Federal Court  Cour fédérale

Date: 20120216

Docket: T-2049-09

Citation: 2012 FC 213

Ottawa, Ontario, February 16, 2012

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

IRENE J. BREMSAK

Applicant

and

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] Irene Bremsak (the applicant), a federal public servant, a self-represented litigant and a suspended member of The Professional Institute of the Public Service of Canada (the Institute or PIPS) seeks a judgment of this Court finding the Institute guilty of contempt for failing to implement an order of the Public Service Staff Relations Board (the Board) dated August 26, 2009 (the Board Order or Reinstatement Order) which, pursuant to a decision of that Board dated December 4, 2009, authorized the Board Order's filing with the Federal Court for enforcement

purposes as provided for under Rule 424 of the *Federal Courts Rules* (SOR/98-106) (the Rules). That filing was effected on December 8, 2009.

[2] The Board Order's central element is the reinstatement of the applicant's status as an elected official of the bargaining unit to all of her elected and appointed positions subject to the normal operation of the constitution and by-laws of the bargaining unit. It reads:

> [145] The bargaining agent is directed to restore the complainant's status as an elected official of the bargaining unit and to advise its members and officials, in the form described in paragraph 131 of this decision, that she has been reinstated to all of her elected and appointed positions subject to the normal operation of the constitution and by-laws of the bargaining agent.
>
> [Emphasis added]

[3] Irene Bremsak was never reinstated to any of the elected or appointed positions, all of whose terms of office have now expired and had so expired at the time of the contempt proceeding before this Court.

[4] The Institute says that it acted properly in not reinstating Ms. Bremsak to office because that obligation was, by the very terms of the Board Order itself, subject to the normal operation of the Institute's constitution and by-laws, which provide that a holder of an office in the Institute must be a member in good standing of that organization.

[5] Irene Bremsak no longer met the condition of being a member in good standing in the Institute since October 15, 2009 when she was suspended for a period of five years by the Executive Committee because two harassment complaints lodged against her or her husband (who acts as her

representative in this matter) by members of the Institute were found substantiated after investigation by an outside investigator appointed by the Institute.

[6] Irene Bremsak has challenged that decision. She did not avail herself of the avenues of appeal available within the Institute. She filed two complaints with the Board who has yet to decide the matter.

[7] This Court has always been concerned by the fact that it was called upon to rule on the defence put forward by the Institute when the validity of the defence was being considered by the Board. Upon reflection, this Court decided to delay rendering judgment until the Board had ruled on the validity of the Executive Committee's decision to immediately suspend the applicant from membership. Ms. Bremsak appealed my decision to the Federal Court of Appeal (FCA) and was supported by the Counsel for the Institute. The FCA ruled that I had erred in deferring my judgment (see *Bremsak v The Professional Institute of the Public Service of Canada*, 2011 FCA 258).

II. Background

(a) Prior Events

[8] All relevant events in this case gravitate around the Board's August 26, 2009 decision (the Reinstatement Decision). Ms. Bremsak was successful in her challenge to a new policy adopted by the Board of Directors of the Institute on March 19, 2008 (the Policy).

[9] The Policy provided for the automatic temporary suspension from Institute positions if an Institute member made an application or complaint about an Institute internal matter, to an outside body such as the Board.

[10] The applicant had made such a complaint to the Board on November 16, 2007. The Institute applied the Policy to the applicant; the result was that effective April 7, 2008 she was suspended from four elected offices in the Institute, one being President of the Greater Vancouver Branch Executive, and her appointed position as Shop Steward.

[11] On July 7, 2008, Ms. Bremsak filed a complaint with the Board submitting her suspension from office pursuant to the Policy violated paragraph 188(e)(ii) of the *Public Service Labour Relations Act* (SC 2003, c 22, s 2) (the *Act*). On August 26, 2009, the Board upheld her complaint making the following remedial order:

> [140] The bargaining agent's preliminary objection to the Board's jurisdiction over its internal affairs is denied.
>
> [141] The complaint dated November 16, 2007 is denied.
>
> [142] The complaint dated April 11, 2008 is allowed.
>
> [143] The bargaining agent is directed to rescind the application of its "Policy Relating to Members and Complaints to Outside Bodies" to the complainant.
>
> [144] The bargaining agent is directed to amend its "Policy Relating to Members and Complaints to Outside Bodies" to ensure that it complies with the Act.
>
> [145] The bargaining agent is directed to restore the complainant's status as an elected official of the bargaining unit and to advise its members and officials, in the form described in paragraph 131 of this decision, that she has been reinstated to all of her elected and

> appointed positions subject to the normal operation of the constitution and by-laws of the bargaining agent.
>
> [Emphasis added]

[12] Paragraphs 130, 131 and 132 express the view of Board member Steeves of the real harm to the Applicant and why he made the order that he did. I reproduce those paragraphs:

> I agree with the complainant that [the Institute's Policy] is contrary to subparagraph 188(*e*)(ii) of the *Act* for the bargaining agent to apply its policy against her and to suspend her from her elected positions. Therefore, I direct the bargaining agent to rescind the policy as it applies to the complainant. As mentioned above, I have found that the policy is consistent with the valid objective of protecting the bargaining agent from real harm to its legitimate and important interests. For this reason, I do not find that the policy as a whole is contrary to the *Act*. I have also found that the policy is overreaching in scope, as demonstrated by its application to the complainant in this case. The Board's previous decision in *Veillette* 2 reached the same conclusion and I also adopt the conclusion in that decision that the bargaining agent is directed to amend its policy to ensure it complies with the *Act*.
>
> Finally, I consider that the real harm in this case has to be the complainant's suspension from her elected positions and that the objective of any remedy must be, as much as practicable, to correct that harm and to restore her to the situation she was in before her suspension. Therefore, I direct that the suspensions of the complainant from elected and appointed offices be rescinded. Furthermore, the fact that the membership and officials of the bargaining agent were told of the complainant's suspension is significant, and I conclude that it is appropriate to direct that the membership and officials be told the suspensions have been rescinded. Unlike in *Veillette* 2, I find that I have the authority to intervene in the bargaining agent's internal affairs to fashion a remedy that relates to the matters set out in subparagraph 188(*e*)(ii) of the *Act*. These include penalties imposed by a bargaining agent because a person has made an application to the Board and, in this case, the penalty was suspension from office. This Order is not intended to override the normal operation of the constitution and by-laws of the bargaining agent in matters such as the usual expiry of the terms of elected or appointed offices.

For these reasons, I consider it necessary in the circumstances of this case to direct the bargaining agent to publish the following announcement in a prominent place in the next edition of one of its regular and significant publications to the membership (this may be an online announcement):

> **Announcement to all members and officials of the Institute**
>
> *On April 9, 2008, Ms. Irene Bremsak was temporarily suspended from her positions of Member-at-Large, SP Vancouver Sub-Group, President, Vancouver Branch; Member-at-Large, B.C./Yukon Regional Executive; and Sub-Group Coordinator, SP Group Executive. This suspension was a result of the Institute's "Policy Relating to Members and Complaints to Outside Bodies" and a complaint filed by Ms. Bremsak with the Public Service Labour Relations Board.*
>
> *The Public Service Labour Relations Board had recently directed, pursuant to subparagraph 188(e)(ii) and section 192 of the* Public Service Labour Relations Act, *that the Institute rescind this policy as it applies to the circumstances of Ms. Bermsak and to amend the policy to ensure that it complies with the* Public Service Labour Relations Act. *The Board also concluded that there may be different circumstances when it is appropriate to suspend a member from elected or appointed office. Finally, the Board directed that this announcement be made to members and officials of the Institute.*
>
> *Therefore, Ms. Bremsak is reinstated to all her elected and appointed positions effective immediately, subject to the normal operation of the Institute's by-laws.*

[Emphasis added]

(b) Subsequent Events

[13] On September 1, 2009, pursuant to section 52 of the *Act* and section 424 of the Rules the applicant requested the Board to certify its remedial order of August 26, 2009 with the Federal Court in order that it may be enforced. The Institute opposed the certification request.

