

SUPREME COURT OF NOVA SCOTIA

Citation: *Morse v. Nova Scotia Labour Board*, 2025 NSSC 406

Date: 20251217

Docket: Ken No. 539627

Registry: Kentville

Between:

Kendall Lloyd Morse

Applicant

v.

Nova Scotia Labour Board, Attorney General of Nova Scotia, Nova Scotia
Government and General Employees Union

Respondents

Judge: The Honourable Justice D. Timothy Gabriel

Heard: October 7, 2025, in Halifax, Nova Scotia

Counsel: Kendall Lloyd Morse, self-represented Applicant
Jillian Houlihan, for the Respondent Nova Scotia Government and
General Employees Union

By the Court:

[1] The Applicant in this matter is Kendall Lloyd Morse. Mr. Morse is seeking judicial review of the decision of Leigh Davis, who sat alone as vice chair of the Labour Board (“the Board”), and issued a decision on November 25, 2024 (“the Decision”). The Board dismissed the Applicant’s complaint, which had been initiated pursuant to s. 54A(3) of the *Trade Union Act* (“the Act”), and was to the effect that the Respondent, the Nova Scotia Government and General Employees Union (“NSGEU” or “the Union”) had breached the duty of fair representation (“DFR”) to which he was entitled (“the Complaint”).

[2] The Board found that it lacked jurisdiction to hear the Complaint. It came to this conclusion on the basis of s. 55(2) of the Act, which provides for a mandatory ninety day time limit within which a DFR complaint must be filed. Alternatively, the Board said that the fact that Mr. Morse had declined to access, or failed to exhaust, the Union’s internal appeal process, also meant that his Complaint did not meet the requirements of s. 55(3).

Factual background

[3] The Applicant filed a complaint in standard form (the Board’s Form 22) which is entitled “Duty of Fair Representation – Complaint Under Section 54A(3) of the *Trade Union Act*” (*Record*, Tab 20). It alleged that the Union and/or its representative, had conducted its representation of him in a manner that was arbitrary, discriminatory, and in bad faith.

[4] Under the section entitled “Your Complaint”, on page 3 of that document, Mr. Morse described the substance of his complaint. In a nutshell, he said it related to his deemed resignation on February 6, 2024, and the fact that the Union had ultimately decided not to grieve it. The Union had cancelled the grievance appeal hearing after the employer, NSYC (“the Employer”), had agreed to rescind the deemed resignation and reinstate Mr. Morse.

[5] On July 22, 2024, Mr. Morse filed the present complaint with the Board (*Record*, Tab 1). On July 26, 2024, by which date he had not returned to work, the Employer again deemed Mr. Morse to have resigned. Mr. Morse did not appeal the Union’s decision not to grieve the second deemed resignation (*Record*, Tab 20, p. 566).

[6] The Applicant explained to the Board, in his Complaint, that his “entire position” was predicated upon his disagreement with the decision of his employer to place him on unpaid leave on December 1, 2021, pursuant to the COVID-19 vaccine mandate:

My entire position for not immediately returning to the NS YC after being invited back in June 2023, and ultimately, the reason this Labour Board Complaint is being lodged now, is because I felt I had been violated by my employer, the NS YC, as well as not being adequately represented by my union of more than 15 years, when I was unlawfully mandated to inject a medical product that hadn't been thoroughly and rigorously safety tested on humans, had failed to stop transmission or infection, as well as causing numerous reported physical and neurological harms. (Appendix Q – The Case Against Mandatory Vaccines)

My original concerns and grievances back in 2021 fell on deaf ears. (Appendix R: Email to NSGEU on October 12, 2021)

(Record, Tab 1, p. 5)

[7] By way of remedies, Mr. Morse sought to have the Board direct the Union to file a grievance with respect to the February 6, 2024 deemed resignation, as well as remedies related to the COVID-19 vaccine mandate and the manner in which he came to be placed on unpaid leave in 2021:

...

