Date: 20251203

Files: 569-02-45979, 45980, and 46019 to 46024,
569-24-46535, 569-33-46066,
569-34-45886 and 45887,
and 569-09-45921 to 45924

Citation: 2025 FPSLREB 161

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

PUBLIC SERVICE ALLIANCE OF CANADA AND PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Bargaining Agents

and

TREASURY BOARD, STATISTICS SURVEY OPERATIONS, PARKS CANADA AGENCY, CANADA REVENUE AGENCY, AND NATIONAL RESEARCH COUNCIL OF CANADA

Employers

Indexed as
Public Service Alliance of Canada v. Treasury Board

In the matter of policy grievances referred to adjudication

Before: John G. Jaworski, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Bargaining Agents: Amarkai Laryea and Morgan Rowe, counsel for the Public Service Alliance of Canada, and Marie-Hélène Tougas and Isabelle Roy-Nunn, counsel for the Professional Institute of the Public Service of Canada

For the Employers: Richard Fader and Larissa Volinets Schieven, counsel

Decided on the basis of written submissions,
filed July 14 and August 11 and 31, 2023.

REASONS FOR DECISION

I. Policy grievances referred to adjudication

A. The grievances filed by the Public Service Alliance of Canada: Board file nos. 569-02-45979 and 45980, 569-34-45886 and 45887, 569-24-46535, and 569-33-46066

[1] On December 10, 2021, the Public Service Alliance of Canada ("the Alliance") filed a grievance under s. 220(1) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*") alleging that the Treasury Board (TB) as the employer violated the collective agreement entered into between it and the TB for the Program and Administrative Services (PA) Group that expired on June 20, 2021 ("the TB and Alliance collective agreement") . The grievance states as follows:

…

> ***Details of the grievance:***
>
> *On October 6, 2021, the Federal Government released its mandatory vaccination policy. It provided for employees to submit to the Employer by October 29, 2021, an attestation of their vaccination status. If they fail to do so, they were placed on administrative leave without pay as of November 15, 2021. The policy applies to employees working on site and teleworking (full time or part time). In that context, the Public Service Alliance of Canada grieves the Employer's unreasonable exercise of its management rights in requiring employees who are permanently teleworking to provide proof of their vaccination status. The Bargaining Agent is not in agreement with a policy that requires employees who do not enter a public workplace to be required to disclose their vaccination status to management. The Employer's actions constitute an unreasonable exercise of managerial responsibilities, and they violate article 6 of the applicable Collective Agreements including the Program and Administrative Services (PA) Collective Agreement.*
>
> ***Corrective Action:***
>
> *The Union is seeking the following:*
>
> *i) a declaration that the Employer has contravened the provisions of the applicable Collective Agreements;*
>
> *ii) an order to the Employer to immediately amend its Mandatory Vaccination Policy to require only employees who are attending the workplace to provide proof of vaccination to management;*
>
> *iv) to make the Union whole;*
>
> *v) other remedies deemed just in the circumstances.*

…

[Emphasis in the original]
[*Sic* throughout]

[2] On March 10, 2022, the Alliance filed a second grievance under s. 220(1) of the *Act*, alleging that the Canada Revenue Agency (CRA) as the employer violated the collective agreement entered into between it and the CRA, that expired on October 31, 2021. This grievance was virtually word-for-word identical to the grievance that it filed on December 10, 2021, against the TB, the differences being that it is against the CRA, references the CRA's "Policy on COVID-19 Vaccination for the Canada Revenue Agency" ("the CRA Policy"), and references the CRA's collective agreement with the Alliance and the clauses in it that were relevant to the grievance. The substantive allegations and relief requested were the same.

[3] The December 10, 2021, grievance filed by the Alliance against the TB shall be referred to as "the TB telework grievance", and the March 10, 2022, grievance filed by the Alliance against the CRA shall be referred to as "the CRA telework grievance".

[4] On March 22, 2022, the Alliance filed two more grievances under s. 220(1) of the *Act*, both virtually word-for-word identical, and the substantive allegations and relief requested are the same. It alleged in the grievances that the TB and the CRA, respectively, as employers, violated the collective agreements entered into between it and the TB (with respect to the PA group) and it and the CRA. The two March 22, 2022, grievances filed by the Alliance shall be referred to respectively as "the TB continued application grievance" and "the CRA continued application grievance".

[5] The TB continued application grievance is as follows:

> ***Details of the grievance:***
>
> *The Public Service Alliance of Canada grieves the Employer's failure at this stage of the pandemic to amend its Policy on COVID-19 Vaccination for the Core Public Administration [after "Mandatory vaccination policy"] and to eliminate placing employees on leave without pay indeterminately if they choose not to be vaccinated. The vast majority of public servants and PSAC members are vaccinated and the union continues to support vaccination. However, at this particular stage of the pandemic, the continuation of such a harsh administrative measure for all PSAC members placed on leave without pay because they continue to choose not to be vaccinated is an unreasonable exercise of managerial responsibilities and constitutes disguised and unjust discipline.*

> *The fact that the Employer's Mandatory Vaccination policy has not seen any substantive changes since its implementation is tantamount to a flagrant abuse of management authority in the workplace. This is particularly true since Chief Public Health Officer of Canada, Dr. Theresa Tam has noted the significant reduction in COVID-19 infections and hospitalizations across the country and the need to find a more sustainable way of living with COVID-19. In addition, there have been numerous reductions in public health measures in several provinces across the country (e., Ontario, Québec, British Columbia), including the upcoming elimination of vaccine and masking mandates in Ontario.*
>
> *In the current context, the threat of COVID-19 transmission in the workplace and the community has significantly diminished due to high vaccine rates and other factors. Alternative measures, including rapid testing and masking, are available to protect the health and safety of all in workplaces. Moreover, many public service workers have clearly established for the past two years that they can work from home, including those that may not be vaccinated. Therefore, the indeterminate placement of the few individuals who choose not to be vaccinated on leave without pay violates several provisions of all applicable Collective Agreements including but not limited to Article 6 (managerial responsibilities) and Article 19 (no discrimination) and Article 21 (joint consultation) and Article 22 (health and safety) of the Program and Administrative Services (PA) Collective Agreement.*
>
> ***Corrective Action:***
>
> *The Union is seeking the following:*
>
> *i) a declaration that the Employer has contravened the provisions of the applicable Collective Agreements;*
>
> *ii) a declaration that the administrative measure of placing employees on leave without pay constitutes unjust discipline at this stage where there is no link to workplace health or safety*
>
> *iii) an order that the Employer immediately amend its Mandatory Vaccination policy to stop the ongoing forced placement of employees on unpaid leaves and to engage in a meaningful consultation with the Union about alternatives, processes and mechanisms to amend and improve its Mandatory Vaccination Policy to protect the health and safety* [sic]*all employees;*
>
> *iv) an order that the Employer reimburse all employees who remain on unpaid leave because of the Employer's failure to update its Mandatory Vaccination policy to appropriately reflect the changing context.*
>
> *v) to make the Union whole;*
>
> *vi) other remedies deemed just in the circumstances.*

[6] On April 13, 2022, the Alliance filed a fifth grievance under s. 220(1) of the *Act*, alleging that Statistics Survey Operations (SSO) as the employer violated the collective

agreement entered into between it and SSO, that expired November 30, 2023 ("the Alliance-SSO grievance"). The grievance is virtually word-for-word identical to the grievances that it filed on March 22, 2022, against the TB and CRA, the difference being that it is against SSO and references the SSO's "Mandatory Vaccination Policy" ("the SSO Policy") instead of the TB Policy or CRA Policy, and it refers to the collective agreement between the Alliance and SSO and its relevant clauses; the substantive allegations and relief requested are the same.

[7] On April 19, 2022, the Alliance filed a sixth grievance under s. 220(1) of the *Act*, alleging that the Parks Canada Agency ("Parks") as the employer violated the collective agreement entered into between it and Parks that expired on August 4, 2021("the Alliance-Parks grievance"). The grievance is virtually word-for-word identical to the grievances it filed on March 22, 2022, against the TB and CRA and on April 13, 2022, against SSO; the difference is that it is against Parks' "Policy on COVID-19 Vaccination for the Parks Canada Agency" ("the Parks Policy"), instead of the TB, CRA, or SSO Policies, and it refers to the collective agreement between the Alliance and Parks and its relevant clauses. The substantive allegations and relief requested are the same.

[8] On September 26, 2022, the CRA denied the CRA telework grievance and the CRA continued application grievance. On October 25, 2022, the TB denied the TB telework grievance and the TB continued application grievance. On November 9, 2022, Parks denied the Alliance-Parks grievance**.** On December 30, 2022, the SSO denied the Alliance-SSO grievance. The Alliance referred all six grievances to the Federal Public Sector Labour Relations and Employment Board ("the Board") for adjudication, as follows:

1) the CRA telework grievance was referred on October 18, 2022, and was assigned Board file no. 569-34-45886;

2) the CRA continued application grievance was referred on October 19, 2022, and was assigned Board file no. 569-34-45887;

3) the TB telework grievance and the TB continued application grievance were both referred on October 28, 2022, and were assigned, respectively, Board file nos. 569-02-45979 and 45980;

4) the Alliance-Parks grievance was referred on November 14, 2022, and was assigned Board file no. 569-33-46066; and

5) the Alliance-SSO grievance was referred on January 24, 2023, and was assigned Board file no. 569-24-46535.

B. The grievances filed by the Professional Institute of the Public Service of Canada: Board file nos. 569-02-46019 to 46024 and 569-09-45921 to 45924

[9] On May 13, 2022, the Professional Institute of the Public Service of Canada ("the Institute") filed six policy grievances under s. 220(1) of the *Act* ("the Institute's TB grievances"). The grievances are all identical and allege that the TB, as the employer, violated the collective agreement between the Institute and the TB for the following groups (collectively, "the TB and Institute collective agreements"):

1) the Health Services group, whose collective agreement expired September 30, 2022 ("the TB and Institute HS collective agreement");

2) the Research group, whose collective agreement expired September 30, 2022 ("the TB and Institute Research Group collective agreement");

3) the Engineering, Architecture and Land Survey (Engineering) group, whose collective agreement expired September 30, 2022 ("the TB and Institute ENG collective agreement");

4) the Information Technology (IT) group, whose collective agreement expired December 21, 2021 ("the TB and Institute IT collective agreement");

5) the Audit, Commerce and Purchasing (Audit) group, whose collective agreement expired June 21, 2022 ("the TB and Institute Audit collective agreement"); and

6) the Applied Science and Patent Examination (Applied Science) group, whose collective agreement expired September 30, 2022 ("the TB and Institute Applied Science collective agreement").

[10] The Institute's TB grievances state as follows:

…

> *This is a policy grievance filed by the Professional Institute of the Public service of Canada (the Institute) pursuant to S.220 of the* Federal Public Sector Labour Relations Act *regarding the application of the Policy on COVID-19 Vaccination for all members of the Core Public Administration, including the Royal Mounted Police.*
>
> ***Details of the grievance:***
>
> *The Employer implemented its Policy on COVID-19 Vaccination (Mandatory Vaccination policy) for all members of the Core Public Administration, including the Royal Mounted Police ("the Policy") on October 6, 2021. Pursuant to the Policy, employees who chose to not be fully vaccinated or disclose their vaccination ("unvaccinated employees") are placed on leave without pay. The Policy provides*

that the need for the Policy and the contents of the Policy are to be reviewed at least every 6 months. The Institute grieves the Employer's continued application of the Policy, without any amendments, given the changed circumstances surrounding the COVID-19 pandemic since the initial implementation date.

The Institute grieves the Employer's continued practice of placing and/or keeping employees, who are unvaccinated or who have chosen not to attest to their vaccination status, on leave without pay indeterminately pursuant to the Policy. The Employer's action in this regard is an unreasonable and unjustifiable exercise of management rights and constitutes disguised and unjust discipline. This continued practice is particularly unreasonable as it relates to those employees who were working remotely when they were placed on leave without pay and would be expected to continue working remotely by the Employer upon their return to work.