[14] On September 2, 2009, the Institute sought judicial review of the Board's August 26, 2009 decision pursuant to section 28(1)(i) of the *Federal Courts Act* (RSC, 1985, c F-7) which says that review is by the FCA.

[15] On September 3, 2009, the Institute sought to stay Board's decision pending the determination by the FCA in a parallel case know as the *Veillette* case (*Professional Institute of the Public Service of Canada v Veillette*, 2009 FCA 256).

[16] On September 21, 2009, the Institute filed another application to stay the Board Order, this time until the FCA had made a decision on the Institute's challenge to the Board's August 26, 2009 decision.

(c) Justice Pelletier's decision dismissing the Institute's stay applications

[17] On October 28, 2009 Justice Pelletier of the FCA dismissed both stay applications. I quote paragraph 10 of his reasons which were prophetic:

> In any event, the balance of convenience strongly favours Ms. Bremsak. In the interval since she was suspended, the term of a number of posts to which she was elected has expired. If the order of the Board is stayed until the matter is finally resolved, all them may expire before she has the opportunity to resume them, assuming she is successful. At that point, the issue would be moot from Ms. Bremsak's point of view.
>
> [Emphasis added]

(d) The Institute's decision to suspend the applicant from membership

[18] As previously noted, on October 15, 2009, the Institute's Executive Committee considered two investigation reports into harassment allegations made against the applicant by five members of the Vancouver Branch Executive. Those reports concluded the complaints made were well founded. The Executive Committee sanctioned the applicant by suspending her immediately as a member of the Institute for a period of five years. It was on October 20, 2009 that Irene Bremsak was advised by the Institute's Executive Committee:

a. That on October 15, 2009 the Institute's Executive Committee considered the investigation reports of the outside investigator assigned by it to review a total of 19 allegations of harassment made against her and her husband by two groups of Institute members 16 of which were substantiated by the investigations. He noted that she had been provided with opportunity to participate in the investigations and had received a copy of the preliminary reports upon which she could comment.

b. The Executive Committee accepted the investigator's conclusions, that on the first set of complaints, her actions caused the complainants to feel bullied, intimidated and threatened and, in respect of the second set of complaints, that she was responsible for the unacceptable harassing behaviour of her spouse.

c. Her behaviour represents a pattern of threats and intimidation of members. It created a toxic environment and led otherwise committed members to question their involvement in the Institute. He said "this behaviour will not be condoned or tolerated by the Institute".

d. As a result, the Executive Committee decided she be suspended from membership in the Institute for a period of five (5) years effective immediately. This meant she could not be a candidate for office, to vote for officers or otherwise participate in the affairs of the Institute.

e. She could appeal by counter submission to the Board of Directors but the review of the Board would be limited to determining whether the Executive Committee had acted within its mandate in rendering its decision.

[19] Irene Bremsak made no appeal to the Board of Directors but challenged it before the Board by filing two complaints which have yet to be decided.

(e) The Board's certification order

[20] In the meantime, Ms. Bremsak continued her efforts to persuade the Board to file a certified copy of its August 26, 2009 Order with the Federal Court. As noted her first request was opposed by the Institute's outside counsel on September 22, 2009.

[21] Immediately after Justice Pelletier's October 28, 2009 decision, the applicant reiterated her certification request. It was again opposed by the Institute but on a new ground, namely, her suspension from membership had the result the filing of the Board's remedial order would serve no useful purpose.

[22] The Board received submissions on the merits of the issue; it released its decision on December 4, 2009. The Board's decision was written by Vice-Chairperson Marie-Josée Bédard, now a judge of this Court. She ordered the filing of the Board's Order. Her order reads:

Order

> 33 I declare that the respondent has complied with paragraph 144 of the Board decision in *Bremsak v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 103.
>
> 34 I further declare that the respondent has not complied with paragraph 143 and 145 of the Board decision in *Bremsak v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 103.
>
> 35 The Board will file its order in *Bremsak v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 103, in the Federal Court.
>
> [Emphasis added]

[23] In her reasons dated December 4, 2009, reported as 2009 PSLRB 159, the Vice-Chairperson indicated she had to answer two questions:

a. Has the Institute complied with the Board's decision which has four requirements?

b. If not, is there a good reason why the filing of the Board's decision would serve no useful purpose?

[24] On the first question, she found the Institute's Revised Policy complied with the PSLRB's Order but there was no compliance as to her reinstatement and announcement to the Membership.

[25] On the second question, Vice-Chairperson Bédard touched upon the Institute's argument the applicant's suspension from membership rendered certification without purpose. She wrote:

> 31 I will now turn to the third alleged reason put forward by the respondent for suggesting that filing the Board's decision in Federal Court would serve no purpose: the suspension of the applicant's membership. Does the respondent's decision to suspend the

> applicant's membership render the filing of the decision 2009 PSLRB 103 in the Federal Court will serve a useful purpose.
>
> 32 Essentially, the respondent is asserting that, given the suspension of the applicant's membership, the Board's decision reinstating her in her elected positions is no longer enforceable and that, therefore, there is no useful purpose in filing decision 2009 PSLRB 103 in the Federal Court.
>
> 33 The real question raised by the respondent's argument is whether the Board's decision can still be enforced, and that question, in my view, should be answered by the Federal Court.
>
> 34 Parliament, in section 52 of the *Act*, vested the Board with the authority to determine whether parties comply with its decisions, but it has not vested the Board with the authority to enforce a decision once it has determined that its decision has not been complied with. Parliament chose to vest the Federal Court with that authority and provided, in section 52, a mechanism to file the Board's decisions in the Federal Court. Once a decision has been filed in the Federal Court, it becomes an order of the Court and it may be enforced as such (subsection 52(2)). I consider that the question of whether a Board decision is enforceable is quite different from the question of whether a decision has been complied with: the former question should be determined by the body vested with the authority to deal with the matters related to the enforcement of an order. For the above reasons, I therefore conclude that the respondent has not convinced me that filing decision 2009 PSLRB 103 in Federal Court would surve [sic] no useful purpose.
>
> [Emphasis added]

(f) The Prothonotary's show cause order

[26] On December 8, 2009, the Board filed its certified Order of August 26, 2009 with the Federal Court. Irene Bremsak immediately initiated contempt proceedings under the Rules. Ms. Bremsak moved quickly the Court on the first step in a contempt proceeding under the Rules by filing an *ex parte* application pursuant to Rule 467 of the Rules for an order that the Institute appear before the Court for a contempt hearing. That application was considered by Prothonotary Lafrenière. He ordered Ms. Bremsak to serve the Institute with her application. He ordered written

submissions and heard the parties orally. Before setting out his decision, I should mention that he tried very hard to mediate this matter but without success. This Court also tried to mediate a settlement both prior and during the contempt hearing. A settlement could not be reached.

