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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

MIKAËL MARLEAU BÉDARD

Complainant

and

NATIONAL POLICE FEDERATION

Respondent

Indexed as

Marleau Bédard v. National Police Federation

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

Before: Renaud Paquet, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Complainant: Himself

For the Respondent: Sean T. McGee, counsel

Heard by videoconference,

September 9 and 10, 2024.
[FPSLREB Translation]

REASONS FOR DECISION**(FPSLREB TRANSLATION)**

I. Complaint before the Board

[1] On July 18, 2022, Mik  l Marleau B  dard (“the complainant”) made a complaint with the Federal Public Sector Labour Relations and Employment Board (“the Board”) against his bargaining agent for a breach of its duty of fair representation under s. 187 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”). The bargaining agent is the National Police Federation (“the respondent” or NPF). When he made his complaint, and during the events that led to it, the complainant was an investigator-constable with the Royal Canadian Mounted Police (RCMP) in Montr  al, Quebec.

[2] In section 5 of the complaint form, the complainant indicated that he became aware of what led to his complaint on May 11, 2022. In section 4, his short account of what led to it read as follows:

[Translation]

The NPF has repeatedly refused and continues to refuse to help me (advice, office technology and legal representation) in my different labour-relations processes that followed my employer’s multiple abuses.

[3] The complainant attached three appendices to his complaint consisting of several dozen pages, a portion of which he filed in evidence at the hearing.

II. Preliminary issues about the evidence

[4] On August 11, 2024, the complainant indicated that he would call Robert Beaulieu as a witness. Mr. Beaulieu is a corporal with the RCMP in Montr  al. On August 16, 2024, the complainant forwarded a document entitled “Appendix 1” to the Board and the respondent. According to him, the 88-page document was to support what Corporal Beaulieu would say in his testimony at the hearing.

[5] On August 29, 2024, the respondent informed the Board that at the hearing, it would object to the 88-page document being filed in evidence because the events it referred to took place more than a decade ago, when there was no collective agreement in force, no accreditation, no right of representation, and no adjudication under the Act.

[6] On August 30, 2024, in a conference call with the parties, I informed them that I had reviewed the 88-page document and that I would not allow filing it as evidence at the hearing because it did not address the complainant's particular situation. It focused above all on Mr. Beaulieu's problems and dissatisfaction in his relationship with the respondent. The complainant's name was not mentioned anywhere in it. As will be demonstrated later, the dispute between him and the respondent is essentially related to its refusal to represent him in two grievances that arose from the employer's policy on COVID-19 vaccination ("the *Policy*"). However, the 88-page document makes no mention of the *Policy* or the NPF's position on it or of any dispute between Mr. Beaulieu and the NPF or the employer in that respect.

[7] During the conference call on August 30, 2024, the complainant expressed his disagreement with my refusal to allow the 88-page document as evidence. He argued that it demonstrated the respondent's unfair labour practices toward Mr. Beaulieu and that it had proceeded in the same way against him. I then reiterated my position, based on the fact that document did not deal with his situation. On September 3, 2024, he informed the Board that given my refusal to allow the 88-page document as evidence, Mr. Beaulieu would not testify at the hearing.

[8] During the conference call on August 30, 2024, the respondent informed the Board and the complainant that it would call Stéphane Laframboise as a witness. Given that the complainant had the burden of proof, he was advised that he was to present his evidence first. According to that sequence, Mr. Laframboise, the respondent's witness, would testify after the complainant.

[9] On September 4, 2024, the complainant asked that the Board add Mr. Laframboise to his list of witnesses and that Mr. Laframboise be called to testify as his first witness at the start of the hearing. He stated that he had some questions to ask that witness. He wanted to ask them before he testified because he did not want Mr. Laframboise to hear his testimony before Mr. Laframboise was called to testify. I refused that request. My view was that it was possible to proceed differently, with respect for procedural fairness. I informed the complainant that he could ask all the relevant questions he wanted to ask Mr. Laframboise during his cross-examination. I also advised the complainant that the Board's practice is to exclude witnesses and that I would take the necessary steps to ensure that Mr. Laframboise did not have access to the complainant's testimony before he testified.

