Date: 20250515

File: 561-02-49325

Citation: 2025 FPSLREB 26

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

COMPLAINANT X

Complainant

and

RESPONDENT Y

Respondent

Indexed as
Complainant X v. Respondent Y

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

Before: Patricia H. Harewood, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Complainant X

For the Respondent: Zakia Jahan, counsel

Decided on the basis of written submissions, filed April 1 and 22 and May 6 and 29 and July 22 and August 8 and 13, 2024.

REASONS FOR DECISION

I. Complaint before the Board

[1] Complainant X ("the complainant") made a complaint under s. 190(1)(g) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"). The complainant alleged that Respondent Y ("the respondent") breached its duty of fair representation (DFR) under s. 187 of the *Act* by failing to assist her with anything with respect to her return to work. This was after an investigation that the employer undertook found that she had been subjected to racial harassment.

[2] The context in this matter is important, so I will summarize it briefly. The complainant, who identifies as a Black woman, was returning to work after maternity leave. The employer's investigation concluded that a harassment complaint that she made in November 2021 was founded in part. According to the respondent, the finding was based on racist statements made by workplace colleagues who had condoned the use of a "Make America Great Again" hat and had compared a large coffee to a "George Floyd".

[3] George Floyd is the Black man whose brutal murder by a white police officer in Minneapolis, Minnesota, in the United States, on May 25, 2020, was captured on video and amplified a global movement for racial justice. This included Black Lives Matter protests throughout the U.S. and Canada. "Make America Great Again" is a controversial political slogan from the U.S. that was most recently popularized by American President Donald Trump and that some consider racist and anti-Black. Although her colleagues' comments and actions were not directed against the complainant, the employer's investigation concluded that she had been racially harassed.

[4] After experiencing racial harassment, she sought help from her bargaining agent, the respondent, with return-to-work accommodations, including a request to be transferred to a work location away from the workplace, where she had experienced the incidents described. She alleges that she was in constant contact with the respondent but that it did nothing to assist her or to contest the respondent's alleged retaliatory actions against her because she reported the harassment and then tried to return to work. She said that she just wanted to work in a place that did not condone racist remarks about Black people.

[5] The respondent replied to this DFR complaint on April 2, 2024. It requested that the Federal Public Sector Labour Relations and Employment Board ("the Board") summarily dismiss the complaint under s. 21 of the *Act* on the grounds that it is frivolous, vexatious, and in bad faith. It also argued that the complaint is untimely and that it does not fall under s. 185 because primarily it is a complaint against the employer about staffing, not the respondent's actions. Finally, it argued that it provided help and timely guidance with respect to the complainant's return to work, so she failed to make out an arguable case that it breached its DFR.

[6] A panel of the Board was assigned to the matter, and the parties provided the supplementary submissions that were requested of them. The Board also requested additional particulars from the parties, including a copy of the respondent's internal appeal process, a copy of an email referenced in the respondent's submissions that the LRO sent to the complainant on December 15, 2023, and an email that the complainant had sent to the respondent's president on December 14, 2023. All requested documents were provided.

[7] This decision addresses whether the complaint falls within the Board's jurisdiction, whether it is timely, and whether there is an arguable case that the respondent acted in a manner that was arbitrary, discriminatory, or in bad faith.

[8] After the decision was issued to the parties on March 18, 2025, the complainant requested a confidentiality order, to protect her safety. The respondent took no issue with the request. The Board granted the order with a letter decision after reviewing its *Policy on Openness and Privacy* and applying the test in *Sherman Estate v. Donovan*, 2021 SCC 25. Therefore, neither the complainant's nor the respondent's names are mentioned. Further, the complainant's workplace is not identified.

[9] For the reasons that follow, I deny all jurisdictional objections. The complaint is timely; its matters, which involve asking for assistance from the respondent on the duty to accommodate and discrimination matters, fall within the scope of a DFR complaint. I have found that s. 190(3) of the *Act* is not applicable and did not bar the complainant from making a DFR complaint. Further, the complainant has made out an arguable case of a breach of s. 187.

II. Summary of the alleged facts

[10] The complainant made her DFR complaint by checking two boxes on the Board's e-filing form, the "Unfair Labour Practice" box, in which a series of unfair employer practices are listed, and the "Unfair representation by bargaining agent (union) s. 187" box.

[11] This explanation and request for corrective action were provided to support the complaint:

> *My employer* [redacted] *suddenly declined my medical documentation and stated that if I did not return to an unsafe work environment that I would get a stoppage of pay, termination and lose my job. I was in constant contact with the union and they did not assist me with anything. I was forced to submit vacation hours until the employer* [redacted] *transferred me to a different work location an hour away from my residence and given a few days notice of the change.*
>
> ***What corrective action is being sought? (maximum 500 characters) (required)***
>
> *I would like the union to actually take an steps to address the abuse of authority by* [redacted]*. I would like any assistance to rectify the blatant bully the* [redacted] *has done to me.*
>
> [*Sic* throughout]

[12] The complainant alleged that the actions that gave rise to the complaint arose on December 14, 2023.

[13] The Board requested particulars with respect to the letter sent to the respondent's president on December 14, 2023.

[14] The complainant provided the following email to respondent's President, along with the respondent's response:

> *Hello Mr.* [redacted],
>
> *I am filing a grievance in regards to the assistance I received from* [respondent]*. I will attempt to break down my grievances;*
>
> *• I recently sent an email to the CO in regards to my ongoing issues with racism within the* [redacted] *(one of those incidents you have personal knowledge in* [the complainant's former workplace]*). My email was requesting a workplace free of blatant racism. The HSO in* [the complainant's workplace] *was spoken to by the EMRO and I provided medical evidence to the union about my medical diagnosis. The HSO is completely disregarding medical*

> *evidence provided to him and also not offering for me to see another physician for an independent assessment. The HSO is staying that I am fit for duty while completely disregarding medical restrictions that my medical team are requesting.*
>
> *• The union has not given me any assistance in regards to when the EMRO threatened to give me a code of conduct and stoppage of pay if I would not return to* [redacted] *and stating that I have no medical diagnosis.*
>
> *• I have been given less than 4 days to decide on two different post that are an hour commute. I have learned that two other members in my old detachment were given positions that would be significantly closer to my residence (30 minutes).*
>
> *I am requesting a thorough look at my file and request any type of assistance that the* [respondent] *has in order. It appears that the* [redacted] *is continuing to come after me for speaking about racism.*
>
> [Signed by the complainant]
>
> [*Sic* throughout]

[15] The respondent wrote to the complainant on December 14, 2023, stating this: "Thank you for making the effort to share your concerns with us. We have escalated your concerns to President [redacted]. All the best …".

