Date: 20240722

File: 561-02-44559

Citation: 2024 FPSLREB 97

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

NEIL KILLIPS

Complainant

and

TREASURY BOARD
(Public Service Commission)

Respondent

Indexed as
Killips v. Treasury Board (Public Service Commission)

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

Before: David Orfald, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself

For the Respondent: Emily Rahn, counsel

Decided on the basis of written submissions, filed April 12 and June 3 and 29, 2022, and August 31, September 27, and October 19, 2023.

REASONS FOR DECISION

I. Introduction

[1] A former colleague emphasized the importance, when ruling on a grievance or an unfair-labour-practice complaint, of first determining the "essential" nature or character of it.

[2] Dan Butler recently served as a part-time member of the Federal Public Sector Labour Relations and Employment Board and was also a full-time member of a predecessor to it, the Public Service Labour Relations Board (the current Board and its predecessors are collectively referred to in this decision as "the Board"). Several of Mr. Butler's decisions, rendered for the Board, emphasized the importance of determining a dispute's essential nature; see *Amos v. Deputy Head (Department of Public Works and Government Services)*, 2008 PSLRB 74 at paras. 75 and 102 (upheld in *Canada (Attorney General) v. Amos*, 2011 FCA 38), *Malette v. Canada Revenue Agency*, 2008 PSLRB 99 at paras. 31, 42, and 43, *Boshra v. Canadian Association of Professional Employees*, 2009 PSLRB 100 at para. 23 (upheld in 2011 FCA 98, see para. 41), and *Manella v. Treasury Board of Canada Secretariat and Public Service Alliance of Canada*, 2010 PSLRB 128 at para. 19.

[3] Although the underlying disputes in those four decisions varied, the common approach applied by the Board was the requirement to determine the essential nature of the dispute before rendering a decision. Sometimes, this task was required to determine whether the Board had jurisdiction over the matter (in *Amos* and *Malette*) or whether a failure to meet timelines ousted the Board's jurisdiction (in *Boshra*). In the case of *Manella*, the task involved determining the essence of the complainant's concern and whether that concern amounted to an unfair labour practice on the part of the alleged respondents to the complaint.

[4] I have kept this principle at the front of my mind when considering the unfair-labour-practice complaint before me.

[5] On April 12, 2022, Neil Killips ("the complainant") made an unfair-labour-practice complaint to the Board under s. 190 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"). The opening two paragraphs of the complaint read as follows:

> *The act giving rise to this complaint was an email sent to the respondent on February 9, 2022 from Public Works and Government Services Canada extorting $7746.70 from the complainant.* ***The respondent knew, or ought to have known, that the complainant did not owe the respondent this money.***
>
> *The respondent extorted the complainant because the complainant filed two grievances and then brought the respondent before the Board when the respondent failed to comply with an Agreement that emerged from the grievances.*
>
> [Emphasis in the original]

[6] Building from that rather cogent description, the complainant listed 8 potential respondents (later expanded to more than 10). He made allegations touching on events spanning back as far as 2015, the termination of his employment in 2018, problems with respect to the resolution of grievances that were referred to the Board in 2019, difficulties with respect to the implementation of a settlement reached in 2020 for those grievances, problems with the public service pay centre, and problems with respect to the reconciliation of his income tax deductions and obligations.

[7] In short, the complainant alleged that these actions added up to a pattern of harassment and intentional harm because he filed grievances, which amounted to an unfair labour practice prohibited by the *Act*. His requested remedies comprised 10 different points that exceeded $2.5 million in one-time payments plus a lifetime annuity of $125 000.

[8] As will be described in the reasons that follow, the Board sought the parties' submissions with respect to the scope of the complaint, the appropriate respondents to it, and the Board's jurisdiction to consider the allegations and render the several remedies sought by the complainant.

[9] I am satisfied that I can render a decision on this complaint without holding an oral hearing, as provided for in s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; "the *Board Act"*).

[10] Following my review of the parties' lengthy written submissions, I return to the need to identify the essential character or nature of this complaint. The event that triggered the complaint was the request made by the Department of Public Works and Government Services (PWGSC), now commonly known as Public Services and Procurement Canada (PSPC), through its Pay Centre ("the PSPC Pay Centre"), for the

repayment of an overpayment made to the complainant. Clearly, he did not want to repay the amount, and did not think he should have to make the repayment. He made this complaint in response.

[11] In the final analysis, I determine that the essential question before the Board is whether the complainant made out an arguable case that the PSPC Pay Centre's request for repayment was an act of reprisal that constituted an unfair labour practice under the *Act*. For the reasons that follow, I find that he did not make out an arguable case that the respondent, defined later as Treasury Board (Public Service Commission), committed an unfair labour practice, and the complaint is dismissed.

II. The structure of this decision

[12] I have structured these reasons for decision under the following headings:

- "The complaint" elaborates the contents of the complaint;
- "Case-management steps" outlines the steps taken by the Board to case-manage the complaint and to invite further submissions from the parties;
- "The factual context for the complaint" draws from the parties' submissions, to set out certain essential facts relevant to the determination of the complaint;
- "The appropriate respondent or respondents to the complaint": I analyze and rule on the parties' submissions on the question of the appropriate respondents to the complaint;
- "The scope of the Board's jurisdiction": I analyze and rule on the parties' submissions on the scope of the Board's jurisdiction;
- "Other case-management rulings" provides my rulings on other issues that arose in the course of the parties' submissions;
- "The arguable-case analysis" sets out the place of an arguable-case analysis in the assessment of unfair-labour-practice complaints; and
- "Analysis and reasons" summarizes the parties' positions as to whether the complainant has made out an arguable case that the respondent committed an unfair labour practice and provides my reasons for dismissing the complaint.

[13] In this decision, I make reference to the following documents submitted by the parties:

- the complaint made on April 12, 2002, comprising 17 pages ("the complaint");
- the respondent's June 3, 2022, reply to the complaint, comprising 4 pages ("the respondent's June 2022 reply");
- the complainant's June 29, 2022, response to the respondent's June 2022 reply, comprising 7 pages ("the complainant's June 2022 response");
- the respondent's written submissions, comprising 6 pages, dated August 31, 2023 ("the respondent's August 2023 submissions");
- the complainant's written submissions, comprising 20 pages, dated September 27, 2023 ("the complainant's September 2023 submissions"); and
- the respondent's reply submissions, comprising 3 pages, dated October 19, 2023 ("the respondent's October 2023 submissions").

III. The complaint

[14] I will start by further elaborating the details of the complaint.

[15] As noted, the opening two paragraphs of the complaint focused on the content of an email to the complainant dated February 9, 2022, from the PSPC Pay Centre. He said that the email requested the repayment of a salary overpayment of $7746.70. He said that the request amounted to extortion and that the alleged respondents knew or ought to have known that he did not owe the respondent that money.

[16] The complainant alleged that the respondent's actions amounted to an unfair labour practice under ss. 186(2)(a) and (c) of the *Act*. He alleged that the requested repayment was "… the latest action in a six year campaign of legalized malice directed against the complainant" and that it amounted to criminal harassment.