III. The parties' evidence

[10] The parties jointly submitted a book of documents that contained 18 from the complainant and 9 from the respondent. In this case, I will discuss only the most important parts. The complainant testified. The respondent called Mr. Laframboise as a witness. He is a career police officer. He joined the RCMP in 1990. From January 2020 to June 2024, he was the respondent's Quebec director. In that capacity, he assisted and represented its members in Quebec.

[11] The complainant holds a college diploma in police techniques. After completing his training at the National Police Academy, he began working as a police officer in 2014 and for the RCMP in 2016. Until 2023, he worked as an investigator in Montréal.

[12] On October 6, 2021, RCMP senior management sent a communiqué to all employees, stating that by no later than October 29, 2021, they had to attest that they had been vaccinated against COVID-19. If they failed to provide it, they would be placed on administrative leave without pay, effective November 15, 2021.

[13] The complainant explained that the directive to be vaccinated created a conflict of loyalty for him. He submitted as evidence a document explaining that a conflict of loyalty is as follows:

[Translation]

A situation that adds stress to diverse commitments that someone has made, thus forcing them to be unfaithful to some of those commitments and, by that fact, to the people those commitments were made to. A conflict of loyalty pits giving your word to one person against giving it to another person. Stress arises from the desire to honour all commitments in a situation that does not allow it. The person experiencing this conflict feels that whatever they do, they will lack honour and integrity; hence, the suffering.

[14] The complainant did not adduce in evidence a detailed reference to the source of that definition, although he testified that Université Laval professors wrote it and that an ethics consultant had repeated it.

[15] On October 29, 2021, the complainant wrote to the employer, and copied the respondent's local representative, stating that he considered himself a victim of discrimination by the employer due to his choice not to be vaccinated, failing which he

would have no income as of November 15, 2021. He then explained that his loyalty to the employer encouraged him to respect its policies but that his personal convictions and opinions about vaccination placed him in a conflict of loyalty with respect to the employer. He stated that he was torn by the dilemma of loyalty between what he thought was the right thing to do for himself and what the employer required of him. The complainant also wrote that the vaccination requirement forced him on one hand to choose between remuneration to meet his needs and the obligation to disclose his medical record and on the other hand to be vaccinated and sacrifice his “[translation] legitimate right to bodily autonomy”. He also referred the employer to the *Universal Declaration of Human Rights* and the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*).

[16] The employer replied to the complainant, stating that his arguments reflected his position and personal opinion, which were not grounds for an exemption from becoming vaccinated. It advised him that he could apply for accommodation on medical, religious, or other prohibited grounds. Otherwise, he would be placed on unpaid leave as of November 15, 2021.

[17] The complainant did not agree with the employer’s response. On November 4, 2021, he replied, asking that what he had written about his conflict of loyalty be forwarded to the appropriate person. He also asked that his conflict of loyalty be given attention and that it was not an exemption request but was based on wrongdoing, namely, “[translation] vaccination attestation and everything that flows from it”. He also asked the employer to justify its position with supporting evidence, to understand its reasoning and learn why it did not validate his conflict of loyalty, despite the legal information that he had cited.

[18] The complainant adduced in evidence the *Values and Ethics Code for the Public Sector* (“the *Values Code*”) and noted that the employer was obligated to respect it. He testified that he and the employer had never had any real dialogue or discussion about his conflict of loyalty. According to him, such discussions should have taken place. He also adduced in evidence the *Public Servants Disclosure Protection Act* (S.C. 2005, c. 46; *PSDPA*). According to him, mandatory vaccination was a serious case of mismanagement. The vaccination was experimental, and he did not know the consequences that it would have on his health.

[19] On November 3, 2021, the complainant filed a grievance addressed to the Office for the Coordination of Grievances and Appeals (to “OCGA Recourse”) using an RCMP form entitled, “Grievance Presentation RCMP Grievance Process”. He stated clearly in his grievance that it was related to the employer’s October 6, 2021, directive on mandatory vaccination. He asserted that the employer attacked his fundamental freedom, protected by the *CHRA*, and that it did not respect his “[translation] ... opinion to not become vaccinated by force”.

[20] On November 10, 2021, the complainant met with his doctor, who then issued a medical note stating the following: “[translation] Work stoppage for medical reasons. Medical follow-up appointment scheduled for December 6, 2021”. The complainant testified that he went on a work stoppage and that he fought alone, without the respondent’s help.

[21] According to the adduced evidence, the employer did not take seriously the medical note that the complainant provided it. In an email exchange on November 11, 2021, its representative described that type of medical note as a loophole that was used before the November 15, 2021, deadline.

