Date: 20251120

Files: 561-02-44741 and
560-02-44742

Citation: 2025 FPSLREB 154

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

CAROLINE BEAUCAGE

Complainant

and

TREASURY BOARD
(Correctional Service of Canada)

Respondent

Indexed as
Beaucage v. Treasury Board (Correctional Service of Canada)

In the matter of a complaint made under section 190 of the *Federal Public Sector Labour Relations Act* and a complaint made under section 133 of the *Canada Labour Code*

Before: Amélie Lavictoire, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Jérémie Côté-Jones, counsel

For the Respondent: Marc Séguin, counsel

Heard at Montréal, Quebec,
October 22 to 25, 2024, and February 4 to 6 and 27, 2025.
(FPSLREB Translation)

REASONS FOR DECISION (FPSLREB TRANSLATION)

I. Complaints before the Board

[1] Caroline Beaucage (“the complainant”) is a correctional officer at the Joliette Institution for Women (“the Institution”), a correctional facility with multiple levels of security.

[2] When the relevant facts occurred, the complainant was the local president of the bargaining agent, the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN), for the Institution. She was also a member of the Institution’s Emergency Response Team (ERT).

[3] The ERT is an elite, specialized team comprising mainly correctional officers who are trained to respond to different emergency situations that can occur in a correctional facility; for example, riots, cell extractions, and high-risk escorts.

[4] An escort is considered high risk when the inmate being escorted outside a correctional facility poses a high risk of escape or violence or when the inmate’s life could be threatened by a third party while travelling outside a correctional facility. A series of specific security measures must be taken for a high-risk escort. To ensure everyone’s safety, the date on which a high-risk escort is to take place remains confidential until just before that date.

[5] As I will explain in the evidence summary, in December 2020, the complainant expressed concerns about the ERT members’ occupational health and safety with respect to a high-risk escort that was to take place in early 2021. She expressed those concerns during ERT training for that escort. At that point, suffice it to say that the leader and deputy leader did not welcome her intervention. A tense exchange followed, during which she was allegedly accused — explicitly or implicitly — of having disclosed the date of the high-risk escort. All the parties used unprofessional language.

[6] The exchange left the complainant feeling upset. She felt attacked for expressing concerns about occupational health and safety. Her relationship with the deputy leader became tense. She made a harassment complaint against the deputy leader.

[7] Several months passed before the Correctional Service of Canada, the complainant's employer ("the employer"), investigated the complaint. The tension between the complainant and the deputy leader spread throughout the ERT after the complaint was made but especially while the investigation was underway.

[8] In February 2022, the complainant was excluded from the ERT after a confidence vote in which a large majority of the ERT members indicated that they no longer had confidence in the complainant as an ERT member. It was the ERT leader who formally requested a confidence vote, but it was the Institution's warden who authorized it and decided to exclude the complainant from the ERT after the vote.

[9] The complainant made two complaints. The first was a complaint under s. 133 of the *Canada Labour Code* (R.S.C., 1985, c. L-2; "the *Code*") in which she alleges that she was excluded from the ERT because she made a harassment complaint and expressed concerns about occupational health and safety. She submits that excluding her from the ERT was a reprisal that the Institution's management endorsed and approved.

[10] The second was 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 alleges that the employer engaged in an unfair labour practice by excluding her from the ERT because, in her capacity as the local's president, she communicated her concerns about a high-risk escort to the bargaining agent's regional president, which the union was already concerned about. The complaint also alleges that she was excluded from the ERT for expressing the bargaining agent's occupational health-and-safety concerns.

[11] In his final argument, the complainant's representative asked the Board to handle the unfair-labour-practice complaint as a secondary matter, meaning only if the Board were to find the reprisal complaint unfounded.

[12] At the hearing, the complainant also asked the Board to first rule solely on the merits of the complaints, leaving the issue of remedy, including the Board's jurisdiction to order that she be reinstated to the ERT, to a later step in the process, should both complaints be allowed. I granted the request. For that reason, this decision is solely about the merits of the complaints.

[13] For the reasons set out in this decision, I find that the complaint under s. 133 of the *Code* is founded.

II. Summary of the evidence

[14] Eight witnesses testified at the hearing.

[15] The complainant testified. She also called Audrey-Anne Daigneault and Frédérick Lebeau as witnesses. Ms. Daigneault is a correctional officer at the Institution, an ERT member, and the complainant's spouse, while Mr. Lebeau was the UCCO-SACC-CSN's regional president for the Quebec region when the relevant events occurred.

[16] The employer's witness list included four members of the Institution's ERT, including Nancy Vadnais, the ERT leader ("the leader"); Julie Brisson, the deputy leader ("the deputy leader"); and Josie Emery and Stéphanie Richer, two ERT members. In addition to being the ERT leader, Ms. Vadnais is also a correctional manager. As for Ms. Richer, she is also an ERT instructor.

[17] The employer's last witness was Sonya Forget, the Institution's warden ("the warden").

[18] At the hearing, the parties presented me with extensive documentary evidence, including notes that the complainant took as the events described in this decision unfolded, as well as a timeline of events that the leader used to request a confidence vote. I considered all the documentary evidence and testimonies. However, for conciseness, I will summarize only the evidence that I consider most relevant to the issues that I must decide in this case.

[19] First, I will describe the Institution's ERT and its role, and then, I will outline the facts that led to the union's concerns about the inmate's transfer and the high-risk escort at issue in this decision. Next, I will describe the different discussions that took place about the high-risk escort. I will also outline the facts that led the complainant to make a harassment complaint and that led to the confidence vote, which resulted in excluding her from the ERT.

A. The ERT

[20] ERTs exist in multiple correctional facilities across the country. They are elite, specialized teams whose members are trained to respond to the diverse emergency situations that can occur in a correctional facility.

[21] ERTs in women's institutions must be made up only of women. While the ERT members in a men's institution are armed, those in a women's institution are not.

[22] The Institution's ERT typically has 15 members, including a leader and deputy leader. When the events relevant to this case occurred, the team had 13 members. Ms. Vadnais was the ERT leader, and Ms. Brisson was the deputy leader. Some ERT members, including Ms. Vadnais, were managers, but most members were correctional officers or primary workers.

[23] The Institution manages the ERT. Although she is not involved in the ERT's daily operations, the Institution's warden has decision-making authority over the team's operations. She approves the ERT leader's and deputy leader's recommendations and operational decisions, including decisions about the ERT's composition.

[24] The Institution's warden is the only person with the authority to exclude a member from the ERT. She can do it based on either her own initiative or the ERT leader's recommendation.

[25] The ERT members are chosen through a rigorous selection process.

[26] The complainant was chosen as a recruit in 2015 after a selection process involving Ms. Forget, the Institution's warden, and a correctional manager who was the ERT's leader at the time. In 2017, after she completed the required training, the complainant became a full ERT member.

[27] Those who become full ERT members have to sign an agreement letter that sets out the conditions of their participation in the ERT. The complainant signed that letter in 2017. The Institution's acting warden at the time also signed it.

[28] Among other things, the agreement letter states that the warden has the authority to remove a member from the ERT who no longer meets the agreement terms and conditions.

[29] Some terms and conditions are more relevant than others. They require that the ERT members promote unity, camaraderie, collaboration, and teamwork and that they demonstrate integrity and honesty in their interactions with coworkers, the ERT leader, and the Institution's management, among others. Members must be discreet and must respect confidentiality when it comes to tasks that management assigns to the ERT. The agreement letter also states that the confidence, discipline, and professionalism that all ERT members must demonstrate toward other members and the leader are essential. It is indicated that in group discussions, ERT members must be open, honest, and disciplined.