- a. back pay for the time that I was placed on paid administrative leave of absence dating back to December 1, 2021
- b. a written apology from the employer, the NSYC, the PSC, the Executive Director of my department and my Director at the time) [sic] and the union (the whole executive and my ERO) for supporting a directive reasonably known to them to be ineffective and harmful thereby making their actions arbitrary, unreasonable, discriminatory and in bad faith
4. To be Made Whole
5. The Legal Opinion of Pink Larkin to NSGEU

(Record, Tab 1, p. 7)

[8] The latter remedy appears to be related to a portion of his Complaint detailing events which occurred in 2021: “Dr. Strang was acting *ultra vires* the HPA and not one person from the Union checked on this. Instead, the NSGEU relied on the legal opinion of Pink Larkin” (Record, Tab 1, p. 5).

[9] Following receipt of Mr. Morse's Complaint, the Board provided him with correspondence dated August 6, 2024 which raised concerns that his complaint was noncompliant with s. 55 of the Act. Among other things, that letter stated:

From an initial review of your complaint, it appears that your complaint is premature, in that you have not accessed a grievance or internal appeal process. The information included with your complaint shows that you were appealing your Union's decision not to file a grievance, and the Union subsequently reversed its decision, and accordingly cancelled the appeal process. The Employer had sent further correspondence to you regarding a return to work. There is no evidence that you have accessed a grievance and/or internal appeal process with respect to the present issue between you and your employer, the terms of your return to work. Accordingly, the Board does not currently have jurisdiction to consider your complaint at this time, as you have not exhausted your union's representation before bringing a complaint to the Board.

(*Record*, Tab 2, p. 214)

[10] Upon being invited to file further information if he disagreed with what had been expressed in the above correspondence, the Applicant replied on August 20, 2024, referenced the cancellation of the NSGEU's grievance appeal hearing, and elaborated that "[t]he aggrievement that I was planning to present encompassed all of the union's actions, dating back to 2021, regarding both the 'administrative leave' and eventual 'resignation'. Additionally, grieving the resignation alone did not resolve my grievance with the union." (*Record*, Tab 3, pp. 218-220).

[11] After receiving Mr. Morse's correspondence, the Board contacted the Union and invited it to make submissions on whether it felt that the Complaint was compliant with s. 55 of the Act (*Record*, Tab 4). In its response, the latter took the position that the Applicant's Complaint, as filed with the board July 22, 2024, was out of time, since in pith and substance, it really concerned the vaccine mandate and the Complainant's placement on unpaid leave in 2021.

[12] The Union went on to point out that it had advised Mr. Morse (on November 18, 2021) that it would not be grieving that particular matter, and it provided him with access to its internal grievance appeal process at that time. Mr. Morse did not avail himself of that process. Moreover, it cited the ninety day time limit prescribed by s. 55(2) of the Act, and its understanding of the Board's jurisprudence, and other case law, which was to the effect that this limit is mandatory and cannot be extended (*Record*, Tab 14, pp. 302 – 304).

[13] Alternatively, the Union took the position that the Complaint was premature and as a consequence was noncompliant with s. 55(3) of the Act. This was because, at the time that he had filed his Complaint, the Applicant had been reinstated by his employer and had been invited to return to work. The specifics of that employment were live issues in respect of which the Union continued to represent him.

[14] As earlier noted, relatively soon after filing his Complaint, his employer again deemed him to have resigned on July 26, 2024. The NSGEU thereupon advised Mr. Morse that it would not be grieving this (second) deemed resignation and discussed with him whether he wished to initiate an internal grievance appeal of that decision. The Applicant did not do so. Rather, he continued to rely upon this Complaint as filed with the Board on July 22, 2024.

[15] The Applicant made a reply submission. He did not disagree with the main thrust of what his Union had argued, rather, his submission was mainly in relation to the interpretation which had been ascribed to the salient facts. The following example suffices to convey the tenor of these submissions:

... Technically, according to Article 28.03, my second resignation would have occurred well before July 26th. The employer reinstated me on June 3rd, claiming my "Leave of Absence" was no longer approved. I was informed that I must return to the workplace on June 24th at 08:30 am (21 calendar days from receiving the letter from the Employer). I was either resigned effectively on June 24th *OR* 10 working days from that date, both of which were well before July 21st. My good faith belief was based on the timetable the employer set for me. There was no intention to return to work after my constructive dismissal of two years. That was made plain in the first attempt at resignation that was voided *ab initio* because of failing to follow even its own flawed legal logic. There has still been no explanation as to whether there would be an interruption in time accumulation during my brief "retirement" from my undescribed "unpaid leave"

On December 21, 2021 the Applicant communicated directly and with pertinent legal citation to the employer and the Employee Relations Officer of the NSGEU, that there was no *legal way* I could be mandated to inject experimental mRNA products (see attach) including the fact that the NSHPA gave the CHMO no power to levy the mandate.