[27] On June 17, 2010 Prothonotary Lafrenière issued Reasons for Order and Order (cited 2010 FC 661) finding Ms. Bremsak had made out a *prima facie* case of contempt by the Institute. He made the following order:

> 1. A representative of the Institute shall appear before a judge at a place and time to be fixed by the Court to hear proof of the following acts, purportedly committed by the Institute, with which it is charged herein, and to be prepared to present any defence that it may have to the charges.
>
> The acts with which the Institute is charged is that the Institute breached the Order of this Court filed on December 8, 2009 by failing , in a timely manner, to restore the status of the Applicant as shop steward, and member on the British Columbia Yukon Regional Executive and SP Vancouver Sub-Group Executive, and to advise its members and officials, in the form described in paragraph 131 of this decision, that the Applicant has been reinstated to all of her elected and appointed positions subject to the normal operation of the constitution and by-laws of the bargaining agent.
>
> 2. Costs of the Applicant's motion are reserved to the judge presiding at the contempt hearing.
>
> [Emphasis added]

[28] On the issue of whether the Institute had complied with the Board's Reinstatement Order he and the impact of the positions having expired, he wrote:

> It is not disputed that the Institute has not complied with an order of the Public Service Labour Relations Board (Board) requiring the Institute to reinstate Ms. Bremsak's status as an elected official of the Institute. The Institute claims, however, that it could not comply with the reinstatement order because Ms. Bremsak's membership was suspended after the issuance of the Board order,

> thereby preventing Ms. Bremsak from holding any elected position in the Institute.
>
> [Emphasis added]

[29] On the reasons offered by the Institute for not having reinstated the applicant he expressed this view:

> The Institute offers two reasons for not reinstating Ms. Bremsak to all her elected and appointed positions, as directed by the Board decision dated August 26, 2009. First, at the time of the Court's Order, the terms of two of her positions had already expired. Secondly, at the time of the Court's Order, Ms. Bremsak had been suspended for five years from Institute membership as a result of her own misconduct in relation to proven allegations of harassment. According to the Institute, the suspension resulted from 16 well-founded complaints of harassment by Institute members against Ms. Bremsak, imposed following an independent investigation, and took effect on October 20, 2009. As a suspended member, Ms. Bremsak could not be reinstated.
>
> [Emphasis added]

[30] On the impact of term expiry he expressed this view:

> There is no precedent for reinstating a union officer into a position whose term has since expired: *Taylor v. Atkinson*, [1984] O.J. No. 399 (S.C.) at paras. 3 and 120. Moreover, the Board itself stated that this was not required. In the circumstances, I conclude that a *prima facie* case of contempt has not been made out with respect to reinstatement of Ms. Bremsak to the two positions whose terms had expired at the time the Board decision was filed with this Court.
>
> The Institute points out that the Board stated in its decision that its direction in relation to reinstatement was not intended to override the normal operation of the Institute's by-laws, which in this case prevents a suspended member from holding office within the Institute. The Institute submits that any ambiguity in the Board's Order should be determined in its favour. It claims that it proceeded on a reasonable interpretation of the order in question, which constitutes a complete answer to charges of contempt.

> According to the Institute, Ms. Bremsak's suspension, imposed in good faith, amounts to a lawful reason for not reinstating Ms. Bremsak. The Federal Court of Appeal itself, in dismissing the Institute's motions for a stay of the Board proceedings, noted that the Board's Order did not prevent the Institute from disciplining Ms. Bremsak should she subsequently engage in conduct worthy of such discipline.
>
> Although Ms. Bremsak's five year suspension may be viewed as a subsequent and intervening event which provided the Institute with a lawful excuse for not reinstating Ms. Bremsak, that is not a matter to be determined at the first stage of the contempt proceeding. An application for a contempt hearing is not the proper forum to consider challenges to the particularity of the order or to decide the merits of any defence available to the alleged contemnor.
>
> On the basis of the material before me, I am satisfied that a *prima facie* case that the Institute disobeyed this Court's order to reinstate Ms. Bremsak to her two positions whose terms had yet to expire on December 8, 2009.
>
> [Emphasis added]

[31] On the issue of the amendment to the Institute's Policy he ruled:

> In light of the finding by the Board on December 4, 2009, that the revised Policy is satisfactory and complies with decision dated August 26, 2009, I conclude that a *prima facie* case of contempt has not been made out as it relates to amendment of the Institute's policy.
>
> [Emphasis added]

[32] On the issue of the publication of the required announcement he wrote:

> At paragraph 145 of the Board's decision, the Institute was directed to advise its members and officials, in the form described in paragraph 131 of its decision, that Ms. Bremsak "has been reinstated to all of her elected and appointed positions" subject to the normal operation of the Institute's constitution and by-laws. At paragraph 132, the Board directed the Institute to publish an

> announcement in a prominent place in the next edition of one of its regular and significant publications to the membership.
>
> The Institute clearly did not comply with the Board's Order to publish the announcement in a prominent place "in the next edition of one of its regular and significant publications to the membership". The requirement to comply with the Board's Order crystallized on December 8, 2009, when the Board decision became a Court Order. Although an announcement was published by the Institute on December 22, 2009, there was a two week delay in doing so. The announcement was placed at the bottom of the Institute website over the winter holiday period, when few members would be accessing the site. It also included a disclaimer. On the evidence before me, I conclude that the placement of the announcement and disclaimer, combined with the unexplained delay in posting it on-line, did not comply with the terms and intent of the Court Order.
>
> The presence or absence of good faith on the part of the alleged contemnor is not relevant in determining whether or not there is a *prima facie* case of contempt. In the circumstances, I am satisfied that a *prima facie* of contempt has been made out as it relates to publication of the announcement.
>
> [Emphasis added]

[33] As previously noted, neither party appealed the Prothonotary's Order to the Federal Court pursuant to section 51 of the Rules.

III. The Statutory Scheme

[34] As noted by Vice-Chairperson Marie-Josée Bédard, now Justice Bédard, a colleague of this Court, "Parliament by section 52 of the Act vested the Board with the authority to determine whether the parties comply with its decisions but has not vested the Board with authority to enforce a decision once it has been determined that its decision has not been complied with." [Emphasis added]

[35] Vice-Chairperson Bédard, as she then was, further noted for enforcement purposes, Parliament in that section provided a mechanism to file the Board's decision in the Federal Court with effect that upon filing the Board's order becomes an order of the Court and may be enforced as such.