Furthermore, the Institute grieves the Employer's failure to substantively review the Mandatory Vaccination policy within the six-month period as required by the Policy and/or to amend the Policy given the changed circumstances surrounding the COVID-19 pandemic since the initial implementation date. This failure to review and/or amend the Policy in the face of these changing circumstances and despite its commitment to review the need for the policy regularly, is a flagrant abuse of management authority in the workplace.

Continuing to place/keep unvaccinated employees on leave without pay beyond April 6, 2022 is an unjustified and excessive measure in light of the current context. The Institute continues to support vaccination and the health and safety objective of the Policy overall, however, the Employer's Policy is now unreasonable given the shifting landscape of the pandemic. These changing circumstances include, amongst others, the very high percentage of vaccinated employees in the Federal Public Service, the lifting of most public health restrictions across the country, the emergence of new variants of COVID-19 that are more resistant to vaccines, the changing scientific data and studies regarding the spread of the virus, and the significant reduction in risk resulting from COVID-19 transmission in the workplace and the community due to high vaccination rates and other factors. The Employer's failure to amend the Policy to provide for alternative, less draconian means to pursue its objectives constitutes an abuse of management rights in these circumstances and amounts to unjust discipline.

The Institute further grieves the Employer's failure to engage the Institute in any meaningful way on the need and content of the Policy from the outset of its development.

The continued application of the Policy and the resulting practice of placing unvaccinated employees on leave without pay therefore violates several provisions of the Collective Agreement, including, but not limited to, Article 5 (management rights), 44 (no discrimination), 37 (joint consultation) and Article 25 (health and

> *safety) of the of the Collective Agreement between the Institute and the Treasury Board (September 30th, 2022).*
>
> *Corrective Action: The Institute is seeking the following:*
>
> *i) a declaration that the Employer has contravened provisions of the Collective Agreement;*
>
> *ii) a declaration that the Employer's action in placing and keeping employees on leave without pay constitutes unjust discipline;*
>
> *iii) a declaration that the leave without pay provisions of the Policy are unreasonable;*
>
> *iv) an order that the Employer immediately cease its practice of placing and keeping employees on unpaid leave under the Policy;*
>
> *iv) an order that the Employer immediately engage in meaningful consultation with the Institute with a view to amending and Improving its Policy to protect the health and safety all employees;*
>
> *iv) an order that the Employer compensate all affected employees for all pay and benefits lost as a result of being placed on leave without pay in violation of the collective agreement, and that these employees be reimbursed for other expenses incurred as a result of being placed on leave without pay in violation of the collective agreement;*
>
> *v) to make the Institute and any affected Institute members whole; and*
>
> *vi) other remedies deemed just in the circumstances.*
>
> [Emphasis in the original]
>
> [*Sic* throughout]

[11] On June 8, 2022, the Institute filed four more policy grievances under s. 220(1) of the *Act*, which allege that the National Research Council of Canada (NRC), as the employer, violated the collective agreement between it and the NRC ("the Institute's NRC grievances"), for the following groups:

1) the Information Services group, whose collective agreement expired June 20, 2022 ("the NRC and Institute Information Group collective agreement");

2) the Library Sciences group, whose collective agreement expired June 30, 2022 ("the NRC and Institute Library Sciences Group collective agreement");

3) the Translation group, whose collective agreement expired July 19, 2022 ("the NRC and Institute Translation Services Group collective agreement"); and

4) the Research Officer and Research Council Officer group ("Research Officers"), whose collective agreement expired September 30, 2022 ("the NRC and Institute Research Group collective agreement").

[12] The wording of all the Institute's NRC grievances is virtually identical and is the same as the Institute's TB grievances; the wording varies only slightly, to reflect the specific clauses of the group-specific collective agreements and state that they involve the NRC as the employer. The substantive allegations and relief requested are the same. As such, I will not set them out, as I have already set out the text of one of the Institute's TB grievances, which sets out the allegations sufficiently for the purposes of these reasons.

[13] On October 6, 2022, the NRC provided a response denying all the Institute's NRC grievances. On October 21, 2022, the Institute referred the Institute's NRC grievances to the Board for adjudication, where they were given the following file numbers:

1) Board file no. 569-09-45921 with respect to the Information Services group;

2) Board file no. 569-09-45922 with respect to the Library Sciences group;

3) Board file no. 569-09-45923 with respect to the Translation group; and

4) Board file no. 569-09-45924 with respect to the Research Officers group.

[14] On October 25, 2022, the TB provided a response to the Institute denying all the Institute's TB grievances, and on November 3, 2022, the Institute referred the Institute's TB grievances to the Board for adjudication, where they were given the following file numbers:

1) Board file no. 569-02-46019 with respect to the Health Services group;

2) Board file no. 569-02-46020 with respect to the Research group;

3) Board file no. 569-02-46021 with respect to the Engineering group;

4) Board file no. 569-02-46022 with respect to the IT group;

5) Board file no. 569-02-46023 with respect to the Audit group; and

6) Board file no. 569-02-46024 with respect to the Applied Science group.

[15] On April 20, 2023, the Institute provided a reply to the TB's response of October 25, 2022.

[16] The Institute confirmed at paragraph 55 of its written reply to the submissions of the employers that it has withdrawn its allegations of discrimination. This just

leaves the grievances filed by the Alliance against the TB, CRA, SSO, and Parks Policies, in which the Alliance alleges discrimination based on race, national or ethnic origin, religion, and disability.

II. The employers' Policies, enacted as a response to the COVID-19 pandemic

[17] On October 6, 2021, in response to the COVID-19 pandemic, the TB enacted the TB Policy. Shortly after the TB Policy was enacted, all of the CRA, Parks, SSO, and the NRC enacted their own Policies with respect to the vaccination of their employees.

[18] The TB Policy provided as follows:

> 1) all TB employees were to be fully vaccinated against COVID-19 and to attest to their vaccination status by no later than October 29, 2021 ("the TB attestation deadline");
>
> 2) TB employees who are unable to be fully vaccinated due to a medical contraindication or a religious or any other prohibited ground of discrimination, as defined under the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*), could request an accommodation;
>
> 3) requests by TB employees were to be assessed on a case-by-case basis, consistent with the TB's *Directive on the Duty to Accommodate*;
>
> 4) those TB employees who requested an accommodation that was not granted could challenge the decision by an individual grievance or a complaint to the Canadian Human Rights Commission (CHRC);
>
> 5) those TB employees who were not granted an accommodation and who were still unwilling to be fully vaccinated, as well as employees who refused to disclose their vaccination status and those who attested that they were unvaccinated, were placed on administrative LWOP two weeks after the TB attestation deadline expired; and
>
> 6) the chief human resources officer was responsible for reviewing the need for the TB Policy and its contents at a minimum every six months and for reporting the results to the TB's president.

[19] The CRA, SSO, Parks, and the NRC all implemented their Policies on COVID-19 vaccination that aligned with the TB Policy. The SSO Policy was enacted on October 20, 2021, while the CRA, Parks, and NRC Policies were all enacted on November 8, 2021. The Policies, although specific to each of the CRA, SSO, Parks, and the NRC, all provided as follows:

1) all their employees were to be fully vaccinated against COVID-19 and to attest to their vaccination status by no later than a specific date ("the attestation deadline"), as follows:

    - the CRA's attestation date was November 26, 2021;
    - SSO's attestation date was November 18, 2021;
    - Parks' attestation date was December 14, 2021; and
    - the NRC's attestation date was November 30, 2021.

2) all employees who are unable to be fully vaccinated due to a medical contraindication or a religious or any other prohibited ground of discrimination, as defined under the *CHRA*, could request an accommodation;

3) requests by employees were to be assessed on a case-by-case basis;

4) employees who requested an accommodation that was not granted could challenge the decision by an individual grievance or a complaint to the CHRC;

5) employees who were not granted an accommodation and who were still unwilling to be fully vaccinated, as well as employees who refused to disclose their vaccination status and employees who attested that they were unvaccinated, were placed on administrative LWOP two weeks after the attestation deadline; and

6) each of the CRA, SSO, Parks, and the NRC was responsible for reviewing the need for their employer-specific policy and its contents at a minimum of every six months.

[20] On February 9, 2022, the TB sent an email to bargaining agents, indicating that it intended to review the TB Policy; it asked for input. On February 18, 2022, the Institute provided written submissions. According to the Institute's submissions, the TB's request on February 9, 2022, was the only one made by the TB for input.

[21] On March 22, 2022, the TB advised that it had received feedback from several bargaining agents raising concerns about the continued application of the TB Policy without changes to it, given what was taking place in most provinces and the high vaccination rate achieved in the federal public service. On that same date, the TB indicated that a decision would be made about whether to rescind or amend the TB Policy before April 6, 2022.

[22] On March 29, 2022, the Institute's president wrote to the TB, voicing concerns about the ongoing application of the TB Policy and stating that the Institute's position had shifted since its February 18, 2022, submission as a result of the changing circumstances around vaccine mandates across the country.

[23] On April 5, 2022, a joint meeting of National Joint Council bargaining agents and the TB took place, at which the TB advised that the review of the TB Policy was still underway and that no decision would be finalized by April 6, 2022.

[24] On June 20, 2022, the TB suspended the TB Policy. TB employees placed on administrative LWOP pursuant to the TB Policy were able to resume their regular work duties with pay as of June 20, 2022.

[25] On June 20, 2022, all of the CRA, SSO, Parks, and the NRC suspended their COVID-19 vaccination policies. All employees of the CRA, SSO, Parks, and the NRC who were placed on administrative LWOP pursuant to their specific separate agency employer's COVID-19 vaccination policies were able to resume their regular work duties with pay as of June 20, 2022.

III. The employers' objections to the Board's jurisdiction

[26] The TB, the CRA, SSO, Parks, and the NRC ("the employers") objected to the Board's jurisdiction to deal with the Alliance's and Institute's ("the unions") grievances on the following general basis:

1) the unions' allegations that the employers failed to consult the unions during the review of the employers' Policies are moot;

2) challenges to the reasonableness of the employers' Policies do not engage the collective agreements;

3) discipline is not a matter in respect of the interpretation or application of the collective agreements;

4) challenges to LWOP do not relate to a bargaining unit generally;

5) the six-month review period was outside the Board's jurisdiction, as it was not in respect of the interpretation or application of the collective agreements; and

6) s. 232 of the *Act* precludes the individual remedies requested.

[27] In addition, with respect to the Institute's TB and NRC grievances, the TB and NRC also raised an objection to jurisdiction on the basis that the Institute's allegation that the TB and NRC failed to meaningfully engage with them is untimely.

