



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

2011–12

Annual Report of the **Public Service Staffing Tribunal**

Moving Forward





Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique



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The Honourable James Moore, P.C., M.P.
Minister of Canadian Heritage and Official Languages
Gatineau, Québec
K1A 0M5

Dear Minister Moore:

In accordance with section 110 of the *Public Service Employment Act*, I am pleased to submit the seventh annual report of the Public Service Staffing Tribunal for the period from April 1, 2011 to March 31, 2012, for tabling in Parliament.

Yours respectfully,

Guy Giguère
Chairperson and Chief Executive Officer

Canada

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Message from the Chairperson

I am pleased to present *Moving Forward*, the 7th annual report to Parliament on the Public Service Staffing Tribunal's contributions to staffing recourse in the Public Service of Canada in 2011–12.

This report outlines the Tribunal's activities as it addressed over double the number of staffing complaints as compared to previous years. In 2011–12 the Tribunal also received lay-off complaints, which are time-sensitive, as several departments implemented their strategic reviews and adjustments in their workforce.

To face these challenges, the Tribunal implemented a number of management strategies to optimize its resources, to help clients resolve complaints and to ensure a timely processing of lay-off complaints. This included new processes and tools, such as settlement conferences and telephone mediations.

In addition to managing the increased caseload and lay-off complaints, the Tribunal continued moving forward by developing a pilot project for expediting hearings. This pilot, which will be launched in April 2012, is designed to shorten the time required for hearings and written decisions by giving parties a more expeditious adjudication of less complex cases.

These strategies and innovations provide greater opportunities for parties to resolve their complaints through timely and efficient processes. By moving forward with new ideas, the Tribunal continues to uphold the values of the *Public Service Employment Act* of effective dialogue, respect for employees and recourse aimed at resolving appointment issues.



Guy Giguère
Chairperson and Chief Executive Officer

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SECTION I – Overview



The Public Service Staffing Tribunal is an independent, quasi-judicial body established under the *Public Service Employment Act* (PSEA) to address complaints related to internal appointments and lay-offs in the federal public service.

The Tribunal conducts hearings, settlement conferences and mediation sessions in order to resolve complaints. In fulfilling its mandate, the Tribunal fosters fair and transparent staffing practices, contributes to a public service that is based on merit, embodies linguistic duality and human rights, and strives for excellence.

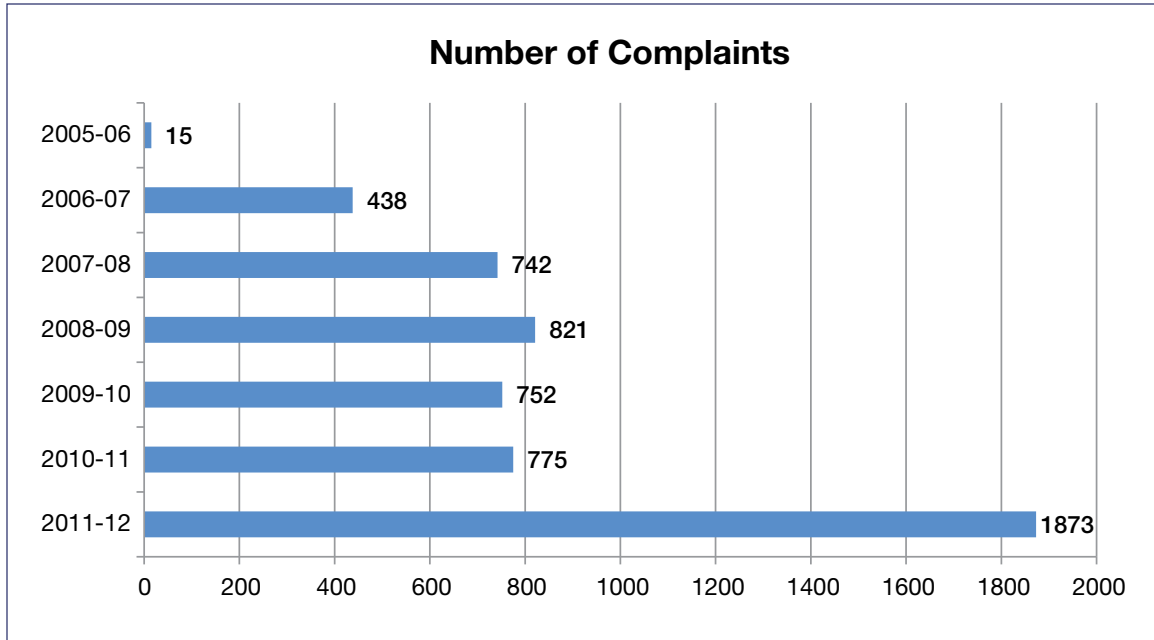
In 2011–12 the Tribunal saw its complaint caseload increase by 142%, over double the number of complaints as compared to previous years, nonetheless it continued moving forward.

Complaint Caseload

An ongoing challenge for the Tribunal, as with most administrative tribunals, is the unpredictability of caseload, i.e. the number of cases can suddenly increase or decrease.

In 2011–12 there was a significant increase in the caseload. The Tribunal received 1,873 complaints as opposed to its four-year average of 773.

The increase in the number of complaints is in part the result of an increase in the number of collective staffing actions, more appointment processes where appointees are chosen from existing pools of qualified candidates, and staffing actions relating to the setup of the Shared Services Canada Agency.



Lay-off Complaints

Several departments implemented strategic reviews from previous fiscal years and reduced their workforce. It was anticipated that some individuals selected for lay-off would be filing complaints alleging abuse of authority in their selection for lay-off (section 65 *Public Service Employment Act*).