[30] All new ERT members must complete intensive initial training. They also must complete 15 days of tactical and theoretical training each year. To remain on the team, they have to meet each training's success criteria. They must also pass physical tests, administered annually.

[31] ERT membership is voluntary. In addition, an ERT member's participation in an emergency response is voluntary. An ERT member who fears for their safety can refuse a response task, which means that the member is not required to participate in an emergency response if they feel the situation endangers their health or safety.

[32] Members are paid for the overtime that they work because of emergency response calls, high-risk escorts, and mandatory training sessions that take place outside work hours. They do not receive a compensation bonus for being ERT members.

[33] Almost all the witnesses said that ERT cohesion is important and that confidence between its members is imperative. According to them, it is a matter of safety.

[34] As I indicated earlier in this decision, the complainant was both the union local's president and an ERT member. It was not the first time that an ERT member also had a union role. It also was not the first time that an ERT member was the local's president.

[35] Several witnesses, including the complainant, Mr. Lebeau, and the leader, said that when an ERT member also has a union role, it is important that they can distinguish between their union and ERT-member roles. The leader testified about the

importance of keeping those roles separate. She said that an ERT member must be completely focused on the task at hand during training and emergency responses. Otherwise, the ERT members' safety could be at risk during emergency responses.

B. The events that led to the union's occupational health-and-safety concerns

[36] The complainant has been a correctional officer (CX-02) at the Institution since 2011. She works in the maximum-security sector as a primary worker.

[37] Since 2014, she has held several union positions. Among others, she was the UCCO-SACC-CSN local's president at the Institution from 2017 to 2024.

[38] As the local's president, she worked with the union's regional representatives for union issues specific to the Institution. She also worked with them on issues that affected more than one correctional facility in the Quebec region. She attended local health-and-safety committee meetings. In a way, she was the conduit for information that could have been relevant or important for the union at the regional level.

[39] She communicated constantly with Mr. Lebeau, the UCCO-SACC-CSN's regional president for the Quebec region at the time, about different issues that were relevant to the Institution. One was an inmate's possible transfer.

[40] Long before the facts that led to this case, a transgender inmate incarcerated in a men's correctional facility argued before the courts for the right to undergo gender-affirming surgery and to then be incarcerated in a women's correctional facility.

[41] The inmate was serving a sentence for a violent crime. She was incarcerated in a maximum-security correctional facility for men. The correctional officers at that facility were armed. When the inmate was escorted outside the walls of the men's facility, for medical or other appointments, the ERT members who escorted the inmate were armed.

[42] According to the Correctional Service of Canada, the inmate was a high risk for escape during escorts outside a correctional facility.

[43] During multiple labour-management meetings beginning in 2019, if not earlier, the bargaining agent raised concerns about the occupational health and safety of the Institution's correctional officers in relation to any possible transfer of the inmate to a women's facility. One concern was that the Institution's correctional officers and its

ERT members were not armed. The complainant participated in some of those meetings.

[44] Also in 2019, the Institution's ERT discussed whether the inmate's high-risk escort would be feasible. The ERT members trained for years to carry out high-risk escorts, and were the inmate transferred to the Institution, it would be their first opportunity to put their training into practice.

[45] In 2020, discussions about the inmate's potential high-risk escort increased, at all levels and in all forums, including at the union's regional and local levels, the Institution, and the employer. The possibility of a transfer, and consequently a high-risk escort, became increasingly likely. However, no decision had been made about whether the inmate would be transferred to the Institution, and no information was known as to when the inmate might have their surgery.

[46] At the hearing, the complainant said that her concerns as the local's president were about the inmate's high-risk escort, the security measures in place once the inmate arrived at the Institution, and the issues that could arise, once the transfer was done, were the inmate escorted outside the Institution's walls for medical emergencies, medical appointments, or other reasons. For the purposes of this decision, suffice it to say that her concerns were mainly about the Institution's correctional officers and ERT members not being armed.

C. The inmate's potential transfer became a reality

[47] In late October or early November 2020, the complainant received a call from a correctional officer at the maximum-security correctional facility for men where the inmate was incarcerated. He reportedly informed her that he was to take part in the inmate's high-risk escort in January 2021, when the inmate was to undergo gender-affirming surgery.

[48] The complainant said that she immediately called the UCCO-SACC-CSN local's president at the maximum-security correctional facility for men. Her counterpart allegedly confirmed that the inmate was to have an operation in early January 2021 and that two ERTs, an unarmed team of women and an armed team of men, would be asked to participate in the high-risk escort. He reportedly gave her the surgery date. The high-risk escort was to take place that day.

[49] Then, the complainant contacted Mr. Lebeau, who was the UCCO-SACC-CSN's regional president for the Quebec region at the time. She informed him that she had learned that the inmate's escort was being planned. He already knew. He informed her that he knew the planned date of the escort, which he had obtained from the local's president at the men's facility where the inmate was incarcerated.

[50] In the days that followed, the leader found out the date on which the high-risk escort would take place. In light of the evidence that was presented to me at the hearing, I am unclear from whom or how she found out the date. It does not matter. For the purposes of this decision, suffice it to say that one way or another, she found out that the complainant had obtained the date of the high-risk escort and had discussed it with Mr. Lebeau. The leader thought that the complainant had disclosed the date to him.

[51] At the hearing, the leader said that she was disappointed that the complainant had spoken with Mr. Lebeau about the escort. By doing that, she disclosed the date and jeopardized the safety of the escort and the members of the two ERTs that were to participate. Since the complainant did not deny disclosing the date to Mr. Lebeau when she was asked about it, the leader assumed that she had indeed disclosed the date to him. She did not investigate. She did not take steps to determine whether her assumption was correct.

[52] Like the leader, the warden testified about her belief that the complainant had disclosed the escort date to Mr. Lebeau and about the additional security measures that were taken because the date had been disclosed. She did not investigate. She did not take steps to confirm that her belief was correct.

[53] It is extremely important to keep a high-risk escort's date secret. It is a matter of safety. Disclosing that date could jeopardize the safety of the inmate, the participating ERT members, and the public.

[54] Since the high-risk escort's date was known by, and had been discussed with, third parties, steps had to be taken to increase the escort's security, which required considerable time and energy from the Institution's warden and the ERT leader.

[55] The evidence that was presented to me at the hearing indicates that shortly after learning that the complainant had discussed the high-risk escort's date with

Mr. Lebeau, the leader asked the Institution's warden to suspend or remove her from the ERT, pending the investigation. The warden refused.

[56] At this point, I will describe a key event in this case.

[57] Leading up to the escort, the ERTs from the Institution and the men's correctional facility participated in a joint training day, on December 8, 2020.

[58] Early that day, the women's ERT members discussed the escort. According to the complainant, when she tried to express her concerns about the women's ERT members not being armed, the leader or deputy leader allegedly cut her off and asked her to wait until later to express her concerns.

[59] When the training ended, and after the men's ERT had left, the Institution's ERT members went back to discussing the escort. The complainant spoke up about the associated risks and security issues. She expressed health-and-safety concerns with the high-risk escort and with the ability of the Institution's ERT to carry out emergency and unplanned high-risk escorts of the inmate after the transfer, in particular because its members were not armed. She also raised the possibility of refusing to work under s. 128 of the *Code*.

[60] At the hearing, the complainant said that she expressed herself as a union representative when she spoke up on December 8, 2020. There is no indication that she specified that she expressly said that she spoke as the union local's president.