IV. Relevant provisions of the *Act* and collective agreements

A. Definitions of "employee"

[28] "Employee" is defined in s. 2(1) of the *Act*, as follows:

…	[…]
employee, *except in Part 2, means a person employed in the public service, other than*	**fonctionnaire** *Sauf à la partie 2, personne employée dans la fonction publique, à l'exclusion de toute personne :*
***(a)** a person appointed by the Governor in Council under an Act of Parliament to a statutory position described in that Act;*	***a)** nommée par le gouverneur en conseil, en vertu d'une loi fédérale, à un poste prévu par cette loi;*
***(b)** a person locally engaged outside Canada;*	***b)** recrutée sur place à l'étranger;*
***(c)** a person not ordinarily required to work more than one third of the normal period for persons doing similar work;*	***c)** qui n'est pas ordinairement astreinte à travailler plus du tiers du temps normalement exigé des personnes exécutant des tâches semblables;*
***(d)** a person who is an* officer *as defined in subsection 2(1) of the* Royal Canadian Mounted Police Act*;*	***d)** qui est un* officier*, au sens du paragraphe 2(1) de la* Loi sur la Gendarmerie royale du Canada*;*
***(e)** a person employed in the Canadian Security Intelligence Service who does not perform duties of a clerical or secretarial nature;*	***e)** employée par le Service canadien du renseignement de sécurité et n'exerçant pas des fonctions de commis ou de secrétaire;*
***(f)** a person employed on a casual basis;*	***f)** employée à titre occasionnel;*
***(g)** a person employed on a term basis, unless the term of employment is for a period of three months or more or the person has been so employed for a period of three months or more;*	***g)** employée pour une durée déterminée de moins de trois mois ou ayant travaillé à ce titre pendant moins de trois mois;*
***(h)** an employee of the Administrative Tribunals Support Service of Canada who provides*	***h)** qui est membre du personnel du Service canadien d'appui aux tribunaux administratifs et fournit, exclusivement à la Commission,*

any of the following services exclusively to the Board:	*l'un ou l'autre des services suivants :*
***(i)** mediation and dispute resolution services,*	***(i)** des services de médiation ou de résolution de conflits,*
***(ii)** legal services,*	***(ii)** des services juridiques,*
***(iii)** advisory services relating to the Board's exercise of its powers and performance of its duties and functions;*	***(iii)** des conseils portant sur l'exercice des attributions de celle-ci;*
***(i)** a person who occupies a managerial or confidential position; or*	***i)** occupant un poste de direction ou de confiance;*
***(j)** a person who is employed under a program designated by the employer as a student employment program.*	***j)** employée dans le cadre d'un programme désigné par l'employeur comme un programme d'embauche des étudiants.*
…	[…]

[29] "Employee" is defined in all the collective agreements at issue. Those definitions are as follows:

[The TB and Alliance collective agreement:]

"employee"	*« **employé-e** »*
means a person so defined in the Federal Public Sector Labour Relations Act *and who is a member of the bargaining unit specified in Article 9 ….*	*désigne toute personne définie comme fonctionnaire en vertu de la* Loi sur les relations de travail dans le secteur public fédéral *et qui fait partie de l'unité de négociation indiquée à l'article 9.*

[The CRA and Alliance collective agreement:]

***"employee"** means a person so defined in the Federal Public Sector Labour Relations Act and who is a member of the bargaining unit specified in Article 1*	***employé** désigne toute personne définie comme fonctionnaire en vertu de la Loi sur les relations de travail dans le secteur public fédéral et qui fait partie de l'unité de négociation indiqué à l'article 1*

[The SSO and Alliance collective agreement:]

"employee" *means a person so defined in the* Federal Public Sector Labour Relations Act*, and who is a member of the bargaining unit covered by this Agreement*	***employé/e*** *désigne toute personne ainsi définie dans la* Loi sur les relations de travail dans le secteur public fédéral *et qui fait partie de l'unité de négociation visée par la présente convention*

[The Parks and Alliance collective agreement:]

"employee" means a person so defined by the Federal Public Sector Labour Relations Act *and who is a member of the bargaining unit*	*employé-e désigne toute personne définie comme fonctionnaire en vertu de la* Loi sur les relations de travail dans le secteur public fédéral *et qui fait partie de l'unité de négociation*

[The TB and Institute HS collective agreement:]

"employee"	***employé***
means a person so defined in the Federal Public Sector Labour Relations Act *and who is a member of the bargaining unit ….*	*désigne toute personne définie comme fonctionnaire au sens de la* Loi sur les relations de travail dans le secteur public fédéral *et qui fait partie de l'unité de négociation*

[The NRC and Institute collective agreements:]

"employee" means a person who is a member of the bargaining unit	*« employé » signifie une personne qui fait partie de l'unité de négociation*

[30] The definition of employee in the French versions of the TB and Institute collective agreements is worded slightly different, however the difference is not relevant for the purpose of these reasons.

[31] All the definitions of "employee" in all the collective agreements refer in some way to the term "bargaining unit". That term is defined in all the collective agreements. While all the definitions are not exactly the same, they all are essentially the same, defining the bargaining unit as employees of the employer in either the group further

described in another article of the respective collective agreement that defines them specifically or, more generally, as employees who belong to the bargaining unit to which the collective agreement applies.

B. The management rights or management responsibilities clause

[32] All the grievances filed allege that one of the employers violated the management rights or management responsibilities clause of the relevant collective agreement. Those clauses, despite the way they may be titled and which article or clause number they are assigned in the relevant collective agreement (from here on, collectively identified as "the management rights clause"), are as follows:

> [The TB and Alliance and CRA and Alliance collective agreements:]
>
> *Except to the extent provided herein, this agreement in no way restricts the authority of those charged with managerial responsibilities in the public service.*
>
> *Sauf dans les limites indiquées, la présente convention ne restreint aucunement l'autorité des personnes chargées d'exercer des fonctions de direction dans la fonction publique.*
>
> [The SSO and Alliance collective agreement:]
>
> *Except to the extent provided herein, this Agreement in no way restricts the authority of those charged with managerial responsibilities in the Statistics Survey Operations.*
>
> *Sauf dans les limites indiquées, la présente convention ne restreint aucunement l'autorité des personnes chargées d'exercer des fonctions de direction dans les Opérations des enquêtes statistique.*
>
> [The Parks and Alliance collective agreement:]
>
> *Except to the extent provided herein, this agreement in no way restricts the authority of those charged with managerial responsibilities in the Agency.*
>
> *Sauf dans les limites indiquées, la présente convention ne restreint aucunement l'autorité des personnes chargées d'exercer des fonctions de direction dans l'Agence.*
>
> [The TB and Institute collective agreements:]

All the functions, rights, powers and authority which the Employer has not specifically abridged, delegated or modified by this agreement are recognized by the Institute as being retained by the Employer.	*L'Institut reconnaît que l'employeur retient les fonctions, les droits, les pouvoirs et l'autorité que ce dernier n'a pas, d'une façon précise, diminués, délégués ou modifiés par la présente convention.*
[The NRC and Institute collective agreements:]	
All the functions, rights, powers and authority which the Council has not specifically abridged, delegated or modified by this Agreement are recognized by the Professional Institute as being retained by the Council.	*L'Institut professionnel reconnaît que le Conseil retient les fonctions, les droits, les pouvoirs et l'autorité que ce dernier n'a pas, d'une façon précise, fait diminuer, déléguer ou modifier par la présente convention.*

[33] All the unions' grievances, other than the TB telework grievance and CRA telework grievance, essentially make the same allegations of the breaches by the employers of the equivalent clauses of the collective agreements entered into between themselves and the employers on health and safety, joint consultation, and, for the Alliance, no discrimination. While those collective agreement clauses are essentially the same, they are sometimes worded a little differently, depending on whether it is an Alliance and employer or Institute and employer collective agreement.

C. The no-discrimination clauses

[34] The no-discrimination clause in the TB and Alliance, CRA and Alliance, SSO and Alliance, and Parks and Alliance collective agreements (either clause 19.01, 16.01, or 17.01). There are minor differences in the wording of the French versions of the different collective agreements, as well as punctuation, however the differences do not have any relevance to these reasons. These clauses state as follows:

… There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an employee by reason of age, race, creed, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, gender identity	[…] *Il n'y aura aucune discrimination, ingérence, restriction, coercition, harcèlement, intimidation, ni aucune mesure disciplinaire exercée ou appliquée à l'égard d'un employé-e du fait de son âge, sa race, ses croyances, sa couleur, son origine nationale ou ethnique, sa confession religieuse,*

and expression, family status, marital status, mental or physical disability, membership or activity in the Alliance or a conviction for which a pardon has been granted.	*son sexe, son orientation sexuelle, son identité sexuelle et l'expression de celle-ci, sa situation familiale, son état matrimonial, son incapacité mentale ou physique, son adhésion à l'Alliance ou son activité dans celle-ci ou une condamnation pour laquelle l'employé-e a été gracié.*

D. The joint consultation clauses

[35] The joint consultation clause in the TB and Alliance, CRA and Alliance collective agreements (article 21 of both), the SSO and Alliance collective agreement (article 13), and the Parks and Alliance collective agreement (article 18) is identical except for a slight difference in the wording of the first clause (21.01, 13.01, or 18.01, as the case may be). The first portion of those clause(s) in those agreements states as follows:

…	[…]
… The parties acknowledge the mutual benefits to be derived from joint consultation and are prepared to enter into discussion aimed at the development and introduction of appropriate machinery for the purpose of providing joint consultation on matters of common interest.	[…] *Les parties reconnaissent les avantages mutuels qui découlent de la consultation mixte et sont disposées à ouvrir des discussions visant à mettre au point et en œuvre le mécanisme voulu pour permettre la consultation mixte sur des questions d'intérêt mutuel.*
…	[…]

[36] The balance of the joint consultation clause in the TB and Alliance, CRA and Alliance, SSO and Alliance, and Parks and Alliance collective agreements is, generally, as follows:

…	[…]
… Within five (5) days of notification of consultation served by either party, the Alliance shall notify the Employer in writing of the representatives authorized to act on behalf of the Alliance for consultation purposes.	[…] *Dans les cinq (5) jours qui suivent la notification de l'avis de consultation par l'une ou l'autre partie, l'Alliance communique par écrit à l'employeur le nom des représentants autorisés à agir au*

	nom de l'Alliance aux fins de consultation.
… Upon request of either party, the parties to this agreement shall consult meaningfully at the appropriate level about contemplated changes in conditions of employment or working conditions not governed by this agreement.	[…] *Sur demande de l'une ou l'autre partie, les parties à la présente convention se consultent sérieusement au niveau approprié au sujet des changements des conditions d'emploi ou des conditions de travail envisagées qui ne sont pas régies par la présente convention.*
… Without prejudice to the position the Employer or the Alliance may wish to take in future about the desirability of having the subjects dealt with by the provisions of collective agreements, the subjects that may be determined as appropriate for joint consultation will be by agreement of the parties.	[…] *Sans préjuger de la position que l'employeur ou l'Alliance peut vouloir adopter dans l'avenir au sujet de l'opportunité de voir ces questions traitées dans des dispositions de conventions collectives, les parties décideront, par accord mutuel, des questions qui, à leur avis, peuvent faire l'objet de consultations mixtes.*
…	[…]

[37] The joint consultation clause in the TB and Institute and NRC and Institute collective agreements is almost identical and in essence says the same things; however, it has minor wording differences. As such, I have set out the three different clauses. They state as follows:

[The TB and Institute HS collective agreement]	
36.01 *The parties acknowledge the mutual benefits to be derived from joint consultation and will consult on matters of common interest.*	***36.01*** *Les parties reconnaissent les avantages mutuels qui découlent de la consultation mixte et sont disposées à se consulter sur des questions d'intérêt mutuel.*
36.02 *The subjects that may be determined as appropriate for joint consultation will be by mutual agreement of the parties and shall include consultation regarding career development, professional responsibilities and standards, quality of client services and workload. Consultation may be at*	***36.02*** *Le choix des sujets considérés comme sujets appropriés de consultation mixte se fera par accord mutuel des parties et doit inclure la consultation relative à la promotion professionnelle, aux normes et aux responsabilités professionnelles, à la qualité des services à la clientèle ainsi qu'à la charge de travail. La consultation*

the local, regional or national level as determined by the parties.	*peut se tenir au niveau local, régional ou national au gré des parties.*
***36.03** Wherever possible, the Employer shall consult with representatives of the Institute at the appropriate level about contemplated changes in conditions of employment or working conditions not governed by this agreement. Both parties agree to consult in a timely manner so that the opinions of the consulted party can be taken into consideration before a decision is taken.*	***36.03** Lorsque c'est possible, l'employeur consulte les représentants de l'Institut au niveau approprié au sujet des modifications envisagées dans les conditions d'emploi ou de travail qui ne relèvent pas de la présente convention.*
…	[…]

[The NRC and Institute collective agreements, with respect to the Information Services, Library Sciences, and Translation groups are similar. The NRC and Institute collective agreement with respect to the Information Services states:]

***25.01** The parties acknowledge the mutual benefits to be derived from joint consultation and will consult on matters of common interest.*	***25.01** Les parties reconnaissent les avantages réciproques des consultations mutuelles et affirment leur désire de se consulter sur les questions d'intérêt commun.*
***25.02** The subjects that may be determined as appropriate for joint consultation will be by mutual agreement of the parties.*	***25.02** Les parties décideront par entente mutuelle des questions sur lesquelles il sera jugé opportun de tenir des consultations mutuelles.*
***25.03** Wherever possible, the Council shall consult with representatives of the Professional Institute at the appropriate level about contemplated changes in conditions of employment or working conditions not governed by this Agreement.*	***25.03** Lorsque c'est possible, le Conseil consulte les représentants de l'Institut professionnel au niveau approprié au sujet des modifications envisagées dans les conditions d'emploi ou de travail qui ne relèvent pas de la présente convention.*

[The NRC and Institute collective agreement, with respect to the Research Officer group:]

6.01 *The parties acknowledge the mutual benefits to be derived from joint consultation and will consult on matters of common interest.*	***6.01*** *Les parties reconnaissent les avantages réciproques à tirer de consultations mutuelles et affirment leur désir de se consulter sur les questions d'intérêt commun.*
6.02 *The subjects that may be determined as appropriate for joint consultation will be by mutual agreement of the parties and shall include consultation regarding career development, workshops and conferences.*	***6.02*** *Les choix des sujets considérés comme sujets appropriés de consultation mixte se fera par accord mutuel des parties et doit inclure la consultation relative à la promotion professionnelle, aux ateliers et aux conférences.*
6.03 *Wherever possible, the Council shall consult with representatives of the Professional Institute at the appropriate level about contemplated changes in conditions of employment or working conditions not governed by this Agreement*	***6.03*** *Partout où cela est possible, le Conseil tiendra des consultations sérieuses avec les représentants de l'Institut professionnel au niveau approprié au sujet des modifications envisagées dans les conditions d'emploi qui ne sont pas régies par la présente convention.*
…	[…]

E. The health-and-safety clauses

[38] The health-and-safety clause in the TB and Alliance and CRA and Alliance collective agreements (article 22), SSO and Alliance collective agreement, and Parks and Alliance collective agreement (article 19) is virtually identical. In the TB and Alliance and SSO and Alliance collective agreements, it is one clause, while in the CRA and Alliance and Parks and Alliance collective agreements, it is two.

