Public Service
Labour Relations and
Employment Board

Public Service Labour Relations and Employment Board

2016-2017 Annual Report

Canada

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Public Service Labour Relations and Employment Board

Chairperson: Catherine Ebbs

Vice-Chairpersons: David Paul Olsen

Margaret Shannon

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Nathalie Daigle

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John G. Jaworski

Steven B. Katkin

Michael F. McNamara

Marie-Claire Perrault

Merrie Beattie (until June 15, 2016)

Part-time Member: Dev A. Chankasingh

The Honourable Judy Foote MP
Minister of Public Services and Procurement
House of Commons
Ottawa ON 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, 2016, to March 31, 2017, for submission to Parliament.

Yours sincerely,

Catherine Ebbs
Chairperson

Message from the Chairperson

I am pleased to present the 2016-2017 Annual Report of the Public Service Labour Relations and Employment Board (PSLREB or Board).

The PSLREB is an independent quasi-judicial statutory tribunal established by the *Public Service Labour Relations and Employment Board Act (the PSLREB Act)*. The Board has existed since November 1, 2014. The Board administers the collective bargaining and grievance adjudication systems in the federal public service and in Parliament, resolves staffing complaints about internal appointments and lay-offs in the federal public service, and resolves pay equity matters. The Board also interprets the *Canadian Human Rights Act* and human-rights-related issues as they relate to its statutory mandate. The Board offers both mediation and adjudication services to resolve matters that come before it. The Board's work is supported by the PSLREB Secretariat of the Administrative Tribunals Support Service of Canada (ATSSC).

The PSLREB provides impartial labour relations and staffing adjudication and dispute resolution services to promote the stability of the federal public service workforce, which is necessary for the timely delivery of services and programs to Canadians.

During a continued period of legislative change affecting its work, the Board has revisited how best to ensure uninterrupted service excellence while looking toward the future integration of its additional mandates. This vision encompasses the values of fairness and transparency in its proceedings, well-reasoned decision making, and other principles that uphold access for its clients as well as stakeholder engagement. The Board has also identified three key priorities, which are exploring different approaches to managing the volume of files before it, modernizing and integrating its case management and scheduling systems, and seeking additional efficiencies. The Board is committed to the continuous improvement of its processes and procedures and to providing effective resolutions of the matters before it.

As was the case for the previous year, the Board continued to operate with a smaller complement of members. As prescribed by the *PSLREB Act*, the Board is to be composed of a chairperson, not more than 2 vice-chairpersons and 10 Board members who are to hold office on a full-time basis, as well as part-time members that the Governor in Council considers necessary to carry out the Board's powers, duties and functions. At the time this report was prepared, the Board was composed of the Chairperson,

two vice-chairpersons, eight full-time members and only one part-time member. Many steps were taken over the latter part of the year to initiate a process for the appointment of new full-time and part-time members, including consultations undertaken in December 2016 to seek recommendations of eligible persons for inclusion on a list of candidates suitable for appointment as members of the Board.

The volume of cases before the Board in 2016-2017 was higher than in previous years, with a total of 2715 cases received. The Board also closed 1771 cases during that period. Despite the gaps in its complement of members, this represents a significantly higher number of cases than it closed the previous year (approximately 20% more). In addition, the Board has had continued success in resolving cases before hearings through either mediation, settlement conferences or matters being withdrawn.

During the past year, the Board also administered requests for arbitration and conciliation during an intensified period of collective bargaining. This involved mediation interventions to assist the parties in reaching tentative agreements for many bargaining units. The Board also responded to several legislative changes and planned to modify its practices and rules to address status reviews and other case-management changes. The Board also monitored proposed legislative changes, which included the following: *Bill C-7 - An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures*; *Bill C-34 - An Act to amend the Public Service Labour Relations Act and other Acts*, introduced in November 2016, which would repeal a number of changes introduced by the *Economic Action Plan 2013 Act, No. 2*; and *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*, which would undo legislative changes that had been made in relation to secret ballot votes.

I am pleased to report that this past fiscal year saw the initiation of the Client Consultation Committee (CCC) on staffing matters and the ongoing engagement of the CCC on labour relations issues. I appreciate the commitment of our stakeholders in engaging in constructive dialogue on expedited hearings, case management and scheduling, among other areas. I look forward to continuing our work with stakeholders on both staffing and labour relations matters and on the Board's priorities in the year to come.

The coming year will mark many important milestones with respect to the legislation administered by the Board. Fifty years ago, in 1967, the federal government introduced the *Public Service Staff Relations Act*, which extended collective bargaining rights to government workers and allowed them the option of arbitration or the right to strike to settle disputes. This coming year will also mark the 14th year of the passage of the *Public Service Modernization Act* and the consequent enactment of the *Public Service Employment Act*, in addition to the modernized *Public Service Labour Relations Act*.

I would like to take this opportunity to thank the Board members and the staff of the ATSSC, in particular the PSLREB Secretariat, for their unfailing dedication and professionalism in supporting the work of the Board.

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 or Board) 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 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.

Figure 1 – Mandate of the PSLREB

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, labour relations matters and staffing complaints

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

With adjudication, the Board achieves the fair and timely resolution of cases through several 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 in and commitment to the resolution of disputes, and promotes a public service characterized by fair and 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 has jurisdiction over several areas of federal public sector labour relations and staffing complaints. Specifically, the Board

- 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* (*CLC*); 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 Board's legislative references encompass a broad range of employment and labour relations issues within the public service, as set out in the mandate conferred on the Board in the *PSLREBA* and in the following legislation:

- the *Public Service Labour Relations Act* (*PSLRA*), Parts I, II and III;
- the *Public Service Employment Act* (*PSEA*), in relation to staffing complaints about 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 *CLC* related to workplace health and safety and reprisals;
- the Yukon *Education Labour Relations Act* and the Yukon *Public Service Staff Relations Act* (when performing functions pertaining to the Yukon, the Board acts as the Yukon Teachers Labour Relations Board and the Yukon Public Service Labour Relations Board, respectively[2]); 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 the *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 (CHRC).

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 PSLREB serves a large number of stakeholders in the performance of its mandate.

The legislative framework of the *PSLRA* covers numerous collective agreements as well as 16 employers and 26 bargaining agents. The *PSLRA* applies to departments named in Schedule I to the *Financial Administration Act* (*FAA*), the other portions of the core public service administration named in Schedule IV and the separate agencies named in Schedule V. The Board serves approximately 225 000 federal public service employees in its mandate under the *PSLRA.*

The legislative framework of the *PSEA* applies to employees and managers in over 40 departments and agencies. These include departments named in Schedule I to the *FAA*, agencies listed in Schedule 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 Treasury Board employs over 164 000 public servants in federal departments and agencies. More than 60 000 public service employees work for one of the separate employers, which range from large organizations, such as the Canada Revenue Agency, to smaller organizations, such as the Canadian Security Intelligence Service. The majority of unionized federal public service employees (64%) are represented by the Public Service Alliance of Canada, 26% by the Professional Institute of the Public Service of Canada and the remaining 10% by 24 other bargaining agents.

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

Please refer to Appendices 6 and 7 for a list of employers, bargaining agents and bargaining units.

Our people

Under section 25 of the *PSLREBA*, the Chairperson supervises and directs the work of the Board. The Board is composed of a chairperson, up to 2 vice-chairpersons and up to 10 full-time Board members along with additional part-time Board members as required. Full-time Board members are appointed by the Governor in Council for terms of no longer than five years and part-time Board members for terms of up to three years, and both may be reappointed. Biographies of Board members are available on the Board's website at http://pslreb-crtefp.gc.ca/about/members_e.asp.

At present, the Board is composed of the chairperson, two vice-chairpersons, eight full-time Board members and one part-time Board member.

In December 2016, the Chairperson, as required by the *PSLREBA*, consulted with the employers and the bargaining agents to solicit from them recommendations of eligible persons for inclusion on a list of candidates suitable for appointment as members of the Board. These recommendations have been received by the Chairperson, and the Board is moving forward with the assessment of the candidates.

The ATSSC's PSLREB Secretariat is led by the executive director and general counsel, who is responsible for leading and supervising its daily operations and who is directly supported by its staff, which comprises approximately 65 employees within dispute resolution, registry, legal and administrative services. The ATSSC's internal services also provide support with respect to information technology, human resources, financial services and facilities.

PART ONE:

Activities of the Board

The Board's work is diverse and unique. In addition to conducting Board hearings, mediations, arbitrations and other case management matters, Board members regularly attend Board meetings to address a variety of issues, endorse or fine tune Board practices and policies, and define strategic directions. In this context, regular updates are provided on different internal service issues that affect the work of the Board as well.

A brief update on some of these issues is provided later in this report.

Progress on the integration of the Board's activities

Over the past year, the Board has focused on building greater awareness of its combined labour relations and staffing mandate.

The Board's Secretariat has continued to make steady progress on addressing work demands and on staff transitions and cross-training. The Secretariat has identified initiatives to integrate its registry function through the review and standardization of some of its administrative processes, while preserving distinctions for process and legislative differences, as appropriate.

The Secretariat's Dispute Resolution Services (Labour Relations) and Staffing Mediation Services have also been engaged in integrating certain high-level practices to ensure coherence in delivering those services.

Case management and dispute resolution

While one component of the Board's work involves the adjudication of cases at hearings and issuing decisions, the scope of the Board's focus is on the resolution of the dispute, even before the hearing. For example, this can include assisting the parties in resolving their differences on their own. Many efforts are made within the case management process to assist in resolving a case or, at the very least, to define and to narrow the issues to those that cannot be settled before a hearing. It is not uncommon for a matter to proceed to a hearing and to then settle at that hearing. Even if a matter proceeds to a hearing, it may reach that stage with fewer issues than were initially presented. Measures and strategies implemented by the Board to encourage parties to resolve issues in a way that supports more rigorous case management include pre-hearing conferences, written submissions, consolidating cases, creating

an agreed statement of facts, creating a joint book of documents, settlement conferences and mediation/arbitration, to name just a few. Many of these activities continue to be an integral part of the activities of the Board and have proven valuable during a very active year, which included a higher volume of cases and a major round of collective bargaining.

There are also other dispute resolution approaches that can assist the parties in resolving a dispute. For example, mediation is used in many cases before the Board and is recognized under both the *PSLRA* (for grievances and collective bargaining) and the *PSEA* (for staffing disputes). One of the fundamental principles of mediation is the self-determination of the parties in the resolution of the dispute. Mediation can facilitate the ability of the parties to reach a voluntary agreement. This non-adversarial approach to dispute resolution can enhance communications between disputing parties outside a formal hearing context with a view to assisting them in reaching a mutually acceptable outcome to the conflict through dialogue. It may also help parties identify and narrow the issues, while promoting an increased understanding of their respective views. The Board has been advised by stakeholders that managers do not always take adequate advantage of this important approach to dispute resolution and supports efforts made by representatives to advance the use of mediation.

One important aspect of dispute resolution belongs to the collective bargaining process. As discussed in previous reports, access to different dispute resolution measures in the collective bargaining context fundamentally changed as a result of amendments to the *PSLRA* that arose from the *Economic Action Plan 2013 Act, No. 2*. Historically, bargaining agents could choose the process for dispute resolution. Under the *Economic Action Plan 2013 Act, No. 2*, unless the level of essential services (designated at the sole discretion of the employer) was at least 80%, the conciliation/strike route was the only dispute resolution option. *Bill C-34 - An Act to amend the Public Service Labour Relations Act and other Acts*, introduced on November 28, 2016, would repeal this and would revert to allowing bargaining agents to choose either arbitration or conciliation as the process for dispute resolution.

The fluctuation of complaints, grievances and applications from year to year and the prediction of trends

There is always a level of unpredictability in the volume of files that might be received by an administrative tribunal from year to year. Many factors influence the unpredictability of the Board's caseload. This year, the Board administered more applications related to certification, many of these related to the Royal Canadian Mounted Police (RCMP). In addition, the Board administered several applications for arbitration and conciliation. The Board also provided support to mediate many matters in the collective bargaining process and contributed to the administration of alternatives to traditional conciliation and arbitration.

In terms of labour relations grievances, the number the Board received was higher than last year

(1979 new cases in 2016-17 compared to 1780 new cases in 2015-16). It also saw an increase in pay-related grievances, with many of them likely linked to the federal pay system.

As for staffing, there has been a steady increase in such complaints (from 601 and 595 complaints in 2014-15 and 2015-16 respectively to 736 complaints in 2016-17). This remains an area in which 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 is also the possibility of an increase 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*.

