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Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

KIRK RAYMOND

Grievor

and

DEPUTY HEAD
(Canada Border Services Agency)

Respondent

Indexed as
Raymond v. Deputy Head (Canada Border Services Agency)

In the matter of an individual grievance referred to adjudication

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

For the Grievor: Bijon Roy, counsel

For the Respondent: David Labelle, counsel

Heard at Windsor, Ontario,
August 12, 2025,
and on the basis of written submissions,
filed September 19 and October 7, 2025.

REASONS FOR DECISION

I. Overview

[1] This decision is about a preliminary objection made by the Canada Border Services Agency (CBSA) to this grievance. The decision turns on a narrow issue of statutory interpretation.

[2] The CBSA terminated the employment of Kirk Raymond ("the grievor") on July 25, 2023. The grievor presented a grievance against his termination of employment on July 26. The grievor also filed a complaint against his termination of employment with the Public Sector Integrity Commissioner (PSIC) on September 19 ("the reprisal complaint"). The CBSA argues that the reprisal complaint prevents the grievor from proceeding with his grievance.

[3] This case turns on the interpretation of s. 19.1(4) of the *Public Servants Disclosure Protection Act* (S.C. 2005, c. 46; *PSDPA*), which reads as follows:

Effect of filing	*Effet du dépôt*
19.1(4) *Subject to subsection 19.4(4), the filing of a complaint under subsection (1) precludes the complainant from commencing any procedure under any other Act of Parliament or collective agreement in respect of the measure alleged to constitute the reprisal.*	***19.1(4)*** *Sous réserve du paragraphe 19.4(4), s'il dépose une plainte au titre du paragraphe (1), le fonctionnaire ou l'ancien fonctionnaire ne peut intenter de recours au titre de toute autre loi fédérale ou de toute convention collective à l'égard des prétendues représailles.*

[4] The key words in that provision are "commencing any procedure". The grievor presented his grievance before filing his reprisal complaint. Therefore, he did not "commence" his grievance after filing his reprisal complaint, which means that the bar in s. 19.1(4) of the *PSDPA* does not apply to this case. In addition, referring his grievance to adjudication was not a fresh "procedure", as that term is meant in s. 19.1(4). As I will explain in greater detail, this interpretation is consistent with the plain wording of s. 19.1(4), the broader context of that statute, and the purpose of that provision.

[5] Therefore, I have dismissed the CBSA's preliminary objection to this grievance and have ordered that the hearing of this grievance continue.

II. Background to the termination of employment

[6] The grievor was employed by the CBSA for approximately 22 years until it terminated his employment on July 25, 2023. He was employed as an intelligence officer. As an intelligence officer, the grievor had certain authority delegated to him, making him what the parties refer to as a "Minister's Delegate".

[7] In brief, this termination of employment stemmed from a dispute over an immigration file. A decision was made by a Minister's Delegate in 2019 to proceed in a particular way with an immigration file. In 2022, CBSA management wanted to re-evaluate that file. The grievor strongly disagreed with the way that his management was dealing with this immigration file, and he told it that on several occasions. Ultimately, another Minister's Delegate made a fresh decision in 2022 that redetermined the original 2019 decision. The CBSA alleges that the grievor prosecuted his disagreement by entering a report in its Global Case Management System on July 11, 2022, which it says had the effect of making a redetermination of that second Minister's Delegate's decision. The CBSA says that this constituted misconduct that warranted the termination of the grievor's employment.

[8] The CBSA suspended the grievor with pay on May 16, 2023, and terminated his employment on July 25.

[9] The CBSA has not yet proven these allegations, which the grievor denies. I have also simplified the parties' dispute and have outlined only the items useful to understanding the legal issue raised in this preliminary objection.

III. Grievances presented

[10] The grievor presented a grievance against his termination of employment on July 26, 2023. The grievance is a typical termination grievance: it states that he grieves the decision to terminate his employment, reserves the right to rely on any pertinent part of the collective agreement, and seeks reinstatement and that he be made whole. The CBSA never provided its response to that grievance, and the grievor referred it to adjudication on June 13, 2024.

