



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

2012-13

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

Improving Service Delivery



Canada



**Public Service
Staffing Tribunal**

**Tribunal de la dotation
de la fonction publique**

240 Sparks Street
6th Floor West
Ottawa ON K1A 0A5
Canada

240, rue Sparks
6^e étage ouest
Ottawa ON K1A 0A5
Canada



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

Dear Minister Glover:

In accordance with section 110 of the *Public Service Employment Act*, I am pleased to submit the eighth annual report of the Public Service Staffing Tribunal for the period from April 1, 2012 to March 31, 2013, for tabling in Parliament.

Yours respectfully,

Guy Giguère
Chairperson and Chief Executive Officer

© Her Majesty the Queen in Right of Canada, represented by the
Chairperson of the Public Service Staffing Tribunal (2013)

This document is available on the Public Service Staffing Tribunal website at <http://www.psst-tdfp.gc.ca>

This document is available in alternative formats upon request.



Message from the Chairperson



***Improving Service Delivery* is the 8th annual report on the activities of the Public Service Staffing Tribunal.**

In 2012-13 the Tribunal moved forward with new ways to improve our service delivery. Strategies and tools, such as settlement conferences and telephone mediations, have helped optimize the Tribunal's resources and proved successful.

The Tribunal launched an expedited hearing process pilot project, which effectively provides more expeditious adjudication of less complex cases by reducing the time required for hearings and written decisions.

As well, the turn-around time for issuing decisions, following a formal hearing, has been shortened significantly and has improved consistently from year to year.

The Tribunal's project to replace its case management system, launched in September 2012, marked a key turning point in how the Tribunal manages its case information. Once operationalized, the system will improve and enhance information management capabilities and functionality, which not only allows the Tribunal to keep pace with technology, but ensures that immediate and future case information management needs are effectively met.

As with previous years, the unpredictability of caseload was a planning challenge for the Tribunal in 2012-13. The Tribunal prepared to manage an influx of lay-off complaints, considering workforce adjustments occurring across government. However, the anticipated increase in the number of lay-off complaints did not occur and the majority of complaints continued to relate to appointment processes, as lay-off complaints represented 22% of the Tribunal's caseload.

By implementing improvements in our service delivery, the Tribunal is better delivering its mandate of resolving staffing issues and disposing of staffing complaints as effectively and efficiently as possible.

Guy Giguère
Chairperson and Chief Executive Officer



Table of Contents



Message from the Chairperson	i
SECTION I – Overview	
Complaints	2
Layoffs	3
Mediation	4
Settlement Conferences	7
Decisions	7
SECTION II – <i>Improving Our Service Delivery</i>	
Case Management	9
Expedited Hearings.....	9
Case Management System	10
Mediation Training	10
Human Resources	11
Values and Ethics Code	11
Annex I – Breakdown of Complaints by Organization	12
Annex II – Tribunal Decisions	14
Annex III – Financial Highlights	20
Annex IV – Members	21
How to Contact the Tribunal	26



SECTION I – Overview



The Public Service Staffing Tribunal (the 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 is responsible for the impartial and timely consideration and disposition of complaints submitted under the PSEA with respect to internal appointment and lay-off processes.

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.

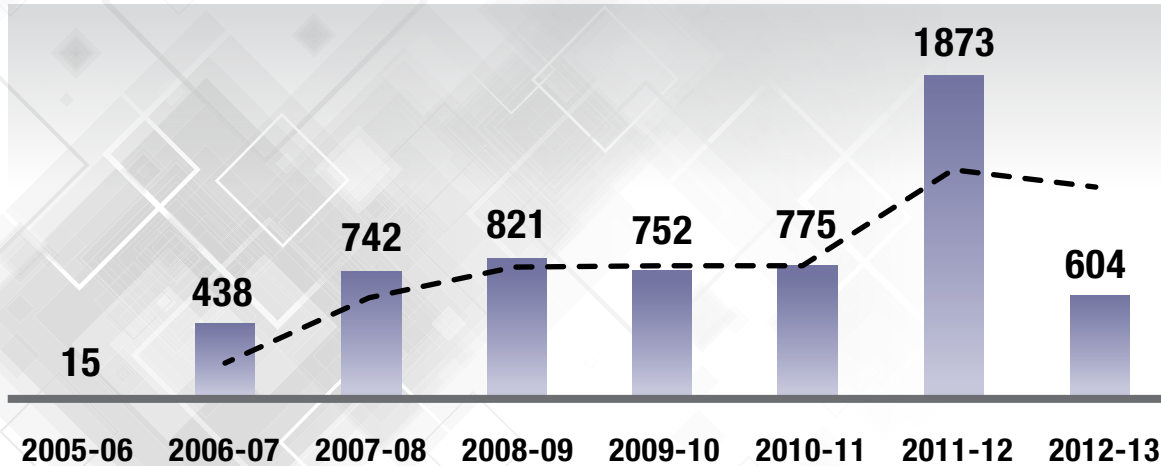
In 2012-13 the Tribunal undertook several activities focussed on *improving our service delivery*, i.e. meeting client needs more efficiently through improved processes and strategies.

