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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

BETWEEN

CHANTAL FORTIER

Complainant

and

**TREASURY BOARD
(Correctional Service of Canada)**

and

JOSÉE TREMBLAY

Respondents

Indexed as

Fortier v. Treasury Board (Correctional Service of Canada)

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

Before: Chantal Homier-Nehmé, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Kim Patenaude, counsel

For the Respondents: Andréanne Laurin, counsel

Heard by videoconference,
April 6 to 8, 2021.

REASONS FOR DECISION**FPSLREB TRANSLATION**

I. Complaint before the Board

[1] On November 2, 2018, Chantal Fortier (“the complainant” or “the president”) made an unfair-labour-practice complaint within the meaning of s. 185 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”) against Josée Tremblay, a warden (“the warden”) with the Correctional Service of Canada, which was represented by the Treasury Board (“the respondent” or “the employer”).

[2] When she made her complaint, the complainant worked at Donnacona Institution (“the institution”) in Quebec. She had held a chief, administration and material management (CAMM), position at the AS-04 group and level since 2005. She was the president of the Union of Safety and Justice Employees (USJE), Local 10003.

[3] The complainant alleged that the respondent contravened the Act by investigating her after collusion and witnesses tampering allegations were made in a disciplinary investigation. She maintained that management’s actions were intended to intimidate her because of her role as the union local’s president. She alleged that the respondent prevented her from carrying out her duties as the local’s president. She claimed corrective measures under ss. 186(1)(a), (2)(c), and (2)(a)(i) of the Act.

[4] Although management’s investigation concluded that collusion and witness tampering did not occur, she submitted that the respondent’s conduct negatively affected her health, which caused her to be absent from October 2018 to March 2019. It also impacted labour-management relations and caused her to retire earlier than planned.

[5] The complainant set out several allegations against management, including a communication problem and a toxic work environment at the institution. At the hearing, she informed the Federal Public Sector Labour Relations and Employment Board (“the Board”) that she was withdrawing the allegation that s. 186(1)(b) of the Act had been violated.

[6] On February 7, 2019, the respondent responded to the complaint, stating that it was difficult to determine when it had engaged in unfair labour practices. It maintained that the complaint was unfounded and that it should be dismissed. It

added that the allegations were too general and that they did not constitute an offence under s. 185 of the *Act*.

[7] The respondent understood that the complainant alleged that it did not take seriously the issues that the USJE presented to it, including employee well-being and harassment and violence in the workplace and that it encourages bad management. It claimed that those allegations do not constitute an offence under s. 185 of the *Act*.

[8] The respondent denied contravening the *Act* and harassing and intimidating the complainant during its investigation of her USJE president role. It denied treating USJE members with contempt. According to it, she raised nothing to demonstrate that employees who were USJE members experienced differential treatment compared to those who were members of other unions.

[9] The respondent submitted that in September 2018, it expanded the order to convene an ongoing disciplinary investigation into misconduct allegations against the assistant warden, interventions (“the AWT”), to include collusion and witness tampering allegations involving the complainant. She received a notice that she was the subject of an investigation mandate as an employee, not as a union representative. The respondent maintained that by doing so, it did not contravene the *Act*.

[10] For the following reasons, the complaint is allowed.

II. Summary of the evidence

A. Background

[11] At the hearing, the president stated that she has been retired since October 2019. Before then, she held the CAMM position. She was responsible for a team of four or five employees and was in charge of document and budget management. She was responsible for staffing and providing regional support for hiring employees.

[12] In summer 2017, she became involved in union activities in her local. She was elected by acclamation. The work environment was difficult, and there were many hiring problems.

[13] Her goal as the president was to improve labour relations and to work with management, to find solutions to the payroll problems associated with the Phoenix system. She was very involved in resolving problems at the AWI's office.

[14] As the local's president, she resolved labour relations problems individually or in the labour-management committee. In fall 2017, she had several meetings with Regional Deputy Commissioners Mike Ryan and Alessandria Page. The complainant wanted to bring difficulties at the institution to their attention. Ms. Tremblay was the institution's warden.

[15] At the hearing, the respondent called the institution's warden as a witness. As the warden, she was required to interact with all the unions, and all her decisions impacted the different unions. The president reported directly to Stéphane Jaillet, Assistant Warden, and Mr. Jaillet reported to the warden. Before the complaint was made, the warden had a good relationship with the complainant. In terms of labour relations, communications with the complainant were done either through her or her team of managers or through the AWI and the deputy wardens.

B. The comprehensive investigation at the institution

[16] In 2017, a comprehensive investigation was launched into the workplace difficulties ("the comprehensive investigation"). The warden invited all employees to discuss their problems. The complainant explained that the facts of the complaint began as part of her first union file. She had agreed to represent Josianne Bergeron, a term contract employee who held a case management assistant/segregation assistant position at the CR-04 group and level. The position was in the AWI's group.

[17] Ms. Bergeron sought the complainant's intervention with respect to the project of supervising online inmate training. She questioned the legality of assigning that new task to her. She believed that the AWI tried to assign a task of a position at the WP-03 group and level.

[18] The complainant researched the task's level and nature. Her opinion was that it was above a CR-04 task. Ms. Bergeron expressed some concerns about being alone with inmates. The complainant disagreed with the AWI about the amount of time that the task required and its level. Ms. Bergeron did not want to make a formal complaint.

[19] Ms. Bergeron testified that she had a meeting about it with her manager and the AWI. She did not feel comfortable being alone with inmates. The AWI was not happy that she had consulted the union. The AWI mixed duties from the case management position with her position.

[20] She felt pressured by the AWI, who insisted that she carry out the new task. The president tried to resolve the situation with the AWI, but the AWI insisted that CR-04s were doing that work in other Quebec regions. The AWI lost her temper and accused Ms. Bergeron and the complainant of bad faith. Ms. Bergeron did not believe that she had the required qualifications to supervise inmates. She had the impression that it was impossible to communicate with the AWI and to find a solution. She felt intimidated and threatened.

[21] The president announced that she would move Ms. Bergeron's file to the next level with the deputy warden. The AWI threatened not to renew Ms. Bergeron's contract. Finally, the AWI found someone else to carry out the task. Ms. Bergeron then had several other conflicts with the AWI but chose not to involve the complainant. After a long meeting detailing all her conflicts to her manager, Ms. Bergeron met with Jérôme Poulin, the deputy warden, and the warden. Mr. Poulin and the warden told her that she had two options: make a harassment or a workplace-violence complaint. Ms. Bergeron refused to take action. Finally, in early June 2018, the warden encouraged her to pursue her rights, and she decided to make a harassment complaint against the AWI.

[22] The warden remembered meeting with Ms. Bergeron and her manager, along with Mr. Poulin. The warden testified that Ms. Bergeron refused to carry out the inmate-supervision task. The warden reportedly asked her about her expectations of management. Ms. Bergeron told her that she did not want the situation to reoccur. The warden explained the process to her for a harassment or workplace-violence complaint. She acknowledged that she asked Ms. Bergeron if she would testify against the AWI were a disciplinary investigation launched.

[23] The president remembered Laura Sablon-Rochette, another employee who had difficulties with the AWI. She was a casual employee at the CR-04 group and level. She held a position as an assistant to the assistant warden, operations. Ms. Sablon-Rochette met with the complainant in her office. She was angry because the AWI had refused to

renew her CR-04 contract. The AWI wanted to give her a contract for a WP-03 position. After the WP-03 contract was offered, the union made submissions.

