



May 18, 2018

Reference No / No de référence

566-02-12604

Ms. Ursula Hendel
President
Association of Justice Counsel
300-2725 Queensview Drive
Ottawa ON K2B 0A1

BY HAND

Ms. Lyne Landriault
Senior Director
Employer Representation in Recourse
Labour Relations Operations
Treasury Board of Canada Secretariat
L'Esplanade Laurier
140 O'Connor
14th Floor Tower East
Ottawa, ON K1A 0R5

BY HAND

**Re: Federal Public Sector Labour Relations and Employment Board
Individual grievance referred to adjudication: 566-02-12604
Kristen Mohr
Office of the Director of Public Prosecutions**

Enclosed is a copy of the decision concerning the above-cited matter.

The decision is being translated into the other official language and will be provided upon request.

Please note that the official archival record of this decision will be located on the FPSLRB website at http://fpslreb-crtespf.gc.ca/decisions/intro_e.asp.

Yours truly,

Original signed by

Original signé par

Martine McFarlane

Case Management Officer
(613) 949-6416

Encl.

c.c.: C. Rootham ✓
M. Delorme
J. Alcock
R. Fader
T. Plante
Chief of Labour Relations – Office of the Director of Public Prosecutions
K. Mohr

MM/hb

Canada

Date: 20180518

File: 566-02-12604

Citation: 2018 FPSLREB 45

*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

KRISTEN MOHR

Grievor

and

**TREASURY BOARD
(Office of the Director of Public Prosecutions)**

Employer

Indexed as

Mohr v. Treasury Board (Office of the Director of Public Prosecutions)

In the matter of an individual grievance referred to adjudication

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

For the Grievor: Christopher C. Rootham, counsel

For the Employer: Joshua Alcock, counsel

Decided on the basis of written submissions,
filed December 4, 2017.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Kristen Mohr ("the grievor") is employed with the Public Prosecution Service of Canada ("PPSC") as a lawyer at the LP-02 group and level. On November 2, 2015, she filed a grievance against her employer's decision to prohibit her from participating in political activities during the 2015 federal election. On May 25, 2016, the grievance was referred to the Public Service Labour Relations and Employment Board for adjudication.

[2] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* to, respectively, the *Federal Public Sector Labour Relations and Employment Board Act* and the *Federal Public Sector Labour Relations Act*.

[3] The matter was scheduled for a hearing on December 27 and 28, 2017, in Ottawa, Ontario. On December 4, 2017, the parties entered into "Minutes of Settlement" ("MOS"), further to which they requested that the Board Member assigned to hear and determine the matter issue an order on the consent of the parties.

[4] At the time of the matters at issue in the grievance, the grievor's terms and conditions of employment were partially governed by a collective agreement between the employer and the Association of Justice Counsel ("the bargaining agent") for the Law Group (All Lawyers) that was signed on March 12, 2013, and that expired on May 9, 2014 ("the collective agreement").

[5] Article 5 of the collective agreement states as follows:

ARTICLE 5

MANAGEMENT RIGHTS

5.01 All the functions, rights, powers and authority which the Employer has not specifically abridged, delegated or modified by this Agreement are recognized by the Association as being retained by the Employer.

5.02 The Employer will act reasonably, fairly and in good faith in administering this Agreement.

...

[6] Article 6 of the collective agreement states as follows:

ARTICLE 6

RIGHTS OF LAWYERS

6.01 Nothing in this Agreement shall be construed as an abridgement or restriction of any lawyer's constitutional rights or of any right expressly conferred in an Act of the Parliament of Canada.

II. Agreed statement of facts and requested order from the Board

[7] As part of the MOS, the parties jointly submitted an agreed statement of facts and requested order, which states as follows:

...