[11] The grievor presented a second grievance on August 20, 2023. His second grievance alleged that the CBSA discriminated against him because of his union activity. He did not refer that grievance to adjudication.

IV. Public Sector Integrity Commissioner complaint filed

[12] On September 19, 2023, the grievor filed the reprisal complaint under s. 19.1(2) of the *PSDPA*, alleging that his paid suspension and termination of his employment were a reprisal for having made protected disclosures of wrongdoing relating to three items. First, he stated that his discussions with management about the immigration file that ultimately led to his dismissal (that he says are dated July 15, July 22, October 5, and November 24, 2022) were protected disclosures and that he was terminated in retaliation for having made them. Second, he provided information to the Senior Office for Internal Disclosure at the CBSA on November 16, 2021, about events that could be loosely characterized as harassment. Third, the grievor participated in an investigation into wrongdoing by another manager by being interviewed as a witness in that investigation on April 28, 2022.

[13] On October 24, 2023, PSIC informed the grievor that the first set of disclosures was not a protected disclosure under the *PSDPA*; however, the second and third sets of disclosures were protected disclosures under the *PSDPA*. Therefore, PSIC decided to investigate his reprisal complaint.

[14] On January 30, 2024, PSIC invited the grievor to provide submissions about whether his reprisal complaint could be better addressed through the grievance process. On March 14, 2024, PSIC decided to suspend its investigation because of his grievance. It concluded that it would be able to know whether the substance of his allegations under the *PSDPA* had been considered on their merits only after the grievance proceedings had concluded.

[15] However, on November 21, 2024, PSIC reversed course after considering submissions prepared by the grievor. PSIC's letter reads in part as follows:

> …
>
> *To summarize your submissions of May 22, 2024, you oppose placing this investigation into abeyance, and among other arguments, you argue that subsection 19.3(2) of the Act does not apply to the above-mentioned grievances as they do not concern an anti-reprisal provision in a collective agreement or otherwise the reprisal allegations.*
>
> …
>
> *After careful review of your submissions and taking into account* Therrien v. Canada (Attorney General)*, it appears that you have*

> *not raised in these grievances allegations that your suspension and termination of employment were reprisal measures taken against you for having made a protected disclosure or cooperated in an investigation into a disclosure.*
>
> *In light of the foregoing, I have decided to resume the investigation in the present file and do not find it necessary to comment further on your submissions.*
>
> *During the course of this investigation, my Office will consider as an alleged protected disclosure the November 16, 2021 — disclosure made to a Senior Officer for Internal Disclosure at the Canada Border Services Agency, along with your April 28, 2022 alleged cooperation in an investigation into a disclosure under the Act. In accordance with my decision letter of October 24, 2023, the four alleged protected disclosures regarding Mr. Macri's involvement in a case, will not be considered as alleged protected disclosures.*
>
> …

[16] I have no information indicating that PSIC's investigation has made any progress in the past year.

V. The CBSA's objection under s. 208(2) of the *FPSLRA*

[17] Before addressing s. 19.1(4) of the *PSDPA*, I will address another ground raised by the CBSA. In oral argument, the CBSA argued that the Federal Public Sector Labour Relations and Employment Board ("the Board") has no jurisdiction to hear this grievance because of s. 208(2) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *FPSLRA*). That provision reads:

Limitation	*Réserve*
208(2) *An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the* Canadian Human Rights Act.	***208(2)*** *Le fonctionnaire ne peut présenter de grief individuel si un recours administratif de réparation lui est ouvert sous le régime d'une autre loi fédérale, à l'exception de la* Loi canadienne sur les droits de la personne.