Complaints

The unpredictability of caseload will continue to represent a planning challenge for the Tribunal.

In 2012-13 the Tribunal's complaint caseload (604 complaints) returned closer to the average levels of recent years (although 2011-12 had a significantly higher than average number of complaints).

Number of Complaints



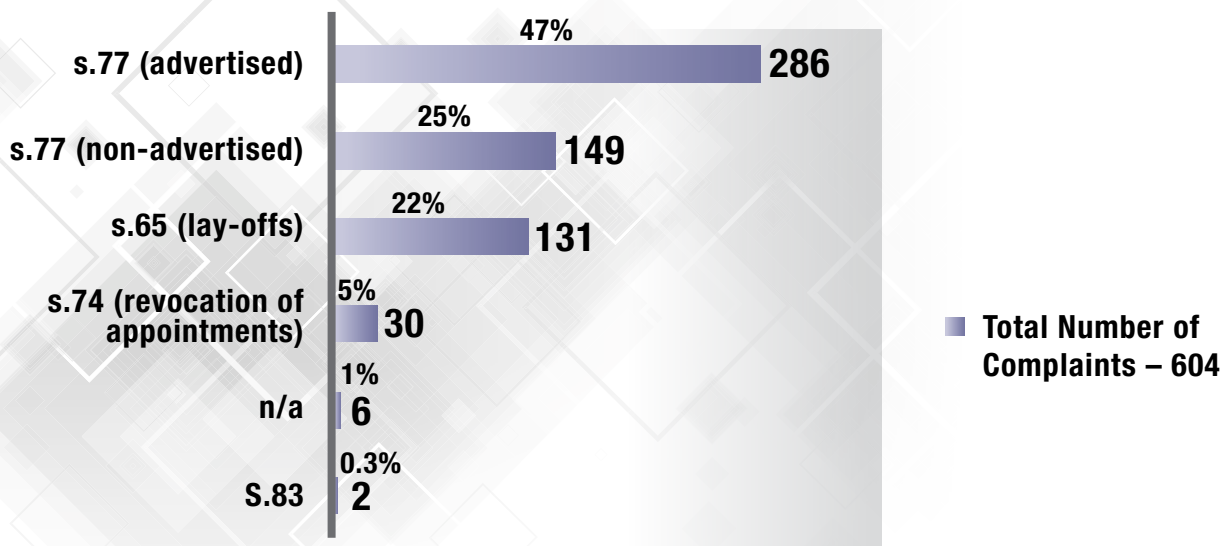
Lay-offs

It was a challenge to predict the number of potential lay-off complaints in 2012-13 given the increased likelihood of complaints as departments implemented cost saving measures and reduced their workforces. Since lay-off complaints are time-sensitive and have serious consequences for employees, it was also important to have in place a process that would ensure these complaints were managed efficiently.

At the beginning of 2012, the Tribunal was prepared to manage an influx of lay-off complaints, yet the anticipated increase in the number of lay-off complaints did not occur by year end.

Lay-off complaints represented 22% of the caseload and the majority of complaints continued to relate to appointment processes, as illustrated in the chart below.

