Federal Public Sector Labour Relations and Employment Board

Commission des relations de travail et de l'emploi dans le secteur public fédéral

# Excellence in Resolution

## FOSTERING HARMONIOUS LABOUR RELATIONS AND EMPLOYMENT PRACTICES IN THE FEDERAL PUBLIC SECTOR

## FPSLREB ANNUAL REPORT


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This publication will also be available on the Board's website.

**The Honourable Dominic LeBlanc**
**Minister of Public Safety, Democratic Institutions and Intergovernmental Affairs**
**House of Commons**
**0ttawa 0N K1A 0A6**

Dear Minister,

As Chairperson of the Federal Public Sector Labour Relations and Employment Board, it is my pleasure to transmit to you, pursuant to section 42 of the *Federal Public Sector Labour Relations and Employment Board Act*, this Annual Report of the Federal Public Sector Labour Relations and Employment Board, covering the period from April 1, 2023, to March 31, 2024, for submission to Parliament.

Yours sincerely,

Edith Bramwell
Chairperson
Federal Public Sector Labour Relations and Employment Board

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# Land Acknowledgment

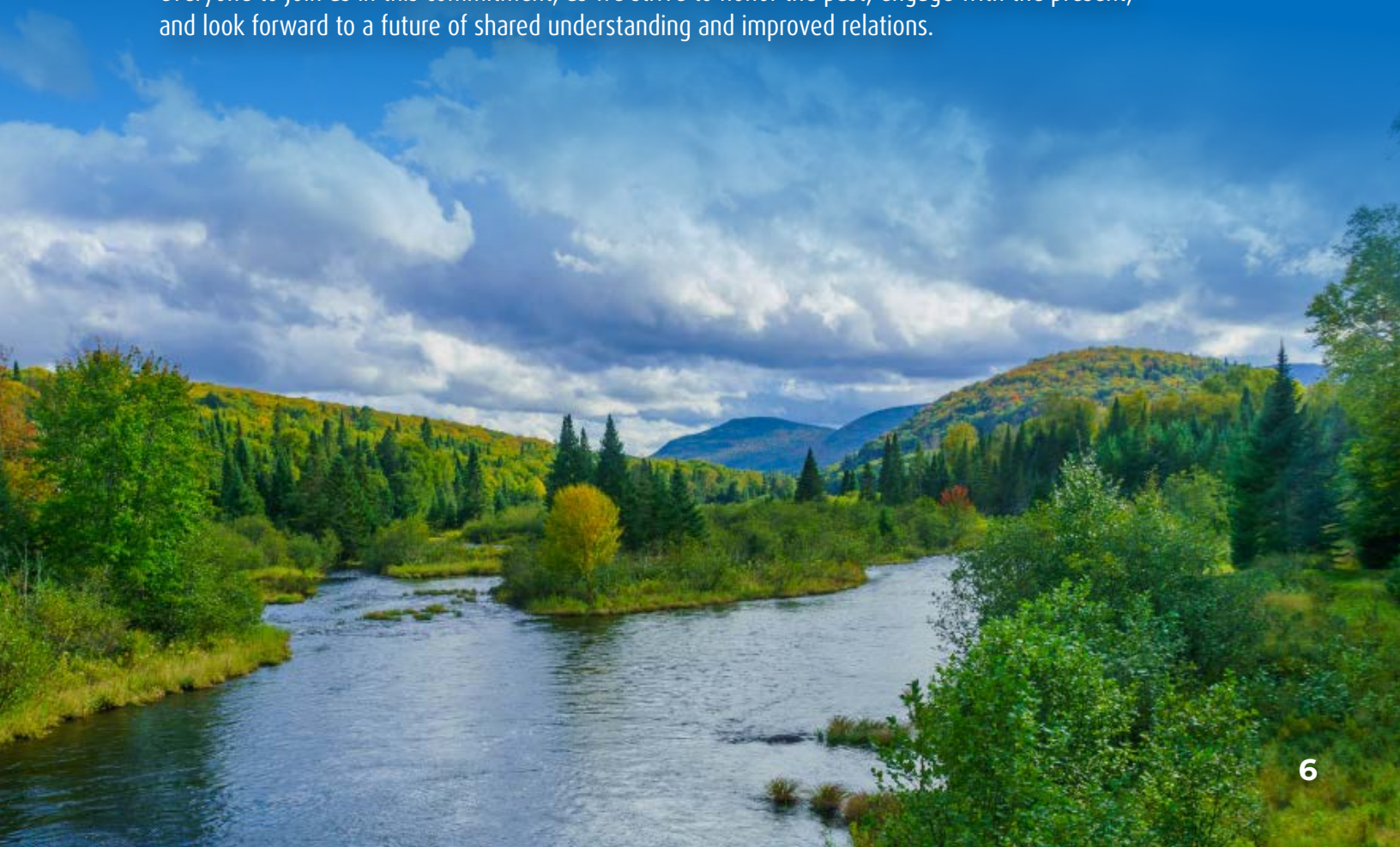
We respectfully acknowledge that our offices are situated on the ancestral and unceded territories of the Anishinaabe Algonquin Nation. These lands have been stewarded through generations by the Algonquin people, whose history, language, and culture continue to influence our vibrant community.

As we conduct hearings and mediations across Canada, we also recognize the diverse Indigenous peoples whose enduring relationships with their traditional territories are fundamental to their identities and cultures. We extend our gratitude for the opportunity to live, work, and learn on these territories.

We acknowledge the resilience and strength of Indigenous peoples, who have faced the devastating impacts of colonization and cultural genocide. This acknowledgment is a reminder of our responsibilities to address these injustices and to strive for truth and reconciliation.

Recognizing the land is an essential step toward reconciliation, but it is not the final destination. The Board is committed to decolonizing its processes, promoting justice, and fostering an environment of inclusivity and respect.

We believe that everyone has a role to play in the ongoing journey toward reconciliation. We invite everyone to join us in this commitment, as we strive to honor the past, engage with the present, and look forward to a future of shared understanding and improved relations.



# Message from the Chairperson

I am pleased to share the Federal Public Sector Labour Relations and Employment Board's ("the Board") Annual Report for 2023-2024.

Behind each case are people seeking fair and just outcomes, reflecting the rich diversity of public services workplaces and the public service community. We remain steadfast in our commitment to service excellence. Our efforts to streamline processes and embrace innovative solutions yielded significant improvements in case management: for the first time in years, the Board closed more files than it opened.

Over the past year, the Board focused on targeted priorities, such as termination files, with the goal of tackling its file inventory more strategically. We significantly increased the number of hearings scheduled, which allowed far more cases to move toward resolution, and improved access to justice. The appointment of new full-time members has also had a significant impact on our ability to address our case load.

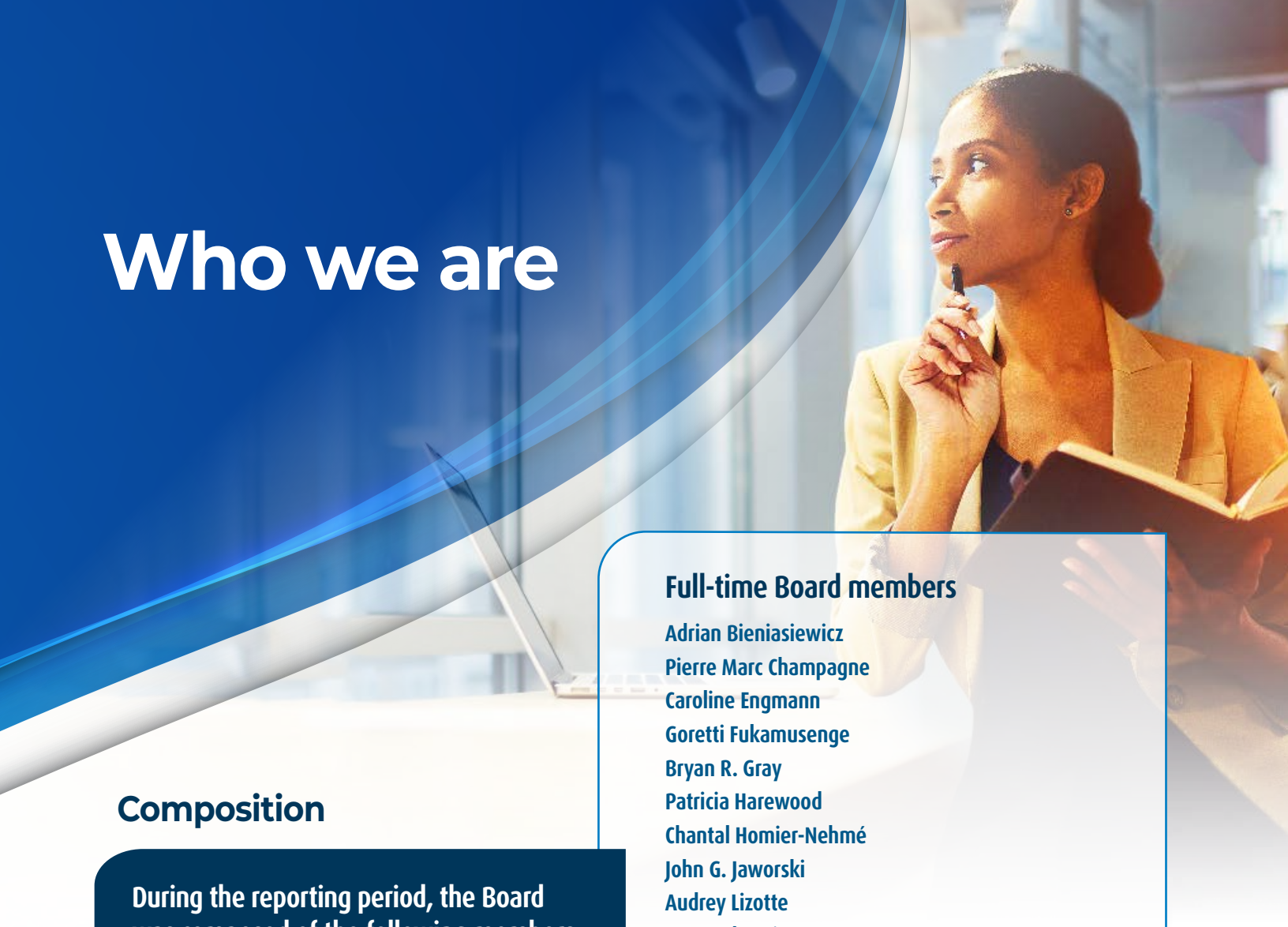
Additionally, 2023-2024 was a significant year for innovation and alternative dispute resolution, which helped resolve numerous cases in a flexible environment and without the need for a formal adjudication process. We continue to offer settlement conferences for all types of files and integrated the Early Resolution Program into our standard service offering, fostering constructive discussions and progress in settling disputes.

I extend my deepest gratitude to the members of our Board and the dedicated staff of the Board's Secretariat for their steadfast support and persistent pursuit of excellence. My thanks also go out to our stakeholders for their invaluable assistance and guidance. Witnessing such a remarkable display of unity and cooperation while striving toward a common goal is genuinely inspiring. It is with pride and enthusiasm that we collectively look forward to the year ahead and the opportunities it brings to better serve the Canadian public.

**Sincerely,**

**Edith Bramwell, Chairperson**
**Federal Public Sector Labour Relations and Employment Board**

# Who we are



## Composition

During the reporting period, the Board was composed of the following members:

- Edith Bramwell, Chairperson
- Marie-Claire Perrault, Vice-chairperson
- Amélie Lavictoire, Vice-chairperson

### Full-time Board members

Adrian Bieniasiewicz
Pierre Marc Champagne
Caroline Engmann
Goretti Fukamusenge
Bryan R. Gray
Patricia Harewood
Chantal Homier-Nehmé
John G. Jaworski
Audrey Lizotte
Ian Mackenzie
Christopher Rootham
Nancy Rosenberg

### Part-time Board members

Joanne Archibald
Fazal Bhimji
Deborah Cooper
Guy Giguère
Guy Grégoire
David Jewitt
Steven B. Katkin
James Knopp
David P. Olsen
David Orfald
Renaud Paquet
Leslie Anne Reaume
Augustus M. Richardson

# The Board's Mandate, Commitment and Jurisdiction

The Federal Public Sector Labour Relations and Employment Board ("the Board") is an independent, quasi-judicial statutory tribunal that supports balanced and harmonious labour relations and employment environments in the federal public sector. The Board resolves work-related conflicts in a fair and unbiased way, as mandated by the laws that the Board interprets and applies, by helping parties to access the Board's services and to settle their differences fairly and efficiently.