[36] Supporting section 52 of the *Act* is section 424 of the Rules, these two provisions read:

Section 52 of the *Act* reads:

Filing of Board's orders in Federal Court	**Dépôt à la Cour fédérale**
52. (1) The Board must, on the request in writing of any person or organization affected by any order of the Board, file a certified copy of the order, exclusive of the reasons for the order, in the Federal Court, unless, in its opinion, (a) there is no indication of failure or likelihood of failure to comply with the order; or (b) there is other good reason why the filing of the order in the Federal Court would serve no useful purpose.	52. (1) Sur demande écrite de la personne ou de l'organisation touchée, la Commission dépose à la Cour fédérale une copie certifiée conforme du dispositif de l'ordonnance sauf si, à son avis : a) soit rien ne laisse croire qu'elle n'a pas été exécutée ou ne le sera pas; b) soit, pour d'autres motifs valables, le dépôt ne serait d'aucune utilité.
Effect of filing	**Exécution des ordonnances**
(2) An order of the Board becomes an order of the Federal Court when a certified copy of the order is filed in that court, and it may subsequently be enforced as such.	(2) En vue de son exécution, l'ordonnance rendue par la Commission, dès le dépôt à la Cour fédérale de la copie certifiée conforme, est assimilée à une ordonnance rendue par celle-ci.
[Emphasis added]	[Notre soulignement]

Section 424 of the Rules reads:

Enforcement of order of tribunal	**Exécution de l'ordonnance d'un office fédéral**
424. (1) Where under an Act of Parliament the Court is authorized to enforce an order of a tribunal and no other procedure is required by or under that Act, the order may be enforced under this Part.	424. (1) Lorsque la Cour est autorisée, en vertu d'une loi fédérale, à poursuivre l'exécution forcée de l'ordonnance d'un office fédéral et qu'aucune autre procédure n'est prévue aux termes de cette loi ou de ses textes d'application, l'exécution forcée de l'ordonnance est assujettie à la présente partie.
Filing of order	**Dépôt de l'ordonnance**
(2) An order referred to in subsection (1) shall be filed together with a certificate from the tribunal, or an affidavit of a person authorized to file such an order, attesting to the authenticity of the order.	(2) L'ordonnance visée au paragraphe (1) est déposée avec un certificat de l'office fédéral ou un affidavit de la personne autorisée à la déposer, attestant l'authenticité de l'ordonnance.
[Emphasis added]	[Notre soulignement]

[37] Part 12 of the Rules is entitled Enforcement of Orders. A review of that Part reveals there are many different ways to enforce an order of an administrative tribunal. The applicant chose one of the most difficult paths – enforcement of the Board's remedial order by contempt proceedings.

[38] On October 26, 2011 the FCA issued its decision in *Canada (Human Rights Commission) v Warman*, 2011 FCA 297 (*Warman*). The context of that case is similar to what is before this Court: (1) a decision of an administrative tribunal, the Canadian Human Rights Tribunal (CHRT), issuing a cease and desist order against Mr. Tremaine; (2) a requirement for enforcement purposes, the CHRT's order be filed in the Federal Court (see section 57 of the *Canadian Human Rights Act*

(RSC, 1985, c H-6) (*CHRA*)); (3) a consideration of Rule 424 of the Rules; (4) an application by an interested person for a contempt order to sanction an alleged breach of the tribunal order. This Court alerted the parties to the *Warman* case and considered their comments.

[39] In my view *Warman* is important to the case at hand for a number of reasons. First, because section 57 of the *CHRA* is very similar to section 52 of the *Public Service Labour Relations Act* (*PSLRA*). *Warman* settled the issue whether the order being enforced by the Federal Court under the authority of section 57 of the *CHRA* is the order of the Tribunal or the Order of the Federal Court.

[40] Justice Marc Noël on behalf of the majority, ruled under the statutory scheme the only order being enforced was the Tribunal's order. He wrote the following:

> It is now settled law that decisions of lower Tribunals can be enforced on their own account through contempt proceedings because they, like decisions of the superior Courts, are considered by the legislator to be deserving of the respect which the contempt powers are intended to impose. This is what section 57 achieves with respect to orders made by the Tribunal under sections 53 and 54 of the Act.
>
> It follows that in the present case, there is only one order – the Tribunal order – which is enforced by the Federal Court pursuant to section 57 as though it was an order of that Court. This intent is best reflected by the French text according to which: "les ordonnances rendues en vertu des articles 53 et 54 […] peuvent […] être assimilées aux ordonnances rendues par celle-ci [*i.e.*, la Cour fédérale] ".
>
> The Federal Court Judge therefore erred when he held that the deliberate violation of the order of the Tribunal could not in itself give rise to a finding of contempt (reasons, para. 28).
>
> [Emphasis added]

[41] Second, Justice Noël tackled the issue whether the Federal Court judge could hold, within the specific context where an order of the Tribunal has been filed with the Federal Court for enforcement purposes, that the knowledge of the Tribunal order (rather than knowledge of its registration) could not give rise to a finding of contempt. In deciding this issue the FCA accepted the proposition a person cannot knowingly disobey an order unless he or she has knowledge of it. The Federal Court judge had held that knowledge of a "Court Order" was required. The FCA ruled, at paragraph 53:

> In my view, the only pre-requisite which can be derived from the Supreme Court's jurisprudence with respect to the second component of the civil contempt test is that there must be actual knowledge of a legally binding order such that it can be shown beyond a reasonable doubt that the order is being disobeyed deliberately or willfully by the alleged contemnor. This is what the evidence establishes in the present case.
>
> [Emphasis added]

[42] Thirdly, the FCA commented on the first requirement of the test for a finding of civil contempt, namely, the order that was breached must state clearly and unequivocally what should or should not be done.

[43] In *Warman*, the Tribunal's cease and desist order required Mr. Tremaine "cease the discriminatory practice of communicating telephonically…..". An argument was raised by Mr. Tremaine that "communicating telephonically" without further description was not sufficiently precise. The FCA rejected that contention, writing at paragraph 57:

> In this respect, I note, as the Federal Court Judge did, that the Tribunal order itself cannot be dissociated from the reasons given for its issuance (reasons, para 34). When regard is had to the reasons, it is clear that the respondent was prohibited from communicating on

> the Internet – (see for example, the decision of the Tribunal, para. 149).
>
> [Emphasis added]

IV. The Harassment Investigations

[44] In mid 2009, Irene Bremsak was the subject of two group harassment complaints by substantially the same people – five members of the Executive of the Vancouver Branch of the Institute.

[45] The first group complaint was sent to the office of the President of the Institute on April 2, 2009 pursuant to the Institute's Harassment Policy. The second complaint was filed on June 5, 2009 by a single Vancouver Branch Executive member but was expanded into a group complaint when other executive members raised similar complaints. The office of the President decided both complaints of harassment should be investigated. On April 27, 2009 and in June, 2009, North Shore Investigation Services (North Shore) was appointed by the Institute to conduct an investigation into the complaints in accordance with Terms and Reference which are in the record. I reproduce two of the main provisions of those terms of reference:

> "CONDUCT OF INVESTIGATION
>
> The investigator will have the discretion to conduct the investigation in such a manner as seems to the investigator to be appropriate in the circumstances, but at no time in a manner that is arbitrary, discriminatory or in bad faith. In addition, the investigator is expected to investigate the facts of the complaints and is not expected to make any recommendations.
>
> INVESTIGATION REPORT
>
> The investigator will submit a report detailing his findings to the PIPSC Executive Secretary and the General Counsel. A copy of the investigator's report will be provided to the Complainants and the

> Respondent, who are to be given the opportunity to comment on the investigator's reports."