[17] In addition to alleging a violation of the *Act*, the complainant alleged violations of the *Criminal Code* (R.S.C., 1985, c. C-46), specifically fraud, extortion, and criminal harassment. He said that the alleged respondents violated the *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.)), specifically by issuing "false tax documents". He also alleged that a lawyer employed by the Department of Justice violated the *Rules of Professional Conduct* of the Law Society of Ontario by engaging in misconduct.

[18] The respondents listed in the complaint included the following: Government of Canada, Public Service Commission, Department of Justice, Minister of Justice, Canada

Revenue Agency, Minister of Finance, Pay Centre, Minister of Public Services and Procurement of Canada.

[19] In terms of corrective action, the complainant requested a restraining order against the Government of Canada prohibiting future communications with him, except with respect to this complaint.

[20] He also requested that the Board order the respondents to do the following:

> …
>
> *1. pay the complainant $200,000 to employ a competent lawyer to clean up the mess the respondent has made for the complainant including the settlement of the complainant's case,*
>
> *2. pay the complainant $125,000 (the complainant's salary upon leaving the respondent's employ) per year for the years 2016 to 2021 inclusive to compensate the complainant for lost wages during that time,*
>
> *3. pay the complainant $250,000 per year for the years 2016 to 2021 inclusive to compensate the complainant for pain and suffering for being criminally harassed and attacked for six years by the Government of Canada while disabled and on sick leave,*
>
> *4. pay the complainant a lifetime annuity of $125,000 to compensate the complainant for lost wages - since the complainant has become permanently disabled while being criminally harassed by the respondent – according to the respondent's own medical experts,*
>
> *5. pay the complainant $300,000 in lieu of a final and accurate reckoning of accounts since the respondent has previously demonstrated quite clearly that the respondent is unwilling to compose such a reckoning,*
>
> *6. satisfactorily rectify the complainant's tax situation by "zeroing" the complainant's account and pay the complainant $100,000 in compensation for the unknown and countless thousands the CRA has already unjustly taken from the complainant,*
>
> *7. pay the complainant $400,000 to employ a professional and competent accountant and a competent lawyer to ensure the respondent has satisfactorily complied with any orders the Board may issue and to respond to any further harassment and legal issues resulting from the respondent's inevitable failure to comply with any orders of the Board,*
>
> *8. refer themselves to the police to investigate the respondent's violation of sections 346(1), 380(1), 366(1), 264(1), 372(1) and 372(3) of the* Criminal Code *and section 239(1) of the* Income Tax Act,

> *9. fine the respondent $10,000 for violating section 186(2) of the Act by using the resources of the Government of Canada, including, but not limited to, the Department of Justice and the Canada Revenue Agency, to harass a current and former employee.*
>
> …

[21] In the respondent's June 2022 reply, it submitted that the February 2022 request for repayment was made by the PSPC Pay Centre for a net amount of $3162.21, due to payments made to the complainant during a period of leave without pay from May 5 to June 2, 2016. It denied the existence of any link between the request for repayment and his exercise of rights under the *Act*. It took the position that he failed to make out an arguable case that it violated the *Act* and requested that the Board dismiss the complaint.

IV. Case-management steps

[22] I will briefly outline the steps taken by the Board to case-manage this complaint and to invite the submissions of the parties.

[23] As noted, the complaint was made on April 12, 2022. I was assigned on October 3, 2022, to determine whether it could be resolved through case management or written submissions.

[24] After contacting the parties for their availability, on January 19, 2023, I convened a case management conference (CMC) via a telephone audio conference.

[25] Following the CMC, in the form of a letter decision dated January 27, 2023 ("the letter decision"), I provided directions requesting written submissions from the parties with respect to the following four questions about the complaint:

> …
>
> *1) Who are the appropriate respondents to this complaint?*
>
> *2) Which aspects of the complaint are within the Board's jurisdiction, and which (if any) are not?*
>
> *3) With respect to the merits of the complaint, is there anything the party wishes to add to the submissions made thus far? (At this stage, the parties may want to submit documents in support of their position and may wish to provide any additional case law references in support of their position.)*

> *4) Which of the remedies requested in the complaint are within the Board's powers, and which (if any) are not?*
>
> …

[26] The letter decision also stated that "[f]ollowing the written submissions process, the Board may issue a written decision on the complaint, may schedule another Case Management Conference, may request further written submissions, or may schedule the complaint for an oral hearing."

[27] Subsequent to the letter decision being issued, the parties agreed to participate in the mediation of the complaint using the services of the Board's Mediation and Dispute Resolution Services (MDRS). Therefore, on February 21, 2023, I suspended the written submissions process.

[28] Upon learning that the mediation did not resolve the complaint, I directed that the written submissions process be resumed. On July 16, 2023, a timeline for the parties' submissions was set out. What followed were the respondent's August 2023 submissions, the complainant's September 2023 submissions, and the respondent's October 2023 submissions.

V. The factual context for the complaint

[29] This is an unfair-labour-practice complaint, alleging that the (alleged) respondents undertook actions of reprisal against the complainant for grievances he filed, in violation of s. 186(2)(a) of the *Act*, and to compel him to refrain from proceeding with a grievance or complaint, in violation of s. 186(2)(c). Given that, it is important to take note of certain facts about two grievances that the complainant had filed and had referred to the Board. These facts are drawn from the parties' submissions and the record before the Board.

[30] Before this complaint was made, the complainant was an employee working for the Public Service Commission ("the PSC").

[31] On November 26, 2015, the complainant presented a grievance to PSC management concerning a letter of reprimand and a five-day suspension without pay served on him on November 26, 2015. That grievance was referred to adjudication before the Board on March 25, 2019, and became Board file no. 566-02-40246.

[32] On September 25, 2018, the complainant presented a grievance to the PSC concerning the termination of his employment on September 21, 2018. That grievance was referred to adjudication on August 26, 2019, and became Board file no. 566-02-40917.

[33] At the time both referrals were made, the complainant was being represented by his bargaining agent, the Canadian Association of Professional Employees (CAPE). Both referrals were made under s. 209(1)(b) of the *Act*. Both referrals included notice to the Canadian Human Rights Commission that the grievances raised discrimination allegations.

[34] With the assistance of the Board's MDRS, on January 30, 2020, the parties reached the settlement of the grievances in Board file nos. 566-02-40246 and 40917 and signed an agreement to that effect ("the settlement agreement").

[35] In November 2020, the Board requested an update on the implementation status of the settlement agreement. On November 26, 2020, CAPE provided notice that the complainant no longer wished to be represented by it, and the Board began communicating directly with him about the two grievances.

[36] Between December 2020 and September 2022, the Board engaged with the parties on many occasions about the implementation status of the settlement agreement. The full details of these submissions are not relevant to this complaint. The essential point to note was that in June of 2021 and then again in June of 2022, the respondent took the position that it had fulfilled all its obligations under the settlement agreement but that the complainant had not met one of his obligations, specifically, the withdrawals of the two references to adjudication. The respondent requested that the Board close the files.

[37] When this complaint was made on April 12, 2022, the two grievance files with the Board were still open.

[38] On September 8, 2022, a different panel of the Board ordered the closure of the two references to adjudication, i.e., Board file nos. 566-02-40246 and 40917. That same panel of the Board ordered sealed one submission from the complainant and one reply submission from the respondent because those submissions detailed confidential aspects of the settlement agreement that the parties had reached.