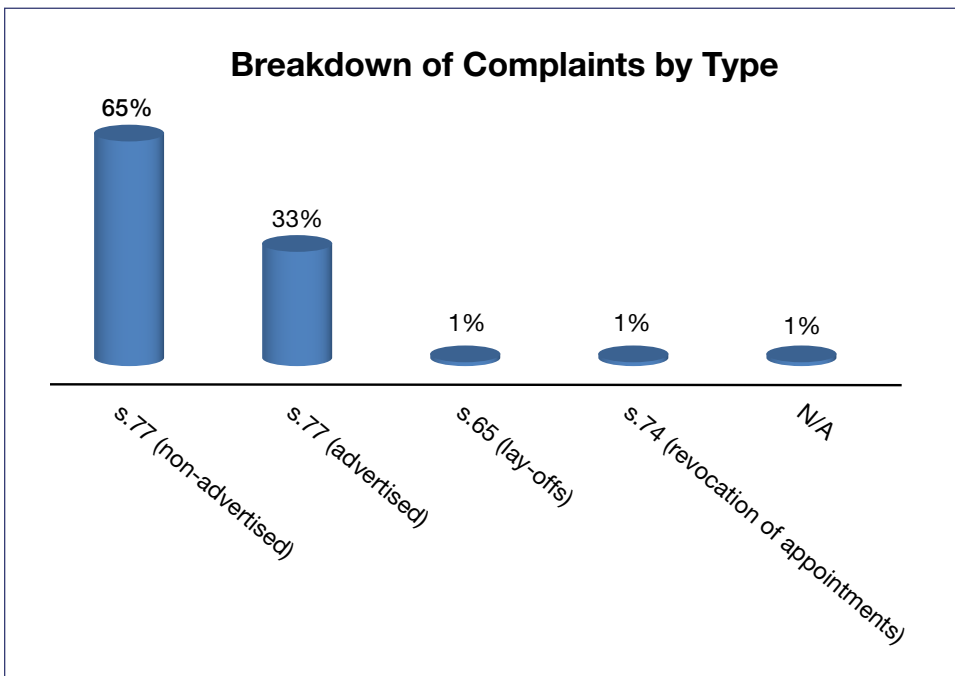
In 2011–12 our planning efforts were geared to examining how best to manage an influx of lay-off cases and to ensure that we had sufficient front-line staff to process the files. Lay-off complaints pose a particular challenge as they are time-sensitive and may have serious consequences for an employee. The Tribunal must therefore ensure a timely process for lay-off complaints.

In 2011–12, at year end, lay-off complaints represented only a small portion of the Tribunal’s caseload. The vast majority of complaints related, as they have in the past, to appointment processes. There is a likelihood of an influx of lay-off complaints in the next fiscal year.

Registry

The Tribunal's registry processed the following during the year:

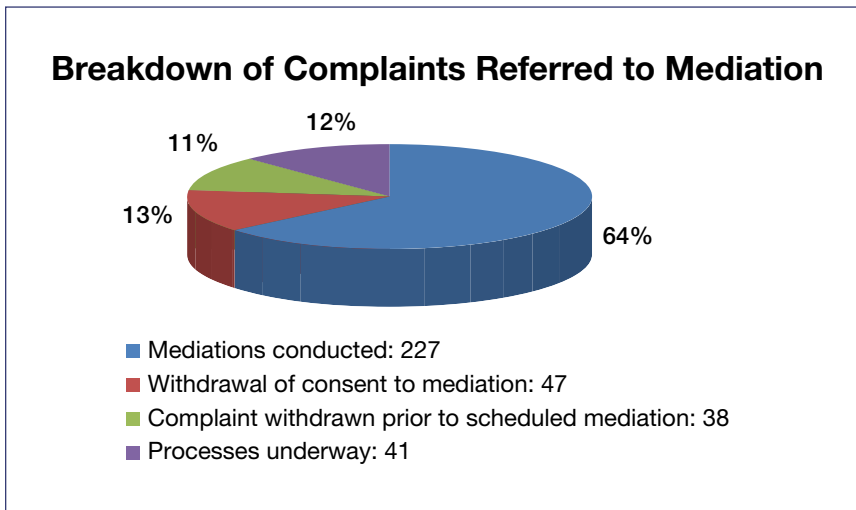
Complaints	1,873
Requests/motions	1,135
Letter decisions	1,100
Letters of directives	59
Reasons for decisions	38



Mediation

Only 5% of complaints go through to a formal hearing. The majority of matters are settled through mediation or other informal processes. Complaints may be also dismissed due to timeliness, lack of jurisdiction or may be withdrawn by the complainant.

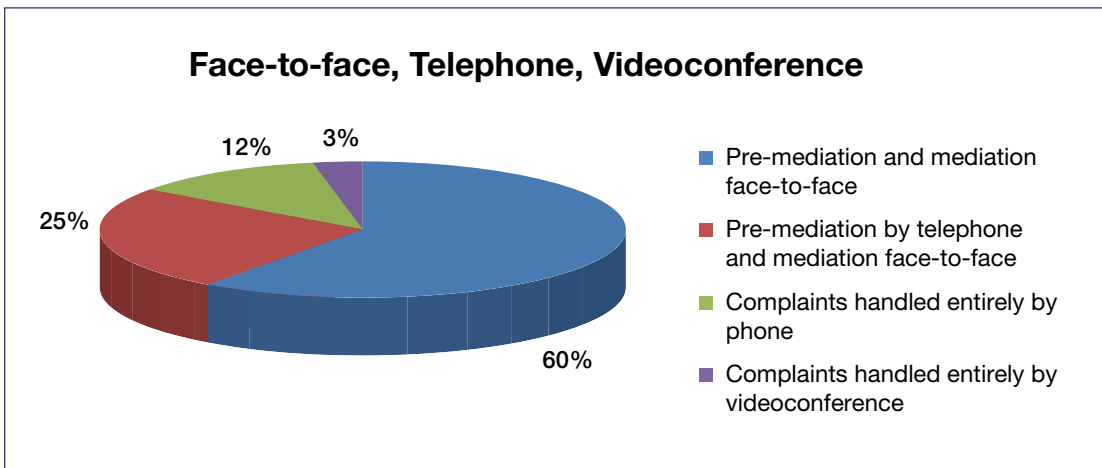
In total, 353 complaints were referred to mediation. Of these 227 (or 64%) proceeded to mediation. One hundred and twenty-six complaints (36%) that were referred did not proceed to mediation as consent to mediation was withdrawn by a party (11%), or the complaint was withdrawn prior to the mediation (13%).



Of the 227 mediations conducted, 186 of these were resolved through mediation, making the overall success rate of mediation 82% (success rates for telephone, videoconference and in-person mediation are similar).

Telephone and Videoconference Mediation

With respect to mediation conducted over the telephone, this year compared to the previous year saw substantial increases in the settlement rate (from an average of 67% to 82%) as well as in the participants' satisfaction rate (from an average of 83% to 90%). These increases could be due to the increased awareness and experience of the parties and their representatives, and to the increased experience of the mediators.