[46] In respect of the first complaint the investigation milestones were:

a. The main allegations have at their source the applicant's view that her suspension was based on the illegal Policy and the members of the Vancouver Executive should support her against the Institute in this matter. The complaints against the applicant typically reached back to April 2008 shortly after Ms. Bremsak had been automatically suspended from her elected position as President of the Vancouver Branch aggravated by an e-mail sent by Ms. Bremsak on March 22, 2009 which added a warning about individual complainants being named in a new complaint against each of them if they failed to support her nomination as a delegate to the 2009 Regional Council.

b. Interviews were completed by June 16, 2009. A draft investigation report was prepared and is dated September 9, 2009 and was circulated for comment.

c. A final investigation report was prepared by North Shore and is dated October 13, 2009. Approximately 12 out of 15 allegations were found to have substantiated. It is to be noted by this Court a majority of the allegations were substantially similar and the finding of harassment based on the opinion of North Shore's opinion "that sufficient written evidence exists to suggest Irene J. Bremsak's action placed each complainant in an unwarranted position and one in which he felt bullied, intimidated and threatened".

[47] The second complaint investigated by North Shore involves the single event which occurred in a restaurant in Vancouver on June 3, 2009, at a joint meeting between the Vancouver Branch and the Canada Revenue Agency Branch. The common allegation is that of harassment by Ms. Bremsak's husband, John Lee (her representative) who threatened legal action if his wife was not immediately reinstated as President of the Vancouver Branch, a proposition in support of which Mr. Lee distributed the recent *Veillette* decision of the PSLRB, which he viewed as invalidating the Policy under which his wife had been suspended.

[48] The major milestones of this second investigation by North Shore are the following:

a. The appointment of North Shore in June 2009 to investigate the second complaint.

b. Interviews conducted in June 2009; telephone interviews completed last week of July and August 2, 2009. Difficulties in scheduling an interview with Ms. Bremsak; one fixed for August 19, 2009 cancelled by John Lee on August 17, 2009, in a dispute about reimbursement of lost time and expenses. Investigator advises the applicant on August 18, 2009 he has an obligation to all parties to complete the investigation on a timely basis and the interview scheduled for the 19th would not be rescheduled if she decided not to participate which was the case. Subsequent efforts on the Institute's part failed.

c. Draft investigative report without participation from Irene J. Bremsak is dated September 9, 2009. It contains no findings.

d. Final investigation report is dated October 14, 2009. Its principal considerations are:

i. The burden of proof rests with the complainants to demonstrate that harassment occurred. Although the evidence is not balanced by Irene J. Bremsak's response to the allegations, I am of the opinion that the complainants and witnesses have demonstrated John Lee's comments and actions at the joint Vancouver Branch and CRA Branch Executive meeting on June 3, 2009 were unwanted, uncalled for and inappropriate. More simply stated:

> I am of the opinion it was not reasonable for John Lee, who was neither a member, nor an invited guest, to disrupt the meeting by demanding and threatening the complainants. Thus, I believe John Lee's behaviour was totally inappropriate, threatening and offensive to each of the complainants.
>
> The harassment policy clearly states its applicability to both members and employees of PIPSC. As John Lee is neither a member, nor an employee, the matter of whether or not his behaviour falls within the purview of the Harassment Policy is left to the Institute to decide.
>
> The investigator said he was of the opinion, "when considering the recent history of the Respondent and the Vancouver Branch Executive, the balance of probability would strongly suggest the disruption of the joint Vancouver Branch and CRA Branch Executive meeting on June 3, 2009 was planned and orchestrated by both Irene Bremsak and John Lee. However, despite the strong speculation that Irene Bremsak was involved behind the scenes, the fact of the matter is that the Respondent (Irene Bremsak) was not outwardly involved in the incident. Irene Bremsak did nothing, said nothing, nor directed John Lee in any manner during the incident at the restaurant".

V. The position of the parties

[49] Each party's position is drawn from their written closing arguments filed after the contempt hearing.

(a) The Institute's position

[50] First, the Institute submits the contempt hearing before this Court raises the following issues:

a. Has Ms. Bremsak demonstrated beyond a reasonable doubt that the Institute is in contempt of the Court's Order dated December 8, 2009 by:

i. Failing to reinstate her into those positions whose term had not expired by the date of the Court's Order (December 8, 2009); and

ii. Failing to comply with the Court's Order in relation to the publication of the Board's prescribed announcement?

[51] According to the Institute, the contempt clock only began to tick when the Board's Order of August 26, 2009 was filed with the Federal Court on December 8, 2009 to become an Order of this Court.

[52] In support of this proposition, the Institute relies upon: (1) Rule 466(b) of the Rules which provides a party is guilty of contempt who "disobeys a process or order of the Court"; (2) the statement in the Prothonotary's reasons at the *prima facie* stage where he stated" based on Rule 466(b), "lack of compliance with the Board's Order is not the issue before the Court on this motion" adding, "the proper focus in the context of this motion for a contempt hearing is whether the

Institute disobeyed the Court's Order rather than the Board's Order"; (3) jurisprudence to the effect that "in matters relating to labour board orders contempt cannot occur prior to the filing of the labour relations board decision with the Court." [Emphasis added]

[53] In summary on this point the Institute's counsel writes:

> In summary, before a finding of contempt can be made in the case at bar, there must be proof beyond a reasonable doubt that the Institute breached the Court's Order filed on December 8th. The need to prove a breach of the Court's December 8th Order, rather than the Board's Order of August 26, 2009, is therefore fundamental to the contempt jurisdiction of this Court.
>
> [Emphasis added]

[54] Second, the Institute took issue with the Prothonotary's statement in this reasons "It was not disputed that the Institute has not complied with an order of the Board requiring the Institute to reinstate Ms. Bremsak's status as an elected official of the Institute." Counsel for the Institute submitted "This, however, was an incorrect starting point." He wrote the following:

> While the Institute admits that it has not reinstated Ms. Bremsak, it has taken the position throughout the contempt proceedings that its conduct has been in accordance with the Court's order, which expressly noted that the reinstatement order was "subject to the normal operation of the constitution and by-laws of the bargaining agent", which in turn, prevented the reinstatement of Ms. Bremsak following her five year suspension from membership in the Institute.
>
> [Emphasis added]

[55] Third, the Institute admits that on December 15, 2009, its Executive Committee met to determine how to comply with the Court Order (e.g. the Board's reinstatement order filed in the Federal Court on December 8, 2009). Institute's counsel writes:

> This was the first Executive Committee meeting following the December 8th Order of the Court. The Executive Committee determined that Ms. Bremsak could not be reinstated, as she had subsequently been suspended from Institute membership for five years commending October 20, 2009. The suspension resulted from numerous well-founded complaints of harassment that had been initiated by Institute members against Ms. Bremsak well before the Board's decision overturning Ms. Bremsak's suspension. An external investigator appointed by the Institute had himself recommended that these allegations be considered to be substantiated.
>
> [Emphasis added]

[56] Fourth, this Court can only look to the Prothonotary's show cause order to determine the parameters of this contempt hearing because it is this decision which sets out the precise charges against the Institute. The Institute's counsel wrote that according to the Prothonotary's show cause order there are only two charges that the Institute is required to defend itself against. He submitted this Court had no jurisdiction beyond the show cause order. Counsel for the Institute put it this way:

> The first charge is that, subsequent to December 8, 209, the Institute failed, in a timely manner, to restore the status of Ms. Bremsak as steward and member of the B.C. Yukon Regional Executive and SP Vancouver Sub-Group Executive.
>
> The Second charge is that the Institute failed to advise its members and officials, in the form described at paragraph 31 of the Board's decision, that Ms. Bremsak had been reinstated subject to the normal operation of the constitution and by-laws of the bargaining agent.
>
> [Emphasis added]

[57] Fifth, it was important, in reviewing the Prothonotary's show cause order to identify those aspects where he found no ground to refer to a contempt hearing namely: (1) that the Institute failed to amend its policy in accordance with the Court Order; (2) Ms. Bremsak was entitled to reinstatement of two elected positions which had expired by the time of the Court's December 8th

Order, the Prothonotary finding, as a matter of law, there was not precedent for reinstating a union officer into a position whose term had since expired, noting the Board itself stated in its August 26, 2009 decision it was not intended to override the ordinary expiry of the terms Mr. Bremsak had held. In other words, according to Institute's counsel, the Prothonotary ruled that applicant had not made out a *prima facie* case of contempt on this point with respect to her reinstatement into the two expired positions at the time the Board's decision was filed in the Federal Court.