The Board's mandate includes:

- administering federal public sector collective bargaining and adjudication processes;
- resolving complaints about internal appointments, appointment revocations, and layoffs;
- resolving human rights issues arising in labour relations grievances, staffing complaints, unfair labour practices, and collective bargaining matters;
- administering federal public-sector reprisal complaints under the *Canada Labour Code* (*CLC*); and
- resolving complaints made by federal public sector and parliamentary employees related to the *Accessible Canada Act*, which establishes a framework for the proactive identification, removal, and prevention of barriers to accessibility for persons with disabilities.

**The Board interprets and applies the following legislation:**

- *Federal Public Sector Labour Relations Act* (*FPSLRA*)
- *Public Service Employment Act* (*PSEA*)
- *Canadian Human Rights Act* (*CHRA*)
- *Parliamentary Employment and Staff Relations Act* (*PESRA*)
- *Public Sector Equitable Compensation Act* (*PSECA*)
- *Canada Labour Code* (*CLC*), Part II
- *Accessible Canada Act* (*ACA*)

The *FPSLRA* applies to departments listed in *Schedule I* to the *Financial Administration Act* (FAA), other portions of the core public administration listed in *Schedule IV*, and separate agencies listed in *Schedule V*. The *FPSLRA* covers over 325 000 federal public sector employees, including RCMP members and reservists. Numerous bargaining agents are certified under the Board's jurisdiction.

The *PSEA* applies to any organization for which the Public Service Commission (PSC) or its delegate has the authority to make appointments and covers approximately 274 000 employees and managers in the federal public service.

## The Board's work

The Board supports fair and productive public sector workplaces by providing a range of efficient dispute resolution processes. Robust federal public service workplaces support all Canadians.

Our decisions often set precedents that guide the interpretation and application of labour laws, not just in the federal public sector but also in other jurisdictions across Canada. Our work contributes to the development of Canadian labour law and promotes consistency and fairness in its application.

**Hearing and deciding grievances, staffing complaints and other disputes**

- Through formal oral and written hearing process, the Board receives evidence from the parties, while ensuring that all parties have an equal right to present their evidence and make their submissions.
- Board members provide carefully articulated decisions based on their consideration of the evidence and submissions.

**Providing other pathways to resolution**

- Informal resolution processes give parties more control in resolving their collective bargaining, grievance, staffing and other disputes.
- These informal processes are often quicker and less expensive and allow for more privacy and confidentiality. This enhances access to justice and allows the Board to focus on cases that require a more formal approach.
- Through these resolution pathways, the Board fosters open, respectful communication, and fair, transparent employment and staffing practices.
- Mutually agreed resolutions eliminate the need for a Board decision which imposes a solution on the parties.
- The Board's longstanding voluntary, formal mediation process focusses on discussions guided by a neutral, unbiased mediator.
- Board members continue to resolve cases through active but informal intervention, in case management conferences, and through the blending of mediation and adjudication processes.

**Administering collective bargaining**

- The Board administers collective bargaining processes for the federal public sector (including the RCMP and Parliament), as covered by the *FPSLRA* and the *PESRA*.
- Collective bargaining is a constitutionally protected process. Federal public institutions and approximately 274 000 employees across at least 100 Board-certified bargaining units negotiate working conditions, salaries, and benefits on a cyclical basis.
- Federal public sector agreements often serve as benchmarks that shape the standards and expectations of the labour market as a whole.
- The Board reviews and supports collective bargaining in many ways, including:
  - » certification of new bargaining units;
  - » determination of proposed changes to bargaining units;
  - » dealing with bargaining unit exclusions and essential services disputes;
  - » administering Public Interest Commissions ("PICs") and interest arbitration boards;
  - » dealing with complaints related to unfair labour practices, such as illegal strikes, bad faith bargaining, and failures to provide fair representation.

## The Board's challenges

The Board faced several challenges at the time of the start of the COVID-19 pandemic. Over the course of several years, the Board's inventory had ballooned to more than three times the size of its annual closure capacity, which at the time ranged between 1200 – 1500 files per year. Pursuant to long-term trends, the demand for the Board's services was on the rise. In the three years following the start of the pandemic alone, file intake rose from 1000 – 1200 files annually to well over 2000 new files, many of which related to COVID-19 vaccination mandates.

The result was an unacceptable level of delay in resolving Board files, and in the scheduling of those files which required a hearing in order to achieve resolution. Traditionally, the Board offered only two dispute resolution pathways: a formal hearing or a voluntary mediation. The use of written submissions or combined mediation/arbitration ("med/arb") techniques to resolve files was infrequent.

Delay was also exacerbated by the fact that since the creation of the Board in its current form in 2014, it had never seen a full complement of Board members.

# The Board's solutions

## Improved technology

The Board has significantly increased the availability of its electronic filing services. This resulted in more efficient processing of incoming files, reduced processing times and more streamlined processes.

In the current reporting period, the Board has also piloted and adopted its own online portal that allow users to share electronic documents with the Board and other parties to the same file. The e-Docs portal is designed to facilitate the sharing of large documents without the necessity for multiple submissions and also allows users to share in real-time during a hearing.

## Increased hearings

Scheduling a hearing almost always promotes resolution, either before the hearing, due to a settlement or a withdrawal, or after, by reasons for decision being issued. As such, in a push to resolve a greater number of files, the Board has significantly increased the number of hearings scheduled, as highlighted later in this report.

## Increased use of informal resolution processes

Informal resolution processes offer various advantages for parties before the Board:

1. Parties can influence the outcome more directly as they are actively involved in shaping the resolution
2. These processes are usually faster and less costly for all parties than formal procedures
3. They often provide a higher level of privacy and confidentiality, safeguarding sensitive details
4. They encourage open, respectful dialogue
5. When parties agree on a resolution, it removes the need for the Board to impose a decision, leading to more satisfactory outcomes for all involved

In 2023-2024, the Board has fully integrated the Early Resolution Program as one of its formal processes, in addition to the use of settlement conferences for both labour and staffing files (for more information, please see the ERO heading in "Highlights").

The Early Resolution Program aims to offer parties a quick way to get discussions started and see if there is a way to explore and solve their issues without having to resort to a formal hearing and adjudication process. With the information that the parties provide, the early resolution officer can help evaluate a case's strengths and weaknesses, based on the facts, the availability of evidence to prove them, and how the Board has decided similar cases. And they look at possible solutions to resolve a dispute appropriately, quickly, and efficiently.

Mandatory, evaluative settlement conferences, presided over by a Board member, help parties to understand the strengths and weaknesses of their case and consider options for resolution. They facilitate a more efficient way to resolve disputes by involving the parties in an evaluative process and by providing an alternative pathway for resolving grievances and complaints. For cases that don't resolve, they help narrow down and clarify issues through improved dialogue among the parties.

## Transparent, targeted scheduling and case management

In an effort to provide transparency in scheduling, the Board implemented the Staffing Case List, which provides parties a view of upcoming cases for the hearing schedule. This list continues to be used, giving complainants, representatives and respondent parties a clear view of what cases will be scheduled in the next cycle, and effectively reducing the waiting period for staffing hearings. Updated regularly, the Board will continue to use this list to transparently schedule staffing files.

Targeted case management and scheduling are two strategic approaches the Board has employed to clear pre-existing backlogs and improve case flows. In 2023-2024, the Board applied this approach to its termination files, effectively reducing inventory through a tailored delivery of services and case management. As the Board looks to the next fiscal year, this approach will continue to be key in providing better access to justice, while prioritizing access to justice for those with the greatest need.

Termination grievances often have significant impacts on employees and departments alike. So, the Board adopted a more targeted approach to case manage termination files more efficiently.

It is proactively case-managing these often-complex cases, to facilitate their resolution.

## Written submissions

The Board's use of written submissions has grown in the last year, relying on written arguments from the parties before us to address preliminary issues more appropriately, or for matters which are not factually contentious. Whether at the outset of the adjudication process or during the scheduling period, the Board's focus is on ensuring the appropriate adjudication services are aligned to the parties' needs.

## Stakeholder consultation

The Board acknowledges the significant impact of stakeholder engagement on the success of our initiatives and our ability to deliver fair, credible, and efficient resolution services.

This past fiscal year, the Board continued to benefit from rich, open discussions with its Client Consultation Committee (CCC) by obtaining the clients' feedback on its processes, policies, practices, and rules. The CCC also helps the Board develop case-management strategies and initiatives, such as grouping cases and implementing other measures to decrease its caseload.

## Appointment of new Board members

The Board has appointed new Board members and, for the first time in a decade, the Board benefited from a full complement of members, increasing its capacity to hear cases and resolve files.

# The Board's performance

## 2023-2024 in numbers (see Appendix 2 for more details)

### Opened and closed files

For the first time in many years, the Board closed more files (2246) than it opened (2233). Compared to last year, 11% fewer files were opened, and 16.5% more files were closed.

#### Labour relations

In 2023-2024, 1855 labour relations files were referred to the Board, compared to 2218 in 2022-2023. This reduction likely resulted from a decrease in vaccination requirement grievances, which had a significant impact on last year's overall numbers.

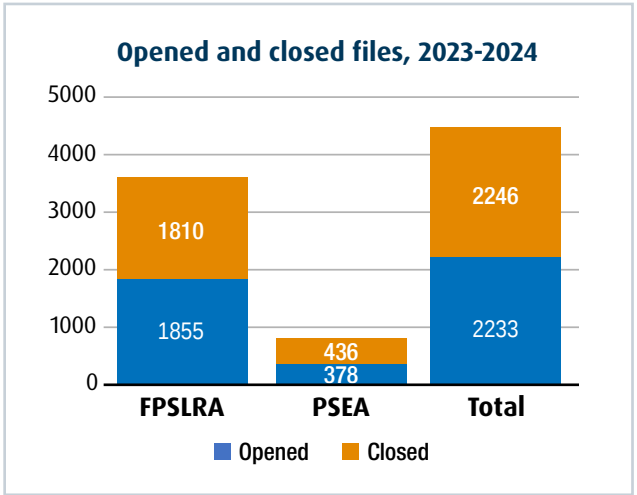
As for closures, 1810 files were closed, compared to 1553 in 2022-2023. Files withdrawn due to a settlement or for other reasons comprised 53% of all closures in the 2023-2024 fiscal year.

#### Staffing

In 2023-2024, 378 applications were made to the Board, compared to 290 in 2022-2023. This increase marks a significant upward shift from the past seven years, during which the number of files received steadily declined.

For the 8th consecutive year, more *PSEA* complaints were closed than opened — 436 files were closed.

#### Overview of opened and closed files

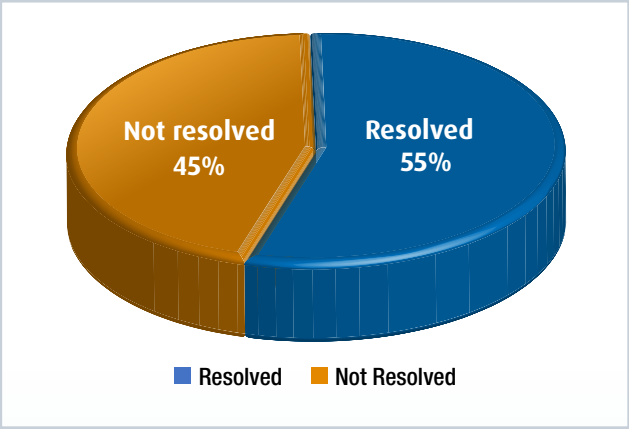


## Hearings

In 2023-2024, a total of 788 hearings were scheduled either for an initial hearing or a continuation, which was an increase of 56% compared to the previous fiscal year.

