





Public Service
Labour Relations and
Employment Board



Public Service Labour Relations and Employment Board 2015-2016 Annual Report

Canada 



**The Honourable Judy Foote MP
Minister of Public Services and Procurement
House of Commons
Ottawa, K1A 0A6**

Dear Minister,

It is my pleasure to transmit to you, pursuant to section 42 of the *Public Service Labour Relations and Employment Board Act*, the Annual Report of the Public Service Labour Relations and Employment Board, covering the period from April 1, 2015 to March 31, 2016, for submission to Parliament.

Yours sincerely,

**Catherine Ebbs
Chairperson**

Public Service Labour Relations and Employment Board

Chairperson: Catherine Ebbs

Vice-Chairpersons: David Paul Olsen
Margaret Shannon

Full-time Members: Merri Beattie
Stephan J. Bertrand
Nathalie Daigle
Bryan Gray (as of July 6, 2015)
Chantal Homier-Nehmé (as of September 8, 2015)
John G. Jaworski
Steven B. Katkin
Michael F. McNamara
Marie-Claire Perrault (as of July 13, 2015)
Catharine Rogers (until August 31, 2015)

Part-time Member: Dev A. Chankasingh (as of June 18, 2015)

Message from the Chairperson

I am pleased to present the 2015-2016 Annual Report of the Public Service Labour Relations and Employment Board (PSLREB). This report is the first to cover a complete fiscal year of operations of the new Board since its creation on November 1, 2014.

The *Public Service Labour Relations and Employment Board Act (PSLREBA)*, which came into force on November 1, 2014, established the Board, merging the functions of the former Public Service Labour Relations Board (PSLRB) and the Public Service Staffing Tribunal (PSST). The new Board 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. 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.

The PSLREB's commitment to resolving labour relations issues and staffing complaints in an impartial manner contributes to a productive and efficient workplace and helps to achieve greater harmony between the federal government, in its role as employer, and its employees and their bargaining agents.

As I said last year, the first five months of our operations as the PSLREB represented a time of practical beginnings. This last fiscal year was a period of navigating changes and using these as stepping stones to find innovative ways of doing our work.

This past year, the Board operated with a smaller complement of members than it did under the statutory framework of the two legacy tribunals. Furthermore, until mid-year, the Board did not have the complement of members permitted under the *PSLREBA*. At mid-year, three new full-time members and one part-time member were appointed. The *PSLREBA* provides for the appointment of one additional full-time member and any part-time members that the Governor in Council considers necessary to carry out the Board's powers, duties and functions. These future appointments could enhance the Board's capacity in delivering its mandate. While the volume of cases received in 2015-2016 was similar to previous years, the Board closed more than 1400 cases, which is about half the number of cases it normally closes in a year. This was likely due in part to the fact that additional members were appointed at approximately the

half-year mark and that only one part-time member was appointed at that time as well. This was also impacted by the organizational transition work.

However, the Board made considerable progress during a year of transition, both in the merger of the two legacy tribunals and in the adaptation to the ATSSC structure. The Board successfully continued to process many cases in the areas of labour relations and staffing during a period of change. There were many impactful cases dealing with terminations, appointment processes, unfair labour practices, human rights and interpretations of collective agreements, to name just a few.

In addition, the Board continued to enjoy success in reaching settlements before hearings through either mediation, settlement conferences or the withdrawal of the matter. It also administered requests for conciliation during this continued period of collective bargaining. The Board also planned for future legislative changes, such as those under the *Economic Action Plan 2013 Act, No. 2*, which are not yet in effect, by drafting regulations designed to address those provisions. The proposed regulations would also make necessary housekeeping changes with a view to more effective case management. In addition, at mid-year, the Board managed another change, which was the designation of a new portfolio minister.

With its broadened public sector mandate, coalescing two business lines — labour relations and staffing — the Board made strides in 2015-2016 to integrate its operations while preserving the integrity of its dual mandate. The Board 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 Board'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 Board every day — the secretariat's staff and staff of the ATSSC.

Catherine Ebbs
Chairperson
Public Service Labour Relations and Employment Board

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About Us

Our mandate

The Public Service Labour Relations and Employment Board (PSLREB) is an independent quasi-judicial statutory tribunal established by the *Public Service Labour Relations and Employment Board Act (PSLREBA)*, which came into force on November 1, 2014.

The PSLREB has jurisdiction over several areas of federal public sector labour relations and staffing complaints. Specifically, the Board does the following:

- administers the public sector collective bargaining and grievance adjudication systems for the federal public service, as well as for the institutions of Parliament;
- resolves complaints related to internal appointments, appointment revocations and lay-offs in the federal public service;
- resolves human rights issues in grievances and complaints that are already within its jurisdiction;
- resolves pay equity complaints in the federal public service;

- administers reprisal complaints of public servants under the *Canada Labour Code*; and
- administers the collective bargaining and grievance adjudication systems in its capacity as the Yukon Teachers Labour Relations Board and the Yukon Public Service Labour Relations Board.

The PSLREB provides two main services:

Adjudication – hearing and deciding grievances, labour relations complaints and other labour relations matters, as well as dealing with staffing complaints related to internal appointments, lay-offs, the implementation of corrective measures ordered by the Board and revocations of appointments; and

Mediation – helping parties reach collective agreements, manage their relations under collective agreements, and resolve labour relations and staffing disputes and complaints without resorting to a hearing.

The Board's commitment to resolving labour relations issues and staffing complaints in an impartial manner contributes to a productive and efficient workplace that ultimately benefits all Canadians through the smooth delivery of government programs and services.

Below is Figure 1 – *The Public Service Labour Relations and Employment Board*, which provides a visual representation of its activities.

Figure 1 – The Public Service Labour Relations and Employment Board

Mandate: The PSLREB administers the collective bargaining and grievance adjudication systems in the federal public service and in Parliament and resolves staffing complaints related to internal appointments, lay-offs and revocations of appointments in the federal public service.

Adjudication Services

Hear and decide grievances and labour relations and staffing complaints

Mediation Services

Help parties reach collective agreements, manage their relations under collective agreements, and resolve labour relations disputes and staffing complaints without resorting to a hearing



With adjudication, the Board achieves fair and timely resolution of cases through various forms of dispute resolution, including hearings, and develops a solid body of precedents that can be used to help resolve future cases.

With mediation, the Board achieves increased collaboration between labour and management, as well as greater interest and commitment in the resolution of disputes, and promotes a public service characterized by fair, transparent employment practices, respect for employees, effective dialogue, and recourse aimed at resolving appointment issues.

Collaborative engagement with stakeholders, through knowledge sharing to catalyze the resolution of cases before the Board

Our responsibilities

The PSLREB deals with matters that were previously dealt with by the former Public Service Labour Relations Board and the Public Service Staffing Tribunal. Those tribunals were merged to form the PSLREB on November 1, 2014, under the *Public Service Labour Relations Act (PSLRA)* and the *Public Service Employment Act (PSEA)*. A key objective of the *PSLREBA* is to steward the work of the two legacy tribunals and to provide new directions when necessary.

The Board’s legislative references encompass a broad range of employment and labour relations issues within the public service:

- the *Public Service Labour Relations Act*, Parts I, II and III;
- the *Public Service Employment Act*, in relation to staffing complaints pertaining to appointments, revocations and lay-offs;

- the *Parliamentary Employment and Staff Relations Act (PESRA)*¹, for the institutions of Parliament (the House of Commons, the Senate and the Library of Parliament), the Office of the Conflict of Interest and Ethics Commissioner, and the Office of the Senate Ethics Officer;
- the *Canadian Human Rights Act (CHRA)*, in relation to *PSLRA* grievances and *PSEA* appointments, along with revocation and lay-off complaints;
- certain provisions of the *Canada Labour Code (CLC)* related to workplace health and safety and reprisal;
- the *Yukon Education Labour Relations Act*, the *Education Staff Relations Act* and the *Yukon Public Service Staff Relations Act*. (When performing the functions pertaining to the Yukon, the Board acts as the Yukon Teachers Labour Relations Board and the Yukon Public Service Labour Relations Board, respectively²); and
- the *Public Sector Equitable Compensation Act*, created as a result of *Budget Implementation Act, 2009 (BIA, 2009)*, is not yet in force; under section 396 of *the BIA, 2009*, and section 441 of *Economic Action Plan 2013 Act, No. 2*, the Board is responsible for dealing with existing pay equity complaints for the public service that were, and could be, filed with the Canadian Human Rights Commission.

1 A separate annual report is issued for the PESRA and is available on the Board's website at http://pslreb-crtefp.gc.ca/index_e.asp.

2 Separate annual reports are issued for those Acts and are available on the Board's website at http://pslreb-crtefp.gc.ca/index_e.asp.

Our clients

The Board serves a large number of stakeholders in the performance of its mandate. The legislative framework of the *PSEA* applies to employees and managers in over 80 departments and agencies. The Board serves approximately 220 000 federal public service employees in its mandate under the *PSLRA*.

The legislative framework of the *PSEA* applies to departments named in Schedule I to the *Financial Administration Act (FAA)*, agencies listed in Scheduled IV (except for the Canadian Dairy Commission) and five separate agencies named in Schedule V. Employees of the public service covered by the legislation may bring a complaint pertaining to an internal appointment, which goes directly to the Board.

The legislative framework of the *PSLRA* covers numerous collective agreements as well as 19 employers and 28 bargaining agents. The *PSLRA* applies to departments named in Schedule I to the *FAA*, the other portions of the core public service administration named in Schedule IV and the separate agencies named in Schedule V.

The Treasury Board employs over 160 000 public servants in federal departments and agencies. More than 60 000 public service employees work for one of the other employers, which range from large organizations, such as the Canada Revenue Agency, to smaller organizations, such as the National Energy Board. The majority of unionized federal public service employees (60%) are represented by the Public Service Alliance of Canada, 23% by the Professional Institute of the Public Service of Canada and the remaining by other bargaining agents.