[58] Sixth, the Institute addressed the required elements which must be established before a finding of contempt can be made. Institute counsel set out the following propositions:

a. In a contempt proceeding, the moving party must demonstrate, beyond a reasonable doubt, that:

   i. The terms of the Court's order in question are clear and unambiguous;

   ii. The alleged contemnor had proper notice of the terms of the order; and

   iii. There is clear proof that the terms of the order have been broken by the alleged contemnor.

b. In order to support a finding of contempt, the court must be satisfied beyond a reasonable doubt that the breach was deliberate, wilful and contumacious (a stubborn refusal to obey or comply).

c. Where a party takes a reasonable amount of time to determine "how to comply", rather than "whether to comply", there will be no contempt of court.

d. Evidence of impossibility to comply or due diligence may constitute a legitimate excuse for not complying with the terms of a Court's order. Where events have made it impossible to comply with the Court's Order, no contempt will be found, unless there is evidence that the party alleged to be in contempt manipulated those events for the purpose of avoiding the Court's Order.

e. Where the Court's Order is unclear or ambiguous any ambiguities must be resolved in favour of the alleged contemnor.

f. If the alleged contemnor has proceeded on a reasonable interpretation of the Order in question this constitutes a complete answer to charges of contempt.

g. Even if the party seeking contempt proposes an interpretation of the Court's Order that is equally supportable, this is not sufficient to warrant a finding of contempt. The alleged contemnor is to be provided the benefit of the doubt as to the question of proper interpretation of the Order, and if the Order is open to the interpretation proposed by the contemnor, then contempt cannot issue.

[59] Seventh, the Institute responded to the allegations made by Ms. Bremsak concerning the time period prior to the filing of the Board's Oder with the Court on December 8, 2009 "even though this period of time is irrelevant to the allegations of contempt of court." The Institute said it was obliged to address this period of time because the applicant attempted to rely on this period as evidence of the Institute's bad faith.

[60] Eight, he referred extensively to the transcript to demonstrate the Institute had complied with the Court Order on publication of the announcement.

(b) The applicant's position

[61] The applicant filed post-hearing written submissions and replied to those of counsel for the Institute. The following are the main points she advanced.

[62] First, she submitted, in civil contempt cases, it is sufficient to show the Court's intention was clear and the contemnor knowingly committed the prohibited act. It is not necessary to show the person charged with contempt was intentionally contumacious.

[63] Second, the time line on how the Orders were to be implemented is clear and unambiguous pointing to the prescribed announcement to the Institute's membership "Ms. Bremsak is reinstated to all her elected and appointed positions effective immediately." Her immediate reinstatement was clearly intended by the Board member in order to eliminate the real harm he perceived Ms. Bremsak suffered.

[64] Third, she submits the Institute attempted to avoid complying with the Court orders by imposing a five (5) year membership suspension. She argues this suspension is a self-imposed restriction (which is being challenged before the Board) and does not meet the requirement for the defence of impossibility since the Institute, at all times, had the authority and power to comply.

[65] Fourth, the Institute acted in bad faith since her 2008 suspension from elected and appointed offices, a suspension which was made pursuant to an illegal policy as so found by the Board in August 2009, a decision no longer under review by the FCA since the Institute discontinued its

judicial review application. The elements of bad faith advanced by Irene Bremsak are: (1) failure to comply with the Board's Reinstatement Order after it lost the two stay applications before Justice Pelletier, particularly in the context that Justice Trudel of the FCA had, on September 3, 2009, dismissed a stay application in the *Veillette* case; (2) failure to purge itself of contempt after Vice-Chairman Bédard's December 4, 2009 and the filing of the Board's remedial order; (3) opposing the filing of the Board's remedial order and failing to comply with the relevant orders which resulted in the expiry of the offices she had been elected to; and (4) issuing a disclaimer in the prescribed announcement by the Board which was, in fact, contrary to what the Board, in its remedial order, had stated should be done.

[66] Fifth, she invokes the following other legal principles applicable to contempt proceedings:

a. An order of the Court is considered valid until set aside by legal process and the ultimate invalidity of the order is no defence to a contempt citation relying on the Supreme Court of Canada in *Canada (Human Rights Commission) v Taylor*, [1990] 3 SCR 892 at pages 87 and 88, as well as *Canada (Human Rights Commission) v Canadian Liberty Net*, [1998] 1 SCR 626 at para 51. Other cases were also cited.

b. A party that finds itself unable to comply with an order or direction of the Court must act in advance to seek relief or must comply, relying on the Alberta Court of Queen's Bench decision in point in the *Point on the Bow Development Ltd. v William Kelly & Sons Plumbing Contractors Ltd.*, 2006 ABQB 775.

c. It is the duty of a person who received a Court order telling that person to do something to obey it and if in some doubt about what it means, that person must take

steps to clarify it citing the Alberta Court of Appeal's decision in *Ouellet v B.M.*, 2010 ABCA 240 at para 14.

d. Impossibility of compliance is not a defence to a charge of contempt if everything possible that could be done was not done citing *Canadian Private Copying Collective v Fuzion Technology Corp.*, 2009 FC 800 at paras 73 and 74.

[67] Sixth, she argues that the Prothonotary erred by not making a ruling on whether the Institute had complied with the Board's remedial order to rescind the application of its Policy to her.

[68] Seventh, she challenged the reliance the Prothonotary placed on the *Taylor v Atkinson* case for the proposition that the Court could not reinstate a person to a term which had expired. She pointed to the fact Mr. Taylor was restored to his union memberships and to his office as President and to Justice Trudel's decision in the *Veillette* case cited at 2009 FCA 256, a view endorsed by Justice Pelletier in this case.

VI. Analysis and conclusions

[69] The starting point for the analysis in this case is the *Act* because the triggering event from which all subsequent events relevant to this contempt hearing flow is the Board's decision of August 26, 2009, finding the Institute's 2008 temporary suspension of the applicant from elected or appointed offices within the Institute violated paragraph 188(e)(ii) of the *Act*.