Seventy-eight percent (78%) of all hearings scheduled fell under the *FPSLRA*, while the remaining 22% fell under the *PSEA*.

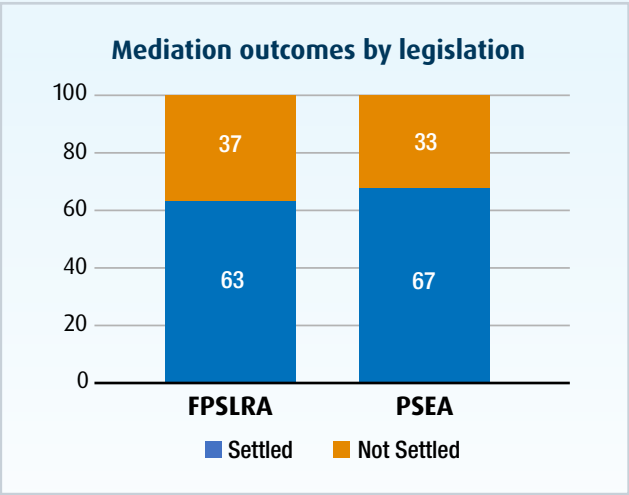
## Settlement conference outcomes




Settlement conferences are one of the solutions the Board uses to manage its caseload. In 2023-2024, 83 settlement conferences were completed, 45 of which led to resolutions.

## Formal mediation outcomes

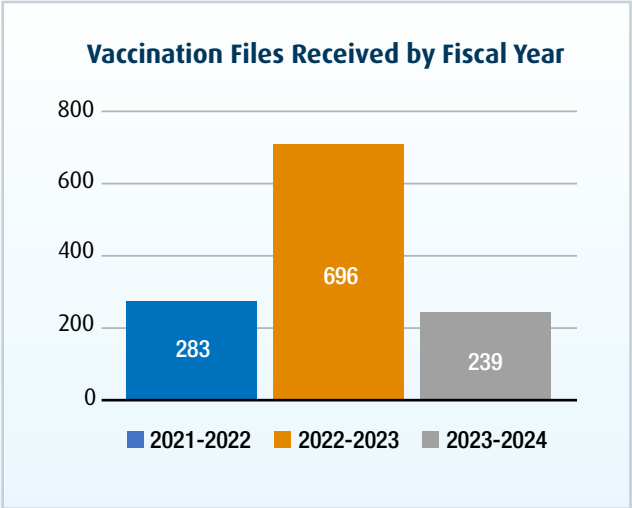
In the 2023-2024 fiscal year, the Board's Mediation and Dispute Resolution Services (MDRS) carried out 138 mediations covering over 100 cases, resulting in the settlement of 59 staffing and 73 labour relations files. The settlement rate is 63% for labour relations files and 67% for staffing files.




Formal mediation sessions are also an opportunity to discuss other matters related to the main subject of mediation. MDRS helped parties settle a record number of disputes that were to be heard by the Federal Court (12), Federal Court of Appeal (8), the Privacy Commissioner (5), the Information Commissioner (8), and the Canadian Human Rights Commission (4), in addition to *Canada Labour Code* and harassment complaints (4) and departmental grievances, most at the final departmental level (3041).

## COVID-19 vaccination policy grievances

In 2023-2024, 239 COVID-19 vaccination policy grievances were referred to the Board, equivalent to 13% of all labour relations files received that year. Since the implementation of the COVID-19 vaccination policy, the Board has received a total of 1218 related files. While the inflow of such files is ongoing, it has been steadily decreasing since the end of fiscal year 2022-2023, as shown in the following graphic.



## Average file age (in months)

The average file age is the period from the file's creation to the end of the current reporting period (March 31, 2024). Overall, the aggregate file age for both labour relations and staffing files was 30 months. The large body of unresolved Covid-19 files has affected this statistic.

The average file age of active labour relations (*FPSLRA*) files increased slightly to 31 months in 2023-2024 from 29 months in 2022-2023. This is due in part to a decrease in the number of new grievances referred to the Board this year. For staffing files (*PSEA*), the active file age dropped significantly to 17 months in 2023-2024 from 21 months in 2022-2023. This is the result of the new Board's approach to scheduling a portion of these files as they are received.

## Number of reasons for decision issued

In the past fiscal year, the Board issued 125 reasons for decisions in both official languages. Of that number, 101 dealt with labour relations matters, 23 dealt with staffing matters, and 1 was a joint labour-relations and staffing decision. This represents a 16% increase from the 108 decisions issued the previous fiscal year. Two-hundred-and-fifty (250) files were closed as a result of a decision being issued.

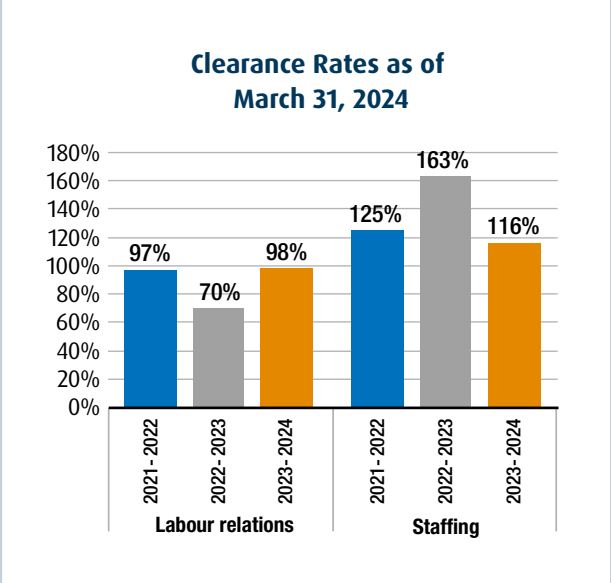
## Clearance rate

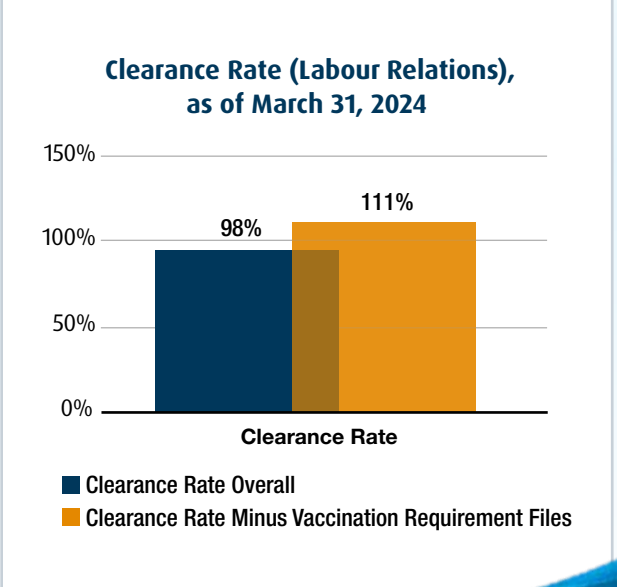
The **CLEARANCE RATE** is the Board's capacity to close as many files as it opens in a given year. If, in a year, the Board closes more files than it opens (higher than 100%), it means that its workload is manageable. If it opens more files than it closes (lower than 100%), it means that adjustments are required to address the workload more efficiently.

With the increased number of closures this year, the Board attained an overall positive clearance rate for the first time in three years by closing slightly more files than received in the fiscal year.

More targeted scheduling, increased hearings, and the use of alternate dispute resolution have enhanced the management of caseload inventory, resulting in more file closures.

### Clearance rate of files, and clearance rate of vaccination files



# Highlights of 2023-2024

## The Board's support for collective bargaining

During this past fiscal year, the MDRS were involved in 31 distinct bargaining processes under the *FPSLRA* involving 5 public sector employers (Treasury Board, Canada Revenue Agency, Parks Canada Agency, Staff of the Non-Public Funds, Canada Food Inspection Agency) and 8 bargaining agents (Public Service Alliance of Canada, Professional Institute of the Public Service of Canada, Canadian Association of Professional Employees, National Police Federation, United Food & Commercial Workers Union, Canadian Federal Pilots Association, Canadian Merchant Service Guild).

The current reporting period was a contentious period for public sector collective bargaining under the *FPSLRA* as it was marked by work stoppages. In April 2023, over 155 000 broader public sector employees represented by the Public Service Alliance of Canada (Treasury Board's PA, SV, TC, EB groups and Canada Revenue Agency's Union of Taxation Employees component) went on strike from April 19 to April 30, 2023. In January 2024, another group of 6 bargaining units, comprising of approximately 500 employees from the Staff of the Non-Public Funds (PSAC bargaining units in Kingston, Petawawa, Ottawa, Valcartier, Montreal-St. Jean and Bagotville), went on strike.

In total, MDRS conducted 15 collective bargaining mediations and established 8 Public Interest Commissions (PIC) and 8 arbitration boards. One arbitration and 4 PICs did not proceed further to successful interventions of the MDRS team.

## Outreach and engagement

In 2023-2024, the Chairperson presented an update on Canadian labour relations law to the Association of Labor Relations Agencies (ALRA) Conference. Vice-Chairperson Amélie Lavictoire also presented a workshop on best practices in decision writing at the same conference. The Chairperson and several Board members actively participated in the broader legal community through other presentations to legal conferences, universities and community groups.

MDRS also offered two mediation presentations at the annual ALRA conference, as well as a mediation training session, in English, at McGill University. MDRS held an information session for bargaining agent representatives and three sessions on the Early Resolution Officer program as well as six virtual mediation training sessions, to introduce stakeholders to mediation at the Board (three in French and three in English).

Irwin Law Inc. recently published the 2nd edition of Board member Christopher Rootham's book, "Labour and Employment Law in the Federal Public Service".

## Early resolution program

During the current reporting period, 578 Board files proceeded through the Early resolution program. Of those, 108 were the subjects of facilitated discussions between the parties and an early resolution officer, 92 were referred to the settlement conference process, and 36 were referred to mediation. An additional 66 files were referred to case management for discussion, and 17 files proceed by way of written submissions. In all, 49 files were closed following an early resolution officer's intervention, who either worked with the parties directly to resolve the files or referred the files to a dispute resolution process that led to their closure.

## Accelerated adjudication process for Phoenix pay-related grievances

In October 2023, in collaboration with the parties to the "*Phoenix Pay System Damages Agreements (2019)*", a *process* was developed to accelerate the adjudication of grievances under that agreement and of grievances processed under similar agreements for separate agencies.

In the current reporting period, the Board also worked collaboratively with the Public Service Alliance of Canada and the Treasury Board to develop a similar process for grievances falling under the "*Phoenix Pay system Damages Agreement (2020)*". The new process should come into effect in the next fiscal year.

Phoenix pay-related grievances before the Board arise from the Phoenix pay system's implementation in 2015, after which a large number of pay-related grievances were referred to the Board. Since then, the Board's inventory of Phoenix pay-related files has been steadily declining, with 46 closures in 2023-2024, for a total of **502** files that remained open at the end of the fiscal year. As of March 31, 2024, Phoenix pay-related grievances constituted 7.4% of the Board's overall file inventory.

## Long-term inventory reduction

This exercise involves reviewing cases filed before 2015, consulting the associated parties and, depending on the outcome of those consultations, assigning them to either MDRS or adjudication for further action.

The Board identified 145 files at the beginning of fiscal year 2023-2024 for review and follow up. At the end of the reporting period, 48% of the files were closed or settled awaiting withdrawal, and 34% were in mediation. The remaining 18% of files will be processed through alternative dispute resolution or adjudication or are awaiting direction. The Board will conduct a fresh exercise on cases filed before 2016 in the coming fiscal year, to improve the flow of long-standing inventory.

## Dedicated termination grievance case management

A total of 49 files were identified for proactive case management. Board members analyzed the files, provided directions, or engaged directly with the parties, which drove several resolutions in fiscal year 2023-2024. Of the 49 cases selected, 25 were closed, 13 were settled, 6 are awaiting decision, 1 is being held in abeyance, 3 are awaiting a scheduled hearing, and 1 is scheduled for a hearing. The pilot project successfully led to resolving, either through withdrawal or by settlement, 38 of the 49 identified files. Key learnings show that proactive and engaged case management can significantly impact outcomes, filtering out preliminary or jurisdictional issues and meaningfully guiding cases to conclusion. The Board will apply these key learnings in the coming year as it continues its work providing access to justice and resolving disputes.