[39] That panel's decision to close those files made reference to the fact that in this complaint, the complainant stated as follows: "More than one year after signing the Agreement, in the spring or summer of 2021, the respondent finally fulfilled enough of the Agreement to satisfy the complainant."

[40] I also take note of the fact that on November 3, 2020, the complainant made a complaint to the Board against CAPE, alleging that it had committed an unfair labour practice by not fulfilling its duty of fair representation pursuant to s. 187 of the *Act*, specifically in relation to the grievance files before the Board. That complaint was given Board file no. 561-02-42264. On June 21, 2021, a different panel of the Board closed that file as the complainant had failed to comply with three deadlines to make the submissions that the panel of the Board had ordered.

[41] Finally, I take note that in this complaint, the complainant stated that his last day at work at the PSC was in 2015 and that he retired from the public service in "… late spring or early autumn of 2021 …". In the respondent's August 2023 submissions, it said that he retired from the PSC on July 9, 2021 — in other words, approximately nine months before this complaint was made.

VI. The appropriate respondent or respondents to the complaint

[42] I turn now to the analysis of the parties' submissions on the four questions that I asked them to address in their written submissions, beginning with the appropriate respondent to the complaint.

[43] As previously noted, the respondents listed in the complaint included the following: "Government of Canada, Public Service Commission, Department of Justice, Minister of Justice, Canada Revenue Agency, Minister of Finance, Pay Centre, Minister of Public Services and Procurement of Canada".

[44] The respondent submitted that the only appropriate respondent is the "Treasury Board (Public Service Commission)". It referenced s. 190(1) of the *Act*, which allows for complaints to be made against an employer, an employee organization, or a person. It said that the complainant was employed by the PSC until he retired on July 9, 2021, and that in accordance with s. 2 of the *Act* and Schedule IV to the *Financial Administration Act* (R.S.C., 1985, c. F-11; "the *FAA*"), the Treasury Board was his employer for the purposes of a complaint under s. 190(1) before the Board. It also said

that he did not allege any circumstances that could amount to an unfair labour practice by an employee organization or a person.

[45] In the complainant's September 2023 submissions, he argued that the appropriate respondents to the complaint include the Treasury Board, which incorporates all entities named in Schedules I and V to the *FAA*, as well as the Canada Revenue Agency. He also argued that CAPE should be added as a respondent, as well as two specific individuals (Allison Donker and Patrick Turcot). He said that he anticipated naming further individuals as the evidence came to light.

[46] Neither party referenced any case law in their submissions on this question.

[47] This is a complaint made under s. 190(1) of the *Act*, which provides as follows:

190 (1) *The Board must examine and inquire into any complaint made to it that*	***190 (1)*** *La Commission instruit toute plainte dont elle est saisie et selon laquelle :*
…	[…]
(g) *the* ***employer****, an* ***employee organization*** *or any* ***person*** *has committed an unfair labour practice within the meaning of section 185.*	***g)*** *l'****employeur****, l'****organisation syndicale*** *ou toute* ***personne*** *s'est livré à une pratique déloyale au sens de l'article 185.*

[Emphasis added]

[48] At the time the complaint was made, s. 2 of the *Act* defined "employer" as follows:

2 (1) *…*	***2 (1)*** […]
employer *means Her Majesty in right of Canada as represented by*	***employeur*** *Sa Majesté du chef du Canada, représentée :*
(a) *the Treasury Board, in the case of a department named in Schedule I to the* Financial Administration Act *or another portion of the federal public administration named in Schedule IV to that Act; and*	***a)*** *par le Conseil du Trésor, dans le cas d'un ministère figurant à l'annexe I de la* Loi sur la gestion des finances publiques *ou d'un autre secteur de l'administration publique fédérale figurant à l'annexe IV de cette loi;*
(b) *the separate agency, in the case of a portion of the federal public administration named in Schedule V*	***b)*** *par l'organisme distinct en cause, dans le cas d'un secteur de l'administration publique fédérale*

to the Financial Administration Act. *(*employeur*)*	*figurant à l'annexe V de la* Loi sur la gestion des finances publiques. *(*employer*)*
…	[…]

[49] Before his departure from the federal public service, the complainant was an employee of the PSC. The PSC is listed in Schedule IV to the *FAA*. The grievances that he referred to the Board (in Board file nos. 566-02-40246 and 40917) were originally presented to the PSC. The PSC responded to them. Once they were referred to the Board, the Treasury Board took on the responsibility of representing the employer with respect to the grievances.

[50] In accordance with s. 2 of the *Act*, the Treasury Board is the legal employer for employees of the PSC. In accordance with the *FAA*, certain human resources functions are delegated to the deputy heads of the agencies and departments listed in Schedules I and IV, which gives them decision-making powers over employees such as the complainant; see *Marleau v. Treasury Board (Royal Canadian Mounted Police)*, 2023 FPSLREB 47 at para. 22, and *Hager v. Statistics Survey Operations and the Minister responsible for Statistics Canada*, 2009 PSLRB 80 at para. 51.

[51] Given these facts and the wording of the *Act*, I find that the appropriate respondent to the complaint is the Treasury Board (Public Service Commission).

[52] Consequently, none of the following entities or persons, as listed by the complainant, are properly formulated as respondents to this complaint: Government of Canada, Department of Justice, Minister of Justice, Canada Revenue Agency, Minister of Finance, Pay Centre, or Minister of PSPC. The Government of Canada is represented by the Treasury Board, which was the complainant's employer. He was not employed by the Department of Justice, the Canada Revenue Agency, or the PSPC Pay Centre. There are no facts pleaded or arguments made that would support the addition of any of the three ministers of the Crown being listed as respondents to this complaint.

[53] I deny the request made in the complainant's September 2023 submissions to list CAPE as a respondent to this complaint. Unfair-labour-practice complaints against an employee organization fall under s. 187 of the *Act*. This complaint was made with respect to s. 186. As already noted, he made a complaint against CAPE (in Board file

no. 561-02-42264) in reference to its duty of fair representation in the grievances that he referred to the Board. As also noted, another panel of the Board ordered that file closed, as he did not provide it with the submissions it required of him, even after three reminders.

[54] I deny the request made in the complainant's September 2023 submissions to list Ms. Donker and Mr. Turcot as respondents to this complaint. Ms. Donker is an employee of the Treasury Board Secretariat, and Mr. Turcot is an employee of the Department of Justice assigned to represent the Treasury Board. They represent the respondent. The respondent is already responsible for their actions in relation to this file. I find that no purpose would be served by naming them separately as respondents.

VII. The scope of the Board's jurisdiction

[55] I turn next to the parties' submissions on the second question I asked them in the letter decision: which aspects of the complaint are within the Board's jurisdiction, and which (if any) are not?

[56] The respondent argued the Board has jurisdiction only over complaints made about alleged actions taken by an employer, which are in violation of s. 186(2) of the *Act*. The section prohibits certain unfair labour practices, and for the Board to have jurisdiction, the alleged actions must be under the circumstances, and for the purposes, set out in s. 186(2). To this end, allegations raised by the complainant that are outside the Board's jurisdiction include an analysis or determination of alleged criminal, tax, and professional-conduct matters involving parties external to the unfair-labour-practice complaint.

