



Public Service
Labour Relations and
Employment Board



Parliamentary Employment and Staff Relations Act Annual Report

APRIL 1, 2015 TO
MARCH 31, 2016

Canada 



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Public Service Labour Relations and Employment Board

April 1, 2015 to March 31, 2016

Chairperson: Catherine Ebbs

Vice-Chairpersons: David Paul Olsen
Margaret Shannon

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Nathalie Daigle
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Michael F. McNamara
Marie-Claire Perrault (as of July 13, 2015)
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Part-time Member: Dev A. Chankasingh (as of June 18, 2015)

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Message from the Chairperson

I am pleased to submit to Parliament the annual report on the administration of the *Parliamentary Employment and Staff Relations Act (PESRA)* for the period from April 1, 2015 to March 31, 2016.

The *Public Service Labour Relations and Employment Board Act*, which came into force on November 1, 2014, established the Public Service Labour Relations and Employment Board (PSLREB), merging the functions of the former Public Service Labour Relations Board and the Public Service Staffing Tribunal. The PSLREB continues to serve approximately 220 000 federal public sector employees as well as stakeholders of the two legacy tribunals. Matters being dealt with by those organizations continue to be heard by the PSLREB. Its legislative references remain the same and in addition to the *Public Service Labour Relations Act (PSLRA)* and the *Public Service Employment Act (PSEA)*, include the *PESRA*, the *Canadian Human Rights Act*, certain provisions of the *Canada Labour Code*, the *Yukon Education Labour Relations Act*, the *Education Staff Relations Act* and the *Yukon Public Service Staff Relations Act*.

The Administrative Tribunals Support Service of Canada (ATSSC), which was established on November 1, 2014 with the coming into force of the *Administrative Tribunals Support Service of Canada Act*, provides support services and facilities to the PSLREB as well as to 10 other administrative tribunals.

With its broadened public sector mandate, coalescing two business lines - labour relations and staffing - the PSLREB made strides in 2015-2016 to integrate its operations while preserving the integrity of its dual mandate. The PSLREB initiated discussion on ways to facilitate more effective case management for both staffing and labour relations matters.

During the past year, we were pleased to continue to engage our stakeholders in discussions about different approaches to managing the PSLREB's large and complex caseload, particularly in the area of labour relations, where the case inventory is high. I must extend my deep appreciation to the stakeholder representatives on the committee who provided input and feedback in several discussions to further the work in the area of public sector labour relations. I look forward to working with the client consultation committees on both staffing and labour relations matters, working together to improve our processes.

I would also like to thank the Board members for their significant contributions to the work of the Board and the very capable people who support the work of the PSLREB every day — the secretariat's staff and staff of the ATSSC.

Catherine Ebbs

Chairperson

Public Service Labour Relations and Employment Board



Introduction

In 1986, the Parliament of Canada passed the *Parliamentary Employment and Staff Relations Act (PESRA)*. Part I (“Staff Relations”) of the *PESRA* gives employees of Parliamentary institutions the right to form a union in order to negotiate collectively the conditions of their employment. Part I also gives these employees the right to lodge grievances concerning these conditions and, in certain cases, to refer these grievances to adjudication before a neutral third party. Part I is administered and applied by the PSLREB.

Under the *PESRA*, the PSLREB hears the following matters:

- applications by employee organizations for certification to become the bargaining agent representing employees;
- complaints of unfair labour practices;
- designations of persons employed in managerial and confidential capacities; and
- adjudications of disputes.

The PSLREB also adjudicates grievances concerning the interpretation and application of provisions of collective agreements, significant disciplinary action, and all forms of termination of employment except rejection on probation during initial appointments. A grievance concerning a demotion, an appointment or classification may also be referred to adjudication but will be determined not by a PSLREB member but by an external adjudicator chosen by the parties, which are equally responsible for the adjudicator’s compensation and expenses.

Through its dispute resolution services, the PSLREB also assists parties unable to resolve their disputes at the bargaining table. This assistance may lead to a resolution without the need for the dispute to be heard formally by the PSLREB or may limit the number of issues.