[70] Member Steeves in reaching his decision reviewed the purpose of section 188 of the *Act* "a relatively recent addition to the Act introducing a new level of jurisdiction for the Board". He found at paragraph 60 examining a similar provision in the *Canada Labour Code*, RSC 1985, c L-2, the

section was intended "to protect and advance individual rights against the previously unfettered authority of the union organization". This statement must be balanced with the legislative recognition that the provisions do not abolish the right of a union to expel, suspend or discipline members. He wrote at page 61 of his decision:

> I also agree with another decision under the *Code* that pointed out the existence of section 185 of the *Code* does not mean that the CLRB is a final appeal for the internal decisions made by a bargaining agent (*James Carbin v. International Association of Machinists and Aerospace Workers* (1984)59 di 109). In my view, that proposition applies to section 188 of the *Act* as well. That is, the Board's role under paragraph 188(*c*) is to ensure that the bargaining agent's standards of discipline are free from discriminatory action. Similarly, the role of the Board under paragraph 188(*e*) is twofold. First, it is to ensure that there is no discrimination against an employee with respect to membership in an employee organization and, second, to enforce the prohibition against intimidation, coercion or the imposition of a financial "or other penalty" because a person has filed an application or complaint under Part 1 of the *Act* or a grievance under Part 2 of the *Act*.
>
> [Emphasis added]

[71] At paragraph 62, he concluded:

> Those provisions raise specific issues under the *Act* and they do not authorize the Board to act as the final arbitrator of all internal disputes within a bargaining agent. They do not, for example, authorize the Board to decide the scope of offences that may be the subject of discipline within the bargaining agent or that may deny membership in the bargaining agent (*Fred J. Solly*; cited in *Beaudet-Fortin v. Canadian Union of Postal Workers* (1997) 105 di 98, at para 86). Simply put, it is not for the Board to say what is a legitimate internal policy or rule or by-law of a bargaining agent except in narrow circumstances. These circumstances include where the policy, rule or by-law is itself discriminatory or its application has discriminatory consequences. Further, the *Act* prohibitsintimidation or coercion because a person has made an application, complaint or grievance under Parts 1 and 2 of the *Act*.
>
> [Emphasis added]

[72] Having found a violation of paragraph 188(e)(ii) of the *Act* when it suspended the applicant in 2008, Member Steeves searched to craft an appropriate remedy. He wrote at paragraph 125 of his reasons:

> With regards to remedy I note that paragraph *192(1)(f) of the Act* is applicable. It is as follows:
>
> > **192**.(1) If the Board determines that a complaint referred to in subsection 190(1) is well founded, the Board may make any order that it considers necessary in the circumstances against the party complained of, including any of the following orders:
> >
> > …
> >
> > (f) if an employee organization has failed to comply with paragraph 188(c), (d) or (e), an order requiring the employee organization to rescind any disciplinary action taken in respect of any em`loyee affected by the failure and pay compensation in an amount that is not more than, in the Board's opinion, any financial or other penalty imposed on the employee by the employee organization.
>
> [Emphasis added]

[73] As noted, he identified the real harm which Ms. Bremsak had suffered from her illegal suspension from office. I repeat his findings at paragraph 131 and 132 of his decision.

> Finally, I consider that the real harm in this case has to be the complainant's suspension from her elected positions and that the objective of any remedy must be, as much as practicable, to correct that harm and to restore her to the situation she was in before her suspension. Therefore, I direct that the suspensions of the complainant from elected and appointed offices be rescinded. Furthermore, the fact that the membership and officials of the bargaining agent were told of the complainant's suspension is significant, and I conclude that it is appropriate to direct that the membership and officials be told the suspensions have been rescinded. Unlike in *Veillette* 2, I find that I have the authority to intervene in the bargaining agent's internal affairs to fashion a remedy that relates to the matters set out in subparagraph 188(*e*)(ii) of the *Act*. These include penalties imposed by a bargaining agent because a person has made an application to the Board and, in this

> case, the penalty was suspension from office. This Order is not intended to override the normal operation of the constitution and by-laws of the bargaining agent in matters such as the usual expiry of the terms of elected or appointed offices.
>
> For these reasons, I consider it necessary in the circumstances of this case to direct the bargaining agent to publish the following announcement in a prominent place in the next edition of one of its regular and significant publications to the membership (this may be an online announcement):
>
> > **Announcement to all members and officials of the Institute**
> >
> > On April 9, 2008, Ms. Irene Bremsak was temporarily suspended from her positions of Member-at-Large, SP Vancouver Sub-Group, President, Vancouver Branch; Member-at-Large, B.C./Yukon Regional Executive; and Sub-Group Coordinator, SP Group Executive. This suspension was a result of the Institute's "Policy Relating to Members and Complaints to Outside Bodies" and a complaint filed by Ms. Bremsak with the Public Service Labour Relations Board.
> >
> > The Public Service Labour Relations Board has recently directed, pursuant to subparagraph 188(e)(ii) and section 192 of the *Public Service Labour Relations Act*, that the Institute rescind this policy as it applies to the circumstances of Ms. Bremsak and to amend the policy to ensure that it complies with the *Public Service Labour Relations Act*. The Board also concluded that there may be different circumstances when it is appropriate to suspend a member from elected or appointed office. Finally, the Board directed that this announcement be made to members and officials of the Institute.
> >
> > Therefore, Ms. Bremsak is reinstated to all her elected and appointed positions effective immediately, subject to the normal operation of the Institute's by-laws.

[74] The facts in this case are not in dispute. The applicant has not to this day been reinstated to the offices she previously held and the terms of those offices have now expired. The Institute does not challenge this fact, it pleads justification or impossibility to comply for the reason that,

it itself, decided to immediately suspend the applicant from membership at a time when two stay applications it had made were yet to be decided by the Federal Court of Appeal. A short period of time after her suspension from membership Justice Pelletier dismissed both stay applications and signaled to the Institute that the balance of convenience greatly favoured the applicant. He signaled the fact that since her suspension the term of a number of her offices had expired. The reason he refused the stay, in part, was his view "if the order the Board is stayed until the matter is finally resolved all of them may expire before she has an opportunity to resume them assuming she is successful and at that point the issue would be moot from her point of view. In short Justice Pelletier told the Institute to comply with the Board order. The Institute failed to do so; it takes the position before this Court that it did not breach the order because the reinstatement order was conditional – it was subject to the normal operations of the Institute's by-laws which permitted it to discipline the applicant which is what happened.

[75] I do not accept the Institute's position. The Board order, read in the context of the member's reasons, is clear and unambiguous. It ordered that the applicant be reinstated to the offices she held and this notwithstanding a finding in the same decision that her first complaint should be dismissed. Member Steeves wrote the following at paragraph 121 and 122 on that point:

> One aspect of the facts is nonetheless troubling in the context of this issue. The complainant attended meetings after she was suspended from office under the policy described above. She was able to speak at those meetings as a member, but she was not attending in the capacity of any of her elected offices. Unfortunately, her conduct at those meetings was disruptive to the point that other people had to intervene to maintain order. The complainant disputes that she was disruptive at these meetings but I prefer the evidence from the bargaining agent's witnesses on this point. The complainant also believe that she should have been

> treated the same as other delegates to these meetings in terms of reimbursement for expenses and she objects to being excluded from some parts of those meetings. I appreciate that she was angry and upset that she had been suspended from her elected positions. But suspended she was, and I can only conclude that her insistence on being treated as if she had not been suspended was unreasonable and disruptive behaviour.
>
> Despite finding that the complainant's behaviour was disruptive at the April 2008 meetings, I do not find that her behaviour created real harm to the bargaining agent. In the end, the meetings proceeded, the business of the meetings was completed and the affairs of the bargaining agent continued. It should not come as a surprise to members of the labour relations community that meetings of bargaining agents can sometimes be raucous and acrimonious. In this regards, I paraphrase as follows a finding in *Veillette* 2: "... the complainant's behaviour was certainly annoying and created discomfort for all but it did not put the organization at risk."