[57] Furthermore, the respondent argued, the Board's jurisdiction is limited by the prescribed timeline for making a complaint pursuant to s. 190(2) of the *Act*, which states that a complaint must be made to the Board 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 circumstances giving rise to the complaint." The only alleged unfair labour practice that took place within the 90 days before this complaint was made was the February 9, 2022, demand for the reimbursement of an overpayment from the complainant. The balance of the alleged incidents that he raised are not only disputed by the respondent but also occurred far beyond the mandatory 90-day deadline permitted by the *Act*, the respondent argued.

[58] The complainant argued that s. 190(1) of the *Act* requires the Board to "examine and inquire into any complaint" made to it that an unfair labour practice has been committed. He argued that the *Act* does not exclude any criminal, tax, or professional-conduct matters. He argued that his allegations with respect to the *Criminal Code*, the *Income Tax Act*, and the *Rules of Professional Conduct* of the Law Society of Ontario describe threats, intimidation, or other types of discipline directed toward him because he had exercised his right to file a grievance.

[59] He argued that the intent of the *Act* is to protect the rights of employees and to maintain fair labour relations. Therefore, the *Act* contains a broad definition of unfair labour practices; it does not limit its scope to specific actions but encompasses any actions taken by employers that could adversely affect the employment relationship or the rights of employees, as outlined in s. 186(2).

[60] If the Board were to deny jurisdiction over matters that may involve criminal, tax, or professional-conduct activities that are connected to employment, it would undermine the purpose of the *Act* and leave employees without the recourse they need to address such issues, the complainant argued. Excluding such matters from the Board's jurisdiction would allow employers to engage in criminal acts with impunity, erode employee rights, deteriorate trust between employers and employees, and weaken the *Act*. Employees may become hesitant to assert their rights or voice concerns, fearing retaliation or illegal actions, he argued.

[61] As for the respondent's timeliness objections, the complainant argued that a continuing violation doctrine applies in cases involving harassment. A violation is deemed ongoing when it involves a series of related acts, some of which might have occurred outside the 90-day time frame. Only the latest incident of harassment need fall within the 90-day time limit, if it is part of a broader pattern of harassment, he argued. A narrow interpretation of the 90-day limit could result in the exclusion of crucial evidence and incidents simply because they occurred slightly earlier than others, even if they are part of a continuous pattern of behaviour.

[62] The complainant argued that in the context of ongoing harassment, s. 190(2) of the *Act* requires the Board to ask, "When should the Complainant reasonably have recognized that he was experiencing harassment?" It is entirely reasonable for him not

to have recognized the harassment any earlier than he did, given the complex and gradual nature of workplace harassment, he argued.

[63] Once again, neither party referenced case law in their arguments.

[64] On the question of the Board's general jurisdiction, the complainant's arguments demonstrate a lack of understanding about the subjects on which the Board can and cannot render decisions. I shall set out the scope of the Board's jurisdiction as clearly as possible, to outline for him the aspects of his complaint that the Board may rule on and those on which it may not.

[65] The Board is what is known as an "administrative tribunal". In Canada, administrative tribunals have been created to provide access to justice for a whole series of specific reasons. For example, the Canadian Human Rights Tribunal on federal human rights matters, the Immigration and Refugee Board on immigration matters and refugee claims, and the Social Security Tribunal for complaints with respect to the Canada Pension Plan and Employment Insurance. Unlike some courts, administrative tribunals do not have residual jurisdiction to consider any matter or to carry out inquiries. They are a creation of the statute or statutes that establishes or establish them, and their jurisdiction is limited to matters that are laid out in those statutes; for an elaboration of this principle, see *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 108.

[66] For the Board, this restriction is reflected at s. 19 of the *Board Act*, which reads as follows:

Powers, duties and functions	***Attributions***
19 *The Board is to exercise the powers and perform the duties and functions that are conferred or imposed on it by this Act or any other Act of Parliament.*	***19*** *La Commission exerce les attributions que lui confère la présente loi ou toute autre loi fédérale.*

[67] Under the *Act*, the Board is granted the powers to render decisions on grievances, provided that they are referred to it under the provisions of Part II of the *Act*, for example, for individual grievances referred to it pursuant to s. 209(1). Also by way of example, the Board is granted the power to render decisions related to

bargaining rights and collective bargaining under sections of the *Act* such as s. 64 (certification) and s. 122 (essential services).

[68] Of particular importance to this complaint, the Board is granted the powers to render decisions on unfair-labour-practice complaints pursuant to s. 190 of the *Act*.

[69] Nowhere in the *Act* is the Board given the power to render decisions about alleged violations of the *Criminal Code*. Nowhere in the *Act* is the Board given the power to investigate an allegation that a lawyer has violated the professional-conduct rules governing him or her. Nowhere in the *Act* is the Board given the power to determine whether the Canada Revenue Agency has misapplied the *Income Tax Act*. Neither the *Criminal Code* nor the *Income Tax Act* confer any powers upon the Board.

[70] The limits on the Board's jurisdiction were clearly stated in *Green v. Deputy Head (Department of Indian Affairs and Northern Development)*, 2017 PSLREB 17, which said the following at paragraph 340:

> ***340*** *The Board is a creature of statute and not a court with inherent jurisdiction. The parties cannot give it jurisdiction where it has none. For the actions the grievor complained about to come within the Board's jurisdiction, they must fall within the matters set out in s. 209 of the* Act*.…*

[71] For this principle, see also *Serediuk v. Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN)*, 2023 FPSLREB 71 at para. 51.

[72] An application of these principles in relation to alleged criminal behaviour in the context of an unfair-labour-practice complaint can be found in the Board's decision in *Theaker v. Union of Solicitor General Employees*, 2021 FPSLREB 127 ("*Theaker 2021*") at para. 50, which reads as follows:

> *[50] The allegations raised in the complaint about criminal interference are outside the scope of the labour relations regime for the federal public sector. As the Court noted in dismissing her motion, the appropriate avenue for complaints of alleged criminal activity is to the responsible police service. Bargaining agents are not obligated to file grievances related to alleged criminal matters. Accordingly, this allegation does not support a finding of a breach of the duty of fair representation.*

[73] The court decision referred to in the Board's decision was *Theaker v. Canada (Justice)*, 2018 FC 662, in which the Federal Court stated the following at paragraph 49:

> *[49] Clearly this Court does not have any jurisdiction to investigate alleged criminal activity or to order that an investigation be conducted. It is generally known that where a person has been the victim or witness of an alleged crime, the person should report the incident(s) to the police or lay an information before the responsible police service. The responsible police service will assess the information and determine whether it supports the need for an investigation.…*

[74] This is not to say that the Board might not hear evidence about alleged or founded violations of the *Criminal Code* or other matters outside its jurisdiction in the context of a grievance or complaint that is properly before it. Information about alleged criminal acts can arise, for example, in the context of a grievance about the termination of an employee. However, flowing from my reading of the *Act* and the principles articulated in *Green*, *Serediuk* and *Theaker 2021*, I conclude the Board does not have jurisdiction to analyze or determine alleged violations of the *Criminal Code*.

[75] The complainant did not cite any case law of the Board, nor am I aware of any, in which the Board made any findings or orders with respect to alleged violations of the *Criminal Code*, the *Income Tax Act*, or the *Rules of Professional Conduct* of the Law Society of Ontario.