[39] Clause 19.01(a) of the Parks and Alliance collective agreement and 22.01 of the CRA and Alliance collective agreement are similar. The latter reads as follows:

22.01 … The parties recognize the Canada Labour Code (CLC), Part II, and all provisions and regulations flowing from the CLC as the authority governing the	*22.01* […] *Les parties reconnaissent le Code canadien du travail (CCT), Partie II, ainsi que toutes les dispositions et règlements qui en découlent, comme l'autorité*

occupational safety and health in the CRA.	*gouvernant la santé et la sécurité au travail à l'ARC.*
…	[…]

[40] The balance of the health-and-safety clause in the CRA and Alliance collective agreement and Parks and Alliance collective agreement as well as in both the TB and Alliance and SSO and Alliance collective agreements is the same except that in the CRA and Alliance collective agreement, the term Agency is used instead of employer and in the Parks and Alliance collective agreement, the words "workplace injury" are used instead of employment injury. That clause is as follows:

…	[…]
… The Employer shall make reasonable provisions for the occupational safety and health of employees. The Employer will welcome suggestions on the subject from the Alliance, and the parties undertake to consult with a view to adopting and expeditiously carrying out reasonable procedures and techniques designed or intended to prevent or reduce the risk of employment injury.	[…] *L'employeur prend toute mesure raisonnable concernant la santé et la sécurité au travail des employé-e-s. Il fera bon accueil aux suggestions de l'Alliance à cet égard, et les parties s'engagent à se consulter en vue d'adopter et de mettre rapidement en oeuvre toutes les procédures et techniques raisonnables destinées à prévenir ou à réduire les risques d'accidents de travail.*
…	[…]

[41] The health-and-safety clause in the TB and Institute collective agreements is found at either article 22, 24, 25 or 26 and the first portion of it states (with minor amendments that are not relevant to the decision) as follows:

The Employer shall continue to make all reasonable provisions for the occupational safety and health of employees. The Employer will welcome suggestions on the subject from the Institute and the parties undertake to consult with a view to adopting and expeditiously carrying out reasonable procedures and techniques designed or intended to prevent or reduce the risk of employment injury or occupational illness, including	*L'employeur continue de prévoir toute mesure raisonnable concernant la sécurité et l'hygiène professionnelles des employés. L'employeur fera bon accueil aux suggestions faites par l'Institut à ce sujet, et les parties s'engagent à se consulter en vue d'adopter et de mettre rapidement en œuvre la procédure et les techniques raisonnables destinées à prévenir ou à réduire le risque d'accident et de maladie professionnels, y*

critical incident stress management services consistent with Treasury Board Policy on Employee Assistance Program.	*compris des services d'intervention en matière de stress à la suite d'incidents critiques conformément à la politique du Conseil du Trésor sur le programme d'aide aux employés.*
…	[…]

[42] None of the NRC and Institute collective agreements have a health-and-safety clause.

F. The discipline clause

[43] All the collective agreements have an article that is entitled either "discipline" or "standards of discipline" ("the discipline clause"), except for the NRC and Institute for the Research Group collective agreement, which does have clauses about discipline; however, they are found under the heading covering employee performance review and employee files.

[44] The discipline clause in the TB and Alliance collective agreement (article 17), CRA and Alliance collective agreement (article 17), SSO and Alliance collective agreement (article 21), and Parks and Alliance collective agreement (article 15) is virtually identical. There are some differences between the collective agreements. In the CRA and Parks collective agreements, the word "employer" is not used; instead, it is "Canada Revenue Agency" and "Agency", respectively. The CRA and Parks collective agreements do not refer to the *Financial Administration Act*. In addition, in the CRA and Alliance collective agreement, it refers to the notice being given of one (1) day. Also, while all have five clauses, they are not always in the same order. And some refer to an employee or employees respectively as him or her, him/her, or them. Finally, the Parks and Alliance collective agreement has a clause that is not included in the others, however it refers to an employee attending a disciplinary hearing as a union representative and not as an employee.

[45] As an example, the discipline clause from the TB and Alliance collective agreement (article 17) states as follows:

…	[…]
17.01 *When an employee is suspended from duty or terminated*	***17.01*** *Lorsque l'employé-e est suspendu de ses fonctions ou est*

in accordance with paragraph 12(1)(c) of the Financial Administration Act*, the Employer undertakes to notify the employee in writing of the reason for such suspension or termination. The Employer shall endeavor to give such notification at the time of suspension or termination.*

licencié aux termes de l'alinéa 12(1)c) de la Loi sur la gestion des finances publiques, l'employeur s'engage à lui indiquer, par écrit, la raison de cette suspension ou de ce licenciement. L'employeur s'efforce de signifier cette notification au moment de la suspension ou du licenciement.

17.02 *When an employee is required to attend a meeting, the purpose of which is to conduct a disciplinary hearing concerning him or her or to render a disciplinary decision concerning him or her, the employee is entitled to have, at his or her request, a representative of the Alliance attend the meeting. Where practicable, the employee shall receive a minimum of two (2) days' notice of such a meeting.*

17.02 *Lorsque l'employé-e est tenu d'assister à une audition disciplinaire le concernant ou à une réunion à laquelle doit être rendue une décision concernant une mesure disciplinaire le touchant, l'employé-e a le droit, sur demande, d'être accompagné d'un représentant de l'Alliance à cette réunion. Dans la mesure du possible, l'employé-e reçoit au minimum deux (2) journées de préavis de cette réunion.*

17.03 *The Employer shall notify the local representative of the Alliance as soon as possible that such suspension or termination has occurred.*

17.03 *L'employeur informe le plus tôt possible le représentant local de l'Alliance qu'une telle suspension ou qu'un tel licenciement a été infligé.*

17.04 *The Employer agrees not to introduce as evidence in a hearing relating to disciplinary action any document from the file of an employee the content of which the employee was not aware of at the time of filing or within a reasonable period thereafter.*

17.04 *L'employeur convient de ne produire comme élément de preuve, au cours d'une audience concernant une mesure disciplinaire, aucun document extrait du dossier de l'employé-e dont le contenu n'a pas été porté à la connaissance de celui-ci ou de celle-ci au moment où il a été versé à son dossier ou dans un délai ultérieur raisonnable.*

17.05 *Any document or written statement related to disciplinary action which may have been placed on the personnel file of an employee shall be destroyed after two (2) years have elapsed since the disciplinary action was taken, provided that no further disciplinary action has been recorded during this period.*

17.05 *Tout document ou toute déclaration écrite concernant une mesure disciplinaire qui peut avoir été versé au dossier personnel de l'employé-e doit être détruit au terme de la période de deux (2) ans qui suit la date à laquelle la mesure disciplinaire a été prise, pourvu qu'aucune autre mesure*

disciplinaire n'ait été portée au dossier dans l'intervalle.

[46] The discipline clause in the TB and Institute collective agreements is article 36, 37 or 38, depending on the agreement. In the TB and Institute HS collective agreement it states as follows:

…	[…]
37.01 *Where written departmental standards of discipline are developed or amended, the Employer agrees to supply sufficient information on the standards of discipline to each employee and to the Institute.*	***37.01*** *Lorsqu'il rédige ou modifie des normes de discipline ministérielles, l'employeur convient de fournir à chaque employé et à l'Institut suffisamment de renseignements à ce sujet.*
37.02 *When an employee is required to attend a meeting, the purpose of which is to conduct a disciplinary hearing concerning him or to render a disciplinary decision concerning him, the employee is entitled to have, at his request, a representative of the Institute attend the meeting. Where practicable, the employee shall receive a minimum of two (2) days' notice of such a meeting as well as its purpose.*	***37.02*** *Lorsque l'employé est tenu d'assister à une audition disciplinaire le concernant ou à une réunion à laquelle doit être rendue une décision concernant une mesure disciplinaire le touchant, il a le droit, sur demande, d'être accompagné d'un représentant de l'Institut. Dans la mesure du possible, l'employé reçoit au minimum deux (2) journées de préavis, ainsi que la raison de l'audition ou de la réunion.*
37.03 *At any administrative inquiry, hearing or investigation conducted by the Employer, where the actions of an employee may have had a bearing on the events or circumstances leading thereto, and the employee is required to appear at the administrative inquiry, hearing or investigation being conducted, he may be accompanied by a representative of the Institute. Where practicable, the employee shall receive a minimum of two (2) days' notice of such administrative inquiry, hearing or investigation being conducted as well as its purpose. The unavailability of the representative will not delay the inquiry, hearing*	***37.03*** *Lors de toute rencontre de demande de renseignements précédant une enquête, audition ou enquête administrative menée par l'employeur, où les actions de l'employé peuvent avoir influé sur les événements ou les circonstances afférents, et où l'employé est tenu de comparaître, il peut se faire accompagner par un représentant de l'Institut. Autant que possible, l'employé est prévenu par écrit au moins deux (2) jours ouvrables avant la tenue d'une telle réunion et de l'objet de cette dernière. La non-disponibilité du représentant ne retardera pas la rencontre de demande de renseignement précédant une enquête, l'audition*

or investigation more than forty-eight (48) hours from the time of notification to the employee.

ou l'enquête administrative de plus de quarante-huit (48) heures à partir de la notification donnée à l'employé.

37.04 *Subject to the* Access to Information Act *and* Privacy Act, *the Employer shall provide the employee access to the information used during the disciplinary investigation.*

37.04 *Conformément à la* Loi sur l'accès à l'information *et la* Loi sur la protection des renseignements personnels *, l'employeur donne à l'employé accès à l'information utilisée au cours de l'enquête disciplinaire.*

37.05 *The Employer agrees not to introduce as evidence in a hearing relating to disciplinary action any document concerning the conduct or performance of an employee the existence of which the employee was not aware at the time of filing or within a reasonable time thereafter.*

37.05 *L'employeur consent à ne pas produire comme preuve à une audience concernant une mesure disciplinaire tout document au sujet de la conduite ou du rendement de l'employé dont celui-ci n'était pas au courant au moment de présenter un grief ou dans un délai raisonnable après avoir présenté le grief.*

37.06 *When an employee is suspended from duty, the Employer undertakes to notify the employee in writing of the reason for such suspension. The Employer shall endeavour to give such notification at the time of suspension.*

37.06 *Lorsque l'employé est suspendu de ses fonctions, l'employeur s'engage à l'informer, par écrit, de la raison de cette suspension. L'employeur s'efforcera de remettre cet avis au moment de la suspension.*

37.07 *The Employer shall notify the local representative of the Institute as soon as possible that such suspension or termination has occurred.*

37.07 *L'employeur informe le plus tôt possible le représentant local de l'Institut qu'une telle suspension ou qu'un tel licenciement a été infligé.*

****

****

37.08 *Notice of disciplinary action which may have been placed on the personnel file of an employee shall be destroyed after two (2) years have elapsed since the disciplinary action was taken provided that no further disciplinary action has been recorded during this period. This period will automatically be extended by the length of any single period of leave without pay in excess of six (6) months.*

37.08 *Tout document de nature disciplinaire qui peut avoir été versé au dossier de l'employé doit être détruit deux (2) ans après la date à laquelle la mesure disciplinaire a été imposée, pourvu qu'aucune autre mesure disciplinaire n'ait été portée au dossier de cet employé durant ladite période. Cette période sera automatiquement allongée selon la*

	durée d'une période de congé non payé de plus de six (6) mois.