An overview of the Board's caseload for labour relations and staffing is presented under Parts Two and Three of this report. Summaries of some noteworthy decisions rendered by the Board are found under Appendix 8.

The Board's human rights mandate

The Board's legislative mandate recognizes that human rights issues may be interwoven in the areas of staffing complaints and labour relations grievances. Such issues may arise in the context of unfair labour practices and collective bargaining as well.

The prohibited grounds of discrimination listed in the *CHRA* are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

When a grievance has been referred to adjudication or a staffing complaint has been filed with the Board and a party to the grievance or the complaint raises an issue involving the interpretation or application of the *CHRA*, then that party, in accordance with the regulations, must give notice of the issue to the CHRC.

If the Board determines that discrimination occurred, the corrective action may include an order for relief in accordance with paragraph 53(2)(e) (general compensation up to $20 000.00) or subsection 53(3) (special compensation) of the *CHRA*, and it can award interest in the case of grievances involving a termination, demotion, suspension or financial penalty at a rate and for a period that it considers appropriate.

A SNAPSHOT OF THE PROPORTION OF HUMAN-RIGHTS-RELATED DECISIONS AT THE BOARD OVER THE FIRST THREE YEARS

The Board receives many different grievances and complaints with human rights components. The Board also issues a considerable number of decisions that address human rights issues. An approximate snapshot of decisions over the first three years, issued in the public service labour relations or staffing areas at the federal level, shows a sizeable number in human rights areas: 20.5% in 2014-2015, 16.6% in 2015-2016 and 25.5% in 2016-2017.

However, it should be noted that this overview is not complete. Because this data addresses only decisions issued, it cannot be considered conclusive. For example, it does not show how many grievances are actually filed with the Board that contain human rights issues. It does not reflect situations in which multiple matters are brought by the same

individual. Nor does it show the total number of matters coming to the Board with a human rights issue that may have been resolved before a hearing through mediation/arbitration, through a mediation settlement or through the withdrawal of the matter for some other reason. In addition, it does not indicate what may be happening in internal departmental grievance processes with respect to human rights matters in the labour relations context or in relation to inquiries about and the resolution of staffing questions that arise from appointment processes.

JOINT UNION/MANAGEMENT TASK FORCE ON DIVERSITY AND INCLUSION

The Joint Management Task Force on Diversity and Inclusion in the Public Service was created in September 2016 to examine how to strengthen diversity and inclusion in the government. In February 2017, the Board provided general comments to the Joint Union/Management Task Force on Diversity and Inclusion. Given that the Task Force was at the close of its mandate and given the limitations of time, the Chairperson addressed only a few points. The submission recognized the importance of preparing for a formal hearing (and other Board proceedings). It was noted that cases with human rights components involve legal questions that can be challenging. It was emphasized that should a matter go to a hearing before a panel of the Board, which is adversarial in nature, it is incumbent on the parties to prepare their cases and to persuade the panel of their respective positions, based on the law and the evidence. The observation was made that in this context, the Board is generally bound to restrict its decision to its factual findings, based on the evidence admitted during the hearing and an interpretation of the statutory framework at play. Therefore, preparing for a hearing is as important in this context as in other types of cases that come before the Board.

The Chairperson also observed that opportunities provided by mediation and case management are important because the parties in conflict may go back to the same work location after a dispute is resolved. Mediation is not adversarial and can be an effective model of dispute resolution because it can lead to a better appreciation of the interests underlying a conflict and to a greater understanding between the parties.

It was recognized that the Board, like all tribunals, is a "creature of statute" and that the statutes governing the Board define the scope of its mandate, including diversity and inclusion. The submission recognized the contributions of its stakeholders — bargaining agents, employers, individual complainants and grievors, deputy heads, and representatives — in the labour relations and staffing worlds in the evolution of thinking in the areas of diversity and inclusion. Because laws evolve, Board members and the staff who support the Board engage in a variety of professional education endeavours to ensure that they are aware of current trends and that they have a greater grasp on relevant issues and themes, including those in the human rights area. For example, PSLREB Secretariat staff were able to attend a session on mental health issues provided by the Canadian Mental Health Association late last year. Members of the Board and staff have also attended training on human rights law and on trends in other contexts.

Proposed legislative changes

Last year's annual report provided an overview of several legislative changes that were moving through Parliament or the Senate or that had been passed into law. The following table provides an overview of the proposed current legislative amendments, including an update on Bill C-4, which addresses secret ballot votes and card checks; Bill C-7, which relates to the RCMP's collective bargaining rights; and Bill C-34, which was tabled later in this fiscal year and repeals components of the *Economic Action Plan 2013 Act, No. 2*, which pertain to the *PSLRA* and dispute resolution rights, along with provisions that have never come into effect.

Changes are also contemplated to the *CHRA* in the upcoming year. On March 2, 2017, Bill C-16, *An Act to amend to Canadian Human Rights Act and the Criminal Code*, passed second reading in the Senate and was referred to the Standing Senate Committee on Legal and Constitutional Affairs. Bill C-16 would amend the *CHRA* to add gender identity and gender expression to the list of prohibited grounds of discrimination. Furthermore, on March 8, 2017, Bill S-201, *An Act to prohibit and prevent discrimination*, passed third reading in the House of Commons. This Bill would amend the *CHRA* to prohibit discrimination on the ground of genetic characteristics.

This table contains an overview of the status of legislation not yet in force and pending bills related to the PSLREB's mandate as of March 31, 2017:

***Budget Implementation Act*, 2009, S.C. 2009, c. 2** **Tabled in the House of Commons on February 6, 2009**	Enacts the *Public Sector Equitable Compensation Act* and makes consequential amendments to other Acts to ensure that proactive measures are taken to provide employees in female-predominant job groups with equitable compensation. Requires public sector employers that have non-unionized employees to determine periodically whether any equitable compensation matters exist in the workplace and, if so, to prepare a plan to resolve them. With respect to public sector employers that have unionized employees, the employers and the bargaining agents are to resolve those matters through the collective bargaining process. Sets out the procedure for informing employees as to whether an equitable compensation assessment was required to be conducted and, if so, how it was conducted and how any equitable compensation matters were resolved. It also establishes a recourse process for employees if the Act is not complied with.	The House of Commons adopted the bill on March 4, 2009. The Senate adopted the bill on March 12, 2009. The Act received royal assent on March 12, 2009. The *Public Sector Equitable Compensation Act* is awaiting its coming into force on a day to be fixed by order of the Governor in Council.

	Amends the CHRA to stop the provisions of that Act dealing with gender-based wage discrimination from applying to public sector employers and extends the PSLREB's mandate to allow it to hear equitable compensation complaints and to provide other services related to equitable compensation in the public sector.	See C-34, which would restore the procedures applicable to arbitration and conciliation that existed before parts of the Economic Action Plan 2013 Act, No. 2, S.C. 2013, c. 40, came into force on December 12, 2014.
***Economic Action Plan 2013 Act, No. 2*, S.C. 2013, c. 40** **Tabled in the House of Commons on October 22, 2013**	Amends the PSLRA's individual grievance process to provide a single forum to public servants who wish to challenge discriminatory practices in the public service (other than those relating to selection processes). Amends the PSEA appointment complaint process to provide a single forum to public servants who wish to challenge discriminatory appointment practices in the public service. Amends the PSLRA's individual grievance process to require bargaining agent representation for employees included in a bargaining unit who wish to present an individual grievance that does not relate to discrimination. Amends the PSLRA's policy grievance process to define more clearly a decision maker's remedial powers. Amends the PSLRA's individual grievance process to apportion the expenses of adjudication relating to the interpretation of a collective agreement in equal parts to the employer and the bargaining agent and to apportion the expenses of adjudication relating to discipline, termination of employment or demotion in equal parts to the deputy head and the bargaining agent.	The House of Commons adopted the bill on December 9, 2013. The Senate adopted the bill on December 12, 2013. The Act received royal assent on December 12, 2013. Parts of the Act are awaiting their coming into force on a day to be fixed by order of the Governor in Council. See C-34, which was tabled this year and that would repeal those provisions not yet in force as well as other parts of the legislation pertaining to collective bargaining.

	Amends the PSEA's lay-off complaint process to limit the right to complain to situations in which more than one employee participates in an exercise to select employees that are to be laid off. Amends the PSEA's lay-off complaint process to limit the right to complain to the deputy head's assessment of the complaining candidate's qualifications.	
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*** **Tabled in the House of Commons on January 28, 2016**	Amends the *CLC*, the *PESRA* and the *PSLRA* to restore the processes for the certification and the revocation of certification of bargaining agents that existed before the *Employees' Voting Rights Act*, S.C. 2014, c. 40, came into force on June 16, 2015.	The House of Commons adopted the bill on October 19, 2016. The bill was being debated by the Senate in third reading as of March 31, 2017.
Bill C-7: ***An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures***	The bill amends the *PSLRA* to provide for a labour relations regime for members of the RCMP and reservists. It provides a process for an employee organization to acquire collective bargaining rights for members and reservists and includes provisions that regulate collective bargaining, arbitration, unfair labour practices and grievances. It also amends the *Royal Canadian Mounted Police Act* to bar grievances related to the interpretation and application of a collective agreement or arbitral award, which are to be filed in accordance with the *PSLRA*.	The House of Commons adopted the bill on May 30, 2016. The Senate adopted the bill with amendments on June 13, 2016. The Senate's amendments were before the House of Commons as of March 31, 2017.

Tabled in the House of Commons on March 9, 2016	The bill changes the titles of the *PSLRA* and the *PSLREBA* and the name of the PSLREB. It also amends the latter Act to increase the maximum number of full-time Board members and to require the Chairperson, when making recommendations for appointment, to take into account the need for two members with knowledge of police organizations. The bill also removes the exclusion of RCMP members from the workers' compensation scheme under the *Government Employees Compensation Act*.	
Bill C-34: *An Act to amend the Public Service Labour Relations Act and other Acts* **Tabled in the House of Commons on November 28, 2016**	The bill amends the *PSLRA* to restore the procedures for the choice of process of dispute resolution, including those involving essential services, arbitration, conciliation and alternate dispute resolution that existed before parts of the *Economic Action Plan 2013 Act, No. 2*, came into force on December 12, 2013. The bill also amends the *Public Sector Equitable Compensation Act* to restore the procedures applicable to arbitration and conciliation that existed before parts of the *Economic Action Plan 2013 Act, No. 2*, came into force on December 12, 2013. The bill repeals provisions of the *Economic Action Plan 2013 Act, No. 2* that are not in force and that amend the *PSLRA*, the *CHRA* and the *PSEA* and it repeals the provisions of the Economic Action Plan 2014 Act, No. 1 that amend those provisions.	The bill was awaiting second reading in the House of Commons as of March 31, 2017.

Outreach

An important part of the Board's work involves communications and outreach. Outreach can occur in a variety of ways, such as consulting stakeholders, holding training sessions, accepting speaking engagements and engaging in professional development. Some of these are noted later in this report.

CLIENT CONSULTATION COMMITTEES (CCC)

While the Board had reinstated its CCC for labour relations two years ago, its counterpart for staffing matters was re-established this fiscal year. The Board values its ability to consult with stakeholders on the high-level issues pertaining to its mandate in a context in which specific cases cannot be discussed. These consultations help the Board improve its services to the parties. This consultative approach has also proven helpful for encouraging best practices before the Board.

The discussions at the CCC may lead to the initiation of special projects between the stakeholders. For example, in some cases, larger departments and bargaining agents have met [the Union of Canadian Correctional Officers (UCCO-SACC-CSN) and the Correctional Service of Canada (CSC), for example] on approaches that they could take to minimizing the issues in cases that come before the Board. This has been facilitated by the Board and has led to the settlement of a significant number of files before the Board.

TRAINING AND PRESENTATIONS

This year, the Board or its Secretariat representatives offered training or accepted speaking engagements and provided presentations on the Board's mandate and activities at meetings and conferences hosted by the following organizations:

- Training on interest-based negotiation and mediation training for labour relations officers, union representatives, managers and supervisors, as well as for those working in related fields. Three training sessions were delivered, two in English, and one in French. Overall, 70 participants attended the interactive two-and-a-half-day course.
- Presentations to stakeholders on the mediation process in the labour relations context.
- In addition, the Chairperson of the Board and Secretariat representatives provided training to new tribunal members across the country through the Tribunal Member Training sessions sponsored by the Council of Canadian Administrative Tribunals (CCAT). Topics included areas such as fairness, jurisdiction, preparing for a hearing, evidence and decision writing.
- Several other speaking engagements were provided on the Board's mandate and activities at meetings and conferences hosted by the following organizations: the Association of Labor Relations Agencies (ALRA), the CCAT, the Public Service Alliance of Canada, the Forum for Chairpersons of Federal/Provincial Labour Relations Boards and Algonquin College.