[18] On its face, the complaints process in s. 19.1 of the *PSDPA* is an administrative procedure for redress provided under an Act of Parliament and, therefore, would prevent an employee from filing a grievance if they have, or could, file a reprisal complaint. However, s. 51(a) of the *PSDPA* is a complete answer to the CBSA's argument. It reads:

Saving	*Exception*
***51** Subject to subsections 19.1(4) and 21.8(4), nothing in this Act is to be construed as prohibiting*	***51** Sous réserve des paragraphes 19.1(4) et 21.8(4), la présente loi ne porte pas atteinte :*
***(a)** the presentation of an individual grievance under subsection 208(1) or section 238.24 of the* Federal Public Sector Labour Relations Act *….*	***a)** au droit du fonctionnaire de présenter un grief individuel en vertu du paragraphe 208(1) ou de l'article 238.24 de la* Loi sur les relations de travail dans le secteur public fédéral*;*

[19] That provision is clear on its face: nothing in the *PSDPA* prohibits the presentation of an individual grievance. The provision overrides or ousts the application of s. 208(2) of the *FPSLRA* to any complaint available under the *PSDPA*. The Board has already said this in *Therrien v. Deputy Head (Department of Employment and Social Development)*, 2019 FPSLREB 82 at para. 143:

> *[143] Having considered the scheme of the* Act *and the* PSDPA*, I am satisfied that s.51(a) of the* PSDPA *applies as an exception to s. 208(2) of the* Act *in this case. As such, the availability of an administrative procedure for redress under the* PSDPA *does not prevent me from hearing these grievances.*

[20] The CBSA acknowledged this in its written submissions, and I describe it only for the sake of completeness.

VI. Meaning of s. 19.1(4) of the *PSDPA*

[21] I already set out s. 19.1(4) of the *PSDPA* in the overview of this decision. It "… precludes the complainant from commencing any procedure under any other Act of Parliament or collective agreement in respect of the measure alleged to constitute the reprisal." As I also said in the overview, the key to this provision is the meaning of the phrase "commencing any procedure".

[22] Before I turn to that, I will deal quickly with a point argued by both parties that I have concluded is irrelevant at this stage: the arguments being advanced in the grievance. The CBSA points out that the grievor's reprisal complaint alleges that his termination was a reprisal for having made a protected disclosure, and it argues in writing that "… it is reasonable to assume that [the grievor] will seek to advance such

an argument at adjudication and put his theory of reprisal to the employer witnesses … when challenging the grounds for the termination." The grievor argued that his grievance does not allege reprisal.

[23] The arguments advanced in a grievance are not relevant to the application of s. 19.1(4) of the *PSDPA*. That subsection states that it "… precludes the complainant from commencing any procedure … **in respect of the measure alleged to constitute the reprisal**" [emphasis added]. The grievor alleges that the measures constituting his reprisal are his paid suspension and his termination. Subsection 19.1(4) does not link the bar on commencing a procedure to the arguments being made in that procedure; it links the bar to the measure constituting the reprisal instead. Since the grievance and reprisal complaint are against the same measure (i.e., his termination of employment), s. 19.1(4) of the *PSDPA* applies, regardless of whether the grievor raises the prospect of reprisal in his grievance.

[24] Any overlap between the grievance and the reprisal complaint is relevant only later when I decide whether to place this grievance in abeyance because of the reprisal complaint.

[25] As I have stated already, this is a matter of statutory interpretation. Statutory interpretation requires a tribunal to consider the trinity of text, context, and purpose. Statutory interpretation is anchored in the text of the provision, particularly where the words of a statute are precise. Additionally, the context and purpose of legislation is discovered primarily through its text; see *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at paras. 24, 28, and 70.

A. Text of s. 19.1(4) of the *PSDPA* and the meanings of "commencing" and "procedure"

[26] To begin with the text of s. 19.1(4), as I have said repeatedly it turns on the meaning of the phrase "commencing any procedure".

[27] The plain meaning of the word "commence" is to start something. The grievor referred to an older edition (5th edition, 1979) of *Black's Law Dictionary* on that point. The current edition (12th edition, 2024) does not have a definition of "commence", but it does define "commencement of an action" as "[t]he time at which judicial or administrative proceedings begin, typically with the filing of a formal complaint." This

is consistent with the *Merriam-Webster* online dictionary and the *Cambridge English Dictionary*, which both define "commence" to mean to begin something.

[28] The grievor presented his grievance on July 26, 2023, and filed his reprisal complaint on September 19. This means that he did not commence his grievance after filing his reprisal complaint, so the bar in s. 19.1(4) does not apply to his grievance.