## Enhancing equity competencies

The Board continues to work to ensure that barriers to justice are dismantled.

In 2023-2024, the Board invited the following distinguished speakers to address the Board and secretariat staff on strategies for addressing systemic barriers to access to justice.

- Anthony Morgan, Senior Strategic Advisor, City of Toronto, offered a well-received presentation on the topic of "Unpacking structural disadvantage: applying an intersectional anti-racist approach to decision making".
- Former Deputy Minister Daniel Quan-Watson gave an inspired presentation on "Equity and Discrimination in the Public Sector".
- David Noganosh, from Red Wolf Mediation, made a thought -provoking presentation, titled "Decolonizing dispute resolution processes".

# Legislative changes impacting our mandate

## Amendments to the *PSEA*

On July 7, 2021, the Government of Canada announced amendments to the *PSEA*. These amendments reaffirmed the importance of a diverse and inclusive workforce and strengthened provisions to address potential bias and barriers in staffing processes.

The amendments included:

- a definition of equity-seeking groups;
- qualification standards must be evaluated for bias and barriers for members of equity-seeking groups; and
- the Public Service Commission was given explicit authority to audit for bias and barriers that disadvantage members of equity-seeking groups.

In July 2023, the last two amendments stemming from the July 2021 changes to the *PSEA* were enacted. Section 2(5) of the *PSEA* now specifies that a reference to "an error, an omission or improper conduct" is to be construed as including an error, an omission, or improper conduct that results from bias or a barrier that disadvantages persons who belong to any equity-seeking group. Section 36 provides that before using an assessment method, the Public Service Commission and delegated deputy heads must conduct an evaluation to identify whether the assessment method and the way it will be applied includes or creates biases or barriers that disadvantage persons belonging to any equity-seeking group. If one is identified, they must make reasonable efforts to remove it or to mitigate its impact on those persons.

These changes to the *PSEA* may not have an immediate and direct impact on matters coming before the Board, as the focus of the amendments is on the activities and responsibilities of the Public Service Commission and deputy heads. However, the amendment may have an effect in relation to arguments that may be made in support of complaints of abuse of authority. That is, in the same manner as complainants currently invoke deputy heads' failures to apply employment-equity criteria, it is possible that similar submissions may be made about failures to comply with their duty to eliminate systemic barriers, as set out in the amendments.

## The open court principle

The open court principle is a fundamental element of the Canadian justice system and is a hallmark of democratic societies. It ensures the transparency and accountability of the judicial system by providing the public the right to observe the process and access the records.

In accordance with the open court principle, the Board's hearings are open to the public, except in unusual circumstances. The Board follows its own ***Policy on Openness and Privacy*** to foster transparency in its processes, as well as accountability and fairness in its proceedings.

In 2023-2024, the Board has received 60 Open Court Requests, releasing 42 793 pages of documents.

## Moving Forward

As we move forward, we will continue to prioritize improved and timely access to justice through respectful, inclusive, and fair processes.

We will continue to focus on leveraging technology to modernize and facilitate our processes and improve our client experience. We will fully implement our e-Docs portal, which underwent a trial phase during 2023-2024. It offers an easy and intuitive way to share documents with parties and the Board. We will also benefit from more powerful data collection and reporting tools, enabling more data-oriented initiatives and management strategies. Hybrid hearings, in which parties can participate in person or virtually, will continue to offer more flexibility for our clients.

We will also enhance caseload management through intake triage and better use of data to predict trends. We are well-equipped to plan for the future, assess our needs, adapt to flashpoints, and better serve our public service community.

In this next fiscal year, we will apply our key learnings from past years to continue to develop thoughtful and proactive approaches to resolving disputes. The Board will also continue to engage its stakeholders directly through early intervention and consultation processes, to improve access to justice.

Using all the tools at our disposal, the Board will capitalize on the momentum it gathered these past years, to provide timely access to justice and promote harmonious labour relations in the public sector.

# Key decisions issued by the Board

## Labour relations

***Kennedy v. Deputy Head (Department of Citizenship and Immigration),* 2023 FPSLREB 118 – Labour relations – The Board's jurisdiction to enforce a settlement agreement**

This decision deals with the question of whether the Board has the jurisdiction to resolve a dispute over whether a party breached the terms of a settlement agreement resolving a grievance after a grievor has withdrawn their grievance and is no longer an employee.

Ms. Kennedy was employed with what was once named Passport Canada and is now part of the Department of Citizenship and Immigration, which was the respondent in this case. It suspended her without pay in February 2014, pending the result of an investigation, and in March 2015, it terminated her employment for cause retroactively to the second working day of the suspension. She filed one grievance against the suspension and a second against the termination and referred them both to adjudication, in July 2014 and July 2015, respectively.

On October 22, 2015, the parties entered into a settlement agreement to resolve the two grievances. The agreement also permitted Ms. Kennedy to resign her employment effective February 17, 2015, which she did. She withdrew her two grievances as part of the agreement on November 24, 2015. The Board acknowledged that the grievances had been withdrawn and closed its files on November 26, 2015.

Before the Board, Ms. Kennedy alleged that the respondent breached the terms of the settlement agreement between November 2016 and August 2017. She alleged that two of its officials distributed information about her reliability status and security clearance in November 2016. She also alleged that she lost her employment at a different federal government department as a result. Finally, she alleged that a similar breach reoccurred in August 2017, costing her employment with another department. The respondent denied breaching the settlement agreement.

The Board determined that it may enforce a settlement agreement even after a grievor withdraws a grievance since it is consistent with the text, context, and purpose of the legislation. The Board has the jurisdiction to resolve disputes over terms of settlements as long as these two conditions are met: first, the proceeding that was settled was commenced under a provision of the *Federal Public Sector Labour Relations Act* granting the Board jurisdiction to hear the dispute, and second, the party trying to

enforce the settlement was a party to the initial proceeding and the settlement. Further, a party alleging a breach of a settlement agreement need not file a fresh grievance and refer it to the Board. Instead, this party should ask the Board to reactivate the closed file for the sole purpose of enforcing the settlement agreement. This process resolves any concern over a grievor no longer being an employee.

The Board declared that the dispute over the alleged breach of the settlement agreement between Ms. Kennedy and the respondent fell within its jurisdiction.

**Suspension grievance denied.**

**Termination grievance will be reactivated to address the claim that the respondent did not comply with the terms of the settlement agreement.**

***Borst v. Treasury Board (Department of Foreign Affairs, Trade and Development)*, 2023 FPSLREB 83 – Collective agreement – National Joint Council's Foreign Service Directive ("FSD") 15, "Relocation" ("the *Directive*") – Shipping and storage of a personal motor vehicle – Principle of comparability – The timeliness of the grievance**

Mr. Borst was posted as a management consular officer at the Embassy of Canada to the Philippines. He was advised that he would be repatriated to Canada from there, and he decided to sell his personal motor vehicle (PMV) locally, in the Philippines. Mr. Borst's household effects were packed for sea and air shipments. He ended up not selling his PMV, and as a result, he requested that it be shipped back to Canada after the other shipments had been made.

On September 19, 2017, Mr. Borst was advised that due to his personal decision, the employer was not able to ship his PMV in the same container as the household effects shipments. A second, separate shipment for the PMV would cost the employer an additional $4842. Consequently, it determined that he would be held financially responsible for the cost difference. On October 16, 2017, the employer stated that expenses pertaining to storage should be assigned to him as well.

Mr. Borst had just completed his posting when he filed his grievance on November 3, 2017, against the employer's refusal to approve shipping the PMV at no cost to him and to ensure that the storage costs that accrued as a result of department- and mission-induced delays and decisions were not transferred to him. The employer raised a preliminary objection that the grievance was untimely.

The Board determined that the grievance was timely as the actions that gave rise to it crystallized on October 16, 2017, when Mr. Borst was informed that he would also be responsible for the storage costs. On the merits, he alleged that the employer's failure to pay all the costs breached section 15 of the 2013 version of the *Directive*, which is incorporated into the Foreign Service (FS) group collective agreement between the employer and the Professional Association of Foreign Service Officers. The employer claimed that Mr. Borst's decision not to consolidate his PMV shipment with his household effects was personal and that the Canadian public should not be responsible for those additional costs.

Section 15.18.1 of the *Directive* provides the employer with significant discretion with respect to paying relocation expenses. The Board found that the employer's decision to cover some, but not all, of the costs of shipping the PMV to Ottawa and to deny covering the related storage costs was a reasonable exercise of management discretion and was not a violation of the collective agreement.

Mr. Borst failed to establish that the employer stalled or that it was late in its decision making. He argued that it was against the principle of comparability to make him pay for some of the shipping and all of the storage costs since it left him in a less-favourable position than he would have been in had he served in Canada. The Board found that Mr. Borst provided no information to compare his situation to what he would have been entitled to with respect to his PMV had he been serving in Canada.

The principle of comparability is to be applied in so far as it is "possible and practicable", according to the introduction and foreword to all the Foreign Service Directives and does not negate the employer's broad discretion to approve shipping and storage expenses for a PMV.

**Preliminary objection on timeliness denied.**

**Grievance denied.**

***Sahadeo v. Deputy Head (Canada Border Services Agency)*, 2024 FPSLREB 12 – Termination for unsatisfactory performance – Suspensions – Discrimination – Confidentiality orders**

Ms. Sahadeo's employment was terminated for non-disciplinary reasons (unsatisfactory performance). Before her termination, she received the following discipline: 3-, 7-, 10-, and 15-day suspensions. She grieved the discipline as well as the termination of her employment. Ms. Sahadeo also referred to adjudication a grievance alleging discrimination based on gender and colour. Further, she referred to adjudication two grievances alleging breaches of the management-rights clause of the relevant collective agreement and two grievances alleging that she was subjected to disguised discipline.

Ms. Sahadeo was selected for the Officer Induction Development Program (OIDP) with the Canada Border Services Agency (CBSA). She graduated from it and was appointed to a border services officer (BSO) trainee position with the CBSA classified at the FB-02 group and level. The training eventually leads a trainee, within 12 to 18 months, to a promotion to the FB-03 group and level.

Ms. Sahadeo received a three-day suspension for using her position to enrol her and her family in the CBSA's NEXUS program. The Board found that the suspension was an excessive response, as Ms. Sahadeo admitted that she made an error in judgment, and she apologized as soon as the employer expressed concerns about the enrolment. The Board pointed out that she was new to the position, which the employer did not consider. The Board substituted the suspension with a written reprimand.

Ms. Sahadeo received a seven-day suspension for her handling of a firearm. The Board found that there was serious misconduct considering the lack of concern about the safe operation of the firearm. Ms. Sahadeo expressed some remorse for her actions. Based on the progressive-discipline principle, the Board found that the firearm mishandling was different in character than using her position to obtain preferential treatment. Further, the previous discipline should not have been a factor in the amount of discipline appropriate for this act of misconduct. The Board reduced the suspension to five days.

Ms. Sahadeo received a 10-day suspension for going to the head of a security line by using her job title and position, as well as advising that she was a CBSA employee, to gain personal advantage over other employees. The Board found that it was a serious act of misconduct. Ms. Sahadeo admitted that her behaviour gave reasonable cause for discipline and that her actions were contrary to security procedures. She did not provide any evidence to support her earlier view that she should have been allowed to go to the head of the security line, and there was no objective reason that she should have thought that doing so was appropriate. The Board found that to be an aggravating factor, since the grievor had had previous discipline related to obtaining a benefit while wearing a CBSA uniform. The Board reduced the suspension to 5 days.

Ms. Sahadeo received a 15-day suspension after NEXUS travellers made two complaints. The issues related to her understanding of the rules applying to NEXUS travellers were intermingled with misconduct allegations. The Board found that most of the substantiated concerns related to her performance of her duties and her knowledge of CBSA policies and procedures rather than misconduct.