Additionally, Board members participate in workshops and other learning and networking events throughout the year.

PART TWO:

Activities under the *PSLRA*

Overview of cases filed with the Board

INTEGRATED REGISTRY SERVICES

The Integrated Registry Services support the role of the Board in both the staffing and the labour relations areas. A significant amount of the Board's work involves case management, and the Registry's case management officers play an integral, central and front-line role in both the administration and operations of this function on the Board's directions.

Specifically, a large volume of the work of Board members will be dedicated to working with the Registry to facilitate the management of a case before it. Case management officers work directly with Board members in managing a substantial volume of operational transactions that can occur on any given day. These can include receiving a grievance, complaint or application; managing the submissions and other "pleadings" in any matter before the Board, such as the allegations, the response and the reply; addressing motions (on matters such as postponements, requests for extensions of time and jurisdictional issues, to name just a few); facilitating pre-hearing conferences; organizing hearings; and fielding a diversity of matters that may come before them.

The objective of case management is to ensure the consistent application of practices and rules toward the resolution of a matter before the Board. Therefore, the Board's work, while often characterized by the final hearing of a matter and the issuance of a decision, actually begins far before this occurs. The Board's directions may ultimately lead to a hearing, whether oral or paper-based. Likewise, in the course of the case management of a matter before the Board, a file may progress and ultimately be resolved before a hearing becomes necessary.

The labour relations caseload includes those matters filed with the Board under Parts I, II or III of the *PSLRA*, namely:

- matters related to the certification of a bargaining agent;
- applications for managerial or confidential exclusions;
- successor rights and obligations;
- unfair labour practice complaints;
- individual, group or policy grievances; and
- *CLC*-related reprisal complaints

Cases filed with the Board in these areas included 1979 new files in 2016-17 compared to the 1780 files received in 2015-2016. During the same period, 1103 cases were closed — a slight increase from the 1031 files closed the previous fiscal year (please refer to Appendix 1).

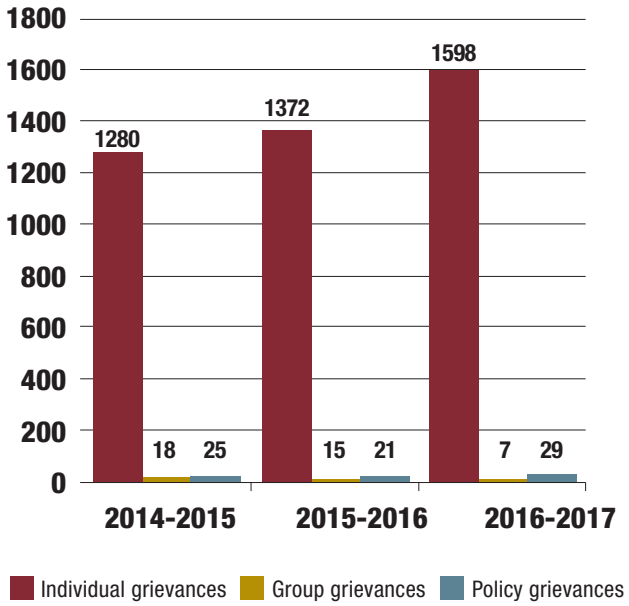
Grievances under Part II of the *PSLRA*

A large proportion of the Board's work is in the area of grievances, which fall under Part II of the *PSLRA*. That part provides the framework for referring grievances to the Board. Of note for this fiscal year is the increase in pay-related grievances referred in relation to the interpretation and application of a collective agreement. The increase in grievances referred under paragraph 209(1)(a) of the *PSLRA* may in part be traced to issues with the implementation of the Phoenix pay system, which was rolled out in 2016. It is impossible to say exactly how many grievances are directly attributable to Phoenix. However, grievances with respect to pay and overtime increased this fiscal year. In the previous year, pay-related grievances accounted for 12%, or 130, of the 1109 grievances that were referred under paragraph 209(1)(a) (about the interpretation of a collective agreement). This fiscal year, pay-related grievances represented almost 50% of grievances (655 of 1338 grievances referred to adjudication under paragraph 209(1)(a)). It is reasonable to assume that this increase is attributable in part to the Phoenix pay system.

Over the past year, the Board also received 85 grievances dealing with termination, 27 dealing with the duty to accommodate and 185 alleging discrimination.

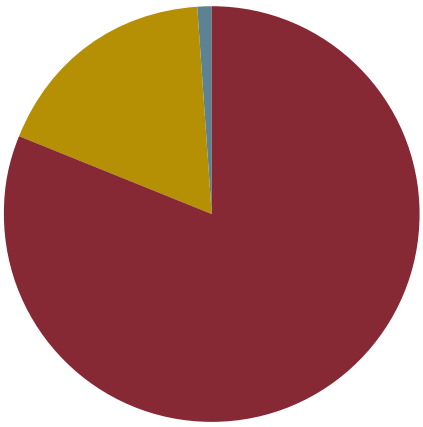
Grievances represented 82.5% of the total cases received in 2016-17, compared to 80.0% in 2015-16 and 74.7% in 2014-15. There are three types of grievances: individual, group and policy. Please see Figure 2, which represents the volume of grievances referred to adjudication, by type, in 2016-2017, compared to the two previous fiscal years.

Figure 2 – Types of grievances filed



The breakdown of the references to adjudication for the reporting year is shown in Figure 3.

Figure 3 – Types of individual grievances



- **1330** Interpretations or applications with respect to employees of collective agreement or arbitral award provisions
- **257** Disciplinary actions resulting in terminations, demotions, suspensions or financial penalties
- **10** Non-disciplinary demotions, terminations or deployment without the employee's consent when consent is required

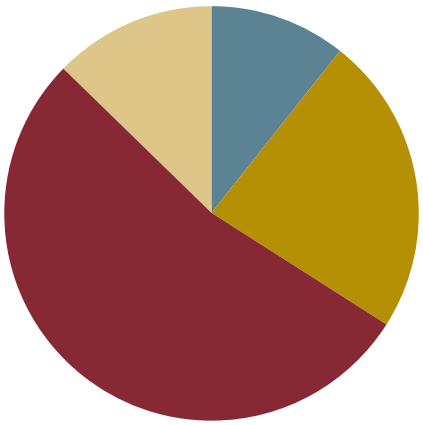
Complaints under Parts I and III of the *PSLRA*

Under Part I of the *PSLRA*, the Board received 47 complaints alleging that an unfair labour practice occurred under section 190 of the *PSLRA*. Twenty-five of those complaints alleged a breach of the bargaining agent's duty of fair representation. The remaining 22 complaints dealt with other allegations of unfair labour practices under section 190.

Under Part III of the *PSLRA*, the Board may hear a complaint under Part II of the *CLC* alleging a reprisal by the employer against an employee invoking his or her rights under the *CLC*. The Board received four complaints in that area this year.

The next figure gives a breakdown of the complaint types.

Figure 4 – Types of complaints received



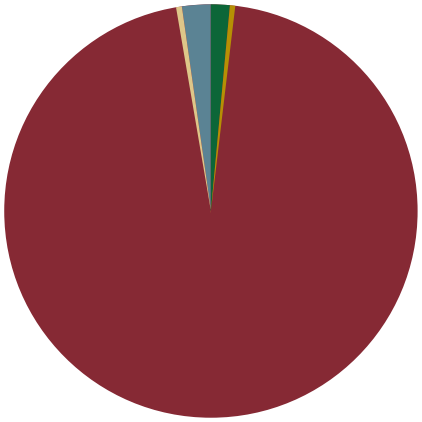
- **5** Complaints (sections 106 and 107)
- **11** Unfair Labour Practices (sections 185, 186, 188 and 189)
- **25** Unfair Labour Practices – Unfair representation (section 187)
- **6** Other

Applications under Part I of the *PSLRA*

The PSLREB received 265 applications pertaining to Part I of the *PSLRA*. These include areas such as managerial and confidential applications and applications pertaining to certifications, decertifications or successions.

This represents a slight decrease from the average 305 applications received over the past three fiscal years. The majority (95%) of applications in 2016-17 were for orders declaring positions managerial or confidential. Applications received during the reporting year represented 13% of the cases received in 2016-17.

Figure 5 – Types of applications



4 Application for certification (sections 54 and 59)

1 Determination of membership (section 58)

253 Application for Managerial or Confidential Positions (section 71)

1 Consent to Institute Prosecution (section 205)

6 Review of orders and decisions (section 43(1))

Also received this fiscal year were three applications for certification, all of which related to either police operations or RCMP civilian members, as follows:

Nature of application	Date filed	Proposed bargaining unit	Status
Application for certification filed under s. 23 of the *PSLRA*	Dec. 9, 2016	All civilian members of the RCMP within the Law Enforcement Support - Telecom Operators (LES-TO) occupational subgroup.	As of the end of the fiscal year, a hearing was scheduled but had not yet taken place to address the following aspects of the application: • whether the applicant is an "employee organization" or a "council of employee organizations"; • whether the representative of the applicant was duly authorized to make the application; • what unit is appropriate for collective bargaining; and • what positions have managerial and confidential duties.

Application for certification filed under s. 23 of the *PSLRA*	Jan. 19, 2017	All employees of the Treasury Board of Canada within the Police Operations Support - Telecommunications Operations (PO-TCO) occupational subgroup.	A hearing of similar scope to that of the first application will be proposed.
Application for certification filed under s. 23 of the *PSLRA*	Mar. 28, 2017	a) All civilian members of the RCMP within the Law Enforcement Support - Intercept Monitors (LES-IM) occupational subgroup; and b) all employees of the Treasury Board of Canada within the Police Operations Support - Intercept Monitoring and Analysis (PO-IMA) occupational subgroup.	

The Board also conducted a vote pertaining to an application for revocation of a bargaining agent in this fiscal year. This matter is still outstanding.

Please refer to Appendix 2 for information on the matters per parts of the *PSLRA*.

The PSLREB scheduled 416 hearings related to the labour relations mandate. Of those, 128 (31%) were postponed due to different factors such as the unavailability of parties and witnesses or a renewed dialogue between the parties on the matters in dispute. Of the remaining cases for which a hearing had been scheduled, 27 (6%) were settled and 99 (24%) were withdrawn. The Board does not have data available about complainants withdrawing their complaints after they were filed. As well, 10 of the 416 hearings scheduled proceeded by way of mediation/arbitration, which resulted in settlements.

In the past fiscal year, the Board issued 89 decisions under its labour relations mandate, which is identical to the number of decisions rendered in the previous fiscal year.

Dispute Resolution Services

The PSLREB Secretariat's DRS provides 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*, as follows:

- assisting parties in the negotiation of collective agreements and their renewals;
- assisting parties in the management of the relations resulting from the implementation of collective agreements;
- mediating in relation to matters under the *PSLRA*, primarily grievances; and
- assisting the Chairperson in discharging responsibilities under that Act pertaining to collective bargaining.

COLLECTIVE BARGAINING

The demand for the services provided by the PSLREB Secretariat's DRS unit typically fluctuates in direct relation to the federal public service collective bargaining cycle. The exceptional nature of the current round of negotiations caused an increase in both the volume and type of service requested over the past fiscal year.

To better understand the exceptional nature of this round, a certain amount of context is worthwhile. In December 2013, before this latest round of negotiation got underway, the previous government passed *Bill C-4 - Economic Action Plan 2013 Act, No. 2* that introduced a series of fundamental changes to the *PSLRA*. A number of those amendments had a direct bearing on the historical balance of collective bargaining in the federal public service, including removing the bargaining agents' ability to select the process for dispute resolution, making conciliation/strike the default option and limiting access to arbitration, providing the employer the sole discretion over the process for essential service determination, and prescribing new preponderant factors that arbitration boards or public interest commissions must consider when issuing their awards or reports.