[29] However, he did refer his grievance to adjudication on June 13, 2024, which was after he filed his reprisal complaint. Therefore, the question is whether the reference to adjudication is a "procedure" distinct from filing a grievance. I have concluded that it is not, and I agree with the grievor that a grievance and reference to adjudication is a single procedure.

[30] Arbitrators have generally treated grievance meetings and arbitration hearings as a single procedure and not as two separate processes. This issue has arisen when dealing with collective agreements that provide that union officials are paid for attending grievance meetings or conferring with employees about grievances. The issue in those cases is whether an arbitration hearing is part of the grievance process. Arbitrators have generally concluded that it is.

[31] The decision in *Re Ross Laboratories, Division of Abbott Laboratories, Ltd. and Retail, Wholesale and Department Store Union, Local 440*, 1981 CanLII 4415 (ON LA) is probably the most explicit on this point, and reads as follows:

> …
>
> *… The substance of the matter is that traditionally in the industrial relations context the first attempt to resolve disputes is done internally between union and management and where that is not successful, resort is had to third party intervention. The first part of the process is normally referred to as a grievance procedure and the second as an arbitration procedure,* ***but they each form an integral part of a single dispute resolution procedure****. In that regard this collective agreement is no different from others, apart from the fact that the grievance portion of the process contains fewer steps than one would traditionally expect.…*
>
> *… The grievance exists until such time as it is either settled in the course of the grievance procedure, or is ultimately determined by arbitration and we think, therefore, that the collective agreement language will extend to whatever time is reasonably necessary for the union properly to advise and confer with the employee until the arbitration process with respect to the grievance has been completed… It is, therefore, our view that under the language of*

> *art. 12.02 the* ***time spent conferring with employees over grievances extends until the grievance and arbitration procedure has been completed.***
>
> …
>
> [Emphasis added]

[32] This approach has been confirmed in more recent decisions, such as *Lynden International Logistics Co v. Teamsters Local Union No. 419*, 2015 CanLII 24419 (ON LA) at para. 19: "… 'handling grievances' includes the whole process of dealing with a grievance through the grievance and arbitration procedures." In addition, *Surrette Battery Co. Ltd. V. International Brotherhood of Electrical Workers (IBEW)*, 1999 CanLII 33387 (NS LA), the arbitration panel stated, "Arbitration is an essential part of the dispute resolution process. The legal authorities suggest a grievance does not terminate when an arbitration panel is founded, and that the grievance exists until the matter is ultimately concluded", either through a negotiated resolution or on the final determination of the matter by an arbitration award.

[33] This conclusion — that adjudication is not a separate procedure from a grievance — is also consistent with s. 214 of the *FPSLRA*. That section states that a decision taken at the final level of the grievance process is "… final and binding for all purposes of this Act …", but only if the grievance "… is not one that … may be referred to adjudication …". This is another indication that grievance and adjudication is a single procedure and not two separate procedures: if they were separate procedures, the final-level grievance decision would be "final and binding", regardless of whether an employee referred it to adjudication. Finally, s. 209(1) of the *FPSLRA* provides that an employee may only refer a grievance to adjudication after presenting it at the final level of the grievance process; this is another indication that grievance and adjudication is a single procedure.

B. Interpreting s. 19.1(4) of the *PSDPA* in context

[34] This plain meaning is consistent with the context of this provision.

[35] The issue before me is whether PSIC and the Board have concurrent jurisdiction over the grievor's termination of employment, as the grievor submits, or whether PSIC's jurisdiction is exclusive. The issue of whether a particular tribunal has exclusive or concurrent jurisdiction over a labour dispute has arisen countless times. The

Supreme Court of Canada in *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 set out the relevant principles as follows at paragraphs 30 to 32:

> *[30] … As I read this Court's jurisprudence, the unavoidable conclusion to be drawn is that mandatory dispute resolution clauses like those considered in* St. Anne Nackawic, Weber *and* Morin *signal a legislative intention to confer exclusive jurisdiction on the labour arbitrator (or other dispute resolution forum provided for under the agreement). This is not a judicial* **preference**, *but an* **interpretation** *of the mandate given to arbitrators by statute. The text and purpose of a mandatory dispute resolution clause remains unchanged, irrespective of the existence or nature of competing regimes, and its interpretation must therefore also remain consistent.*
>
> *[31] This conclusion is consistent with the concern expressed in* Vavilov *for predictability, finality and certainty in respect of jurisdictional lines between competing tribunals. Conditioning the effect of a mandatory dispute resolution clause on the nature of the competing forum would result in persistent jurisdictional confusion, leaving members of the public unsure "where to turn in order to resolve a dispute" (para. 64). Affirming that the same principles apply in every context avoids this state of affairs.*
>
> *[32] That said, it remains necessary to consider whether the competing statutory scheme demonstrates an intention to displace the arbitrator's exclusive jurisdiction. In some cases, it may enact a "complete code" that confers exclusive jurisdiction over certain kinds of disputes on a competing tribunal, as it did in* Regina Police *(see also J.-A. Pickel, "Statutory Tribunals and the Challenges of Managing Parallel Claims", in E. Shilton and K. Schucher, eds.,* One Law for All? Weber v Ontario Hydro and Canadian Labour Law: Essays in Memory of Bernie Adell *(2017), 175, at pp. 184-87). In other cases, the legislation may endow a competing tribunal with concurrent jurisdiction over disputes that would otherwise fall solely to the labour arbitrator for decision. And where the legislature so provides, courts must respect that intention.*
>
> [Emphasis in the original]

[36] To summarize, mandatory dispute-resolution clauses in labour relations statutes (such as s. 236(1) of the *FPSLRA*) mean what they say: labour tribunals have exclusive jurisdiction over labour disputes, and the concurrent or exclusive jurisdiction of another tribunal requires some statutory language to indicate such. Therefore, we must turn to the *PSDPA* to find out whether PSIC has exclusive jurisdiction.

[37] Subsection 19.1(4) of the *PSDPA* must be read in context with the rest of that Act, particularly ss. 19.3(1)(a), 19.3(2), and 19.4(1) and (4). They read as follows:

19.3 (1) *The Commissioner may refuse to deal with a complaint if he or she is of the opinion that*	***19.3 (1)*** *Le commissaire peut refuser de statuer sur une plainte s'il l'estime irrecevable pour un des motifs suivants :*
(a) *the subject-matter of the complaint has been adequately dealt with, or could more appropriately be dealt with, according to a procedure provided for under an Act of Parliament, other than this Act, or a collective agreement ….*	***a)*** *l'objet de la plainte a été instruit comme il se doit dans le cadre d'une procédure prévue par toute autre loi fédérale ou toute convention collective ou aurait avantage à l'être;*
(2) *The Commissioner may not deal with a complaint if a person or body acting under another Act of Parliament or a collective agreement is dealing with the subject-matter of the complaint other than as a law enforcement authority.*	***(2)*** *Il ne peut statuer sur la plainte si une personne ou un organisme — exception faite d'un organisme chargé de l'application de la loi — est saisi de l'objet de celle-ci au titre de toute autre loi fédérale ou de toute convention collective.*
…	[…]
19.4 (1) *The Commissioner must decide whether or not to deal with a complaint within 15 days after it is filed.*	***19.4 (1)*** *Le commissaire statue sur la recevabilité de la plainte dans les quinze jours suivant son dépôt.*
…	[…]
(4) *If the Commissioner decides not to deal with a complaint and sends the complainant a written notice setting out the reasons for that decision,*	***(4)*** *Dans le cas prévu au paragraphe (3) :*
(a) *subsection 19.1(4) ceases to apply; and*	***a)*** *le paragraphe 19.1(4) cesse de s'appliquer;*
(b) *the period of time that begins on the day on which the complaint was filed and ends on the day on which the notice is sent is not to be included in the calculation of any time the complainant has to avail himself or herself of any procedure under any other Act of Parliament or collective agreement in respect of the measure alleged to constitute the reprisal.*	***b)*** *la période qui commence le jour où la plainte a été déposée et qui se termine le jour où la décision motivée est envoyée au plaignant n'est pas prise en compte dans le calcul du délai dont dispose le plaignant pour intenter tout recours prévu par toute autre loi fédérale ou toute convention collective à l'égard des prétendues représailles.*

[38] These provisions, read alongside s. 19.1(4), set out a comprehensive and clear scheme for PSIC reprisal complaints.