[76] Therefore, given that analysis, I declare that the Board does not have the jurisdiction to rule on, make orders, or award remedies with respect to the following specific allegations in the complaint:

- criminal harassment pursuant to the *Criminal Code* (the complaint, page 6 at paragraph 3, page 14 at paragraph 3, and page 15 at paragraphs 6 and 7);
- extortion pursuant to the *Criminal Code* (the complaint, page 11 at paragraph 5);
- the issuance of fraudulent tax slips pursuant to the *Income Tax Act* (the complaint, page 11 at paragraph 6);
- fraud pursuant to the *Criminal Code* (the complaint, page 11 at paragraph 7, and page 12 at paragraph 1);
- violations of the *Rules of Professional Conduct* of the Law Society of Ontario (the complaint, page 12 at paragraph 1, and page 13);

- forgery pursuant to the *Criminal Code* (the complaint, page 13 at paragraph 5);
- false information and harassing communications pursuant to the *Criminal Code* (the complaint, page 14 at paragraphs 5 and 6); and
- obstructing the course of justice pursuant to s. 139(2) of the *Criminal Code* (the complainant's September 2023 submissions, page 13 at paragraph 8).

[77] With respect to the 90-day time limit to make an unfair-labour-practice complaint, s. 190(2) reads as follows:

Time for making complaint	***Délai de présentation***
190(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.*	***190(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.*

[78] The Board does not have the discretion to extend the period under s. 190(2) except in limited and exceptional circumstances; see *Beaulieu v. Public Service Alliance of Canada*, 2023 FPSLREB 100 at paras. 19, 20, and 44.

[79] The complainant is correct that s. 190(2) gives the Board the power to determine when a complainant knew or "ought to have known" of the actions giving rise to his or her complaint. He is also correct, at least in principle, that a single event might be the culminating or crystallizing event that causes a complainant to realize that he or she has experienced reprisal. In that context, he asserted that the February 2022 request for repayment was the "last straw" in a series of events.

[80] I agree with the complainant that in such a circumstance, events that took place outside the 90-day window could be relevant to providing the context for determining whether an event that took place inside the 90-day window constituted an unfair labour practice.

[81] However, in this matter, the complainant's detailed allegations, made over the course of multiple pages, indicate that he was entirely cognizant of the respondent's actions preceding the February 2022 overpayment email, and that those preceding

actions took place well before the 90-day window that applies to this complaint. This is evident in large part because he filed grievances in relation to these events, up to and including the termination of his employment. He referred those grievances to adjudication under s. 209(1)(b) of the *Act*. He engaged with a different panel of the Board in discussions about the implementation of the settlement agreement that he reached with the employer about those grievances. Having filed and pursued grievances about these matters, and indeed having settled those grievances, he cannot claim that he was unaware of the respondent's alleged actions from 2015 to 2022.

[82] On page 6 of his complaint, the complainant wrote as follows:

> *The respondent's campaign against the complainant began in late 2015 or early 2016 when the complainant filed a grievance. On the advice of the complainant's union, the complainant immediately put the grievance into abeyance while the complainant waited for the respondent to provide the complainant with documents the complainant needed for the grievance.*

[83] Given s. 190(2) of the *Act*, I cannot find that events from 2015 and 2016 that were the subject of a grievance filed by the complainant could form part of the allegations to be determined in this complaint; see *Andruszkiewicz v. Canada Border Services Agency*, 2021 FPSLREB 72 at para. 21.

[84] More significantly, the allegations in the bulk of the complaint (starting at page 7 through page 11) concern the grievances that became Board file nos. 566-02-40246 and 40917. The allegations refer to the termination of the complainant's employment and the fact that the parties reached a settlement of those grievances. The allegations are that he experienced considerable difficulty having the respondent properly reconcile his pay and leave balances, properly compensate him for what was agreed to, properly amend his tax slips, and properly process his retirement. He also alleged that in 2021, he learned that he was entitled to compensation for damages caused by the Phoenix pay system, which is used by the PSPC Pay Centre, and that the respondent has refused to pay him those damages.

[85] I am sympathetic to the complainant's list of difficulties with respect to the Phoenix pay system and the difficulties he has had understanding some transactions, along with the barriers he experienced in having his T4 slips issued or reissued.

[86] However, the fact these alleged actions occurred while the complainant was actively pursuing the implementation of the settlement agreement in Board file nos. 566-02-40246 and 40917 demonstrates that he knew or ought to have known that these actions had taken place. The timelines for making an unfair-labour-practice complaint about those actions expired well before this complaint was made and therefore are outside the Board's jurisdiction; see *Andruszkiewicz*.

[87] Beyond their timeliness, the allegations related to the complainant's difficulties having the settlement agreement implemented face an additional jurisdictional challenge, related to s. 191(2) of the *Act*, which reads as follows:

Refusal to determine complaint involving collective agreement	***Personne agissant pour le compte de l'employeur***
191(2) *The Board may refuse to determine a complaint made under subsection 190(1) in respect of a matter that, in the Board's opinion, could be referred to adjudication under Part 2 or Division 2 of Part 2.1 by the complainant.*	***191(2)*** *Lorsqu'elle vise une personne qui a agi ou prétendu agir pour le compte de l'employeur, l'ordonnance est en outre adressée au secrétaire du Conseil du Trésor, dans le cas de l'administration publique centrale, et à l'administrateur général, dans le cas d'un organisme distinct.*

[88] When this complaint was made, the complainant was **actively engaged** in a process of making submissions to the Board with respect to the grievances in Board file nos. 566-02-40246 and 40917. When this complaint was made, those files were still open. To the extent that any of his allegations relate to the implementation of the settlement of those grievances, the appropriate place to address those allegations was within the parameters of that process. This complaint cannot be an attempt to relitigate what was in those grievances or the remedies that were addressed in that settlement agreement. Another panel of the Board decided to close those grievance files because it determined that the settlement agreement that the parties had reached in those files had been fully implemented. This complaint cannot be used to reopen those grievance files or to reassess whether the settlement agreement was fully implemented.

[89] Following from the related analysis just described, I conclude that only one allegation in the complaint is within the Board's jurisdiction and within the 90-day time limit established by s. 190(2): the allegation that the respondent's (alleged)

request that the complainant repay $7746.70 due to an overpayment represented an unfair labour practice prohibited by ss. 186(2)(a) or (c) of the *Act*.

VIII. Other case-management rulings

[90] Before turning to that allegation, I will provide my rulings on two other issues that arose in the course of the parties' submissions.

[91] As noted earlier, the complainant requested in his complaint that the Board issue a restraining order requiring the respondent to immediately cease further contact with him, except concerning this complaint.