(Record, Tab 16, p. 549)

[16] On November 26, 2024 the Board released its decision (Order LB-2435). The first two paragraphs are succinct:

- [1] This decision addresses whether Kendall Morse’s complaint, alleging that the Union failed in its duty of fair representation, satisfies the jurisdictional prerequisites outlined in the *Trade Union Act* (the “*Act*”). Specifically, the Board must determine whether the complaint was filed within the 90-day statutory period under Section 55 (2) and whether Mr. Morse satisfied the procedural requirements under the *Act*, including the exhaustion of the internal union remedies as required by Section 55(3).
- [2] For the reasons below, the Board finds that Kendall Morse’s complaint does not satisfy the statutory prerequisites outlined in the *Trade Union Act*, as it was filed outside the 90-day limitation period and failed to meet the procedural requirement of exhausting internal union remedies. Consequently, the complaint is dismissed for lack of jurisdiction.

(*Record*, Tab 20, pp. 563-569)

[17] The Board made many important findings of fact. For example, it first concluded that the pith and substance of Mr. Morse’s complaint was directed at his “placement on unpaid leave effective December 1, 2021, under a mandatory COVID- 19 vaccination policy” (*para. 4* – this and all subsequent references refer to the corresponding paragraph of the Decision, *Record*, Tab 20). It also accepted that the Applicant had asked to grieve the vaccine mandate and unpaid leave in 2021, that he had been advised by the Respondent Union that it would not do so, that he was informed of his option to appeal the Union’s decision to the NSGEU’s Grievance Appeal Committee on November 18, 2021, and he did not pursue this appeal. Neither was an unfair representation complaint filed by him with the Labour Board (*paras. 5-6*). The Union maintained its position not to grieve the Applicant’s placement on unpaid leave from the effective date of that leave.

[18] In mid-2023 and on February 6, 2024, the Applicant was invited to return to work by the Employer and Mr. Morse demurred, raising concerns about the lack of resolution regarding his unpaid leave status (*para. 7*). He explained his rationale:

... I cannot trust that my employer, the NSYC, will not attempt to coerce me again to take experimental products with no long-term safety data... I cannot risk returning to a place that cares so little for my personal health and safety...

... I’m owed an apology, restitution for the entire time I was placed on unpaid administrative leave (constructive dismissal) as well as restoration of my full seniority. Anything less would be considered an insult...

(*para. 9*)

[19] On February 13, 2024, the Employer wrote to Mr. Morse and confirmed that he was now deemed to have resigned (as opposed to being on unpaid leave) as of February 6, 2024.

[20] The Board referenced the fact that the Applicant continued to focus on issues related to the vaccination mandate and his 2021 unpaid leave. It further referenced the statement in his grievance appeal to the effect that his “biggest grievance has always been” placement on administrative leave (in 2021) as well as his continuing focus upon the fact that the direction to return to work in 2024 provided him with no remedy(ies) for what had happened then in 2021 (*paras. 9-12*)

[21] The Board also accepted the Union’s position with respect to its decision to cancel the grievance appeal hearing once the Employer had rescinded the deemed resignation. As the Board’s Vice-Chair explained:

[13] The Union subsequently identified procedural inconsistencies in the Employer’s actions surrounding the deemed resignation and secured Mr. Morse’s reinstatement in May 2024. In correspondence dated May 9, 2024, the Union informed Mr. Morse:

...the appeal hearing on the 21st will not be required...I am in discussions with the Employer and will have an update...that will result in one of two things; I will file a grievance on them having deemed you resigned, or they will reinstate your employment.

If I file the grievance then there would be no necessity to appeal me not filing a grievance and if they reinstate your employment they would have undone the action susceptible to grievance. As one or the other of these things will happen, either they reinstate you or I file grievance, then there won’t be any availability to of appeal.

[14] As the Employer reinstated Mr. Morse, the appeal did not proceed.

[15] Despite the reinstatement, Mr. Morse again declined to return to work, citing ongoing concerns related to the 2021 mandate. On July 22, 2024, Mr. Morse filed the present complaint with the Board.