[16] The LRO wrote to the complainant on December 15, 2023, noting that the fact that some staff received more desirable lateral transfers is a staffing issue and a management right. The respondent advised that it did not have representation in staffing issues. The LRO suggested follow-up with the employer.

[17] The complainant alleged that she was awaiting a response from the respondent's national president with respect to her grievance.

[18] After several months of receiving no response from the respondent's national president, she made this complaint with the Board on March 14, 2023.

III. Summary of the arguments

A. For the respondent

[19] The respondent replied to the complaint by laying out a factual background, which is not necessary to summarize for the purpose of the Board's analysis.

[20] The respondent provided the following four defences against the complaint:

…

i. The Complaint falls outside of s.185's purview;

ii. The Complaint presents no arguable case;

iii. The Complaint is untimely; and

iv. The Complainant did not follow the internal appeal procedure ….

1. The complaint is untimely

[21] The respondent claims that the complainant knew by November 27, 2023, of the actions that gave rise to the complaint, in light of her correspondence with the respondent's labour relations officer (LRO).

[22] The LRO wrote as follows on November 22, 2023:

…

3. If the attempts at an alternate location are denied, I caution you that you may be ordered to return to work in [redacted] *or to a specific location. We can not guarantee that you will not face the consequences of a code of conduct or stoppage or [sic] pay and allowance for absence without authorization for refusing to return to work because of a single incident of harassment. This is not to minimize your experience, but rather the processes of* [redacted] *have reviewed and offered recommendations to restore the workplace and the individual who made the comments has been disciplined.*

4. Should you return to [redacted] *and harassment is ongoing, or others need to be addressed, you should be filing another complaint on* [*sic*] *those individuals.*

…

[23] In response to the LRO's email of November 22, 2023, the complainant wrote this on November 27, 2023:

…

Just wanting to confirm that the union is ignoring my medical documentations and allowing the [employer] *to threaten to fire me? It appears that the union isn't representing me at all. At this point I have spoken to my own counsel and they have agreed that legally the* [employer] *can not* [*sic*] *ignore my medical documentation and medical diagnosis.*

> *If the union is ignoring my medical documentation can you let me know as I will probably be paying out of a pocket for a lawyer and filing a duty for fair action [sic].*
>
> …

[24] Since the complainant knew the respondent was not assisting her by November 27, 2023, she should have made her complaint by February 25, 2024. Instead, she made her complaint on March 14, 2024, which was outside the 90-day statutory time limit to make it. Therefore, it should be dismissed on that basis alone.

2. The complaint falls outside the Board's purview

[25] The respondent alleged that since the complaint refers to an alleged toxic workplace, the complainant's refusal to return to it, and staffing issues, it falls outside the scope of a DFR complaint.

3. The complainant did not follow the internal appeal process

[26] The respondent submits that the complaint must fail because the complainant failed to use its Representation Policy, of which section 11.3.1 states that members must appeal a respondent's decision to the respondent's president. The respondent claims that the complainant is therefore barred from pursuing her complaint pursuant to s. 190(3) of the *Act*.

B. For the complainant

[27] In response to the respondent's claim that the issues raised do not fall within the scope of a DFR complaint, the complainant noted that the investigator concluded that the workplace incidents met 3 of the 13 grounds of harassment under the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6) — race, ethnic origin, and colour. She noted that she needed help to return to a safe environment, based on the treatment that she had previously received. She argued that the respondent had an obligation to assist her.

[28] The complainant submitted that the respondent did nothing to assist her. Instead, it let the employer threaten to fire her for reporting racism. She alleged that the respondent allowed the employer to retaliate against her by threatening to stop her pay and even terminate her if she did not return to work.

[29] The complainant alleged that the return-to-work issues that she faced related to human rights and were organizational issues.

[30] The complainant alleged that the respondent let the employer threaten to fire her because she reported racism in the workplace. After submitting 250 hours of vacation leave when the employer denied her medical diagnosis, she was given the option of being transferred to a location an hour from her home.

[31] The complainant further noted that she needed assistance from the respondent to return to work and that it had an obligation to assist her.

[32] The complainant alleged that her issue is a "… human rights issue and an organizational issue …".

[33] In response to the claim that she should have used the internal appeal process, the complainant argued that she did not know about it. She alleges that she was told to contact the respondent's president, which she did.

C. The respondent's rebuttal

[34] The respondent replied by relying on its submissions of April 2.

[35] The respondent noted that at its core, the complaint pertains to the complainant's return to work, which was a staffing issue outside the purview of the DFR.

[36] In response to the complainant's allegation that she was not aware of the internal appeal process, the respondent noted that she was provided with a copy of the *Representation Policy* and information on the appeal process on November 2023. In addition, her grievance to its national president on December 14, 2023, was not an appeal; she asked what the respondent could do for her. She did not appeal its decision.

IV. Supplementary written submissions

[37] On June 25, 2024, the Board requested supplementary submissions on the following questions:

> - Do the matters raised in the complaint fall within the scope of s. 185 of the *Act*?

- Is the complaint timely?
- How does s. 190(3) of the *Act* apply in the particular context of this complaint?
- Does the complaint disclose an arguable case?

A. For the respondent

[38] The respondent submitted that based on the complaint's wording and the letter sent to its president on December 14, the complainant's main concern is with the employer's action, not its actions. Since ss. 185 and 187 of the *Act* focus on a bargaining agent's actions, the complaint does not fall within the scope of the *Act*.