Breakdown of complaints by type



Mediation

Complaints Referred to Mediation

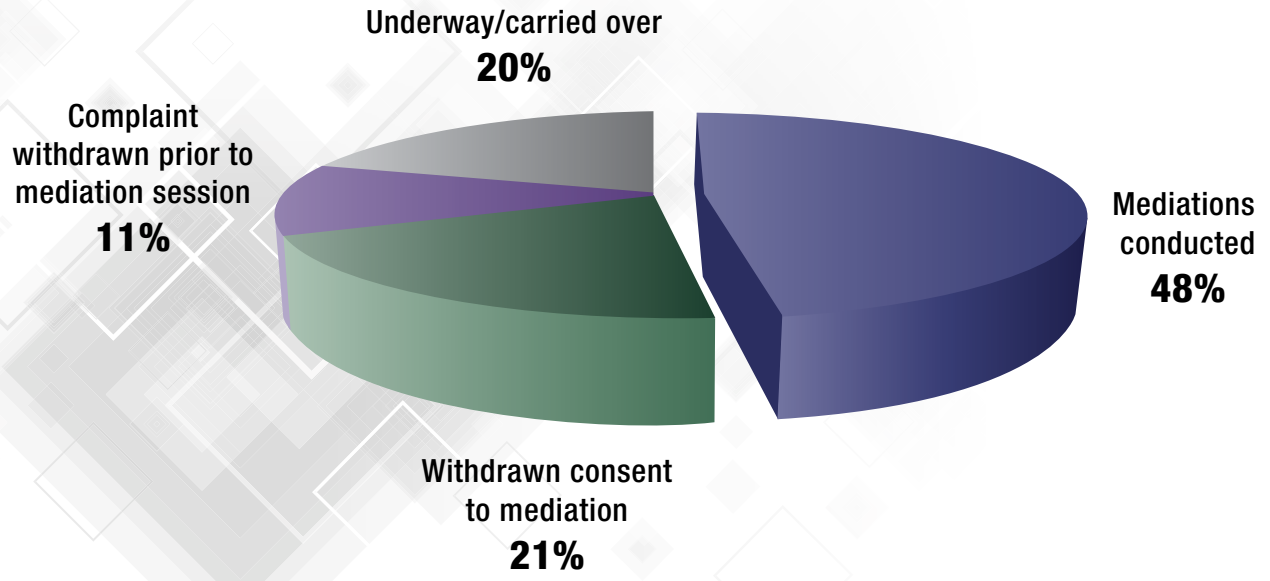
Less than 10% of complaints received at the Tribunal go on to a formal hearing. The majority of complaints are resolved through mediation or other informal processes.

In 2012-13, out of 168 mediations conducted, 129 complaints were settled. This represents an overall success rate of 77% (similar rates for mediations by telephone, videoconference and in person).

Breakdown of total complaints referred to mediation	
Total referred to mediation (<i>294 carried over from previous years</i>)	351
Total mediations conducted	168
Total complaints resolved by mediation	129
Mediation success rate ¹	77%

Breakdown of complaints in mediation – withdrawn or underway (A complaint at the mediation stage may be dismissed due to missed timeliness, lack of jurisdiction or may be withdrawn by the complainant.)	
Mediations conducted	168
Party withdrew consent to mediation	73
Mediation processes underway/carried-over to next fiscal year	72
Withdrawn prior to the scheduled mediation session	38

¹The success rate is the same for mediations done by telephone, by videoconference and in person. However, there is a difference between the success rate for mediation of complaints regarding internal appointment (80%), which represent 74% of mediations, and the success rate for mediation of complaints regarding lay-offs (71%), which represent 26% of mediations.