[16] As a result of Mr. Morse’s decision not to return to work, on July 26, 2024, the Employer again deemed Mr. Morse to have resigned.

[17] The Union wrote to Mr. Morse on July 29, 2024, stating:

The Labour Board will likely ask you if you’ve availed yourself of any internal union appeal process. Your original appeal was cancelled because the employer reinstated your employment leaving

nothing to grieve. They have since sent you correspondence indicating they have deemed you resigned.

I sent you an e-mail on June 12th asking if you could send me a copy of the letter they sent reinstating your employment but I haven't heard from you since.

We are unfortunately in the same situation we were when they originally deemed you resigned back in February. I am also in the same position that I don't believe a grievance that they deemed you resigned would have merit and therefore would not be successful.

You still have an opportunity to appeal that decision and if you would like I can have an appeal letter sent and schedule an appeal committee meeting.

- [18] Mr. Morse did not pursue an appeal of the Union's decision not to grieve this second deemed resignation in July 2024.

(Record, Tab 20, pp. 565-566)

[22] Ultimately, on the issue of the duty of fair representation under s. 54A(3), the Board concluded:

- [26] Mr. Morse's complaint primarily challenges the Union's response to the Employer's COVID-19 vaccination policy and seeks remedies such as lost wages, seniority, and a formal apology related to the 2021 unpaid leave. The Union's subsequent communications in 2023 and 2024 reaffirmed their 2021 decision not to grieve without introducing a new actionable event. As no new actionable event arose to restart the limitation clock, Mr. Morse's July 22, 2024 complaint is untimely.

(Record, Tab 20, p. 568)

[23] As to the exhaustion of internal remedies under s. 55(3), the Board concluded:

- [27] Even if the complaint had been timely under Section 55(2), which the Board finds it was not, Section 55(3)(b) requires complainants to exhaust all internal union remedies before filing a complaint with the Board.
- [28] Mr. Morse did not appeal the Union's decision not to grieve the 2021 unpaid leave. He cannot revisit the decision now.
- [29] Although Mr. Morse initially appealed the Union's decision not to grieve his February 2024 deemed resignation, this appeal became unnecessary after the Union secured his reinstatement. The issue of the deemed resignation, the only live issue at that time, was rescinded by the Employer,

leaving nothing for the Union to grieve and, therefore, nothing for Mr. Morse to appeal.

(Record, Tab 20, p. 568)

Issues

1. Is “reasonableness” the standard of review for the impugned Decision of the Labour Board? and
2. If reasonableness is the applicable standard, has the Decision been shown to have to have been unreasonable?

Discussion

1. ***Is “reasonableness” the standard of review for the impugned Decision of the Labour Board?***

[24] Although the Applicant takes a contrary position, the Respondent Board is correct. The consideration process through which the Court determines the applicable standard of review begins with the presumption that reasonableness is the applicable standard in all cases, absent a clearly manifested legislative intent to the contrary. The limited exceptions to this general rule will be found in statutory appeals, general questions of law of central importance to the legal system as a whole, or questions primarily related to the jurisdictional boundaries between two or more administrative bodies (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, paras. 10 – 17).

[25] Our Court of Appeal has made this explicit (on many occasions) in relation to situations involving judicial review of decisions of the Labour Board, in which the latter interprets and applies the *Trade Union Act*. A couple of examples will suffice.

[26] First, in *Canadian Union of Public Employees, Local 3912 v. Nickerson*, 2017 NSCA 70, (pre-*Vavilov*) the Court explained:

[30] It is settled that reasonableness applies to a decision of the Labour Board that interpreted and applied the *Trade Union Act*: *Egg Films Inc. v. Nova Scotia (Labour Board)*, 2014 NSCA 33, leave to appeal refused [2014] S.C.C.A. No. 242, para. 24, and authorities there cited; *Labourers v. CanMar*, paras. 32-34. See also *Wilson v. Atomic Energy of Canada Ltd.*, [2016] 1 S.C.R. 770, paras. 15, 70, 71.

[31] In *Coates v. Nova Scotia (Labour Board)*, 2013 NSCA 52, paras. 39-45, this Court held that a Review Officer’s function under s. 56A of the *Trade Union*

Act similarly is subject to reasonableness. I note that s. 56A(7) of the *Trade Union Act* signals deference:

56A(7) A decision of a review officer under this Section is final and conclusive and not open to question or review.