[39] The respondent cited *Elliott v. Canadian Merchant Service Guild*, 2008 PSLRB 3, to support its position that "… the duty of fair representation is concerned with the actions of a bargaining agent as they relate to the dealings that an employee in the bargaining unit may have with the employer …".

[40] With respect to the timeliness of the complaint, the respondent added that s. 190(2) of the *Act* requires a complaint to be made 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 that gave rise to it.

[41] The complainant lists December 13 as the applicable date that gave rise to the complaint, but it is inaccurate, because she had already complained about the respondent's actions on November 27, 2023. Therefore, the deadline was February 26, 2024. Alternatively, she ought to have known by November 29, 2023, when she was advised that there would be no legal representation on her file.

[42] As for the application of s. 190(3)(b) of the *Act* to this complaint, the respondent acknowledged that that provision does not necessarily apply to matters arising under s. 187. However, *Markey v. Professional Institute of the Public Service of Canada*, 2011 PSLRB 36, underlines that the existence of an internal appeal process, and a complainant's failure to use it, is a factor in determining whether a bargaining agent acted in an arbitrary manner.

[43] In this case, the respondent argues that the complainant did not properly avail herself of its internal appeal process before making the complaint.

[44] In terms of the arguable-case framework, the respondent added a reference to *Sganos v. Association of Canadian Financial Officers*, 2022 FPSLREB 30. It also noted

that the right to representation is not absolute and that a complaint to the Board is not an appeal against a bargaining agent's decision not to provide representation (see *Mongeon v. Professional Institute of the Public Service of Canada*, 2022 FPSLREB 24).

[45] The respondent then largely relied on its own allegations, rather than the complainant's, to argue that she did not make out an arguable case of arbitrariness. It argued that she did not make any allegations that established discrimination. Finally, with respect to bad faith, it argued that she failed to make an arguable case of personal hostility or vexatious or malicious conduct on its part against her (see *Barrett v. Canadian Association of Professional Employees*, 2023 FPSLREB 66).

B. For the complainant

1. On the issue of jurisdiction

[46] The complainant submitted that this is not a staffing issue but an issue involving human rights.

[47] She noted that she is a Black person and alleged that she was working in an environment that condoned racist remarks about Black people.

[48] She argued that she wanted to go to work knowing that racist remarks would be immediately denounced.

[49] She repeated that the respondent failed to hold people accountable for racist remarks and that she was just expected to continue to work with them.

2. On the issue of timeliness

[50] The complainant argued that she was waiting for the respondent's president to respond to her grievance. She said the only email she received about assistance from the respondent was about emailing its president. After several months of not receiving a response, she made this complaint.

[51] She argued that the emails demonstrate that the respondent did not really do anything to assist her.

3. On the issue of the respondent's appeal process

[52] The complainant argued that she did not know how the internal appeal process would restrict the respondent from assisting her.

[53] The complainant submitted that she was looking for assistance from the respondent so that she would not be fired for reporting racism.

[54] She asked whether it was fair to just ignore her request and to take no steps to assist her.

4. On the issue of an arguable case

[55] The complainant argued that the respondent took no steps to assist her, other than sending emails but taking no actual steps.

[56] The complainant argued that the respondent sided with the employer and that it even refuses to acknowledge the grievance that she filed with its national president.

[57] The complainant submitted that she is a whistleblower who spoke out against an organization with no accountability, with zero assistance from the respondent.

[58] She said that she would like to know how a bargaining agent can take zero steps to help someone dealing with a human rights issue.

C. The respondent's rebuttal

[59] The respondent's rebuttal largely repeated and relied on its previous submissions filed on July 22, 2024.

[60] With respect to exhausting the internal appeal process, the respondent noted that the complainant's email to the respondent's National President was mainly to ask for further assistance from the respondent, not to appeal an internal decision or action of the respondent, which is required by section 11.3.1 of the respondent's *Representation Policy*.

[61] With respect to timeliness, the respondent submitted that the complainant's claim that she was waiting for a response from the respondent's President and that she did not know where to make the complaint is disingenuous, since as early as November 27, 2023, she stated that she intended to make a DFR complaint.

[62] In response to the complainant's allegation that the respondent took no steps to assist her, it submitted that timely and helpful advice was provided throughout the return-to-work process from one of its LROs. The respondent cited *Osman v. Canada*

Employment and Immigration Union, 2020 FPSLREB 40 at para. 20, to underline that an employee's disagreement with their bargaining agent does not prove a DFR breach.

V. Reasons

[63] In her complaint, the complainant alleges that the respondent committed an unfair labour practice by declining to help her with return-to-work issues following an employer investigation that concluded that she had been racially harassed in the workplace.

[64] However, this decision makes no determination on the merits, since I determined that it would be best to first proceed using the arguable-case framework. If there is no arguable case, then the matter cannot proceed on its merits.

[65] The respondent also raised three other objections, notably, about my jurisdiction on the basis of timeliness and about an allegation that the complaint's subject matter falls outside the Board's purview. The final objection is that the complainant failed to exhaust the internal appeal process. It also argued that the complaint is frivolous, vexatious, and in bad faith and that it should be summarily dismissed under s. 21 of the *Federal Public Sector Labour Relations and Employment Board Act*, but it provided no specific arguments to substantiate that argument. Since I have ultimately found that the complainant made out an arguable case, I find no merit to that argument. I will begin by focusing on the timeliness objection and then address the other objections, including why the complainant made out an arguable case.

A. Timeliness: the complaint is timely

[66] Under s. 190(2) of the *Act*, a complaint under s. 190(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 complaints.

[67] That is a strict deadline. In the absence of exceptional or unusual circumstances, the Board has no discretion to extend it (*Beaulieu v. Public Service Alliance of Canada*, 2023 FPSLREB 100 at para. 41). The Board's only discretion is to determine when the complainant knew or ought to have known of the action or circumstances giving rise to the complaint. That is a purely factually determination based on a careful review of the facts.

[68] Further, the Board's case law on whether a union's existing internal appeals process can postpone the 90-day timeline is divergent.