[39] It is useful to recall that "reprisal" is a defined term that includes discipline, demotion, termination, or "… any measure that adversely affects the employment or working conditions of the public servant …" (see the *PSDPA*, s. 2(1)(d), the definition of "reprisal"). Anything that is a reprisal can also be grieved under s. 208(1)(b) of the *FPSLRA*, and some reprisal measures (including most discipline, demotions, and terminations) can be referred to adjudication under s. 209(1)(b), (c), or (d) of the *FPSLRA*. While the scope of employees protected by the *PSDPA* is broader than the *FPSLRA*, for all intents and purposes, there is considerable overlap between the two statutes. Therefore, there must be concurrent jurisdiction between the *PSDPA* and the *FPSLRA*; otherwise, the *PSDPA* would cover almost no one.

[40] The *PSDPA* sets out how to deal with that concurrent jurisdiction in ss. 19.3(1) and (2). If the grievance process has already been resolved or not yet started, s. 19.3(1) applies, and PSIC must decide whether to proceed despite either a resolved grievance or one that has not yet commenced. If a grievance has been filed but not yet resolved, s. 19.3(2) applies automatically and requires PSIC to dismiss the complaint (see *Therrien v. Canada (Attorney General)*, 2017 FCA 14 at para. 5).

[41] The bar on commencing new proceedings in s. 19.1(4) of the *PSDPA* must also be read in context with the 15-day period in which PSIC has to make its decision about whether to proceed and with the freeze on any limitation period to commence that proceeding that is set out in s. 19.4(4)(b). The bar on commencing a proceeding in s. 19.1(4) is meant to be either permanent, if PSIC takes the case, or short-lived, if it does not.

[42] Read in context with these other provisions of the *PSDPA*, s. 19.1(4) is designed to apply only to new proceedings commenced after the reprisal complaint has been filed. If the order is reversed (as in this case), then s. 19.3(2) applies instead and should get rid of the reprisal complaint to the extent that there is any overlap. The *PSDPA* has decided to deal with active and potential grievances differently, and s. 19.1(4) should be interpreted in a way that is consistent with and respects Parliament's choice of how to design this statutory regime.

C. Purpose of s. 19.1(4) of the *PSDPA*

[43] The CBSA argues that the purpose of s. 19.1(4) of the *PSDPA* is to prevent employees from engaging in simultaneous proceedings addressing the same events, and that purpose would be frustrated if the Board heard this grievance.

[44] My reasons about context also address the CBSA's arguments about the purpose of s. 19.1(4) of the *PSDPA*. The purpose of that provision, read alongside the other provisions that I quoted from earlier, is not to grant PSIC the exclusive jurisdiction to hear reprisal complaints. It is to buy PSIC the 15 days it needs under s. 19.4(1) to decide whether to deal with a complaint or leave it for the grievance process. Interpreting s. 19.1(4) as applying only to new proceedings does not frustrate that purpose, considering PSIC's ability to consider whether it must defer to the existing grievance under s. 19.3(2).

[45] For these reasons, I have concluded that s. 19.1(4) does not apply to this case.

VII. Whether the Board should exercise its discretion not to hear the case

[46] My conclusion that s. 19.1(4) of the *PSDPA* does not apply when an employee presents a grievance before filing a reprisal complaint with PSIC does not end this inquiry. As I said earlier, PSIC has concurrent jurisdiction over the grievor's termination of employment with the Board. The Supreme Court of Canada stated in *Horrocks* at para. 41 that "[w]here two tribunals have concurrent jurisdiction over a dispute, the decision-maker must consider whether to exercise its jurisdiction in the circumstances of a particular case." Therefore, I must decide whether to exercise my jurisdiction to hear this grievance in this case.

[47] While the CBSA did not make submissions explicitly about *Horrocks*, it submitted that the Board should place this grievance in abeyance (instead of dismissing it outright), pending the conclusion of the reprisal complaint. It had two main reasons that the Board should do this: the pith and substance of the reprisal complaint goes to the heart of the termination grievance, and proceeding with this grievance "risks the doubling of corrective measures" if the grievor is successful in his reprisal complaint. I disagree with both submissions.