The single substantiated act that gave reasonable cause for her misconduct related to the treatment of a traveller who cried. The Board applied the principle of proportionality and found a significant mitigating factor in the employer's inconsistent approach given that another, more experienced, BSO was not disciplined, even though that BSO was coaching the grievor and was a witness to the crying. The Board allowed this grievance.

Ms. Sahadeo's employment was terminated for unsatisfactory performance. The Board applied the criteria set out in *Raymond v. Treasury Board*, 2010 PSLRB 23. The expected performance standard was clearly set out in the documents provided to the grievor, including the "OIDP Guide". The Board determined that the core competencies and expectations were clearly communicated to her at the beginning of the training. But the necessary tools, training, and mentoring to meet the performance standards in a reasonable time were not provided to her. Ms. Sahadeo's ability to improve her performance was severely limited by the lack of feedback from her superintendent and his unwillingness to discuss her assessments with her, which amounted to bad faith. The recommendation document in support of terminating the grievor for unsatisfactory performance contained references to discipline imposed for misconduct, which was highly prejudicial to her and met the definition of "bad faith". The Board allowed the grievance against the termination and reinstated her as an officer trainee in the OIDP.

Ms. Sahadeo filed four grievances relating to the employer's management of her training program, relying on the management-rights clause in her collective agreement as well as disguised discipline. The Board was of the view that management duplicated her grievance against the termination of her employment. The Board denied these grievances.

Ms. Sahadeo filed a discrimination grievance. In the notice provided to the Canadian Human Rights Commission, she changed the focus of her grievance to expand its scope by describing the alleged discriminatory practice as relating to the termination of her employment. However, the basis for the Board's jurisdiction over her human rights allegations rested on the grievance. On some of the allegations, the Board concluded that part of the grievance was continuing and was applicable to the period after the discrimination grievance was filed. Ms. Sahadeo established the first two parts of the test to prove *prima facie* discrimination: (1) she is a Black woman, and (2) she was subject to adverse treatment through her performance assessments that resulted in the termination of her employment. Ms. Sahadeo did not establish a nexus between any adverse treatment and a prohibited ground of discrimination. The grievance was denied.

Finally, the Board ordered that the videos of the customs area, in which travellers' identities are visible, be sealed and that the personal identifiers in any documents related to travellers be redacted. The Board ordered the anonymization of the travellers mentioned at the hearing and in any documents.

The Board ordered the videos of arming rooms and tax documents sealed. The Board ordered that the names and birthdates of the grievor's spouse and children be redacted.

**Grievances against the 3-, 7-, and 10-day suspensions allowed in part.**

**Grievance against the 15-day suspension allowed.**

**Grievances against discrimination, management rights, and disguised discipline denied.**

**Grievance against the termination allowed.**

Note: an application for judicial review has been filed with the Federal Court of Appeal (Court file no. A-78-24).

***Tarek-Kaminker v. Treasury Board (Office of the Director of Public Prosecutions)*, 2023 FPSLREB 61 — Openness and privacy — Application to limit the availability of information reported in Board decisions**

Ms. Tarek Kaminker was a Crown attorney who had filed an accommodation grievance. In an earlier decision ("decision 2021 FPSLREB 120"), the Board had rejected her grievance as well as her request to not report her name in that decision. But the Board had ordered specific exhibits sealed and other exhibits redacted. Ms. Tarek Kaminker sought judicial review of decision 2021 FPSLREB 120.

Ms. Tarek Kaminker also asked the Board to not make decision 2021 FPSLREB 120 available to the public, pending the outcome of the judicial review. The Board applied *Sherman Estate v. Donovan*, 2021 SCC 25, in its determination of that request.

*Sherman Estate* reaffirmed that a party seeking to limit the public availability of information in legal proceedings has the burden of demonstrating that the information at issue poses a serious risk to an important public interest, that no sufficient alternative measures could prevent that risk, and that the benefits of the order sought outweigh its negative effects.

Ms. Tarek Kaminker was concerned that the negative findings about her credibility reported in decision 2021 FPSLREB 120 might impede her Crown attorney career and negatively affect the proper administration of justice. She also believed that the personal information about her and her family reported in that decision went beyond what was necessary. Further, she feared that that personal information, along with the negative findings about her credibility reported in that decision, threatened her dignity and that of her family.

The Board found that Ms. Tarek Kaminker failed to establish that the negative findings about her credibility in decision 2021 FPSLREB 120 constituted a serious risk to the proper administration of justice and noted that mere assumptions are not sufficient in that respect. The Board found that at most, the negative findings about her credibility might affect her ability to work on files assigned to her.

The Board also found that for the personal information reported in decision 2021 FPSLREB 120 to constitute a serious risk to Ms. Tarek Kaminker's dignity and that of her family, it had to be highly sensitive or related to a person's "biographical core". The Board found that Ms. Tarek Kaminker failed to demonstrate, or even allege, the highly sensitive nature of the personal information at issue.

Therefore, the Board found that Ms. Tarek Kaminker failed to demonstrate that the public availability of the information in decision 2021 FPSLREB 120 posed a serious risk to an important public interest and denied the request to not make decision 2021 FPSLREB 120 available to the public pending the outcome of the judicial review.

**Grievor's request denied.**

***Diop v. Treasury Board (Department of Public Works and Government Services)*, 2023 FPSLREB 81 – Discrimination on the basis of sex – Repayment of maternal and parental allowances for employees who return to work outside the core public administration**

In this decision, the Board had to determine whether certain provisions in the grievor's collective agreement concerning the repayment of maternal and parental allowances were discriminatory on the basis of sex. Employees in the core public administration receive maternity and parental allowances ("the allowances") in addition to Employment Insurance benefits. The collective agreement in this case required employees who receive the maternity and parental allowances to return to work in the core public administration or at one of three separate agencies listed in the collective agreement: the Canada Revenue Agency ("CRA"), the Canadian Food Inspection Agency ("CFIA"), or Parks Canada. The return-to-work requirement was for a period equal to the period that they received the allowances. Otherwise, they had to pay back the portion of the allowances for which they did not meet this requirement.

The grievor worked in the core public administration and received both the maternity and parental allowances. She returned to work in the core public administration in July 2014 but began working for the National Energy Board in January 2015, which is a separate agency that is not included in the return-to-work requirement. She was asked to pay back a portion of the allowances that she had received. She then filed a grievance alleging discrimination on the basis of sex as primarily women experience the adverse impact of the repayment.

The Board found that there was no discrimination. The grievor did not allege that either the return-to-work requirement or the repayment requirement was discriminatory. Rather, she alleged that it was discriminatory for the collective agreement to provide that an employee had to fulfil their return-to-work obligation only in the core public administration, the CRA, Parks Canada, or the CFIA.

The Board examined the application of the Supreme Court of Canada's decision in *Fraser v. Canada (Attorney General)*, 2020 SCC 28, to the analysis of discrimination grievances under a collective agreement. The Board found that the differential treatment that the grievor alleged occurred was based on the employer she worked for, which is not a protected ground of discrimination, and that the applicable collective agreement clauses created a distinction between employees who fulfil the return-to-work requirement and do not have to repay the allowances and employees who do not fulfil the requirement and must repay them. The Board found that that distinction was not based on a protected ground, as required for the *prima facie* discrimination test developed by the case law.

**Grievance denied.**

***Paterson v. Public Service Alliance of Canada*, 2023 FPSLREB 44 – Application for a declaration that a strike vote was invalid**

In the year under review, the Board dealt with an application for a declaration that a strike vote was invalid.

In *this case*, the applicant was an employee in a bargaining unit represented by the respondent, although he was not one of its card-carrying members. He alleged that he had not received notice that the respondent had shortened, by eight days, the period for voting on a strike. He attempted to vote on the final day of the shortened period but was not allowed to register for an information session that the respondent had made a requirement for voting. The applicant alleged that the respondent prevented him from voting. The respondent requested that the Board dismiss the application summarily, without an oral hearing.

The Board noted a discordance between the English and French versions of s. 184(1) of the *Federal Public Sector Labour Relations Act* ("the *Act*"). While the English version states that all employees must be given a "reasonable opportunity" to vote on a strike, the French version states simply that they must be given an "opportunity". The Board found that the French version better accords with Parliament's intent and the preamble of the *Act*; that is, it emphasizes the right to vote, which is consistent with the right to strike protected under the *Canadian Charter of Rights and Freedoms* (enacted as Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.).

The Board noted that it could dismiss the application if the respondent satisfied it that the irregularities that the applicant alleged clearly would not have changed the outcome of the vote.

The Board found three substantial irregularities with the voting: the shortening of the voting period, the failure to communicate that change, and the insufficient capacity for the mandatory information session before voting. The Board found that the eight-day reduction of the voting period was significant and that the respondent failed to make discernable, genuine, and meaningful efforts to announce the change to all employees in the bargaining unit, despite the relative ease with which it could have expressly called attention to the reduction. The Board also found that the lack of available mandatory information sessions was a serious deficiency in the voting process, which again, the respondent could have easily remedied.

The Board found that despite substantial irregularities with the voting process, a change to the outcome of the vote was a remote possibility in the circumstances, although not numerically impossible. Therefore, it dismissed the application for a declaration that the strike vote was invalid.

However, the Board stressed that its decision might have been different had either the voter turnout or the margin in favour of the strike been lower.

**Application dismissed.**

***Laquerre v. The National Battlefields Commission*, 2023 FPSLREB 84 – Jurisdiction – Definition of "employer" for the purposes of the *Federal Public Sector Labour Relations Act* ("the *Act*") – Separate agency not included in either Schedule I, IV, or V to the F*inancial Administration Act* (R.S.C., 1985, c. F11; "the *FAA*")**

The Board had to determine whether employees of the National Battlefields Commission ("NBC") are "employees" for the purposes of the *Act*.

The employee was terminated from his employment with the NBC. As his employer provided no internal grievance process, he referred his grievance directly to adjudication with the Board, along with a legal opinion as to why the Board had jurisdiction over his grievance. The NBC objected to the Board's jurisdiction.

Under the *Act*, an "employer" is a department named in Schedule I to the *FAA*, another portion of the federal public administration named in Schedule IV, or a separate agency named in Schedule V. The NBC is included not in those schedules but is in Schedule II.

The employee argued that his exclusion from the *Act* went against the *Act*'s purpose. Furthermore, he noted that he also had no recourse under the *Canada Labour Code* (R.S.C., 1985, c. L-2). The Board found that the legislator's choice not to include the NBC in the schedules that are subject to the *Act* was deliberate. As such, the NBC is not an "employer" for the purposes of the *Act*, and the employee could not refer a grievance to the Board. The Board noted that the proper recourse available to the employee would be before the courts.