[47] The discipline clause in the NRC and Institute collective agreements (article 24 of the Information Services and Translation group collective agreements and article 12 of the Library Sciences collective agreement), is virtually word-for-word the same, although the Library Sciences collective agreement clauses are in a different order. They state as follows:

…	[…]
… The Council agrees not to introduce as evidence in a hearing relating to disciplinary action any document from the file of an employee, the existence of which the employee was not aware at the time of filing or within a reasonable period thereafter.	[…] *Le Conseil convient de ne pas déposer, au cours de séances se rapportant à une mesure disciplinaire, document extrait du dossier de l'employé dont l'employé n'aurait pas connu l'existence au début des procédures ou dans un délai raisonnable par la suite.*
… Where an employee is required to attend a meeting, the purpose of which is to render a disciplinary decision concerning him/her, the employee is entitled to have, upon request, a representative of the Professional Institute attend the meeting. Where practicable, the employee shall receive a minimum of one (1) day's notice of such a meeting and shall be informed of the reason for it.	[…] *Lorsque l'employé est tenu d'assister à une réunion durant laquelle doit être rendue une décision concernant une mesure disciplinaire le touchant, il a le droit, sur demande, d'être accompagné d'un représentant de l'Institut professionnel. Lorsque possible, l'employé est informé au moins une (1) journée à l'avance d'une telle réunion et de la raison.*
… When an employee is suspended from duty, the Council undertakes to notify the employee in writing of the reason(s) for such suspension. The Council shall endeavor to give such notification at the time of suspension.	[…] *Lorsque l'employé(e) est suspendu de ses fonctions, le Conseil doit l'aviser par écrit des motifs de la suspension. Le Conseil s'efforce de donner cet avis au moment de la suspension.*
… Any document or written statement related to disciplinary action, which may have been placed on the personnel file of an employee, shall be destroyed after two (2) years have elapsed since the disciplinary action was taken provided that no further	[…] *Un document ou une déclaration écrite relié à une mesure disciplinaire placé dans le dossier personnel de l'employé est retiré de son dossier personnel deux (2) années après le moment où la mesure disciplinaire a été prise, à condition qu'aucune nouvelle*

disciplinary action has been recorded during this period.	*mesure disciplinaire n'ait été portée au dossier au cours de cette période.*

[48] In addition, in the NRC and Institute Library Sciences Group collective agreement, there is an additional line added to the clause pertaining to the retention of documents or statements for a period of two years. That additional line states as follows: "This two (2) year period will automatically be extended by the length of any period of leave without pay in excess of three (3) months."

[49] The NRC and Institute Research Group collective agreement for the Research Officer group does not have an article entitled "Discipline" or "Standards of Discipline" or pertaining to discipline. However, in the article pertaining to "Employee Performance Review and Employee Files", there are two clauses identical to those in the other NRC and Institute collective agreements; they are the following:

- The clause pertaining to destroying documents or statements in the personnel file once two years have elapsed since the disciplinary action.
- The clause in which the NRC agrees to not introduce into evidence at a hearing subsequent to a disciplinary action documents that the employee was not aware of at the time of the disciplinary action.

G. Grievance procedure clauses

[50] All the collective agreements contain articles setting out grievance procedures. Much of what is set out in those articles is already set out in Part 2 of the *Act*, in ss. 208, 209, 215, 216, 220, and 221.

[51] The article in the TB and Alliance collective agreement (article 18), CRA and Alliance collective agreement (article 18), SSO and Alliance collective agreement (article 22), and Parks and Alliance collective agreement (article 16) is similar and in some respects virtually identical. The relevant portion of the TB and Alliance collective agreement is as follows:

…	[…]
Individual grievances	***Griefs individuels***
18.02 *Subject to and as provided in section 208 of the* Federal Public Sector Labour Relations Act*, an*	***18.02*** *Sous réserve de l'article 208 de la Loi sur les relations de travail dans le secteur public fédéral et*

employee may present an individual grievance to the Employer if he or she feels aggrieved:

conformément aux dispositions dudit article, l'employé-e peut présenter un grief contre l'employeur lorsqu'il ou elle s'estime lésé :

a. by the interpretation or application, in respect of the employee, of:

a. par l'interprétation ou l'application à son égard :

i. a provision of a statute or regulation, or of a direction or other instrument made or issued by the Employer, that deals with terms and conditions of employment;

i. soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi;

or

ou

ii. a provision of the collective agreement or an arbitral award;

ii. soit de toute disposition d'une convention collective ou d'une décision arbitrale;

or

ou

b. as a result of any occurrence or matter affecting his or her terms and conditions of employment.

b. par suite de tout fait portant atteinte à ses conditions d'emploi.

Group grievances

Griefs collectifs

18.03 *Subject to and as provided in section 215 of the* Federal Public Sector Labour Relations Act, *the Alliance may present a group grievance to the Employer on behalf of employees in the bargaining unit who feel aggrieved by the interpretation or application, common in respect of those employees, of a provision of the collective agreement or arbitral award.*

18.03 *Sous réserve de l'article 215 de la Loi sur les relations de travail dans le secteur public fédéral et conformément aux dispositions dudit article, l'Alliance peut présenter un grief collectif à l'employeur au nom des employé-e-s de cette unité qui s'estiment lésés par la même interprétation ou application à leur égard de toute disposition d'une convention collective ou d'une décision arbitrale.*

a. In order to present a group grievance, the Alliance must first obtain the written consent of each of the employees concerned.

a. La présentation du grief collectif est subordonnée à l'obtention par l'Alliance du consentement écrit de chacun des employé-e-s concernés.

b. A group grievance shall not be deemed to be invalid by reason

b. Le grief collectif n'est pas réputé invalide du seul fait que le

only of the fact that the consent is not in accordance with Form 19.	*consentement n'est pas donné conformément à la formule 19.*
c. A group grievance must relate to employees in a single portion of the Federal Public Administration.	*c. Le grief collectif ne peut concerner que les employé-e-s d'un même secteur de l'administration publique fédérale.*
Policy grievances	***Griefs de principe***
18.04 *Subject to and as provided in section 220 of the* Federal Public Sector Labour Relations Act*, the Alliance or the Employer may present a policy grievance in respect of the interpretation or application of the collective agreement or of an arbitral award.*	***18.04*** *Sous réserve de l'article 220 de la Loi sur les relations de travail dans le secteur public fédéral et conformément aux dispositions dudit article, l'Alliance ou l'employeur peut présenter un grief de principe portant sur l'interprétation ou l'application de la convention collective ou d'une décision arbitrale.*
…	[…]
18.05 *For the purposes of this article, a grievor is an employee or, in the case of a group or policy grievance, the Alliance.*	***18.05*** *Pour l'application du présent article, l'auteur du grief est un employé-e ou, dans le cas d'un grief collectif ou de principe, l'Alliance est l'auteur du grief*
…	[…]

[52] The grievance procedures set out in the SSO and Alliance collective agreement with respect to individual grievances (clause 22.01), group grievances (clause 22.02), and policy grievances (clause 22.03) are identical to those set out in clauses 18.02, 18.03, and 18.04 of the TB and Alliance collective agreement, except that in the SSO and Alliance collective agreement, clause 22.01 uses "he/she", clause 18.02 states "he or she", clause 22.02 refers to simply a form, and clause 18.03 refers to the specific form number.

[53] The CRA and Alliance collective agreement clauses with respect to individual grievances (clauses 18.06 and 18.07), group grievances (clauses 18.23 and 18.24), and policy grievances (clause 18.37) state as follows:

…	[…]
Individual Grievances	***Griefs individuels***

18.06 *An employee who wishes to present a grievance at any prescribed level in the grievance procedure shall transmit this grievance to the employee's immediate supervisor or local officer-in-charge who shall forthwith:*

(a) forward the grievance to the representative of the Employer authorized to deal with grievances at the appropriate level, and

(b) provide the employee with a receipt stating the date on which the grievance was received by the employee.

18.06 *L'employé qui désire présenter un grief à l'un des paliers prescrits de la procédure de règlement des griefs le transmet à son surveillant immédiat ou au chef de service local qui, immédiatement :*

a) le transmet au représentant de l'Employeur autorisé à traiter les griefs au palier approprié, et

b) transmet à l'employé un récépissé indiquant la date à laquelle le grief lui est parvenu.

18.07 Presentation of grievance

Subject to and as provided in section 208 of the Federal Public Sector Labour Relations Act (FPSLRA), an employee who feels that they have been treated unjustly or considers themselves aggrieved by any action or lack of action by the Employer, in matters other than those arising from the classification process, is entitled to present a grievance in the manner prescribed in clause 18.06 except that:

(a) where there is another administrative procedure for redress provided by or under any act of Parliament other than the Canadian Human Rights Act to deal with the employee's specific complaint, such procedure must be followed, and

(b) where the grievance relates to the interpretation or application of this Agreement or an arbitral award, the employee is not entitled to present the grievance unless they

18.07 Présentation des griefs

Sous réserve de l'article 208 de la Loi sur les relations de travail dans le secteur public fédéral (LRTSPF) et conformément aux dispositions dudit article, l'employé qui estime avoir été traité de façon injuste ou qui se considère lésé par une action ou l'inaction de l'Employeur, au sujet de questions autres que celles qui découlent du processus de classification, a le droit de présenter un grief de la façon prescrite au paragraphe 18.06, compte tenu des réserves suivantes :

a) s'il existe une autre procédure administrative de réparation prévue par une loi du Parlement ou établie aux termes d'une telle loi, à l'exception de la Loi canadienne sur les droits de la personne, pour traiter sa plainte particulière, cette procédure doit être suivie, et

b) si le grief porte sur l'interprétation ou l'exécution de la présente convention ou d'une décision arbitrale, l'employé n'a pas le droit de présenter le grief, à moins d'avoir obtenu le

have the approval of and is [sic] represented by the Alliance.

consentement de l'Alliance et de se faire représenter par celle-ci.

…

[…]

Group Grievances

Griefs collectifs

18.23 *The Alliance may present a grievance at any prescribed level in the grievance procedure, and shall transmit this grievance to the officer-in-charge who shall forthwith:*

18.23 *L'Alliance peut présenter un grief à l'un des paliers prescrits de la procédure de règlement des griefs et le transmet au chef de service qui, immédiatement*

(a) forward the grievance to the representative of the Employer authorized to deal with grievances at the appropriate level, and

a) le transmet au représentant de l'Employeur autorisé à traiter les griefs au palier approprié, et

(b) provide the Alliance with a receipt stating the date on which the grievance was received by the employee.

b) transmet à l'Alliance un récépissé indiquant la date à laquelle le grief lui est parvenu.

18.24 Presentation of a Group Grievance

18.24 Présentation d'un grief collectif

Subject to and as provided in section 215 of the FPSLRA, the Alliance may present to the Employer a group grievance on behalf of employees in the bargaining unit who feel aggrieved by the interpretation or application, common in respect of those employees, of a provision of a collective agreement or an arbitral award.

Sous réserve de l'article 215 de la LRTSPF et conformément aux dispositions dudit article, l'Alliance peut présenter un grief collectif au nom d'employés de l'unité de négociation qui s'estiment lésés par l'interprétation ou l'application, communément à leur égard, d'une disposition d'une convention collective ou d'une décision arbitrale.