[48] Before addressing these submissions, it is worth briefly outlining the process for a reprisal complaint. Reprisal complaints are filed with PSIC. PSIC must decide

whether to deal with the complaint, applying the provisions of the *PSDPA* that I set out earlier. If it decides to deal with the complaint, an investigator investigates the complaint and prepares a report for the Commissioner (s. 20.3). The Commissioner then decides whether the complaint warrants being referred to the Public Servants Disclosure Protection Tribunal ("the Tribunal") and, if so, files an application with the Tribunal. The Tribunal then holds a hearing and decides whether a reprisal occurred and if so, it may grant a remedy to the complainant. The remedies available to the Tribunal are set out in s. 21.7(1) of the *PSDPA* and are, in a termination case, reinstatement and back pay or compensation in lieu of reinstatement, compensation for expenses and financial losses, and up to $10 000 for pain and suffering.

[49] First, the pith and substance of the grievance and reprisal complaint are very different. PSIC has limited the reprisal complaint to the allegation that the grievor was terminated in reprisal for having made a protected disclosure on November 16, 2021, and being interviewed in an investigation on April 28, 2022. The grievance says nothing about those two events.

[50] I agree with the CBSA that the grievance and reprisal complaint are about the same measure — i.e., the termination of employment. However, that does not mean that their pith and substance are the same. The reprisal complaint is solely about whether the grievor's protected disclosures were a factor in the termination of his employment. This grievance, by contrast, is about the application of the test in *William Scott & Company Ltd. v. C.F.A.W., Local P-162*, 1976 CarswellBC 518, namely, has the CBSA shown that the grievor engaged in misconduct, and if so, has it shown that the termination of employment was an appropriate response, and if not, what is the appropriate penalty.

[51] PSIC examined the grievance and the reprisal complaint and concluded that the grievor has "… not raised in these grievances allegations that your suspension and termination of employment were reprisal measures taken against you for having made a protected disclosure or cooperated in an investigation into a disclosure." I share that conclusion. The grievance and reprisal complaint are about the termination of employment, but otherwise, they are about different things and involve a different legal test.

[52] Second, there is very little risk of a double recovery for the grievor in this case. The remedial power available in adjudication is set out in s. 228(2) of the *FPSLRA* to "… make the order that the adjudicator or the Board consider appropriate in the circumstances …". If, somehow, the reprisal complaint is decided before this grievance, I would certainly consider any remedy made by the Tribunal when deciding what is appropriate in this grievance, to avoid a double recovery. Similarly, s. 21.7(1) of the *PSDPA* states that the Tribunal **may** make various orders. Obviously, the Tribunal will consider any order of the Board before exercising its discretion about the appropriate remedy.

[53] Not only is there very little risk of a double recovery, but also, the remedies are different at the Board and the Tribunal. The Tribunal is capped at $10 000 for pain and suffering experienced as a result of a reprisal. By contrast, the Board can award aggravated or punitive damages if appropriate, with no cap. The Tribunal has no express power to order interest on back pay; the Board does (see s. 226(2)(c) of the *FPSLRA*).

[54] In this way, I have concluded that the pith and substance of the grievance is different from that of the reprisal complaint and that there is very little risk of a double recovery.

[55] Finally, I found it noteworthy that the Tribunal has heard only two cases on the merits since its inception in 2006: *Agnaou v. Public Prosecution Service of Canada,* 2019 PSDPT 2 (about a reprisal complaint made in 2011), and *Dunn v. Indigenous and Northern Affairs Canada*, 2017 PSDPT 3 (about a reprisal complaint made in 2012). There is simply no track record on which I could conclude that there is any likelihood that the grievor would obtain a remedy from the Tribunal — particularly a timely remedy — in his reprisal complaint.

[56] Therefore, I have decided not to exercise my discretion and place this case in abeyance. Instead, the case will continue on the dates discussed with and provided to the parties.

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

(The Order appears on the next page)

VIII. Order

[58] The CBSA's preliminary objection is dismissed.

December 17, 2025.

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