

**Date:** 20250526

**File:** 561-02-49966

**Citation:** 2025 FPSLREB 64

*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

**CORY CAYEN**

Complainant

and

**TREASURY BOARD**  
**(Department of Employment and Social Development)**

Respondent

Indexed as

*Cayen v. Treasury Board (Department of Employment and Social Development)*

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

**Before:** Christopher Rootham, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Complainant:** Himself

**For the Respondent:** Erin Saso

---

Decided on the basis of written submissions,  
filed December 14, 2024, and January 14, February 18 and 21, and March 5, 2025.

---

## REASONS FOR DECISION

---

### I. Overview

[1] This decision is about whether this complaint should be dismissed because it was made late. There is no dispute that it was made late. The complainant, Cory Cayen, says that his medical condition prevented him from making a complaint on time. I have concluded that he has not demonstrated that he was so medically incapacitated that he was unable to make this complaint during the 90-day period for him to do so.

[2] Therefore, I dismiss the complaint. My detailed reasons follow.

### II. Facts that led to the complaint

[3] On October 6, 2021, the Treasury Board enacted the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* (“the Vaccine Policy”). The Vaccine Policy required all employees in the core public administration to be fully vaccinated against COVID-19.

[4] The complainant received the COVID-19 vaccine late in November 2021. Almost immediately after receiving the vaccine, the complainant reported being ill. He went on sick leave and has never returned to work. The complainant attributes his illness to receiving the vaccine.

### III. Process of this complaint

[5] The complainant made this complaint against the Department of Employment and Social Development (“the employer”) on June 3, 2024.

[6] The complainant made a complaint against his bargaining agent that same day. The Federal Public Sector Labour Relations and Employment Board (“the Board”) dismissed that complaint because it was made late; see *Cayen v. Public Service Alliance of Canada*, 2025 FPSLRB 4 (“Cayen #1”).

[7] The employer objected to this complaint on two grounds: that it does not raise an arguable case, and that it was made late. I directed the parties to deal with the issue of whether it was made late and, for now, not deal with whether it raises an arguable case. I also directed that the issue be dealt with in writing.

**IV. Basis of the complaint**

[8] As a first step, I directed that the complainant provide the particulars of his complaint so that the employer could properly respond to it and assess whether it was made late. The complainant explained that he alleges that the employer breached s. 186(2)(a)(iv) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”) by enacting the *Vaccine Policy*. He says that the *Vaccine Policy* is unreasonable and breaches the collective agreement, and he says this is also a breach of s. 186(2)(a)(iv).

**V. Whether the complaint was made late**

[9] Subsection 190(2) of the *Act* requires a complaint to be made to the Board within 90 days after the date on which the complainant knew, or in the Board’s opinion ought to have known, of the action or circumstance giving rise to it. The employer implemented the *Vaccine Policy* on October 6, 2021. I have no information about when the complainant became aware of it, but it was certainly no later than October 27, 2021, because that is the date that the complainant applied for an exemption from the *Vaccine Policy*. Therefore, the complaint was made well beyond the 90-day time limit for doing so.

[10] As explained in *Cayen #1*, this 90-day time limit is mandatory and can be waived only in rare cases. Those rare cases include circumstances when a complainant is medically incapacitated and, therefore, unable to make a complaint on time.

[11] In *Cayen #1*, the complainant provided some medical information to the Board. That medical information was not sufficiently detailed to support granting him an extension of time. In this complaint, I gave the parties an opportunity to make submissions about *Cayen #1*. The complainant filed submissions that stated: “I was not saying that I was sick and un able [sic] to follow the instructions. Due to medications and my disability, I am at a huge disadvantage and unable to follow the process’s [sic] as my daily life let alone anything complex.” The complainant also provided half of 1 page of a 17-page medical document, part of which was included in what he filed in *Cayen #1*.

[12] The complainant still has not provided medical information that is sufficiently detailed to support waiving the 90-day time limit. The medical information provided by the complainant provides information about his current state of health but does not

describe his state of health during the 90-day period after October 27, 2021 (i.e., ending on January 25, 2022). The closest I have is a medical document from 2024, stating that he has been being treated since February 2022. I have no evidence at all about the complainant's health before January 25, 2022, aside from the fact that he was off work for medical reasons. That is not sufficient to meet his burden to show that he was medically incapable of making this complaint.

[13] Additionally, in *Cayen #1* the Board concluded that the complainant's ability to retain and instruct counsel to write a demand letter to his bargaining agent on August 18, 2023, was a very strong indicator that he had the medical capacity to make a complaint about the same issue. When he provided submissions in this case, the complainant provided an invoice from his former lawyer that, he says, is the final invoice and shows that he no longer had a lawyer after that point. That invoice is dated April 15, 2024, and contains docket entries for correspondence and phone calls between the complainant and his lawyer about his complaint between April 1 and 15, 2024. However, the invoice also contains a series of trust entries showing that the complainant retained his lawyer in early August 2023. This is a very strong indication that the complainant had the medical capacity to make this complaint in August 2023.

[14] In conclusion, the complainant has filed no evidence indicating that he was medically incapable of making this complaint before the January 25, 2022, deadline for doing so. As for the period after that date, his medical information does not rebut the strong inference that the fact that he was well enough to retain and instruct counsel meant that he had the capacity to commence this complaint. Therefore, I must dismiss this complaint because it was made late.

[15] I am very sympathetic to the complainant's medical conditions, and I wish him every hope for his recovery.

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

*(The Order appears on the next page)*

**VI. Order**

[17] The complaint is dismissed.

May 26, 2025.

**Christopher Rootham,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**