[69] Recent cases such as *Dundas v. Canadian Association of Professional Employees*, 2024 FPSLREB 55; *Nemish v. King, Walker and Union of National Employees (Public Service Alliance of Canada)*, 2020 FPSLREB 76; and *Esam v. Public Service Alliance of Canada (Union of National Employees)*, 2014 PSLRB 90 at para. 32 reinforce that the statutory deadline under section 190(2) was enacted by Parliament and leaves absolutely no room for the Board's discretion. If Parliament had wished to extend the deadline, in light of existing internal appeals process, it could have done so.

[70] In addition, attempts to change the union's mind do not extend the deadline.

[71] Other cases such as *Renaud* suggest that in circumstances where the union requires members to exhaust an appeals process, the 90-day deadline can logically only begin to run after the appeals process has been exhausted. In effect, decisions like *Renaud* and *Markey* (in obiter) conclude that the 90-day deadline is postponed or cannot be triggered before the culmination of the internal appeals process.

[72] I would agree with the Board's comments in *Dundas* at paragraph 34 that *Renaud* and *Markey* "have misinterpreted the clear and unambiguous wording in the statute" by suggesting that the time limit in s. 190(2) does not start to run in cases where the complainant has used the union's internal appeals process. As a creature of statute, the Board is bound by the strict timeline of s. 190(2) which makes no mention of an internal appeals process.

[73] However, the Board is required to review all of the facts and make a determination on when the complainant knew or ought to have known of the action or **circumstances** giving rise to the complaint. This requires determining the essential nature of the complaint.

[74] The complaint is about the union's ongoing failure to assist her regarding return-to-work accommodation following a finding that she experienced racial harassment. The complainant notes in her complaint:

> *My employer the* [redacted] *suddenly declined my medical documentation and stated that if I did not return to an unsafe work environment that I would get a stoppage of pay, termination and lose my job. I was in constant contact with the union and they*

> *did not assist me with anything. I was forced to submit vacation hours until the* [redacted] *transferred me to a different work location an hour away from my residence and given a few days notice of the change.*
>
> [*Sic* throughout]

[75] Therefore, as in the case of *Boshra v. Canadian Association of Professional Employees*, 2009 PSLRB 100 at para. 22 (upheld on judicial review 2011 FCA 98), I find the grievor's allegations refer to a cumulative pattern regarding representation that breached the *Act*. Therefore, I must determine whether the complainant knew of this pattern during the 90-day window and identify any triggering or crystallizing events.

[76] The complaint was filed on March 14, 2024. Ninety days prior to that date is December 15, 2023. Therefore, if the complainant knew of this pattern before December 15, 2023, her complaint is out of time.

[77] I begin my review on the timeliness issue by examining the initiating document that the complainant filed. All complainants who claim that their bargaining agent has committed an unfair labour practice by breaching its DFR must electronically fill out a form and provide particulars on the nature of the complaint and the corrective action sought.

[78] The form is short and fairly straightforward and has a section to fill out with the filing party's contact information and the actual complaint form, on which the filing party must specify the nature of the complaint, specify the entity it is being made against (i.e., employer versus bargaining agent), and provide particulars describing the event, actions, or circumstances that gave rise to the complaint.

[79] Toward the end of the form, there is a requirement to provide the date on which the filing party became aware of the act, omission or other matter giving rise to the complaint.

[80] Initially, the complainant marked that date as December 14, 2023.

[81] The complainant also indicated "No" in response to the question of whether the bargaining agent provided the filing party with a copy of the decision on the grievance or appeal.

[82] Just below that, in the box that states, “If not [as in if no copy of the decision was provided], what date was the grievance or appeal presented”, the complainant indicated December 14, 2023, as the date on which the grievance or appeal was presented.

[83] The parties do not dispute that on December 14, 2023, the complainant wrote to respondent President. The dispute turns on whether the clock should start to run from December 14, 2023, November 29th or on another date.

[84] There is also no dispute that the complainant wrote to the LRO on December 13 with her recent discovery that other members had been transferred to a work location closer to their home and asking whether the LRO could do something about that.

[85] When asked by the Board to provide the LRO’s response to the December 13 email, the respondent provided a copy of the LRO’s email of December 15 in which the LRO concluded that the respondent had no representation on staffing matters. The LRO noted that it was the employer’s managerial right to staff as it sees fit, so she could contact her “CDRA” to discuss options. There is no explanation as to what the acronym “CDRA” stands for but it is not the bargaining agent.

[86] The complainant provided sparse submissions on the timeliness issue. However, she did note in her supplementary submissions that she was waiting for the respondent’s president to respond to her December 14, 2023, email. In response to the respondent’s argument that the complaint was out of time, she submitted that she waited several months and that she eventually made her complaint after she received no response from the respondent’s president.

[87] The respondent argued that on November 27, the complainant had already complained to the respondent’s LRO about its failure to assist her. Alternatively, the latest the complainant should have known of the actions that gave rise to the complaint was November 29, when it advised her that it would not provide her with any legal representation for her return-to-work issues and informed her of the right to appeal the decision to its national president within 14 days.

[88] Further, the respondent argued that the complainant’s December 14, 2023, email to its national president was not a proper appeal of the respondent’s decision not to represent her.

[89] I disagree.

[90] Based on a review of the correspondence between the respondent's labour relations officer and the complainant, I find that the email to the LRO on December 14, 2023, was an appeal of the respondent's decision.

[91] Although the complainant used the term "grievance", rather than "appeal", and might not have been fully aware of the mechanics of the internal appeal process, it is evident from the content of the communication that it was an attempt to appeal the respondent's decision to deny her legal representation on her file and to get help with her return-to-work and accommodation issues by filing a grievance. However, as stated above, the existence of an appeals process does not postpone the timeline under 190(1). It is simply a factor in determining when the complainant knew or ought to have known of the action or circumstances giving rise to the complaint.

[92] On November 29 the complainant was advised that the respondent would not provide her with legal representation for her return-to-work issues and informed her that she could appeal that decision to its national president. On November 29, she replied to the respondent's LRO to confirm her understanding that the respondent would not provide her with any assistance.

[93] I also find that the November 29 email from the LRO, indicating that the respondent would not provide legal representation, was not an end to the circumstances that gave rise to the complaint. The LRO expressly indicated that decision could be appealed.