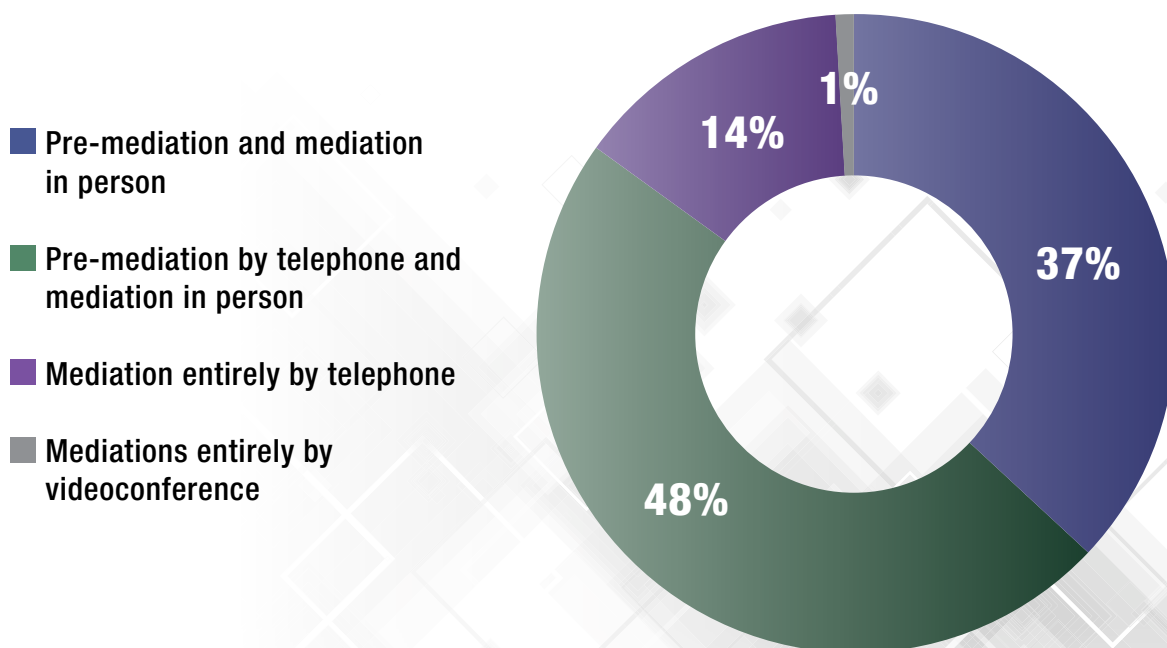
Telephone and Videoconference Mediation

To improve the Tribunal’s service delivery to clients and create savings and efficiencies, mediation sessions were increasingly conducted by telephone and videoconferencing. Information was made available on the Tribunal’s website encouraging the use of new technologies for conducting mediation sessions.

Telephone and videoconference mediations continued to be used and the Tribunal increased the practice of conducting the pre-mediations by telephone and the mediations in person.

Based on feedback on both the mediation process and the work of the mediator, the mediation participant satisfaction rate is 85%. The same satisfaction rate is reported for mediations done by telephone and videoconference.

Breakdown of mediations in-person, telephone or videoconference	
Pre-mediation and mediation by telephone (14%) and videoconference (1%)	15%
Pre-mediation (one day) by telephone and mediation (one day) in person	48% ²
Pre-mediation (one day) and mediation (one day) in person	37%



² Increase from 25% target for previous year

Settlement Conferences

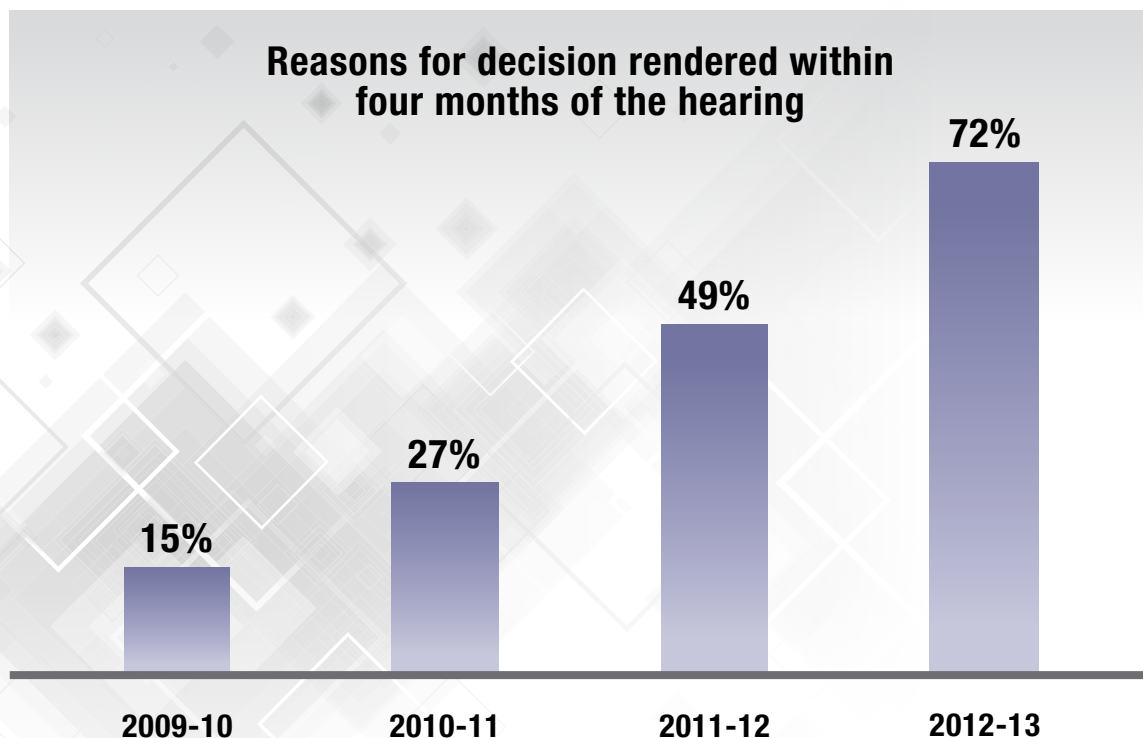
Since 2010, the Tribunal has conducted settlement conferences. Like mediation, it is a confidential process with the objective of coming to a final resolution with a withdrawal of the complaint. Both have a high settlement rate. However, a settlement conference differs as it is a mandatory process controlled by the Tribunal. It is a rights-based evaluative process chaired by a Tribunal member. It allows the parties to discuss, in caucus, the strengths and weaknesses of their case in order to reach a settlement that is satisfactory to them.