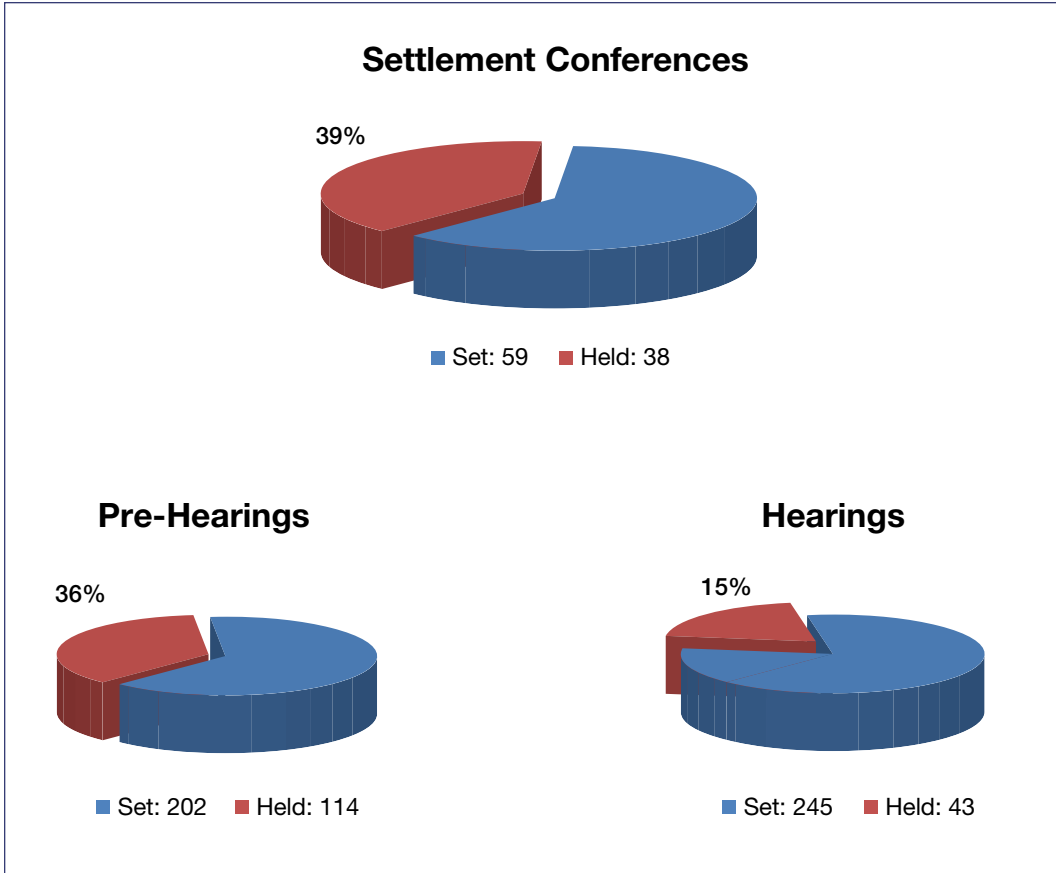


Settlement Conferences and Pre-Hearings

Settlement Conferences were added to the Tribunal's dispute resolution toolbox at the end of 2010–11.

Settlement conferences provide the parties an opportunity to discuss directly the complaint, something not possible within the context of a quasi-judicial hearing. It is efficient as it is combined with the pre-hearing conference and done within a day and without involving any travel. Settlement conferences are mandatory and have attained over the last two years an impressive settlement rate of 75%.

It also provides value for the parties involved even if the complaint does not settle, as it provides them with an evaluation of the strengths and weaknesses of their case and better prepares them for the hearing. Settlement conferences, prehearings and hearings are set several months ahead but may not proceed where the Tribunal grants a postponement of the hearing or when the complaint is withdrawn.



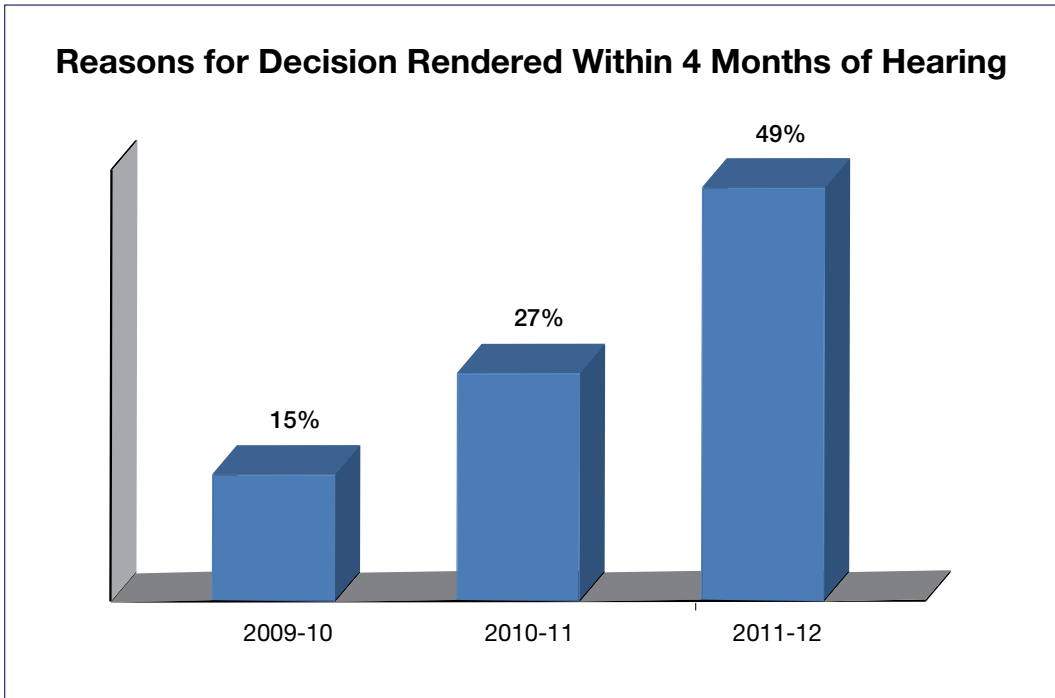
Decisions

The Tribunal's ultimate goal with respect to the complaints it receives is to render high quality decisions within a reasonable time frame. The Tribunal has set a target of rendering 80% of its reasons for decision within four months of the hearing.

The Tribunal issues detailed Reasons for Decision following an oral hearing. It also issues Letter Decisions, which are more concise, to deal with the over 1,000 procedural and jurisdictional matters that must be decided by a Tribunal member during the year.

These procedural and jurisdictional matters are usually decided on the basis of written submissions and the vast majority of the Letter Decisions are issued within a few days after the parties have provided their submissions.

The number of Reasons for Decision issued was 38 and the Tribunal issued these decisions within four months of the hearing in 49% of the cases, a significant improvement over the previous year.



SECTION II – *Moving Forward*



Managing Increased Caseload

Closer monitoring of case management practices, such as reassigning cases between members and conducting settlement conferences, are in place to provide conditions that will assist the Tribunal in moving forward toward its target of 80% of decisions rendered within four months of a hearing.

Tribunal decisions must be timely, sound and well-reasoned, and caseload strategies have contributed to the Tribunal's success in improving the timeframe for rendering decisions, over the last three years, and in particular the year under review.