Other Board clients include employees excluded from bargaining units and those who are not represented.

For a list of employers, bargaining agents and bargaining units, please refer to the Board's website at http://pslreb-crtefp.gc.ca/collectivebargaining/employers_e.asp.

Our people

Under section 25 of the *PSLREBA*, the Chairperson supervises and directs the work of the Board. Appointed by the Governor in Council for terms of no longer than five years, Board members may be reappointed. Biographies of Board members are available on the Board website at http://pslreb-crtefp.gc.ca/about/members_e.asp.

The Board is composed of the following positions: a chairperson, up to two vice-chairpersons, up to 10 full-time members and additional part-time members as required. At present, the Board is composed of one chairperson, two vice-chairpersons, nine full-time members, and one part-time member. At the end of the fiscal year, there remained one full-time member vacancy. The legislation allows for the appointment of more part-time members.

As previously mentioned, the ATSSC came into being on November 1, 2014. Under section 10 of the *Administrative Tribunals Support Service of Canada Act*, the chief administrator of the ATSSC is responsible for providing support services and facilities to the Board.

Those services fall within three broad areas:

- registry services;
- specialized services (expert staff); and
- internal services, including the common functions of information technology, human resources and financial services.

At the coming into force of the *Economic Action Plan 2014 Act, No. 1*, all registry, expert and administrative support staff of the former PSLRB and the PSST became part of the ATSSC's PSLREB secretariat. These employees support the mandate of the Board and assist the parties involved in matters before the Board; provide legal advice to the Chairperson and Board members on operational, procedural and substantive issues; file, manage and safeguard the Board's cases; and provide the parties with impartial third-party assistance in resolving disputes.

The PSLREB secretariat is led by the Executive Director and General Counsel, who is responsible for leading and supervising its daily operations. The Executive Director and General Counsel is directly supported by the ATSSC's PSLREB secretariat staff, which comprises approximately 65 employees who establish priorities, manage the work and report on the performance of their specific units.

PART ONE:

Activities of the Board

The Board resolves disputes between the federal government as employer and public servants in the areas of labour relations and staffing, as well as in human rights areas for which the Board has jurisdiction in these two domains. This annual report covers the period from April 1, 2015 to March 31, 2016, and reviews the Board's activities related to only two areas of its legislative mandate, those that fall under the *PSLRA* and the *PSEA*.

The variance in volume of cases from year to year, the importance of the human rights mandate linked to both its labour relations and staffing legislative framework, the influence of dispute resolution measures and strategies, proposed legislative changes, Board membership, organizational change and integration, and stakeholder engagement are all part of the tapestry of the Board's work and are discussed below.

The variance in complaints, grievances and applications from year to year

The Board's caseload in both the areas of labour relations and staffing are constant and dynamic. Variability in its caseload and its work can be related

to diverse factors. In the area of labour relations, a wide range of cases may be presented to the Board. The volume and nature of applications related to bargaining agent certification, grievances and unfair labour practice complaints are dependent on many factors, including issues in collective bargaining, legislative and other trends, and impasses in parties coming to a consensus. Certain cases may be very complex, due to the legal arguments put forward or the facts presented to the panel of the Board. On the other hand, in some instances, a matter that may appear less significant than others may represent part of a dispute that reflects a significant wedge between the parties in their working relationship.

The number of complaints related to internal appointments may be expected to decline during a time of workforce adjustment and to rise when appointment processes are on the increase. There may also be increases in lay-off complaints during periods of workforce adjustment. Other factors may also play a role in the ebb and flow of cases linked to the *PSEA*.

The human rights mandate in labour relations and staffing since 2005

The *Public Service Modernization Act* empowered the adjudication of human rights issues in relation to labour relations grievances and staffing disputes. The Board may deal with issues related to several of the prohibited grounds of discrimination listed in the *Canadian Human Rights Act (CHRA)*, such as race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, and disability. The Board receives its jurisdiction to hear human rights matters only through its statutory jurisdiction to hear staffing-related complaints or labour relations matters.

The influence of dispute resolution measures and strategies

In the collective bargaining context, there are traditionally two approaches to dispute resolution if there is an impasse to negotiating a collective agreement: conciliation, leading to a strike; and arbitration. When the parties reach an impasse and are bound to use the conciliation/strike route, a Public Interest Commission (PIC) is established to assist the parties through the issuance of non-binding recommendations. The PSLREB does not control the demand for these processes, which depends on the respective strategies of the parties. Some factors influencing the number of PICs that are held include the pace of negotiations, the stage that the parties have reached in the collective bargaining process and the availability of qualified professionals to act in PICs.

Access to different dispute resolution measures fundamentally changed as a result of amendments to the *PSLRA* that arose from the *Economic Action Plan 2013 Act, No. 2*. As of the coming into force of these provisions in December 2014, bargaining agents no longer have the discretion or authority to select which of the two mechanisms they would prefer. The default approach is now conciliation, followed by the strike route if no agreement is reached. Access to arbitration is possible only if both parties agree to it in writing (separate agencies must have the approval of the President of the Treasury Board). However, arbitration is mandatory if 80% or more of positions in the bargaining unit have been designated essential. As noted in the next section below, the March 2016 federal budget announced that certain aspects of the changes brought into effect by this legislation would be reviewed.

Proposed legislative changes

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

Human rights, mandatory bargaining agent representation and time limits

The *Economic Action Plan 2013 Act, No. 2*, includes several legislative provisions that are not yet in force relating to labour relations and staffing. Provisions under the *PSLRA* include but are not limited to these areas in labour relations:

- charge-back provisions for many grievances to the employer and bargaining agent;
- the creation of a new stand-alone human rights grievance and an expanded human rights mandate;

- the removal of notice to the Canadian Human Rights Commission for grievances before the Board;
- the requirement for mandatory bargaining agent representation for many grievances;
- a change to the test in relation to the extension of timelines in grievances that are referred to the Board; and
- amendments modifying the rights of recourse with respect to advertised appointment processes and lay-offs.

In areas pertaining to the Board's mandate under the *PSEA*, provisions not yet in force include amendments modifying the rights of recourse with respect to advertised appointment processes and lay-offs, the application of the *CHRA* to staffing complaints and the removal of notice to the Canadian Human Rights Commission.

The Board developed regulations to address these changes, as well as housekeeping modifications in anticipation of these provisions coming into force. As of the end of 2015-2016, no decision was made as to whether any or all of these provisions would come into force. In its March 22, 2016, federal budget, the federal government stated that it will consult on changes to the *PSLRA* introduced through the *Economic Action Plan 2013 Act, No. 2*.

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 Parliamentary Employment and Staff Relations Act, the Public Service Labour Relations Act 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 Supreme Court of Canada had suspended its declaration of invalidity until May 16, 2016.

Board membership

As of April 1, 2015, the Board was composed of 10 full-time members. Some part-time members were also continued, but only if they were assigned to finalize work done under the legacy board. Mid-way through the fiscal year, three new full-time members and one part-time member were appointed and trained. However, the term of one full-time member was not renewed. Therefore, as of March 31, 2016, the Board was operating with 12 full-time members and 1 part-time member. This compares with 23 full-time and part-time members under the combined complement of the two legacy tribunals. With a smaller number of members, there may also be an impact on the number of cases that can be processed and the number of decisions rendered.

Organizational change and integration

As noted earlier in this report, two major structural changes affected the new Board on November 1, 2014, which continued to have an impact throughout 2015-2016.

THE MERGER OF THE PSST AND THE PSLRB

The first change was the merger of the PSLRB and the PSST into the PSLREB.

There are common areas to both legislative mandates that are continued under the new PSLREB. Similar to the legacy tribunals, the PSLREB continues to be a quasi-judicial tribunal. It offers the same wide range of dispute resolution and mediation services. Should a hearing be held, the PSLREB can similarly

conduct either a paper or oral hearing depending on the circumstances, make findings of fact, and come to a legal determination in its final decision with an order. The PSLREB continues to consider human rights issues arising from its mandate under both the *PSLRA* and the *PSEA*.

There are also distinct differences between the two mandates. The Board and its predecessor board are considered to perform a “hybrid” function in the labour relations field. The mandate of the *PSLRA* is driven largely by the recognized importance of collective bargaining and ultimately the importance of harmonious labour relations in the federal public service. The *PSLRA* also addresses grievance disputes. Grievances are referred to the Board but only after having gone through an internal departmental grievance process. Not all grievances allowed under the *PSLRA* may be presented before the Board. Grievances are often determined by considering collective agreement provisions, but not always. Reprisal complaints arising from the *Canada Labour Code* may also come before the Board.

Staffing complaints that come before the Board under the *PSEA* do not initially go through an internal and legislated departmental complaints process. These complaints come directly to the Board if an individual chooses to dispute an internal appointment, a revocation of an appointment or a lay-off alleging an abuse of authority. Staffing complaints generally require that the Board consider whether the deputy head has abused his or her authority.

With these distinctions in mind, the Board is attending to the integration of services in such a way that neither the labour relations nor the staffing complaints mandate is compromised.

THE CREATION OF THE ATSSC

With regard to the second key legislative change affecting the structure of the Board, the *Administrative Tribunal Support Services Canada Act (ATSSCA)*, passed under the *Economic Action Plan 2014 Act, No. 1*, came into effect on the same day as the *PSLREBA* on November 1, 2014. It created the ATSSC, which now provides all operational, administrative and corporate support to several tribunals and boards, including the PSLREB. Sections 10 and 12 of the *ATSSCA* state that the Chief Administrator of the ATSSC is responsible for the provision of the support services and the facilities that are needed by each administrative tribunal to exercise its powers and perform its duties and functions in accordance with the rules that apply to its work. However, these powers, duties and functions do not extend to any of the powers, duties and functions conferred by law on any administrative tribunal or on any of its members. The Chairperson of the Board consults with the PSLREB Secretariat and attends the consultative meetings for tribunal chairpersons with the ATSSC, with a view to providing meaningful input in a manner in which to ensure that the powers, duties and functions conferred on the Board are not compromised in the provision of service to the Board.