[61] The complainant's intervention led to a tense verbal exchange between her and the ERT's leader and deputy leader. That exchange left her feeling upset.

[62] Allegedly, the leader and deputy leader accused her — explicitly or implicitly — of disclosing the high-risk escort's date. They allegedly informed everyone present that the date had to be changed because it had been disclosed, which jeopardized the escort's safety. Using unprofessional language, the leader allegedly said that the complainant should be removed from the ERT for disclosing the date.

[63] They also said that they did not understand why the complainant raised those concerns and brought up the possibility of refusing to work at that point. At the hearing, the leader and deputy leader said that they had been surprised that she expressed occupational health-and-safety concerns with the escort barely a few weeks

before the planned escort date, when they had been discussing the escort for months, if not years. The ERT had trained for years to carry out a high-risk escort.

[64] It is important to note that the complainant also used unprofessional language during the exchange when she indicated that the leader and deputy leader were behaving like rabid dogs attacking her.

[65] A few days after that incident, the complainant informed the Institution's management and the ERT leader that she was thinking about making a harassment complaint against the deputy leader. Their relationship was already tense, which increased when the possibility of a harassment complaint came up.

[66] The employer took steps to arrange an informal discussion between the complainant and the deputy leader. That discussion never took place.

[67] At the hearing, Ms. Emery described the period between the complainant's first mention of a possible harassment complaint and her removal from the ERT as the beginning of a difficult period in the ERT.

[68] I digress briefly to point out that the high-risk escort took place in January 2021, on the date planned. Contrary to what the leader and deputy leader said on December 8, the escort date did not change. The inmate was transferred to the Institution in the days after the surgery.

D. The workplace-harassment complaint

[69] In February 2021, the complainant made a workplace-harassment complaint against the deputy leader. She did it by completing a form that specifically referenced Part II of the *Code* and that was entitled, "[translation] Notification Form - Workplace Harassment and Violence - *Canada Labour Code*, Part II".

[70] The complaint was about a period from March 2018 to February 2021 and contained several allegations, including one about the December 8, 2020, incident.

[71] From February to May 2021, exchanges took place between the Institution's management and the complainant about informal conflict management.

[72] Although they expressed themselves differently, all the ERT members who testified at the hearing described the period after the complaint was made as one of

unease and tension in the ERT. The leader and Ms. Emery said that the tension in the ERT increased significantly after the investigation began.

[73] According to Ms. Emery, the complaint and the complainant's behaviour had caused rifts in the ERT. On cross-examination, and when she was called to explain the nature of the rifts that she had referred to, she described the harassment complaint as an attack against a person who was both a good friend and an elected deputy leader and whom the ERT members generally liked.

[74] ERT training and meetings were suspended when the complainant made her complaint, or shortly after that. At the hearing, the leader said that it was the Institution's management, presumably the warden herself, who decided to suspend training and meetings until the complaint was resolved.

[75] Several months passed before the investigation began. Interviews took place only in November and December 2021. Several ERT members were called to testify during the investigation.

[76] The investigation report was submitted at the end of March 2022, after the complainant was removed from the ERT.

E. The confidence vote, and the complainant's removal from the ERT

[77] Some time after the complainant made her harassment complaint, Ms. Emery allegedly explained to the leader that ERTs at other correctional facilities would hold a confidence vote to deal with tension and unease on their teams. The Institution's ERT had never held a confidence vote.

[78] The leader suggested to the Institution's warden that they hold a confidence vote, specifically to confirm whether the ERT members had confidence in the complainant as a team member.

[79] At the hearing, the warden said that the deputy leader was the first person to suggest a confidence vote. She also said that she knew that ERTs at other correctional facilities had held confidence votes. According to her, those votes were not common practice but were an informal practice that ERTs elsewhere in Quebec had used in situations involving a loss of confidence in an ERT member. There are no guidelines or directives about holding the votes.

[80] The evidence presented at the hearing set out that the ERT leader asked the warden several times to authorize a confidence vote about the complainant. And several times, the warden refused. She wanted to let the harassment complaint and investigation process run its course.

[81] At the hearing, the leader said that in December 2021, the situation in the ERT had become unmanageable. Once again, she asked the warden to approve a confidence vote.

[82] The warden's approval is not required to hold a confidence vote. But the leader asked her to approve one, and that time, the warden said that she would authorize a vote if the leader requested it formally and in writing, which she did.

[83] In December 2021, the leader made the formal request.

[84] The request indicated that some ERT members were reluctant to participate in an emergency response with the complainant because they did not feel that she respected them and feared that she would retaliate against them. The request also referred to her harassment complaint and its impact on the ERT. In her request, the leader said that several ERT members had been called in the complaint investigation and that she did not know if that was what made things awkward in the ERT. She said that some ERT members spoke about resigning from the team. She ended her request by stating that she found the situation in the ERT unhealthy and that it tarnished the team's image.

[85] At the hearing, the leader testified at length about why she asked the warden to authorize a confidence vote.

[86] The leader said that the complaint led to widespread dissatisfaction and tension in the ERT. By December 2021, significant time had passed since the complaint had been made, and the time had "[translation] taken its toll" on the team members. Training had been suspended and was to remain so until the investigation was complete. Tension had existed within the team for over a year. According to her, it was hard to imagine having new recruits join the ERT when a harassment complaint involving two team members was being investigated. She was exhausted. She wanted to retire from the ERT, but not while it was in conflict. And the deputy leader and several other ERT members threatened to resign if she quit the ERT.

[87] She said that from the time that the ERT members were called to testify in the investigation, the tensions and rifts in the team since the December 8, 2020, incident intensified. According to her, the ERT members were worried about antagonizing the complainant. Others were reluctant to work with her in an emergency response. She worried that the ERT would not be able to respond properly to an emergency if many members resigned or refused to respond with the complainant. At the hearing, she said that she needed the Institution's management to take action so that the ERT could move on.

[88] At the hearing, she also said that the complaint investigation had led the ERT members to rally behind the deputy leader. They began to share with her concerns about the complainant that they had not previously reported to her.

[89] The warden approved the request.

[90] The vote was held on February 12, 2022. The ERT members received an email from the leader asking them to vote on whether they had confidence in the complainant as an ERT member or to indicate that they were abstaining from the vote. Note that the complainant's harassment complaint was still being investigated.

[91] The votes were received and counted by the Institution's assistant warden, operations, who is a member of senior management, as the title suggests.

[92] In February 2022, the complainant was excluded from the ERT. Most ERT members had voted that they did not have confidence in her as an ERT member.

[93] It was the warden who decided to exclude her from the ERT. As previously indicated, only the warden has the authority to remove a member from the ERT.

[94] At the hearing, the warden said that she ratified the vote and authorized removing the complainant because the ERT members' threats to resign and refusal to participate in emergency responses with the complainant jeopardized the Institution's safety.

[95] Although she said at the hearing that some people had come to speak to her about the complainant and the ERT tensions, she gave very few details about it. Rather, it appears from her testimony that she mainly relied on the information that the leader had relayed to her when deciding to authorize the vote and ratify the results. She did

not take steps to confirm the information that the leader had allegedly relayed to her. She did not know who, or how many ERT members, allegedly threatened to resign or refused to participate in emergency responses. She knew of one incident in which the leader or deputy leader allegedly had trouble finding enough ERT members to effect an emergency response, but she did not indicate that it was because some refused to participate in a response with the complainant.