The changes to the legislative backdrop under which negotiations were then initiated, combined with issues with the overhaul of the sick leave regime contributed to create a very challenging set of circumstances. Negotiations were protracted, but little progress was realized. Subsequent to the 2015 election, the new government communicated its intention to repeal the more contentious aspects of Bill C-4, including the aforementioned changes affecting collective bargaining. On June 3, 2016, the President of the Treasury Board wrote to the Heads of Bargaining Agents, confirming their legislative intentions and providing interim measures designed to restore, to the extent possible, the framework in place before Bill C-4.

The communication of the government's legislative intentions and subsequent actions contributed to an improved climate at the bargaining table, although challenges remained. Beginning in the fall of 2016, the Board received a number of requests for its mediation services. It also was asked to assist the parties in developing their responses to accessing a rarely used method of alternative dispute resolution provided for under section 182 of the *PSLRA*. In his June 3, 2016 letter, the President of the Treasury Board had indicated that the Treasury Board would agree to allow access to section 182, which provides

an opportunity for parties to refer any term or condition of employment that may be included in a collective agreement to an eligible person for final and binding determination. This process has been referred to as binding conciliation. Exceptionally this year, the DRS assisted several parties in developing their frameworks for binding conciliation and administered one referral for binding conciliation – the hearing will take place in the next fiscal year.

During the course of this last fiscal year, the Board responded to requests for mediation in relation to nine bargaining units. The Board prioritized collective bargaining and took the necessary steps to respond promptly to requests. By the end of the fiscal year, mediation sessions had taken place for eight out of the nine bargaining units resulting in seven cases in which the bargaining agent and the employer were able to reach a tentative agreement. These agreements covered approximately 105 000 federal employees and played a major role in establishing the settlement trends in the public service. In the other mediation, the parties subsequently requested to proceed to formal conciliation.

The DRS unit coordinates the two formal dispute resolution processes provided for under the *PSLRA* once an impasse has been reached in collective bargaining. Conciliation involves the appointment by the minister of a Public Interest Commission (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 option is arbitration. In this case, the chairperson of the PSLREB appoints an arbitration board that has the authority to issue a final and binding award.

Two requests for the establishment of PICs were carried forward from the previous fiscal year. In one case, the parties agreed to change the dispute resolution method and opted for the establishment of a single-member arbitration board. The board was established, and the parties reached a tentative agreement with the assistance of the arbitrator. Therefore, no decision was issued. In the second case, the PIC chairperson reported that the parties reached a tentative agreement at the hearing.

The Board received three new requests for the establishment of PICs, which will take place in the next fiscal year. The DRS continued to closely monitor collective bargaining activities to ensure its readiness to respond to the increased service demand in this environment while maintaining service levels in mediating grievances and complaints.

Mediation of complaints under Part I and of grievances under Part II of the *PSLRA*

Parties with matters before the Board may choose mediation as a mechanism to resolve the issues underlying their grievances or complaints referred to adjudication. As shown in Figures 3A and 3B, a variety of areas can be subject to mediation. 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.

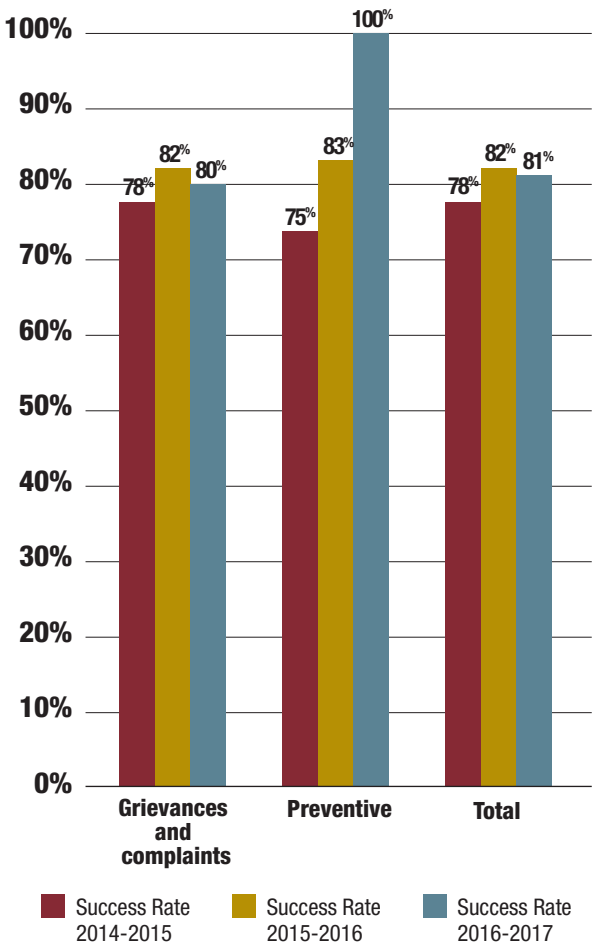
During 2016-2017, 86 mediations of grievances and complaints were conducted, which represents an increase compared to the past 2 years. Although many factors can impact the number of mediations conducted in one fiscal year, the DRS implemented

new practices in scheduling mediations and in appointing mediators that are aimed at increasing the number of mediations conducted in a year for files already referred to the Board. As a result, 86 grievances and complaints proceeded to mediation this year compared to 72 and 79 in the past 2 years, respectively.

During the reporting period, the parties successfully reached agreements in 82% of the cases, leading to the settlement of 181 files at the PSLREB. Figure 6 shows that the success rate of the parties at mediation has been fairly stable in the 80% range over the past three years. It is noteworthy that the settlement rate success can have an impact well beyond those matters already referred to adjudication at the Board. Those matters that successfully settled also led to the resolution of 50 grievances that had not yet been referred to the Board, as well as 15 complaints that were before the CHRC. Mediation as a process has proven successful in addressing several types of disputes before the Board.

Figure 6 - Mediation settlement rate

Comparison of 2016-2017 and the two previous fiscal years



Figures 7A and 7B provide a breakdown of the types of files that were settled at mediations. Four types of files were addressed in mediation, namely, individual grievances, policy grievances, complaints, and managerial and confidential exclusions. The majority of files settled fell within individual grievances. Figure 7B provides an overview of these types of grievances. As for the complaints, the majority were in the unfair labour practice and duty of fair representation categories. Only one complaint fell under the *CLC*.

Figure 7A - Types of files settled at mediation

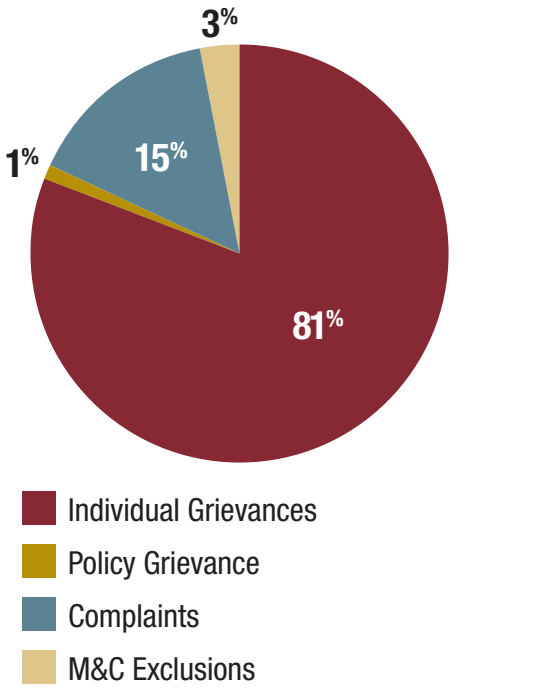
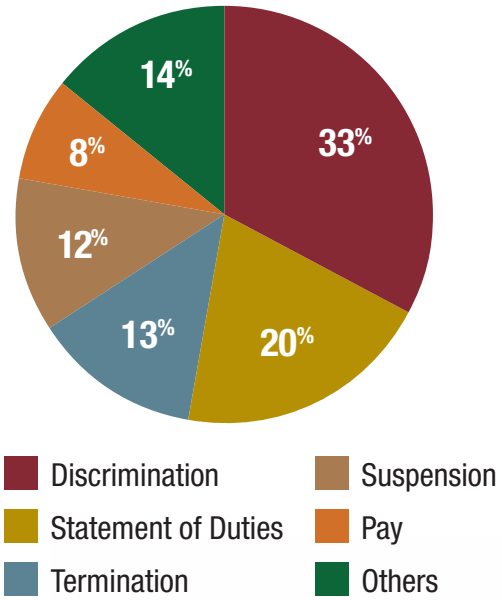


Figure 7B - Types of individual grievances settled at mediation



This past year, the DRS also worked closely with parties to assist in the resolution of some cases before the Board without proceeding to a formal mediation. These interventions led to the withdrawals of 45 grievances in addition to the 181 files settled through mediation.

Preventative Mediation

In exceptional circumstances, the Board provides preventative mediation services to assist parties to resolve grievances that could eventually be referred to adjudication. During the year, four preventative mediations were conducted, and the parties reached settlements in all cases. As a result, five grievances were prevented from possibly being referred to the Board.

PART THREE:

Activities under the *PSEA*

Complaints

The PSLREB receives the following four categories of complaints under the *PSEA*:

- internal appointment (section 77):
  - paragraph 77(1)(a) covers an abuse of authority by the Public Service Commission (the Commission) or the deputy head in the exercise of its or his or her authority under subsection 30(2),
  - paragraph 77(1)(b) covers an abuse of authority by the Commission in choosing between an advertised and a non-advertised internal appointment process, and
  - paragraph 77(1)(c) covers the failure of the Commission to assess the complainant in the official language of his or her choice, as required by subsection 37(1);
- lay-off (section 65);
- the revocation of an appointment (section 74); and
- a failure to correctly implement corrective action ordered by the PSLREB (section 83).

During 2016-2017, the PSLREB received 736 staffing complaints, which represents a significant increase over the past 6 fiscal years. For example, in 2015-2016, 143 complaints related to a non-advertised process were received, while in 2016-2017, 344 complaints of this nature were received, which is an increase of 140%. This substantial increase may be attributable in part to the Commission's "New Direction in Staffing", which came into effect on April 1, 2016, with a view to simplifying staffing, while ensuring that it remains merit-based and non-partisan, and providing organizations with greater scope to customize approaches to staffing for their particular needs, all within the spirit of the *PSEA*.

Over the past fiscal year, the PSLREB closed 668 staffing files, which is a 50% increase in the number of files closed compared to the previous year and directly correlates to the number of decisions rendered following hearings. Of the 88 staffing cases scheduled for hearings, 27 hearings were held, resulting in 43 cases being closed and 6 cases awaiting decision. The remaining 61 cases (69%) were cancelled, including 39 cases (44%) that were postponed and 22 cases (25%) that were cancelled due to the withdrawal of the matters after they were scheduled for hearings by the filing party - 3 of which were withdrawn further to a settlement conference. This represents a 4% increase in the number of cases cancelled compared to 2015-16.

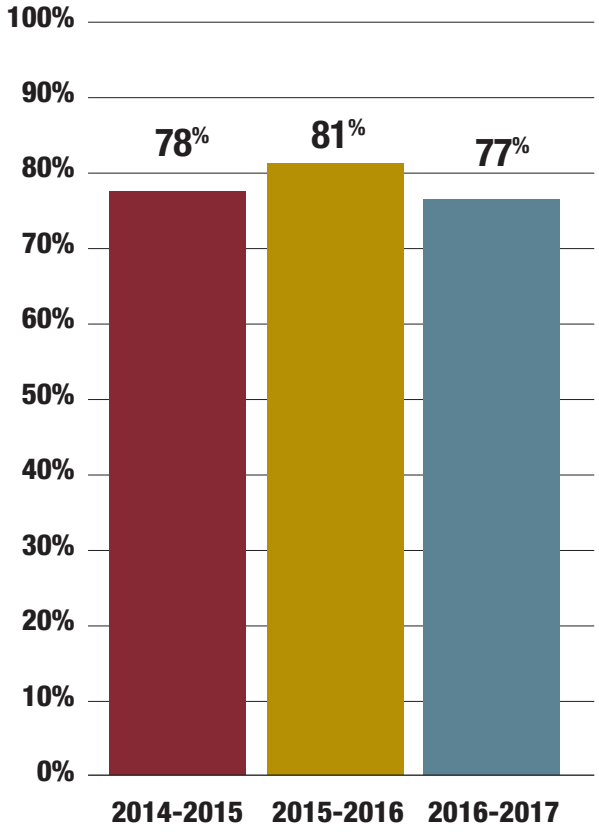
Of the 682 letter decisions issued last year, 299 (44%) were related to requests for extensions of time, and 217 (32%) were related to dismissals of complaints.