While the Tribunal will continue, as best it can, to put in place the conditions that will allow it to reach its goal of rendering high quality decisions within a reasonable time frame, there are nevertheless many variables over which the Tribunal has no control, e.g. timelines for appointment or reappointment of members, the independence conferred to the members by virtue of their role, as well as members' planned and unplanned leave, etc.

The Tribunal improved the tools, policies and processes that assist in effectively resolving complaints and better managing the organization.

Our approach to dealing with the increased workload involved several means at our disposal, including:

- Mediation
- Settlement conferences and mediations by telephone
- Increased flexibility with respect to telephone, videoconference and in-person mediation
- Consolidation of cases automatically or at the request of the parties
- Dealing with issues of jurisdiction as soon as a complaint is filed
- Pre-Hearing conferences and settlement conferences
- Tight case tracking
- Scheduling of all cases to be heard several months ahead
- Case management system
- Expedited hearing pilot project (one-day hearing and decisions within 10 days [no witnesses] or 30 days [witnesses])

New Tools and Expedited Hearing Process Pilot Project

After having completed two successful pilot projects previously (Settlement Conference Pilot Project and Telephone Mediation Pilot Project) and adding them to the Tribunal's dispute resolution tool box, planning began for an Expedited Hearing Pilot Project and consultations were held with our stakeholders.

It was believed that this tool would assist in dealing with less complex cases that could be heard in a day and where the Tribunal would render its decision within 10 or 30 days of the hearing.

Case Management System

The Tribunal identified an off-the-shelf product that would meet the Tribunal's needs and budgetary constraints and has proceeded with a project to replace the existing case management system which is no longer supported by the supplier and fails to meet our current and projected case management needs.

The new case management system marks a key turning point in how the Tribunal manages its case information. This system will take advantage of new technology to improve and enhance our information management capabilities, which will not only allow us to keep up with technological change, but also represents the best approach to ensuring the Tribunal's immediate and future case information management needs are met.

While the Tribunal participated in the working group set up by Public Works and Government Services Canada charged with the development of a shared case management system for small departments and agencies, the Tribunal could not wait for that shared system to be available, as the timeline for the implementation of the shared system is several years down the road.

Human Resources

With the continuous increase in its caseload, the Tribunal has ensured that all its senior and front line positions are staffed. Emphasis continues to be on creating a workplace of choice by providing opportunities for learning and knowledge transfer.

Mediation Training

A streamlined version of the Tribunal's mediation training and an updated presentation on the Tribunal's jurisprudence were offered to stakeholders.

The Tribunal offered a total of six training sessions (four in English and two in French) for Interest-based Negotiation and Mediation. These sessions were made available in five locations across Canada: Ottawa (two sessions), Regina, Vancouver, Halifax and Montreal.

Feedback from participants in the mediation training and for the presentation on jurisprudence indicates an overall satisfaction rate of 80%.

Annex I – Breakdown of Complaints by Organization

Organization	Total	%
Shared Services Canada	706	38
Human Resources and Skills Development Canada	364	19
Canada Border Services Agency	226	12
Correctional Service of Canada	150	8
Department of National Defence	96	5
Department of Fisheries and Oceans	53	3
Royal Canadian Mounted Police	35	2
Public Works and Government Services Canada	32	2
Environment Canada	23	1
Transport Canada	21	1
Aboriginal Affairs and Northern Development Canada	18	1
Passport Canada	16	1
Health Canada	15	1
Immigration and Refugee Board of Canada	14	1
Citizenship and Immigration Canada	11	1
Veterans Affairs Canada	9	0
Foreign Affairs and International Trade Canada	8	0
Treasury Board	8	0
Canada School of Public Service	6	0
Agriculture and Agri-Food Canada	5	0
Natural Resources Canada	4	0
Public Service Commission	4	0
Privy Council Office	4	0
Library and Archives Canada	4	0
Canadian International Development Agency	4	0

Organization	Total	%
Statistics Canada	3	0
Industry Canada	3	0
Parole Board of Canada	3	0
Canadian Grain Commission	3	0
Office of the Secretary to the Governor General	3	0
Public Health Agency of Canada	3	0
Public Prosecution Service of Canada	2	0
Unknown Organization	2	0
Department of Finance Canada	2	0
Department of Justice Canada	2	0
Canadian Radio-television and Telecommunications Commission	2	0
Public Safety Canada	1	0
National Energy Board	1	0
Canadian Heritage	1	0
Commission for Public Complaints Against the RCMP	1	0
Canadian Human Rights Commission	1	0
Chief Electoral Officer of Canada	1	0
Infrastructure Canada	1	0
Federal Economic Development Agency for Southern Ontario	1	0
Canadian Northern Economic Development Agency	1	0
	1873	100%

Annex II – Tribunal Decisions

Abuse of Authority Findings

In 2011–12, the Tribunal found that there had been abuse of authority in the following cases, some of which are discussed in the following section:

Hughes v. Deputy Minister of Human Resources and Skills Development Canada

McMillan v. Deputy Minister of Indian and Northern Affairs Canada

Brookfield v. Deputy Minister of Foreign Affairs and International Trade

Bain v. Deputy Minister of Natural Resources

Marcil v. Deputy Minister of Transport, Infrastructure and Communities

Kress v. Deputy Minister of Indian and Northern Affairs Canada

Amirault v. Deputy Minister of National Defence

Whalen v. Deputy Minister of Natural Resources Canada

Trends and Principles Found in Tribunal Decisions

The purpose of this section is to provide an overview of principles enunciated or reiterated by the Tribunal in its jurisprudence. The 2011–12 summaries provided below do not contain all of the details of the particular case. Only the relevant portions are reproduced below.

Complete summaries and the full text of the decisions can be found on our website:

www.psst-tdfp.gc.ca.

Apprehension of Bias

A finding of abuse of authority may be made where, in the context of a staffing decision, there exists a reasonable apprehension of bias. The Tribunal has established and applied the following test for apprehension of bias in staffing matters: *If a reasonably well-informed person would reasonably apprehend bias on the part of one or several of the persons responsible for the assessment, the Tribunal may conclude that there was an abuse of authority.*

Amirault v. Deputy Minister of National Defence, 2012 PSST 0006

A reasonable apprehension of bias was established based on the existence of previous conflicts between two assessment board members and the complainant. In addition, the presence of a board member at the interview of one of the appointees, with whom the board member had an external business relationship, gave rise to a reasonable apprehension of bias.

Bain v. Deputy Minister of Natural Resources, 2011 PSST 0028

The Tribunal did not find that the evidence established personal favouritism. However, it did find that the personal friendship between one of the board members and the appointee gave rise to a reasonable apprehension of bias.