In some instances, the member presiding over the settlement conference may decide following preliminary discussions with the parties to cancel the settlement conference where it appears that the parties have no likelihood of coming to any resolution of the complaint. It also occurs that the complaint is withdrawn before the settlement conference takes place.

In 2012-13, the Tribunal scheduled a total of 24 settlement conferences (11 in person and 13 by telephone). Several complaints were withdrawn prior to the scheduled date and a few were also cancelled. Thirteen settlement conferences were held resulting in nine complaints being resolved in this fiscal year or in the months following. Only four complaints were not resolved and proceeded to a hearing.

Decisions

As the Tribunal's jurisprudence is more and more established, the turn-around time for issuing decisions, following a formal hearing, has improved significantly and continues to improve consistently from year to year.



In addition to improving the turn-around time for issuing decisions, the Tribunal closed 1339 complaint files. Of those, 1135 or 85% were closed within 270 days or less from the receipt of the complaint.

In addition to issuing reasons for decision following a hearing, the Tribunal also deals with numerous motions, and issues and interim and final decisions in the form of letter decisions or letters of direction. The chart below sets out the number of motions received and types of interim and final decisions issued.

Requests/motions	968
Letter decisions	839
Letters of direction	57
Reasons for decisions	42





SECTION II – *Improving Our Service Delivery*



Lay-off Complaints

Information specifically targeting section 65 complaints which deal with lay-offs was posted on the Tribunal's website to explain and simplify the complaint process and answer frequently asked questions such as settlement information, submission requirements/timelines, use of personal information, rights of other parties, etc.

To be responsive to time-sensitive issues, these complaints were given priority through a modified internal process. To accelerate the process, case files were received by Mediation Services before the allegations were submitted. As such, mediators were immediately made aware of the time frame for exercising resolution options. Scheduling for pre-hearing conferences, settlement conferences and hearings were also given priority.

Expedited Hearings

The expedited hearings pilot project was launched in April 2012 as part of the Tribunal's commitment to more efficient and simpler ways of resolving complaints. The pilot project seeks to shorten the time required for hearings and written decisions by providing more expeditious adjudication of less complex cases.

The first expedited hearing was held in the summer and this new process was subsequently fine tuned to make it more flexible. The Tribunal later identified potential cases and sent out notices to parties about the expedited process. At the pre-hearing conference, the member reviews, with the parties, the complaint and discusses the witnesses they intend to call. Based on these discussions, the Tribunal determines whether an expedited hearing is appropriate. Deadlines are set for the exchange of documents, jurisprudence and statements of fact, and any terms specific to the case are established.

Three expedited hearings were held in this first phase of the pilot project. Each had witnesses and lasted one day. The parties received the Tribunal's decision less than 30 days after the hearing date. Given the initial success of the project, it was decided to extend it into the next fiscal year with more cases contemplated for expedited hearings.

It is believed that this new process will prove to be an effective way to improve services. Once there is a sufficient body of jurisprudence regarding lay-off complaints, those cases will also be considered for an expedited hearing. In the future, some cases where there are less complex allegations of discrimination may also be dealt with through an expedited hearing.

Case Management System

The Tribunal spent a considerable amount of time detailing its business requirements for the consultants charged with configuring its new case management system. This exercise allowed a rethink of certain processes and procedures. Several of these were simplified, streamlined, or in some cases, eliminated.

The off-the-shelf product chosen has proven flexible and meets 90% of the Tribunal needs in its current form. Initial training for super-users was completed in March.

Implementation and testing progressed in a timely fashion. The launch of the new system is planned for fall 2013.

The new case management system is an important element of the Tribunal's commitment to:

- make better use of technology
- provide more efficient and effective case management
- decrease environmental impact and reduce cost by enabling a paperless office, and
- address a growing need for reporting, recordkeeping and information management.

Mediation Training

The mediation training course was offered seven times. However, due to a low number of registrations, the course was delivered four times during the year, i.e. three in English and one in French in three regions (including twice in the National Capital Region).