Mediation of staffing complaints

Section 97 of the *PSEA* establishes that the Board may provide mediation services to resolve a complaint. This year, the Board received more staffing complaints, and more mediation sessions were conducted. Indeed, 132 mediations were conducted this year, and of those, the parties reached a settlement in 102 cases. As a result, 118 files were settled. This year's staffing mediation success rate is 77%. A review of Figure 8 shows only a minor variance in success rates over the past three years. Although there has been a slight decrease in the settlement of staffing complaints, it is worth mentioning that most mediation sessions are considered a success if the dialogue facilitated between the parties leads to a better understanding of the matter between the parties. At times, this can lead to a narrowing of the issues to be heard in adjudication. There are always lessons learned on both sides, which can lead to a better working environment, improved communication between the parties and a better understanding of the staffing regime.

Figure 8 - Mediation settlement rate

Comparison of 2016-2017 and the two previous fiscal years



Openness and Privacy

The Board adheres to the open court principle. It has included its policy on openness and privacy on its website so that stakeholders understand the scope of this principle on its work. As a best practice, the Board includes a review of its policy on openness and privacy in its annual report as well.

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.

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 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 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 licence number, or credit card or passport details. The Board endeavours to include such information only to the extent that it 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 8 for the summaries of the main Board decisions in 2016-2017. The full texts of all Board decisions are available on its website: http://pslreb-crtefp.gc.ca/decisions/intro_e.asp.

Organizational Contact Information

For all inquiries, including hearing confirmations, mediation questions and questions from the media, please contact the Board via the information listed here. Our hours of operation are from 8:00 a.m. to 4:00 p.m. (EST), 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

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Public Service Labour Relations and Employment Board
P.O. Box 1525, Station B
Ottawa, Ontario
Canada
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Appendix 1

Total caseload for the Board or legacy Boards: 2014-2015 to 2016-2017

LABOUR RELATIONS:

Fiscal Year	Carried forward from previous years	New			Total New	Closed	Carried forward to next year
		Grievances	Complaints	Applications			
2014-2015*	4537	1365	73	387	1825	1465	4897
2015-2016	4897	1424	50	306	1780	1031	5646
2016-2017	5646	1633	47	299	1979	1103	6522

STAFFING:

Fiscal Year	Carried forward from previous years	New complaints	Complaints closed	Carried forward to next year
2014-2015*	206	601	604	203
2015-2016	203	595	449	349
2016-2017	349	736	668	417

* The 2014-2015 data reflect caseloads under the PSLRA and the PSEA from the former PSLRB and PSST for the period from April 1, 2014, to October 31, 2014, and from the PSLREB for the period from November 1, 2014, to March 31, 2015.

Appendix 2

Matters per parts of the *PSLRA*, 2016-2017

Part I – Labour Relations	Number of matters
Review of orders and decisions (subsection 43(1))	6
Application for certification (sections 54 and 59)	4
Determination of membership (section 58)	1
Complaints	
Complaints (sections 106 and 107)	5
Unfair labour practices (sections 185, 186, 188 and 189)	11
Unfair labour practices - unfair representation (section 187)	25
Other	6
Managerial or confidential positions	
Applications for managerial or confidential positions (section 71)	253
Preventative mediation	4
Request for arbitration (subsections 136(1) and (5))	1
Appointment of mediator	9
Application for conciliation (subsections 161(1) and (4))	3
Consent to institute prosecution (section 205)	1
Binding conciliation	1
Part II – Grievances	
Individual grievances (section 209)	1598
Group grievances (section 216)	7
Policy grievances (section 221)	29
Filing of order in Federal Court (subsection 234(1))	1
Part III – Occupational health and safety	
Reprisals under section 133 of the *Canada Labour Code* (section 240)	4
Public Service Labour Relations Regulations	
Part II – Grievances	
Extension of time (section 61)	10
TOTAL	1979

Appendix 3

Matters per parts of the *PSEA*, 2016-2017

Part 4 – Employment	Number of matters
Complaint to Board for lay-off (subsection 65(1))	4
Part 5 – Investigations and complaints relating to appointments	
Revocation of appointment (section 74)	3
Internal appointments (subsection 77(1))	727
Failure of corrective action (section 83)	2
TOTAL	736

Appendix 4

Complaints filed under the *PSEA* per department, 2016-2017

Department	Number of complaints received in 2016-2017	Percentage
Administrative Tribunals Support Service of Canada	1	0.1%
Canada Border Services Agency	93	12.6%
Canadian Intergovernmental Conference Secretariat	1	0.1%
Canadian Space Agency	3	0.4%
Correctional Service of Canada	78	10.6%
Courts Administration Service	4	0.5%
Department of Agriculture and Agri-Food	13	1.8%
Department of Canadian Heritage	2	0.3%
Department of Citizenship and Immigration	28	3.8%
Department of Employment and Social Development	189	25.7%
Department of Fisheries and Oceans	35	4.8%
Department of Foreign Affairs, Trade and Development	6	0.8%
Department of Health	26	3.5%
Department of Indian Affairs and Northern Development	17	2.3%
Department of Industry	31	4.2%
Department of Justice	9	1.2%
Department of National Defence	74	10.1%
Department of Natural Resources	5	0.7%
Department of Public Works and Government Services	28	3.8%
Department of the Environment	4	0.5%
Department of Transport	4	0.5%
Department of Veterans Affairs	7	1.0%
Economic Development Agency of Canada for the Regions of Quebec	1	0.1%
Immigration and Refugee Board	2	0.3%

Department	Number of complaints received in 2016-2017	Percentage
Indian Oil and Gas Canada	2	0.3%
Library and Archives of Canada	1	0.1%
National Energy Board	2	0.3%
Office of the Auditor General of Canada	1	0.1%
Office of the Commissioner for Federal Judicial Affairs	1	0.1%
Office of the Governor-General's Secretary	18	2.4%
Parole Board of Canada	1	0.1%
Patented Medicine Prices Review Board	1	0.1%
Privy Council Office	2	0.3%
Public Health Agency of Canada	5	0.7%
Public Prosecution Service of Canada	10	1.4%
Public Safety Canada	2	0.3%
Public Service Commission	1	0.1%
Royal Canadian Mounted Police	19	2.6%
Shared Services Canada	1	0.1%
Statistics Canada	6	0.8%
Treasury Board Secretariat	2	0.3%
TOTAL	736	100%

Appendix 5

Synopsis of applications for judicial review of decisions rendered by the PSLREB, the PSLRB and the PSST over the past three fiscal 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							
2012-2013	160	32	5	27	0	0	0
2013-2014	203	37	11	22	3	1	0
April 1, 2014, to October 31, 2014	68	17	4	12	1	0	0
TOTAL PSLRB and PSST	431	86	20	61	4	1	0
Under the PSLREB							
November 1, 2014, to March 31, 2015	30	8	0	6	2	0	0
2015-2016	96	27	7	13	5	2	1
2016-2017	125	20	3	5	1	11	0
TOTAL PSLREB	251	55	10	24	8	13	1
GRAND TOTAL	682	141	30	85	12	14	1

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

[2] The methodology has been updated to avoid the 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 141 applications filed since 2012-13 (approximately 21% of the 682 decisions rendered over the 5-year period under the legacy tribunals and the PSLREB), approximately 12% have been allowed thus far (slightly less than 2% of all decisions rendered).

Appendix 6

Number of bargaining units and public service employees by employer and bargaining agent[1]

Where the Treasury Board of Canada is the employer:

Bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Association of Canadian Financial Officers	1	4250
Association of Justice Counsel	1	2369
Canadian Association of Professional Employees	2	13 251
Canadian Federal Pilots Association	1	401
Canadian Merchant Service Guild	1	1002
Canadian Military Colleges Faculty Association	1	169
Federal Government Dockyard Chargehands Association	1	70
Federal Government Dockyard Trades and Labour Council (East)	1	616
Federal Government Dockyards Trades and Labour Council (Esquimalt, B.C.)	1	655
International Brotherhood of Electrical Workers, Local 2228	1	1012
Professional Association of Foreign Service Officers	1	1562
Professional Institute of the Public Service of Canada	6	33 339
Public Service Alliance of Canada	5	98 437
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN	1	6723
UNIFOR	3	284
TOTAL FOR THE TREASURY BOARD OF CANADA	27	164 140

[1] Number of bargaining units and employees provided by the employer.

Other employers:

Separate employers	Number of bargaining units	Number of public service employees in non-excluded positions
Canada Revenue Agency (CRA)		
Professional Institute of the Public Service of Canada	1	11 657
Public Service Alliance of Canada	1	27 570
Total	2	39 227
Canadian Food Inspection Agency (CFIA)		
Professional Institute of the Public Service of Canada	3	2026
Public Service Alliance of Canada	1	4167
Total	4	6193
Canadian Nuclear Safety Commission (CNSC)		
Professional Institute of the Public Service of Canada	1	732
Total	1	732
Canadian Security Intelligence Service (CSIS)		
Public Service Alliance of Canada	1	109
Total	1	109
Communications Security Establishment (CSE)		
Public Service Alliance of Canada	1	2160
Total	1	2160
National Capital Commission (NCC)		
Public Service Alliance of Canada	1	336
Total	1	336
National Energy Board (NEB)		
Professional Institute of the Public Service of Canada	1	448
Total	1	448
National Film Board (NFB)		
Canadian Union of Public Employees, Local 2656	2	81
Canadian Union of Public Employees, Local 4835 - Syndicat général du cinéma et de la télévision (SGCT)	1	96
Professional Institute of the Public Service of Canada	2	148
Total	5	325

Other employers:

Separate employers	Number of bargaining units	Number of public service employees in non-excluded positions
National Research Council of Canada (NRCC)		
Professional Institute of the Public Service of Canada	4	1513
Research Council Employees' Association (RCEA)	6	1564
Total	10	3077
Office of the Auditor General Canada (OAG)		
Public Service Alliance of Canada	1	149
Total	1	149
Office of the Superintendent of Financial Institutions (OSFI)		
Professional Institute of the Public Service of Canada	1	486
Public Service Alliance of Canada	1	13
Total	2	499
Parks Canada Agency (PCA)		
Public Service Alliance of Canada	1	4848
Total	1	4848
Social Sciences and Humanities Research Council of Canada (SSHRC)		
Public Service Alliance of Canada	2	192
Total	2	192
Staff of the Non-Public Funds, Canadian Forces (SNPF-CF)		
Public Service Alliance of Canada	10	679
United Food and Commercial Workers Union	12	568
Total	22	1247
Statistical Survey Operations (SSO)		
Public Service Alliance of Canada	2	1923
Total	2	1923
TOTAL FOR SEPARATE EMPLOYERS	56	61 465
TOTAL FOR THE TREASURY BOARD OF CANADA	27	164 140
TOTAL FOR ALL EMPLOYERS	83	225 605

Appendix 7

Number of bargaining units and public service employees by bargaining agent[1]

Certified bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Association of Canadian Financial Officers (ACFO)	1	4600
Association of Justice Counsel (AJC)	1	2608
Canadian Association of Professional Employees (CAPE)	*2	*12 708
Canadian Federal Pilots Association (CFPA)	1	382
Canadian Merchant Service Guild (CMSG)	1	1036
Canadian Military Colleges Faculty Association (CMCFA)	*1	*190
Canadian Union of Public Employees, Local 2656 (CUPE)	*2	*80
Federal Government Dockyard Chargehands Association (FGDCA)	1	50
Federal Government Dockyard Trades and Labour Council East (FGDTLC-E)	*1	*709
Federal Government Dockyards Trades and Labour Council (Esquimalt) (FGDTLC-Esq)	1	750
International Brotherhood of Electrical Workers, Local 2228 (IBEW)	*1	*1114
Professional Association of Foreign Service Officers (PAFSO)	1	1550
Professional Institute of the Public Service of Canada (PIPSC)	18	51 852
Public Service Alliance of Canada (PSAC)	27	131 109
Research Council Employees' Association (RCEA)	6	1604
Syndicat général du cinéma et de la télévision (SGCT) - CUPE 4835	*1	*102

[1] Number of bargaining units and employees provided by the employer.