The Board is attending to this change in several ways. It is monitoring the manner in which support is provided and is considering, in its discussions with the PSLREB Secretariat, modifications to the organization that would better suit the new structure.

It also provides arms-length input to the ATSSC on service support and future steps. The Chairperson is also part of the ATSSC Chairpersons' Forum, which is a consultative structure that provides input to the ATSSC.

Client consultation committee

The Board values its ability to consult with stakeholders on the issues pertaining to its mandate in a context where specific cases are not discussed. These consultations assist the Board in improving its service to the parties.

The Board re-established its Client Consultation Committee (CCC) for labour relations just prior to this year, and met with the Chairperson and other representatives of the Board throughout this fiscal year. The objective of these meetings was to explore collaborative initiatives and proactive strategies to reducing the caseload before the Board. The CCC membership is composed of representatives from both bargaining agents and employers that appear before the Board.

The implementation of some strategies began in late 2015-2016. The Board worked with stakeholders to support approaches to addressing the caseload, reviewed policy grievances with a view to prioritizing those that had the highest potential impact and increased the complement of mediators for labour relations matters. For example, one of the projects in place involves the Union of Canadian Correctional Officers/Syndicat des Agents Correctionnels du Canada – Confédération des Syndicats Nationaux and the Correctional Service of Canada. More external mediations were conducted in 2015-2016. Plans are underway to staff positions for internal mediators.

PART TWO:

Case Management under the *PSLRA* and the *PSEA*

Overview

The number of new cases received by the PSLREB remained relatively stable during 2015-2016. (Please refer to Appendix 1 – Total Caseload). Two thousand, three hundred and seventy-five (2375) new files were received, compared with 2401 new files received, on average, over the previous three³ fiscal years. The Board closed 1480 files in 2015-2016, compared with 2637 files closed, on average, over the previous three fiscal years. The Board also carried over 5100 files in 2015-2016 from previous years, largely from the labour relations area.

Activities Related to the *PSLRA*

OVERVIEW OF CASES FILED WITH THE BOARD

The PSLREB's labour relations caseload — or cases filed with the Board under Parts I or II of the *PSLRA* — included 1780 new files in 2015-2016,

³ Throughout this 2015-2016 Annual Report, data used to compare with previous years takes into account the statutory changes that arose from the creation of the new Board on November 1, 2014. Hence, 2014-2015 data reflect numbers under the *PSLRA* or the *PSEA* from the former PSLRB and PSST for the period from April 1, 2014, to October 31, 2014, and from the new PSLREB for the period from November 1, 2014, to March 31, 2015.

compared with an annual average of 1715 over the previous three fiscal years, and carried over 4897 files from previous years (Refer to Appendix 1).

A detailed table showing matters under the *PSLRA* is available in Appendix 2.

In 2015-2016, 1031 files under the *PSLRA* were closed, either through a settlement, withdrawal or formal decision being rendered, compared with an annual average of 1855 over the previous three fiscal years. As explained earlier in this report, to address the larger case inventory in the labour relations area, the Board has renewed its dialogue with its Client Consultation Committee on managing its caseload, the streamlining of its case management processes and systems, and the examination of more efficient and simpler ways of resolving less complex cases through expedited hearings.

Over the last few years and in 2015-2016, the Board observed that more complex matters, such as increased requests for pre-hearing production orders, accommodation issues for physical and mental disabilities requiring specialized hearing arrangements, and privacy issues, contributed to more hearings.

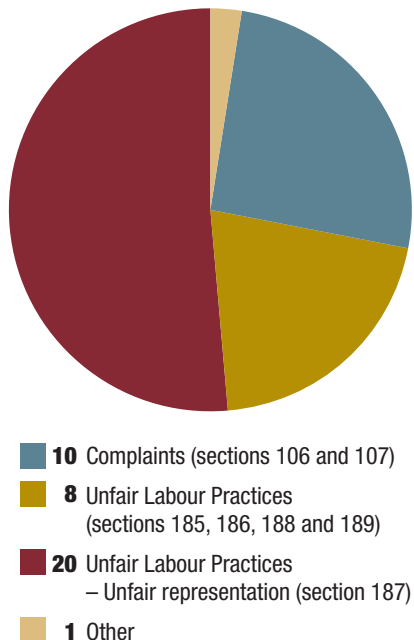
LABOUR RELATIONS

Complaints filed under Part I of the *PSLRA*

Section 190 of the *PSLRA* allows a party to bring a complaint for an unfair labour practice before the Board.

In 2015-2016, the PSLREB received 39 such complaints, including 20 complaints where the complainant represented himself or herself in a complaint alleging that his or her bargaining agent failed in its duty of fair representation. Refer to Figure 2 for a breakdown by type of complaint received.

Figure 2 – Types of complaints received



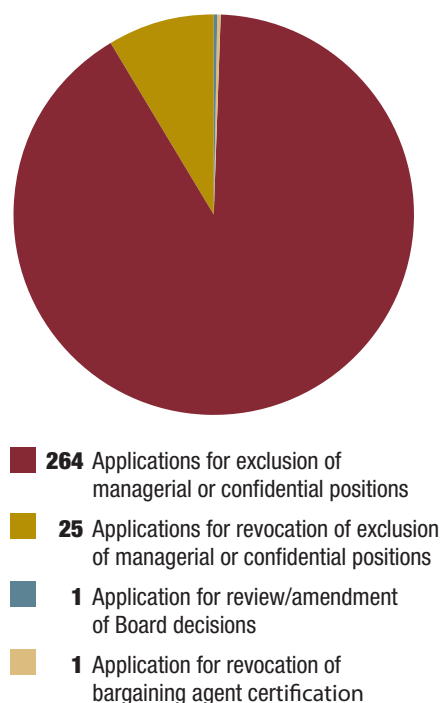
While representing only 2% of the cases received, many complaints related to complex or time-sensitive issues (e.g., collective bargaining and self-represented complainants), which require a substantial amount of time and resources from the Board.

Applications under Part I of the *PSLRA*

A variety of applications can be filed with the PSLREB under Part I of the *PSLRA*, which focuses on labour relations and collective bargaining. During 2015-2016, the PSLREB received 305⁴ applications, compared to 419 applications in 2014-2015, 224 applications in 2013-2014 and 258 applications in 2012-2013 (for an average of 300 over the previous three fiscal years but with notable variations each year).

The breakdown by type of applications received in 2015-2016 is shown in Figure 3 (excluding 14 from the total of 305 that were for requests for preventive mediations and applications for conciliations or for the appointment of a mediator).

Figure 3 – Types of applications



⁴ Starting in 2015-2016, this total excludes applications for extensions of time, even though they were included in previous years' totals. Applications for extensions of time are now included in the discussion pertaining to Part II of the *PSLRA*.

The majority (86%) of applications received in 2015-2016 were for orders declaring positions managerial or confidential. The Board received only one application for a revocation of certification, but this type of application requires substantial Board resources, including the additional expenditure of contracting with a third party to conduct a vote. Applications received during the reporting year represented 17% of the cases received in 2015-2016.

The Board issued 222 orders for exclusions of managerial or confidential positions and 19 orders for revocations of exclusions of managerial or confidential positions.

GRIEVANCES

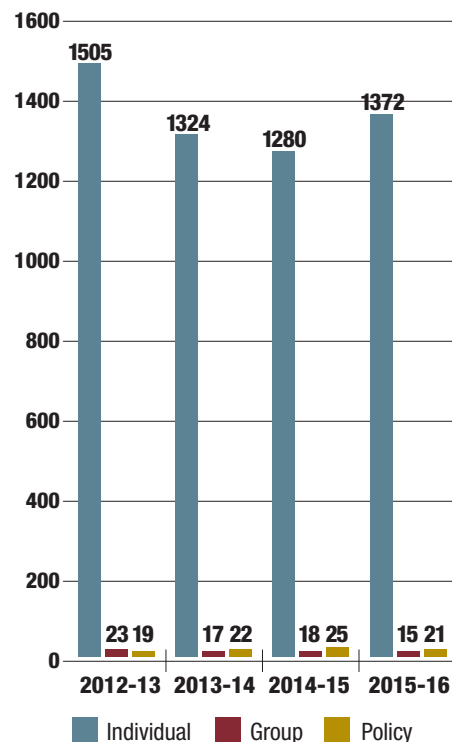
Part II of the *PSLRA* deals with grievances, which represent the largest portion of the Board's workload. Grievances represented 79% of the cases received in 2015-2016.

This year, the number of grievances received was essentially the same as the average for the previous three fiscal years (1408 compared to 1411). There are three types of grievances: individual, group and policy. Please see Figure 4, which represents the volume of grievances referred to adjudication, by type, in 2015-2016, compared to the three previous fiscal years.

As discussed earlier, several grievances include human rights questions in areas of discipline, demotion, termination and the interpretation of a collective agreement. The Board issued a few decisions⁵ where the adjudicator found there was discrimination and awarded monetary disposition.

The Board also receives several requests for extensions of time for grievances under its regulations. This year, there were 16 requests for extensions of time for hearing grievances. In addition, five decisions were issued pertaining to whether there was jurisdiction to refer a grievance to adjudication.