Unlike the *Public Service Labour Relations Act (PSLRA)*, the *PESRA* provides for only one means of resolving disputes if bargaining comes to a dead end: arbitration. In these situations, the PSLREB acts as an arbitration board; after hearing the parties, it renders a decision on the issues. These decisions form part of the collective agreements and apply to the parties and to employees.

Proposed Legislative Changes

Several proposed legislative changes either came into effect or were to be repealed in this fiscal year.

Votes and card checks

At the beginning of 2015-2016, the Board anticipated the coming into force of the *Employee Voting Rights Act*. This legislation requires secret ballots on all votes pertaining to labour relations certification issues, and it came into force on June 16, 2015.

However, in the latter half of the fiscal year, Bill C-4, *An Act to amend the Canada Labour Code, the PESRA, the PSLRA and the Income Tax Act*, was tabled before the 1st session of the 42nd Parliament to repeal the *Employee Voting Rights Act*. If Bill C-4 is passed, the procedures for bargaining agent certification and decertification linked to the former statutory model would be restored. In the former model, evidence of majority support from employees either by card check or by Board-ordered vote was required.

The Royal Canadian Mounted Police (RCMP) and the definition of an employee under the PSLRA

On January 16, 2015, the Supreme Court of Canada issued its reasons in *Mounted Police Association of Ontario v. Canada (Attorney General)*, [2015] 1 SCR 3. The Supreme Court found that the imposition of the RCMP Staff Relations Program was constitutionally invalid. It also stated that the exclusion of RCMP members and reservists from the application of the PSLRA was unconstitutional. The Court found that both infringed section 2(d) of the *Canadian Charter of Rights and Freedoms*, which guarantees freedom of association and protects a meaningful process of collective bargaining, providing employees with a choice of independence sufficient to enable them to determine and pursue collective interests. With respect to the unconstitutionality of the current definition of an employee under the PSLRA, the Court had suspended its declaration of invalidity until May 16, 2016.

For more information on the proposed legislative changes affecting the Board's mandate, please refer to the PSLREB Annual Report posted on its website at http://pslreb-crtefp.gc.ca/about/reports_e.asp.



Other Responsibilities

The bulk of the PSLREB's caseload falls within its responsibilities under the *PSLRA*, through which it administers the collective bargaining and grievance adjudication systems in the federal public service, and under the *PSEA*, the process for complaints related to internal appointments and lay-offs in the federal public service.

Under the *PSLRA* and the *PSEA*, the PSLREB provides two main services: adjudication and mediation. Its clients include approximately 220 000 federal public service employees covered by the *PSLRA* and by numerous collective agreements, employers and bargaining agents as well as employees excluded from bargaining units, those who are not represented or those who choose to represent themselves.

Under an agreement with the Yukon government, the PSLREB administers its collective bargaining and grievance adjudication systems, acting as the Yukon Teachers Labour Relations Board and the Yukon Public Service Labour Relations Board.

Proceedings before the Public Service Labour Relations and Employment Board

There are four types of adjudicable grievances under the *PESRA*:

- The first type arises from the application or interpretation of collective agreements or arbitral awards.
- The second type includes disciplinary actions resulting in suspension or financial penalty and to terminations of employment for reasons other than rejection on probation for an initial appointment.
- The third type includes grievances related to demotions of employees, to denials of appointment and to classification. They are heard and determined by an adjudicator who is selected by the parties and who is not a member of the PSLREB.

- The fourth type refers to grievances under section 70 of the *PESRA*, which requires that the PSLREB look into allegations that cannot be the subject of a grievance by an individual employee. Those situations occur when the employer or the bargaining agent seeks to enforce an obligation alleged to arise from a collective agreement or an arbitral award.

Under the *PESRA*, as of March 31, 2016, 34 new cases had been filed with the PSLREB. Of these, 23 were grievances, including two policy grievances, five were Board cases (four dealing with the review of decisions and one with the determination of membership) and six pertained to collective bargaining matters. The PSLREB disposed of eight cases during the period under review, all of which were settled or withdrawn. Thirty-eight (38) cases will be carried forward into 2016-2017, two of which involve the Protective Services Group, 23 the House of Commons, 4 the Library of Parliament and 9 the Senate.