[24] After discussions took place about assigning the WP-03 task to Ms. Bergeron, the AWI told Ms. Sablon-Rochette that her CR-04 contract would not be renewed. The AWI reportedly told her that it was the complainant's fault that her contract would not be renewed.

[25] As part of representing Ms. Sablon-Rochette, the complainant explained the institution's staffing procedure to her. The complainant told her that management first must check the pool. If the candidates refuse, it then must ask for notices of interest. If there is no interest, management may hire casually.

[26] The president raised her concerns about the AWI with Mr. Jaillet, but he did not wish to become involved. Therefore, the president decided to discuss the matter with the warden, who told her that she would resolve it directly with Ms. Sablon-Rochette. In February 2018, the warden called Ms. Sablon-Rochette to her office to ask her who had told her that it was the president's fault that her contract had not been renewed. Ms. Sablon-Rochette replied that she did not know. The warden asked the AWI the same question, and she denied "[translation] winding up" Ms. Sablon-Rochette.

[27] The president remembered that the meeting quickly became heated. She wanted it to end, but the AWI persisted. The complainant left the meeting in tears. She felt the need to protect herself from the AWI.

[28] After the meeting, she emailed the warden and Mr. Poulin. She stated that she had been sensitive to the AWI's comments, that she had the time to reflect on the situation, and that she wanted to avoid all confusion in her mandatory professional relations. The president asked that all communications with the AWI be by email and that she always be accompanied by her manager or anyone else, to avoid misinterpretation. In her president role, she insisted on always being accompanied by the employee seeking representation.

[29] On March 12, 2018, the complainant emailed the warden and Mr. Poulin to inform them that the AWI had come to her office to discuss a work situation with her. She reiterated that she did not want to be in a work context in which the AWI could negatively interpret what she said. She was uncomfortable and did not dare tell the

AWI to leave. According to her, the AWI appeared intimidating and authoritarian. She feared that the AWI would think that she had bad intentions. Mr. Poulin replied that he would have a conversation with the AWI on how to communicate with the complainant.

[30] On April 17, 2018, the warden sent the investigation report to her assistant, Joannie Laforge, to be shared with the unions. The report drew conclusions from all the meetings with members of the USJE and the other unions. At the hearing, the parties agreed to present in evidence a redacted copy of the investigation report, which I accepted.

[31] To follow up on the investigation report, the warden wanted to develop an action plan. She had invited the unions to comment on the report. The local believed that it was too general and that instead it should identify and target problems. People were disappointed. The warden had mandated the AWI to summon all employees, to offer them training. The employees were insulted because according to them, the AWI was part of the problem.

[32] The president called to testify Sonia Thibodeau, a USJE local union representative. Ms. Thibodeau remembered that in June 2018, Yvon Barrière, Regional Vice-President, USJE, went to Québec for a labour-management meeting. Management allowed employees to attend that meeting. The local took the opportunity to meet with Mr. Barrière to discuss the general details of the complaints about harassment and violence in the workplace.

[33] According to the complainant, the employees had major expectations of the investigation report. The local had options to propose to move forward. In late June, the warden initiated a meeting with the same group who had attended to discuss the situations that they had experienced (e.g., bad management or unresolved problems). The president wanted communication to improve. The warden wanted another meeting with the same people, even though they had already provided that information to the investigator.

[34] The warden organized a meeting with all the employees involved so that they could present their concerns directly, without the union's involvement. The complainant was pleased at that meeting between management and employees. The decisions were up to the warden. The message from management was a desire to improve relations, to improve the work environment.

[35] Ms. Thibodeau testified that the warden had told her that she preferred meeting alone with employees directly, as the AWI accused the union of being at the heart of the labour relations problems. That is why she did not want to involve the union. Ms. Thibodeau assisted Ms. Bergeron for the meeting with the investigator as part of the investigation against the AWI.

[36] Ms. Bergeron remembered the June 2018 meeting with all the employees who had experienced difficulties with the AWI. The warden knew that the work climate with the AWI was not good and asked the employees to report their conflicts. The employees were uncomfortable. The warden explained the options and indicated that if they wanted to take part, then was the time to.

C. The disciplinary investigation of the AWI

[37] The warden testified that in June 2018, a disciplinary investigation was launched into the AWI, due to Ms. Bergeron's complaint. External investigators were dispatched. To follow up on the meeting with the other employees, and in consultation with Human Resources, the warden decided to expand the investigation mandate against the AWI.

[38] In July 2018, the complainant was on annual leave when she learned from Ms. Thibodeau that the warden had initiated a disciplinary investigation of the AWI due to the conflicts with Ms. Bergeron. It surprised the complainant, as many other situations should have been addressed at the same time. She contacted the warden, who refused to discuss it with her. The warden told her that from then on, employees would have to bring their conflicts directly to the warden's attention, who would decide how to proceed.

[39] Ms. Bergeron explained that after the announcement was made that the AWI was being investigated, she had to testify and to prepare her testimony. Thus, Ms. Bergeron asked the president for the chronology of events, so that she could put her thoughts in order. The president, Ms. Bergeron, and Laurence Gauvin, a local union representative, exchanged their information in an email chain from July 10 to 13, 2018. The complainant had signatures for her roles both as the CAMM and as a union president. The July 10, 2018, email included her union president signature. In her July 13, 2018, email, she stated the following: "[translation] ... provide your version. The important thing is to be honest ...".

[40] The president then learned that the AWI had met with the warden, in crisis, when she learned that the president had met with Ms. Bergeron. In a sarcastic tone, the warden explained to the president that the AWI did not want the complainant to be the local's president and to represent the employees. In cross-examination, the warden acknowledged that it was not pleasant and that it was stressful for the complainant. The president took a vacation and returned to work in August.

D. The disciplinary investigation of the collusion and witness tampering allegations

[41] The investigation into the president and Ms. Bergeron was launched based on information that the warden received from the investigators in the comprehensive investigation, who informed her that after hearing the testimonies, they feared that possibly, collusion or witness tampering against the AWI had taken place. She consulted Labour Relations, which advised her of two options, either launch a disciplinary investigation against the president and Ms. Bergeron, or expand the investigation mandate against the AWI. The investigation that was underway into the AWI could not be concluded without validating or negating the collusion and witness tampering allegations. The warden stated that she did not see the email and that she could not be involved in the investigation. It was not her responsibility. Otherwise, it would have constituted interfering with the investigation. She could not ignore that type of information, which potentially was a breach of the employer's *Code of Discipline*.

[42] In cross-examination, the warden explained that it was not her role to examine the evidence gathered during the investigation. It was inappropriate for her to examine the full email exchange. Even knowing that the complainant played a support role for the employees involved, clarification was not possible, given the significance of the collusion and witness tampering allegations. It was too important for the impartiality and transparency of the ongoing process. According to her, the new allegations had to be investigated. Mr. Poulin remitted the disciplinary investigation letter to the president, and she was treated the same as had been Ms. Bergeron, as an employee.

[43] In September, Mr. Poulin asked to meet with the president. She had regular calls with him as part of her roles as the CAMM and the local's president. He handed her a disciplinary investigation letter for the collusion and witness tampering allegations. He explained that she was being investigated as the CAMM. The president did not understand why; nothing had been unusual in the exercise of her CAMM duties.

[44] The president did not receive advance notice informing her of a meeting with Mr. Poulin that she qualified as disciplinary. Its purpose was to inform her that a disciplinary investigation would take place. She told Mr. Poulin that it was vexatious and that a mistake had been made. The warden was leading the matter with the region and was away on the day of that meeting, so Mr. Poulin was the acting warden. The notice indicated that he had obtained information that suggested that the complainant might have taken part in collusion or witness tampering before and during the investigation into the AWI.