Figure 4 – Type of grievance filed



⁵ E.g., refer to the PSLREB website at http://pslreb-crtefp.gc.ca/decisions/intro_e.asp for the following decisions:

- *Rodrigue v. Deputy Head (Department of Veterans Affairs)*, 2016 PSLREB 09;
- *Chênevert v. Treasury Board (Department of Agriculture and Agri-Food)*, 2015 PSLREB 52; and
- *Kirby v. Treasury Board (Correctional Service of Canada)*, 2015 PSLREB 41

Individual grievances

Individual grievances may be referred to adjudication under section 209(1) of the *PSLRA* as follows:

- interpretations or applications with respect to employees of collective agreement or arbitral award provisions;
- disciplinary actions resulting in terminations, demotions, suspensions or financial penalties;
- demotions or terminations for unsatisfactory performance or any other reason that is not a breach of discipline or misconduct or deployment without the employee's consent when consent is required and that are only for employees for whom the Treasury Board is the employer; and
- demotion or termination for any reason that does not relate to a breach of discipline or misconduct with regard to employees for whom the Canadian Food Inspection Agency or the Canada Revenue Agency is the employer.

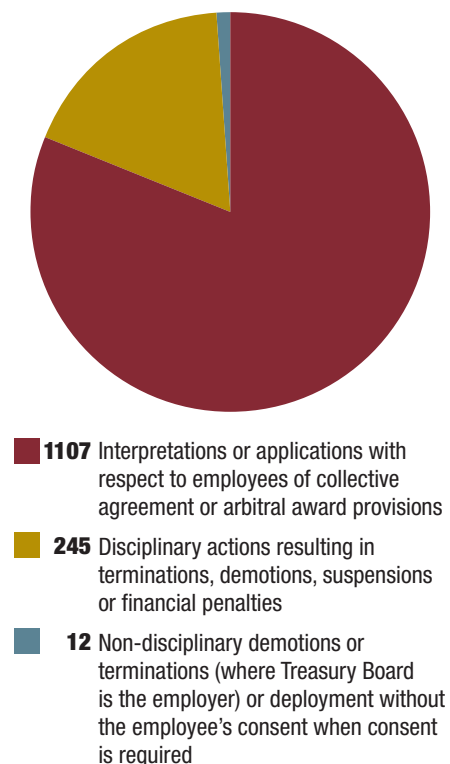
In 2015-2016, 1372 new individual grievances were referred to adjudication. The majority (81%) of individual grievances related to the interpretation or application of a collective agreement or an arbitral award. This is consistent with previous fiscal years: 79% in 2014-2015, 77% in 2013-2014 and 83% in 2012-2013. Of particular note, the PSLREB received eight new individual references to adjudication under the former *Public Service Staff Relations Act (PSSRA)*. Those grievances were presented at the first level of the employer's internal grievance procedure before April 1, 2005, and were referred

to adjudication 10 years later, in 2015-2016.

The referral of grievances after such a long period could be attributed to a number of factors, including efforts by the parties to resolve the grievance at the departmental level and the waiver of time limits for the presentation of the grievance to succeeding grievance levels or to make a reference to adjudication to the Board.

The breakdown of the references to adjudication for the reporting year, excluding the eight references under the *PSSRA*, is shown in Figure 5 below.

Figure 5 – Types of individual grievances



The majority of the grievances dealt with the interpretation and application of leave, statements of duties, overtime and pay.

The PSLREB received 31 references to adjudication where the grievors were proceeding without bargaining agent representation. These files are typically more labour intensive as the grievors are unfamiliar with the process and need more time and guidance to navigate the proceedings.

The Board closed 675 individual grievances files, through hearings, settlements or withdrawals.

Group grievances

In 2015-2016, 15 new group grievances were referred to adjudication. Group grievances are similar to individual grievances in that they grieve the interpretation of a collective agreement or arbitral award. However, one group grievance is filed (as opposed to many individual grievances), with many grievors attaching their names to the grievance. These grievances are referred to adjudication by the bargaining agent under section 216 of the *PSLRA*. Most of those grievances deal with pay, overtime and statements of duties.

In addition, the Board dismissed five group grievances, while eight other group grievances were closed prior to a hearing being held.

Policy grievances

Policy grievances may be filed by a bargaining agent or an employer and relate to an alleged violation of a collective agreement or arbitral award that affects either the employer, the bargaining agent or the bargaining unit generally. These grievances are referred to adjudication under section 221 of the *PSLRA*. Different policies may be the subject of a grievance. For example, security screening,

the reimbursement of liability insurance, after hours on-call duty and not being reimbursed for professional development.

In 2015-2016, the PSLREB received references to adjudication for 21 new policy grievances.

The Board also rendered two decisions which were both granted. Five other policy grievances were closed prior to a hearing being held.

Occupational health and safety

In 2015-2016, the Board received 11 complaints filed under the *Canada Labour Code*.

The *Budget Implementation Act (BIA), 2009*

The transitional provisions of the *BIA* 2009 allow the Board to deal with pay equity complaints. This year, no pay equity complaints were filed with the Board. One decision was issued following a hearing.

DISPUTE RESOLUTION SERVICES – LABOUR RELATIONS

Overview

The PSLREB Secretariat's Dispute Resolution Services (DRS) provide mediation services to support the mandate of the Board as it relates to both collective bargaining and grievances, in accordance with section 14 of the *PSLRA*:

- assisting parties in the negotiation of collective agreements and their renewal;
- assisting parties in the management of the relations resulting from the implementation of collective agreements;

- mediating in relation to grievances;
- assisting the chairperson in discharging his or her responsibilities under that Act; and
- capacity building with stakeholders in mediation within the labour relations environment.

Collective bargaining

The demand for mediation services provided by the PSLREB Secretariat's DRS fluctuate directly in relation to the federal public service collective bargaining cycle. In the past fiscal year, while negotiations were underway in most federal government bargaining units, these negotiations were generally at the earlier stages of the negotiation process. Consequently, the requirement for the Board's involvement during this time frame was low.

When the parties are unable to make progress in their face-to-face negotiations during collective bargaining, the PSLREB may be called upon to provide mediation support. Due to the stage at which most parties were in the bargaining cycle, the PSLREB responded to only two requests for mediation and, in both instances, assisted the parties in reducing the number of outstanding issues.

The DRS also coordinate the two formal dispute resolution processes provided for under the *PSLRA* once an impasse has been reached in collective bargaining. Conciliation, the default option under the legislation, involves the appointment by the minister of a PIC to assist the parties through the issuance of non-binding recommendations. The report of the PIC's recommendations is a key prerequisite to a bargaining agent attaining the legal right to conduct

strike action. The second approach is arbitration, which involves the chairperson appointing an arbitration board that has the authority to issue a final and binding award. Since the passage of the *Economic Action Plan 2013 Act, No. 2*, access to arbitration is now available only in very limited circumstances.

During 2015-2016, the PSLREB received no arbitration requests. It received two requests for conciliation, and PICs were established in both cases. The hearings will take place in 2016-2017. The DRS also continued to monitor closely the collective bargaining environment in preparation for an increased demand in the event that impasses are reached in the negotiations that are currently active.

MEDIATION FOR GRIEVANCES AND COMPLAINTS

Clients of the PSLREB may choose mediation as a mechanism to resolve the issues underlying their grievances or complaints referred to adjudication. Mediation is a voluntary and confidential process that provides parties with the opportunity to find their own solutions to the issues in dispute. The process is facilitated by an impartial third party who has no decision-making powers, and its outcome creates no precedents.

During 2015-2016, 72 mediations of grievances and complaints were conducted, compared with an annual average of 81 mediations over the previous three fiscal years⁶. During the reporting period, the parties successfully reached agreements in 82% of the cases, leading to the settlement of

⁶ In 2013-2014, 92 mediations were conducted, while in the following 2 fiscal years, the lower number of interventions is a reflection of the increased administrative work involved in implementing legislative changes, as well as staffing levels (i.e., there was one less mediator).

123 files at the PSLREB. Those mediations also led to the settlement of several grievances at the departmental level.

The mediation of grievances has proven successful in addressing many disputes before the Board. Many interventions are complex and deal with very sensitive issues and, in some instances, require more than one session to reach a resolution. Trends in mediation vary from year to year. Over the reporting period, many grievances addressed in mediation were related to disciplinary issues, termination of employment and discrimination. There was also an increase in the frequency of mental health issues.

Generally, mediation is provided for matters that have been formally referred to the Board. In limited circumstances, the Board provides preventive mediation services to assist in the resolution of grievances that could eventually be referred to adjudication. During the year, 12 preventive mediations were conducted. Parties reached a settlement in 83% of cases, which led to the settlement of 68 files that could have otherwise been referred to adjudication.

Please see Figures 6 and 7, which compare mediations for the reporting period to the two previous fiscal years. As illustrated, settlement rates are fairly consistent from year to year.