Collective Bargaining

The PSLREB issued one arbitral award in 2015-2016. In that period, it also received one request for conciliation under section 40 of the *PESRA*. A conciliator was appointed, and the conciliation session is scheduled to take place in the next fiscal year. The PSLREB also received five requests to establish arbitration boards under section 50 of the *PESRA* during the reporting period. By the end of the fiscal year, four arbitration boards consisting of three members had been established. The hearings will be held in the next fiscal year.

See Table 2 for a list of grievances by type before the PSLREB from April 1, 2004 to March 31, 2016.

See Table 3 for a list of grievances and Board cases carried forward, received and completed between April 1, 2010 and March 31, 2016.



Mediation

When a file is referred to adjudication, the parties may choose to resolve the matter without resorting to a formal hearing. In such cases, they may proceed to mediation with the assistance of the Dispute Resolution Services (DRS) of the PSLREB secretariat. In 2015-2016, two mediation interventions were conducted by DRS. Parties reached a settlement in one of these two cases.

Reasons for Decision Issued

In 2015-2016, the PSLREB issued two formal decisions and five arbitral awards under the *PESRA*.

Tables

TABLE 1: Bargaining Units and Bargaining Agents under the *Parliamentary Employment and Staff Relations Act*, as of March 31, 2016

BARGAINING UNITS	BARGAINING AGENTS
House of Commons as Employer	
Technical Group	Unifor
Protective Services Group	House of Commons Security Services Employees Association
Procedural Clerks and Analysis and Reference	Professional Institute of the Public Service of Canada
Operational Group (except for part-time cleaners classified at the OP A level)	Public Service Alliance of Canada
Reporting Subgroup and Text Processing Subgroup in the Parliamentary Programs Group	Public Service Alliance of Canada
Postal Services Subgroup in the Administrative Support Group	Public Service Alliance of Canada
Scanners	Public Service Alliance of Canada
Senate of Canada as Employer	
Legislative Clerk Subgroup in the Administrative Support Group	Professional Institute of the Public Service of Canada
Protective Service Subgroup in the Operational Group	Senate Protective Service Employees Association
Operational Group (except for employees in the Protective Service Subgroup)	Public Service Alliance of Canada



BARGAINING UNITS	BARGAINING AGENTS
Library of Parliament as Employer	
Library Science (Reference) and Library Science (Cataloguing) Subgroups in the Research and Library Services Group	Public Service Alliance of Canada
Administrative and Support Group	Public Service Alliance of Canada
Library Technician Subgroup in the Research and Library Services Group	Public Service Alliance of Canada
Research Officer and Research Assistant Subgroups in the Research and Library Services Group	Canadian Association of Professional Employees

TABLE 2: Grievances Received, April 1, 2004, to March 31, 2016

Fiscal Year	Interpretations [para. 63(1)(a)]	Discipline [paras. 63(1)(b) & (c)]	Policy [Sec. 70]	Paras. 63(1) (d), (e) & (f)	Total
2015-2016	12	9	2	0	23
2014-2015	0	1	1	0	2
2013-2014	9	2	0	0	11
2012-2013	11	1	5	8	25
2011-2012	8	3	3	5	19
2010-2011	6	4	3	12	25
2009-2010	1	5	1	14	21
2008-2009	1	9	1	24	35
2007-2008	2	7	1	19	29
2006-2007	6	12	0	28	46
2005-2006	4	11	0	25	40
2004-2005	2	4	0	0	6
	62	68	17	135	282

TABLE 3: Grievances and Board Cases Carried Forward, Received and Completed, April 1, 2010 to March 31, 2016

Fiscal Year	Carried Forward	Received	Overall Total	Disposed of During the Year Total
2015-2016	12	34	46	8
2014-2015	15	2	17	6
2013-2014	22	12	34	18
2012-2013	15	13	28	6
2011-2012	15	7	22	7
2010-2011	44	12	56	14