…

[…]

Policy Grievances

Griefs de principe

18.37 *The Employer or the Alliance may present a policy grievance to the other in respect of the interpretation or application of the collective agreement or arbitral award as it relates to either of them or to the bargaining unit generally.*

18.37 Tant l'Employeur que l'Alliance peut présenter à l'autre un grief de principe portant sur l'interprétation ou l'application d'une disposition de la convention ou de la décision arbitrale relativement à l'un ou l'autre ou à l'unité de négociation de façon générale.

… […]

[54] The Parks and Alliance collective agreement clauses with respect to individual grievances (clause 16.03), group grievances (clause 16.09), and policy grievances (clause 16.13) are largely the same as those in the TB and Alliance, CRA and Alliance, and SSO and Alliance collective agreements; the relevant portions state as follows:

… […]

16.03 Individual Grievances	***16.03 Griefs individuels***
a) Subject to and as provided in Section 208 of the Federal Public Sector Labour Relations Act *(FPSLRA), an employee who feels that he or she has been treated unjustly or considers himself or herself aggrieved by any action or lack of action by the Agency is entitled to present a grievance in the manner prescribed in sub-paragraph (b) except that where the grievance relates to the interpretation or application of this agreement or an arbitral award, the employee is not entitled to present the grievance unless he or she has the approval of and is represented by the Alliance.*	*a) Sous réserve de l'article 208 de la* Loi sur les relations de travail dans le secteur public fédéral *(LRTSPF) et conformément aux dispositions dudit article, l'employé-e qui estime avoir été traité de façon injuste ou qui se considère lésé par une action ou l'inaction de l'Agence a le droit de présenter un grief de la façon prescrite à l'alinéa b), sous réserve que le grief porte sur l'interprétation ou l'exécution de la présente convention ou d'une décision arbitrale, l'employé-e n'a pas le droit de présenter le grief, à moins d'avoir obtenu le consentement de l'Alliance et de se faire représenter par celle-ci.*
b) An employee who wishes to present a grievance at a prescribed step in the grievance procedure shall transmit this grievance to his or her immediate supervisor or local officer-in-charge who shall forthwith:	*b) L'employé-e qui désire présenter un grief individuel à l'un des paliers prescrits de la procédure de règlement des griefs le remet à son surveillant immédiat ou au chef de service local qui, immédiatement :*
(i) forward the grievance to the representative of the Agency authorized to deal with grievances at the appropriate step,	*(i) l'adresse au représentant de l'Agence autorisé à traiter les griefs au palier approprié,*
and	*et*
(ii) provide the employee with a receipt stating the date on which the grievance was received by him or her.	*(ii) remet à l'employé-e un récépissé indiquant la date à laquelle le grief lui est parvenu.*

…	[…]
16.09 Group Grievances	***16.09 Griefs collectifs***
a) Subject to and as provided in sections 215 and 216 of the Federal Public Sector Labour Relations Act, *the Alliance may present the Agency a group grievance on behalf of employees in the bargaining unit who feel aggrieved by the interpretation or application, common in respect of those employees, of a provision of the collective agreement or an arbitral award.*	*a) Sous réserve des paragraphes 215 et 216 de la Loi sur les relations de travail dans le secteur public fédéral, l'Alliance peut présenter un grief collectif au nom des employé-e-s qui se considèrent lésé-e-s par la même interprétation ou application à leur égard de toute disposition de la présente convention ou décision arbitrale.*
In order to present the grievance, the Alliance must first obtain the consent of each of the employees concerned in the form provided for at subsection 77(2) of the Federal Public Sector Labour Relations Regulations (FPSLRR). The consent of an employee is valid only in respect of the particular group grievance for which it is obtained.	*La présentation du grief collectif est subordonnée à l'obtention au préalable par l'Alliance du consentement de chacun des employé-e-s, selon les modalités établies à l'article 77(2) du règlement sur les relations de travail dans le secteur public fédéral (RRTSPF). Le consentement ne vaut qu'à l'égard du grief en question.*
…	[…]
16.13 Policy Grievances	***16.13 Griefs de principe***
a) The Agency or the Alliance may present a policy grievance to the other in respect of the interpretation or application of the collective agreement or arbitral award as it relates to either of them or to the bargaining unit generally.	*a) L'Alliance et l'Agence ont chacun le droit de présenter à l'autre un grief de principe portant sur l'interprétation ou l'application d'une disposition de la convention collective ou d'une décision arbitrale relativement à l'un ou à l'autre ou à l'unité de négociation de façon générale.*
…	[…]

[55] The articles in the TB and Institute collective agreements (articles 33, 34, or 35, as the case may be), are all relatively similar if not verbatim in their wording. As an example, I shall set out the relevant portions of article 34 of the TB and Institute collective agreement with respect to the Health Services group. They state as follows:

…	[…]
34.02 Individual grievances	***34.02 Griefs individuels***
Subject to and as provided in section 208 of the Federal Public Sector Labour Relations Act, *an employee may present an individual grievance to the Employer if he or she feels aggrieved:*	*Sous réserve de l'article 208 de la* Loi sur les relations de travail dans le secteur public fédéral *et conformément à ses dispositions, l'employé a le droit de présenter un grief individuel à l'employeur lorsqu'il s'estime lésé :*
a. by the interpretation or application, in respect of the employee, of:	*a. par l'interprétation ou l'application à son égard,*
i. a provision of a statute or regulation, or of a direction or other instrument made or issued by the Employer, that deals with terms and conditions of employment;	*i. soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,*
Or	*Ou*
ii. a provision of the collective agreement or an arbitral award;	*ii. soit de toute disposition de la convention collective ou d'une décision arbitrale,*
Or	*Ou*
b. as a result of any occurrence or matter affecting his or her terms and conditions of employment.	*b. par suite de tout fait portant atteinte à ses conditions d'emploi.*
34.03 Group grievances	***34.03 Griefs collectifs***
Subject to and as provided in section 215 of the Federal Public Sector Labour Relations Act, *the Institute may present a group grievance to the Employer on behalf of employees in the bargaining unit who feel aggrieved by the interpretation or application, common in respect of those employees, of a provision of the collective agreement or an arbitral award.*	*Sous réserve de l'article 215 de la* Loi sur les relations de travail dans le secteur public fédéral *et conformément à ses dispositions, l'Institut peut présenter un grief collectif à l'employeur au nom des employés de l'unité de négociation qui s'estiment lésés par la même interprétation ou application à leur égard de toute disposition d'une convention collective ou d'une décision arbitrale.*
a. In order to present a group grievance, the Institute must first	*a. La présentation du grief collectif est subordonnée à l'obtention au préalable par l'Institut du*

obtain the written consent of each of the employees concerned.	*consentement écrit de chacun des employés concernés.*
b. A group grievance must relate to employees in a single portion of the federal public administration.	*b. Le grief collectif ne peut concerner que les employés d'un même secteur de l'administration publique fédérale.*
34.04 Policy grievances	***34.04 Griefs de principe***
Subject to and as provided in section 220 of the Federal Public Sector Labour Relations Act*, the Institute or the Employer may present a policy grievance in respect of the interpretation or application of the collective agreement or an arbitral award.*	*Sous réserve de l'article 220 de la Loi sur les relations de travail dans le secteur public fédéral et conformément à ses dispositions, l'Institut ou l'employeur peut présenter un grief de principe portant sur l'interprétation ou l'application de la convention collective ou d'une décision arbitrale.*
A policy grievance may be presented by the Institute only at the final step of the grievance procedure, to an authorized representative of the Employer. The Employer shall inform the Institute of the name, title and address of the representative.	*L'Institut ne peut présenter un grief de principe qu'au dernier palier de la procédure de règlement des griefs, à un représentant autorisé de l'employeur. L'employeur doit informer l'Institut du nom, du titre et de l'adresse de son représentant.*
The grievance procedure for a policy grievance by the Employer shall also be composed of a single step, with the grievance presented to an authorized representative of the Institute. The Institute shall inform the Employer of the name, title and address of this representative.	*La procédure de règlement des griefs pour un grief de principe présenté par l'employeur est également composée d'un seul palier, le grief étant présenté à un représentant autorisé de l'Institut. L'Institut doit informer l'employeur du nom, du titre et de l'adresse de son représentant.*
…	[…]

[56] The parties filed extensive written arguments, totalling over 150 pages.

[57] At paragraph three of their respective submissions filed in response to the preliminary objection filed by the employers, the Alliance and Institute stated that they generally adopt and rely upon the arguments of each other.

V. Reasons

[58] The employers' objections are allowed in part, as set out below.

[59] The *Act* provides several ways in which parties, over which the Board may have jurisdiction, can bring their issues to the Board for adjudication. Grievances are set out in Part 2 of the *Act*, comprising ss. 206 through 238. There are three distinct types of grievances: individual grievances, group grievances, and policy grievances. While Part 2.1 also deals with grievances, it is specific to the Royal Canadian Mounted Police and has no bearing on the matters before me.

[60] All the collective agreements also specifically identify these three different types of grievances, and in doing so, the procedure involved in proceeding with a grievance of each of the different types. These clauses set out who is entitled to grieve under each of the grievance types. While in *Markovic v. Parliamentary Protective Service*, 2021 FPSLREB 128, at paragraph 58 the Board noted that the clause of the collective agreement regarding the right to present a grievance had "no legal consequence" since "a collective agreement cannot amend an Act", these clauses, essentially mimic the requirements set out in the *Act*.

[61] The right to file an individual grievance is granted in s. 208(1) of the *Act*, to individual employees. It is not granted to a bargaining agent. While only an employee can present an individual grievance, certain types of individual grievances can be pursued only if the bargaining agent agrees to represent the employee. Section 208(4) of the *Act* states that if the bargaining agent does not agree, the grievance cannot be presented. If the bargaining agent initially agrees, but at some point during the grievance procedure withdraws its support, then the grievance cannot proceed and dies. An individual grievance is exactly what it states it is, and the procedures set out in the collective agreements all refer to rights tied to that type of grievance being exercised by an individual; an employee.

[62] Group grievances are the second type. Section 215(1) of the *Act* states that these are presented and pursued by a bargaining agent on behalf of a group of employees. There are conditions surrounding the presenting and pursuing of a group grievance. The bargaining agent cannot just present a group grievance. Section 215(2) of the *Act*, states that in presenting a group grievance, employees who want to be part of it must consent. Indeed, the consent must be in writing and must be obtained before

presenting the grievance. It is clear and unambiguous that this is to deal with situations in which several employees in the same bargaining unit appear to have the same issue with the employer. It is a more efficient way of dealing with an issue when it affects several employees; one grievance, a "group grievance", on behalf of all the employees specifically affected, rather than many individual grievances all setting out the same or very similar facts and issues.

[63] The third and final type of grievance is the policy grievance. A policy grievance, as set out in s. 220 of the *Act*, is not something that is granted to employees. An individual employee cannot present and pursue a policy grievance as defined by the *Act*. An employee can file an individual grievance, which may involve the interpretation of a policy; however, it is not a policy grievance. A policy grievance, presented under s. 220, can be exercised only by a bargaining agent or an employer.

[64] *Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)*, 2008 PSLRB 84 ("*PSAC v. TB 2008*"), held that s. 220 of the *Act* sets out only two conditions that must be satisfied for a policy grievance to be filed: first, it must relate to the interpretation or application of a collective agreement or an arbitral award, and second, the issue must relate either to the bargaining agent or the employer or to the bargaining unit generally.

[65] Paramount to determining the employers' jurisdictional objection is understanding what the individual collective agreements state. The law with respect to the interpretation of collective agreements is well settled. It is summarized as follows in Brown and Beatty, *Canadian Labour Arbitration*, 5th ed., at paragraph 4:20: "… in determining the intention of the parties, the cardinal presumption is that the parties are assumed to have intended what they have said, and that the meaning of the collective agreement is to be sought in its express provisions."