[45] In the notice, Mr. Poulin informed the complainant that were that action proven, it would constitute a serious offence and a violation of the employer's *Standards of Professional Conduct* or *Code of Discipline*. The notice indicated that a disciplinary investigation mandate had been issued to two area directors. The president was informed of her right to representation.

[46] On September 17, 2018, the president learned that Ms. Bergeron had also been called to a disciplinary meeting about the collusion and witness tampering allegations. Ms. Bergeron testified that she too was in shock. She testified that she did not understand the word "collusion"; she felt betrayed by the warden. Initially, she did not want to make a complaint against the AWI. The warden encouraged her to. Now that she required representation, she was being accused of collusion. Ms. Bergeron had the impression that she was being subjected to reprisals.

[47] The president chose to be represented by Karine Kergoat, Regional Vice-President, USJE for its Quebec region. The vice-president contacted Ms. Page, the deputy commissioner for that region, for an explanation. Ms. Page explained that the president was not being investigated as the president but as an employee. The president was stressed, as she still did not understand how she was part of a disciplinary investigation in her CAMM role.

[48] Ms. Kergoat testified that in September 2018, the complainant informed her of the collusion and witness tampering allegations. She did not understand at all, and, according to her, it made no sense. She found it troublesome that the local's president was being investigated after her intervention with an employee. She requested a meeting with Ms. Page to find out why the president was being investigated. According to her, there was no justification for such an investigation. The warden's reaction was

exaggerated, considering the email exchange in question, which had nothing conclusive in it.

[49] To Ms. Kergoat, it was a form of reprisal. She made calls to try to resolve the situation but was unsuccessful. Once the complainant was convened to an investigation, she wrote to Ms. Page, to inform her that the union had lost all trust in management and that labour-management relations were broken off. Shortly before the day of the investigation, she met with the warden and Mr. Poulin, who repeated that with the information obtained, they had no choice but to investigate. The warden and Mr. Poulin replied not to worry and that if the president had done nothing wrong, everything would be fine.

[50] The president testified that when she was called to a disciplinary investigation without warning, the union prepared a letter to management, indicating that the trust between the union and management had been broken. Ms. Kergoat contacted all the presidents of the different locals, who all withdrew from labour-management meetings to support the complainant and because of what was happening at the institution. Ms. Thibodeau confirmed that in late October 2018, after the complainant and Ms. Bergeron were investigated for collusion, the union ended labour-management meetings, as the relationship of trust with management had been broken.

[51] The warden knew that Ms. Thibodeau's October 31, 2018, email that indicated that the relationship of trust between management and the USJE had been broken was related to the disciplinary investigation triggered against the president and Ms. Bergeron. She testified that she was aware that several people disagreed with the disciplinary investigation of the president and Ms. Bergeron.

[52] On October 2, 2018, the president met with the investigators from the disciplinary committee for the AWI's investigation. They asked her questions about her union role. Suddenly, they presented her with a redacted version of the email that she sent to Ms. Bergeron and Ms. Gauvin on July 10, 2018.

[53] The email was partly redacted, and the president could see that it was from Ms. Laforge, the warden's assistant. The complainant asked how and why Ms. Laforge had access to the email. She explained to the investigators why she drafted it. The email that she was presented had only Ms. Gauvin's response stating that that was not what had happened. It did not include the president's response that set out to the two

of them the importance of being honest in their versions. The president wanted to be reassured with respect to the entire matter and asked the investigators if she could send them the entire email.

[54] When she returned from vacation on October 25, 2018, not knowing how the warden had obtained the email, the president went to see Ms. Laforge. While the president was away, Ms. Laforge replaced her as the CAMM and took care of her email inbox. The president forwarded her emails to Ms. Laforge while she was away.

[55] Ms. Laforge testified that in 2018, she was the warden's assistant and a unionized employee and USJE member. She handled all correspondence and administrative support, employee and manager movement, incident investigations, disciplinary investigations, and notices, and she attended labour-management meetings.

[56] In July 2018, Ms. Laforge was called to an investigation of the harassment allegations against the AWI. At that time, she was in the complainant's position on an acting basis because the complainant was on vacation. Therefore, she received emails as the acting CAMM. She received and had to read all the complainant's emails. She saw one that stated the following: "[translation] ... so that our versions are the same ...". She felt uncomfortable with what it said. According to her, it was unfair for the AWI to be disciplined because of the people involved. She wanted to validate her impression, so she asked a security officer for information. Based on her values, it was unacceptable for a person subjected to an administrative investigation to be disciplined for collusion. The security officer recommended that Ms. Laforge speak with the investigators.

[57] In cross-examination, Ms. Laforge confirmed that she shared the email only with the security officer and her union representative, who then forwarded it to the investigators. She did not share the email with the warden or the AWI. Ms. Laforge stated that she did not see the entire email exchange. She saw the entire exchange only at the end of the investigation. She saw only the emails received in the email inbox. She did not feel comfortable questioning the president directly, given some bad interactions she had had with her in the past.

[58] The president submitted that management could have asked her directly about the email, to obtain an explanation without conducting an investigation. However, the

warden decided to expand the disciplinary investigation mandate against the AWI to include the collusion and witness tampering allegations against the complainant and Ms. Bergeron. The complainant did not understand why the warden had decided to do that. The warden could have met with her personally to ask her about the email without conducting an investigation. According to the president, the warden knew her. It was not how she operated or how she did things, so she wondered why one investigation was always done on top of another. The president then learned that Ms. Laforge had shared the email with the investigators.

[59] Ms. Bergeron met with the investigators in October 2018. She sought to understand why she did not have the opportunity to meet with management to explain herself before an investigation was triggered. She had nothing to do with the exchange between Ms. Gauvin and the president about ensuring that their versions were the same. The complainant clearly wrote that the important thing was to be honest in their versions.

[60] During that time, the investigation of the AWI continued. The complainant was on sick leave, and the warden met with the AWI to inform her of a second investigation mandate and a second allegation, from another employee. The AWI was beside herself and informed the warden that she would make a complaint against the president.

[61] Even though the president was on sick leave, Ms. Page, the person responsible for harassment complaints in the Quebec region, informed her that the AWI had made a harassment complaint against her. The harassment complaint notice was dated September 28, 2018, was signed by the deputy commissioner, and indicated that nine allegations against the complainant had been considered admissible. The complainant was invited to send her comments to her in writing.

[62] According to management, the AWI's harassment complaint against the president was allegedly made in the context of her CAMM role. She read the deputy commissioner's instructions. She testified that she shared the complaint with her manager, Mr. Jaillet. He testified that he was not aware of the reasons for the complaint or the instructions given to the president after it was made.

[63] Ms. Page indicated to the president that when she met with the employees who had complained against the AWI, she had to follow certain instructions. Ms. Page told the president that the warden had told her in a sarcastic tone that the AWI did not

want the complainant to be the president and did not want her to represent employees. The complainant did not know that she had to respect that measure.

[64] The warden testified that she told the president not to go to the AWI's office or to speak to her and that if she had to, she was to address someone else, to not make things worse. The president understood that she was not to have any contact with the AWI. The warden explained that the regional deputy commissioner decided whether a harassment complaint would be investigated or whether it would be addressed through informal conflict management. Her only role as the warden was to separate the people in question.

[65] On November 7, 2018, the complainant emailed Ms. Page. She asked for clarification as to the measures and instructions that she was to follow during the investigation of the AWI's harassment complaint against her. The email was adduced in evidence. She indicated that she was still the local's president, that some of the AWI's employees still asked to meet with her for advice and support, and that against her will, she would see the AWI in the halls, as they worked in the same sector. She asked for clarification to avoid a misinterpretation of her actions and avoid causing harm.