[22] On November 29, 2021, the complainant filed a second grievance, also addressed to “OCGA Recourse”, using the RCMP form entitled, “Grievance Presentation RCMP Grievance Process”. He alleged that the employer did not deal with his conflict of loyalty. He asked it to recognize and deal with his conflict.

[23] The complainant testified that throughout that time, he received no help from the respondent, which was aware of what was happening, notably Mr. Laframboise. Apparently, a local NPF representative initially helped him report his conflict of loyalty but quickly referred him to the respondent’s national office, instead of instructing him to contact Mr. Laframboise. The complainant stated that he then felt vulnerable.

[24] On November 3, 2021, Pat Bouchard, a regional NPF representative, wrote to the complainant, stating that the *Policy* did not violate the collective agreement. He advised the complainant to file a grievance using the grievance form that is filed under the RCMP’s grievance process. Mr. Bouchard justified his position as follows:

[Translation]

...

The following is the legal reasoning behind the NPF's actions. As *an employer, the Treasury Board has the statutory authority under the Financial Administration Act to adopt policies (such as this one) on human resources and the general administration of its workforce. However, such policies must be constitutionally valid and must conform to the principles of labour law. With respect to a potential Charter challenge under section 7, the current case law demonstrates that similar mandatory vaccination policies do not contravene section 7 because the consequence of not complying is solely economic (i.e., administrative leave). A challenge under other Charter sections would be very much moot and would probably fail, given the limitation of Charter rights.*

As for labour law, the policy is consistent with the collective agreement (in fact, clause 19.03 expressly recognizes that the Treasury Board will continue to take all reasonable steps to ensure the occupational health and safety of bargaining unit members). It is also very likely that an adjudicator will consider it reasonable, given that it contains exclusions appropriate to the duty to accommodate under human rights legislation and that it provides for a period of advance notice before the direction is imposed. Adjudicators have upheld similar mandatory vaccination policies in other cases, in which vaccination was causally linked to the objective of preserving occupational health and safety. Due to the preponderance of scientific evidence that supports vaccination, such as 1) significantly reducing the likelihood of COVID-19 infection, 2) significantly reducing the probability of COVID-19 transmission, and 3) significantly reducing the likelihood of severe illness and death due to COVID-19, this policy would likely also be upheld.

Given all that, a collective challenge to the policy would most likely fail and therefore would constitute an unjustifiable expenditure of NPF membership dues. The NPF has advocated for and will continue to advocate to have members' privacy and human rights respected under the policy. The NPF will not make a collective challenge of the policy.

...

[25] According to the complainant, the respondent never dealt with his conflict of loyalty or did any research to understand the ethical concepts on which it was based. It reportedly did not help him at all in that respect. According to him, Mr. Laframboise never dealt with it but suggested that he pursue the two grievances filed in November 2021 on his own. According to the complainant, the respondent completely lost interest in his situation. Mr. Laframboise allegedly provided him with case law that he described as "[translation] bogus". According to the complainant, the respondent did not provide him with anything on the conflict-of-loyalty issue.

[26] The complainant also sought asked Mr. Laframboise for help when the employer wanted to force him to consent to an external medical opinion. It advised him that if he failed to comply, he would no longer receive his salary and benefits. He advised the respondent of it, and according to him, nothing was done to help him. Instead, the respondent allegedly suggested that he cooperate with the employer and comply with its requests.

[27] The complainant also testified that the respondent refused to provide him with the assistance of a lawyer of his choice, to represent him.

[28] On March 30, 2022, the complainant filed an appeal with the respondent's president, Brian Sauvé, as he was permitted to under the respondent's *Representation of Members Policy*. He then wrote that its legal team refused to help him with his conflict of loyalty and his employer's reprisal of not paying him. He added that he received no service from the respondent's legal team and Mr. Laframboise, who had absolved himself of his responsibilities. He sought a second legal opinion from a lawyer of his choice, who was familiar with the RCMP and federal administrative law, and who would have been able to respect his constitutional rights and deal with his conflict of loyalty and the resulting reprisals.

[29] On May 11, 2022, Mr. Sauvé dismissed the complainant's appeal and informed him that the respondent would not provide the requested representation services. This was the essence of Mr. Sauvé's response:

[Translation]

...