See also:

*Brown v. Commissioner of Correctional Service of Canada, 2011 PSST 0015**Hughes v. Deputy Minister of Human Resources and Skills Development Canada, 2011 PSST 0016**Marcil v. Deputy Minister of Transport, Infrastructure and Communities, 2011 PSST 0031**Sproule Deputy Minister of Transport, Infrastructure and Communities, 2011 PSST 0034**Jayawardena v. Chief Statistician of Canada of Statistics Canada, 2012 PSST 0002*

Human Rights

Brown v. Commissioner of Correctional Services Canada, 2011 PSST 0015 (decision under judicial review)

Both direct and circumstantial evidence can be considered in determining whether a *prima facie* case of discrimination is established. When there is evidence that establishes a pattern of discrimination, there must also be a link established between the pattern and individual discrimination in the situation under review.

The Tribunal found that the complainant did not establish a *prima facie* case of discrimination. The complainant failed to prove that there was a pattern of discrimination regarding promotions at the time of this appointment process. Moreover, the Tribunal found that the evidence was neither sufficient nor complete enough to establish that the complainant's race, colour or national/ethnic origin was a factor in the failure to appoint the complainant to one of the positions in this appointment process.

Jalal v. Deputy Minister of Human Resources and Skills Development Canada, 2011 PSST 0038
(Judicial review pending)

The complainant alleged, among other things, that the respondent had discriminated against him because of his race and ethnic origin. The Tribunal concluded with respect to this allegation that the actions and events to which the complainant testified, if believed, did not establish a *prima facie* case of discrimination.

His allegation was neither complete nor sufficient to justify a finding in his favour. He did not establish the requisite link between that discrimination and his elimination from the appointment process. His allegation of discrimination was based entirely on his belief with regard to what was going on in the minds of the assessment board members, without any confirming evidence independent of this belief.

Use of Previous Appointment Process Results, Screening, Scheduling Interviews and Marking

Hughes v. Deputy Minister of Human Resources and Skills Development Canada, 2011 PSST 0016

The complainant alleged that the respondent erred in allowing eight persons who had been qualified under an earlier appointment process to be included in the process which was the subject of the complaint. There was no evidence that the earlier test did not effectively assess the essential qualification or that there were any errors or inconsistencies in the marking of the earlier test. The Tribunal concluded that the statements of merit criteria were identical in both processes and that although the verification and accuracy tests were not the same, they were sufficiently similar. The respondent did not therefore abuse its authority in including the eight candidates qualified under the earlier process.

The complainant also alleged that in the current process, the respondent marked one of his answers as being incorrect while similar answers from two other candidates were marked correct. After the complaint was filed, the respondent changed its decision and reassessed the complainant to award the missing mark on this question. The Tribunal found that this did not change the fact that the respondent improperly eliminated the complainant from the appointment process on the basis of a test that was not marked fairly and consistently. The Tribunal therefore concluded that the respondent abused its authority by marking the verification and accuracy test in an inconsistent and unfair manner.

Anwar v. The Chief Public Health Officer of the Public Health Agency of Canada, 2011 PSST 0024

When individuals are in a pool of fully qualified candidates for a given group and level, they may market themselves to other managers looking to fill vacancies at the same group and level. The Tribunal noted that a manager who is not involved in the original appointment process may use a pool of fully qualified candidates to fill a different position; whether such an appointment will be the result of an advertised or non-advertised appointment process will depend on what is indicated in the notice of appointments to the pool of candidates. However, such an appointment would be subject to further assessment on any other qualifications required by that different position.

Brookfield v. Deputy Minister of Foreign Affairs and International Trade, 2011 PSST 0025

The Tribunal found that the respondent abused its authority in assessing the experience of one of the complainants. It made its decision to eliminate him at the initial screening based on inadequate material. The evidence demonstrated that the respondent failed to consider the entire content of Mr. Brookfield's application.

Kress v. Deputy Minister of Indian and Northern Affairs Canada, 2011 PSST 0041

The respondent scheduled an interview for the appointment process during the annual leave of the complainants. One complainant did not provide any options or any contact information to permit the rescheduling of the written exam. The Tribunal dismissed this complaint. However the second complainant had maintained contact with the respondent during her leave and provided the respondent the option to conduct her interview two business days later than the date scheduled for her interview. The Tribunal found that the respondent abused its authority with respect to this complainant by refusing to exercise its discretion and by adopting a policy that fettered its ability to consider her individual case with an open mind. The respondent was also found to have acted on inadequate information and was seriously careless when it made its decision without responding to the complainant's requests to discuss the matter and explore other options.

Whalen v. Deputy Minister of Natural Resources Canada, 2012 PSST 0007

The Tribunal found that the respondent abused its authority in the assessment of candidates as the examination failed to adequately test some of the knowledge qualifications as they were set out in the Statement of Merit Criteria for this position. As they were not fully assessed, it could not be demonstrated that the appointee met the essential qualifications for the position.

Classification Matters

Velasco v. Deputy Minister of Transport, Infrastructure and Communities, 2011 PSST 0017

The complainants argued that the respondent misused the appointment provisions of the PSEA by making appointments instead of reclassifying to avoid reclassification costs. They also alleged, among other things, that one of the essential experience qualifications was artificial and arbitrary. The Tribunal found that the respondent did not abuse its authority by making appointments under the PSEA. Reclassification relates only to positions and is not an appointment or a substitute for an appointment of a person under the PSEA. Whether a position is new or reclassified, an appointment under the PSEA is required if the position is to be filled or the group and level of the incumbent is to be changed. The Tribunal found that the evidence before it did not demonstrate any misuse or disregard of the classification system that is relevant to the appointments that were made. In a complaint under s. 77 of the PSEA, the Tribunal has jurisdiction to examine an allegation that an essential qualification does not meet or exceed the applicable qualification standard established by the employer. The Tribunal found that the essential qualification was not arbitrary and exceeded the qualification standard and, therefore complied with the PSEA.

Revocation of Appointment

McMillan v. Deputy Minister of Indian and Northern Affairs Canada, 2011 PSST 0020

(Judicial review pending)

The respondent revoked the complainant's appointment after receiving an anonymous note alleging irregularities in the process. The complainant was not provided with the opportunity to view the material or respond to the content of the report before its findings were made final and her appointment was revoked.

The Tribunal found that the revocation of the complainant's appointment was unreasonable. The respondent has a duty to consider input from those persons who are affected by a decision to revoke an appointment. The procedural flaws rendered the investigation report an unreliable foundation for a decision of the magnitude of revocation. Because the complainant was denied a meaningful opportunity to be heard, the investigation process could not be considered reasonable.