[66] Ms. Page simply told her to limit her contact with the AWI. With respect to her role as the local's president, although the email did not explicitly state it, the complainant testified that she understood that she could no longer represent the employees involved in the investigation of the AWI.

[67] When the complainant met with her manager to inform him of the harassment complaint made against her, he added to her performance agreement that she had to better manage the duality of her union role and her job. The performance agreement was a statement of her capacities and performance. She wanted to discuss it with him, but he told her to let it go and that they would talk about it again. It affected her, and she found it difficult to accept that she was being accused of intentions of collusion, witness tampering, and harassment, given that Mr. Jaillet had known her very well and for a long time.

E. The performance agreement

[68] After all those events, the complainant faced a harassment complaint against her. She also alleged that she was given the objective of better managing her union and

employee roles in her 2018-19 fiscal-year performance agreement. She suffered from insomnia and palpitations. She had to take medication and made more and more mistakes at work. Finally, she went on sick leave in November 2018.

[69] Mr. Poulin asked Ms. Thibodeau to inform the complainant and Ms. Bergeron of the outcome of the collusion investigation. In the first week of December 2018, she was informed that the investigation had revealed no collusion or witness tampering. The complainant testified that the stress and anxiety that she experienced caused her to go on sick leave. She asked Ms. Kergoat for a meeting with Ms. Page, to ask that the AWT's false harassment complaint be withdrawn, that an investigation be launched into how the email had exited her inbox, and that her sick leave be reimbursed.

[70] On December 5, 2018, Ms. Kergoat emailed Ms. Page, to discuss the investigation report's findings. The purpose of her email was to ask that certain steps be taken for the complainant to be able to discuss the investigation report's results and to clear her reputation. She wanted reparation for the alleged harm against her. Ms. Kergoat and the complainant wanted to know what had triggered the investigation.

[71] The reparation requests were presented by email on January 14, 2019. Management did not respond. On February 15, 2019, the complainant resubmitted the demands. She was due to return from sick leave and wanted answers to her questions. Ms. Page responded that investigations remain confidential and that the complainant could not discuss the outcome. On March 8, 2019, Ms. Kergoat wrote to the warden, to inform her that although the investigation had proven beyond a doubt that no collusion or witness tampering had taken place, the reputations of the people in question had been tarnished, and the personal and professional repercussions were enormous.

[72] Ms. Kergoat requested an apology letter from management, written permission for the complainant and Ms. Bergeron to be able to speak openly about the investigation because that was part of the healing process, reimbursement of all leave used after the investigation was launched, and reimbursement of all salary lost after the investigation was launched. On March 13, 2019, the warden acknowledged receiving their demands and continued her explanation by writing that based on the information that had been brought to her attention, the expansion of the investigation mandate had been necessary, to clarify the situation for everyone involved. The

primary objective of an investigation is to establish the context and the facts of misconduct allegations. The warden indicated that for those reasons, she could not follow up on their demands.

[73] Under cross-examination, Ms. Kergoat indicated that the warden had told her that she had to expand the investigation involving the AWI, given the new information that had been brought to her attention. According to Ms. Kergoat, it would have been easier to ask the complainant and Ms. Bergeron for the rest of the email instead of launching an investigation or expanding it.

[74] By March 2019, the complainant had still not recovered. She had to use her annual leave credits because she had exhausted her sick leave credits. Ms. Kergoat wrote to Ms. Page to follow up on the reparation demands made in January and February. Ms. Page contacted the warden, who had categorically refused all the complainant's demands. Apart from the warden's explanations noted earlier, the complainant indicated that she never received the reasons behind launching the investigation.

[75] On March 20, 2019, the complainant emailed the warden, to tell her that she did not want to be alone with the warden or the AWI and that all meetings had to be held in a third party's presence. The complainant wanted to facilitate her return to work. She had used all her sick and vacation leave. She had submitted a medical note to limit contact with the people in question. She had also asked to be accompanied when meeting with her manager.

[76] In April 2019, Mr. Jaillet asked the complainant to close her mid-year performance agreement. He knew that she did not agree with the addition of the objective about the distinction to be made between her CAMM duties and her role as the local's president. That is why she asked that her performance agreement remain pending, as it was part of the complaint before the Board.

[77] Later, the complainant learned that her manager had had her entire performance agreement closed, with no opportunity to discuss his reproach about better managing her union president and CAMM roles. She did not know what he was talking about. To her knowledge, there had never been a complaint in her workplace exchanges. She always used two signatures and clarified her role very precisely in her interactions with management.

[78] On May 8, 2019, Mr. Poulin, the warden on an acting basis, sent a letter to the complainant advising her of the investigation report about the collusion and witness tampering allegations. He informed her that the investigation report was confidential and that she had seven working days to provide written or verbal comments to the investigator.

[79] The complainant learned from the investigation report that the security intelligence officer at the institution who had led the investigation into collusion and witness tampering had received a copy of the initial email. The security intelligence officer's role at the institution is to manage inmate information. It is not to manage emails from the union or from the institution's employees. At the hearing, the complainant still did not understand why Ms. Laforge had done that. According to her, it damaged her credibility. Ms. Laforge could have simply asked her the question or, out of caution, found the email that the complainant sent in response to Ms. Gauvin's email, noting the importance of being honest.

[80] The investigation report cited Ms. Laforge's statement that indicated that the complainant never approached Ms. Laforge about the investigation process into the AWI and that the complainant never expressed any specific animosity toward the AWI. According to the investigator, the collusion and witness tampering allegations were unfounded, and it constituted a labour relations conflict.

[81] All these events had a major impact on the complainant, who had a hard time physically; she suffered from insomnia in addition to the psychological impact. Her credibility had been affected by her colleagues' judgment of her. She had no opportunity to discuss her position on the collusion and witness tampering allegations because she had been advised not to discuss it. She had been deprived of representing her members as the local's president, and the entire local's relationship of trust with management had been affected. It was a very difficult time in her life. According to her, her colleagues and management had betrayed her. The entire situation could have been avoided. She was prescribed medication for insomnia and anxiety and had six psychological consultations.

[82] The complainant retired early, at a young age. She still enjoyed her work and her role as the local's president. She did not foresee retiring at such a young age. She never suffered a reduction in work and was never suspended. She was prevented from

representing the members involved in the investigation against the AWI. However, in cross-examination, she agreed that the warden never prevented her from filing a grievance or making a complaint.

[83] The complainant refused an informal resolution with the AWI, as she had lost trust. She never received any clarification of the AWI's harassment complaint against her. The AWI's complaint was made without speaking to her first.

[84] Although Ms. Page's November 16, 2018, letter indicated that the complainant continued to assume her union president responsibilities "[translation] in accordance with best practices", she did not agree that the respondent did not prevent her from exercising her union functions. Ms. Page ordered her to contact Mr. Poulin about any file that would require representation as part of the AWI investigation.

[85] The respondent's representative told the complainant that the warden would testify that she advised the complainant that the AWI intended to make a harassment complaint against her. The complainant responded that it was untrue. As she remembered, it was a request to put measures in place to limit interactions with the AWI. Even before the July 12, 2018, meeting, measures were in place that were implemented at her request.

[86] Ms. Laforge disclosed the email that led to the investigation of collusion and witness tampering from the complainant's email inbox. Ms. Laforge received the email because the complainant's email inbox had been forwarded. The complainant was away for about three weeks in July. The emails were automatically forwarded to Ms. Laforge but did not include the messages that the complainant sent in response to those received.