Figure 6 – Number of Mediations Conducted and Files Settled Comparison Between 2015-2016 and two Previous Fiscal Years

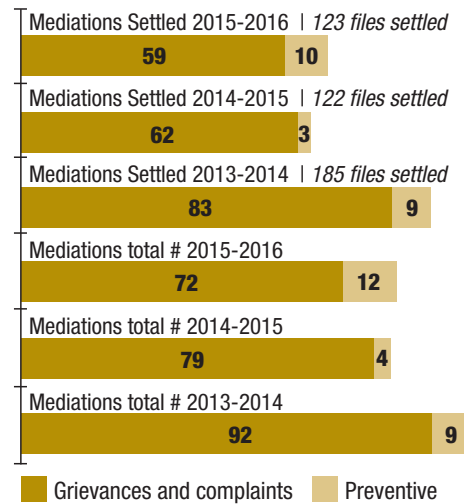
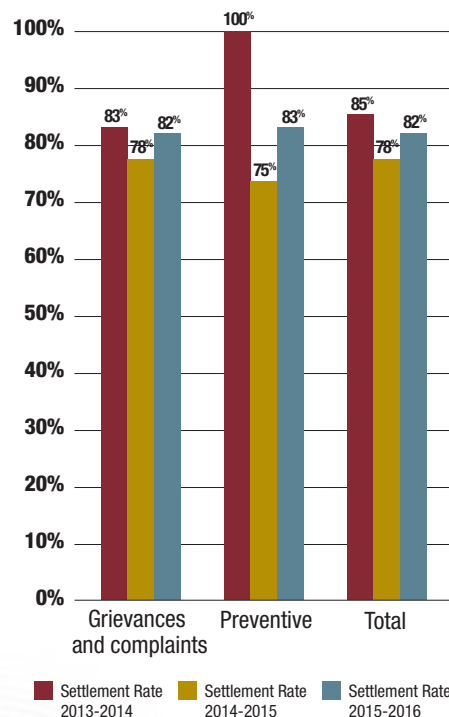


Figure 7 – Mediation Settlement Rate Comparison Between 2015-2016 and two Previous Fiscal Years



HEARINGS AND REASONS FOR DECISION ISSUED

It is important to note that not all cases proceed to a hearing. Many files are resolved prior to a determination of the matter through the parties having settled the matter. In addition, once a hearing is scheduled, the Board may facilitate dialogue towards a settlement through tools such as mediation/arbitration. The Board scheduled 311 hearings for labour matters in 2015-2016. Many hearings were cancelled due to the settlement or withdrawal of the matters. Of the 311 labour hearings scheduled in the reporting period,

- 74 hearings were cancelled due to the withdrawal of the matters after being scheduled for hearing;
- 41 hearings were cancelled due to the settlement of the matters after being scheduled for hearing; and
- 90 hearings were postponed for a variety of reasons, including unexpected unavailability of a member, a party, witnesses or representatives, or the parties deciding to mediate the matter. Some matters were postponed at the parties' request to allow time for a decision in a related or similar matter to be issued.
- 106 hearings proceeded as scheduled;

In 2015-2016, the PSLREB issued 87 formal decisions on labour relations files.

It should be noted that in the process of reaching a final determination on any matter before the Board, a panel of the Board may also issue interim

decisions on a multitude of issues, such as the extension of timelines, jurisdictional issues and requests for postponement.

Activities Related to the PSEA

OVERVIEW OF CASES FILED WITH THE BOARD

In 2015-2016, the PSLREB received 595 staffing complaints, compared with an annual average of 585 over the previous three years. It closed 449 staffing complaint files in 2015-2016, compared with an annual average of 782 over the previous three years (please refer to Appendix 1 – Total Caseload for more information).

The four types of staffing complaints that the PSLREB may hear are as follows:

- internal appointments (section 77 of the *PSEA*);
- lay-offs (section 65 of the *PSEA*);
- the implementation of a corrective measure ordered by the Board (section 83 of the *PSEA*); and
- the revocation of an appointment (section 74 of the *PSEA*).

Of the complaints received in 2015-2016, 573 related to internal appointments (96% of the total number of complaints), 4 to lay-offs and 16 to revocations of appointments. The remaining two complaints were found to be outside the Board's jurisdiction.

Table 1 - Staffing: A Snapshot

	2012-2013	2013-2014	2014-2015	2015-2016
Hearings held*	39	20	20	9
Cases mediated	168	155	201	161
Cases settled	129	126	169	133
Reasons for decisions issued	42	33	18	4**
Motions	968	706	834	657

*One hearing can relate to one or several complaints (e.g., where many complaints have been consolidated into one file for expediency).

**One decision with reasons was issued on a preliminary motion, and three decisions were issued following hearings on the merits.

Factors affecting the number of hearings held include the number and availability of Board members and the volume of postponement requests received from the parties.

The Board holds mediations, settlement conferences and hearings to resolve filed complaints. All files for which a complaint is not withdrawn are dealt with at a hearing.

The Board encourages parties to continue their efforts to reach a settlement during the adjudication process. At any time during that process, the parties may enter into discussions with the adjudicator to reach a settlement.

SETTLEMENT CONFERENCES

A settlement conference differs from the mediation process. It tends to be more of an evaluative or rights-focused process that the Board initiates and controls. A settlement conference is typically held in the two months before the hearing date.

In 2015-2016, 34 complaint files were referred to settlement conferences, 31 of which were handled through 14 conferences held by the Board. Of those 31 files, 22 were resolved through the withdrawals of the complaints while 9 files proceeded to a hearing. The other three files referred to settlement conferences were cancelled by the appointed members.

MEDIATION OF STAFFING COMPLAINTS

Mediation of staffing complaints is a voluntary process. This year, mediators of the PSLREB Secretariat conducted a total of 77 mediations. These mediations, which may involve more than one file, represent a settlement rate of 83%, compared to an average of 81% over the last three years.

HEARINGS AND REASONS FOR DECISIONS ISSUED

In 2015-2016, the PSLREB scheduled 34 hearings for staffing complaints, compared to an annual average of 86 in the three previous fiscal years. It also granted 25 requests for postponement of scheduled hearings in 2015-2016. The PSLREB held nine hearings on staffing complaint files, of which three were continuations.

As noted earlier within the labour relations context, during the life of a staffing complaint, the PSLREB may receive a number of different preliminary requests or motions before it proceeds to a hearing.

In 2015-2016, the PSLREB issued 628 letter decisions on preliminary matters.

From the nine staffing complaints that proceeded to a formal hearing, the PSLREB issued three formal decisions.

Training and Outreach

The PSLREB and its secretariat offer training and outreach in various areas. The Board offers interest-based negotiation and mediation training for labour relations officers, union representatives, managers and supervisors, as well as those working in related fields. As part of its mandate to support the parties in collective bargaining, specialized training in interest-based bargaining to parties involved in negotiations can also be provided. Upon receiving joint requests from the parties, the PSLREB secretariat will work with representatives of the bargaining agent and the employer to design and deliver training tailored to their specific requirements.

In addition, the secretariat offers two days of training on considerations related to mediation of staffing disputes. The training can be in person or by teleconference for stakeholders such as managers, the parties' representatives (departmental human resources advisors and union representatives). The in-person training also includes a presentation on legal trends and jurisprudence in areas pertaining to concepts such as abuse of authority and related principles. In 2015-2016, the Board offered three training sessions in the domain of staffing complaints, delivered through one two-day session (in person), and two one-and-a-half-hour online sessions.

The PSLREB and its secretariat also offered presentations on many issues to stakeholders, including the following:

- a labour relations mediator made two presentations to stakeholders on the Board's services, specifically on interest-based negotiation and mediation in the collective bargaining context;
- the Chairperson of the PSLREB participated in a roundtable on comparing administrative justice; in labour and employment law at the annual symposium of the Council of Canadian Administrative Tribunals (CCAT);
- several presentations were delivered to the Tribunal Members Training Program (CCAT);
- the secretariat's Executive Director and General Counsel moderated a session on labour boards and change (CCAT);
- a Senior Legal Counsel with the secretariat also moderated a workshop entitled Access to Justice: Unequal Access to Evidence and Other Procedural Barriers (CCAT);
- the Chairperson delivered a presentation on working with self-represented parties at the annual conference of the Association of Labor Relations Agencies (ALRA);
- the secretariat's Executive Director and General Counsel co-facilitated a general counsel roundtable on legislative changes and jurisprudence (ALRA)
- a Senior Legal Counsel offered a presentation on law careers and labour law careers at Queen's University.

Openness and Privacy

As a quasi-judicial tribunal that renders decisions on a broad range of labour relations and employment matters in the federal public service, the Board operates very much like a court. Bound by the constitutionally protected open court principle, it conducts its oral hearings in public, save for exceptional circumstances. As a result, most information filed with the Board becomes part of a public record and is generally available to the public, ensuring transparency, accountability and fairness.

The open court principle requires that judicial and quasi-judicial proceedings are held in an open forum. This principle is crucial to promoting the rule of law and the administration of justice. It prevents abuse, which can occur when a hearing is held behind closed doors. The identity of the party or witness is generally considered essential to endorsing the public accountability of a specific person and what he or she has to say in those proceedings.

The mandate of the Board is such that its decisions can impact the whole public service and Canadians in general. The Board has a policy on the open court principle that describes its processes and how it handles issues relating to privacy: http://pslreb-crtefp.gc.ca/privacy_e.asp.

The Board's website, notices, information bulletins and other publications advise parties and the community that its hearings are open to the public. Parties that engage the Board's services should be aware that they are embarking on a process that presumes a public airing of the dispute between them, including the public availability of decisions. Parties and their witnesses are subject to public scrutiny when giving evidence before the Board, and they are more likely to be truthful if their identities are known. Board decisions identify parties and their witnesses by name and may set out information about them that is relevant and necessary to the determination of the dispute.

At the same time, the Board acknowledges that in some instances, mentioning an individual's personal information during a hearing or in a written decision may affect that person's life. Privacy concerns arise most frequently when identifying aspects of a person's life become public. These include information about an individual's home address, personal email address, personal phone number, date of birth, financial details, social insurance number, driver's license number, or credit card or passport details. The Board endeavours to include such information only to the extent that is relevant and necessary for the determination of the dispute.

In keeping with the principles of administrative law, the Board is required to issue a written decision when deciding a matter. The Board provides public access to its decisions in accordance with the open court principle.

Board decisions are available electronically on its website. In an effort to establish a balance between providing public access to its decisions and privacy concerns, the Board has taken measures to prevent Internet searches of full-text versions of decisions posted on its website. This was accomplished by using the web robot exclusion protocol that is recognized by Internet search engines (e.g., Google and Yahoo). As a result, an Internet search of a person's name will not yield any information from the full-text versions of decisions posted on the Board's website.