The respondent's decision to revoke the appointment, which was based on a flawed conclusion, was therefore unsustainable. The Tribunal ordered that the revocation of the complainant's appointment be set aside and that the complainant be fully reinstated to the position with effect from the date of revocation.

Anwar v. The Chief Public Health Officer of the Public Health Agency of Canada, 2011 PSST 0024

The complainant argued that a manager, not involved in this appointment process, made him a verbal offer of employment that was then unreasonably revoked. That manager was under the presumption that the complainant was in a fully qualified pool of candidates.

The complainant was, however, only in a partially qualified pool of candidates as a result of a top-down assessment method. The manager did not have the authority to make an appointment, he was simply putting together a Staffing Action Request. When the fact that the complainant was not in a pool of fully qualified candidates came to light, the ongoing approval process was never completed, no offer of employment was made and no appointment took place. The Tribunal therefore concluded that since there was no appointment, no revocation of an appointment had taken place.

Priorities*Maxwell v. Deputy Minister of National Defence, 2011 PSST 0021*

The complainant claimed that her priority entitlement was not respected in the appointment process. The Tribunal acknowledged that the Public Service Commission (PSC) is responsible for administration and oversight in matters of priority entitlement. However, the Tribunal found that it could consider the concerns raised by the complainant with respect to her priority entitlement in this internal appointment process. The Tribunal found that the complainant had not proven an abuse of authority in her assessment, including how her self-referred priority status was handled by the respondent. The complainant's claim, that she was entitled to be assessed before the successful candidate and, if found qualified, to be appointed, was not supported by any legislative authority or policy instrument. PSC policy allows self-referred priority persons seeking positions at levels higher than their substantive level to be assessed along with the rest of the candidates involved in the process. In addition, a person with a disability priority may only be appointed in priority to other persons if they meet the essential qualifications for the position.

Failure to Attend the Hearing

Section 29 of the *Public Service Staffing Tribunal Regulations* provides that when a party fails to appear at a hearing, and the Tribunal is satisfied that the Notice of Hearing was sent to that party, the Tribunal may proceed with the hearing and dispose of the complaint without further notice. It is the complainant who bears the burden of proving, on a balance of probabilities, the allegations of abuse of authority he or she raises. It is not sufficient for a complainant to make allegations of abuse of authority without supporting them with evidence from witnesses, facts and/or documents.

Sharma v. Chief Public Health Officer of the Public Health Agency of Canada, 2011 PSST 0027

Huot v. President of the Economic Development Agency of Canada for the Regions of Quebec, 2011 PSST 0029

Galenzoski v. Commissioner of the Royal Canadian Mounted Police, 2011 PSST 0032

Kerr v. Chief Statistician of Canada of Statistics Canada, 2012 PSST 0001

Post Hearing Evidence

Murray v. Chairperson of the Immigration and Refugee Board of Canada, 2011 PSST 0036

(Judicial review pending)

The Federal Court issued a decision concerning the complainant's request to submit a PSC audit, after the completion of the hearing of his complaint. The Court remitted the matter back to the Tribunal.

The Tribunal found that the test, as established in *Whyte, Kasha v. Canadian National Railway, 2010 CHRT 6 (CanLII)*, required that three conditions were to be fulfilled in order to accept new evidence where a tribunal has not yet reached its final conclusion: 1) It must be shown the evidence could not have been obtained with reasonable diligence for use at the hearing; 2) The evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive; and 3) The evidence must be such as presumably to be believed.

The Tribunal was satisfied that the PSC audit met the first and last condition, but not satisfied that it met the second condition. The Tribunal concluded that the PSC audit would not have had an important influence, whether decisive or not, on the result of the case. The request to accept the evidence was denied.

Jalal v. Deputy Minister of Human Resources and Skills Development Canada, 2011 PSST 0038

(Judicial review pending)

The complainant wanted to introduce new evidence when he submitted his written arguments. The Tribunal found that it could not accept this new evidence at the stage of the written arguments since it did not meet the first condition set out in the *Whyte* test (as explained above in the *Murray* case).

Recourse to Tribunal and Deputy Head Investigation

Marcil v. Deputy Minister of Transport, Infrastructure and Communities, 2011 PSST 0031

After the complaint was made to the Tribunal, the respondent initiated an investigation into the appointment process and determined that there had been an error in the assessment of candidates. The respondent did not revoke the appointment. It constituted a new assessment board and reassessed the candidates.

The Tribunal emphasized that for recourse to be meaningful, there must be finality to an appointment process. Furthermore, while the PSEA provides deputy heads with a mechanism to use at their discretion to correct errors, omissions or improper conduct in an appointment process, it also provides employees with a right of recourse to the Tribunal. These two processes were not designed to operate together. The deputy head's authority to initiate an investigation and take corrective action is not a substitute for recourse to the Tribunal under the PSEA.

The Tribunal therefore did not take into consideration the reassessments of candidates in determining whether there was an abuse of authority in the appointment process. The Tribunal determined that the reassessment of candidates did not properly address the finding of abuse of authority in this case. The respondent should have revoked the appointment, proceeded with a new appointment process to fill the position following the revocation if it wished to do so, and post recourse rights if applicable. The Tribunal ordered the deputy head to revoke the appointment.

Lay-off: Time for Making a Complaint

Tran v. Commissioner of the Royal Canadian Mounted Police, 2012 PSST 0003

The respondent brought a motion to dismiss the complainant's complaint of lay-off, asserting that it was filed outside the 15-day period. The Tribunal found that the complainant met one of the preliminary conditions for filing a complaint, namely that she had been selected for lay-off. The second preliminary condition is that an employee has to have been informed by the deputy head that he or she will be laid off. The term surplus is linked solely to the eventual lay off of an employee. When a deputy head informs an employee that his or her position is surplus, it equates to informing an employee that they will be laid off for the purposes of recourse to the Tribunal.

The Tribunal concluded that the appropriate time for making a complaint to the Tribunal under s. 65(1) of the PSEA is when the selection for lay-off process is complete and an employee is notified that they have been selected for lay-off and that their position is surplus to requirements. The Tribunal found that, in the matter of lay-off, it is essential that the deputy head inform an employee that they have recourse to the Tribunal, as well as the grounds and deadline for making a complaint. The Tribunal concluded that the respondent's failure to do so constituted exceptional circumstances that, in the interest of fairness, justified an extension of the time to file the complaint.

Informal Discussion

Rosenthal v. President of the Federal Economic Development Agency for Southern Ontario, 2011 PSST 0022

The complainant submitted that the respondent failed to provide him with a full informal discussion. The Tribunal found that the respondent had fully addressed the complainant's questions via email. The Tribunal found that the respondent's response to the complainant's request for informal discussion was adequate in the circumstances.