**File closed due to lack of jurisdiction.**

***Moniz v. Treasury Board (Department of Foreign Affairs, Trade and Development)*, 2023 FPSLREB 79 – Discrimination – Same-sex couple – Surrogacy – The employer refused to grant benefits under the Health Care Travel Foreign Service Directive, Directive 41 ("FSD 41")**

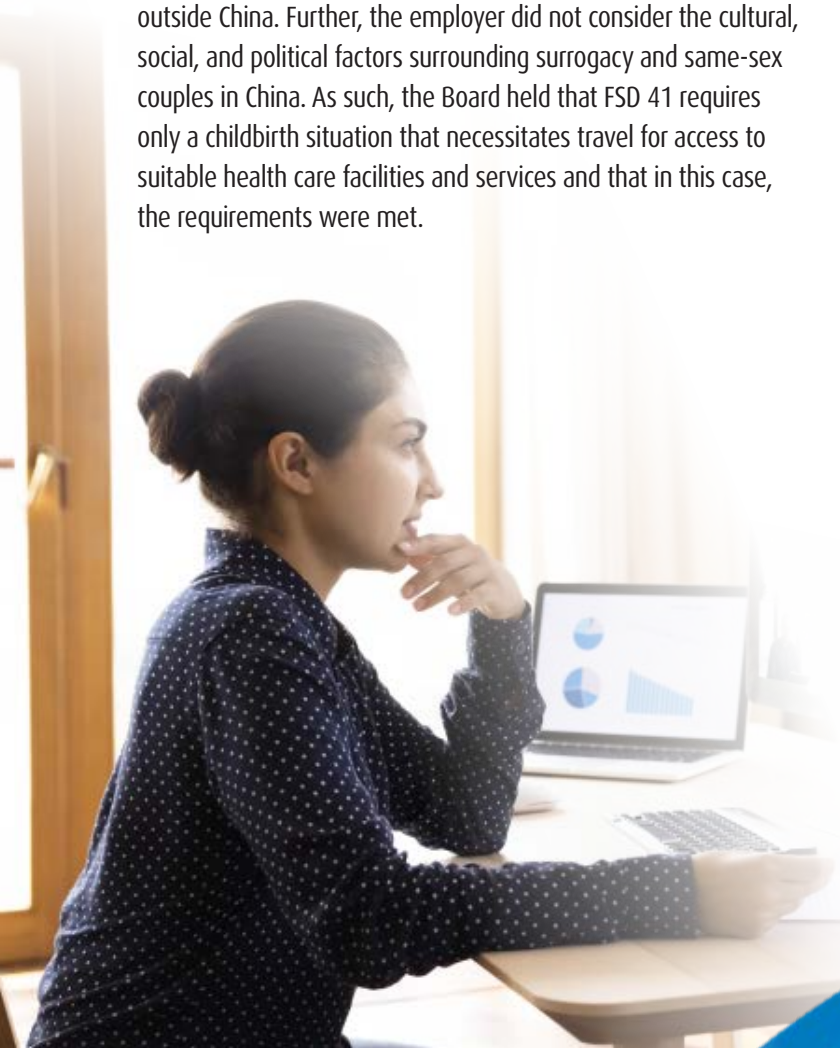
The grievor grieved his employer's refusal to grant him coverage under FSD 41, "Health Care Travel", and to provide him and his husband with financial benefits to attend the birth of their first child.

The grievor worked for Global Affairs Canada ("the employer") and was stationed in China. He and his husband had arranged to have a child through a surrogate in the United States. He applied to receive coverage and financial benefits under FSD 41 so that he and his husband could attend the birth of their child in the United States. The employer denied the application, claiming that FSD 41 did not apply to the grievor's situation as the child was born through a surrogate, which did not require the grievor or his husband to travel to receive health care. The grievor alleged that the employer's interpretation was discriminatory on the grounds of sexual orientation and family status.

Two issues were before the Board. First, was the grievor entitled to coverage under FSD 41? Second, was the employer's interpretation and application of FSD 41 discriminatory?

The Board determined that FSD 41 applied to the grievor's situation.

The Board found that the wording of FSD 41 does not require either the employee or their spouse to be pregnant or require medical care. Rather, FSD 41 provides benefits to assist with access to suitable health care services and facilities. There were no suitable facilities in China, as determined by Health Canada, and the birth of the grievor's child necessarily had to occur outside China. Further, the employer did not consider the cultural, social, and political factors surrounding surrogacy and same-sex couples in China. As such, the Board held that FSD 41 requires only a childbirth situation that necessitates travel for access to suitable health care facilities and services and that in this case, the requirements were met.



The Board found that the employer's interpretation and application of FSD 41 were discriminatory. The grievor suffered adverse treatment because he did not receive the benefits under FSD 41. The employer's interpretation of FSD 41 required that coverage may be provided only to an employee who is pregnant or has a pregnant spouse, despite that wording not appearing in the directive. By including such conditions, the employer excluded the grievor from the application of FSD 41. The protected characteristics of sexual orientation and family status were a factor in that exclusion because, as a same-sex couple, neither the grievor nor his spouse could become pregnant, and for them to start a family and have a biologically related child, surrogacy was necessary.

The employer was unable to establish that its interpretation was based on a *bona fide* occupational requirement.

**Grievance allowed. Jurisdiction was retained if the parties failed to agree to a suitable remedy.**

### *Rehibi v. Deputy Head (Department of Employment and Social Development)*, 2024 FPSLREB 47 – *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* – Leave without pay for failing to comply

On October 6, 2021, the Treasury Board ("the respondent") adopted the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* ("the *Policy*"). It required that all employees in the core public administration be fully vaccinated against COVID-19 unless accommodation was provided based on a prohibited ground of discrimination under the *Canadian Human Rights Act*. Employees who refused to become fully vaccinated or to attest to their vaccination status before the date determined by the employer were placed on unpaid leave until they were vaccinated or the *Policy* was repealed or suspended.

On November 15, 2021, the grievors — Mr. Rehibi and Ms. Lavoie — were placed on unpaid leave because they refused comply with the *Policy*. They remained on unpaid leave until the *Policy* was suspended in June 2022. They alleged that the seven-month unpaid leave was a disguised disciplinary action, meaning that it was an action that sought to correct their

behaviour and encourage them to become vaccinated. The issue that the Federal Public Sector Labour Relations and Employment Board ("the Board") had to decide in this decision was whether the application of the *Policy* was an administrative action aimed at, among other things, protecting the health and safety of employees in the core public administration or whether it was a disguised disciplinary action.

To distinguish between disciplinary and non-disciplinary action, the Board had to consider both the employer's actual (as opposed to stated) intent and the impact of the action on the grievors. The Board found that the grievors did not meet their burden of demonstrating on a balance of probabilities that they had been subject to disciplinary action. The evidence showed that the purpose of the *Policy* was to protect the health and safety of employees in the core public administration. Furthermore, the employer had sufficient credible and reliable information to justify imposing a vaccination policy. This was a safe and effective approach to meet its operational objective of increasing the number of employees working in person.

In the exceptional circumstances of a pandemic that impacted all the employer's operations, the Board determined that it was reasonable and effective for the employer to adopt a policy that applied to its entire workforce; this enabled it to ensure uniformity and certainty in the application of the *Policy*.

The Board found that the grievors did not demonstrate that the employer's intent was to punish them or to correct their behaviour by imposing leave without pay on them. They also failed to demonstrate that the impact of the decision to place them and keep them on leave without pay was disproportionate to the administrative reason and legitimate operational considerations cited by the respondent.

In addition, the grievors argued that the *Policy* was intended to compel them to become vaccinated; otherwise, they were to be deprived of their income for an indeterminate period, and that it was a violation of the right to security of the person guaranteed in s. 7 of the *Canadian Charter of Rights and Freedoms*. The right to security of the person protects both the physical and psychological integrity of the person. However, the Board found that the grievors did not demonstrate that their physical integrity had been compromised because their decision not to become vaccinated had been respected. The aspect of the right to security of the person that protects a person's psychological integrity protects the person from severe psychological suffering caused by the state. The Board determined that the impact of the *Policy* on the grievors could not be characterized as serious psychological harm. While the choice as to whether to comply with the *Policy* was difficult and had consequences, the Board found that it was an informed choice that the grievors made on principle. The consequences that they suffered resulted from that choice. The duration of the leave was related to the pandemic's evolution and the employment-related reason cited by the respondent. The respondent's decision to suspend the *Policy* was based on developments in scientific knowledge on the Omicron variant and its impact on vaccine efficacy. The grievors did not demonstrate that it was unreasonable for the respondent to do so.

Although the imposition of unpaid leave for failing to comply with the *Policy* had an adverse effect on the grievors, the Board's view was that the *Policy* was an administrative action. For that reason, it denied the grievances, for lack of jurisdiction.

**Grievances denied.**

A judicial review application was filed with the Federal Court of Appeal (file no. A-154-24), and the parties are awaiting a hearing date.

### *Abraham v. Canadian Food Inspection Agency*, 2023 FPSLREB 108

**– Collective agreement breach – The right to a complete and current job description – Functional Supervisory Differential (FSD) – Whether tasks compensated through an FSD should be included in the job description – Pyramiding – Retroactivity**

The grievances at issue arose out of the final of three grievance campaigns (in 2001, 2009, and 2011) that Canadian Food Inspection Agency ("the Agency") employees classified at the VM-01 group and level ("the grievors") had launched. The parties agreed that the case would not be heard as a test case, that all 242 grievances would be consolidated under one file, and that the decision would apply to all the grievors.

The grievors alleged that they often had to complete tasks assigned to VM-02s, which were compensated by an FSD, and argued that those tasks should be included in the VM-01 generic job description. They alleged that the failure to include those tasks in the generic job description was a violation of

their right to receive a complete and current description of their duties and responsibilities, as the collective agreement provided. The Agency argued that including those tasks in the generic job description while also compensating the grievors through the FSD would lead to pyramiding.

The Board disagreed with the Agency. It found that duties compensated by an FSD could also be included in a generic job description and that the issue should be determined on the usual principles applicable to job description grievances. Furthermore, it held that the FSD was a compensation issue that had no bearing on the grievors' right to a complete and current job description as the collective agreement provided. The Board found that in fact, the VM-01s were required to perform many of the alleged duties and on enough of a regular basis to justify including them in the generic job description. It did raise the issue of how the functions were spread through the job description and not grouped into one key competency but declined to decide that issue.

The Board ordered that some of the grievors' proposals be included in the VM-01 generic job description.

The grievors also raised the issue of retroactivity. The Board found that the evidence and the parties' actions demonstrated that they had an implicit agreement for an effective date of 2001 for any job description modifications. Even though the hearing concerned only the 2011 grievance campaign, the issues dated back to 2001, and each grievance campaign was a continuation of the one before it. Therefore, the Agency's argument that the grievors could not seek redress beyond the applicable time limit was not admissible.

The Board ordered that the modifications be retroactive to 2001.

**Grievance allowed in part.**

### *St-Onge v. National Research Council of Canada*, 2023 FPSLREB 57 – Grievance – The employer attempted to recover a salary overpayment – The limitation period applicable to an overpayment recovery

The employer overpaid the grievor's salary for eight weeks while she was on unpaid sick leave in 2019. In 2022, it attempted to recover the overpayment through payroll deductions. The grievor filed a grievance to contest that recovery.

The Board had to interpret s. 32 of the *Crown Liability and Proceedings Act* (R.S.C., 1985, c. C-50, "*CLPA*"), specifically whether the federal six-year limitation period or Ontario's two-year limitation period applied. If the two-year limitation period applied, then the employer would have lost its right to recover the overpayment.

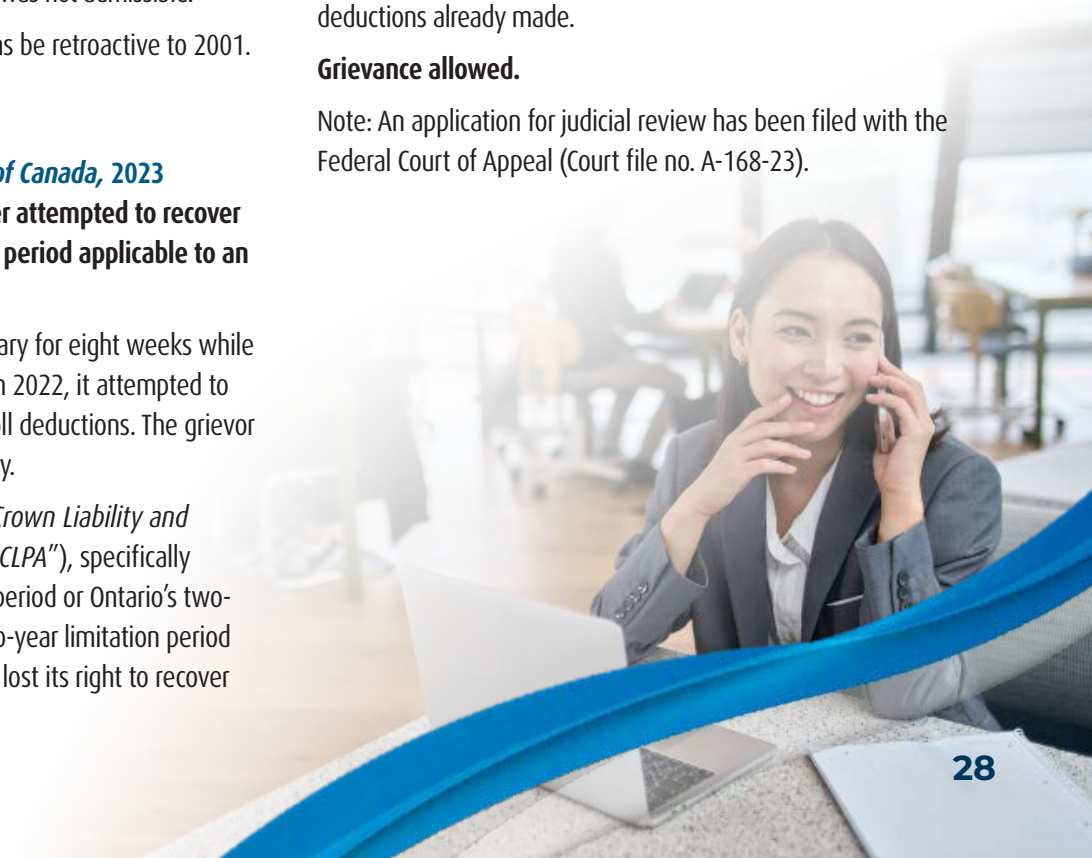
The Board examined the relevant statutory and case law and found that Ontario's two-year limitation period applied. A plain-language reading of s. 32 of the *CLPA* provides that the provincial limitation period is the rule and that the federal limitation period is the exception. The latter applies only when proceedings arise "otherwise than in a province"; i.e., when the cause of action arises in more than one province, in a combination of provinces, or outside a province altogether.