Certified bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Unifor, Local 87-M	**1	**27
Unifor, Local 2182	1	250
Unifor, Local 5454 (Canadian Air Traffic Control Association (CATCA))	1	6
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN)	1	6865
United Food and Commercial Workers Union, Local No. 175 (UFCWU-175)	4	217
United Food and Commercial Workers Union, Local No. 832 (UFCWU-832)	1	62
United Food and Commercial Workers Union, Local No. 864 (UFCWU-864)	3	183
United Food and Commercial Workers, Local 1400 (UFCW-1400)	*1	*4
United Food and Commercial Workers, Local 401 (UFCW-401)	1	70[2]
United Food and Commercial Workers Union, Local 1518 (UFCWU-1518)	2	79
TOTAL	82	218 839

[1] Number of bargaining units and employees provided by bargaining agents.

[2] Depending on the season, the number may vary between 30 and 70 employees.

Note: The total indicated in Appendix 7 does not equal the total indicated in Appendix 6 (from the Treasury Board and other employers) because the employees in Appendix 6 generally include those both represented and not represented by a bargaining agent.

* The number shown is as of March 31, 2014.

** The number shown is as of March 31, 2013.

Appendix 8

PSLREB decision summaries

Throughout each year, the Board issues many decisions. In addition, the Federal Court of Appeal issues decisions on matters that were before the Board and that were subject to judicial review. The following are representative summaries of key jurisprudence in this fiscal year.

Labour relations

TERMINATION

In the year under review, the Federal Court of Appeal rendered the following three decisions relating to Board decisions on the revocation of reliability status: *Canada (Attorney General) v. Grant*, *Bergey v. Canada (Attorney General)* and *Canada (Attorney General) v. Féthière*.

Canada (Attorney General) v. Grant

In *Canada (Attorney General) v. Grant*, 2017 FCA 10, the Federal Court of Appeal confirmed the decision of the Board in *Grant v. Deputy Head (Canada Border Services Agency)*, 2016 PSLREB 37.

Ms. Grant worked in several positions at one of the Canada Border Services Agency's border crossings in Ontario. After investigating several allegations of misconduct by Ms. Grant, the deputy head first suspended and then revoked her reliability status, which was a mandatory condition of her employment. The deputy head subsequently terminated her employment. Ms. Grant grieved and eventually referred her grievances to adjudication, both under subparagraph 209(1)(c)(i) and paragraph 209(1)(b) of the *PSLRA*. The deputy head objected to the Board's jurisdiction, alleging that Ms. Grant was challenging administrative measures.

As the deputy head had relied on Ms. Grant's loss of reliability status to terminate her employment, the Board found that it had jurisdiction under subparagraph 209(1)(c)(i) of the *PSLRA*, which addresses a demotion or termination under the *FAA* for unsatisfactory performance or for any other reason that does not relate to a breach of discipline or misconduct.

The Board determined whether the suspension and revocation of reliability status constituted cause for termination and specifically whether those decisions were based on facts that logically supported them. It found that revoking Ms. Grant's reliability status and then terminating her employment was a sham. The evidence did not establish real security concerns but pointed to perceived misconduct. In the alternative,

the Board found that the suspension and revocation of Ms. Grant's reliability status and the termination of her employment were disguised disciplinary measures that fell under its jurisdiction pursuant to paragraph 209(1)(b) of the *PSLRA*, that is, a disciplinary action resulting in termination, demotion, suspension or financial penalty. The Board upheld the grievances and ordered Ms. Grant reinstated.

On judicial review, the Federal Court of Appeal declined to address the issue of the Board's jurisdiction under subparagraph 209(1)(c)(i) of the *PSLRA* to review the merits of the decisions to suspend and revoke Ms. Grant's security status and to terminate her employment. The Court remarked that the Board has also found that those decisions were disguised disciplinary actions. That alternate finding was clearly within the Board's jurisdiction. The Court found that the evidence before the Board supported the finding that the suspension and revocation of Ms. Grant's reliability status and the termination of her employment were without cause.

Bergey v. Canada (Attorney General)

In *Bergey v. Canada (Attorney General)*, 2017 FCA 30, the Federal Court of Appeal overturned the decision of the Federal Court in *Bergey v. Canada (Attorney General)*, 2015 FC 617, which had confirmed the decision of an adjudicator in *Bergey v. Treasury Board (Royal Canadian Mounted Police) and Deputy Head (Royal Canadian Mounted Police)*, 2013 PSLRB 80.

Ms. Bergey worked as a clerk in one of the RCMP's detachments in British Columbia. Her work life deteriorated, and her relationships with management and co-workers became strained. While she was on sick leave, the deputy head suspended and revoked her enhanced reliability status, which was a mandatory condition of her employment; suspended her pending a determination of her employment status; and terminated her employment. Ms. Bergey grieved and eventually referred her grievances to adjudication, both under paragraph 209(1)(b) (a disciplinary action resulting in termination, demotion, suspension or financial penalty) and subparagraph 209(1)(c)(i) (a demotion or termination under the *FAA* for unsatisfactory performance or for any other reason that does not relate to a breach of discipline or misconduct) of the *PSLRA*. The deputy head objected to the jurisdiction of an adjudicator over the suspension and revocation of Ms. Bergey's enhanced reliability status and the termination of her employment, alleging that these decisions were administrative measures.

The adjudicator found that her jurisdiction over the suspension and revocation of Ms. Bergey's enhanced reliability status was conditional on these decisions being either disciplinary or administrative actions tainted by bad faith or procedural unfairness. However, she found that she could not assess the reasonableness of those actions. The adjudicator found that they were administrative actions based on legitimate security concerns held in good faith and that they were not a contrivance, sham or camouflage. She further found that these actions were not tainted by procedural unfairness. She upheld the deputy head's objection to her jurisdiction over the suspension and revocation of Ms. Bergey's enhanced reliability status.

The adjudicator also found that her jurisdiction over Ms. Bergey's suspension pending a determination of her employment status was conditional on a finding

of disciplinary action under paragraph 209(1)(b) of the *PSLRA*. She found that the suspension was an administrative action that was motivated neither by an intention to discipline or punish Ms. Bergey nor by bad faith. Furthermore, Ms. Bergey had not established any procedural unfairness with respect to that decision. The adjudicator declined to take jurisdiction over the grievance.

The adjudicator found that she had jurisdiction under subsection 209(1) of the *PSLRA* to determine whether the termination of Ms. Bergey's employment was for cause, either for disciplinary reasons or otherwise. The adjudicator found that the deputy head showed cause for terminating Ms. Bergey's employment, as an enhanced reliability status was a mandatory condition of her employment and no evidence was presented to establish that the deputy head's decision had been made in bad faith or was procedurally unfair. The adjudicator dismissed that grievance.

On judicial review, the Federal Court upheld the adjudicator's jurisdictional finding as reasonable. The Court also concluded that the adjudicator's dismissal of Ms. Bergey's termination grievance followed as a rational outcome. On appeal, the Federal Court of Appeal stated that the issues at play were the scope of protection from termination without cause provided to employees under the *PSLRA* on the one hand and on the other hand the ability of public service employers to terminate employees for security-related reasons, thus shielding their decisions from review for cause.

In determining these issues, the Federal Court of Appeal reviewed 25 years of legislative amendments made to the *PSLRA* (and its predecessor, the *Public Service Staff Relations Act*), the *PSEA* and the *FAA*. The Court noted that all terminations of indeterminate employees in the core public administration should now be for cause. The Court also noted that the RCMP's policies provided that Ms. Bergey could grieve the suspension and revocation of her enhanced reliability status under the *PSLRA*'s grievance process.

The Federal Court of Appeal reviewed relevant precedents and cautioned that care should be taken in reading old case law decided under previous versions of the statute. The Court noted that if the Board determines that the employer's actions constituted a disguised act of discipline, it must review what occurred and decide whether the employer had cause to impose the sanction. The Court did not address the adjudicator's finding that she had no jurisdiction to assess the reasonableness of the decisions to suspend and then revoke Ms. Bergey's enhanced reliability status, because Ms. Bergey had not raised the issue on appeal, "… even though such an argument might well be a good basis for setting the adjudicator's decision aside." The Court added that the adjudicator might have erred in relying on case law predating the currently applicable statutory provisions.

The Federal Court of Appeal found that the adjudicator misconstrued what constitutes a disciplinary action. It noted the deputy head's concession that it changed course after having initiated the disciplinary process to deal with Ms. Bergey's behaviour, preferring to use its security review process to terminate her employment. The only reasonable conclusion in this case was that the suspension and revocation of Ms. Bergey's enhanced reliability status, the suspension pending determination of her employment status and

the termination of her employment were indeed disguised disciplinary actions. The Court found that the adjudicator's decision deprived Ms. Bergey of her right under the *PSLRA* to have those actions reviewed for cause.

The Federal Court of Appeal remitted all grievances to the Board for a new determination in accordance with the Court's reasons, specifying that the Board had no need to address whether Ms. Bergey had been the subject of disguised disciplinary actions. The Court directed the Board to determine whether the deputy head had cause for suspending and revoking Ms. Bergey's reliability status, suspending her pending a determination of her employment status and terminating her employment and to consider an appropriate remedy, as the case may be.

Canada (Attorney General) v. Féthière

In *Canada (Attorney General) v. Féthière*, the Federal Court of Appeal upheld the Board's decision in *Féthière v. Deputy Head (Royal Canadian Mounted Police), 2016 PSLREB 16*.

Mr. Féthière worked for the RCMP as a clerk at the Québec office of the Centre of Operations Linked to Telemarketing Fraud. Based on Mr. Féthière's conduct outside the workplace and outside work hours, the deputy head suspended his reliability status, which was a condition of his employment; suspended him from his duties while an investigation took place; revoked his reliability status; and terminated him. Mr. Féthière filed grievances against those actions and eventually referred them to adjudication. The deputy head objected to the Board's jurisdiction to deal with the grievances, alleging that they were related to administrative actions that led to the termination. The deputy head also objected to the Board's jurisdiction to determine whether there were grounds for revoking Mr. Féthière's reliability status.

The Board concluded that it had jurisdiction to deal with the suspension of Mr. Féthière's reliability status, as that action was not justified by the security risks cited by the deputy head but instead was a disguised disciplinary action. The Board also concluded that it had jurisdiction to deal with Mr. Féthière's suspension from his duties, as that action was based on the suspension of his reliability status, which itself was a disguised disciplinary action. The Board allowed those grievances.

The Board also concluded that it had jurisdiction to deal with the revocation of Mr. Féthière's reliability status, as that action was not justified by the security risks cited by the deputy head but instead was a disguised disciplinary action. The Board allowed that grievance.

Finally, the Board concluded that it had full jurisdiction under paragraphs 209(1)(b) and (c) of the *PSLRA* to determine whether there were grounds for Mr. Féthière's termination. It concluded instead that it had been based on a false pretext. The Board allowed that grievance.

On judicial review, the Federal Court of Appeal confirmed the Board's jurisdiction under paragraph 209(1)(c) of the *PSLRA* to determine whether the deputy head had justified revoking the reliability status, which had been cited in support of terminating Mr. Féthière. Based on subsection 12(3) of the *FAA*, the Court concluded that "[translation] … to determine whether there were grounds, the Board must necessarily examine the alleged cause

of termination." The Court found that the Board's conclusions on jurisdiction were consistent with the letter and spirit of both the *PSLRA* and the *FAA*.

The Federal Court of Appeal also found that the Board's conclusions were reasonable, namely, that the suspension of Mr. Féthière's reliability status, his suspension from his duties during the investigation and the revocation of his reliability status were disguised disciplinary actions.

Finally, the Federal Court of Appeal declined to rule on the issues of whether Mr. Féthière's conduct was reprehensible and whether it justified his termination as they had not been addressed before the Board.

Heyser v. Deputy Head (Department of Employment and Social Development)

In the year under review, the Federal Court of Appeal also heard the judicial review application of an adjudicator's decision in *Heyser v. Deputy Head (Department of Employment and Social Development) and Treasury Board (Department of Employment and Social Development),* 2015 PSLREB 70, in Federal Court of Appeal File No. A38115.

The adjudicator's decision is reported at pages 31 and 32 of the Board's 2015-2016 Annual Report.

The Federal Court of Appeal's decision on judicial review was still under reserve at the end of the year under review.

REJECTION ON PROBATION

Canada (Attorney General) v. Dyson, 2016 FCA 125

In the year under review, the Federal Court of Appeal heard the judicial review application of the PSLREB's decision in *Dyson v. Deputy Head (Department of Fisheries and Oceans)*, 2015 PSLREB 58. The grievor had been rejected on probation. The adjudicator concluded that he had jurisdiction to hear the matter, allowed the grievance and reinstated the grievor to his position. The PSLREB's decision is reported at pages 30 and 31 of its 2015-2016 Annual Report.