[96] At this point, I will describe the testimonies of Ms. Emery, Ms. Richer, and the deputy leader about why they voted in favour of removing the complainant from the ERT. Based on the evidence presented to me at the hearing, I could not determine whether the leader voted.

[97] Ms. Emery said that over the years, the complainant's behaviour had become disrespectful, especially toward the correctional managers. According to her, the complainant was inflexible, had trouble admitting when she was wrong, and behaved in a manner incompatible with the ERT's values.

[98] She said that when the vote was taken, the conflict between the complainant, leader, and deputy leader had been ongoing for months. On cross-examination, she said that as of the moment that it was possible that the complainant might make a complaint, the ERT members were on guard at all times. No one wanted to antagonize the complainant. The complaint led to a rift within the team. According to Ms. Emery, the complaint was an attack on a well-liked deputy leader.

[99] Ms. Richer testified about why she indicated through the vote that she did not have confidence in the complainant. She gave three reasons. The first was that the complainant allegedly disclosed the date of the high-risk escort, which jeopardized the ERT's safety. The second was that over the years, many frustrations had built up against the complainant. They had to do with her actions and comments that according to Ms. Richer, displayed a lack of professionalism and a lack of respect for the ERT instructors. Her last reason was the complainant's harassment complaint, specifically that it led to a "[translation] strange atmosphere" within the ERT and to the ERT training being suspended temporarily.

[100] The deputy leader also testified about why she voted in favour of removing the complainant from the ERT, namely, her behaviour and attitude when she was an ERT member. She gave some examples, including the complainant's lack of respect for the

Institution's managers, an incident in which she allegedly acted intimidatingly toward a correctional officer, the fact that she had left mandatory training sessions prematurely, and her excessive cellphone use during ERT meetings and training.

[101] At the hearing, the deputy leader said that after the complainant complained, the ERT crumbled. A large amount of information was revealed about the complainant. Some ERT members feared that she would retaliate, while others no longer wanted to work with her.

[102] As previously indicated, the warden is the only person who could have authorized removing the complainant from the ERT if a majority of the team members voted that they did not have confidence in her.

[103] At the hearing, the warden explained why she authorized removing the complainant from the ERT.

[104] She felt that the tension in the ERT arose from widespread frustration over the fact that she did not intervene and address the complainant's breach when she disclosed the date of the high-risk escort.

[105] She also said that she learned much about the complainant during the investigation and allegedly realized that the source of the tension in the ERT was more complicated than she had thought. At the hearing, the warden said that she learned of certain concerns about the complainant, namely, a lack of professionalism and respect. On cross-examination, the warden admitted that the leader had relayed most of those "[translation] concerns" to her and that she took no steps to confirm whether the information provided to her was accurate.

[106] When the complainant testified about the vote and her removal from the ERT, she described a heavy sense of loss. She had been very proud to be part of the ERT. Her ERT role had been important and meaningful for her.

III. Reasons

[107] The complainant made two complaints.

[108] Her complaint under s. 133 of the *Code* alleges that after she raised concerns about the occupational health and safety of the ERT members who would have to carry out the high-risk escort and after she said that she was thinking about making a

complaint under Part II of the *Code*, she was subjected to a reprisal that the Institution's management supported and approved, in particular her removal from the ERT.

[109] She also made a complaint under s. 190(1)(g) of the *Act*, alleging that the actions taken by the ERT leader and the Institution's management amounted to an unfair labour practice against her because she was allegedly subjected to intimidation and a reprisal for carrying out her union duties after expressing the union's concerns about occupational health-and-safety issues related to the inmate's high-risk escort.

[110] Before analyzing the complaints, I want to make clear what I must rule on through this analysis.

[111] In both the evidence that they presented and their arguments, the parties focused heavily on the inmate, the health-and-safety issues that could have arisen from the high-risk escort and the inmate's detention at the Institution, and the different discussions of the union and the employer on that subject.

[112] The evidence that was presented to me provides useful and interesting factual context. But to rule on the complaints made under s. 133 of the *Code* and s. 190(1)(g) of the *Act*, I need not conclude whether there were real health-and-safety issues or whether the employer's steps were adequate or complied with its legal obligations.

[113] The complainant also focused heavily on how the employer handled her harassment complaint, specifically the slowness of the process and the time between the complaint being made and the investigation being closed. I need not rule on how the employer handled the complaint. I will abstain from that.

[114] I am seized of two complaints, one alleging that the complainant was subjected to a reprisal for exercising a right provided in Part II of the *Code*, and the other alleging that the employer engaged in an unfair labour practice by excluding her from the ERT because, in her capacity as the local's president, she contacted the bargaining agent's regional president about the high-risk escort, which the union was already concerned about.

[115] I must rule solely on the issues specific to these complaints.

[116] As indicated previously, the bargaining agent asked me to first rule on the reprisal complaint and to rule on the second complaint only if I conclude that the first is unfounded. I will discuss the complaints in that order.

A. The reprisal complaint

[117] Part II of the *Code* is about rights and obligations for workplace health and safety. Its main purpose is to prevent accidents, injuries, occurrences of harassment and violence, and injuries linked to employment (see s. 122.1).

[118] Sections 133 and 147 of the *Code* — the provisions under which the complainant made her complaint — are part of a legislative regime that is intended to ensure that employees can freely raise and express concerns about workplace health and safety without being subjected to measures that discourage, punish, or prevent them from exercising their rights under Part II of the *Code*.

[119] Section 147 of the *Code* lists the reprisal actions that the employer cannot take. The following four categories of actions may be reprisals under the *Code*: 1) to dismiss, suspend, lay off, or demote an employee; 2) to impose a financial or other penalty on an employee; 3) to refuse to pay an employee remuneration in respect of any period that the employee would, but for the exercise of the employee's rights under this Part, have worked; and 4) to take any disciplinary action against or threaten to take any such action against an employee.

[120] Section 133 of the *Code* provides recourse before the Board for an employee who believes that their employer took action against them that contravened s. 147.

[121] The parties agree that the legal test applicable to complaints made under s. 133 is the one that the Board described in *White v. Treasury Board (Correctional Service of Canada)*, 2022 FPSLREB 52 at para. 73; and *Burlacu v. Treasury Board (Canada Border Services Agency)*, 2022 FPSLREB 51 at para. 96. The test is the following:

> 1) Has the complainant acted in accordance with Part II of the *Code* or sought the enforcement of any of the provisions of that Part?
> 2) Has the employer taken against the complainant an action prohibited by s. 147 of the *Code*?
> 3) Is there a direct link between (a) the action taken against the complainant and (b) the complainant acting in accordance with Part II of the *Code* or seeking the enforcement of any of the provisions of that Part?

[122] I will discuss the three parts of the test set out in *White* and *Burlacu* in order.

[123] The complainant has the burden of proof. She must establish on a balance of probabilities that the employer contravened s. 147 of the *Code*. The reversal of the burden of proof provided in s. 133(6) does not apply in this case.

1. The complainant acted in accordance with the provisions of Part II of the *Code*

[124] It is undisputed that the complainant acted in accordance with the provisions of Part II of the *Code* or that she sought to have its provisions enforced. At the hearing, the employer recognized that by making a harassment complaint, she satisfied the first part of the test in *White* and *Burlacu*. I agree.

[125] In February 2021, the complainant made a harassment complaint against the deputy leader. She did it by completing a form that specifically referenced Part II of the *Code* and that was entitled "[translation] Notification Form - Workplace Harassment and Violence - *Canada Labour Code*, Part II".