With respect to your allegation of a conflict of loyalty with respect to the COVID-19 vaccination requirements, we have concluded that it is unlikely that an adjudicator would determine that you can effectively be excluded from the vaccination requirement, or to disclose your vaccination status, based on a conflict of loyalty.

We also have the benefit of several arbitral awards in which employers' decisions to introduce health-and-safety policies and measures against COVID were approved, despite Charter arguments. While certain exceptions apply (such as grounds of discrimination based on an employee's disability or religious beliefs), an employee's conflict of loyalty, as described, does not justify a refusal to comply with the employer's policies and directives to combat COVID.

With that, I confirm the opinions and conclusions that the NPF has communicated to you to date, particularly during your discussions with Mr. Bouchard last November 3, 2021. Thus, the NPF will not represent you in such a grievance. However, note that our labour relations officers remain available to provide you with technical and procedural advice on the grievance process.

As for the notice that you received that your pay and benefits will stop, which came after your interactions with the RCMP's Occupational Health and Safety Service (OHSS), I would like to reiterate the importance that you cooperate, as best you can, with the employer's efforts to confirm your inability to work. An employee is not entitled to impose the parameters and conditions of his or her cooperation. As noted in the Notice of Intent to Stop Pay and Benefits, the consequences of not cooperating can be severe. In such a scenario, the NPF's ability to intervene is negligible.

Finally, as for your last email on May 3, 2022, I would like to again confirm that the NPF will not represent you in your grievance under Part III of the RCMP Act, despite your representations to that effect to the Office for the Coordination of Grievances and Appeals. Again, if you wish, we can assign you a labour relations officer, who will only be able to provide you with procedural advice.

In light of all that, I confirm the NPF's decisions to not provide you with representation services for the files noted earlier.

...

[30] Mr. Laframboise testified that the complainant first asked him for help in January 2022. He testified that the conflict-of-loyalty issue that the complainant raised was complex and that he almost always asked for help from the respondent's legal services, to respond properly to the complainant.

[31] Mr. Laframboise testified that the complainant's grievances were filed under the RCMP's internal process, not under the grievance process set out in the collective agreement. According to Mr. Laframboise, the conflict of loyalty that the complainant raised arose from the conflict between his values on vaccination and the *Policy*.

[32] In cross-examination, Mr. Laframboise testified that he was not familiar with the employer's obligations with respect to conflicts of loyalty and in cases of disclosing wrongdoing. He also testified that he did not personally conduct any research into those issues; nor did he consult external experts. He relied solely on the information that the respondent's legal services provided to him.

[33] The respondent adduced in evidence its *Representation of Members Policy*, which includes the following, among other things:

[Translation]

...

4.1. *Members may be represented in matters relating to their terms and conditions of employment in the Royal Canadian Mounted Police.*

4.2. *In the appropriate circumstances, the NPF may represent members in the following matters:*

4.2.1. *Conduct proceedings under Part IV of the Royal Canadian Mounted Police Act;*

4.2.2. *Grievances filed under s. 238.24 of the Federal Public Sector Labour Relations Act that allege a violation of the collective agreement;*

4.2.3. *Grievances filed under Part III of the Royal Canadian Mounted Police Act;*

4.2.4. *Security clearance and reliability status issues;*

4.2.5. *Applications made to the Federal Court or the Federal Court of Appeal in matters related to the topics listed earlier.*

...

6.1. *When deciding whether to represent a member, the NPF may consider the following factors:*

6.1.1. *The impact of the matter or decision on the member;*

6.1.2. *The degree to which the matter or decision affects the NPF's membership as a whole;*

6.1.3. *The impact of the matter or decision on other NPF members;*

6.1.4. *The chances of success;*

6.1.5. *The costs of representing the member.*

...

[34] Mr. Laframboise testified that the respondent helps its members with grievances filed under both the collective agreement and the RCMP's grievance process. But in the first case, the respondent's approval is required when the grievance is filed; in the second case, it is not.

IV. Summary of the arguments

A. For the complainant

[35] The respondent failed its duty of fair representation by not providing the complainant the support and representation that he was entitled to when he raised the conflict of loyalty with the employer, which he experienced from its implementation of the *Policy*. He then faced retaliation from it, and the respondent did not support him.

[36] The respondent and its representatives ignored the responsibilities of the employer's chain of command, which they do not seem to understand. It could have intervened and helped start a dialogue, which would have avoided the employer's multiple retaliations.