[66] Collective agreements are contracts. They set out some of the terms and conditions of the relationship between the employer and the employees through their bargaining agent. For the most part, the rights and benefits in a collective agreement flow from the employer to the employees. If there was no collective agreement, the terms and conditions of the employment relationship between an employer and employee would be dictated by any agreement made by the employer and the particular employee, subject to the legislation that governs the workplace and any

common law established that is accepted as law in that jurisdiction. If there was no agreement between the individual employee and employer, it would simply be the policies determined by the employer, subject to the legislation and common law that is accepted as law in the jurisdiction that governs the workplace.

[67] Not everything written in a collective agreement between an employer and bargaining agent provides substantive rights and benefits. Some clauses provide context, and some are explanatory, defining how to interpret the substantive rights and benefits that are contained in the agreement. *Wepruk v. Treasury Board (Department of Health)*, 2016 PSLREB 55 at paras. 32 to 35, *Swan v. Canada Revenue Agency*, 2009 PSLRB 73 at para. 55, and *Mackwood v. National Research Council of Canada*, 2011 PSLRB 24, all stand for the proposition that some clauses of a collective agreement do not grant substantive rights to employees.

[68] For example, Part IV of the PA collective agreement between the TB and Alliance (one of the collective agreements that is at issue in these matters) is titled "Leave provisions" and contains 22 separate articles, 33 through 54. They cover several different types of leave, of which some employees benefit and others may not. Some types are contingent and other are not. Some are time-limited and expire if not used, and some do not. Not every clause within these 22 articles in this collective agreement confers a substantial benefit; some are merely explanatory or provide context. An example of the explanatory nature of some of the clauses is clause 33.01b, which states that "Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day." It is purely explanatory. Clause 34.05 is titled "Scheduling of vacation leave with pay". Clause 34.05a states that "Employees are expected to take all their vacation leave during the vacation year in which it is earned." This provides context for the balance of clause 34.05 that sets out how vacation leave is scheduled. It is important to determine whether the clause at issue involves a benefit being conferred.

[69] In addition, s. 229 of the *Act* provides that an adjudicator's or the Board's decision may not have the effect of requiring the amendment of a collective agreement or an arbitral award. This is reflected in the Board's jurisprudence, as well as that of the Federal Court. In this respect, see *Delios v. Canada Revenue Agency*, 2013 PSLRB 133 (upheld in 2015 FCA 117), and *Professional Institute of the Public Service of Canada v. Canada Revenue Agency*, 2016 PSLREB 77.

[70] While all the grievances in this matter are generally about the COVID-19 vaccination policies of the federal government as the employer (the TB) or federal-government-related employers (the CRA, SSO, Parks, and the NRC), they fall into two distinct groups. The first group consists of the initial two grievances filed by the Alliance against the TB and the CRA respectively that I have identified as the TB telework grievance and the CRA telework grievance, respectively and, the second group consists of all the rest of the grievances.

[71] Aside from the fact that there may be a difference in bargaining agent and employer or employers, there are three differences between the two groups. The first is that the two grievances of the first group grieve the TB and CRA's exercise of their management rights by requiring employees who were permanently teleworking to provide proof of their vaccination status, while the balance of the grievances, which make up the second group, whether by either of the unions and against one of the employers, is about that employer continuing the practice of placing unvaccinated employees or employees who choose not to attest to their vaccination status on LWOP. For the Alliance grievances in this second group, the date is March 22, 2022, while the Institute grievances is dated May 13 and June 8, 2022.

[72] The second difference is that the two grievances in the first group grieve only the TB and CRA's unreasonable exercise of its management rights and cite an unreasonable exercise of managerial responsibilities and a violation of article 6 of the applicable collective agreements, which is the management rights clause, while those in the second group allege not only a breach of the management rights clause in all the collective agreements but also a breach of the no-discrimination, joint consultation, or the health-and-safety clauses of the relevant collective agreement.

[73] The third and final difference between the two groups is that the grievances in the second group, in addition to alleging that one of the employers breached different clauses relating to management rights, no discrimination, joint consultation, or health and safety, allege that the employers' actions amounted to disguised and unjust discipline.

A. Alleged breach of the management rights clause

[74] In all the collective agreements, as outlined at paragraph 32, there is an article that is identified as the management rights clause.

[75] In short, what the clause states is that if the employer has not bargained something and it is not in the collective agreement, it is up to the employer to determine what it will do.

[76] Quite simply, grievances alleging that the employer's action breached this clause do not grant the Board with jurisdiction to review the reasonableness of the employer's actions. This clause does not create any right that flows to the bargaining agent or employee. It does not create any term or condition of employment that binds the employer in the way in which it manages its workplace, its employees, or its relationship with the bargaining agent. In fact, it states the opposite. It clarifies that if something is not in the collective agreement, it is in the exclusive jurisdiction of the employer. This clause is an acknowledgement by the bargaining agent that anything not bargained remains with the employer, which is something that the employer already has by virtue of either the governing legislation – ss. 7 and 11.1 of the *FAA* for the TB and s. 30(1)(d) of the *Canada Revenue Agency Act* (S.C. 1999, c. 17) for the CRA – or common law or both.

[77] *PSAC v. TB 2013* held that in exercising its functions, the employer can do anything that is not specifically or by inference prohibited by statute or collective agreement. *Basra v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 28, held that ss. 7 and 11.1 of the *FAA* grant the TB a broad, unlimited power to set general administrative policy for the federal public service, to organize it, and to determine and control its personnel management. This includes the power to determine the terms and conditions of employment not otherwise specified in those sections, to ensure effective human resources management.

[78] *Federal Government Dockyard Trades and Labour Council (East) v. Treasury Board (Department of National Defence)*, 2014 PSLRB 51, held that ss. 7 and 11.1 of the *FAA* and s. 7 of the *Act* grant the employer the right to organize the public service, allocate resources, and assign duties. The management rights clause in a collective agreement recognizes the employer's exclusive right and responsibility to manage its operation in all respects and acknowledges that it retains all rights and responsibilities not specifically covered or modified by the collective agreement. The adjudicator's opinion was that in the face of such clear management rights, an express prohibition in the collective agreement would be required to limit the employer's right to assign work to employees who are not part of the bargaining unit.

[79] The Alliance and Institute cited private-sector arbitral jurisprudence in support of the position that there is a requirement for the employer to act responsibly when exercising its authority on matters governed by the management rights clause. As set out in *Peck v. Parks Canada*, 2009 FC 686, private-sector jurisprudence is distinguishable when an employer is exercising a management function otherwise conferred by statute and not specifically prohibited by statute.

[80] In addition, the Alliance and Institute also cited the *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55 ("*AJC v. Canada*") and *Canada (Attorney General) v. Lloyd*, 2022 FCA 127, in support of their position that the employer has an inherent obligation to exercise management rights reasonably.

[81] The telework grievances challenge the reasonableness of the employers' exercise of their management rights when they required employees who were teleworking to provide proof of their vaccination status. Both grievances are based solely on an alleged violation of the management rights clause of the relevant collective agreement. No other clause is referred to or alleged to apply.

[82] In *AJC v. Canada*, the Association of Justice Counsel argued that the residual management rights mentioned in its collective agreement were not absolute and that they had to be exercised in a reasonable manner. In the relevant collective agreement in that case, there was an article titled "managements rights", which included two clauses, which were reproduced by the Court at paragraphs 9 and 10 of its decision:

> …
>
> *[9] … Clause 5.01 specifies that the employer retains all management rights and powers that have not been modified or limited by the collective agreement:*
>
> *All the functions, rights, powers and authority which the Employer has not specifically abridged, delegated or modified by this Agreement are recognized by the Association as being retained by the Employer.*
>
> *[10] But these management rights are not unfettered. Under clause 5.02 of the collective agreement, the employer is required to "act reasonably, fairly and in good faith in administering this Agreement".*

[83] The Supreme Court stated that many of the residual management rights for the federal government employers are set out in legislation. It then referred to the powers

of the Treasury Board under ss. 7 and 11.1 of the *FAA* and stated that management's residual right to unilaterally impose workplace rules is not unlimited and must be exercised reasonably and consistently with the collective agreement. The Court then pointed out that clause 5.02 of the collective agreement in that case also constrained management's ability to exercise these rights. The Court made the following comments:

> ***IV. Analysis***
>
> *A. Does the Directive Breach Clause 5.02 of the Collective Agreement?*
>
> ***(1) Residual Management Rights***
>
> *…*
>
> *[18] In unionized workplaces, labour arbitrators recognize management's residual right to unilaterally impose workplace policies and rules that do not conflict with the terms of the collective agreement (D.J.M. Brown and D. M Beatty, with the assistance of C. E. Deacon, Canadian Labour Arbitration(4th ed. (loose leaf)), vol. 1 at topic 4:1520). Often this residual power is recognized expressly in a "management rights" clause. Clause 5.01 of the collective agreement is one such clause, as it reserves for the employer the right to exercise all management powers that have not been "specifically abridged, delegated or modified" by the collective agreement.*
>
> *[19] For federal government employers, many of these residual management rights are set out in legislation. Under ss. 7 and 11.1 of the Financial Administration Act, R.S.C. 1985, c. F-11, the Treasury Board is authorized to exercise a number of different powers with respect to its human resources management responsibilities. These rights include providing for the allocation and effective use of human resources (s. 11.1(1)(a); determining and regulating the pay of employees, the hours of work and leave and any related matters (s. 11.1(1)(c)); and providing for any other matters necessary for effective human resources management (s. 11.1(1)(j)).*
>
> *[20] That said, management's residual right to unilaterally impose workplace rules is not unlimited. Management rights must be exercised reasonably and consistently with the collective agreement (Brown and Beatty, at topic4:1520; Re Lumber & Sawmill Workers' Union, Local 2537, and KVP Co. (1965), 16 L.A.C. 73 (Ont.); Irving, at para. 24).*
>
> *[21] Clause 5.02 of the collective agreement also constrains management's ability to exercise these rights, as it provides that in administrating the collective agreement, the employer must "act reasonably, fairly and in good faith". Any unilaterally imposed workplace policy must comply with these limitations.*

> *[22] The question raised before the adjudicator was whether the standby directive represented a reasonable and fair exercise of management rights. The employer's good faith is not in issue.*
>
> …

[84] The Alliance argued that the Supreme Court found that the requirement of reasonableness arose from clause 5.01 of the collective agreement at issue in that decision. I disagree. It is important to note that in its analysis, the Court was answering the following question: "Does the Directive Breach Clause 5.02 of the Collective Agreement?" That clause imposed an obligation on the employer to "act reasonably, fairly and in good faith". There is no such clause in the collective agreements at issue in these policy grievances.

[85] The Alliance and Institute also relied on *Lumber & Sawmill Workers' Union, Local 2537 v. KVP Co. Ltd.*, [1965] O.L.A.A. No. 2 (QL) ("*KVP*"). In that decision, the collective agreement at issue did not have a management rights clause. The arbitration board found jurisdiction in another specific clause of the collective agreement dealing with discharge or suspension by the employer. The arbitration board stated this:

> ***41*** *For the reasons outlined above under the heading "Effect of Lack of Management's Rights Clause" I am of the view that the provisions of art. 8.08 of the collective agreement clearly clothe this board with jurisdiction to determine whether or not the discharge of the grievor on June 24, 1964, was unjust or contrary to the terms of the collective agreement or unfair under all the circumstances.*

[86] In *KVP*, the arbitration board found that it had jurisdiction to intervene based on the collective agreement's wording. It is in that context that the arbitration board stated that a "rule unilaterally introduced by the company, and not subsequently agreed to by the union … must not be inconsistent with the collective agreement" and "must not be unreasonable" (at para. 33).

[87] The unions relied on *Lloyd* at paragraphs 47, 48 and 50 to support their position that the employer has an inherent obligation to exercise management rights reasonably.

[88] The issue that must be determined in this case is not whether the employer has an obligation to exercise its management rights reasonably. Rather, the issue is

whether the policy grievances were presented in accordance with the requirements set out in the *Act*. Section 220(1) of the *Act* provides that a policy grievance must be in respect of the interpretation or application of the collective agreement to be properly presented. It is only when a policy grievance has been properly presented that it may be referred to adjudication pursuant to s. 221 of the *Act*. The collective agreements at issue in these policy grievances do not contain a clause similar to clause 5.02 of the collective agreement in *AJC v. Canada*. On their own, the management rights clauses at issue in these policy grievances do not "clothe this board with jurisdiction" to review the reasonableness of the employers' actions.