[32] Reasonableness governs the Review Officer’s Decision in this case.

[27] Similarly, in *Murphy v. Unifor Local 4606*, 2023 NSCA 4, (post-*Vavilov*) the Court stated:

[19] [The hearing judge] chose the correct standard of review to apply. The question he had to answer was whether the review officer’s decision was reasonable. I agree with [him] that the decision was reasonable in light of the information provided by Ms. Murphy and the principles applicable to a complaint under s. 54A(3) of the *Trade Union Act*.

[28] Clearly, the applicable standard is reasonableness.

2. ***Has the Decision been shown to have been unreasonable?***

(i) *What makes a decision “reasonable” in this context?*

[29] The Court in *Vavilov* provides guidance as to what a reasonableness standard means, and how it is applied:

[68] Reasonableness review does not give administrative decision makers free rein in interpreting their enabling statutes, and therefore does not give them licence to enlarge their powers beyond what the legislature intended. Instead, it confirms that the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority. Even where the reasonableness standard is applied in reviewing a decision maker’s interpretation of its authority, precise or narrow statutory language will necessarily limit the number of *reasonable* interpretations open to the decision maker – perhaps limiting it one. Conversely, where the legislature has afforded a decision maker broad powers in general terms – and has provided no right of appeal to a court – the legislature’s intention that the decision maker have greater leeway in interpreting its enabling statute should be given effect. Without seeking to import the U.S. jurisprudence on this issue wholesale, we find that the following comments of the Supreme Court of the United States in *Arlington*, at p. 307, are apt:

The fox-in-the-henhouse syndrome is to be avoided not by establishing an arbitrary and undefinable category of agency decision-making that is accorded no deference, but by taking seriously, and applying rigorously, in all cases, statutory limits on agencies’ authority. Where [the legislature] has

established a clear line, the agency cannot go beyond it; and where [the legislature] has established an ambiguous line, the agency can go no further than the ambiguity will fairly allow. But in rigorously applying the latter rule, a court need not pause to puzzle over whether the interpretive question presented is “jurisdictional”

[30] And later on (also in *Vavilov*):

[75] We pause to note that our colleagues’ approach to reasonableness review [in dissent] is not fundamentally dissimilar to ours. Our colleagues emphasize that reviewing courts should respect administrative decision makers and their specialized expertise, should not ask how they themselves would have resolved an issue and should focus on whether the applicant has demonstrated that the decision is unreasonable: paras. 288, 289 and 291. We agree. As we have stated above, at para. 13, reasonableness review finds its starting point in judicial restraint and respects the distinct role of administrative decision makers. Moreover, as explained below, reasonableness review considers all relevant circumstances in order to determine whether the applicant has met their onus.

[emphasis added]

[31] The Respondent makes reference to the decision in *Paladin Security Group Limited v. Canadian Union of Public Employees, Local 5479*, 2023 NSCA 86:

[40] Reasonableness is a “reasons first” approach. The reviewing court “must begin its inquiry into the reasonableness of the decision by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion”. “Reasons first” means the reviewing court does not start with its view, *i.e.* it does not fashion its “own yardstick ... to measure what the administrator did”, and then proceed with “disguised correctness review”. (*Vavilov*, paras. 83-84. *Mason*, paras. 8, 58, 60 and 62-63).

[41] Both the administrative decision’s outcome and its reasoning matter. The outcome must be justifiable and, where reasons for the decision were required, the outcome must be “justified” by the reasons. The reviewing court “must consider only whether the decision made by the administrative decision maker – including both the rationale for the decision and the outcome to which it led – was reasonable”. (*Vavilov*, paras 86-87. *Mason*, paras. 58-59)

[42] Reasonableness is “a single standard that accounts for context”. Reviewing courts are to analyze the administrative decisions “in light of the history and context of the proceedings in which they were rendered”. The history and context may show that, after examination, an apparent shortcoming is not a failure of justification. History and context include the evidence, submissions, record, the policies and guidelines that informed the decision-maker’s work and past

decisions. Context also includes the administrative regime, the decision maker's institutional expertise, the degree of flexibility assigned to the decision maker by the governing statute and the extent to which the statute expects the decision maker to apply the purpose and policy underlying the legislation. (*Vavilov*, paras. 88-94, 97, 110; *Mason*, para. 61, 67, 70. See, for instance, *Labourers' International Union, Local 615 v. Grafton Developments Inc.*, 2023 NSCA 25, paras. 104-108, for how these factors affect the Nova Scotia Labour Board.)