The Board's policy is consistent with the statement (<http://www.hfatf-fptaf.gc.ca/news-06-26-2009-en.php>) of the Heads of Federal Administrative Tribunals Forum (endorsed by the Council of Canadian Administrative Tribunals) and the principles found in the *Use of Personal Information in Judgments and Recommended Protocol* approved by the Canadian Judicial Council (http://cjc-ccm.gc.ca/cmslib/general/news_pub_techissues_UseProtocol_2005_en.pdf).

Please refer to Appendix 3 for the summaries of the main Board decisions in 2015-2016. The full texts of all Board decisions are available on the website: http://pslreb-crtefp.gc.ca/decisions/intro_e.asp

Judicial Review

Occasionally, parties may apply for judicial review of a decision rendered by the Board. Decisions of the Board are reviewed by the Federal Court of Appeal, while some adjudication decisions are reviewed by the Federal Court and others are reviewed by the Federal Court of Appeal. Please refer to Appendix 4 for a synopsis of applications for judicial review of PSLREB decisions in the five previous years.

Organizational Contact Information

For all inquiries, including hearing confirmation, mediation and media, please contact the Board via the information listed below. Our hours of operation are from 8:00 a.m. to 4:00 p.m. (EST) from Monday to Friday. Before making an inquiry, we encourage you to visit the [Board's website](#) for information about the Board's activities.

Email: mail.courrier@pslreb-crtefp.gc.ca

Telephone: 613-990-1800

Toll-free: 866-931-3454

Fax: 613-990-1849

TTY (teletype): 866-389-6901

Access to Information and Privacy:
613-957-3169

Jacob Finkelman Library:
library-bibliotheque@pslreb-crtefp.gc.ca

Street address:

C.D. Howe Building
240 Sparks Street
West Tower, 6th Floor
Ottawa, Ontario

Mailing address:

Public Service Labour Relations
and Employment Board
P.O. Box 1525, Station B
Ottawa, Ontario
Canada
K1P 5V2

Appendix 1

Total Caseload for the Board: 2012-2013 to 2015-2016

LABOUR RELATIONS:

Fiscal Year	Carried forward from previous years	New			Total New	Closed	Carried forward to next year
		Grievances	Complaints	Applications			
2012-2013	4703	1548	61	290	1899	2125	4477
2013-2014	4477	1372	76	221	1669	1609	4537
April 1, 2014, to October 31, 2014*	4537	500	43	274	817	958	4396
November 1, 2014, to March 31, 2015	4396	865	30	113	1008	507	4897
2015-2016	4897	1424	50	306	1780	1031	5646

STAFFING:

Fiscal Year	New Complaints	Complaints Closed
2012-2013	604	1221
2013-2014	551	521
April 1, 2014, to October 31, 2014*	323	389
November 1, 2014, to March 31, 2015	278	215
2015-2016	595	449

* Decisions rendered by the PSLRB and the PSST, before the creation of the PSLREB. By the application of section 3 of the *PESRA*, the PSLRB acted as the Board for the purposes of that Act. Therefore, decisions issued by the Board under the *PESRA* are included in this chart.

Appendix 2

Matters per Parts of the *Public Service Labour Relations Act, 2015-2016*

Part I – Labour Relations	Number of matters
Review of orders and decisions (section 43(1))	1
Revocation of certification (sections 94, 101 and 102)	1
Complaints	
Complaints (sections 106 and 107)	10
Unfair Labour Practices (sections 185, 186, 188 and 189)	8
Unfair Labour Practices - unfair representation (section 187)	20
Other	1
Managerial or confidential positions	
Application for managerial or confidential positions (section 71)	264
Revocation of order, managerial or confidential positions (section 77)	25
Preventive mediation	12
Appointment of mediator (section 108(1))	1
Application for conciliation (sections 161(1) and (4))	2
Part II – Grievances	
Individual grievances (section 209)	1364
Group grievances (section 216)	15
Policy grievances (section 221)	21
Part III – Occupational Health and Safety	
Reprisals under section 133 of the <i>Canada Labour Code</i> (section 240)	11
<i>Public Service Labour Relations Regulations</i>	
Part II – Grievances	
Extensions of time (section 61)	16
<i>Public Service Staff Relations Act</i>	
Part IV – Grievances	
Individual grievances (section 92)	8
TOTAL	1780

Appendix 3

PSLRB Decision Summaries

Some of the key decisions of the Board in 2015-2016 are summarized in the following two sections: **A) labour relations** decisions, and **B) staffing decisions**.

A. Labour relations decisions

1) *Bernard v. Professional Institute of the Public Service of Canada, Treasury Board and Canada Revenue Agency, 2015 PSLRB 59.*

On April 24, 2014, the applicant requested that the Public Service Labour Relations Board (PSLRB) reconsider its decision in *Professional Institute of the Public Service of Canada v. Treasury Board and Canada Revenue Agency*, 2008 PSLRB 13 (“*PIPSC 1*”). She alleged that employees impacted by the decision were not given notice of the hearing and were unable to make submissions as a result. In particular, the applicant asserted that legislative history and parliamentary debate surrounding *Canada Labour Code* amendments were relevant and that this information was not put to the PSLRB because employees were not given notice.

The PSLRB’s interim decision in *PIPSC 1* found that a union’s obligation to represent its members in

good faith requires employers to disclose employee contact information to allow the union to contact them regarding certain union activities, such as strike votes and final offer votes. However, the PSLRB held that there was insufficient information before it for it to grant a remedy. The parties consulted and reached a voluntary agreement, eventually incorporated into an order from the PSLRB *Professional Institute of the Public Service of Canada v. Canada Revenue Agency*, 2008 PSLRB 58 (“*PIPSC 2*”), where the employer agreed to share employee contact information.

The applicant filed an application for judicial review of this decision to the Federal Court of Appeal on the grounds that such a disclosure would violate the *Privacy Act*. The Court upheld the application and sent the matter back to the PSLRB, which later released *Professional Institute of the Public Service of Canada v. Canada Revenue Agency*, 2011 PSLRB 34 (“*PIPSC 3*”). Apart from two minor revisions, the PSLRB upheld the validity of the agreement. The Federal Court of Appeal dismissed an application for judicial review of *PIPSC 3*, holding that the PSLRB’s decision was reasonable. An appeal of this decision was dismissed by the Supreme Court of Canada.

The applicant then brought a request that the Public Service Labour Relations and Employment Board (PSLREB) reconsider the decision in *PIPSC 1*.

The PSLREB held that she did not have standing to request the reconsideration because the decision she sought to have reconsidered was a complaint the union filed against the employer, to which she was not a party. The PSLREB added that the purpose of reconsidering an issue is to allow a party to submit new evidence or arguments that could not reasonably have been made at the time of the hearing and not to relitigate the merits of a case. The PSLREB stated that her remedy would have been to seek judicial review of *PIPSC 1*, which she had opted not to do. Furthermore, her application was not timely, as she waited six years after the decision was rendered to request that it be reconsidered. The PSLREB also added that the application was “a thinly disguised attempt to reopen” the issue already decided by the Supreme Court of Canada in *Bernard v. Canada (Attorney General)*, [2014] 1 S.C.R. 227.

The applicant’s request for reconsideration was dismissed.

2) *Montle and Gabriel v. Canada Revenue Agency, 2015 PSLREB 97.*

The grievors became Canada Revenue Agency (CRA) employees on April 3, 2008, in the Audit, Financial and Scientific (AFS) Group. On that date, their employment was transferred to CRA from the Ontario Ministry of Revenue (“OMoR”), which both joined in 1982. A human resources (HR) agreement was put in place to facilitate the transition, and it included provisions that recognized an employee’s continuous date of service that applied to current and future AFS

collective agreements. The HR agreement and a later memorandum of understanding (MOU) did not form a part of the collective agreement.

The grievors were not automatically able to transfer all their pensionable service from the OMoR to the Public Service Superannuation Plan (PSSP). They were each given the option to buy back uncredited service, which would have cost Mr. Montle \$91 156.23 and Mr. Gabriel \$65 693.42. If they failed to pay these amounts, the result would have been pensionable services losses of 4 years and 36 days and 3 years and 155 days respectively. Both opted not to transfer their pensionable service.

When the grievors joined the CRA, the collective agreement contained a clause indicating that the CRA would provide 37.5 hours of paid leave per year, up to a maximum of 187.5 hours for employees 55 years or older with 30 years of service. However, this clause changed in 2012. The new clause stated that the 187.5-hour maximum would be available only to employees with a combination of age and years of service to qualify for an immediate annuity without penalty under the PSSP. Due to the fact that both grievors opted not to transfer their pensionable service time to a pension plan under the PSSP, they were not eligible for pre-retirement leave because their prior years of service did not count towards an immediate annuity, as per the new clause.

The PSLREB held that the clause in the new agreement was clear and unambiguous and that it required employees seeking pre-retirement leave to be eligible to receive their pensions under the PSSP. The PSLREB noted that the grievors were effectively arguing that the CRA did not have the authority to alter the collective agreement in this way because

it violated the initial HR agreement with the OMoR. The PSLREB rejected this position, stating that the bargaining agent was attempting to "... enforce an agreement that [was] not its to enforce". Had the initial HR agreement been included in the collective agreement, this case may have been decided differently; however, it was designed to ease the transition between employers, not govern the collective agreement.

The PSLREB dismissed the grievances.

3) *Dyson v. Deputy Head (Department of Fisheries and Oceans), 2015 PSLREB 58.*

The grievor worked on a probationary basis as a fishery officer trainee with the Department of Fisheries and Oceans (DFO) for just over two years, at which point he was rejected on probation. The DFO asserted that the grievor was rejected on probation in good faith and for legitimate employment-related reasons. The employer alleged that it had concerns regarding the grievor's reliability and attendance; failure to meet work requirements; and failure to adhere to established policies, procedure, practices and codes of conduct.