[87] The respondent told the complainant that Mr. Jaillet added that objective because some employees and other managers had complained, as they did not know which hat she wore. She responded that performance agreements could not be used to catch an employee by surprise. According to her, she was entitled to be informed of those comments and to be given the opportunity to correct her actions before they were mentioned in the performance agreement. She never had the opportunity to discuss it, and Mr. Jaillet closed the performance agreement without giving her that opportunity.

[88] The respondent called Mr. Jaillet to testify. The warden was his immediate supervisor. Mr. Jaillet had a good relationship with the complainant. However, it was more complex when they discussed work. They generally had difficulty agreeing on points of management. He had the impression that she took everything personally. When he made a decision that she did not like, she would go directly to the warden.

[89] Mr. Jaillet testified about the complainant's performance agreement. In general, he made good comments about her performance. He acknowledged that despite the difficulty getting along, she had significant experience and carried out her work well. She met all the competencies. He remembered that she refused to sign the mid-year performance agreement and that it was closed during the following year. They had a difference of opinion about adding the objective at mid-year of clarifying her roles in her interactions and of clearly distinguishing between her roles as the CAMM and the local's president. He acknowledged that it was not easy for her but that it was also not easy for him.

[90] Mr. Jaillet asked the complainant to clarify her role in her interactions. He cited the example of one instance, when she went to tell Mr. Poulin that he had not entered his assistant's leave in the system. According to him, it was not clear whether she was acting as the CAMM or as the local's president. In addition, she had to dedicate time to her union files. As a manager, Mr. Jaillet did not have access to them. She also had to handle her work files in compensatory time. That created some difficulty separating her work as the CAMM and her union work. Mr. Jaillet had difficulty dealing with the situation. According to him, the union work was complex, but the daily work also had to be done. Apparently, he wanted a clearer distinction between the two roles. The goal was not at all to prevent the complainant from carrying out her union duties. She moved about the institution to meet with employees who needed her. Mr. Jaillet did not know whether she asserted her right to challenge her performance agreement.

[91] In cross-examination, Mr. Jaillet stated that the complainant did her CAMM work well with respect to managing her sector 80% of the time. She had full latitude and was capable of managing her sector. They had a good working relationship. She had her way of seeing things and, if it did not match his vision, then it did not work. The 20% of the time was enough to ruin the 80% and all his trust in her ability to do her work. When she returned from her leave, they could no longer have a face-to-face conversation. She preferred to communicate with him by email or with a witness

present. He tried to hold discussions with her to correct the situation before including the objective in writing. The AWI complained to Mr. Jaillet about the complainant, as the complainant insisted on being accompanied at all times when she had to be in the AWI's presence.

[92] Again in cross-examination, Mr. Jaillet explained that at that point, he had to consult Human Resources, to clarify things. That was his daily reality with the complainant. According to him, it was the worst management period in his 29 years of service. He indicated that he had to walk on eggshells like he had never had to before with respect to the entire AWI story. He understood why the complainant asked to be accompanied by a witness. He did not remember her requesting a meeting to discuss the instructions to communicate in writing.

III. Reasons, and summary of the arguments

[93] The complainant made the complaint under s. 190(1)(g) of the *Act*. That provision states that the Board must examine and inquire into any complaint made to it that the employer, an employee organization, or any person has engaged in an unfair labour practice within the meaning of s. 185.

[94] In an email dated November 1, 2019, the complainant stated that she sought corrective measures under ss. 186(1)(a), (2)(c), and (2)(a)(i) of the *Act*. I note that the initial complaint makes no mention of a violation of s. 186(1)(a). In that email, she indicated that she sought a declaration that the respondent infringed s. 186(1)(a). It did not object to that claim.

[95] The relevant provisions of the *Act* read as follows:

...	[...]
<i>5 Every employee is free to join the employee organization of his or her choice and to participate in its lawful activities.</i>	<i>5 Le fonctionnaire est libre d'adhérer à l'organisation syndicale de son choix et de participer à toute activité licite de celle-ci.</i>
...	[...]
186 (1) No employer, and, whether or not they are acting on the employer's behalf, no person who occupies a managerial or confidential position and no person	186 (1) Il est interdit à l'employeur ainsi qu'au titulaire d'un poste de direction ou de confiance, à l'officier, au sens du paragraphe 2(1) de la Loi sur la Gendarmerie

who is an officer as defined in subsection 2(1) of the Royal Canadian Mounted Police Act or who occupies a position held by such an officer, shall

(a) participate in or **interfere** with the formation or administration of an employee organization or **the representation of employees by an employee organization** ...

...

(2) No employer, no person acting on the employer's behalf, and, whether or not they are acting on the employer's behalf, **no person who occupies a managerial or confidential position** ... who occupies a position held by such an officer, shall

(a) refuse to employ or to continue to employ, or suspend, lay off, discharge for the promotion of economy and efficiency in the Royal Canadian Mounted Police or otherwise **discriminate** against any person **with respect to employment, pay or any other term or condition of employment, or intimidate, threaten or otherwise discipline** any person, because the person

(i) is or proposes to become, or seeks to induce any other person to become, a member, **officer or representative** of an employee organization, or participates in the promotion, formation or administration of an employee organization

...

royale du Canada, ou à la personne qui occupe un poste détenu par un tel officier, qu'ils agissent ou non pour le compte de l'employeur :

a) de participer à la formation ou à l'administration d'une organisation syndicale ou **d'intervenir dans l'une ou l'autre ou dans la représentation des fonctionnaires par celle-ci;**

[...]

186 (2) Il est **interdit** à l'employeur, à la personne qui agit pour le compte de celui-ci ainsi qu'**au titulaire d'un poste de direction** ou de confiance [...] agissent ou non pour le compte de l'employeur :

a) de refuser d'employer ou de continuer à employer une personne donnée, ou encore de la suspendre, de la mettre en disponibilité, de la licencier par mesure d'économie ou d'efficacité à la Gendarmerie royale du Canada ou de faire à son égard des **distinctions illicites en matière d'emploi**, de salaire ou **d'autres conditions d'emploi**, de l'intimider, de la menacer ou de prendre **d'autres mesures disciplinaires** à son égard pour l'un ou l'autre des motifs suivants :

(i) elle adhère à une organisation syndicale ou **en est un dirigeant ou représentant** — ou se propose de le faire ou de le devenir, ou incite une autre personne à le faire ou à le devenir —, ou contribue à la formation, la promotion ou l'administration d'une telle organisation,

...

(c) seek, by **intimidation**, threat of dismissal or any other kind of threat, **by the imposition of a financial or other penalty** or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of an employee organization or to refrain from

c) de chercher, notamment par **intimidation**, par menace de congédiement ou **par l'imposition de sanctions pécuniaires ou autres**, à obliger une personne soit à s'abstenir ou à cesser d'adhérer à une organisation syndicale ou d'occuper un poste de dirigeant ou de représentant syndical, soit à s'abstenir :

...

[...]

[Emphasis added]

[96] Section 190(2) of the Act provides as follows that a complaint alleging that an employer committed an unfair labour practice must be made within 90 days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstance giving rise to the complaint:

190 (1) ...

190 (1) [...]

(2) Subject to subsections (3) and (4), a complaint under subsection (1) must be made to the Board not later than 90 days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint.

(2) Sous réserve des paragraphes (3) et (4), les plaintes prévues au paragraphe (1) doivent être présentées dans les quatre-vingt-dix jours qui suivent la date à laquelle le plaignant a eu — ou, selon la Commission, aurait dû avoir — connaissance des mesures ou des circonstances y ayant donné lieu.