[89] The unions argued that the Board (including its predecessors) has taken jurisdiction and assessed in previous cases whether an employer's management rights were exercised reasonably. They relied on Union of Canadian Correctional Officers - Syndicat des agents correctionnels - CSN v. Treasury Board (Correctional Service of Canada), 2007 PSLRB 120 ("UCCO"), Public Service Alliance of Canada v Treasury Board (Correctional Service of Canada), 2020 FPSLREB 99 ("PSAC 2020"), and Public Service Alliance of Canada v Treasury Board, 2022 FPSLREB 12 ("PSAC 2022"). In all those decisions, the issues were with respect to a provision of the applicable collective agreement.

[90] In UCCO, the issue involved the payment of remuneration under the collective agreement. In PSAC 2020, the Board made it clear at paragraph 123 that the issues raised in the policy grievance were with respect to the collective agreement:

> *[123] This policy grievance serves to efficiently bring to the Board a grievance involving the bargaining unit generally, as it involves a change to the generic work description applicable to all GL-COI-11s (OI) and a corresponding change in their pay. It is related to the application of the collective agreement, since article 58 of the collective agreement entitles employees to a complete and current statement of duties. A GL-COI-11's pay also includes the ITD, where applicable, as provided in the definition of "pay" under Appendix B.*

[91] At issue in *PSAC 2022* was whether the employer's guidance on "other leave with pay" resulted in an "unreasonable withholding of the benefit" that was specifically provided for in the collective agreement.

[92] The unions also refer to *Metropolitan Toronto (Municipality) v. C.U.P.E.*, 1990 CanLII 6974 ("*CUPE*") and *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34 ("*Irving Pulp & Paper, Ltd.*") for the proposition that a management rights clause gives rise to a substantive obligation of reasonableness.

[93] The management rights article in *CUPE* had two clauses. Clause 3.01 contained a list of functions that were recognized as being exclusive to the employer and specifically provided for the possibility of presenting a grievance where an employee had been "discharged or disciplined without reasonable cause". In clause 3.02, the employer agreed "that it will not exercise any of the functions set out in clause 3.01 in a manner inconsistent with the provisions of this Agreement." The collective agreements at issue in these policy grievances do not contain a clause similar to clause 3.02 of the collective agreement in that decision.

[94] In *Irving Pulp & Paper, Ltd.*, the Supreme Court confirmed that rules enacted by an employer as a vehicle for discipline must meet the requirement of reasonable cause (see paras. 22 to 26). In the telework grievances, the Alliance did not allege any disciplinary action.

[95] In this case, the requirement for employees to provide proof of their vaccination status is not covered in the relevant collective agreements. It involves only the exercise of the employers' management rights.

[96] The employers' objections to the TB telework grievance (filed December 10, 2021; Board file no. 569-02-45979) and the CRA telework grievance (filed March 10, 2022; Board file no. 569-34-45886) are allowed and the grievances are denied. The Board is without jurisdiction to adjudicate these grievances because they do not pertain to the interpretation or application of the respective collective agreements.

[97] I am reassured by the Board's recent decision in *Dupuis v. Canada Revenue Agency*, 2024 FPSLREB 164, in my conclusion that a grievance alleging that the employer's actions violated the management rights clause of the applicable collective agreements does not confer the Board with jurisdiction to review the reasonableness of the employer's actions. The management rights clause reviewed in that decision was one of the management rights clauses at issue in these grievances; the one between the CRA and Alliance. In addition, in *Dupuis*, one of the issues grieved was not dissimilar

to the issue here, involving the COVID-19 and vaccination attestation by employees. In that matter, the grievor took issue with having to disclose his vaccination status based on it being personal medical information. The Board found that it was without jurisdiction to review the exercise of the employer's management rights under clause 6.01 of the CRA and Alliance collective agreement as there was "no language in the collective agreement that would "clothe this board with jurisdiction", to review the reasonableness of the employer's actions."

[98] For the grievances that form the second group, they allege a violation of other clauses of the applicable collective agreements as opposed to only the management rights clause. That is, they identify the clause or clauses that they allege limit management rights. The Board will review these other clauses to determine whether the policy grievances are "in respect of the interpretation or application of the collective agreement" before deciding whether it has jurisdiction.

B. Alleged breach of the no-discrimination clauses; health and safety clauses; and joint consultation clauses

[99] When it comes to determining whether the Board has jurisdiction to hear a grievance in respect of the interpretation or application of the collective agreement, the question is whether "on its face" the grievance raises an issue that relates to the interpretation or application of the collective agreement (see *Association of Justice Counsel v. Canada (Attorney General)*, 2013 FC 806 at para. 50).

[100] In *PSAC v. TB (2008)*, when deciding whether the Board had jurisdiction over a policy grievance, the adjudicator stated at paragraphs 52, and 54 through 56, as follows:

> *[52] A policy grievance filed under subsection 220(1) of the* Act *must satisfy the following conditions:*
>
> > *• it must relate to the interpretation or application of the collective agreement or arbitral award;*
> >
> > *and*
> >
> > *• the issue must relate either to the bargaining agent or to the employer, or to the bargaining unit generally.*
>
> …
>
> *[54] Within its general right to manage, the employer is empowered to adopt and implement policies unilaterally. However, the discretion of the employer's action is limited by the provisions*

> *of the collective agreement. The compliance of employer policies within the collective agreement has generally been viewed as being adjudicable.*
>
> …
>
> *[55] Every policy adopted by an employer, whether incorporated into the collective agreement or not, is subject to adjudication if the dispute relating to the policy concerns its compliance or consistency with the collective agreement. In my view, this is precisely what section 220 of the* Act *contemplates.*
>
> *[56] In this case, the bargaining agent alleges that the policy introduced by the employer violates the non-discrimination clause (article 19) of the collective agreement. This is clearly a matter"…in respect of the interpretation or application of the collective agreement…," and the grievance, therefore, meets the first condition of subsection 220(1) of the* Act.

[101] In all the collective agreements, there is a clause that is identified in some manner as "no discrimination". What this clause states, in more or less almost the exact same wording, is that there shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or disciplinary action exercised or practised with respect to an employee by reason of age, race, creed, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, gender identity and expression, family status, marital status, mental or physical disability, membership or activity in the relevant bargaining agent, or conviction for which a pardon has been granted.

[102] *PSAC v. TB (2008)* was a decision dealing specifically with whether or not a policy grievance regarding the no discrimination clause of the relevant collective agreement was within the jurisdiction of the Board. The Board in that matter held that it clearly was. I see no reason to depart from the reasoning set out in that decision. In this case, the second group of grievances relate to the interpretation or application of the collective agreements because they allege a breach of the no discrimination; joint consultation; or health and safety clauses. As such, the employers' objection to jurisdiction to the policy grievances relating to those clauses is dismissed.

[103] Insofar as there are no health-and-safety clauses contained in the NRC and Institute collective agreements, there cannot be a breach of them.

C. Allegation that the employers' failures to amend their Policies in the spring of 2022 was disguised and unjust discipline

[104] What remains to be determined is whether the allegation of disguised and unjust discipline otherwise raises an issue in respect of the interpretation or application of the collective agreement. For the reasons set out in the following paragraphs under this heading, I find that it does not and that the Board is without jurisdiction.

[105] Each collective agreement has a definition section, and all of them define "employee". While the definitions may vary a little, in the end, an employee is an individual who is employed by one of the employers. To be more specific, the employee is a person and is, for the purpose of the collective agreement, a member of the bargaining unit for which one of the unions is the representative.

[106] It is trite to state that any of the employers has no disciplinary power over any of the unions. The relationship between them is contractual. Neither of the unions meets the definition of "employee".

[107] I have also set out in these reasons both the discipline standards and grievance procedure portions of the collective agreements at issue. While there is some difference in some of the wording, all of them contain some variation of the same essential components, which are as follows:

- an employee who is required to attend a meeting, hearing, or investigation that may entail discipline is entitled to a certain amount of notice and may request to have a bargaining agent representative present;
- the bargaining agent is to be notified as soon as possible if an employee is suspended or terminated;
- there is a limit to the amount of time in which an employer can maintain documents on the employee's personnel file if they are with respect to a disciplinary matter;
- the employer cannot use, in disciplinary proceedings, documents that it has not disclosed within a certain period to the employee; and
- the level at which the consultation shall take place.

[108] When the discipline clause is examined, all versions of it refer to procedural or process rights to an employee when the employer is either taking some action against

that employee, contemplating acting against an employee, or has taken action against an employee for behaviour by the employee that it deems was misconduct.

[109] It is also trite that an employer can discipline an employee for misconduct. If it does, it is open for the employee to present a grievance pursuant to the grievance procedure set out in the *Act*, which is often mirrored in collective agreements. These policy grievances are being advanced by the unions, not an individual employee. In short, what the unions suggest is that globally, the action of the employers was disciplinary against all affected employees.

[110] The discipline clause in the collective agreements does not speak about misconduct or specific acts by an employee that may be misconduct and that may be subject to discipline. It simply sets out some procedural steps in processes that involve discipline. There is no allegation in any of the material that related to the interpretation or application of any of the things that are set out in the discipline clause of the collective agreement.

[111] For example, one provision, which is found in one form or another in some of the collective agreements that have discipline clauses, speaks to what the employer undertakes to do when an employee is either suspended from duty or terminated in accordance with s. 12(1)(c) of the *FAA*. It states that the employer "undertakes" to notify the employee in writing of the reason for such suspension or termination in accordance with s. 12(1)(c) and to do it at the time of the suspension or termination. The unions made no allegation that their grievances were presented in respect of the interpretation or application of this type of clause of the relevant collective agreements.

[112] Clause 17.02 of the TB and Alliance collective agreement provides that an employee who is required to attend a disciplinary hearing or a meeting to render discipline is entitled to have, at their request, a representative of the Alliance attend the meeting with them, and where practicable, the employee shall receive a minimum of two days' notice of the meeting. The unions made no allegation that their grievances were presented in respect of the interpretation or application of this type of clause of the relevant collective agreements.

[113] I could go through all the discipline clauses, but the concept is applicable to all of them. They are not applicable to the fact situation put forward by either of the

unions in their grievances. None of the grievances concern the interpretation of application of any provisions related to LWOP. Without an allegation that relates to the interpretation or application of the respective collective agreements, the Board is without jurisdiction.

[114] Quite simply put, alleging that an employer's action of either placing or keeping employees who are unvaccinated or who choose not to disclose their vaccination status on LWOP indeterminately was disciplinary or disguised discipline is not something that relates to the interpretation or application of any discipline clause in any of the collective agreements at issue.

[115] As set out in the *Act* and as set out in the collective agreements at issue, an employee who feels aggrieved may present a grievance; however, it would be an individual grievance. Neither the *Act* nor the collective agreements provide for bargaining agents to file individual grievances. The wording of the collective agreements is simple and straightforward and not in any way confusing. The right to present individual grievances falls to each employee, not a bargaining agent. Since a bargaining agent cannot be disciplined, it cannot file an individual grievance alleging discipline. This is a right that accrues to an employee, and it is up to any individual employee to pursue that right.

D. Mootness, timeliness and remedy

[116] Based on the limited factual information provided, and the findings set out herein, it is difficult to determine whether or not the issues that are left are moot or untimely, and what, if any, remedies may be appropriate. As such, these issues shall be left to the Board hearing those portions of the grievances that remain, that have not been dismissed.

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

(The Order appears on the next page)

VI. Order

[118] The employers' objections to jurisdiction are allowed in part.

[119] The grievances in Board File Nos. 569-02-45979 and 569-34-45886 are denied.

[120] The allegations relating to discipline or disguised discipline in Board File Nos. 569-02-45980, and 46019 to 46024, 569-24-46535, 569-33-46066, 569-34-45887 and 569-09-45921 to 45924, are denied.

[121] The balance of the employers' objections are dismissed to the extent set out in these reasons.

December 3, 2025.

John G. Jaworski,
a panel of the Federal Public Sector
Labour Relations and Employment Board