The Board also rejected the employer's argument that the federal limitation period should apply because the employer is national in scope and that it would be in the interests of equity, fairness, and consistency for all federal employees in overpayment situations to be subject to the same limitation period. The Board noted that had Parliament wanted the six-year limitation period to apply to any or all actions involving the Federal Crown, or even those involving a debt owed to the Federal Crown, it could have done so.

The Board concluded that the proper approach to the question of which limitation period applies under s. 32 is to conduct a fact-based inquiry into where the cause of action arose. In this case, the employer was based in Ontario, the grievor lived and worked in Ontario, the employer's compensation system was managed in Ontario, and the author of the repayment claim was based in Ontario. Accordingly, the cause of action arose in Ontario, and that province's two-year limitation period applied. As the employer attempted to recover the overpayment outside the limitation period, the Board allowed the grievance and ordered the employer to stop the payroll deductions and to reimburse the grievor for the deductions already made.

**Grievance allowed.**

Note: An application for judicial review has been filed with the Federal Court of Appeal (Court file no. A-168-23).



***Amato v. Treasury Board (Correctional Service of Canada)*, 2023 FPSLREB 50 – Jurisdiction – Timeliness – Preliminary objection – Delay to refer a grievance to adjudication**

In May of 2018, the grievor grieved the employer's alleged violations of the health-and-safety article of the applicable collective agreement. The employer denied the grievance at the first level in June and at the second level in August of 2018. The grievor transmitted their grievance to the third and final level in August of 2018, but the employer denied the grievance only in December 2022. The grievor then referred the grievance to adjudication in January 2023.

Section 90(1) of the *Federal Public Sector Labour Relations Regulations* (SOR 2005/79; "the *Regulations*") provides that a grievor must refer their grievance to adjudication within 40 days of the employer's final-level response. Section 90(2) states that if the employer does not respond to a grievance at the final level within the delay established by the collective agreement, the 40-day delay to refer the grievance to adjudication begins at the expiration of the employer's delay to respond.

The original deadline for the employer to respond to the grievance at the final level expired on September 4, 2018. It argued that its denial of the grievance at the final level in December 2022 did not reactivate that period and that its lack of response was a deemed rejection of the grievance. It objected to the grievance being referred to adjudication, claiming that the 40-day delay began when its delay to respond to the final-level grievance expired. The grievor argued that they referred their grievance to adjudication within 40 days of the final-level decision and that therefore it was done within the period.

The Board decided that a failure to respond to the grievance within the required period was not a deemed rejection of the grievance under s. 90 of the *Regulations* and that the grievor had referred their grievance to adjudication within the prescribed 40-day period. Being an exception to the general rule, s. 90(2) can apply only when the employer has made no decision. Although the employer did not make a timely decision, it cannot be said that it made no decision. Additionally, the purpose of s. 90(2) is not to allow the employer to benefit from its delay rendering a final decision but rather to allow a grievor to nevertheless move forward with their grievance if the employer fails to provide a final-level decision.

The Board found that s. 90(2) applies only when the employer does not render a final-level decision. Since it rendered one, the time limit set out in s. 90(1) governed this case, and the time limit began to run on December 1, 2022. The Board also found that the delay of over 4 years was not an abuse of process.

**Objection dismissed.**

***Schiller v. Canadian Food Inspection Agency*, 2023 FPSLREB 112 – Jurisdiction – Non-renewal of a term appointment – Discrimination – Violation of a collective agreement – Clarification of the phrase "… freestanding jurisdiction over issues of alleged human rights violations …"**

In *Schiller*, the Board reiterated that a grievance concerning a non-renewal of a term appointment or a rejection on probation alleged to be discriminatory, in violation of the applicable collective agreement, falls within its jurisdiction under s. 209(1)(a) of the *Federal Public Sector Labour Relations Act* (*FPSLRA*).

The grievor had been appointed on a determinate basis, and her term appointment was set to expire, without a renewal. She filed a grievance alleging that the employer had violated the applicable collective agreement through its discriminatory conduct. She raised several discrimination allegations, one of which concerned the non-renewal of her term appointment.

The employer objected to the Board's jurisdiction to hear the matter. It argued that the essence of the grievance was the challenge to the non-renewal of the term appointment, not the interpretation or application of a collective agreement under s. 209(1)(a) of the *FPSLRA*, and that the Board had to first determine if it had jurisdiction over that matter before it could hear the other discrimination allegations.

Furthermore, the employer alleged that if the Board did not have jurisdiction to hear the matter of the term appointment not being renewed, then it could not hear the other discrimination allegations, as they would constitute freestanding human rights violations as referred to in *Shenouda v. Treasury Board (Department of Employment and Social Development)*, 2017 PSLREB 21, and *Chamberlain v. Canada (Attorney General)*, 2015 FC 50.

The Board did not agree. It stated that the proper test is whether the allegations fall within the grounds of s. 209(1) of the *FPSLRA*. It found that all the allegations concerned the interpretation or application of the collective agreement within the meaning of s. 209(1)(a). It also clarified that a grievance concerning freestanding human rights violations (as referenced in *Shenouda*) alleges only violations of the *Canadian Human Rights Act* (R.S.C. 1985, c. H-6) and does not only raise allegations of discrimination in violation of a collective agreement. The Board found that the grievor's allegations fell within the adjudicable grounds in s. 209(1).

**Objection dismissed.**

***Treasury Board v. National Police Federation*, 2023 FPSLREB 110 – Labour relations – Application – Managerial and confidential positions – Constitutional question – *Canadian Charter of Rights and Freedoms* (enacted as Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.); "the *Charter*") – Freedom of association – Section 59(1) of the *Federal Public Sector Labour Relations Act* ("the *Act*") – The United States' *National Labor Relations Act of 1935* (ch. 372, 49 Stat. 449 (1935); "the *Wagner Act* model") – R. v. *Oakes*, [1986] 1 SCR 103 ("the *Oakes* test")**

The National Police Federation ("the NPF") was certified as the bargaining agent for the Regular Members and Reservists (RM) bargaining unit at the Royal Canadian Mounted Police ("the RCMP") on July 24, 2019.

While the NPF's application for certification was still pending before the Board, the Treasury Board of Canada ("the employer") proposed that the Board declare 1139 positions "managerial or confidential", in accordance with ss. 59(1)(a), (c), (e), and (g) ("the exclusion provisions") of the *Act*. The employer revised the number of positions to be declared managerial or confidential to 478.

The NPF opposed the remaining proposals and raised a constitutional question. It alleged that the exclusion provisions violate s. 2(d) of the *Charter* and are not saved by s. 1 of the *Charter*. The parties requested that the Board first determine the constitutional question before making any rulings on which proposed positions are managerial or confidential positions, and the Board agreed with that approach.

The issue to be determined was whether there was a breach of the freedom of association of those employees in excluded positions and, if so, whether that breach was justified under s. 1 of the *Charter*. In its analysis, the Board provided a brief overview of the history of exclusion provisions in the federal public sector and other Canadian jurisdictions. It also provided its interpretations of the exclusion provisions in the *Charter* era.

In its analysis of freedom of association and exclusions, the Board primarily relied on the *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 ("MPAO"), decision, which — at the time — was the most recent discussion of freedom of association. The Board also stated that it did not need to determine whether exclusion provisions are part of the *Wagner Act* model. Although freedom of association does not guarantee access to a particular model of labour relations, it does guarantee

access to a meaningful process of collective bargaining. As was noted in MPAO, the purpose of collective bargaining is to preserve "collective employee autonomy" against the "superior power of management" and to maintain "equilibrium" between the parties.

The Board concluded that the exclusion provisions limit the freedom of association guaranteed under the *Charter* for those employees in excluded positions and do not accord with the values underlying the *Charter*. The Board then turned to whether the exclusion provisions are saved by s. 1 of the *Charter*.

Section 1 of the *Charter* allows laws to be enacted that limit *Charter* rights if it is established that the limits are reasonable and demonstrably justified in a free and democratic society. The Board applied the *Oakes* test, which has two components: (1) whether the legislative provisions pursue a pressing and substantial objective, and (2), whether the means used to achieve the objective are proportional to the objective, which involves considering three factors. The employer had the burden of satisfying the *Oakes* test on a balance of probabilities.

With respect to the first component of the test, the Board found that preventing a conflict of interest that can arise from the "... existence of dual loyalties resulting from the duties performed for the employer and membership in a bargaining unit" that relate to the fundamental terms and conditions of the employment relationship is, theoretically, a pressing and substantial objective.

Addressing the first factor of the second component of the test, the Board looked at the exclusion provisions in question and found that they were rationally connected to the pressing and substantial objective.

As for the second factor of the second component, the Board stated that the *Act* and its application have focused on conflict of interest and the risk of dual loyalties, which are very real concerns in labour relations. As such, the Board concluded that the provisions of the *Act* minimally impair freedom of association under the *Charter*.

As for the third factor of the second component, which requires that the salutary effects of the impugned provisions outweigh their deleterious effects, the Board indicated that the exclusions are necessary for preventing a conflict of interest that can arise from the "... existence of dual loyalties resulting from the duties performed for the employer and membership in a bargaining unit" that relate to the fundamental terms and conditions of the employment relationship.

The benefits to collective bargaining and labour relations resulting from the limitation of the associative rights of RCMP officers in positions that will be identified as managerial or confidential by the Board outweigh the disadvantage of limiting those rights for those RCMP members in those positions.

Consequently, the Board found that the limitation to the freedom of association created by the exclusion provisions in the *Act* was saved by s. 1 of the *Charter*. As such, the Board declared that the exclusion provisions contained in ss. 59(1)(a), (c), (e), and (g) of the *Act* were in compliance with the *Charter*.

**Declaration made that the exclusion provisions comply with the *Charter*.**

Note: An application for judicial review is pending before the Federal Court of Appeal (Court file no. A-360-23, entitled *National Police Federal v. Treasury Board Secretariat*).

## Staffing

***Lysak v. Commissioner of the Royal Canadian Mounted Police*, 2024 FPSLREB 3 – Staffing – Motion to dismiss outside the area of selection – Employees with priority status**

This decision concerns a motion by the respondent, the Commissioner of the Royal Canadian Mounted Police (RCMP), to dismiss two complaints on the basis that the complainant, Mr. Lysak, did not have standing to make them. The motion was based on its contention that the complainant was not within the area of selection established for the appointments in question and therefore did not have standing to make a complaint, given the provisions of s. 77 of the *Public Service Employment Act* (*PSEA*), and that the complainant's priority status for reappointment did not provide him with a right of recourse for this appointment process.