[94] In the complainant's December 14 email to the respondent's president, she notes that she is "… filing a grievance in regards to the assistance I received from respondent." In the third paragraph, she clearly attacks the respondent's alleged inaction, notably, its alleged failure to assist her when the employer threatened "… code of conduct and stoppage of pay …" unless she returned to her former workplace. In the second-last sentence of the email, she states that she seeks a "thorough look" at her file and "any type of assistance" that the respondent can provide. It was **not a boilerplate** request for assistance from the respondent; it was an attempt to grieve the employer's failure to accommodate her and to procure assistance on the return-to-work issues.

[95] The respondent responded to the grievance on December 14, 2023, by advising that it would escalate her concerns to its national president.

[96] The LRO responded on December 15, 2023, to the complainant's email of December 13. In response to the complainant's concern that she was being treated differently than her colleagues with respect to her accommodation request, the LRO provided a response. The LRO noted that the respondent did not have representation in staffing and suggested she pursues another recourse.

[97] Given the clear wording of the complaint and the number of back-and-forth exchanges between the complainant and the respondent, I find that there is no single action that gave rise to the complaint but rather a set of circumstances — plural — regarding the bargaining agent's alleged failure to provide her with any assistance regarding her return to work issues.

[98] The online Oxford dictionary defines circumstances as facts or conditions connected with or relevant to an event or action.

[99] In the case at bar, the complainant is not alleging circumstances that amount to a singular event or situation. She is alleging a pattern by the union over time of refusing to provide her with any assistance at all and of failing to seriously turn its mind to her concerns about retaliation and racial discrimination by her employer in the accommodation process. Therefore, as in *Boshra*, at para. 22, I have found that the complainant's allegations relate to an underlying pattern in the representation provided by the respondent. Therefore, in looking at the complaint holistically, a determination has been made on when knowledge of this pattern crystallized.

[100] The respondent notes in its submissions that the communication between the complainant and the respondent regarding return-to-work and staffing issues took place over the course of a number of months, notably between March and November 2023. The complainant alleges that she was in constant contact with the union and that it did nothing to assist her. The complaint does not elaborate on the exact period she is referring to.

[101] Based on the submissions, I find the circumstances giving rise to the complaint that the union exhibited a pattern of failing to assist her to include the following:

- On November 22, in response to the complainant, the LRO wrote that the complainant could face a code of conduct, stoppage of pay and allowance if she refused attempts by the employer to offer her an alternate location and refused to return to work due to what it deemed a single incident of harassment.
- On November 28, in response to the complainant's email that she had until Friday to decide whether to move her family to a job hours away, the LRO asked whether there were changes to her medical profile and asked to review the material.
- The respondent communicated on November 29, that it would not be providing legal representation regarding her return-to work issues. The complainant sought and received clarification of the respondent's position on November 29, 2023, that it did not represent on staffing matters. The respondent directed the complainant to exhaust an internal appeals process if she did not agree with this decision.
- The complainant sent a request to the LRO on December 13, 2023, indicating that she had received information that other employees were receiving lateral transfers closer to home and asking the respondent if it could do something about that.
- The complainant filed a "grievance" with the National President regarding the employer's failure to accommodate her, the respondent's failure to assist her in the accommodation process, raising new issues of differential treatment in staffing.
- The respondent LRO responded on December 15, 2023, to the complainant's December 13 email indicating that the respondent did not provide representation on staffing matters and that the chances of success of a grievance were not high.
- The National President did not respond to her grievance or appeal.

[102] I agree with the Board's conclusion in *Dundas* that the task is to determine when the complainant knew or ought to have known of the action or circumstances giving rise to the complaint. The existence of an internal appeals process does not extend the determination of when the complainant knew or ought to have known of the action or circumstances giving rise to the complaint. However, it is a factor in determining when the complainant knew of the actions or circumstances giving rise to the complaint.

[103] The complainant states in her complaint that she was aware of the action giving rise to the complaint on December 14, 2023. In response to the question as to whether she received a response to her grievance or appeal, she checks "No".

[104] The employer alleges that the complainant ought to have known of the actions giving rise to the complaint by November 29, 2023, at the latest when the respondent indicated it would not be providing her with legal representation regarding her return-to-work matters.

[105] I find that the complainant knew of the circumstances giving rise to the complaint by December 15 when, following new information received by the complainant on December 13, the LRO offered an explanation as to why the union could not even look into why certain employees were getting lateral transfers closer to home and she was not. I find the respondent's decision not to represent the complainant on what it deemed a staffing matter, even though the complainant appeared to be suggesting a pattern of differential treatment, is an integral component of the complaint that was eventually filed.

[106] I do not find the complainant ought to have known of the circumstances on November 27 because she wrote back requesting a confirmation from the respondent as to whether it would assist her or not. The response of the LRO on November 29, 2023, clearly directed her to the respondent president suggesting that she could find assistance there, in the form of an appeal. Moreover, communication with the LRO continued with the complainant bringing forward new issues for which she requested the bargaining agent's assistance.

[107] Therefore, I find that it was not until December 15, 2023, that the complainant knew of the circumstances giving rise to her complaint. This is when the events giving rise to her complaint crystallized.

[108] By December 15, the complainant knew that the union would not do anything about her claim that she was being treated differently than other staff. She knew the union would not be assisting her with respect to her request to be accommodated. Although she did not have a response from the national president regarding all of the issues raised in her grievance or appeal, she certainly knew of the circumstances that gave rise to the complaint that was eventually filed on March 14, 2024, which was broadly focused on allegations that the union was exhibiting a pattern of failing to provide her with any assistance at all regarding her return to work issues and her allegations of retaliation by her employer.

[109] Further, I find this matter can be distinguished from *Dundas*, in which there was a singular alleged breach that gave rise to the complaint, notably an allegation that the union failed to represent the complainant fairly because the union representative initially assigned to the file was in a conflict of interest.