[126] It is not the Board's job, in the context of this case, to determine whether the complainant was harassed. In this analysis, the Board need only determine whether the complainant exercised — or sought the enforcement of — a right under Part II of the *Code*.

[127] When she made her complaint, she clearly exercised a right provided in Part II of the *Code*; namely, the right to make a complaint about a situation that she believed might be harassment (see s. 127.1(1) of the *Code*; and *Bah v. Royal Bank of Canada*, 2018 CIRB 867 at para. 36).

[128] The first part of the test in *White* and *Burlacu* has been satisfied. Now, I will discuss the second part.

2. The complainant's exclusion from the ERT was a penalty that was not financial in nature and that the employer imposed or approved

[129] The complainant alleged that the employer imposed a "financial or other penalty" on her when it excluded her from the ERT because she had exercised or attempted to exercise her rights under Part II of the *Code* (see s. 147(c)). Specifically, she alleged that the employer excluded her from the ERT because she made a workplace-harassment complaint. Alternatively, she alleged that it also excluded her because she expressed occupational health-and-safety concerns with the high-risk

escort and the inmate's transfer. The parties focused on the first allegation. I will do the same.

[130] Reprisals can take many forms. Not all are financial. Section 147 of the *Code* recognizes it, as does the Board's jurisprudence (see, for example, *Chaves v. Treasury Board (Correctional Service Canada)*, 2005 PSLRB 45 at para. 72; *White*, at para. 72; and *Burlacu*, at para. 88).

[131] A reprisal can also arise from the employer's action or inaction (see *Tanguay v. Statistical Survey Operations*, 2005 PSLRB 43 at para. 23).

[132] At the hearing, the employer's representative recognized that excluding a member from the ERT may be a penalty under the *Code* that is not financial in nature. But he pointed out that to be a reprisal under the *Code*, such a penalty, in this case the complainant's removal from the ERT, must have been imposed with the intent to harm the complainant.

[133] The employer's representative referred to paragraph 20 of *Tanguay* in which, according to him, the Board indicated that to conclude that a reprisal took place, the evidence must indicate that the employer intended to harm the employee who exercised a right under Part II of the *Code*.

[134] In my opinion, examining the employer's intention is better placed within the analysis of the third part of the *White* and *Burlacu* test. I note that the Board's recent jurisprudence, including *Burlacu*, has addressed the employer's intention as part of the analysis to determine whether there is a direct link between a penalty and exercising a right under Part II of the *Code*. In the context of this case, the employer's intention is an integral part of the analysis that I must carry out when the time comes to determine whether there is a direct link between the complainant's removal from the ERT and her making a harassment complaint.

[135] At this stage of the analysis, I must decide whether the employer took action against the complainant and whether it amounted to a "financial or other penalty". The other reprisal actions identified in s. 147 of the *Code* do not apply.

[136] At the hearing, the employer's representative said that the ERT members proposed and managed the confidence vote that led to removing the complainant.

However, he acknowledged that the Institution's warden authorized holding the vote and removed the complainant from the ERT.

[137] It is undisputed that the complainant's removal would not have happened without the warden's approval. She was the only one who had the authority to effect the removal. The removal resulted from an employer action.

[138] Whether or not an ERT member suggested the confidence vote and the warden approved the result of a vote by ERT members does not change the fact that the final decision to remove the complainant from the ERT was the warden's.

[139] I would also add that the employer downplayed its role in the process that led to removing the complainant. It had an active role in the process that led to the confidence vote. The evidence that was presented to me at the hearing indicates that the deputy commissioner for the Quebec region knew about the vote and its purpose, namely, to remove the complainant from the ERT if the vote was not in her favour. The complainant and the warden had spoken to her about it. Furthermore, the warden authorized the vote, a member of the Institution's senior management received and counted the votes, and the warden decided to remove the complainant from the ERT.

[140] The Institution's warden was not required to exclude the complainant after the vote. She had the discretion to remove or not remove her. She chose to authorize the removal.

[141] I have no difficulty in concluding that the complainant's removal from the ERT resulted from an employer action.

[142] Next, I must decide whether removing the complainant from the ERT was a financial or other penalty.

[143] In *Harris v. Treasury Board (Canada Border Services Agency)*, 2020 FPSLREB 55, the Board concluded that the employer's refusal to authorize a shift change might have been a penalty under the *Code* (see paragraph 139) and stated the following:

> …
>
> *[132] "Penalty" is defined in* Webster's New World Dictionary, *Second College Edition, as follows:*
>
> **1.** a punishment fixed by law, as for a crime or breach of contract

> **2.** the disadvantage, suffering, handicap, etc. imposed upon an offender or one who does not fulfill a contract or obligation, as a fine or forfeit
>
> **3.** any unfortunate consequence or result of an act or condition.

*[133] The wording of s. 147 does not limit a penalty to being only financial as it uses the word "financial" and the phrase "**other penalty**" [emphasis added]. It is well known that an employer can penalize its employees for misconduct by oral or written reprimand, both of which typically do not necessarily have a financial impact; yet they are, nonetheless, penalties and are used to discipline employees.*

[134] In interpreting the definition of "penalty" as "… any unfortunate consequence or result of an act or condition", an employer can do things to an employee in the course of the employment relationship that could be considered a penalty, even if such a thing is not a termination, suspension, or demotion and does not have a financial impact.

[135] An example is a leave denial in any given circumstances, which could be more devastating to an employee than a financial penalty, such as a denial that would prevent an employee from attending an important family event, like a wedding or a graduation. In addition, if an employee requests a shift change for such an event that is also denied when there is no reason for denying it, it too could be viewed as a penalty to an employee. It is the loss of being at or attending the event that is an unfortunate consequence of the employer's action (denying the leave or shift change).

…

[Emphasis in the original]

[144] In *Gaskin v. Canada Revenue Agency*, 2008 PSLRB 96, the Board said that the list of actions enumerated in s. 147 of the *Code* supports the conclusion that the term "penalty" is expressly used in addition to discipline and the threat of discipline (see paragraph 75). It concluded that suspending an employee's regular pay on the exhaustion of sick leave credits could be considered as imposing a "disadvantage or loss", terms that were in the definition of "penalty" that the Board cited. At paragraph 76, the Board also said that at first glance, letters informing an employee that their sick leave credits are almost exhausted could constitute a financial or other penalty.

[145] What about this case? Was the complainant's removal from the ERT an "… unfortunate consequence or result of an act or condition" (see *Harris*, at para. 134)? If the employer's refusal to authorize a shift change, suspension of an employee's

regular pay on the exhaustion of sick leave credits, and sending of letters to inform an employee that their sick leave is nearly exhausted have been found to constitute considered a financial or other penalty, then I am of the opinion that the answer to whether removing the complainant from the ERT constituted a financial or other penalty must be in the affirmative.

[146] The complainant was excluded from an elite team at the Institution. Her removal stripped her of a coveted and prestigious role at the Institution. Although it was a volunteer role for which she was not paid, it made her a leader in the Institution, gave her access to specialized training, and involved her working overtime during training and emergency responses, which boosted her pay as a primary worker.

[147] I conclude that removing the complainant from the ERT was a penalty that was not financial in nature.

3. The complainant's exclusion from the ERT was directly linked to her harassment complaint

[148] I previously concluded that the complainant exercised a right under Part II of the *Code* and that that employer removed her from the ERT. Under the third part of the test in *White* and *Burlacu*, I must now examine the facts closely, to determine whether there is a direct link between the reprisal action and the complainant exercising her rights under Part II of the *Code*.