To address the decreasing number of registrations, consultations were undertaken with information technology services and external practitioners to initiate a pilot project for distance training that would include a shorter training format, less travel cost and greater accessibility. This pilot will be further developed in 2013-14.

Participant feedback indicated a 90% satisfaction rate (for trainers and course content), a 2% increase over the previous year. The higher satisfaction rate is in part due to improvements made to the participants' manual by the Mediation Services team. The mediation training also included a half-day presentation on "*What You Need to Know*" about the Tribunal's processes and decisions (provided by the Tribunal's Legal Services team). This training helped improve clients' understanding of abuse of authority, what it constitutes and the principles that have emanated from it.

The Mediation Services team also provided other presentations and information on dispute resolution services and mediation, telephone mediation, and settlement conferences throughout the year.

Human Resources

Human Resources and Corporate Services implemented an Occupational Health and Safety Program and employee training. The Tribunal conducted research and held meetings in which it consulted with other departments on best practices. By developing the Occupational Health and Safety policies, the Tribunal diligently ensured that the specific health and safety components required at the Tribunal were streamlined into the program.

While the Tribunal as a micro agency faced inherent challenges in developing and implementing this important program, its launch and implementation was a significant accomplishment and success.

Other Human Resources and Corporate Services highlights included revising financial capabilities and procedures in order to streamline operations across the Tribunal.

A Business Continuity Plan was also put in place to ensure that the Tribunal would be able to continue its operations during emergency situations.

Values and Ethics Code

During the initial stages, Tribunal employees and members were provided with copies of the Public Sector code. They were encouraged to review the code, to actively participate in consultations, and to help develop the organizational code for the Tribunal as a means of contributing to maintaining and improving the quality of the workplace.

A working group organized and delivered employee and member training for the code.

Annex I – Breakdown of Complaints by Organization

Organization	Total (604)	% of overall
Human Resources and Skills Development Canada	116	19%
Correctional Service of Canada	78	13%
Canada Border Services Agency	69	11%
Department of National Defence	65	11%
Immigration and Refugee Board	34	6%
Department of Fisheries and Oceans	23	4%
Shared Services Canada	22	4%
Royal Canadian Mounted Police	20	3%
Statistics Canada	20	3%
Department of Health	18	3%
Department of Public Works and Government Services	15	2%
Department of the Environment	14	2%
Department of Transport	13	2%
Department of Citizenship and Immigration	10	2%
Department of Industry	10	2%
Department of Indian and Northern Affairs Canada	7	1%
Canadian International Development Agency	6	1%
Department of Natural Resources	6	1%
Canadian Grain Commission	5	1%
Department of Veterans Affairs	5	1%
Library and Archives of Canada	5	1%
Department of Agriculture and Agri-Food	4	1%

Organization (continued)	Total (604)	% of overall
Public Health Agency of Canada	4	1%
Canadian Space Agency	3	–
Department of Foreign Affairs	3	–
Department of Justice	3	–
National Parole Board	3	–
Privy Council Office	3	–
Canadian Radio-television and Telecommunications Commission	2	–
Economic Development Agency of Canada for the Regions of Quebec	2	–
Other Employer	2	–
Public Safety Canada	2	–
Canada School of Public Service	1	–
Canadian Human Rights Commission	1	–
Department of Canadian Heritage	1	–
Department of Western Economic Diversification	1	–
Federal Economic Development Agency for Southern Ontario	1	–
Financial Consumer Agency of Canada	1	–
Indian Oil and Gas Canada	1	–
International Joint Commission (Canadian Section)	1	–
National Energy Board	1	–
Passport Canada	1	–
Registry of the Public Servants Disclosure Protection Tribunal	1	–
Treasury Board	1	–

Annex II – Tribunal Decisions

The purpose of this section is to provide an overview of the principles enunciated in the Tribunal's jurisprudence. The summaries below do not contain all of the details of the particular case. Only the relevant portions have been reproduced below.

Complete summaries and the full text of the Tribunal's decisions can be found on the Tribunal's website at: <http://www.psst-tdfp.gc.ca/article.asp?id=3434>.

Abuse of Authority

The Tribunal's decision in *Kane v. Deputy Head of Service Canada*, 2007 PSST 0035, made its way to the Supreme Court of Canada.