[110] I also find that this matter can be distinguished from *Nemish* where there was evidence that the complainant kept on communicating with the union to try to change its mind without new information. Here, the complainant brought forward new issues to the union on December 13 regarding alleged differential treatment in lateral transfers. The union continued to provide her with the same response - that it could not represent her on staffing matters.

[111] Therefore, for all the reasons stated, the grievor's complaint is timely because December 15 falls within the 90-day window for filing a complaint pursuant to subsection 190(2) of the *Act*.

[112] The respondent's request to reject the complaint based on timeliness is therefore denied.

B. The subject of the complaint falls within the purview of a DFR complaint

[113] It is trite law that DFR complaints must address a bargaining agent's actions, inactions, or omissions. They are not available to complainants as blunt instruments to address an employer's actions or omissions. At the same time, any such complaint will necessarily refer to bargaining agent actions or omissions that have a link to the employee's relationship to the employer.

[114] Ultimately, DFR complaints have links to rights, obligations, or matters under the *Act* or a collective agreement that a complainant is facing as an employee with their employer (see paragraph 188 of *Elliott*). A complainant who makes such a complaint usually ultimately seeks assistance from their bargaining agent to help resolve outstanding issues that they are experiencing in the workplace.

[115] In this case, and somewhat perplexingly, in its initial response, the respondent claims that the matters raised in this complaint pertain to a workplace transfer, the complainant's refusal to return to it, and staffing issues outside of the purview of a DFR complaint. In its supplementary submissions, the respondent provides more nuance, stating that the focus of both the complaint and the December 14 email to the respondent's president is **mainly** the employer's actions, not the respondent's actions.

[116] I cannot agree.

[117] The respondent's characterization of the complaint is far too narrow. It is simply not substantiated by the wording of the complaint.

[118] Rather, I accept the complainant's explanation that the complaint is about her request for the respondent's assistance to deal with human rights matters in the workplace and her right to return to a safe work environment following her experience of racial harassment. These matters are within the scope of a DFR complaint. In fact, these are precisely the types of matters that are related to the collective agreement, its provisions on no-discrimination and the employer's obligation to provide a safe and healthy workplace. Reducing the complaint to staffing issues misses the mark on its pith and substance.

[119] The complainant repeatedly alleged that the respondent failed to provide her with the assistance that she needed to safely return to the workplace and to protect her from the alleged retaliation and differential treatment from her employer for reporting racism. She needed help, including a recourse mechanism to challenge the employer's alleged actions.

[120] Issues involving the duty to accommodate, prohibitions against discrimination, and protections from reprisals for exercising rights under a collective agreement all fall within a bargaining agent's responsibilities as the certified and exclusive representative of all employees within a complainant's bargaining unit.

[121] While some of the allegations in the complaint certainly point in the employer's direction, the complaint clearly raises allegations about **how** the respondent represented or failed to represent the complainant (i.e., in a discriminatory, arbitrary, or bad faith fashion), which are all within the scope of a complaint under s. 187 of the *Act*.

[122] Therefore, the respondent's preliminary objection that the complaint is outside the scope of a DFR complaint is denied.

[123] Section 190(3) does not apply.

[124] The complainant was not required to exhaust the internal appeal process. Section 190(3) of the *Act* is not applicable to complaints alleging an unfair labour practice under s. 187.

[125] I reproduce the relevant provision as follows:

Complaints	***Plaintes à la Commission***
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 :*
(a) *the employer has failed to comply with section 56 (duty to observe terms and conditions);*	***a)*** *l'employeur a contrevenu à l'article 56 (obligation de respecter les conditions d'emploi);*
(b) *the employer or a bargaining agent has failed to comply with section 106 (duty to bargain in good faith);*	***b)*** *l'employeur ou l'agent négociateur a contrevenu à l'article 106 (obligation de négocier de bonne foi);*
(c) *the employer, a bargaining agent or an employee has failed to comply with section 107 (duty to observe terms and conditions);*	***c)*** *l'employeur, l'agent négociateur ou le fonctionnaire a contrevenu à l'article 107 (obligation de respecter les conditions d'emploi);*
(d) *the employer, a bargaining agent or a deputy head has failed to comply with subsection 110(3) (duty to bargain in good faith);*	***d)*** *l'employeur, l'agent négociateur ou l'administrateur général a contrevenu au paragraphe 110(3) (obligation de négocier de bonne foi);*
(e) *the employer or an employee organization has failed to comply with section 117 (duty to implement provisions of the collective agreement) or 157 (duty to implement provisions of the arbitral award);*	***e)*** *l'employeur ou l'organisation syndicale a contrevenu aux articles 117 (obligation de mettre en application une convention) ou 157 (obligation de mettre en œuvre la décision arbitrale);*
(f) *the employer, a bargaining agent or an employee has failed to comply with section 132 (duty to observe terms and conditions); or*	***f)*** *l'employeur, l'agent négociateur ou le fonctionnaire a contrevenu à l'article 132 (obligation de respecter les conditions d'emploi);*
(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.*
Time for making complaint	***Délai de présentation***
(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*	***(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*

the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint.

Limitation on complaints against employee organizations

(3) Subject to subsection (4), no complaint may be made to the Board under subsection (1) on the ground that an employee organization or any person acting on behalf of one has failed to comply with paragraph 188(b) or (c) unless

(a) The complainant has presented a grievance or appeal in accordance with any procedure that has been established by the employee organization and to which the complainant has been given ready access;

(b) the employee organization

(i) has dealt with the grievance or appeal of the complainant in a manner unsatisfactory to the complainant, or

(ii) has not, within six months after the date on which the complainant first presented their grievance or appeal under paragraph (a), dealt with the grievance or appeal; and

(c) the complaint is made to the Board not later than 90 days after the first day on which the complainant could, in accordance with paragraphs (a) and (b), make the complaint.

Exception

(4) *The Board may, on application to it by a complainant, determine a complaint in respect of an alleged failure by an employee organization to comply with paragraph 188(b) or (c) that has not been presented as a*

plaignant a eu — ou, selon la Commission, aurait dû avoir — connaissance des mesures ou des circonstances y ayant donné lieu.