[149] In *Burlacu*, the Board stated that a direct link is more than a simple nexus or relationship between the measure that the employer imposed and the employee's exercise of rights under the *Code*. It stated that the question is whether the employer made the alleged reprisal because the employee acted in accordance with or in furtherance of the provisions in Part II of the *Code* (see *Burlacu*, at para. 89).

[150] It is not enough to simply establish a relationship or a temporal link between the two events. The facts must be weighed carefully, to determine whether there is a causal link between the measure that was imposed or threatened and the employee's exercise of their rights under the *Code* (see *Burlacu*, at para. 91). In other words, to conclude that there is a direct link, a causal link is required between the employer's imposed measure and the employee's exercise of a right under Part II of the *Code* (see *Burlacu*, at para. 109; and *Osman v. Treasury Board (Department of Employment and Social Development)*, 2024 FPSLREB 180 at para. 238).

[151] It is important to remember that the presence or existence of a causal link between two events (in this case, the alleged reprisal and the exercise of a right under Part II of the *Code*) does not necessarily mean that the employee's exercise of a right under Part II of the *Code* was the only reason that the alleged reprisal was made (see *Lueck v. Department of Foreign Affairs, Trade and Development*, 2021 FPSLREB 87 at para. 290). A combination of factors may act together to drive an employer to impose an impugned measure. However, to meet the direct-link criterion described in *Burlacu* and *Osman*, the employee's exercise of a right under Part II of the *Code* must be a significant factor that led the employer to impose the impugned measure. It cannot be one factor of little weight among several others. I would even go as far as to say that it must be the most important factor that drove the employer to act.

[152] The complainant argued that there was a direct link between her removal from the ERT and her making her workplace-harassment complaint against the deputy leader; in other words, the employer removed her from the ERT because she made the complaint.

[153] The employer argued that although the complainant was removed from the ERT while her harassment complaint was being investigated, her removal was not linked to the complaint. According to it, she was removed from the team because her behaviour and attitude had affected the ERT's cohesion. It argued that her professional breaches and her behaviour toward other ERT members and the Institution's management had weakened the ERT. By removing her from it, the employer tried to preserve or restore cohesion in the ERT, to ensure its members' safety and that of all the Institution's correctional officers and inmates.

[154] Although it was not expressed as such at the hearing, I gather from the employer's arguments that it was its submission that the only real relevance of the complaint and the employer's investigation was that together, they served as a mechanism through which the ERT members expressed long-standing concerns and frustrations about the complainant.

[155] The employer argued that its intention was not to harm or punish the complainant, so removing her could not be considered a reprisal under s. 147 of the *Code*.

[156] I turn once more to the concept of the employer's intention and its argument that it did not intend to harm the complainant, which I discussed briefly in the last section of this decision.

[157] As stated earlier, the employer cited *Tanguay*, specifically paragraph 20, to support its argument that to be a reprisal under s. 147 of the *Code*, the impugned measure must have been imposed with the intent to harm the other person. It follows implicitly from the employer's argument that were I to conclude that there is a direct link between the complainant's removal from the ERT and the complaint that she made under Part II of the *Code*, I could conclude that the removal was a reprisal only if she successfully demonstrated that the employer intended to harm her when it removed her from the ERT.

[158] In *Tanguay*, an employee who was a member of an occupational health-and-safety committee incurred travel expenses because of where the employer decided to hold a committee meeting. The Board was seized of a complaint that alleged that the employer's refusal to reimburse travel expenses was a reprisal under Part II of the *Code*.

[159] In that case, the Board concluded that the refusal to reimburse the expenses could not constitute a penalty other than financial in the absence of proof that the employer's refusal was intentional or that it was to punish participation in the committee meeting by deliberately causing the employee expenses that it did not intend to reimburse.

[160] At paragraph 20 of *Tanguay*, the Board correctly stated that the rationale of s. 147 of the *Code* is to ensure compliance with the occupational health-and-safety provisions of Part II, without reprisals. Then, it referred to a labour relations dictionary that defined "reprisals" as "action taken … to inflict a physical, economic or other disadvantage in response to an act carried out by another". The Board then said that "… there must be an intention to harm."

[161] In the part of its argument about *Tanguay* and the requirement to demonstrate intent to harm to conclude that an action is a "financial or other penalty" within the meaning of s. 147, the employer referred to *Canada (Attorney General) v. Frazee*, 2007 FC 1176, and *Peters v. Treasury Board (Department of Indian Affairs and Northern Development)*, 2007 PSLRB 7, which dealt with the employer's intention in the context

of individual grievances alleging that it imposed disguised discipline. Those decisions instruct that to distinguish between measures that are disciplinary and that are not disciplinary, the Board must consider the employer's intention; specifically, whether it intended to punish the employee or to correct behaviour.

[162] The Board's jurisprudence over complaints made under s. 133 of the *Code* is well established and extensive. For that reason, I am of the opinion that the jurisprudence on individual grievances alleging disguised discipline is of limited relevance to the analysis that I must carry out in this case. I prefer the jurisprudence that deals with ss. 133 and 147 of the *Code*.

[163] Section 147 of the *Code* must be interpreted consistently with its purpose, namely, to protect employees from actions that may be intended to dissuade them or to prevent them from exercising their occupational health-and-safety rights under the *Code*. In that respect, the notion of intent to harm that the employer referred to is consistent with the purpose of s. 147.

[164] That said, *Tanguay* was decided in 2005, and I note that in its recent jurisprudence, including *White*, *Burlacu*, *Osman*, *Panesar v. Canada Revenue Agency*, 2024 FPSLREB 32, and others, the Board has focused on the causal link between the employer's action and the employee's exercise of a right under Part II of the *Code*, not on the intent to harm or punish. I need not decide whether the Board's recent jurisprudence, cited previously, had the effect of replacing *Tanguay*. In this case, it suffices to say that I believe that the Board can conclude that an employer action is a reprisal even without the intent to harm or punish the employee in question. I will explain.

[165] Any analysis of the third part of the *White* and *Burlacu* test must account for the purpose of s. 147 of the *Code*; namely, to protect employees from actions that may be intended to dissuade or prevent them from exercising their occupational health-and-safety rights under the *Code*.

[166] I accept that to be a reprisal under the *Code*, the alleged reprisal action must at first glance have been taken intentionally, meaning that it is not the result of chance or an unexpected consequence of an employer action. That is why *Burlacu* and other decisions require a direct link between the alleged reprisal action and the employee's exercise of a right under Part II of the *Code*, meaning that the reprisal action was taken

because the employee exercised or sought to have a right enforced under Part II of the *Code*.

[167] The impugned action must also have been taken to prevent, dissuade, or discourage the employee from exercising or seeking to exercise a right under Part II of the *Code*.

[168] I accept without hesitation that an action taken with the intent to harm or punish an employee because they exercised or tried to exercise a right under Part II of the *Code* is, at first glance, a reprisal. However, I am unable to accept that a financial or other penalty intentionally imposed on an employee because their exercise of a right under Part II is annoying or inconvenient for the employer, or a step that interferes with its operations, cannot also satisfy the third part of the test. In those circumstances, an intent to harm the employee may or may not be present. However, in my opinion, it is clear that a financial or other penalty imposed for that reason is covered by s. 147 of the *Code*. An action taken against an employee because their exercise of rights under Part II is inconvenient for the employer or interferes with its operations would serve to deter or discourage the exercise of a right just as much as a measure intended to punish the employee in question.

[169] I note that the Board appears to have drawn a similar conclusion in *Ronca v. Parks Canada Agency*, 2023 FPSLREB 97.