Walker-McTaggart v. Chief Executive Officer of Passport Canada, 2011 PSST 0039

If an informal discussion reveals that an error has been made in an assessment, the mistake can be corrected; however, that was not the case here. It was clear that the communication during this informal discussion was ineffective. However, the outcome of this complaint did not turn on the failure of informal discussion.

Lirette v. Deputy Minister of National Defence, 2011 PSST 0042

By refusing to provide the complainant access to sufficient information during informal discussion, the respondent failed to satisfy the PSC *Informal Discussion Policy*. However, the respondent's failure to properly conduct an informal discussion had no bearing on the assessment of the merit during the appointment process.

References

Kraya v. Deputy Minister of National Defence, 2012 PSST 0009 (Judicial review pending)

One of the complainant's referees provided a negative reference. The referee contacted the assessment board to retract his reference, but it denied the request. The Tribunal found that the reliance on the referee's reference, in spite of his request to retract it, did not constitute an abuse of authority. The referee was chosen by the complainant, if the complainant had reservations about giving that referee as a reference, he should not have provided his name to the assessment board.

Complaint Must be Personal to the Complainant

Doraiswamy v. Deputy Minister of Transport, Infrastructure and Communities, 2011 PSST 0035

The complainant stated that he was not interested in the position or being appointed to it. The Tribunal concluded that the complainant had no interest in an acting appointment and that, in fact, he was complaining on behalf of others. On this basis, the Tribunal found that the complainant had not established that he had the right to file a complaint to the Tribunal under s. 77 of the PSEA.

Non-Advertised Appointment Process

The very nature of a non-advertised appointment process is that it does not present an opportunity for people to apply. Furthermore, the respondent is not required to consider more than one person for each appointment to be made on the basis of merit. This is the nature of this type of appointment process. Therefore, the term "access" should be given a more nuanced meaning. The Tribunal has already established that the simple fact of using a non-advertised process does not constitute, in and of itself, abuse of authority.

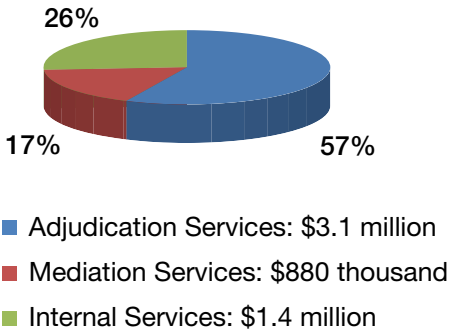
Velasco v. Deputy Minister of Transport, Infrastructure and Communities, 2011 PSST 0017

Vaudrin v. Deputy Minister of Human Resources and Skills Development Canada, 2011 PSST 0019

Jack v. Commissioner of the Correctional Service of Canada, 2011 PSST 0026

Annex III – Financial Highlights

Spending by Operational Priorities

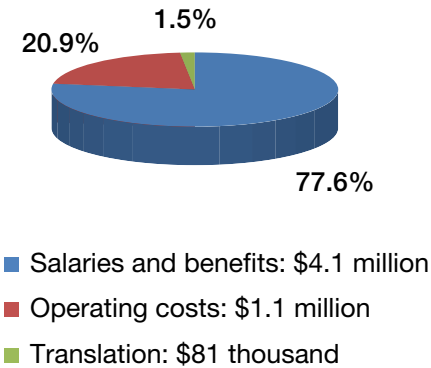


Based on the Tribunal’s financial statements, total expenses were \$5.3 million in 2011–12.

The majority of the funds, \$3.1 million or 57%, were spent on the Adjudication Services; while

Mediation Services represented \$880K or 17% of total expenses and Internal Services represented \$1.4 million or 26% of total expenses.

Spending by Type



Total expenses for the Tribunal were \$5.3 million in 2011–12 of which \$4.1 million or 77.6% were spent on salaries and employee benefits.

\$1.1 million or 20.9% were spent on other operating costs such as transportation costs, professional services fees, accommodation costs and cost for hearing and mediation facilities.

The balance of \$81 thousand or 1.5% of the Tribunal costs was for translating its decisions (special purpose allotment).

Annex IV – Members’ Biographies



Guy Giguère, Chairperson and Chief Executive Officer

A seasoned adjudicator and mediator with over 25 years of experience in the federal public service of Canada, born in St-Jérôme, Québec, Mr. Giguère is a lawyer and holds a civil law degree (LL.L) from the Université de Montréal. He worked in the private sector before joining the public service with Employment and Immigration Canada where he provided training and advice on human rights, privacy and access to information. He later worked with the Office of the Privacy Commissioner, the Department of Justice and the Privy Council Office. He began adjudicating and mediating labour grievances in 1998 as a member of the Public Service Staff Relations Board. He became Deputy Chairperson of the Board in 2001. Guy Giguère was appointed Chairperson of the Public Service Staffing Tribunal in March 2005 and reappointed for a five-year period on March 31, 2008. Mr. Giguère is a frequent speaker on mediation and arbitration and trains new members of federal administrative tribunals on the conduct of hearings. He is President of the Council of Canadian Administrative Tribunals, a national organization whose main mandate is to promote excellence in the field of administrative justice and provide training for boards, commissions and administrative tribunals in Canada.



John A. Mooney, Vice-Chairperson

John A. Mooney was appointed Vice-Chairperson of the Public Service Staffing Tribunal in September 2009. Mr. Mooney holds a BA and License in Civil Law (LL.L) from the University of Ottawa and has extensive experience in administrative tribunals both as an adjudicator and manager. His prior experience includes working as a legal analyst for the Canadian Union of Public Employees; legal counsel for the Chambre de commerce du Québec, counsel for pension applicants before the Canadian Pension Commission and senior legal officer for the International Civil Service Commission of the United Nations. From 1992 to 1996, he was Chairperson of the Public Service Commission (PSC) Appeal Board. As part of the Privy Council Task Force on Modernizing Human Resources Management from 2001 to 2003, he helped draft the new *Public Service Employment Act* (PSEA). After the PSEA came into force, Mr. Mooney became the PSC Director of Regulations and Legislation where he managed the development of policies and regulations needed to implement the PSEA. In August, 2007, he was appointed as a full-time member of the Public Service Labour Relations Board.



Joanne Archibald, Member

Joanne Archibald was appointed to the Public Service Staffing Tribunal as a permanent full-time member on March 1, 2010. Having obtained a Bachelor of Laws (LL.B) from the University of Calgary, Ms. Archibald is an active member of the Law Society of Alberta. She began her study of mediation in 1993 and is a Registered Practitioner in Dispute Resolution with the Canadian International Institute of Applied Negotiation. Ms. Archibald has served as a mediator both within the public service and with the Provincial Court of Alberta. Well versed in administrative law, Ms. Archibald conducted quasi-judicial hearings pursuant to the *Public Service Employment Act* from 1991 until her appointment to the Tribunal.