The grievor's position was that the employer acted in bad faith and that it dismissed him due to his medical condition. The grievor insisted that he complied with his employer's requests to provide medical certificates when he was off sick. Furthermore, he asserted that he was advanced sick leave credits by his employer when he ran out, which the employer was permitted to do at its discretion under article 39 of the collective agreement.

The respondent objected to the adjudicator's jurisdiction on the grounds that section 211 of the *Public Service Labour Relations Act (PSLRA)* does

not allow referring a grievance to adjudication about terminations made under the *Public Service Employment Act (PSEA)*. The adjudicator noted that if the grievor could prove on a balance of probabilities that the termination was not for a legitimate employment-related reason but was for some other contrived reason, disguised discipline, sham, camouflage or bad faith, he would have jurisdiction.

The adjudicator held that the grievor established that the DFO acted in bad faith and that it did not base its decision on a bona fide dissatisfaction as to suitability. The DFO's witnesses, including two of the grievor's superiors, failed to give any evidence as to why they failed the grievor on his performance reviews. Both avoided the question when asked it at the hearing. The adjudicator held that although the employer need not have a prima facie just-cause reason for termination, the case law is clear that it must at least provide some type of explanation for a termination.

In addition, the adjudicator found that the allegations that the grievor did not follow policies were based in part on events that predated the probation and of which the employer knew before it hired the grievor. The adjudicator further held that allegations that the grievor did not follow DFO firearm and sick-leave policies were unfounded. No copy of the DFO policy was presented in evidence and there was no evidence that the grievor knew of the DFO policy. Although employers are entitled to set out rules and policies to be followed, the adjudicator held that "... they may not be used in bad faith or as a sham or camouflage". Although there was no doubt that the evidence showed that the grievor did not follow the firearm policy, there was evidence that he followed all instructions provided to him by his firearm training officer and that those instructions

were not in accordance with policy. The adjudicator found that the DFO was concerned with the grievor's use of such leaves. However, there was no evidence that the grievor abused sick leaves or that he failed to follow the proper process to notify the employer when he was sick.

The adjudicator allowed the grievance and reinstated the grievor to his position. The decision is under judicial review before the Federal Court of Appeal.

4) *Heyser v. Deputy Head (Department of Employment and Social Development) and Treasury Board (Department of Employment and Social Development), 2015 PSLREB 70.*

The grievor was an appeals specialist benefits officer with the Department of Human Resources and Skills Development. The employer revoked the grievor's reliability status due to the fact that she falsified a medical document in order to extend an existing teleworking agreement. The employer terminated the grievor's employment for what it alleged were administrative reasons due to the fact that reliability status was a prerequisite for employment.

The grievor filed two grievances simultaneously; one grieving her termination, and the other grieving the revocation of her reliability status.

At the outset of the hearing, the employer raised an objection as to the adjudicator's jurisdiction to hear the grievance on the grounds that because the grievor's reliability status was revoked, she no longer met the conditions of her employment. As a result, the employer alleged that the adjudicator had to find that it had cause to terminate the grievor's employment under section 12(3) of the *Financial Administration Act (FAA)*. The employer asserted

that as the termination was for just cause and not for disciplinary reasons, the adjudicator would have jurisdiction only if he or she found that it was a case of disguised discipline.

The adjudicator found that he did have jurisdiction to hear the grievance because his jurisdiction was not limited only to terminations for discipline reasons. Paragraph 209(1)(c) of the *PSLRA* gives adjudicators jurisdiction over a termination of an employee in the core public service, which includes the power to hear grievances involving terminations for "... any other reason that does not relate to discipline or misconduct ...".

Although the employer was justified in investigating the grievor's falsified medical note, the adjudicator held that permitting the grievor to remain in her position for six months after the investigation ended conflicted with the employer's position that the grievor was "a threat to the department". Simultaneously alleging that the grievor was a threat while permitting her to continue working and acknowledging that there had never been any security concerns before or after the investigation delegitimized the employer's position.

Furthermore, the employer did not submit evidence regarding the alleged risk and threat that the employer faced as a result of the grievor's continued employment. In fact, the employer's *Personnel Security Standard* required reasonable cause for believing the grievor might steal or exploit assets for personal gain.

The adjudicator, accordingly, held that the employer's termination of her employment without cause constituted a "contrived reliance" on the *FAA*, a sham or camouflage. Although the adjudicator held

that this did not clothe the employer's decision as a "disciplinary action" and dismissed the termination grievance, the adjudicator allowed the grievance concerning the revocation of the grievor's reliability status. This finding was made on the grounds that the revocation of security status was not based on a reasonable cause to believe that she represented an unacceptable security risk and that the grievor's termination was not for cause.

The adjudicator ordered the grievor reinstated in her position retroactive to the date of termination, with all rights and benefits. This decision is under judicial review before the Federal Court of Appeal.

5) *Charette et al. v. Parks Canada Agency*, 2015 PSLREB 43.

Five individual grievors filed grievances against their employer, the Parks Canada Agency, regarding a "Selection of Employees for Retention and Lay-off" (SERLO) process. Each grievor took a similar position and alleged that individual and total ratings under the "Assessment Criteria" were not an accurate assessment under the SERLO process. Furthermore, the grievors alleged that the assessment violated Appendix K of the collective agreement.

The employer objected to jurisdiction on three grounds: (1) that the *Parks Canada Agency Act* was a complete bar, (2) that the grievances did not relate to a breach of a provision of the collective agreement within the meaning of paragraph 209(1)(a) of the *PSLRA*, and (3) that SERLO grievances are akin to staffing grievances, over which the Board has no jurisdiction.

The adjudicator dismissed justifications 1 and 3 of the employer's jurisdiction objection. Under the first justification, although Parks Canada may not

be subject to the *PSEA* because it is a separate employer under section 11(1) of the *FAA*, the adjudicator noted that it was nevertheless bound by a collective agreement. As the grievances were referred to adjudication under paragraph 209(1)(a) of the *PSLRA*, the Board might have had jurisdiction to hear the complaint if it was determined that the grievance breached the collective agreement.

Under the third justification, the grievors argued that even if this was a staffing complaint, they had no other avenue for redress, which would have given them jurisdiction under subsection 208(2) of the *PSLRA*. Though true, the adjudicator held that this only permits a grievance to be filed and that it does not enlarge the Board's jurisdiction.

The adjudicator dismissed the grievances for lack of jurisdiction based upon the employer's second ground. The employer asserted that the grievances did not relate to a breach of a provision in the collective agreement. Although the grievors asserted that the SERLO process breached the obligation of the employer's chief executive officer to treat everyone "equitably," the adjudicator held that the pith and substance of the grievances concerned the SERLO process, not the collective agreement.

Appendix K of the collective agreement makes a number of references to "Work Force Adjustment," which determines the steps to be followed once a determination for a lay-off has been decided. The adjudicator held that because this section does not instruct management on how to determine who should be laid off, there was no provision of the collective agreement at stake in these grievances.

Furthermore, although the grievors brought their claims under the guise of equitable treatment,

they did not plead or enter into evidence any mention of inequity or unfair treatment, which was at odds with the position that their assessment scores were inaccurate.

The adjudicator dismissed the grievances for want of jurisdiction.

6) *Sather v. Treasury Board (Correctional Service of Canada)*, 2015 PSLREB 45.

The grievor filed a grievance challenging the Correctional Service of Canada's decision to terminate his employment for sexually assaulting a coworker. The grievor and the coworker attended a hockey game and went to a pub outside work hours. Though in different groups at the hockey game, the two later spent time together at a pub. Although the coworker admitted to flirting with the grievor, she rejected multiple advances at the bar and later in his truck. The grievor ignored her pleas and sexually assaulted her in his truck after they left the bar.

The coworker's request to testify behind a witness screen was denied. The adjudicator held that because the grievor would be unable to see the witness, allowing the coworker to testify behind the screen would prevent the grievor from having the fair hearing to which he was entitled.

The parties agreed that if the adjudicator found that the grievor sexually assaulted his coworker, his actions merited termination. The issue before the adjudicator was simply determining whether or not the sexual assault occurred. The adjudicator cited leading jurisprudence, particularly the Supreme Court's reasons in *R. v. Ewanchuk*, [1999] 1 S.C.R. 330, and held that the grievor sexually assaulted his coworker.

The coworker's flirtatious behaviour did not imply consent to subsequent sexual activity. The only story of the night's events is the victim's, as the grievor did not testify to contradict her assertions that she repeatedly denied his requests to engage in sexual conduct. As such, the only way her testimony could fail was if the adjudicator found that she lacked credibility. Although there were some minor inconsistencies in her testimony, the adjudicator held that the witness was credible, and noted that inconsistencies are understandable in circumstances where an individual was assaulted. Significantly, the adjudicator held that the victim's testimony regarding what transpired in the grievor's truck was consistent and unchallenged. The adjudicator held that a negative inference could be drawn from the grievor's failure to testify.

The adjudicator dismissed the grievance.

7) *Marchand v. Deputy Head (Canada School of Public Service)*, 2015 PSLREB 63.

The employer suspended the grievor without pay on December 10, 2012, and later terminated his employment on March 26, 2014. The grievor filed grievances for each event, which were scheduled to be heard concurrently a few weeks after this motion for interim relief was filed.

The grievor sought interim relief on the grounds that the employer stated prior to the upcoming hearing that it would not challenge the termination grievance and acknowledged that it should compensate the grievor for the direct losses caused by the termination. The grievor understood this to mean that he was entitled to lost salary and benefits during his suspension and for the entire period since he was terminated.