[170] In *Ronca*, the grievor challenged his supervisor's decision several times, raising occupational health-and-safety concerns. He made a complaint under the *Code*. He expressed his disagreement so frequently and in such a way that it led to a workplace-harassment complaint against him. The harassment complaint was determined founded, and the grievor was terminated. The Board was seized, among other things, of a termination grievance and a complaint alleging that the termination was a reprisal under s. 147 of the *Code*.

[171] The Board concluded that the grievor's termination was a reprisal. It rejected the employer's argument that there was no direct link between the grievor's termination and the health-and-safety concerns that he had raised. The Board stated that the evidence presented at the hearing clearly set out that the investigation into the grievor's complaint under the *Code* had "… created a great deal of unrest in the workplace …", "… had a profound impact on the workplace …", and "… had the

potential to negatively impact (or put a halt to) ongoing … projects." In its decision, the Board particularly emphasized the testimony of a witness who allegedly stated that the *Code* complaint destroyed the fabric of the team and jeopardized its operations (see *Ronca*, at paras. 281 and 282).

[172] The Board's analysis in *Ronca*, as described, is brief. It is just two paragraphs. But I see similarities to the evidence that was presented to me at the hearing.

[173] First, I note that at the hearing, the employer focused heavily on the factors that allegedly led individual ERT members to vote in favour of removing the complainant from the ERT. The deputy leader, Ms. Emery, and Ms. Richer testified about it. I considered that evidence and will refer to it in my analysis. But it was the warden who decided to remove the complainant from the ERT, after the leader requested it in writing. For this analysis, the most relevant factors are the reasons that led the warden to ratify the vote's result and remove the complainant from the ERT and, to a lesser extent, the information that she used to make that decision.

[174] The evidence presented to me at the hearing shows that the complainant's complaint was a major irritant for the ERT members. Over time, the complaint and the ensuing investigation also became an irritant for the employer. The complaint-investigation process interfered with the ERT's operations.

[175] From the first time that the complainant said that she was thinking about making a harassment complaint, the situation in the ERT became more complex. The tension between her and the deputy leader ultimately spread throughout the team.

[176] The complaint and the ensuing investigation process had a profound impact on how the ERT operated. Several months passed after the complaint was made and the investigation began. The investigation process itself was long. The leader said that the delays in the process "[translation] wore out" the ERT members. ERT training and meetings were suspended once the complainant made her complaint or shortly after that. They were reinstated only once she was excluded from the ERT. At the hearing, some of the employer's witnesses said that those suspensions were factors that contributed to eroding team cohesion.

[177] The period after the complaint was made was described at the hearing as one of profound unease and tension within the ERT. At the hearing, the leader and Ms. Emery

stated that the tension in the ERT increased significantly after the investigation began and ERT members were called as witnesses in the investigation.

[178] The testimonies of the leader, Ms. Emery, and Ms. Richer indicated that some ERT members — including Ms. Emery and Ms. Richer — perceived the complainant's complaint as an attack on the deputy leader and, to a lesser extent, the leader. Those witnesses stated that making the complaint against a team leader created a negative atmosphere or environment for the team and its members that lasted for months.

[179] The leader wanted to retire from the ERT, but she did not want to as long as the team was in conflict because of the harassment complaint. At the hearing, she said that the deputy leader and some ERT members allegedly stated that they would resign from the ERT if she retired.

[180] In addition, the complaint and investigation made it hard for the leader and deputy leader to recruit new members. At the hearing, the leader stated that she had a hard time imagining bringing new recruits to the team when it was in conflict.

[181] When she formally asked the warden in writing to authorize a confidence vote about the complainant, the ERT leader stated that there was unease in the team and that several team members had been called as part of the complaint investigation. In her request, she indicated that she wondered whether the investigation was causing the unease in the team.

[182] In her written request, the leader also indicated that some ERT members were concerned that the complainant would retaliate and were reluctant to participate in responses with her. When she was asked about the retaliatory actions that some ERT members were concerned about, she said that she referred to concerns that the complainant would make a workplace-harassment complaint against those whom the investigator had called.

[183] At around the same time that she formally requested authorization to hold the vote, the leader prepared a timeline of the complainant's alleged breaches. I will return to them later in my analysis. For now, suffice it to say that the timeline indicates that an ERT member allegedly said that the complaint had demotivated her, while another said that making such a complaint was unacceptable and asked for a confidence vote about the complainant. In the timeline, the leader also indicated that the ERT's image

was a major concern for management and that "[translation] … several employees questioned the ERT's atmosphere and [noted] tension and unease between Caroline and some ERT members".

[184] The evidence as a whole, but especially the testimonies of the leader, deputy leader, and warden, demonstrates that the complainant's harassment complaint and the ensuing investigation process created profound unease within the ERT, which grew worse as time went on.

[185] At the hearing, the leader said that in December 2021, she asked the warden to authorize a confidence vote to reduce tension and unease in the team. It was not the first time that she asked the warden to approve a vote. Before December 2021, the warden had refused. At the hearing, she stated that she refused to authorize the vote because the complainant made a workplace-harassment complaint, which was being investigated. However, according to her and the leader, in December 2021, the situation in the ERT had become unmanageable.

[186] At the hearing, the warden explained why, in early 2022, she ratified the vote's result and removed the complainant from the ERT.

[187] She said that she felt that the tension in the ERT was due to its members' widespread frustration that she did not intervene and address the complainant's breach when she disclosed the date of the high-risk escort. Later in my analysis, I will revisit the allegation that the complainant disclosed that date, which was a recurring theme in the warden's testimony.

[188] At the hearing, the warden also stated that she learned much about the complainant during the investigation. She said that she learned of some concerns about the complainant, namely, she was unprofessional and disrespectful. She also said that she learned that some ERT members refused or threatened to refuse to participate in emergency responses with the complainant.

[189] On cross-examination, she could not say how many ERT members allegedly refused or threatened to refuse to respond. She could not name one of them. She admitted that the leader had shared with her most of the concerns and incidents involving the complainant that she had said she learned about during the investigation. They were not incidents that she had witnessed or, with one exception, concerns that

were communicated to her directly. She did not take steps to confirm that the information that the leader relayed to her was accurate. She used that information to conclude that the ERT's situation had become unmanageable and that she had to intervene.

[190] Later in my analysis, I will revisit the concerns and incidents involving the complainant that were described at the hearing.

[191] The following is a summary of the key points from the warden's entire testimony:

- The harassment complaint led to unease and rifts in the ERT.
- As time went on, the rifts became more serious and concerning.
- The warden wanted to put a stop to the rifts in the ERT.
- Removing the person who complained against the deputy leader would have had the effect of removing from the team the person who caused the rifts by complaining against a team leader.
- Once the complainant was removed, all ERT operations, including training and meetings, were able to resume.

[192] At the hearing, the employer described the investigation process as a mechanism that allowed the ERT members to express long-standing concerns about the complainant.

[193] I accept that the complaint and the ensuing investigation offered the ERT members a mechanism or a way to express themselves about the complainant. However, the employer's witnesses all specifically or indirectly referred to the complaint's impact on the ERT, the fact that the complaint was an attack on the deputy leader, the fact that training was suspended during the investigation, and that there was tension in the team because of a conflict that pitted one member against the deputy leader.

[194] As I stated previously, the employer argued that it removed the complainant from the ERT because as time went on, her behaviour and attitude caused the ERT members to lose confidence in her. According to it, ERT cohesion, member safety, and the team members' confidence in each other were paramount issues.