[92] Via the letter decision, I denied the request for a restraining order for the following reasons:

> …
>
> *The Board has determined that it will* ***not*** *issue the requested restraining order. The powers of the Board under s. 192(1) of the* Act *are predicated on the Board having determined that the complaint is well founded. The Board has not made that determination. Even if the Board had the jurisdiction to issue a restraining order against the whole Government of Canada under s. 192(1) of the* Act*, or under some other portion of the* Act*, the Board member is not convinced that the restraining order is necessary, practical, or feasible. The Board does not read the respondent's submissions as admission of any of the complainant's allegations; the respondent has requested dismissal of the complaint.*
>
> *The Board agrees with the respondent that various government departments are required to communicate with individuals such as the complainant with respect to pay, pension, taxes, passport applications or other reasons. By way of example, since he made this restraining order request, this Board had to communicate with the complainant with respect to the status of grievance files that were open before it, up until September 8, 2022.*
>
> *The complainant has not convinced the Board that he is overwhelmed by communications from the respondent or other parts of the Government of Canada, with respect to matters not related to this complaint. In the complaint itself, referring to the period 2015 - 2021, the complainant stated "… the only interactions the complainant has had with the respondent are through the complainant's grievances, or responding to the respondent's harassment arising from the grievances." This suggests that the complainant's main interactions with the respondent during that period are in relationship to grievances he had made.*

> *Finally, the Board does not find that the complainant has made out any harm that requires the Board intervention at this time, that could not be remedied at a later stage by a monetary award. If the Board determines the complaint to be well-founded, it will consider what harm has been demonstrated and what remedies are within its powers to order under s. 192(1) to redress that harm.*
>
> …
>
> [Emphasis in the original]
>
> [*Sic* throughout]

[93] The second issue I will address in this section is a request, made in the complainant's June 2022 response, to amend his complaint. He asserted that in the respondent's June 2022 reply, it committed an additional unfair labour practice because it stated that the parties had settled the grievances in Board file nos. 566-02-40246 and 40917 and that the settlement agreement included a commitment by him to withdraw the grievances and a harassment complaint. That is the reason he made the request to amend his complaint.

[94] The complainant argued that one of the other terms of the settlement agreement was that the other terms were to remain confidential. He argued that the respondent broke the terms of the settlement agreement by disclosing that the agreement included his commitment to withdraw the grievances and the harassment complaint and that it made that disclosure to intimidate him for making this complaint. He argued that the respondent sought, by means of the inappropriate disclosure, to compel him to refrain from participating in a proceeding under Part 1 of the *Act*, namely, the hearing of this complaint. Therefore, the respondent violated ss. 186(2)(a) and (c), he argued.

[95] The complainant said that if he were not allowed to amend his complaint, he would make a new unfair-labour-practice complaint.

[96] The respondent took the position that the purported disclosure of the terms of the settlement agreement cannot amount to an unfair labour practice within the meaning of s. 186(2). Despite that, it consented to having this allegation added to the complaint for reasons of efficiency, rather than proposing that the complainant make a new complaint.

[97] I find the complainant's request to amend his complaint and add an additional allegation to be without foundation. The statement in the respondent's June 2022 reply — which was that the settlement agreement included an agreement on his part to withdraw his references to adjudication — is already part of the Board's record on the grievances in file nos. 566-02-40246 and 40917. When the respondent's June 2022 reply was filed, those files were still open, and the parties to the grievance were actively making submissions to the Board about whether the agreement had, or had not been, fully implemented. In that process, the employer had asserted that all the terms of the settlement agreement had been implemented except for the complainant's commitment to withdraw the grievances. As outlined earlier in this decision, the parties exchanged positions on this question several times over the course of some 22 months.

[98] Furthermore, nothing in the employer's statement reflects the disclosure of a confidential aspect of the settlement. When parties settle a grievance, it is standard practice that the grievor undertakes to withdraw it from the Board once the settlement agreement is implemented.

[99] It might not have been required for the respondent to also indicate that in the settlement agreement, the complainant had also committed to withdrawing a harassment complaint that he made in 2016. However, his entire complaint amounts to an allegation that he was subject to harassment by the respondent. He makes specific mention in his complaint of having filed a harassment grievance in late 2015 or early 2016. In that context, I understand why the respondent would indicate to the Board that the settlement agreement contained a commitment on his part to withdraw both the grievances and the harassment complaint.

[100] Moreover, the complainant himself disclosed certain details of the settlement agreement in his complaint (see page 8, paragraphs 3 and 4), which were more specific in nature than what was addressed in the respondent's June 2022 reply.

[101] I take note of the fact that when the panel of the Board assigned to Board file nos. 566-02-40246 and 40917 decided to close those files, it also ordered the settlement agreement sealed, as confidential. The full terms of the settlement agreement have not been disclosed by either party in the context of this complaint.

IX. The arguable-case analysis

[102] As stated earlier, the remaining question to be addressed is whether the respondent's (alleged) request that the complainant repay $7746.70 due to an overpayment represented an unfair labour practice prohibited by ss. 186(2)(a) or (c) of the *Act*.

[103] I will begin by discussing the purpose of engaging in an arguable-case analysis in the assessment of unfair-labour-practice complaints.

[104] I recognize that when a complaint of this type is made, there is a reverse burden of proof placed upon the respondent via s. 191(3) of the *Act*, which reads as follows:

Burden of proof	***Charge de la preuve***
191(3) *If a complaint is made in writing under subsection 190(1) in respect of an alleged failure by the employer or any person acting on behalf of the employer to comply with subsection 186(2), the written complaint is itself evidence that the failure actually occurred and, if any party to the complaint proceedings alleges that the failure did not occur, the burden of proving that it did not is on that party.*	***191(3)*** *La présentation par écrit, au titre du paragraphe 190(1), de toute plainte faisant état d'une contravention, par l'employeur ou la personne agissant pour son compte, du paragraphe 186(2), constitue une preuve de la contravention; il incombe dès lors à la partie qui nie celle-ci de prouver le contraire.*

[105] The Board's jurisprudence is that to engage the reverse-onus provision of s. 191(3), the complainant must first make out an arguable case that an unfair labour practice occurred. I find that this is best expressed in *Quadrini v. Canada Revenue Agency*, 2008 PSLRB 37, which is another decision issued on behalf of the Board by its former member, Mr. Butler.

[106] The analysis in *Quadrini* is rooted in the Board's explanation of the purpose behind the unfair-labour-practice prohibition at s. 186(2): to prohibit reprisals against employees who exercise their rights to grieve or complain under the *Act*. The Board said as follows at paragraph 45:

> *45 It has been and continues to be fundamental to the integrity of the labour relations systems created by the new* Act *and the former* Act *that persons who have exercised rights accorded to them under those laws did so, and can continue to do so, without*

> *fear of reprisal. Were it otherwise, given the possibility of the misuse of authority in the relationship between individual persons and employers, the chilling effect of reprisal action on the exercise of vested statutory rights could undermine the effective force of those rights.*

[107] The Board added that the concept of reprisal "… establishes the fundamental context within which an unfair labour practice complaint of this type must be considered" (see *Quadrini*, at para. 47).