[37] The conflict of loyalty that the complainant raised was outside the traditional labour relations framework and involved compliance with the *Values Code*, the *CHRA*, and the *PSDPA*. The respondent mishandled the entire issue that he raised, solely on the legal basis of labour law.

[38] At no time did the respondent consult an ethics lawyer or ethicist to adequately defend the complainant. By doing so, it dealt superficially and arbitrarily with the issue that he raised. It could have explored other ways to help him but did not.

[39] The complainant asked that I allow his complaint. He suggested that I order the respondent to reimburse him all the legal and other costs that he has already incurred, allow him to hire a lawyer of his choice, and pay that lawyer to continue his representation.

[40] The complainant referred me to *Noël v. Société d'énergie de la Baie James*, 2001 SCC 39.

B. For the respondent

[41] The respondent first summarized the evidence adduced at the hearing. I will not repeat what was presented to me at that time.

[42] The respondent submitted that I do not have jurisdiction to deal with this complaint as it is about representation for grievances filed under the grievance process set out in Part III of the *Royal Canadian Mounted Police Act* (R.S.C., 1985, c. R-10; "the *RCMP Act*"). It is in no way related to the respondent's obligations under the *Act*.

[43] The respondent submitted that if the Board determines that it has jurisdiction to deal with the complaint, the respondent did not breach its duty of fair representation. It submitted that it did not act arbitrarily, discriminatorily, or in bad faith. It examined all the facts and arguments that the complainant submitted. It accounted for all that had been submitted to it and based its conclusions on internal and external legal advice. Several adjudicators had already concluded that the *Policy* did not violate the *CHRA*.

[44] The right to representation is not unlimited. According to the case law, the threshold for a bargaining agent's duty is not the satisfaction or dissatisfaction of an employee who requested assistance. Nor is it a disagreement about the strategy or procedure that it followed. Instead, it is a matter of determining whether it acted arbitrarily, discriminatorily, or in bad faith.

[45] After reviewing the facts and the case law, the respondent concluded that the complainant's case could not succeed. That conclusion was reasonable. According to it, he did not submit any evidence to support his complaint. Therefore, it asked the Board to dismiss it.

[46] The respondent referred me to the following decisions: *Bahniuk v. Public Service Alliance of Canada*, 2007 PSLRB 13; *Benoit v. Trimble*, 2014 PSLRB 46; *Bergeron v. Public Service Alliance of Canada*, 2019 FPSLREB 48; *Bomongo v. Communications, Energy and Paperworkers Union of Canada*, 2010 FCA 126; *Boshra v. Canadian Association of Professional Employees*, 2009 PSLRB 100; *Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 SCR 1298; *Canadian Merchant Service Guild v. Gagnon*, [1984] 1 SCR 509; *Healy v. Canadian Union of Postal Workers*, 2002 CIRB 194; *Jutras Otto v. Brossard*, 2011 PSLRB 107; *Lafontaine v. Syndicat des technicien(ne)s et artisan(e)s du réseau français de Radio-Canada (STARF)*, 2010 CIRB 552; *Manella v. Treasury Board of Canada Secretariat*, 2010 PSLRB 128; *Sheobaran v. Canadian Telephone Employees' Association*, 1999 CanLII 18518 (CIRB); *Ouellet v. St-Georges*, 2009 PSLRB 107; *Payne v. Public Service Alliance of Canada*, 2023 FPSLREB 58; *Savoury v. Canadian Merchant Service Guild*, 2001 PSSRB 79; *Taylor v. Public Service Alliance of Canada*, 2015 PSLREB 35; and *Fidèle v. National Police Federation*, 2023 FPSLREB 48.

[47] The respondent advised me that it prepared a summary of its arguments, which it forwarded to the Board, for submission to me. However, the document was received a few minutes after the complainant finished presenting his arguments. In the interest of fairness to him, given that he did not have the opportunity to read the document, let alone reply to it, I advised the respondent that I would not consult it and that it would be returned. I also informed the respondent that I had ample time to note the details of its oral submissions.

V. Analysis

[48] The complaint cites s. 190(1)(g) of the *Act*, which refers to s. 185. Among the unfair labour practices referred to in that section, s. 187 is the one of interest in this complaint, and it reads as follows:

187 No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit.

187 Il est interdit à l'organisation syndicale, ainsi qu'à ses dirigeants et représentants, d'agir de manière arbitraire ou discriminatoire ou de mauvaise foi en matière de représentation de tout fonctionnaire qui fait partie de l'unité dont elle est l'agent négociateur.