[195] ERT members can be called on to respond to dangerous, volatile, and unforeseen situations. They respond in teams, and each member must always have in

mind the safety of her fellow team members. I accept without hesitation that they must have confidence in each another, they must communicate well, and a certain degree of cohesion is required between the team members. I also accept that all those factors are important, to maximize the ERT members' ability to maintain their attention in an emergency response and that it is a matter of safety.

[196] The evidence presented to me at the hearing demonstrates that the ERT members are very serious about the safety of the team, their fellow team members, the Institution, and its inmates. However, the evidence also demonstrates that the ERT — as it stood at the time — had some strong personalities, who expressed their opinions quite directly and who could at times use colourful language. Clearly, the complainant and the deputy leader were among them.

[197] Some of the employer's witnesses argued that excluding the complainant was about her behaviour and attitude, not because she made a harassment complaint, allegedly disclosed the date of the high-risk escort, or raised concerns about the ERT members' health and safety.

[198] Some of the employer's witnesses testified about why they voted that they had lost confidence in the complainant. They described a number of concerns about the complainant as an ERT member when the confidence vote was held. They described different types of incidents, including some dating back to 2018. The timeline that the leader prepared includes some of those incidents.

[199] The concerns expressed at the hearing varied. I did not list all of them in the evidence summary. For this analysis, suffice it to say that they included, among other things, disclosing the date of the high-risk escort, at least one bullying allegation, allegations of disrespectful behaviour toward ERT members and management, leaving mandatory training sessions early, and a rigid, defensive attitude that made constructive discussions difficult, if not impossible.

[200] I do not deny that some ERT members might have been frustrated with and had concerns about the complainant. Some, even all, of their frustrations and concerns might have been real and legitimate. However, to say the least, it is curious that none of the concerns appear to have been written down when the events occurred by either the leader, the deputy leader, or the Institution's management. No disciplinary action was taken against the complainant, and no remedial plan was drawn up.

[201] The complainant's performance assessments that were presented as evidence at the hearing were generally positive. They do not mention the behaviours and attitudes that were described to me at the hearing. Some mention the complainant's leadership in the ERT, her teamwork skills, and the respect that she showed in her exchanges with coworkers and the Institution's management. Problematic attitudes and behaviour are not reflected in her performance assessments, although her contribution to the ERT and her union president role are mentioned sometimes.

[202] But her performance assessments do show that she is someone who does not hesitate to express her opinions and concerns. They suggest that her direct, passionate communication style could upset correctional managers.

[203] Had the complainant's behaviour and attitude been as problematic as described to me at the hearing, it would be reasonable to expect that the ERT leader or the Institution's management would have taken formal action before December 2021, when the warden authorized the confidence vote.

[204] The allegation that the complainant disclosed the date of the high-risk escort and jeopardized the safety of ERT members is a useful example. It is not necessary for me to decide whether the complainant disclosed the date of the high-risk escort to the UCCO-SACC-CSN's regional president. Mr. Lebeau testified that he learned the date from a third party. His testimony was not contradicted, and neither the warden nor the ERT leader took steps to inquire about or confirm their belief that the complainant had disclosed the date.

[205] At the hearing, the warden testified at length on this point. She described her concerns about the safety of those involved in the escort and the different administrative steps that she and others had to take to increase the escort's security measures after the date was disclosed. The ERT leader also testified at length on this point. Both suggested that disclosing the escort date was a serious breach that undermined the ERT members' confidence in the complainant and led to her being removed from the ERT.

[206] Although they described the incident as a serious breach that endangered the ERT members' lives, they did not follow up on it with the complainant. They did not inquire to confirm that the complainant had disclosed the escort date. No one contacted Mr. Lebeau to find out how he had learned the date. No disciplinary or

administrative action was taken against the complainant. Although the leader suggested shortly after that the complainant be suspended or removed from the team, the evidence shows that the warden refused to.

[207] At the hearing, the warden said that she was a new warden at the time. She did not have much experience and was reluctant to suspend or remove a local's president from the ERT. That may be true, but her testimony about the seriousness of the complainant's alleged breach makes it hard to understand or accept her explanation that she was reluctant to act.

[208] I want to point out that more than one factor could have led the employer to remove the complainant from the ERT. I cannot discard the possibility that the complainant's attitude and behaviour were factors. However, it is clear from the totality of the evidence that making her harassment complaint against the deputy leader interfered with the ERT's operations and caused rifts and unease within the ERT.

[209] As in *Ronca*, I find that the *Code* complaint created significant agitation in the workplace, had a profound impact on the ERT's operations, and had the potential to further interfere with its operations. As some of the employer's witnesses testified at the hearing, including the leader and deputy leader, the complaint caused the ERT to crumble and risked compromising its operations.

[210] The warden ratified the vote's result and authorized removing the complainant, to end the tensions and rifts that the complaint had created. She knew that a complaint had been made under Part II of the *Code* and that it was being investigated. She knew that the complaint alleged harassment in the ERT and that the first person to suggest a confidence vote to her was named in the allegations. She was not required to remove the complainant. She had a discretionary power. She chose to exercise it, to end an inconvenience that was interfering with the ERT's operations.

[211] Although I could accept that the employer's health-and-safety concerns with the tension in the ERT were real and serious, imposing a penalty that is not financial on an employee who made a workplace-harassment complaint is not a recommended course of action to deal with those concerns.

[212] I find that there is a direct link between the complainant's complaint and her removal from the ERT. Her removal was a reprisal that the employer made because her harassment complaint and the ensuing investigation process impacted the ERT's operations and activities.

B. The unfair-labour-practice complaint

[213] Alternatively, the complainant argued that the employer removed her from the ERT because she performed her union duties by speaking to Mr. Lebeau about the date of the high-risk escort and the related occupational health-and-safety issues. According to the bargaining agent, the complainant's treatment arose from a misunderstanding of a union local president's role, the union context, and the UCCO-SACC-CSN's organizational structure. By removing the complainant from the ERT on those grounds, the employer allegedly engaged in an unfair labour practice within the meaning of s. 185 of the *Act*.

[214] As I have already concluded that the complainant was removed from the ERT because she exercised a right under Part II of the *Code* and that her removal from the team was a reprisal for making a harassment complaint, it is not necessary for me to rule on the subsidiary unfair-labour-practice complaint.

IV. Conclusion

[215] The complaint made under s. 133 of the *Code* is founded. Excluding the complainant from the ERT was a reprisal under s. 147.

[216] The unfair-labour-practice complaint, made as a subsidiary complaint, is dismissed.

[217] The Board remains seized of the *Code* complaint (Board file no. 560-02-44742) until the matter of remedy is resolved, either by the parties reaching an agreement or by another Board order. The parties must inform the Board of their desired action plan within 90 days of this decision's date.

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

(The Order appears on the next page)

V. Order

[219] The complaint under s. 133 of the *Code* (Board file no. 560-02-44742) is founded.

[220] The employer contravened s. 147 of the *Code* by making a reprisal against the complainant.

[221] The subsidiary complaint under s. 190(1)(g) of the *Act* (Board file no. 561-02-44741) is dismissed.

[222] The Board remains seized of Board file no. 560-02-44742 until the matter of remedy is resolved, either by the parties reaching an agreement or by another Board order. The parties must inform the Board of their desired action plan within 90 days of this decision's date.

November 20, 2025.

FPSLREB Translation

Amélie Lavictoire,
a panel of the Federal Public Sector
Labour Relations and Employment Board