[97] In the circumstances of this complaint, the respondent made no objection about the time limit not being respected. The complaint was made on November 2, 2018, and the disciplinary investigation into the collusion and witness tampering allegations began on September 17, 2018. Among other things, the president alleged that she was affected in her union representative role. She submitted that the respondent engaged in an unfair labour practice by investigating the local's president's actions in her support of a member. In particular, the facts underlying the disciplinary investigation against the AWI are relevant to deciding the complaint before the Board.

[98] With respect to s. 186(1)(a) of the Act, the Board has consistently interpreted it as stating that a complaint under it can be made only by a bargaining agent or a duly

authorized representative (see *Gabon v. Department of the Environment*, 2022 FPSLREB 6). The complainant was the local's president, and the bargaining agent made the complaint. She was represented by private-sector counsel, whom the bargaining agent had mandated. Therefore, she had standing to make a complaint under s. 186(1).

[99] For the following reasons, the evidence clearly established that the respondent violated s. 186(1)(a) of the *Act* by intervening in Ms. Bergeron's representation. The complainant was the USJE local's president, and Ms. Bergeron was a USJE member. She asked the local's president for help preparing for her meeting with the investigators. The respondent was negligent when it decided to launch a disciplinary investigation against the local's president without investigating the facts behind the collusion and tampering allegations. From that moment, the local's president could no longer help Ms. Bergeron as part of the investigation against the AWI. That constituted interference in the local's president's role and therefore in a USJE member's representation.

[100] With respect to the complaints under ss. 186(2)(a)(i) and (c) of the *Act*, the respondent submitted that an arguable case must be established before the reverse burden of proof under s. 191(3) can be applied (see *Joe v. Marshall*, 2021 FPSLREB 27 at para. 107). I agree.

[101] As the Public Service Labour Relations Board (a predecessor to the Board) determined in *Laplante v. Treasury Board (Department of Industry and the Communications Research Centre)*, 2007 PSLRB 95, *Quadrini v. Canada Revenue Agency*, 2008 PSLRB 37, and *Manella v. Treasury Board of Canada Secretariat*, 2010 PSLRB 128, an unfair-labour-practice complaint can be dismissed if, on its face, it does not show a reasonable link to the prohibitions in the *Act*.

[102] Section 191(3) of the *Act* provides that a written complaint of an alleged failure to comply with s. 186(2) is itself evidence that the failure actually occurred and that the burden of proving that it did not is on the party alleging that the failure did not occur. I must assess whether, taking all the facts as alleged by the complainant as true, there is an arguable case that the respondent contravened the provisions at issue in ss. 186(2)(a)(i) and (c).

[103] The complainant submitted that the administrative investigation into the collusion and witness tampering allegations resulted directly from her duties as president of the union local. She alleged that the respondent contravened the *Act's*

provisions cited earlier by launching a disciplinary investigation against her and a USJE member after collusion and witnesses tampering allegations in the exercise of her representation role were made. She maintained that those allegations, and the disciplinary investigation against her, were intended to intimidate her in her role as the local's president. And adding in her performance agreement the objective to better differentiate her roles in the workplace was discrimination with respect to employment.

[104] Taking the facts alleged in the complaint as true, I conclude that the complainant presented an arguable case, and I accept that the facts can be supported with respect to ss. 186(2)(a)(i) and (c) of the *Act*. It remains to be determined whether those provisions were violated. As noted earlier, s. 191(3) provides that the respondent has the burden of proving that no violations took place.

[105] The complainant submitted that the issue that I must determine is as follows: Did the warden contravene the *Act* by engaging in an unfair labour practice by investigating the local's president's actions in her representation of Ms. Bergeron? According to the complainant, the warden discriminated with respect to employment by attempting to intimidate her and by threatening to impose a disciplinary action in her role as the local's president in her representation of Ms. Bergeron. The complainant submitted that her support of Ms. Bergeron constituted a lawful activity protected by s. 5 of the *Act*. In addition, after the notice of the disciplinary investigation was issued, the president was prevented from helping Ms. Bergeron in the investigation involving the AWI and was subjected to reprisals with respect to her performance agreement after she exercised her union activities.

[106] The complainant submitted that union representatives benefit from all the protections afforded by the *Act* and that they must be able to act with impunity while exercising their rights when acting in good faith. Union representatives must be able to carry out their responsibilities with thoroughness and openness without management intervening in union representation. It is a difficult role, and there is a price to pay. There are inherent risks in the role that are protected by the *Act*. To support her claims, the complainant referred me to the following case law: *Shaw v. Deputy Head (Department of Human Resources and Skills Development)*, 2006 PSLRB 125 at paras. 50 and 51; *Quadrini*, at paras. 45 to 47; *Choinière Lapointe v. Correctional Service of Canada*, 2019 FPSLREB 68 at paras. 194 to 199 and 237; and *Joe*, at para. 126.

[107] The respondent maintained that it would have acted with the same objectivity and promptness regardless of the statuses or roles of those targeted by the allegations, which it took seriously. There was no malice or anti-union sentiment on its part. The information received suggested that there was collusion and witness tampering in the investigation involving the AWI. That is why the employer exercised its management rights, in good faith. Its opinion is that in an investigation, regardless of the grounds, management cannot ignore information provided to it and must treat it with diligence. It requested that the complaint be dismissed and referred me to the following decisions: *Quadrini; Hager v. Statistical Survey Operations (Statistics Canada)*, 2011 PSLRB 79 at paras. 75, 112, 113, 118, 124, 131, and 137; and *Joe v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLREB 10 at paras. 39 to 42.

[108] The respondent submitted that the warden listened to employees and that she tried to address the problem of the institution's work environment. The complainant never suffered any monetary loss. The respondent never prevented her from carrying out her union activities. She was never prevented from communicating with members during the grievance process or from making a complaint, and no disciplinary measure was imposed on her. Therefore, the complaint has no basis. Merely making a complaint is not proof in itself. Disciplinary action was not imposed on her, and there is no evidence of intimidation. The respondent had no control over the harassment complaint that the AWI made against the complainant. She sometimes signed her emails as the local's president and as the CAMM. That could have led to confusion. Therefore, adding the objective to her performance agreement was justified and was in no way a reprisal measure. The goal was not to prevent her from carrying out her duties but to understand the role that she was acting in. The AWI made the harassment complaint against the complainant not in her role as the local's president but as the CAMM.

[109] The respondent submitted that the AWI told the warden that she wanted the complainant to stop exercising her union activities. The warden replied that that was not possible and that there was no question of preventing her from exercising her union activities.

[110] With respect, I do not agree. That is not what I heard in the evidence in the warden's testimony. At the hearing, the warden simply indicated that she remembered that the AWI came to meet with her to tell her that she no longer wanted the

complainant to represent the employees. The warden apparently repeated that information to the complainant. I conclude that that is the main reason behind the AWI's harassment complaint against the complainant. The AWI did not want the complainant to be the local's president and to represent employees in the disciplinary investigation against her. The warden was aware of the AWI's anti-union sentiment and did nothing to resolve the situation.

[111] The respondent submitted that it was not the warden's role to decide to have the complainant and Ms. Bergeron testify as part of the investigation. The warden exercised her management right when faced with serious allegations and decided to expand the investigation's mandate. That cannot constitute an unfair labour practice within the meaning of the *Act*. And the warden did not play a role in the harassment complaint made against the complainant or in adding the objective to the performance agreement.