Mr. Kane's complaint was that there had been an abuse of authority in the choice of an advertised appointment process. Following reorganization, he was deployed in a position that was later declared a new position at a higher level and advertised in an appointment process. He applied but failed a standardized test and later deployed in another position. The Tribunal rejected the complaint as it found that the PSEA clearly provides that the deputy head has the discretion to use an advertised or a non-advertised appointment process. The complainant sought judicial review of the Tribunal's decision. The case was dismissed by the Federal Court which found the Tribunal's decision to be reasonable.

The complainant appealed to the Federal Court of Appeal (FCA). In January 2011, in its reasons, the Court rejected the respondent's claim that abuse of authority requires an element of intention. The FCA upheld the Tribunal's broad interpretation of abuse of authority and specifically stated that errors, omissions and improper conduct can also constitute abuse of authority (see paras. 57 to 67 of *Kane v. Canada (Attorney General)*, 2011 FCA 19). However, the Court granted the appeal on other grounds and returned the case to the Tribunal.

The Attorney General appealed to the Supreme Court of Canada (SCC). In November 2012, the SCC granted the appeal, confirming the Tribunal's original decision. The SCC found that the Tribunal's decision that there was no abuse of authority in the choice of an advertised process was reasonable. Although the FCA's decision was set aside, the SCC did not address the interpretation of abuse of authority and as such, the interpretation of abuse of authority endorsed by the FCA continues to be applied by the Tribunal.

Personal Favouritism

The Tribunal found abuse of authority related to personal favouritism in the following decisions.

Pardy v. Deputy Minister of Aboriginal Affairs and Northern Development Canada, 2012 PSST 0014

<http://www.psst-tdfp.gc.ca/article.asp?id=5175>

The complainants alleged that the respondent personally favoured the appointee and predetermined that he would be appointed to the position. Six weeks prior to the interview, the appointee was asked by the delegated manager to make a presentation dealing with an issue that was an essential qualification that was to be assessed at the interview. The evidence also showed that the manager had made comments to a Human Resources manager shortly before the interviews that he had decided to give the position to the appointee. Furthermore, the manager had made comments prior to the reference checks being completed indicating that the appointee would be the successful candidate.

The Tribunal found that it was more likely than not that making the presentation did give the appointee an opportunity to prepare for the interview that the other two candidates did not have. The manager had prepared the interview questions, was aware of their nature and knew that the appointee would be interviewed. The Tribunal also found that it was more likely than not that the manager had made a statement shortly before the interviews that he had decided to give the position to the appointee and that he had decided, before the reference checks were concluded, that the appointee would be appointed to the position.

The Tribunal found that the manager's actions and statements showed that the respondent was not acting in good faith and, more likely than not, personally favoured the appointee in the advertised process. The complaint was substantiated and the Tribunal ordered the respondent to revoke the appointee's appointment.

Spirak v. the Deputy Minister of Public Works and Government Services Canada, 2012 PSST 0020

<http://www.psst-tdfp.gc.ca/article.asp?id=5203>

The complainant alleged that the respondent abused its authority in the application of merit by extending through a non-advertised process the acting appointment of the appointee and by personally favouring the appointee. The Tribunal found that the evidence relating to this appointment reflected a pattern of personal favouritism. The respondent failed to give adequate and accurate notice of the appointment. The respondent contravened s.13 of the *Public Service Employment Regulations* by delaying the notification of the appointee's appointment, it had provided inaccuracies about the true length of the appointment, and it issued an improper notice of appointment that failed to inform those in the area of selection of their right to complain to the Tribunal nor give the grounds upon which the complaint could be made. Furthermore, the rationale given to justify the appointment did not accurately reflect the circumstances of the appointment. There was also evidence of a personal relationship between the hiring manager and the appointee.

The Tribunal also found that the respondent acted in bad faith in failing to correct information it provided to the complainant and other employees about the length of the acting appointment's term and in leading the complainant to believe that he would be considered for the acting appointment when in fact he had no intention of considering anyone other than the appointee. The Tribunal concluded that in making the appointment, the respondent did not conform to the department's own appointment values of access, fairness and transparency, and that the respondent acted in bad faith and demonstrated personal favouritism towards the appointee.

The Tribunal revoked the appointment, cognizant of the fact that the acting appointment had ended. It stated that this fact did not make the revocation of the appointment moot. The Tribunal found that the manager had displayed a blatant disregard for certain staffing requirements therefore it recommended that the respondent provide training or coaching in staffing techniques and procedures to the manager to ensure that future appointment processes are conducted in full compliance with the relevant statutes, regulations and policies.

Errors in Assessments – Reference Checks

The Tribunal found abuse of authority in the following decisions relating to the assessment of references.