Restriction relative aux plaintes contre une organisation syndicale

(3) Sous réserve du paragraphe (4), la plainte reprochant à l'organisation syndicale ou à toute personne agissant pour son compte d'avoir contrevenu aux alinéas 188b) ou c) ne peut être présentée que si les conditions suivantes ont été remplies :

a) le plaignant a suivi la procédure en matière de présentation de grief ou d'appel établie par l'organisation syndicale et à laquelle il a pu facilement recourir;

b) l'organisation syndicale a :

(i) soit statué sur le grief ou l'appel, selon le cas, d'une manière que le plaignant estime inacceptable,

(ii) soit omis de statuer sur le grief ou l'appel, selon le cas, dans les six mois qui suivent la date de première présentation de celui-ci;

c) la plainte est adressée à la Commission dans les quatre-vingt-dix jours suivant la date à partir de laquelle le plaignant était habilité à le faire aux termes des alinéas a) et b).

Exception

(4) *La Commission peut, sur demande, statuer sur la plainte visée au paragraphe (3) bien que celle-ci n'ait pas fait l'objet d'un grief ou d'un appel si elle est convaincue :*

grievance or appeal to the employee organization, if the Board is satisfied that	
***(a)** the action or circumstance giving rise to the complaint is such that the complaint should be dealt with without delay; or*	***a)** soit que les faits donnant lieu à la plainte sont tels qu'il devrait être statué sans délai sur celle-ci;*
***(b)** the employee organization has not given the complainant ready access to a grievance or appeal procedure.*	***b)** soit que l'organisation syndicale n'a pas donné au plaignant la possibilité de recourir facilement à une procédure de grief ou d'appel.*

[Emphasis added; marginal note emphasis in the original]

[126] Initially, the respondent claimed that under s. 190(3) of the *Act*, the Board was barred from addressing this complaint because, in its view, the complainant did not exhaust its internal appeal process.

[127] In its supplementary submissions, the respondent conceded that provision does not necessarily apply to matters arising under s. 187 of the *Act*. However, the failure to exhaust an internal appeal process is a factor in determining whether a bargaining agent acted in an arbitrary manner (see *Markey*).

[128] Section 190(3) of the *Act* bars complainants alleging an unfair labour practice under s. 188(b) or (c) from making a complaint unless certain conditions have been met, including exhausting the internal grievance or appeal process. These are complaints that allege that a bargaining agent applied its internal standards of discipline or membership rules in a discriminatory manner.

[129] However, the complainant does not allege an unfair labour practice under s. 188(b) or (c) of the *Act*. Her allegations relate solely to a breach of s. 187, which is the provision on unfair representation by a bargaining agent.

[130] Therefore, I find that s. 190(3) of the *Act* is not applicable to this matter. For complaints alleging a breach of s. 187, I agree with the complainant that there is simply no requirement to exhaust an internal appeal or grievance process before making one.

[131] Further, I find *Markey* wholly unhelpful to the respondent's arguments as to the application of s. 190(3) of the *Act*. In *Markey*, the complainant alleged that the

bargaining agent breached its DFR by failing to represent her on a human rights grievance. The bargaining agent provided feedback and recommendations and made an internal appeal process available to her, but she refused to use it. The former Board was required to determine whether the bargaining agent's conduct was discriminatory, arbitrary, or in bad faith. When it assessed the complaint on the merits, it considered the fact that the complainant was provided with a preliminary decision from the bargaining agent and that she chose not to use its internal appeal process, which was readily available to challenge it. In that context, the former Board concluded that although the existence of an internal appeal process did not automatically bar the complainant from making a complaint under s. 187, it might have been a factor to consider when determining whether the bargaining agent breached its DFR.

[132] As I have already concluded, in this case, the complainant attempted to use the respondent's appeal process, I find that the facts in this case can be easily distinguished from *Markey*, in which the complainant refused to use it. Ultimately, I find that *Markey* provides no support for the respondent's argument that s. 190(3) of the *Act* is in any way applicable to this case.

C. There is an arguable case that the respondent acted in an arbitrary manner

[133] The DFR is a fundamental pillar of collective bargaining and a cornerstone of harmonious labour relations. It exists in most statutes across Canada, and the Board and its predecessor have discussed it at length.

[134] Under the *Act*, the DFR is laid out in ss. 185, 187, and 190.

[135] Fundamentally, the DFR requires bargaining agents to treat all members fairly and in a manner that is not arbitrary, discriminatory, or in bad faith. It requires them to act impartially, without hostility or malice, when carrying out their role as the exclusive spokesperson for all their members. The DFR is now firmly implanted in Canadian labour law and jurisprudence.

[136] The Supreme Court of Canada comprehensively examined its evolution 40 years ago in *Canadian Merchant Services Guild v. Gagnon*, [1984] 1 S.C.R. 509, in which it noted that a union's exclusive authority to collectively bargain and to act as the sole representative for all members in the bargaining unit with respect to terms and conditions of employment carries with it a countervailing check on how it exercises its

power. The Court explained that this regulation on a union's authority arose in American courts to protect individual employees from "… abuse at the hands of the majority."

[137] The Court also underlined that the duty was derived from the American case of *Steele v. Louisville & N.R. Co.*, 323 U.S. 192 (1944). This was a case in which Black locomotive firemen successfully challenged a seniority clause that their railway union negotiated that restricted their employment and seniority rights. The union was the exclusive representative of all firemen but allowed only white firemen — who constituted the majority of railway employees — to become members. It negotiated with the employer to place Black firemen at the bottom of the seniority list and to restrict access to promotions only to white firemen, all in an effort to protect jobs for white firemen.