[112] As noted in *Choinière Lapointe*, under s. 191(3) of the *Act*, my task consists of determining whether the respondent proved on a balance of probabilities that ss. 186(2)(a)(i) and (c) were not contravened. Overall, I conclude that it did not discharge its burden of proving that the complaint is unfounded.

[113] I conclude that the respondent's actions were taken to intimidate and threaten the president for her role as the local's president and that the disciplinary investigation into the collusion and witness tampering allegations and the warning that a disciplinary measure could be imposed on her constituted a threat with the goal of dissuading her from helping Ms. Bergeron. I do not agree with the respondent, which claimed that its actions were a reasonable exercise of management rights. A reasonable exercise of management rights required an investigation into the facts behind the collusion and witness tampering allegations before launching a disciplinary investigation.

[114] The president was prevented from representing Ms. Bergeron during the investigation against the AWI, and a disciplinary investigation was launched against her when Ms. Bergeron asked her for help when preparing for her meeting with the investigators. I am satisfied that those measures were taken to intimidate and threaten her because she supported Ms. Bergeron in her intimidation allegations against the AWI.

[115] She suffered reprisals with respect to her performance agreement. She ended up with negative comments that insinuated that she had difficulty managing her roles as the local's president and as the CAMM. Section 186(2)(a)(i) of the *Act* prohibits discrimination with respect to employment or other terms of employment because the person is a representative or leader of an employee organization. In this case, adding those comments constituted discrimination. Mr. Jaillet was unable to clarify the complainant's difficulties with the duality of her roles, which the respondent was aware of. Mr. Jaillet reported directly to the warden. In his testimony, he was visibly disturbed by the fact that the complainant had exercised her role as the local's president and complained that she often had to work overtime to complete her work. Labour relations as a whole with management suffered. The different locals withdrew from labour-management meetings, which sent a chill. That evidence was not challenged.

[116] As I determined in *Joe*, being an elected union official carries with it a set of heightened obligations and responsibilities. That is why a law protects lawful union activities. Among other things, the Board must ensure that the union freedoms set out in the *Act* can be exercised with impunity.

[117] As determined in *Quadrini*, at para. 45, it is fundamental to the integrity of the labour relations system that people have the opportunity to exercise the rights accorded to them under those laws without fear of reprisal. Were it otherwise, given the possibility of abuse of authority in employee-employer relationships, "... the chilling effect of reprisal action on the exercise of vested statutory rights could undermine the effective force of those rights." In this complaint, the respondent launched an investigation against the local's president into her support of a member without verifying the facts underlying the collusion and witness tampering allegations. Although the respondent maintained that it had no intention to threaten the complainant, she testified convincingly that she felt threatened when she received the disciplinary investigation notice. I conclude that the disciplinary investigation constituted an attempt to intimidate her and a threat to impose disciplinary action on her due to her president role. The disciplinary investigation notice was unfounded.

[118] As I determined in *Joe*, union representatives must be able to exercise their lawful activities without fear of reprimand, interference, or intimidation from the employer. The facts of this complaint are similar to the facts in *Joe*. Given that labour

relations can be conflictual in nature, arbitrators and adjudicators generally give union representatives latitude in how they carry out their duties and how they challenge management, without fear of being disciplined. Even if a union representative performs his or her duties in a manipulative way, such conduct cannot justify discipline unless it is done maliciously or deceitfully, whether consciously or recklessly, or in a way that threatens, intimidates, or publicly attacks the employer or a member of management.

[119] Protection would also not extend to conduct that falls outside the normal range of union responsibilities, such as consciously or maliciously spreading falsehoods about a member of management or other employees. Protection would also not apply when someone instigates a witch hunt against a member of management based on complaints that are consciously or recklessly false or for a personal vendetta. No protection would be accorded to a union officer who incited a violation of a law.

[120] In the complainant's case, it is quite the contrary. The email that led the warden to order a disciplinary investigation against the complainant and Ms. Bergeron clearly indicated that it was from the president and explicitly indicated the need to be honest in the versions. For that reason, I conclude that the warden was negligent by not carrying out due diligence and by not asking the investigators to obtain the full version of the email before accusing the president and Ms. Bergeron of collusion and witness tampering and pursuing a disciplinary investigation against them. That gesture had an enormous impact on the complainant personally and on Ms. Bergeron and labour-management relations. The warden could have simply ordered the investigators to summon them as witnesses and to ask them their questions about the email without launching a disciplinary investigation. I conclude that the respondent did not discharge its burden of proving that the disciplinary investigation launched against the complainant was not intended to intimidate her due to her president role.

[121] In this case, researching the facts before launching a disciplinary investigation would have revealed that the complainant signed the email in question as the president and that she was helping Ms. Bergeron. In addition, the email in its entirety included a reminder to Ms. Bergeron of the need to be honest in their versions. The warden was aware of the AWI's anti-union sentiment of animosity toward the complainant. When she administered the disciplinary process involving the union representative, the warden should have demonstrated diligence and investigated the

facts before launching the disciplinary investigation. She should have considered the fact that the accusations were against the union president, who bore heightened responsibilities and had to ensure that she could carry on with her union activities while her conduct was being investigated.

[122] In the circumstances of this complaint, I find that that is not what occurred. For all the reasons stated earlier, I conclude that the respondent engaged in unfair labour practices prohibited under ss. 186(2)(a)(i) and (c) of the *Act* by not allowing the president to help Ms. Bergeron in the investigation against the AWI, by launching a disciplinary investigation against the president before verifying the facts behind the collusion and witness tampering allegations, by threatening the president with possible disciplinary action, and by allowing Mr. Jaillet to add as an objective the need to identify the duality of her roles in her workplace interactions.

[123] I agree with the complainant that she signed the email that led to the investigation as the local's president. The chronology is clear of the complainant's email to Ms. Bergeron indicating that Ms. Gauvin suggested changing the versions, but the president and Ms. Bergeron were investigated. The warden failed her duty to obtain the relevant information before proceeding with the disciplinary investigation. I agree with the complainant that she and Ms. Bergeron could simply have been questioned as part of the ongoing investigation; then, whether a disciplinary investigation was required could have been determined.

[124] I do not share the warden's opinion that the allegations were so significant that it was the only way to proceed. Given the complainant's role as the local's president, it would have been more prudent to proceed this way and avoid the repercussions on her, the union, and labour relations. The decision to investigate was the warden's, who was never able to explain how the email could have suggested collusion or witness tampering. She could simply have asked for the entire email chain. The respondent was unable to demonstrate that ss. 186(2)(a)(i) and (c) of the *Act* were not contravened.

IV. Corrective measures

[125] To follow up on the Board's request made at the pre-hearing conference, on November 1, 2019, the complainant set out the corrective measures that she seeks, as follows:

[Translation]

...

1. *A declaration that the Correctional Service of Canada contravened the prohibitions set out in ss. 186(1)(a), 186(2)(a)(i), and 186(2)(c) of the Federal Public Sector Labour Relations Act, S.C. 2003, c. 22, s. 2 ("the Act");*
2. *The reimbursement of sick leave, vacation leave, and other leave taken due to the contravention of the Act;*
3. *The reimbursement of medical costs (psychological and medication) not reimbursed by Sun Life;*
4. *The withdrawal of the comment in Section C of the mid-year performance agreement that Stéphane Jaillet prepared on December 6, 2018;*
5. *The amendment of the employer's declaration to the CSST signed on December 17, 2018, to correct the inaccurate statements;*
6. *An investigation into the unauthorized sharing of confidential information, namely, the union email being shared from the email inbox ...*
7. *General damages for the harm suffered from the contravention of the Act;*

...