The Attorney General of Canada filed an application for judicial review. It alleged that the adjudicator exceeded his jurisdiction and erred when he concluded that the employer acted in bad faith and that the grievor's termination was not based on a *bona fide* dissatisfaction as to suitability. The Federal Court of Appeal found that the law is clear in that it permits an adjudicator who is seized of such a grievance to look into the issue to determine whether the case really is what it appears to be. The Court determined that due to the lack of evidence and the absence of facts provided by the employer, it was reasonable for the adjudicator to conclude that the employer acted in bad faith. In doing so, the adjudicator had assumed jurisdiction.

Therefore, the application for judicial review was dismissed.

DISCIPLINARY TERMINATION

Sather v. Deputy Head (Correctional Service of Canada), 2015 PSLREB 45, was discussed in last year's annual report. The adjudicator found that the grievor had sexually assaulted a co-worker, which had violated the employer's disciplinary code as an

act of personal or sexual harassment, and therefore that the grievor's dismissal was justified. In reaching his conclusion, the adjudicator noted that while some of the co-worker's evidence was not credible, her evidence that she did not consent to having sexual relations with the grievor was credible. The adjudicator also drew a negative inference from the fact that the grievor failed to testify.

In *Sather v. Canada (Correctional Service)*, 2016 FCA 149, the Federal Court of Appeal dismissed an application for judicial review of the adjudicator's decision. The Court held that the adjudicator's assessment of the evidence was reasonable. It rejected the grievor's argument that the adjudicator should have assessed the co-worker's credibility globally and then believed either all or none of her evidence.

HUMAN RIGHTS GRIEVANCES

The Board frequently addresses human rights issues in the adjudication of matters before it.

Disability

Canada (Attorney General) v. Rahmani, 2016 FCA 249

The Federal Court of Appeal dismissed an application for the judicial review of a Board decision to allow an individual grievance in *Rahmani v. Deputy Head (Department of Transport)*, 2016 PSLREB 10. The employer had terminated the grievor for physically striking his manager during a confrontation. The Board found that the employer imposed the penalty without considering several mitigating factors of which it was aware, including the grievor's state of mind and the possibility that his medication had influenced his behaviour that day. The grievor's disability was a factor in the decision to terminate him and therefore was discriminatory. A 22-month suspension was imposed instead of the termination. Compensation under paragraph 53(2)(e) and subsection 53(3) of the *CHRA* was also awarded.

On judicial review, the Federal Court of Appeal found that the Board did not err in concluding that the prohibited ground of discrimination need only be one factor to establish a case of discrimination. It noted that its conclusion was consistent with the Supreme Court of Canada's recent decision in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39. The Court also noted that the Board's finding did not mean that an employer can never dismiss an employee who commits violence in the workplace but only that such a decision cannot be made without considering the state of the employee's health.

Disability and family status

Bodnar v. Treasury Board (Correctional Service of Canada), 2016 PSLREB 71

In October 2011, the Correctional Service of Canada (CSC) implemented a policy to manage the attendance of its employees. Supervisors were to review their employees' leave usage. If a repetitive pattern appeared, an employee could be interviewed to explore the reasons for his or her absences. Eight employees who were interviewed or whose attendance was managed under the policy filed grievances alleging that the CSC had discriminated against them based on family status or disability.

The Board found that in assessing the amount of leave an employee took when compared to a nationally calculated leave usage threshold, the policy did not distinguish between culpable and non-culpable absences, such as those related to family status or disability. It did not evaluate employees' absences on a case-by-case basis. As a result, the policy singled out employees whose absenteeism was linked to those prohibited grounds of discrimination. The acceleration of managing their attendance in turn could have adversely affected their continued employment and possibly could have led to termination. Therefore, the Board found the policy discriminatory on its face (*prima facie*). In its defence, the CSC did not establish that there was a *bona fide* occupational requirement to justify applying the policy in this manner. It did not prove that accommodating the grievors would have imposed undue hardship on it based on health, safety or cost.

Accordingly, the Board allowed the grievances and declared that the policy violated the anti-discrimination provision of the collective agreement. Each grievor was awarded $250 in damages for pain and suffering under paragraph 53(2)(e) of the *CHRA* and $500 in special compensation under subsection 53(3).

This decision is under judicial review before the Federal Court of Appeal.

Gender and pay equity

Bishop-Tempke v. Treasury Board, 2017 PSLREB 3, was a decision rendered on a preliminary motion to have part of a pay equity complaint struck.

On February 25, 2016, Nicole Bishop-Tempke and the Association of Canadian Financial Officers filed a complaint with the CHRC that relied on sections 7, 10 and 11 of the *CHRA*.

The complainants alleged that the respondent, the Treasury Board, had discriminated against financial officers (FIs), who are members of a female-predominant occupational group, on account of their sex. The FIs stated that they perform work of equal value to male-dominated occupational groups but are paid less. The complaint encompasses all four classifications of the FI group, designated FI-1, FI-2, FI-3 and FI-4.

The CHRC referred the complaint to the Board pursuant to subsection 396(1) of the *Budget Implementation Act, 2009*, which directs that complaints based on section 7, 10 or 11 of the *CHRA* (pay equity complaints) are to be referred to the Board.

The Treasury Board raised a preliminary objection and sought to have the Board strike the part of the complaint that dealt with the FI-1 and FI-2 levels by declaring it *res judicata* or an abuse of process. The Treasury Board argued that the pay equity issue in respect of those two classifications had already been decided in a previous case, *Hall v. Treasury Board*, 2015 PSLREB 56.

The Board reviewed the test for *res judicata*, as follows: 1) the same issue has been decided, or the cause of action is the same; 2) the previous decision was final and 3) the parties or their privies are the same in both proceedings. Even if these conditions are met, the decision maker still has discretion and must decide whether *res judicata* should apply.

The Board found that at such a preliminary point in the proceedings, without any evidence, it could not be determined whether the cause of action or the issues were the same as those in *Hall*. Given the difference in the characterization of the group that claimed it was discriminated against, an arguable case could be made that the issue was not the same. This claim was that the whole of the FI category had suffered wage discrimination, not only the FI-1 and FI-2 levels. The analysis would necessarily be different.

In addition, the issue dealt with in *Hall* was whether the value of the work had been assessed reliably. The Board had not pronounced on the discrimination issue, as such, in the *Hall* decision; therefore, there was no risk of a contradictory decision.

The Board also concluded that it would be an appropriate case in which to apply discretion and to dismiss the motion in the interests of fairness, even if the conditions of *res judicata* had been met. Whether seen in light of *res judicata* or abuse of process, the Board considered that it would not be proper to prevent the case from going forward with respect to all four FI classifications. Removing the FI-1 and FI-2 groups from the global analysis for the period of 2006 to 2015 would necessarily have had an impact on the gender composition of the whole category. At that stage, it was impossible to know what that impact might be. It was possible that a greater wrong might have occurred by prematurely removing parts of the category that were to be used in the complainant's analysis.

Moreover, the Board noted that one must exercise caution when determining the scope of a case based on human rights. It would be wrong to deprive anyone of the right to have their case heard if a previous case had not fully addressed their human rights concerns.

The complaint was based on a fundamental human right, which is the right of women to be paid the same as men for work of equal value. The Board held that it would not be appropriate at that stage to make an order that could have wrongly deprived the complainants of the opportunity to fully defend their rights.

The Treasury Board's motion to dismiss part of the complaint before it was heard and was dismissed.

Family status

Guilbault v. Treasury Board (Department of National Defence), 2017 PSLREB 1

The grievor challenged his employer's refusal to grant his request for accommodation based on family status. His family consists of his spouse, who has some limiting medical conditions, and four children, two of whom have special needs. His spouse was on her own with the children from 4 p.m. until the grievor's return from work at 7:15 p.m. Among those special needs, one child required help with exercises, which the grievor's spouse could not undertake. The grievor requested an accommodation to his work schedule that would have allowed him to combine his two 15-minute health breaks into one break to be taken at the end of the day so that he could leave 30 minutes earlier.

The grievor's immediate supervisor refused his request. She stated that it was more of an issue of family planning than accommodation. She noted

that he refused to consider alternate solutions, such as a compressed workweek, a variable schedule, part-time employment, altering his working hours, travelling by car or changing daycares. At the final level of the departmental grievance process, the employer found that the grievor was not discriminated against by the employer's refusal to grant his request. However, it was acknowledged that his family status justified his need to leave the workplace 30 minutes earlier.

The employer determined that it was reasonable for the grievor to move his lunch break to the end of the workday, to allow him to leave earlier to meet his family obligations at home.

The grievor was dissatisfied with this response as it did not acknowledge the employer's alleged discrimination; nor did it indicate that he would be allowed to combine his two health breaks, which would have allowed him to take a 30-minute lunch. Accordingly, nothing was changed in his work schedule until after 21 months had passed, when a new supervisor implemented the decision at the final level and granted the grievor's request.

The issue before the Board was whether the employer contravened the collective agreement and the *CHRA* by discriminating against the grievor on the basis of family status. Specifically, did the grievor have a right to accommodation?

The Board applied the test set out by the Federal Court of Appeal in *Canada (Attorney General) v. Johnstone*, 2014 FCA 110. In that case, the Court held that to establish a *prima facie* case of discrimination on the prohibited ground of family status resulting from childcare obligations, an individual must show the following:

1. that a child is under his or her care and supervision;
2. that the childcare obligation at issue engages the individual's legal responsibility for that child, as opposed to a personal choice;
3. that he or she has made reasonable efforts to meet those childcare obligations through reasonable alternative solutions and that no such alternative solution is reasonably accessible; and
4. that the impugned workplace rule interferes in a manner that is more than trivial or insubstantial with the fulfillment of the childcare obligation.

The grievor explained at the hearing why the alternatives presented by the employer could not resolve his problem. The Board noted that he never mentioned hiring a babysitter for a few hours at the end of the day or finding other options for external help. The employer could not have a legal responsibility for the functioning of the family. Its initial refusal to accommodate the grievor did not interfere with his ability to meet his legal obligations toward his children or his spouse. The employer's eventual decision to grant the request was not an acknowledgment of an obligation under the *CHRA* but was in good faith, done to seek a solution to a work-life balance issue.

Following the test in *Johnstone*, the Board found that the legal obligation threshold was not met and that the grievor did not make out a *prima facie* case of discrimination. The Board went further and stated that even if a *prima facie* case of discrimination

had been made, it still would have found that the employer had fulfilled its duty of reasonable accommodation, even though the measure was implemented late. The Board dismissed the grievance.

INTERPRETATION OF A COLLECTIVE AGREEMENT

Standby and overtime

Canadian Federal Pilots Association v. Treasury Board, 2016 PSLREB 46

Transport Canada operates aircraft that conduct flights in areas such as the North Atlantic Ocean that are outside the range of terrestrial radar and radio communication and that cannot be managed by air traffic control. As a result, Transport Canada employs flight followers to enhance its flight crews' safety by conducting regular checks from the ground of a flight's progress. Every 30 minutes, the flight followers receive a computer-generated email from the aircraft's onboard systems containing a flight status report. They must also be ready at any time during a flight to receive a satellite call from the flight crew reporting route alterations or requesting assistance. Most flights occur during normal weekday office hours, but several late and weekend departures are scheduled every month. The flight followers use smartphones to monitor those flights when they are away from their offices.

The Canadian Federal Pilots Association (CFPA) is the flight followers' bargaining agent. According to its collective agreement with the Treasury Board, employees working overtime are paid at a higher rate than those on standby status. The CFPA filed a policy grievance claiming that the overtime provisions of the collective agreement were not being respected. Transport Canada considered the flight followers on standby when they were assigned flights and were away from their offices. They were considered called back and were paid overtime only when they conducted a mandated flight check every 30 minutes or when they received a call from a flight crew.

The Board found that under the collective agreement, employees are on standby status when the employer requires them to be available and able to perform work during off-duty hours, meaning that the work is not certain to occur. On the other hand, overtime means work performed in excess of an employee's scheduled hours of work. Such excess work is scheduled in advance and cannot be considered standby. Flight followers know a week or more in advance that they will be monitoring a specific flight outside office hours. Therefore, that is scheduled overtime work.

The grievance was allowed. On May 10, 2017, the Federal Court of Appeal dismissed an application for judicial review of this decision.