[49] Before determining whether the respondent failed its duty of fair representation, I will consider its argument that I do not have jurisdiction to deal with this complaint. According to it, the complaint is about the representation of grievances filed under the grievance process set out in Part III of the *RCMP Act*. It is in no way related to the respondent's obligations under the *Act*. The respondent referred me to *Fidèle* to support its argument. At paragraph 25 of *Fidèle*, the Board concluded as follows:

[25] For those reasons, I find that the complainant's arguments did not demonstrate a reasonable cause of action. When she filed her grievance, she did so not under the Act but under the RCMP Act. Consequently, the complaint is not under the Board's jurisdiction, and the respondent did not fail its duty of fair representation set out in s. 187 of the Act.

[50] In *Frémy v. Royal Canadian Mounted Police*, 2021 FPSLREB 47, the Board examined its jurisdiction over complaints that arise from grievances filed under the *RCMP Act*. In that case, the complainant alleged that the employer retaliated against

him after he filed a grievance. The grievance was filed under the *RCMP Act*. The Board concluded that it did not have jurisdiction to deal with the complaint, and, after reviewing the *RCMP Act*'s relevant provisions, it wrote this at paragraphs 36 and 37:

[36] In addition, the provisions of the RCMP Act are compatible with the provisions of the Act that relate to the limited right of RCMP members to file grievances. While an employee who is not a member of the RCMP can file a grievance about almost anything related to their conditions of employment (see ss. 208(1)(a) and (b) of the Act), s. 238.24 of the Act limits the right of RCMP members to file grievances that are related to the interpretation or application of a collective agreement or an arbitral award. However, RCMP members have an additional recourse under section 31(1) of the RCMP Act; that is, they can file a grievance if they are aggrieved by a decision, act, or omission in the administration of the affairs of the RCMP. There is no doubt that it was this recourse that the complainant used when he filed his two grievances.

[37] Given that the complainant's two grievances were not filed under the Act, and specifically under Part 2, which deals with grievances, I agree with the respondent's objection that as the complainant did not meet the criteria set out in section 186(2)(a)(iii) of the Act, the Board cannot deal with the unfair-labour-practice complaint. When he filed his two grievances, the complainant did not exercise his rights under the Act; rather he exercised them under the RCMP Act. Therefore, I have no jurisdiction to consider his complaint.

[51] I fully agree with the analyses presented in *Fidèle* and *Frémy* and conclude that I do not have jurisdiction to decide a complaint in which an RCMP member, in this case the complainant, alleges that the respondent failed its duty of fair representation in the representation of grievances filed under the grievance process set out in Part III of the *RCMP Act*. There is no need to add to the Board's conclusions in those two decisions.

[52] That said, I do not necessarily share the respondent's position that this complaint should be dismissed outright on that basis alone. It seems important to pursue the analysis further. Indeed, for example, the respondent could have offered to file a grievance for the complainant under the collective agreement, either on the issue that the employer challenged his sick leave or based on the no-discrimination clause. I do not necessarily claim that the respondent should have done so, but I must pursue the analysis further before deciding whether it failed its duty of fair representation under s. 187 of the *Act*.

[53] First, recall that section 187 of the *Act* does not require that an employee organization represent an employee in any dispute that he or she has with their employer. Rather, it prohibits the employee organization from acting in an arbitrary or a discriminatory manner or in bad faith when it represents an employee or when it decides whether to represent them. On that point, the Supreme Court of Canada stated the following at page 527 of *Gagnon*:

The following principles, concerning a union's duty of representation in respect of a grievance, emerge from the case law and academic opinion consulted.

- 1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.*
- 2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.*
- 3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.*
- 4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.*
- 5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.*

[54] The complainant referred me to *Noël*, in which the Supreme Court of Canada reaffirmed the principles set out in *Gagnon* and *Gendron*. At paragraph 50 of *Noël*, the Court noted that a union may not process an employee's complaint in a superficial or careless manner. It must investigate the complaint, review the relevant facts, or seek whatever advice may be necessary. But it added that the employee is not entitled to the most thorough investigation possible and that the union has considerable discretion as to the type and extent of the efforts that it will undertake in a specific case.