The adjudicator agreed with the employer's submissions that he did not have jurisdiction to grant interim relief. Section 226 of the *PSLRA* lists an adjudicator's powers. Nowhere in it or anywhere else in the *PSLRA* is reference made to injunctive relief powers. The adjudicator also held that the legislature did not explicitly express an intention to grant such a power.

The adjudicator also considered whether he should grant such relief in the event that he did have the power to make *interim* orders. He held that he should not. Given the fact that reinstatement or compensation could be ordered if he found for the grievor, the amount of compensation could vary substantially depending on which remedy the adjudicator deemed appropriate. The fact that the employer was seeking a short notice period and did not desire reinstatement indicated that granting salary and benefits for a three-year period would have been inappropriate in the circumstances.

The adjudicator dismissed the grievor's provisional execution request.

8) *Tchorzewski v. Treasury Board (Correctional Service of Canada)*, 2015 PSLREB 86.

The grievor worked for the Correctional Service of Canada at its Regional Psychiatric Centre (RPC). At the time of the hearing in May 2014, she had been on leave since April 2007. She grieved that her employer failed to properly accommodate the post-traumatic stress disorder (PTSD) that she suffered following a correctional manager's use of force on an inmate. The grievor suffered from PTSD and workplace harassment following her decision to report the incident.

A preliminary issue that the adjudicator had to decide was whether to grant the employer its request to keep the correctional manager's name private. The employer's position was that his name was not relevant to the issue of whether the employer met its duty to accommodate the grievor's illness. Although the adjudicator acknowledged that she would not reveal his name simply because it had been revealed in the past, as was suggested by the grievor, the adjudicator held that this grievance did not meet the Supreme Court's "*Dagenais/Mentuck*" test for placing limitations on the information related to public proceedings. As such, the correctional manager's name was used in the adjudicator's reasons.

After the grievor reported the correctional manager's excessive use of force, the grievor received threats for months in person, over the phone and via email. She felt unsafe at work, rarely left her home, was eventually diagnosed with PTSD and was advised not to return to work at the RPC. After a period of leave, she accepted a temporary position as a term project officer at Regional Headquarters to accommodate her inability to return to the RPC, although her permanent position technically remained there. After approximately one year in her temporary position, the grievor's PTSD returned when she testified at the correctional manager's criminal trial. She again went on leave.

In the following years, both the RPC and Regional Headquarters made a variety of efforts to accommodate the grievor's illness. Although the adjudicator noted that there did appear to be confusion as to who was responsible for assisting the grievor, the adjudicator held that the employer met its duty to accommodate the grievor when it

offered to hold the position of regional coordinator for quality improvement for her. She rejected this position because she was worried that it would require her to lose her nursing certification. This assumption was incorrect, but nevertheless she rejected the position.

The adjudicator also held that the grievor's insistence that she not move was not a reasonable restriction to place on her, given the circumstances. The grievor cited her partner's work and their families as reasons for not moving; however given the time frame in which accommodation was being sought, restricting herself to her residential area was unacceptable.

However, the length of time that the grievor was on medical leave placed her in a position where she should have been placed on a priority status list as per the *Public Service Employment Regulations*. This never occurred, and it would have in fact provided the grievor with approximately one year of priority hiring possibilities in her residential area. Although the adjudicator indicated that this might have been fruitless, the grievor was nevertheless entitled to this priority position.

The grievance was allowed in part.

9) *Albano v. Deputy Head (Correctional Service of Canada), 2015 PSLREB 79.*

The grievor was a correctional manager with the Correctional Service of Canada (CSC). He was placed on indefinite suspension without pay pending a disciplinary investigation into an assault upon an inmate. The grievor returned to work three weeks later with altered duties while an investigation into

the event continued. When this investigation was complete, the grievor was suspended for 30 days without pay for dereliction of duties as per CSC's "Standards of Professional Conduct" and "Code of Discipline". Grievances for both suspensions were filed separately but heard concurrently.

The PSLREB dismissed the grievance regarding the first suspension on the grounds that the second suspension, for 30 days, subsumed the first. As the first suspension lasted 14 days, the grievor suffered only an additional 16 days of suspension once the first was subsumed in the second. The PSLREB held that the first suspension was moot.

Regarding the second grievance, the PSLREB found inconsistencies in the grievor's story. The PSLREB found that as manager, the grievor should have stepped in to prevent three corrections officers from removing an inmate from his cell and placing him in segregation and that the grievor's failure to do so allowed an assault on the inmate to take place. The PSLREB further found that the grievor failed to perform his duties when reporting the incidents by attempting to cover up his own misconduct.

The PSLREB dismissed both grievances.

10) *Anthony v. Treasury Board (Department of Veterans Affairs), 2015 PSLREB 38.*

The grievor worked with the Department of Veterans Affairs from 1981 until 2013. From 1987 until 2005, she received a bilingualism bonus. In 2005, she was promoted to an English-only position, which disqualified her from receiving the bonus. She was informed that she would no longer receive it. Unbeknownst to both parties,

the employer accidentally continued paying her this bonus for seven years. Once the employer found out, it devised a repayment scheme for the grievor to repay six of the seven years of overpayment at a rate of 5% of each pay cheque. The amount was repaid by March 2013.

The grievor filed this grievance to contest the employer's decision to recover the repayment. Although an employer has the authority to recover money paid to an employee in error, it also has the discretion not to require the recovery of such overpayments. The grievor attempted to rely on estoppel and alleged that she was under the impression that her employer had made an unequivocal promise to her that her pay would be accurate. She alleged that because her payment was going into her bank account via direct deposit and because the bilingual bonus error coincided with an increase in salary due to her promotion, she was justifiably unaware that any error had occurred.

The adjudicator held that the employer's continual providing the grievor with pay stubs that contained a description of the amounts that were paid to her contradicted her claim that a clear and unambiguous promise had been made to her was accurate. Although the adjudicator noted how unfortunate it was that the error persisted for so long, the grievor had had ample evidence at her disposal to identify the error.

The grievance was denied.

B. Staffing complaints

1) *Pond v. Deputy Minister of Indian Affairs and Northern Development, 2015 PSLREB 44.*

In July 2011, the respondent initiated an internal advertised appointment process to create a pool of qualified candidates for a number of PM-02 positions in Aboriginal Affairs and Northern Development Canada (AANDC). The complainant filed a complaint alleging abuse of authority in the indeterminate appointment of a candidate from this pool. The complainant was also in the pool, from which she was appointed twice on an acting basis; the person selected for the indeterminate appointment had received three acting appointments from the pool as well.

The complainant did not file complaints against any of these acting appointments. She claimed that the respondent misinformed her about one of the acting appointments and, therefore, she was denied her right to complain. The Board accepted to consider the evidence about the acting appointments as part of the sequence of events culminating in the indeterminate appointment. The Board found that while the respondent was careless in its notification of one of these acting appointments by posting it late and including some wrong information, these errors were not sufficiently serious to reach the level of abuse of authority. The Board further noted that any consequence to the complainant as a result of these errors was corrected, as she was allowed the opportunity to fully present her case before the Board, including her concerns related to the acting appointment.

The complainant also alleged that the respondent employed improper staffing practices by seconding the appointee into a PM-02 position, although she was in a CR-04 position, and secondments are supposed to be at-level. The respondent explained that the appointee was seconded from her home department to AANDC and then immediately appointed to the PM-02 position on an acting basis so that her salary could be paid by AANDC. The Board found that the complainant did not refer to any statutory provision that would preclude the respondent from doing this nor did she present any evidence to contradict this explanation.

In addition, the complainant alleged that the respondent abused its authority by choosing

inappropriate criteria when it selected the appointee for the indeterminate appointment from the pool. The Board pointed out that the five criteria that were used to appoint her indeterminately were all listed in the Statement of Merit Criteria for the internal advertised appointment process. The hiring manager testified that he chose the criteria for selecting candidates from the pool for appointment based on the needs of the organization and in consultation with the department's human resources staff and the assessment board chair. The Board found that the manager properly exercised his authority to choose the right fit criteria for this appointment.

For these reasons, the Board dismissed the complaint.

Appendix 4

Synopsis of Applications for Judicial Review of Decisions Rendered by the PSLREB, the PSLRB and the PSST over the Past Five Years

Fiscal Year	Decisions rendered ¹	Number of applications	Applications withdrawn	Applications dismissed ²	Applications allowed ²	Applications pending ³	Appeals of applications pending ²
Under the PSLRB and PSST							
2011-2012	190	36	10	17	8	1	0
2012-2013	160	32	5	26	1	0	0
2013-2014	203	37	11	22	3	1	3
April 1, 2014, to October 31, 2014	68	17	3	12	1	1	0
TOTAL PSLRB and PSST	621	122	29	77	13	3	3
Under the PSLREB							
November 1, 2014, to March 31, 2015	30	8	0	4	2	2	0
2015-2016	96	26	4	4	3	15	0
TOTAL PSLREB	126	34	4	8	5	17	0
GRAND TOTAL	747	156	33	85	18	20	3

¹ Decisions rendered do not include cases dealt with under the expedited adjudication process and managerial exclusion orders issued by the PSLRB or the PSLREB upon consent of the parties.

² The methodology has been updated to avoid duplication of entries and to integrate results of appeals disposed of into statistics for applications dismissed and applications allowed.

³ Applications that have yet to be dealt with by the Federal Court and the Federal Court of Appeal; does not include appeals pending before the Federal Court of Appeal or the Supreme Court of Canada.

Note: The figures for the last five fiscal years are not final, as not all the judicial review applications filed in those years have made their way through the Court system. Of the 156 applications filed since 2011-12 (21 % of the 747 decisions rendered over the 5-year period under the legacy tribunals and the PSLREB), approximately 12 % have been allowed thus far (only slightly over 2 % of all decisions rendered).