Merri Beattie, Member

Merri Beattie is an experienced human resources professional with particular expertise in labour relations and staffing. Ms. Beattie began her public service career with Supply and Services Canada and has held positions in management since 1999. Ms. Beattie served on the Privy Council's Task Force on Modernizing Human Resources Management created in April 2001 to draft a new institutional and legislative framework for human resources management in the public service. Following the adoption of the *Public Service Modernization Act* (PSMA), Ms. Beattie participated in the planning of PSMA implementation across government departments and agencies. In January 2004, Ms. Beattie was named Director of Human Resources Modernization with Public Works and Government Services Canada. In this capacity, she led the design and implementation of the department's human resources policy frameworks and systems, including its response to the new Act. Ms. Beattie was appointed as a permanent full-time member of the Public Service Staffing Tribunal in November 2005.



Lyette Babin-MacKay, Member

Lyette Babin-MacKay was appointed as a permanent full-time member of the Public Service Staffing Tribunal in July 2009. Ms. Babin-MacKay has over 26 years of experience in human resources, labour relations and staffing; having joined the federal public service of Canada in 1983, she served with Employment and Immigration Canada, Agriculture Canada and National Defence and was appointed to the Professional Institute of the Public Service of Canada in 1996. At the Institute, in addition to providing representation to members regarding grievances, complaints, staffing appeals and adjudication, she was an active member of several National Joint Council Committees and of the Public Service Commission Advisory Council. In 2004 and 2005, she was a member of working groups established by the Deputy Ministers' Sub-Committees on Staffing and Staffing Recourse and on Labour Relations and Dispute Resolution in order to assist departments and agencies in the implementation of the *Public Service Employment Act* and the *Public Service Labour Relations Act*. In 2007, she returned to the federal public service as Senior Policy Analyst with the Treasury Board Secretariat of Canada. Ms. Babin-MacKay holds an Honours BA in History from the University of Ottawa.



Ken Gibson, Temporary Member

Ken Gibson was appointed as a temporary member of the Public Service Staffing Tribunal in November 2005. Mr. Gibson began his career as a researcher with the Science Council of Canada and later worked at the Professional Institute of the Public Service of Canada as both chief research officer and negotiator. From 1985 to 2000, he held a number of senior human resources management positions at the National Research Council, including Director of Employee Relations. Mr. Gibson has spent the last five years working as a human resources consultant with expertise in HR strategy, policy and program development, project management, labour relations and change management. Mr. Gibson holds an Honours BA in Commerce with specialization in economics and industrial relations.



Maurice Gohier, Member

Maurice Gohier began his career in the federal public service as a Staff Relations Officer with Veterans Affairs Canada in 1984. From there, Mr. Gohier joined Fisheries and Oceans Canada as its Chief, Staff Relations and Administration until 1990 when he moved to Training and Development Canada as a Labour Relations Instructor. In 1996, following assignments at the RCMP External Review Committee and the Treasury Board Grievance Adjudications Section, Mr. Gohier joined the Public Service Commission (PSC) Recourse Branch where he first worked as an Investigator and later as Chairperson of the PSC Appeal Board. Mr. Gohier also worked in the PSC Investigation Branch where he acquired management experience as Assistant Director of Operations and Director of the Jurisdiction and Case Management Directorate. During the transition years from the former to the new *Public Service Employment Act*, Mr. Gohier worked as Recourse Manager and Coach and was responsible for the training of newly hired PSC Investigators. Mr. Gohier holds a Bachelor's degree both in Business Administration and Education from the University of Ottawa. He was appointed as a permanent full-time member of the Public Service Staffing Tribunal in February 2010.



Eugene Williams, Temporary Member

Following his 1976 call to the bar, Eugene Williams joined the Bureau of Competition Policy and remained there for 4 years. In 1980 he became a prosecutor with the federal Department of Justice in Ottawa and had carriage of tax, competition, drugs and regulatory prosecutions until 1990. Between 1990 and 1998 he participated in section 696 Criminal Code reviews, (formerly s. 690) and was involved in the development of the Criminal Conviction Review Group and became its first coordinator. He was appointed Queen's Counsel in 1993. In 1998, he rejoined the Federal Prosecution Service (FPS) as the Director of the FPS Ottawa-Gatineau office. In January 2006 Eugene Williams, Q.C. was appointed the IMET coordinator in the Office of the Director of Public Prosecutions. (On December 12, 2006, the Office of the Director of Public Prosecutions was created by the *Federal Accountability Act* and assumed responsibility for the activities of the Federal Prosecution Service of the Department of Justice.) He remained in that position until he retired from the Public Service in October 2010.



Tara Erskine, Temporary Member

Tara Erskine was appointed as a temporary member of the Public Service Staffing Tribunal in December 2010. She is a labour and employment lawyer with over fifteen years of experience in private practice and has appeared before labour relations boards, human rights tribunals, and various levels of courts across the country. Ms. Erskine holds a Bachelor of Arts degree from the University of King's College and a Law degree from Dalhousie University. She is a member of Law Society of Upper Canada, the Law Society of Alberta and the Nova Scotia Barristers Society. In addition to her legal training, Ms. Erskine completed the Advanced Program in Human Resource Management at the Rotman School of Management, University of Toronto and holds the designation as a Certified Human Resource Professional (CHRP). She has completed courses in mediation through Harvard Law School. Ms. Erskine is a regular speaker on labour and employment law matters.

John B. Hall, Temporary Member

John Hall received his law degree from the University of British Columbia in 1980 and began his professional career as an arbitrator in 1985 when he was appointed to the B.C. Labour Relations Board. He served as Vice-Chair for two years before becoming a partner in a major Vancouver law firm. Mr. Hall returned to the Labour Board in 1992 as Associate Chair (Adjudication). He was named Acting Chair in 1996 and resigned two years later to pursue a private arbitration, dispute resolution and training practice. Since that time, he has also received a wide range of part-time appointments to both provincial and federal statutory tribunals and been selected to arbitrate and/or mediate numerous labour and employment disputes since the 1980s, with many of his decisions being reported nationally. He regularly instructs tribunal adjudicators on conducting hearings and writing decisions. Mr. Hall served as a Director of the Council of Canadian Administrative Tribunals, was the founding President and later a Director of the B.C. Council of Administrative Tribunal and, since 1999, has been the Secretary of the B.C. Arbitrators Association. Mr. Hall was appointed to the Public Service Staffing Tribunal as a part-time member on July 30, 2008.

How to Contact the Tribunal

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