[55] This complaint is related from the start to the representation that the respondent offered the complainant when he denounced the conflict of loyalty that he faced from the *Policy*. According to him, his loyalty to the employer encouraged him to

respect its policies, but his vaccination convictions placed him in a conflict of loyalty with respect to the employer. He stated that he was torn by that loyalty dilemma.

[56] On November 3, 2021, Mr. Bouchard clearly advised the complainant of the respondent's position on the *Policy*. At that time, he explained to the complainant that the employer has the right to adopt human resources policies. According to him, challenging the *Policy* based on the *CHRA* would likely fail. He also wrote that it was very likely that an adjudicator would find the *Policy* reasonable. Following that response, Mr. Laframboise suggested that the complainant file a grievance under the *RCMP Act*. In his response after the complainant's appeal, Mr. Sauvé reiterated in greater detail the respondent's position on the *Policy*. He argued that an employee's conflict of loyalty, as the complainant described, did not justify refusing to comply with the *Policy* to combat COVID-19. Mr. Sauvé also reminded the complainant of the importance of cooperating with the employer's efforts to confirm his inability to work and that an employee is not entitled to impose the parameters and conditions of their cooperation.

[57] Based on what was submitted to me in evidence, I conclude that the respondent did not breach its duty of fair representation on the representation issue, with respect to the conflict of loyalty that the *Policy* caused the complainant. It examined and analyzed what he submitted to it. It reviewed the case law. It sought legal experts' advice and concluded that a collective or an individual grievance filed under the collective agreement was unlikely to succeed. I also note that in *Musolino v. Professional Institute of the Public Service of Canada*, 2022 FPSLREB 46, the Board has already found that a bargaining agent did not act arbitrarily when it decided not to file a policy grievance against the *Policy*. The bargaining agent based its decision on legal advice and reviewed the jurisprudence of similar cases.

[58] The complainant criticized the respondent for not consulting ethics experts. He stated that it erred by dealing with his case solely on a legal basis. It had no obligation to consult such experts. While its analysis was based on labour law, it had no obligation to go further. After all, a collective or an individual grievance filed under the collective agreement is above all a legal process for challenging an employer's decision. Regardless of what the complainant stated, the respondent did not deal superficially with his claims. And nothing in the adduced evidence indicated to me that it would have acted in bad faith or in a manner that was arbitrary or not objective.

[59] The respondent could have provided the complainant with more information; for example, administrative tribunals' decisions on the legality of employer vaccination policies. However, it was not required to and therefore did not breach its duty of fair representation.

[60] As for the respondent's advice that the complainant cooperate with the employer on the issue of his sick leave, I see nothing wrong with it, let alone a breach of s. 187 of the *Act*. The employer clearly had doubts about the medical situation that he reported. It is reasonable to believe that it was entitled to go further and request more information and a second opinion.

[61] Based on that analysis, I conclude that the respondent did not fail its duty of fair representation. The complainant did not present me with any evidence that would lead me to conclude that it acted in an arbitrary or a discriminatory manner or in bad faith in terms of representing him.

VI. Confidentiality order

[62] After the hearing, the complainant asked the Board to redact the medical information in the file. He also asked it to redact his personal information in the file, including his mailing address, personal email address, social insurance number, date of birth, telephone number, and identification number for the RCMP's Human Resources Management Information System.

[63] The respondent did not take a position on the complainant's requests.

[64] I examined the requests based on the open court principle and by referring to the criteria that the Supreme Court of Canada set out in *Sherman Estate v. Donovan*, 2021 SCC 25; *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 SCR 835; and *R. v. Mentuck*, 2001 SCC 76.

[65] I believe that the risk to the complainant of disclosing the personal and medical information described earlier outweighs any public interest in its disclosure. I order redacted his medical and personal information.

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

(The Order appears on the next page)

VII. Order

[67] The complaint is dismissed.

[68] I order the staff members of the Board's Secretariat to redact the complainant's medical information in the file.

[69] I also order the staff members of the Board's Secretariat to redact the complainant's personal information in the file, including his mailing address, personal email address, social insurance number, date of birth, telephone number, and identification number for the RCMP's Human Resources Management Information System.

December 20, 2024.

FPSLREB Translation

**Renaud Paquet,
a panel of the Federal Public Sector
Labour Relations and Employment Board**