[108] In *Quadrini*, the Board required the complainant to first demonstrate that he had an arguable case, stating as follows at paragraph 32:

> *32 At heart, the issue of a* prima facie *case here is one of common sense. Were it the case that a person could simply file a complaint stating his or her conviction that there has been a violation of subsection 186(2) of the new* Act *and, by doing so, trigger the legal requirement that the respondent prove the contrary, the possibilities for vexatious litigation would be substantial. An allegation of a breach of subsection 186(2) must be reasonably arguable on its face. As stated earlier, the threshold is the following: taking all of the facts alleged in the complaint as true, is there an arguable case that the respondents have contravened subparagraphs 186(2)(a)(iii) or (iv) of the new* Act*?*

[109] If a complainant does make out an arguable case, then it is up to the respondent to demonstrate that it had a legitimate business reason for its actions and that it did not engage in an act of reprisal, as discussed as follows in *Hager*, at para. 33:

> *33 Since this is a complaint alleging a violation of a prohibition stated in subsection 186(2) of the* Act*, subsection 191(3) applies… Applied to this case, subsection 191(3) requires the respondents to prove that, on a balance of probabilities, they did not discriminate against the complainants with respect to employment because they were members or officers of an employee organization. Stated differently, the respondents have the burden to prove that their decision to remove the complainants from the Core North Team was for a business reason rather than for their memberships or roles in the bargaining agent.*

[110] This approach has been followed by the Board in a large number of cases; see *Laplante v. Treasury Board (Department of Industry and the Communications Research Centre)*, 2007 PSLRB 95 at para. 88, *Manella*, at para. 24, *Gray v. Canada Revenue Agency*, 2013 PSLRB 11 at para. 79, *Choinière Lapointe v. Correctional Service of Canada*, 2019 FPSLREB 68 at paras. 11 to 21, *Joe v. Treasury Board (Correctional*

Service of Canada), 2021 FPSLREB 10 at paras. 40, 41, and 46, *Joe v. Marshall*, 2021 FPSLREB 27 at para. 108, and *Coupal v. Canadian Food Inspection Agency*, 2021 FPSLREB 124 at paras. 225 to 226.

[111] When it conducts an arguable-case analysis, the Board must consider the facts alleged by the complainant as true and then determine whether the complainant has made out an arguable case that the *Act* has been violated; see *Messer v. Public Service Alliance of Canada*, 2024 FPSLREB 6 at para. 5, *Burns v. Unifor, Local 2182*, 2020 FPSLREB 119 at paras. 82 to 84, *Abi-Mansour v. Public Service Alliance of Canada*, 2022 FPSLREB 48 at paras. 48 and 49, and *Corneau v. Association of Justice Counsel*, 2023 FPSLREB 16 at paras. 17 and 25 to 34.

[112] When considering whether an arguable case has been made out, it is not merely a matter of accepting the complainant's pleadings as true. As is often the case, the complainant cites certain facts and then pleads (or argues) that certain actions or inactions on the part of the respondent represented a reprisal or a threat of reprisal prohibited by s. 186(2). The issue for the Board is whether the facts provided by the complainant, or provided by the respondent and confirmed by the complainant, rise to the level of a complaint that has a reasonable chance of success; see *Corneau*, at para. 34.

X. Analysis and reasons

[113] In considering whether the complainant has made out an arguable case that the respondent violated the *Act*, I take note that in both the complaint and in the complainant's June 2022 response to the respondent's June 2022 reply, he submitted that he had made out an arguable case that the respondent had violated the *Act*. This indicates to me that he was aware that he was required to meet that standard with his complaint.

[114] In the letter decision, I invited the complainant (and the respondent) to make additional submissions about the merits of the complaint and to attach to those submissions any documents they wished to add to support their positions.

[115] For the purposes of this analysis, I accept as true that on February 9, 2022, the complainant received an email from the PSPC Pay Centre claiming that he was required to repay an overpayment of $7746.70. The respondent submitted that it was able to

confirm with the PSPC Pay Centre that it had sent a letter advising him of a net overpayment in the amount of $3161.21 and that the amount owing was the result of his pay being continued during a period in which he was on leave without pay from May 5 to June 1, 2016. Despite my invitation to the parties to submit documentary support, neither did so, so I have not reviewed the contents of the email or letter.

[116] I take note of the fact that both parties' submissions confirm that the complainant's employment with the PSC was terminated on September 21, 2018, that he had referred two grievances to adjudication with the Board in March and August of 2019, and that in January 2020, the parties reached the settlement agreement with respect to those grievances. The record before the Board is that between November 2020 and September 2022, the parties made submissions to it with respect to the implementation status of the settlement agreement. I also take note of the complainant's statement that he retired from the public service in "… late spring or early autumn of 2021 …" and that the respondent submitted that the actual retirement date was July 9, 2021. I have accepted the latter as accurate.

[117] The email or letter that gave rise to this complaint was sent on February 9, 2022, which was a full seven months after the complainant's date of retirement from the public service. This complaint was made a further three months later. As already noted, at the time the complaint was made, the grievances in Board file nos. 566-02-40246 and 40917 were still active. The panel of the Board seized with those files decided to close them only in September of 2022.

[118] The complainant argued that the facts cited in his complaint amount to an arguable case that the respondent discriminated against him with respect to pay and employment and that it intimidated, threatened, or otherwise disciplined him for filing grievances against it. He argued that the facts established a clear and probable link between the respondent's actions and his grievances.

[119] In the respondent's June 2022 reply, it argued that the complainant had the onus of demonstrating a link between the alleged breach of the *Act* (the email of February 2022) and his participation in a grievance or complaint process. He has not demonstrated that the respondent's actions were intended to dissuade him from participating in the grievance or complaint process, it said. It took the position that the notification of his debt to the Crown was the result of an overpayment made to him

during his period of leave without pay in 2016. The overpayments were calculated by the PSPC Pay Centre and were not linked to the grievances previously filed and subsequently settled between the parties. It argued that the complainant did not establish a link or demonstrate how the respondent, or any person acting on its behalf, sent the letter of overpayment recovery to him to intimidate or threaten him, impose any financial penalty on him, or otherwise compel him to refrain from testifying or participating in any grievance or complaint process.

[120] In the complainant's June 2022 response, he argued that "… the most reliable, enduring and necessary link to demonstrate Causality [*sic*] …" between the respondent's actions and its overpayment recovery is "that of Time [*sic*]." He went on to add this:

> …
>
> *… Without Time [sic] there would be no Causality [sic], and the Complainant has shown that the Respondent's actions began* ***immediately after*** *the Complainant filed the Complainant's grievance, and that the only interaction between the Complainant and the Respondent has been because of the Complainant's grievances. In other words, the Complainant is demonstrating a temporal link; the Complainant grieves, the Respondent replies with a crusade. The Complainant is also demonstrating a link between the Complainant and the Respondent through the grievance(s).*
>
> …
>
> [Emphasis in the original]

[121] The complainant argued that if an employee is caught in an act of fraud and is fired the next day without explanation, it is probable or at least possible that the employee was fired because of the act of fraud. Supposing that the employee had not committed fraud but instead had filed a grievance and was nonetheless fired without an explanation, then using the same reasoning, there is at least the possibility that the employee was fired because of the grievance. He cited *Hager*, at paras. 39 to 41, as authority, arguing that this reasoning is sufficient to satisfy the arguable-case test.

[122] One of the respondent's main activities is paying and financially compensating its employees, the complainant argued. He argued that by making the request for repayment, it committed fraud, harassment, and extortion. He linked these to his allegations about the violation of the *Criminal Code*.