[76] Not only did the Board order state she should be reinstated, member Steeves prescribed the wording of the announcement which he directed should be published in a prominent place in the next edition of one of its regular and significant publications to the membership which may be an online announcement. The announcement member Steeves presented was:

> Therefore, Ms. Bremsak is reinstated to all her elected and appointed positions effective immediately, subject to the normal operation of the Institute's by-law.

[77] Member Steeves was also clear about the scope of the reinstatement order he made: it was not intended to overide the normal operation of the Institute's by-law in such matters at the usual expiry of the terms elected offices.

[78] In short, member Steeves' order is clear: reinstate Ms. Bremsak immediately in order that her term of offices not expire and the real harm she suffered not be repaired.

[79] The Institute was well aware of its obligations under the Board's order. That is why it sought to stay the operation of the Board's order at a time when its harassment investigation was well advanced; indeed draft reports were in circulation.

[80] In this context, it is unreasonable for the Institute to interpret the Board order as permitting a subsequent event such as a suspension of membership which would nullify the reinstatement. The terms of this order were clear. Reinstate now! If disciplinary issues arose later to warrant action, the Institute could do so at that time.

[81] I deal briefly with the suspension of membership justification. That matter is before the Board. At this stage of the process, am I obligated to assume without further inquiry, the validity of the decision as a block to a contempt finding. In my view, I am not and was so directed by the FCA; moreover both the Vice-Chairperson of the Board and the Prothonotary did not decide the issue but stated the question whether the suspension meant the Board's order could not be enforced was mine to decide. My view is that it can.

[82] These are serious questions raised about the validity of the suspension. I list the most evident ones:

1. the fact the suspension from membership was to take place immediately;
2. the fact that no hearing or submissions were received by the Executive Committee before the sanction was imposed;

3. the question whether the Executive Committee had the authority to suspend the membership of a member rather than the Board of Director's has been raised;
4. the substantive question as to the scope of the concept of harassment in the particular context of the facts alleged is in issue;
5. the proportionality of the sanction when it is considered that the allegations which were found well founded, were similar and made by five members of the VancouverBranch is a question mark;
6. the fact the applicant was not able to comment on the final investigation reports before decision was made is an issue.

[83] By raising these questions, I must not be taken as having decided the merits of the Institute's decision. The Institute had the right to investigate and to discipline Ms. Bremsak. The allegations against her and her husband were serious. The question is whether they amounted to harassment, and whether the penalty and its timing were reasonable and proportioned.

[84] In the circumstances on the evidence before me, I am not satisfied the Institute met its evidentiary burden of establishing lawful excuse.

[85] I make another point. A critical part of the Institute's case is when the contempt clock started ticking. Its view is that I only started ticking on December 8, 2009, when the Board's order was filed with the Federal Court. In my view, the Federal Court of Appeal's decision in *Warman* is contrary to this submission. There is only one order to be enforced here and that is the Board's order of August 26, 2009. It is true the Board's order was only filed on December 8, 2009. Its

filing was twice opposed by the Institute; once after the Federal Court of Appeal had denied the stay of the Board's order. In my view, the FCA did not hold that, in appropriate circumstances, a contempt finding could not be based on events prior to the filing. It depends on the circumstances one of which is the knowledge the Institute had of the Board order and its terms. I am satisfied the Institute well knew what the Board had ordered immediate reinstatement. In the circumstances of this case, I am of the view the facts giving rise to a contempt finding can be based on the terms of the very Board order which is sought to be enforced – immediate reinstatement.

[86] I am aware the Institute had the right to challenge the Board's decision, it latter discontinued the judicial review application. I do not question the reason's why I choose to do so. The fact remains that today the applicant is without a remedy and there is no legal challenge to the validity of the Board's decision and remedy.

[87] On the issue of the announcement, it is clear the Institute did not comply with the prescribed announcement. It had to change it to recognize the fact the applicant was never reinstated.

[88] One issue which caused this Court to pause is the fact the Prothonotary ruled the relevant order was the Court order which emanated from the Board order. The Prothonotary did not have the benefit of the FCA's decision in *Warman*. The Court, as previously noted, canvassed the parties on the point. The issue is a question of law which the Court can decide notwithstanding the terms of the Prothonotary's show cause order. I take the same view of his view that there was not precendent to reinstate an expired term. That may be so at common law but does not seem to be supported by

Taylor v Atkinson on the facts. Reinstatement is a statutory remedy (see paragraph 192(1)(e) of the *Act*.

[89] The question of the appropriate penalty arises. Rule 472 of the Rules reads:

Where a person is found to be in contempt, a judge may order that	Lorsqu'une personne est reconnue coupable d'outrage au tribunal, le juge peut ordonner :
(a) the person be imprisoned for a period of less than five years or until the person complies with the order;	a) qu'elle soit incarcérée pour une période de moins de cinq ans ou jusqu'à ce qu'elle se conforme à l'ordonnance;
(b) the person be imprisoned for a period of less than five years if the person fails to comply with the order;	b) qu'elle soit incarcérée pour une période de moins de cinq ans si elle ne se conforme pas à l'ordonnance;
(c) the person pay a fine;	c) qu'elle paie une amende;
(d) the person do or refrain from doing any act;	d) qu'elle accomplisse un acte ou s'abstienne de l'accomplir;
(e) in respect of a person referred to in rule 429, the person's property be sequestered; and	e) que les biens de la personne soient mis sous séquestre, dans le cas visé à la règle 429;
(f) the person pay costs.	f) qu'elle soit condamnée aux dépens.

[90] The Court is of the view that it has jurisdiction to order that the applicant be reinstated into the positions she held when originally suspended. As Justice Trudel states in *Veillette*, above, reinstatement is a normal remedy in cases such as this one. That is the relief ordered by the Board. The Institute was aware of the expiry issue; it has some responsibility in non-compliance with the fact the terms expired and the applicant has not yet been reinstated to date.

[91] I am very hesitant to order reinstatement as a remedy. The issue of her suspension from membership is still outstanding. I have found the allegations of harassment serous. In this context, reinstatement is not an appropriate remedy.

[92] I have always though the parties should resolve the matter between themselves particularly in the context I have described settlement is an option; it was achieved by the parties in the *Veillette* case and the settlement was sanctioned by Justice Mainville. This is not to suggest that the settlement in this case should be the case.

[93] If settlement is not achieved within six (6) weeks, the Court will ask the parties for submissions on an appropriate remedy. This Court remains seized of the matter.

[94] The facts of this case are not contested based on the evidence, I find that the Institute has not complied with the Board's remedial order. The three conditions for a finding of contempt are satisfied beyond a reasonable doubt. For the test of reasonable doubt I apply the Supreme Court of Canada's decision in *R v Lifchus*, [1997] 3 SCR 320 at page 335 and *R v W (D) [DW]*, [1991] 1 SCR 742.

JUDGMENT

THIS COURT'S JUDGMENT is that the Professional Institute of the Public Service of Canada is guilty of contempt of an Order of the Public Service Labour Relations Board dated August 26, 2009. The Court orders that the parties attempt to resolve the appropriate remedy to the contempt finding between themselves within six (6) weeks of this date, such settlement to be approved by this Court, failing which this Court, who remains seized of the matter, will call on the parties for submissions on the appropriate remedy. Costs reserved for later determination.

"François Lemieux"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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