[126] At the hearing, the complainant requested \$5000 in damages for the impact that she suffered. She asserted that s. 192(1) of the Act enables the Board to make any order or order any remedies for damages suffered. She testified that the investigation's launch caused her to feel a deep sense of betrayal. It affected her health to the point that she had to take sick leave and annual leave from October 2018 to March 2019, which had an impact on her physically and psychologically. She was medicated and had to consult the Employee Assistance Program. All this impacted her workplace reputation and her relationships with her colleagues. She testified that during the investigation, she saw the judgment from her colleagues and felt gagged because she could not talk about what was happening to her. She was unable to represent USJE members and to be an effective union president. She felt that the members lost their trust in her, and she quit her position as the local's president before her term ended. Her return from sick leave was difficult, and the environment was unbearable. She took early retirement. For all those reasons, she requested \$5000 in damages.

[127] The respondent submitted that it was entirely normal for a disciplinary investigation to cause stress. However, it is normal in a work environment. The

complainant had access to the Employee Assistance Program. There is no reason to grant any form of damages. An employer must be able to take all necessary measures when serious allegations are brought to its attention, without fear of having to compensate. The disciplinary investigation and harassment complaint concluded that there was no misconduct on the complainant's part. She was cleared of all allegations.

[128] Section 192(1) of the Act gives me the power to make any order that I consider necessary in the circumstances against the party that is the subject of the complaint and states as follows:

192 (1) If the Board determines that a complaint referred to in subsection 190(1) is well founded, the Board may make any order that it considers necessary in the circumstances against the party complained of, including any of the following orders:

(a) if the employer has failed to comply with section 107 or 132, an order requiring the employer to pay to any employee compensation that is not more than the amount that, in the Board's opinion, is equivalent to the remuneration that would, but for that failure, have been paid by the employer to the employee;

(b) if the employer has failed to comply with paragraph 186(2)(a), an order requiring the employer to

(i) employ, continue to employ or permit to return to the duties of their employment any person whom the employer or any person acting on the employer's behalf has refused to employ or continue to employ, has suspended, transferred, laid off, discharged for the promotion of economy and efficiency in the Royal Canadian Mounted Police or otherwise discriminated against, or discharged contrary to that paragraph,

192 (1) Si elle décide que la plainte présentée au titre du paragraphe 190(1) est fondée, la Commission peut, par ordonnance, rendre à l'égard de la partie visée par la plainte toute ordonnance qu'elle estime indiquée dans les circonstances et, notamment :

a) en cas de contravention par l'employeur des articles 107 ou 132, lui enjoindre de payer à un fonctionnaire donné une indemnité équivalant au plus, à son avis, à la rémunération qui aurait été payée par l'employeur au fonctionnaire s'il n'y avait pas eu contravention;

b) en cas de contravention par l'employeur de l'alinéa 186(2)a), lui enjoindre :

(i) d'engager, de continuer à employer ou de reprendre à son service le fonctionnaire ou toute autre personne, selon le cas, qui a fait l'objet d'une mesure interdite par cet alinéa,

(ii) pay to any person affected by that failure compensation in an amount that is not more than, in the Board's opinion, the remuneration that would, but for that failure, have been paid by the employer to that person, and

(ii) de payer à toute personne touchée par la contravention une indemnité équivalant au plus, à son avis, à la rémunération qui lui aurait été payée par l'employeur s'il n'y avait pas eu contravention,

(iii) rescind any disciplinary action taken in respect of any person affected by that failure and pay compensation in an amount that is not more than, in the Board's opinion, any financial or other penalty imposed on the person by the employer;

(iii) d'annuler toute mesure disciplinaire prise et de payer au fonctionnaire touché une indemnité équivalant au plus, à son avis, à toute sanction pécuniaire ou autre imposée au fonctionnaire par l'employeur;

(c) if the employer has failed to comply with paragraph 186(2)(c), an order requiring the employer to rescind any action taken in respect of any employee affected by the failure and pay compensation in an amount that is not more than, in the Board's opinion, any financial or other penalty imposed on the employee by the employer ...

c) en cas de contravention par l'employeur de l'alinéa 186(2)c, lui enjoindre d'annuler toute mesure prise et de payer au fonctionnaire touché une indemnité équivalant au plus, à son avis, à toute sanction pécuniaire ou autre imposée au fonctionnaire par l'employeur;

...

[...]

[Emphasis added]

[129] For all those stated reasons, I do not agree that the president suffered no consequences. I conclude that she and Ms. Bergeron were affected by the events. The complainant felt intimidated and threatened when she received the disciplinary investigation notice. She was not given the opportunity to explain herself before the investigation was launched. The disciplinary investigation impacted her in the workplace, and she retired earlier than planned. I found the testimonies of the complainant, Ms. Bergeron, and Ms. Kergoat on this point particularly convincing. I note that the complainant's psychological suffering and early retirement because the prohibitions set out in ss. 186(2)(a)(i) and (c) were contravened is difficult to evaluate objectively and to quantify. However, this suffering, as she testified, included a deep sense of betrayal by the respondent, humiliation in the workplace from being investigated, and feeling gagged. For all those reasons, I conclude that \$5000 is the

appropriate amount of damages in the circumstances to address those events' impact on the complainant personally.

[130] In addition, I find that the president took annual and sick leave because of the disciplinary investigation of her due to her exercising her union functions, namely, helping Ms. Bergeron in the investigation against the AWI. That was a lawful activity protected by the *Act*. In its approach and its decision to proceed with a disciplinary investigation against the complainant, the respondent was negligent because it knew that she was acting in her role as the local's president, and it could have simply validated the allegations before proceeding to the investigation. I do not agree with it that a disciplinary investigation results in normal stress. Any disciplinary investigation can have devastating effects in the workplace, particularly when the local's president is being investigated. Before undertaking a disciplinary investigation, it could have displayed objectivity and prudence and obtained the entire email chain. I accept as true the complainant's testimony that the investigation destructively impacted both her, personally, in the workplace, and labour relations, which is why she decided to retire earlier than planned.

[131] As she requested, I grant the corrective measure consisting of a declaration, the reimbursement of sick and annual leave taken due to the contravention of the *Act*, and \$5000 in general damages for the harm experienced from that contravention.

[132] The complainant did not specify the "[translation] ... other leave taken due to the contravention of the *Act*", so no order will be made in that respect.

[133] The complainant's request for "[translation] [a]n investigation into the unauthorized sharing of confidential information, namely, the union email being shared from the email inbox ..." is denied. She did not present any related evidence or any arguments as to how this corrective measure would be justified in the circumstances.

[134] With respect to the other requested corrective measures, I leave it to the parties to agree to the appropriate remedy or to ask for the Board's assistance if they are unable to reach an agreement.

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

(The Order appears on the next page)

V. Order

[136] The complaint is allowed.

[137] The respondent contravened the prohibitions set out in ss. 186(1)(a), (2)(a)(i), and (2)(c) of the *Act*.

[138] I order the employer to pay the complainant \$5000 in general damages.

[139] I order restored in full to the complainant the sick leave and annual leave credits that she took between October 2018 and March 2019 due to the disciplinary investigation.

[140] In the event that the parties cannot agree on a remedy, the Board remains seized to decide it. Within 60 days of the receipt of this decision, the parties shall notify the Board in writing that its assistance is required to resolve the issue.

April 5, 2024.

FPSLREB Translation

**Chantal Homier-Nehmé,
a panel of the Federal Public Sector
Labour Relations and Employment Board**