[123] In the complainant's September 2023 submissions, he referenced an August 2021 email from the respondent. From his description of it, it appears related to the implementation status of the settlement agreement for his grievances before the Board and his retirement from the public service in July 2021. He stated that in that email, the respondent committed to reviewing and reconciling all overpayments for the years 2016 to 2020 and reconciling and amending all tax slips, including for the years 2017 and 2018, and to providing a breakdown of any overpayments and T4-slip reviews, by August 31, 2021. He argued that it broke that promise, which demonstrated a lack of integrity and accountability and caused him further stress and uncertainty. Because these actions were part of a broader pattern of harassment, they amount to an unfair labour practice designed to intimidate or punish him, he argued.

[124] The question that I must answer is whether the complainant has made out an arguable case that the respondent committed an unfair labour practice prohibited by the *Act* when the PSPC Pay Centre sent its overpayment claim on February 9, 2022.

[125] In so doing, I will draw again on the Board's conclusions in *Quadrini*, at paras. 45 and 47, which are that the provisions at ss. 186(2)(a) and (c) of the *Act* are designed to prohibit **reprisals** against an employee for filing a grievance or making a complaint or for participating in a grievance or complaint process.

[126] In this case, I find that the complainant has not pleaded facts that would allow me to conclude that the February 2022 request for the repayment of an overpayment was a **reprisal**.

[127] The complainant's core argument focuses on time. He filed two grievances then settled them and encountered significant problems in the implementation of the settlement, and the request for the reimbursement of an overpayment followed. Therefore, he said, it is probable or possible that the repayment request was a reprisal for filing the grievance or was designed to compel him to refrain from proceeding with the grievance.

[128] It takes more than a link in time to establish probable or possible causation between one event and another.

[129] The full timeline is that the complainant initially received a disciplinary suspension, and subsequently, his employment was terminated. He filed grievances

about both matters. He referred them both to the Board. With the assistance of his bargaining agent, he resolved them and signed the settlement agreement with the respondent. In the process of implementing the agreement, some difficulties were experienced. He began to represent himself in discussions with the Board about the implementation status of the settlement agreement (and made a duty-of-fair-representation complaint against his bargaining agent). The discussions between the Board and the parties about the implementation status of the settlement agreement took place over 22 months, from November 2020 to September 2022. In September 2022, another panel of the Board ordered the grievance files closed on the basis that the respondent had fully implemented its commitments under the settlement agreement. The duty-of-fair-representation complaint was closed by another panel of the Board in June of 2021, after the complainant failed to respond to three reminders of a deadline to provide submissions on the complaint.

[130] This complaint was made in April of 2022, which was while the grievance files were still open and the submission process with respect to the status of the agreement's implementation was still underway.

[131] The complainant argued the harassment he experienced began "immediately after" he filed his grievances. The complainant filed his grievances in 2015 and 2018. I have already found that this complaint is constrained by the 90-day deadline for making a complaint under s. 190(2) of the *Act* and that any complaint about actions that immediately followed the filing of his grievances is untimely. I have found that the only aspect of the complainant's allegations which is within the 90-day deadline was the February 2022 request for repayment. To be clear, the request for repayment of the overpayment did not "immediately" follow the filing of his grievances. It came several years after the filing of the grievances, and seven months after the complainant had retired from the public service.

[132] I understand and appreciate that the complainant experienced significant difficulty with respect to the end of his employment with the employer. He has clearly established at least an **arguable** case that there were delays and missed deadlines in reconciling his pay associated with the end of his employment and errors or delays in the production of an accurate reconciliation of his prior years' T4 slips. He has established at least an arguable case that therefore, he experienced problems with

respect to the accurate reconciliation of his tax returns with the Canada Revenue Agency.

[133] However, he has not pleaded facts that would allow me to conclude that he has an arguable case that the respondent made the February 9, 2022, request for repayment as an act of **reprisal** or to compel him to refrain from proceeding with a grievance amounting to an unfair labour practice.

[134] I have already found that PWGSC and the PSPC Pay Centre are not respondents to this complaint. There were no facts pleaded nor any documents provided that would suggest that the PSPC Pay Centre knew that the complainant had filed a grievance. There were no facts pleaded that would indicate that the actual respondent in this case, the Treasury Board (Public Service Commission), directed the PSPC Pay Centre to make the request for the repayment of the overpayment.

[135] The respondent argued that the overpayment took place in relation to pay during a period of leave without pay in 2016 and that it was not linked in any way to the grievances filed by the complainant. This is a credible and believable explanation that was not countered by any facts offered by him.

[136] I have noted that in making this complaint, the complainant emphasized that "[t]he respondent knew, or ought to have known, that the complainant did not owe the respondent [the] money" described in the repayment request. He has not pleaded any facts that would allow me to conclude that the respondent knew, or ought to have known, that the original overpayment did not occur, or that he was not responsible for repaying it.

[137] I take arbitral notice that there have been numerous problems with delays in the reconciliation of salary overpayments and underpayments through the PSPC Pay Centre and the compensation software program known as "Phoenix"; see, for example, *Public Service Alliance of Canada v. Treasury Board*, 2019 FPSLREB 27 at para. 150, *Burns*, at para. 37, and the report of the Public Interest Commission in *Public Service Alliance of Canada and Treasury Board of Canada*, 2020 CanLII 12252 (PSLREB) at paras. 13 to 15.

[138] I appreciate that the February 9, 2022, repayment request was not anticipated by the complainant and that it led to the making of this complaint. I suspect that the

repayment request arose in a reconciliation of the complainant's pay, following the settlement of his grievances and his retirement from the public service. However, as I have already concluded, this complaint may not be used to relitigate issues addressed in his grievances. Another panel of the Board decided to close his grievance files because it determined that the settlement agreement had been fully implemented by the respondent. This complaint cannot be used to reopen those grievance files or to reassess whether the settlement agreement was fully implemented.

[139] It is easy to distinguish this complaint from *Hager*, which was cited by the complainant as an authority for his position that he has established an arguable case. In that case, the complainants had pleaded facts alleging that a manager had said "… complaining or pushing too hard on things will put you in a bad place" (see paragraph 12) and that after making complaints about the treatment of overtime, they were removed from a work team. The Board relied on those alleged facts in concluding that the complainants had established an arguable case that their removal from the work unit was a reprisal; see paragraph 40.

[140] In this case, the complainant has not pleaded any facts like those provided in *Hager* suggesting that the respondent might have attempted to dissuade him from proceeding with a grievance or to punish him from doing so.

[141] In any case, in *Hager*, the Board said that the complainants only "tenuously" made out an arguable case; see paragraph 41. Furthermore, after the complaint went to an oral hearing, it was dismissed; see *Hager v. Statistical Survey Operations (Statistics Canada)*, 2011 PSLRB 79 at para. 136.

[142] As I have determined that the complainant has failed to make out an arguable case that the respondent committed an unfair labour practice prohibited by the *Act*, I order the complaint dismissed.

[143] As I have dismissed the complaint, I need not consider in detail the elements of the complainant's requested remedies that might be within the Board's jurisdiction and those that are not, which was the fourth question in the letter decision. Suffice it to say that most of his requested remedies were linked to allegations that I have found are outside the Board's jurisdiction. Furthermore, the scope and scale of the remedies that he requested exceed by many orders of magnitude the $7746.70 request for repayment that he claims to have received.

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

(The Order appears on the next page)

XI. Order

[145] The complaint is dismissed.

July 22, 2024.

David Orfald,
a panel of the Federal Public Sector
Labour Relations and Employment Board