Assignments

Major v. Deputy Head (Department of Fisheries and Oceans), 2017 PSLREB 27

In this case, the grievor was a fishery officer with the Department of Fisheries and Oceans ("the employer") at its Grande-Rivière, Quebec, office.

In 2012, there were serious longstanding issues among the employees in Grande-Rivière — the office had been dysfunctional for some time and was failing to meet its mandate. After many attempts were made to address these issues, the employer

decided to relocate several employees to other locations for a period of two years. The hope was that upon their return to the Grande-Rivière office, the employees' work performance and willingness to collaborate with each other would be improved.

The grievor was one of these employees. She received a letter advising her that her substantive position remained at Grande-Rivière but that she was to report to Quebec City for a two-year stint in that office. During that period, she would be required to work in Northern Quebec three out of every four weeks. She did not report there and was terminated for abandoning her position.

The employer said that the grievor had consented to such relocation by accepting her job offer letter dated June 30, 2005, which contained a mobility clause, as follows:

> [Translation]
>
> *By accepting this offer, you also accept the following conditions of employment:*
>
> - Agree to be deployed anywhere in Canada or assigned to all types of regulatory enforcement activities, including inland, coastal, and offshore patrols and/or special operations.

Paragraph 51(6)(a) of the *PSEA* provides that an employee may be deployed without his or her consent if agreement to being deployed is a condition of employment of his or her current position. Therefore, based on her job offer letter, the grievor could have been deployed, without her consent, anywhere in Canada.

However, section 52 of the *PSEA* provides that on deployment, an employee ceases to be the incumbent of his or her previous position.

The grievor's relocation letter advised her that her substantive position remained at Grande-Rivière; therefore, she did not cease to be the incumbent of her current position. Thus, the decision to relocate her could not have constituted a deployment. Rather, it was an assignment.

The next question was whether the grievor could be assigned to the Quebec City office without her consent.

The grievor argued that the word "or" in the mobility clause makes a distinction between a "deployment anywhere in Canada" and an "assignment to regulatory enforcement activities". The Board agreed that the ordinary meaning of these words supported the conclusion that the word "or" is disjunctive, not conjunctive.

In other words, the grievor had agreed to be deployed anywhere in Canada and had agreed to be assigned to "all types of regulatory enforcement activities". However, she had not agreed to be assigned to all types of regulatory enforcement activities anywhere in Canada.

The Board noted that the employer's interpretation (that by accepting the letter, the grievor had agreed to be assigned anywhere in Canada) was unreasonable. It would mean that the employer could simply assign an employee to another geographic area for any period, without the employee's consent, be it to Quebec City or Vancouver. The Board found that this would have disproportionate and devastating personal consequences for employees.

In the grievor's case, assigning her to Quebec City meant she would be separated from her family and that she would incur considerable financial obligations. The employer would pay only her moving

costs, so she would have had to rent an apartment in Quebec City while working in Northern Quebec three out of four weeks and retain her house in Grande Rivière, and she would have seen her family potentially only one week a month. To conclude that she had consented to such an assignment with all its personal consequences would require a much clearer text than the mobility clause in her job offer letter.

The only reason the employer cited for the grievor's termination was that by not reporting to the Quebec City office, she had not respected the mobility clause in her job offer letter and therefore had renounced her position. To determine whether she had abandoned her position, the Board first had to determine whether her position was in Quebec City.

Based on the Board's interpretation of the mobility clause, it concluded that a two-year assignment outside the Grande-Rivière district was not legitimate and that the grievor was not required to report to the new location. Accordingly, the fact that she did not report there could not constitute an abandonment of her position, as follows:

> … the reason the employer provided for terminating the grievor is not supported by the evidence before me. It incorrectly believed that it could assign her to the Northern Quebec sector without obtaining her consent. When it decided to assign her to another geographic area, it had a duty to obtain her consent, unless otherwise clearly indicated in her conditions of employment.

The Board allowed the termination grievance and ordered the deputy head of the Department of Fisheries and Oceans to reinstate the grievor to her fishery officer position at the Grande-Rivière office, retroactive to October 26, 2012, with all rights and benefits.

Overtime

Ducey v. Treasury Board (Department of National Defence), 2016 PSLREB 114

The grievors were civilian technicians who worked at the employer's engineering support facility in Halifax, Nova Scotia. They worked regular hours, not shifts, from 07:30 to 16:20, Monday to Friday. They conducted two sea trials, on the submarine HMCS Windsor and on the frigate HMCS Halifax, of four and three days respectively in April 2013.

The collective agreement provided that when an employee was required to be in a submarine or on a ship during sea trials, he or she would be considered at his or her workplace and would be paid at the straight-time rate for all hours during his or her regularly scheduled hours of work, and overtime thereafter based on the number of hours worked in excess of his or her regularly scheduled hours of work. A dispute arose about the amount of overtime that should have been paid to the grievors during these sea trials.

The Board observed that from the outset of the sea trials, the hours being worked differed significantly from the grievors' normal hours worked ashore at the support facility. The evidence was that sea trials involve periods of waiting for the submarine or ship at issue to move and of working at odd times for often lengthy continuous periods. The Board determined that in the case of sea trials, the collective agreement presupposes that the employee is in a captive time situation. The wording of the collective agreement contemplates some time being

unworked and specifically addresses it by stating that all unworked time is to be paid at the regular rate. In addition, in the case of submarine trials, the parties recognized that the conditions on a submarine warranted additional compensation and agreed on what was appropriate by providing for a submarine trials allowance based on a formula set out in the collective agreement. The grievors received this allowance.

A key issue in the case was the meaning of the phrase "regularly scheduled hours of work" during sea trials. Both parties agreed that the grievors' regularly scheduled hours of work on the first day of the sea trials were restricted to the straight-time rate under the collective agreement. However, the grievors argued that, based on a past practice, "regularly scheduled hours of work" applied only to the first day of a sea trial. The Board accepted the grievors' evidence that there was such a past practice. However, it found that the language used in the collective agreement was unambiguous. Therefore, past practice could not be used to contradict that language. The Board determined that the employer breached its obligations with respect to paying overtime and ordered the employer to pay the grievors overtime based on the appropriate hours and rates set out by the Board for the periods that they conducted the sea trials at issue.

The Board allowed the grievance.

Administrative procedures provided elsewhere under subsection 208(2) of the *PSLRA*

Lukits v. Treasury Board (Department of National Defence), 2017 PSLREB 6

Dr. Steven Lukits (the grievor) is a professor of English at the Royal Military College of Canada (the College). He is a member of the University Teaching bargaining unit represented by the Canadian Military Colleges Faculty Association.

The College received an access-to-information request relating to the War Literature II course taught by the grievor. It asked for the production of course materials, lecture slides, handouts, course packages and the grievor's handwritten notes. He agreed to provide his course outline and class material but not his course notes. His bargaining agent and the Principal of the College supported his position.

The Chief of Military Personnel ordered the grievor to produce his course notes under threat of discipline. The grievor produced them under protest and filed a grievance, which was referred to adjudication.

The employer challenged the Board's jurisdiction to hear the case, alleging that it fell under the *Access to Information Act (AIA)*, which has the purpose of providing Canadians with access to information that is under the control of government institutions. The College is a "government institution" as defined in the *AIA*.

The key question to determine jurisdiction was whether the course notes were under the control of the College. If they were not, then the *AIA* did not apply. The grievor argued that the notes were his property. They were not, and never had been,

held under the College's control. The employer's order to produce them breached articles 5 and 8 of the collective agreement.

Article 8 ("Past Practices") preserves the working conditions that existed before the collective agreement, if they were not altered by it. The collective agreement is silent about the ownership of course notes; therefore, the past practice applied. The grievor and the Principal said that the College had always treated course notes as the personal property of individual professors. However, the employer said that the notes belonged to the College.

Article 5 ("Academic Freedom") is silent with respect to disclosing course notes; therefore, the employer argued that it did not apply and that it was not an issue of academic freedom. However, the Board held that it was arguable that the ownership of course notes was an issue that could fall within the scope of article 5.

Accordingly, this matter did not fall under the *AIA* simply because it arose from a request for information under it. It was an employment dispute involving alleged breaches of the collective agreement concerning the preservation of past practices and academic freedom. The employer's order to the grievor to produce the notes, under threat of discipline, was fundamentally an employment issue. Therefore, the Board concluded that it had jurisdiction to hear the matter.

DECISIONS UNDER THE *PSEA*

George v. President of the Canada Border Services Agency, 2017 PSLREB 28

In 2013, the respondent posted a job opportunity advertisement (JOA) for an internal advertised appointment process to create a pool to staff liaison officer (LO) positions in missions abroad on an "acting assignment" basis. The process was open to agency employees whose substantive positions were at least at the FB-5 level and included a bilingual (BBB) imperative language requirement as an essential qualification for the position. According to the complainant, these LO positions in missions abroad are coveted within the respondent.

Section 77 of the *PSEA* provides that an unsuccessful candidate in the area of selection for an internal appointment process may file a complaint with the Board that he or she was not appointed or proposed for appointment because of an abuse of authority. The complainant filed two complaints under that section against acting appointments made from the pool. He withdrew one complaint, and the other proceeded to hearing. At the hearing, the respondent conceded that cross-postings (subsequent acting assignments in other geographic locations) were the agency's preferred mechanism to fill these LO positions abroad and that the pool would be used to fill remaining vacancies. The complainant argued that the requirements applied to those who had applied to the JOA, namely, the minimum FB-5 classification and bilingualism at the BBB level, were not applied to those who were offered LO positions through cross-postings, which constituted an abuse of authority.

At the hearing, the respondent raised for the first time that the Board did not have jurisdiction to consider the complaint on its merits. The respondent argued that by virtue of section 17 of the *Public Service Employment Regulations* (*PSER*), a person cannot bring before the Board a section 77 complaint of abuse of authority with respect to an acting appointment to a position in a rotational system allowing agency employees to move to and from Canada. Based on the evidence before it, the Board found that the LO positions are part of a rotational system. The chosen candidate continues to be the incumbent of his or her substantive position in Canada and is expected to return to it once the temporary posting abroad is completed. The Board was satisfied on the evidence that the staffing action concerning the chosen candidate who was the subject of this complaint constituted an acting appointment to a rotational position pursuant to a rotational system of posting employees to missions abroad, to carry out the agency's mandate outside Canada. Accordingly, the Board concluded that the appointment was excluded from the application of section 77 of the *PSEA* by virtue of section 17 of the *PSER*.

The Board dismissed the complaint on the basis that it had no jurisdiction to consider it on its merits.

De Santis v. Commissioner of the Correctional Service of Canada, 2016 PSLREB 34

In April 2014, the respondent emailed an "Expression of Interest" notice to all employees in its Pacific Region for an assignment or acting opportunity of four months less a day to fill the position of regional manager of operations at CORCAN - Pacific Region (classified AS-7). Twelve applications were received. The complainant was screened out, and the appointee was appointed to the position. The respondent used a non-advertised process to make the appointment.

The complainant alleged that the respondent abused its authority in the choice of process and in the application of merit. The appointee had already been acting in the position, and that last appointment extended his acting appointment for a period of more than four months. The complainant alleged that describing the appointment process as non-advertised could be considered an abuse of authority. According to the respondent, what mattered most was whether an abuse of authority occurred in the process itself, however one chose to describe it.

The Board found that the acting regional director had satisfactorily explained the process. The Board also concluded that whether the process was considered advertised or non-advertised, it did not find that the complainant had established that there was an abuse of authority in the choice of process.

With respect to the application of merit, the complainant pointed to a number of deficiencies in the process leading to the appointment. Specifically, two elements in how the merit criteria were applied to the appointee's application seemed highly problematic.

First, the educational requirement applied was not the one stated in the original Expression of Interest, which required the successful completion of a two-year post-secondary diploma related to the position. In his application, the appointee did not specify any post-secondary education leading to a diploma. Therefore, on its face, the appointee's application did not meet the education requirement stated in the Expression of Interest.

Second, the complainant pointed out the fact that the application sent by the appointee in response to the call for an Expression of Interest was identical in its wording to the required "Assessment of Qualifications" that the hiring manager wrote to justify the one-month extension and the second four-month appointment. The respondent provided nothing satisfactory to the Board to explain how this could have happened. The Board stated that a reasonable inference could be made that given the near-identical text in his application, the appointee had used the assessment of qualifications that the acting regional director had authored. The Board concluded that the respondent abused its authority in the application of merit.

The complaint was substantiated, and the Board ordered the deputy head to revoke the acting appointment.