[43] The “hallmarks of reasonableness” are “justification, transparency and intelligibility”. Consequently, a decision will be unreasonable where “the reasons read in conjunction with the record do not make it possible to understand the decision maker’s reasoning on a critical point”. (*Vavilov*, paras. 99 and 103; *Mason*, para. 60)

[44] More specifically, the reviewing court “must be able to trace the decision maker’s reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that ‘there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived’ [citation omitted]”. A question-begging gap on a critical point may impair intelligibility. Mere repetition of the statutory language, followed by a peremptory conclusion “will rarely assist a reviewing court” and is “no substitute for statements of fact, analysis, inference and judgment”. (*Vavilov*, para. 102; *Mason*, para. 65)

[45] A “minor misstep” or a “merely superficial or peripheral” shortcoming will not suffice to overturn an administrative decision. Rather, the flaw must be “sufficiently central or significant to render the decision unreasonable”. To determine whether there is a sufficiently central or significant flaw, the reviewing court asks whether the administrative decision “is based on an internally coherent and rational chain of analysis and ... is justified in relation to the facts and law that constrain the decision maker”. If yes, “[t]he reasonableness standard requires that a reviewing court defer to such a decision”. If no, the decision “fails to provide a transparent and intelligible justification for the result” and is unreasonable. (*Vavilov*, para. 84-85, 99, 100-107; *Mason*, paras. 8, 59, 64).

[46] *Vavilov*, paras. 105-135, and *Mason*, paras. 65-76 elaborated on the factors that “constrain the decision maker”, under this test, and their utility in a particular case: the governing statutory scheme, other statutory or common law, principles of statutory interpretation, evidence before the decision maker, submissions of the parties, past practices and decisions, and the impact of the decision on the affected individuals. The factors are “not a checklist” and will vary in application and significance from case to case (*Vavilov*, para. 106; *Mason*, para. 66).

[47] As to the remedy, when the administrative decision has “a fundamental gap or an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision”. The reviewing court may not “disregard the flawed basis for a decision and substitute its own justification for the outcome”. (*Vavilov*, para. 96). Rather,

the court should remit the matter to the decision maker. However, where “the interplay of text, context and purpose leaves room for a single reasonable interpretation ... it would serve no useful purpose in such a case to remit the interpretative question to the original decision maker”, and the reviewing court may end the matter (*Vavilov*, para. 124 and to the same effect para. 142; *Mason*, paras. 71, 120-22).

[48] This “robust” standard of reasonableness is meant to “strengthen a culture of justification in administrative decision-making” (*Vavilov*, para. 12; *Mason*, para. 63).

[emphasis added]

(ii) *Application to the case at bar*

[32] Section 54A(3) of the Act provides:

No trade union and no person acting on behalf of a trade union shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in a bargaining unit for which that trade union is the bargaining agent with respect to the employee’s rights under a collective agreement. 2005, c. 61, s. 7.

[33] In turn, s. 55(2) provides:

Subject to this Section, a complaint shall be made to the Board pursuant to subsection (1) not later than ninety days from the date on which the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.

[34] Finally, s. 55(3) provides:

Subject to subsection (4), no complaint shall be made to the Board under subsection (1) or under subsection (3) of Section 54A on the ground that a trade union or any person acting on behalf of a trade union has failed to comply with clause (f) or (g) of Section 54 or subsection (3) of Section 54A unless

- (a) the complainant has presented a grievance or appeal in accordance with any procedure
 - (i) that has been established by the trade union, and
 - (ii) to which the complainant has been given ready access;
- (b) the trade union
 - (i) has dealt with the grievance or appeal of the complainant in a manner unsatisfactory to him, or

- (ii) has not, within six months from the date on which the complainant first presented his grievance or appeal pursuant to clause (a), dealt with his grievance or appeal; and
- (c) the complaint is made to the Board not later than ninety days from the first day on which the complainant could, in accordance with clauses (a) and (b), make the complaint.