Mr. Lysak made his first complaint with the Board on March 31, 2019, about an indeterminate appointment made on March 26, 2019 ("the indeterminate appointment"). The second complaint was made on September 30, 2019, and was about an acting appointment made on September 26, 2019 ("the acting appointment"). Both appointments were made from an advertised appointment process for a lead hand technician position, classified at the GL-VHE-10 group and level and located at the RCMP Post Garage in Winnipeg, Manitoba.

The respondent argued that while persons with this type of priority status remain employed for certain purposes, such as benefits and the right to request leave, they do not "occupy a position". The respondent also invoked s. 43 of the *PSEA*, which allows the deputy head not to consider a person with a priority entitlement (PPE) if the appointment of that person will result in another person having a priority right.

The Board held that Mr. Lysak did not have the right to make the complaints as he was not in the area of selection, since he was not filling the functions of a position in the RCMP Post Garage. The Board agreed with the respondent and the Public Service Commission that the invocation of s. 43 meant that the RCMP had no obligation to consider the complainant as a priority appointment for the indeterminate position.

With respect to the acting appointments, the Board confirmed that they are excluded from the *PSEA*'s relevant priority entitlement provisions under s. 12 of the *Public Service Employment Regulations*. As a result, the complainant could not exercise his entitlement rights for the acting appointment.

Finally, the Board concluded that it does not have jurisdiction to render a decision for a complainant who is outside the area of selection established by the respondent for the appointment process in question. Similarly, the Board does not have jurisdiction to consider a complaint that either the complainant's home organization (in this case, the RCMP) or the PSC failed to fulfil its obligations under the priority administration system. This Board's jurisdiction is prescribed by s. 88 of the *PSEA* to complaints made under ss. 65(1), 74, 77, and 83.

**Objection allowed.**

**Complaints dismissed.**

### *Meneguzzi v. Deputy Head (Office of the Director of Public Prosecutions),* 2023 FPSLREB 67 – Open court principle – Public availability of decisions

Ms. Meneguzzi made a staffing complaint with the Board, which dismissed it in an earlier decision ("decision 2019 FPSLREB 77").

Ms. Meneguzzi requested that the Board either not make decision 2019 FPSLREB 77 available to the public or that it mask her identity in it. The Board applied *Sherman Estate v. Donovan*, 2021 SCC 25, to the determination of Ms. Meneguzzi's request. She worried that the detailed information about her reported in decision 2019 FPSLREB 77 impaired her chances of being considered for other public service positions. Essentially, it was unclear to her why her promotion concerns are public concerns.

The Board relied on its case law, both before and after *Sherman Estate*, which held that personal reputation and its impact on job prospects are not important public interests. The Board also followed the principles reaffirmed in *Sherman Estate* that require a substantial risk that is well grounded in the evidence and that poses a serious threat to an important public interest.

The Board found that Ms. Meneguzzi did not prove a real and substantial serious risk to an interest of public importance that would justify restricting public access to decision 2019 FPSLREB 77. It also found that any benefit of an order to mask her identity in that decision would not outweigh the negative effects of such an order on the public's right to open and accessible Board proceedings. Therefore, the Board denied the request to either not make decision 2019 FPSLREB 77 available to the public or to mask Ms. Meneguzzi's identity in it.

**Application denied.**

# Summaries of key decisions that were judicially reviewed

***Canada (Attorney General) v. Lyons*, 2024 FCA 26 – Orders of aggravated and punitive damages**

IIn 2020, the Board determined that the termination of Louise Lyons' (the grievor's) employment as a correctional officer with the Correctional Service of Canada (CSC) was excessive (2020 FPSLREB 122). The Board substituted for the termination of employment a one-month suspension without pay. The applicant did not seek judicial review of that decision.

The Board held a separate hearing on the grievor's request for aggravated damages for psychological harm and punitive damages. Following that hearing, the Board awarded $135 000 to the grievor in aggravated damages, $75 000 in punitive damages for the CSC's conduct during the investigative and grievance processes, and an additional $100 000 in punitive damages specifically for the CSC's conduct at the hearing before the Board (2022 FPSLREB 95). This decision was reported in the Board's 2022-2023 annual report and was challenged by the applicant, the Attorney General of Canada, before the Federal Court of Appeal on judicial review.

The applicant contended that the aggravated and punitive damage awards were unreasonable as they did not accord with the applicable jurisprudential framework. Among other things, the applicant argued that the Board failed to consider the "proportionality" of the punitive damages awarded.

The Court dismissed the judicial review application. It concluded that although the Board did not explicitly refer to a proportionality analysis in its reasons, this was not fatal to the decision. The Board weighed the relevant factors, considered the other damages awarded, and addressed the need for additional punitive damages. The Board's decision, when read as a whole, addressed the relevant factors throughout its analysis.

The Court determined that the punitive damages award was not disproportionate in the context of the specific circumstances of this case, hence falling within the "bounds of rationality". According to the Court, the Board's decision bears the hallmarks of reasonableness: it is justified, transparent, and intelligible and falls within the range of acceptable outcomes; therefore, it was not the Court's role to intervene or conclude that the amount of aggravated and punitive damages was disproportionate and unreasonable.

The punitive damages awards, singularly ($75 000 and $100 000) or together ($175 000), represent the largest amounts ever awarded by the Board under that head of damages.

**Application dismissed.**

***Canada (Attorney General) v. National Police Federation*, 2023 FCA 75 – Labour relations – Statutory freeze**

In 2021, the Board allowed the complaint made by the respondent, the National Police Federation ("the Federation"), under s. 190 of the *Federal Public Sector Labour Relations Act* ("the *Act*") (see *National Police Federation v. Treasury Board (Royal Canadian Mounted Police)*, 2021 FPSLREB 77). In its complaint ("the freeze complaint"), the Federation alleged that the Royal Canadian Mounted Police ("the RCMP") violated s. 56 of the *Act* by converting — or "civilianizing" — during the "freeze period" set out in that provision five positions traditionally occupied by regular members of the RCMP into positions to be held by public service employees to help deliver the Applied Police Sciences (APS) course to cadets. The RCMP argued that it had a right to assign duties and classify positions, in accordance with s. 7 of the *Act*. All it did during the freeze period was exercise that right.

The Board determined that under s. 7, the employer had the right and discretion to assign duties but that s. 7 did not provide a complete answer to a complaint under s. 56. The Board also had to examine when and how the RCMP exercised its discretion to assign duties. In the circumstance of the case, the Board concluded that the employer used its discretion to assign APS duties to regular members, which it changed during the freeze period by assigning those duties to civilian positions. Further, the Board found that the changes did not accord with the RCMP's business-as-before management practices.

While the evidence was that the RCMP had shifted toward a greater use of public service employees and a proportionately reduced role for regular members within its overall staff mix,

the Board found that the APS positions had a unique role. Both management and the Federation acknowledged that only current or former police officers can provide the instruction, run the APS scenarios, and monitor and evaluate the progress of recruits through the program. In contrast, the past practice of civilianization in the RCMP was concentrated in areas such as human resources, strategic planning, media relations, intelligence analysis, informatics, and related executive positions. As a result, the Board declared that the RCMP breached the statutory freeze by converting the APS positions.

The Attorney General of Canada filed a judicial review application with the Federal Court of Appeal (Court file no. A-205-21). On judicial review, it asked that the Court set aside the Board's decision and that it remit the matter back to the Board for redetermination on the ground that the Board committed errors by misinterpreting s. 7 of the *Act* and by applying the business-as-before exception too narrowly.

The Court dismissed the application. It reiterated that freeze cases are inherently factual in nature. In such cases, labour boards are required to determine whether a change was a reasonable one that the employer was permitted to make in light of all the relevant surrounding circumstances and a purposive interpretation of the statutory freeze provisions. Where there is evidence to support the factual conclusions reached by a labour board, a reviewing court owes deference to the labour board's assessment.

In the Court's view, the Board offered a reasonable and balanced view of the interplay between ss. 7 and 56 of the Act that was respectful of the principles of statutory interpretation and that aligned with the jurisprudence on freeze complaints.

The Court also found that the Board did not commit an error when it rejected the business-as-before defence. The Board recognized that the RCMP had shifted toward greater use of public service employees in recent years. However, it held that the "civilianization" at issue was not in accordance with its past practices when all the relevant surrounding circumstances were considered. The Board did not apply the business-as-before exception too narrowly by limiting its consideration to the past practice with respect to the APS positions. In the Court's view, the Board's approach was quite the contrary, having taken the view that it was "appropriate to consider the RCMP experience as a whole". It did so by undertaking a detailed review of the evidence of the different initiatives that had resulted in the civilianization of hundreds of RCMP regular member jobs. It did the same for the staffing patterns across the RCMP.

Ultimately, the Court was satisfied that the Board's decision was based on an internally coherent and rational chain of analysis and that it was justified with respect to the facts and law.

**Application dismissed.**

# Appendix 1 – Total FPSLREB caseload, 2020-2021 to 2023-2024

## *Federal Public Sector Labour Relations Act*

| Fiscal Year | Carried Forward from Previous Years | New | | | Total New | Closed | Carried Forward to Next Year |
|---|---|---|---|---|---|---|---|
| | | Grievances | Complaints | Applications | | | |
| 2020-2021 | 6107 | 545 | 64 | 107 | 716 | 1050 | 5773 |
| 2021-2022 | 5773 | 871 | 66 | 196 | 1133 | 1099 | 5807 |
| 2022-2023 | 5807 | 1803 | 105 | 310 | 2218 | 1553 | 6431 |
| 2023-2024 | 6431 | 1244 | 99 | 510 | 1855 | 1810 | 6476 |

## *Public Service Employment Act*

| Fiscal Year | Carried Forward from Previous Years | New Complaints | Complaints Closed | Carried Forward to Next Year |
|---|---|---|---|---|
| 2020-2021 | 584 | 319 | 269 | 634 |
| 2021-2022 | 634 | 306 | 383 | 557 |
| 2022-2023 | 557 | 290 | 459 | 383 |
| 2023-2024 | 383 | 378 | 436 | 325 |

# Appendix 2 – Matters filed per part of the *Federal Public Sector Labour Relations Act* in 2023-2024

| *Federal Public Sector Labour Relations Act* | Number of Files or Applications |
|---|---|
| **PART I - LABOUR RELATIONS** | |
| **Reviews of orders and decisions (s. 43(1))** | **2** |
| **Requests for arbitration (s. 136)** | **6** |
| **Complaints** | **81** |
| Complaints (ss. 106 and 107) | 11 |
| Duty to implement a provision of collective agreement (s. 117) | 0 |
| Duty to observe terms and conditions - Essential Services Agreement (s. 132) | 1 |
| Unfair labour practices (ss. 185, 186, 188, and 189) | 21 |
| Unfair labour practices - unfair representation (s. 187) | 48 |
| **Managerial or confidential positions** | **510** |
| Applications for managerial or confidential positions (s. 71) | 432 |
| Applications for revocation of order (s. 77) | 78 |
| **Applications - Consent to prosecution (s. 205)** | **0** |
| **PART II - GRIEVANCES** | |
| **Individual grievances (s. 209)** | **1192** |
| **Policy grievances (s. 221)** | **28** |
| **Group grievances (s. 216)** | **3** |
| **PART III - OCCUPATIONAL HEALTH AND SAFETY** | |
| **Reprisals under s. 133 of the *Canada Labour Code* (s. 240)** | **14** |
| *Federal Public Sector Labour Relations Regulations* | |
| **PART II - GRIEVANCES** | |
| **Extensions of time (s. 61)** | **19** |
| **Total** | 1855 |

# Appendix 3 – Matters filed per part of the *Public Service Employment Act* in 2023-2024

| *Public Service Employment Act* | Number of Matters |
|---|---|
| **PART 4 - EMPLOYMENT** | |
| Complaints to the Board re: layoff (s. 65(1)) | 3 |
| **PART 5 - INVESTIGATIONS AND COMPLAINTS RELATED TO APPOINTMENTS** | |
| Revocations of appointment (s. 74) | 23 |
| Internal appointments grounds of complaint (s. 77(1)) | 347 |
| Failures of corrective action (s. 83) | 3 |
| Unspecified | 2 |
| **Total** | **378** |