1. *The grievor, Kristen Mohr, is a lawyer at the LP-02 group and level employed with the Public Prosecution Services [sic] of Canada ("PPSC").*
2. *The grievor's position is with the "travel team" at PPSC. This means that the majority of the grievor's workload involves carriage of prosecutions in jurisdictions other than the National Capital Region. The grievor has some files in the National Capital Region.*
3. *The grievor was interested in canvassing on behalf of a candidate in the 2015 federal election in a riding in the National Capital Region. As a canvasser, the grievor would be going door-to-door in her neighbourhood and asking the residents to vote for her candidate. She would only identify herself by her first name and would indicate that she was a volunteer for the candidate and political party. The grievor would not identify her profession or her last name. The grievor would also put up lawn signs in the neighbourhood, and would distribute pamphlets and other literature about her candidate.*
4. *On August 26, 2015, PPSC Corporate Counsel sent an e-mail to all staff at PPSC to remind them of their responsibilities regarding political activities. The e-mail contained a link to an online "Political Activities Self-Assessment Tool" for staff to use if they were considering non-candidacy political activities.*

5. *On that same day, the grievor used that online tool. The results were inconclusive. Therefore, she wrote to PPSC Corporate Counsel on August 27, 2015 to ask for advice. PPSC Corporate Counsel responded on September 15, 2015 to ask for more information. The grievor provided that information on September 16, 2015 - explaining that she wished to be a canvasser (as described above) and the nature of her prosecution duties (also as described above).*
6. *On September 18, 2015 the grievor confirmed, in response to the Corporate Counsel's question that the canvassing would take place outside of work hours.*
7. *On October 1, 2015 the Director of Public Prosecutions concluded that the grievor's canvassing presented "an apparent or potential conflict of interest."*
8. *The grievor complied with the Director of Public Prosecution's decision.*
9. *On October 2, 2015, the grievor grieved that decision. On her grievance presentation form, the grievor stated:*

I hereby grieve the Employer's decision prohibiting me from participating in political activities throughout the federal election period.

On January 6, 2017 the Federal Court of Appeal issued its decision in Taman v. Attorney General of Canada, 2017 FCA 1. In that decision, the Federal Court of Appeal quashed the decision of the Public Service Commission of Canada denying another PPSC prosecutor permission to be a candidate in the 2015 federal election, finding that the Commission had not justified its conclusion nor sufficiently articulated its reasoning.

AND WHEREAS the parties seek a decision of the Board granting the order set out below;

THE BOARD MAKES THE FOLLOWING ORDER:

1. *The grievance is allowed.*
2. *On the consent of the parties, I declare that the decision of the Director of Public Prosecutions dated October 1, 2015 preventing the grievor from canvassing on behalf of a political party in the manner proposed in paragraph 3 of the agreed statement of facts, violated article 5.02 of the collective agreement between the Employer and Bargaining Agent in that the decision was not reasonable.*

3. *On the consent of the parties, I also order that the Director of Public Prosecutions' letter dated October 1, 2015 be removed from the PPSC - Corporate Counsel file.*

[8] The agreed statement of facts sets out an incorrect date with respect to the grievance; it was filed on November 2, 2015, not October 2, 2015.

[9] On consent, the parties jointly requested that the facts and order as set out in the MOS be issued as an order of the Board.

III. Reasons

[10] I have reviewed and analyzed the content of the consent order and the documents on file. I conclude that the consent order proposed by the parties to the collective agreement provides for a clear and final resolution of the grievance and, as such, is in the best interests of labour relations. Therefore, I have no reason to not agree with the parties' request.

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

(The Order appears on the next page)

IV. Order

[12] The grievance is allowed.

[13] On the consent of the parties, I declare that the decision of the Director of Public Prosecutions dated October 1, 2015, preventing the grievor from canvassing on behalf of a political party in the manner proposed in paragraph 3 of the agreed statement of facts, violated article 5.02 of the collective agreement between the Employer and Bargaining Agent in that the decision was not reasonable.

[14] On the consent of the parties, I also order that the Director of Public Prosecutions' letter dated October 1, 2015, be removed from the PPSC - Corporate Counsel file.

May 18, 2018.

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