[35] Having reviewed the Decision in its entirety, I agree with the Respondent's position that the reasons given by the decision-maker were intelligible, logical and transparent. The rationality of the Decision was demonstrated by the Board's respect for the language of the Act and the jurisprudence both of this Court and that contained in prior decisions of the Board itself.

[36] The Court further agrees that the Board's finding that the timeline respecting Mr. Morse's complaint originated in November 2021 flows logically from its reasons. These reasons, among other things, reference Mr. Morse's own statements interspersed throughout his Complaint, and the remedies sought, which are almost entirely derived from the fact that, in 2021, he was placed on unpaid leave, coincident with the imposition of the vaccination mandate at that time, to which he took exception.

[37] As the aforementioned authorities have demonstrated, and as this Court has also determined (see for example, *Skinner v. Nova Scotia (Labour Board)*, 2020 NSSC 280, at para 43), in circumstances such as those which it found to exist in this case, the Board had no discretion to provide the Applicant with an extension of the ninety day time limit prescribed by s. 55.

[38] Moreover, the Board found (in the alternative) that the Applicant had not exhausted the internal appeal process provided by NSGEU before applying for relief to the Board, and it had ample basis upon which to do so. This, in and of itself, is an insurmountable impediment to its jurisdiction in this matter.

[39] The principle which underlies such a proposition was stated in an earlier decision of the Labour Board, namely, *Morris v. Nova Scotia Government and General Employees Union, Local 191*, 2024 NSLB 7. Therein, the Chair clearly explained that rationale as follows:

[15] As a matter of policy, this is because a union must be given an opportunity to represent the employee prior to being exposed to a complaint before the Board. This usually means pursuing a grievance against the employer on behalf of the

member. Grievance processes are understood to include a union member's responsibility to exhaust any internal union appeal processes. Once these are complete, a union member is given a finite opportunity to complain, providing certainty.

[40] Finally, there was a collateral issue raised by Mr. Morse (for the first time) in his brief to this Court. He complains that he has a “reasonable apprehension of bias (*Applicant's Brief*, paras. 87-100) on the part of the Board. Even if I were to conclude that, by addressing these concerns in his brief for the first time, that they are validly before the Court (they are not, see *Civil Procedure Rule 7.05 (4)(d)*), I would have concluded that there is no merit to such a contention. I will explain.

[41] The Applicant's allegations of bias and/or conflict of interest appear to be tripartite. First, he alleges that the Board and the Union “share of the material fact that all of them enforced mandates for the injection of experimental mRNA products to maintain employment” (*Brief*, para. 90). Second, he contends that the Respondent Board in “hearing the matter that would have involved the correctness of action surrounding the mandating of the mRNA products ... could reasonably be assumed to have legal implications for the Nova Scotia Labour Board as an employer following the same mandates” (para. 92). Finally, the Respondent contends that “employees of the Labour Board are also employees of the NSGEU” (para. 93), and that as a result of all of these things, the Board has a “direct material interest in its outcome”.

[42] Such contentions arise from a misunderstanding of the difference between persons involved in the adjudicative functions of the Labour Board, and its staff. As Justice Moir pointed out in *Coates v. Sharp*, 2012 NSSC 311, aff'd 2013 NSCA 52:

[84] To repeat, the Board is not like a hospital or a commercial corporation. It does not make decisions corporately. The decision-maker on withdrawal versus dismissal was the panel. It was not even constituted when a member of Board staff referred to the possibility of withdrawal.

[43] It is therefore difficult to disagree with the Board's submission:

82. The Labour Board necessarily renders decisions on matters involving the NSGEU pursuant to its statutory authority to administer the *Trade Union Act* as well as the *Civil Service Collective Bargaining Act*, RSNS 1989 ...suffice to say there are numerous such decisions. There is no basis whatsoever to conclude that the Board is not impartial in this or any other

matter involving the NSGEU will by virtue of union membership of any member of the Board staff.

(Respondents' Brief)

[44] There is nothing even remotely suggestive of bias on the part of the Board with respect to either the procedure adopted throughout, or in the logic driving the Decision itself. Certainly, nothing which would suffice to raise a reasonable apprehension of bias on the part of the decision-maker has been shown.

Conclusion

[45] Mr. Morse's application for judicial review is dismissed. The parties have thirty days within which to attempt to agree on costs, failing which I will accept brief submissions.

Gabriel, J.