[138] The Supreme Court of Canada summarized the DFR in *Canadian Merchant Services Guild*, at 527, as follows:

> *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.*

[139] Further, in *Noël v. Société d'énergie de la Baie James*, 2001 SCC 39, the Supreme Court of Canada provided further guidance on the concept of arbitrary conduct and serious negligence as components of unfair representation, as follows:

…

> *50. The concepts of arbitrary conduct and serious negligence, which are closely related, refer to the quality of the union representation. The inclusion of arbitrary conduct means that even where there is no intent to harm, the 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; however, the employee is not entitled to the most thorough investigation possible. The association's resources, as well as the interests of the unit as a whole, should also be taken into account. The association thus has considerable discretion as to the type and extent of the efforts it will undertake in a specific case. (See Adams,* supra*, at pp. 13-20.1 to 13-20.6.)*
>
> *51. The fourth element in s. 47.2* L.C. *is serious negligence. A gross error in processing a grievance may be regarded as serious negligence despite the absence of intent to harm. However, mere incompetence in processing the case will not breach the duty of representation, since s. 47.2 does not impose perfection as the standard in defining the duty of diligence assumed by the union. In assessing the union's conduct, regard must be had to the resources available, the experience and training of the union representatives, who are usually not lawyers, and the priorities connected with the functioning of the bargaining unit (see Gagnon,* supra*, at pp. 310-13; Veilleux,* supra*, at pp. 683-87; Adams,* supra*, at p. 13-37).*

…

[140] While *Noël* was a case in which the Supreme Court of Canada addressed the DFR in the context of the Quebec *Labour Code* (CQLR c C-27), which codifies the DFR at art 47.2, the same concept of arbitrariness applies to this case.

[141] Further, as stated in *Noël*, in terms of the DFR, matters involving serious effects on an employee, such as a refusal to represent them on a termination grievance, call for closer scrutiny. While this case does not involve such allegations, I find that it does include allegations with similarly serious effects on an employee, notably, the alleged failure to represent her on a human-rights return-to-work accommodation following a finding of racial harassment.

[142] In assessing whether the complainant has made out an arguable case of a DFR breach, the Board is required to assess whether, if taking the alleged facts as true, there is an arguable case that the respondent acted in a manner that was arbitrary, discriminatory, or in bad faith. Since I find no allegations of bad faith or discriminatory

conduct by the respondent, my focus is on whether the complainant made an arguable case of arbitrary conduct against the respondent.

[143] The former Board succinctly described the test in *Hughes v. Department of Human Resources and Skills Development*, 2012 PSLRB 2 at para. 86.

[144] The parties in that case were asked to specifically address whether, if the former Board considered all the facts alleged in the complaints as true, there was an arguable case that the respondent contravened the *Act*'s unfair-labour-practice legislative provisions.

[145] In *Sganos*, the Board compared the test to the "plain and obvious" test in civil proceedings. Although taking the complainant's facts as true is a low threshold, the facts have to be capable of being proven. One cannot build an arguable case based on pure speculation or on alleged facts that could occur in the future.

[146] Moreover, the alleged facts must be given a broad, liberal, and generous reading, to compensate for drafting deficiencies (see *Zbarsky v. Canada*, 2022 FC 195 at para. 15).

[147] I adopt the arguable-case framework, keeping in mind these lessons from the jurisprudence.

[148] Taking the complainant's alleged facts as true, I find that she made out an arguable case of a breach of s. 187 of the *Act*. Specifically, I find that there is an arguable case that the respondent acted in an arbitrary manner by failing to provide her with any assistance or to seriously turn its mind to her allegations that the employer was retaliating and discriminating against her in her request for a return-to-work accommodation.

[149] The alleged facts that establish an arguable case can be summarized as follows:

- The complainant requested help from the respondent to contest the employer's alleged action of failing to accommodate her upon her return to work, including reprisal allegations and allegations of racial harassment.
- She was in constant contact with the respondent but received no assistance
- She received the respondent's decision that denied her legal representation because it deemed her claims a staffing matter, but also informed her that she could appeal the decision.
- She submitted a grievance or appeal to the respondent's national president. The president never responded.

[150] While failing to respond does not automatically establish an arguable case of a DFR breach, in this case, the National President never responded.

[151] Moreover, the crux of the complainant's allegations relate to a pattern by the bargaining agent of refusing to take her claims of retaliation and anti-Black racism seriously.

[152] The respondent's argument that it provided timely and helpful advice is grounded in its allegations which differ from those of the complainant. Therefore, I find that, for the purpose of the arguable case framework, I must take as true the allegations the complainant has pleaded. The complainant does not allege at any point that the advice provided by the union was timely or helpful. Instead, she alleges that the bargaining agent did not provide her with any assistance at all.

[153] The complainant's submission clearly underlines that she was desperate for assistance. The allegations that the union provided her with no assistance and failed to take her claims of retaliation and discrimination seriously provide the requisite ingredients for an arguable case of arbitrary conduct on the respondent's part.

[154] Further, it is certainly not lost on me that it was not a request for support to file a grievance about overtime or an unreasonable denial of vacation leave. It was an ongoing cry for help from an employee returning from maternity leave who had previously experienced racial harassment at work and just wanted to return to a workplace free of it.

[155] Since the complainant's allegations are to be taken at face value, I find that the complainant has established an arguable case of arbitrary conduct on the part of the union in failing to seriously consider her allegations and to assist her with her return to work.

[156] Issues of individual and systemic anti-Black racism in the workplace are often complex. They are generally challenging to address, for unions and employers alike. Solutions may require changing embedded and long-standing institutional culture, policies, and attitudes that may serve as barriers to substantive equality. This is no easy task. However, failing to respond or to take seriously a claim from an employee requesting help from her bargaining agent to address retaliation and anti-Black racism

at work is neither fair, nor recommended. I find that if the alleged facts are taken as true, the complainant made out an arguable case of arbitrary conduct by the respondent.

[157] I want to be clear that this is not a determination that a breach of s. 187 of the *Act* has been established. Further, the Board notes that the respondent has indicated in its submissions a willingness to try mediation if the Board finds an arguable case has been made out. While this was initially declined by the complainant, this remains an option that the parties could explore.

[158] However, should this matter proceed to a hearing, the complainant will bear the burden of establishing that on a balance of probabilities, the DFR was breached.

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

(The Order appears on the next page)

VI. Order

[160] The respondent's jurisdictional objections are denied.

[161] The complainant has made an arguable case of arbitrary conduct.

[162] The matter will be scheduled for a hearing in due course.

May 15, 2025.

Patricia H. Harewood,
a panel of the Federal Public Sector
Labour Relations and Employment Board