Ostermann v. the Deputy Minister of Human Resources and Skills Development Canada, 2012 PSST 0028

<http://www.psst-tdfp.gc.ca/article.asp?id=5268>

The complainant alleged that the respondent failed to properly assess her candidacy with respect to the essential qualification of judgment by using as a referee a person who had only supervised her for approximately five weeks, and by attributing too much weight to that referee's observations. This referee had provided negative comments. The assessment board had contacted three referees in total and assigned a mark based on the average score for judgment for the three references.

The Tribunal found that the errors made in assessing the complainant were serious enough to constitute an abuse of authority. The most serious error committed by the respondent was the simplistic and rigid approach that the assessment board used in determining that the complainant failed the judgment qualification.

The Tribunal determined that the assessment board had failed to take into consideration the fact that, at the time of the reference, that particular referee had only supervised the complainant for a few weeks. The assessment board had not conducted an adequate assessment of the complainant's qualifications when it included that referee's reference without considering the appropriate weight to be attached to the reference. The limited period of time in which the referee observed the complainant called for flexibility in the marking and an appropriate assignment of weight in the assessment process.

The Tribunal further found that the assessment board had also failed to properly reconcile the divergence of opinions among referees. Attributing the same weight to each of them was not a reasonable method to address that difference of opinions. The assessment board therefore acted in an arbitrary manner and fettered its discretion. The Tribunal concluded that together the errors were serious enough to constitute an abuse of

authority. The complaint was substantiated and the Tribunal ordered that the respondent reassess the judgment qualification. If she met that qualification, the respondent had to complete her assessment with respect to the other qualifications and if found qualified, place her in the pool of qualified candidates if that pool still existed.

Gabon v. the Deputy Minister of Environment Canada, 2012 PSST 0029

<http://www.psst-tdfp.gc.ca/article.asp?id=5272>

The complainant alleged, among other things, that the respondent abused its authority in the assessment of her reference check by:

- a) not contacting her;
- b) obtaining a reference from a former manager who was biased;
- c) relying on information from an unqualified referee who had not supervised her directly;
- d) failing to accommodate her in its assessment of the reference check; and
- e) refusing one of her referees.

The Tribunal found that while there was nothing improper in the respondent's choice of assessment method, the instructions to candidates with respect to references should have been clearer. The candidates were simply given the option to provide professional references such as a supervisor, colleague, and a member of a professional organization. However, the reference check questionnaire was designed to only seek the input of supervisors rather than colleagues or members of a professional organization.

The Tribunal found that the errors and omissions that occurred in this appointment process were as follows:

- 1) The instructions to candidates with respect to the provision of names of referees were unclear;
- 2) Notwithstanding that candidates could provide the names of colleagues and members of a professional organization, the reference check guide was designed for supervisor/managers to complete;
- 3) The assessment board considered the verbal opinions of the complainant's former manager without exercising the necessary caution required in the circumstances;
- 4) The assessment board relied on verbal comments from two of the complainant's supervisors when all other candidates were assessed by way of completed written references; and
- 5) The overwhelming disproportionate weight placed by the assessment board on a particular reference, despite the fact that the referee had never been the complainant's direct supervisor, and the corresponding lack of weight placed on the references provided by the complainant's three referees was also an error.

Based on those collective errors, the Tribunal concluded that the respondent had abused its authority with respect to the complainant's assessment. The Tribunal ordered the respondent to reassess the complainant's interpersonal skill, initiative and judgment qualifications, and, if found qualified, to place her in the pool from this appointment process if it still existed. The Tribunal also recommended that training in the conduct of reference checks be provided for the members of the assessment board.

Errors in Assessments – Linguistic Profile

The Tribunal found abuse of authority in the following decision relating to the appointee's assessment of the linguistic profile.

Hammouch v. Deputy Minister of National Defence, 2012 PSST 0012

<http://www.psst-tdfp.gc.ca/article.asp?id=5141>

The complainant alleged among other things that the appointee did not have the required linguistic profile for the position at the time he was awarded the acting appointment. The Statement of Merit Criteria indicated “BBB” as the official language proficiency for the position. The appointee had a linguistic profile of “ECE” but it had expired. The appointee therefore did not have the full linguistic profile required at the time of his appointment. Since the appointee did not meet one of the essential qualifications, his appointment was not made on the basis of merit. The Tribunal found that appointing someone who does not meet all of the essential qualifications is an error that is serious enough to constitute an abuse of authority within the meaning of section 77(1)(a) of the *Public Service Employment Act*. As a result, the Tribunal concluded that the respondent abused its authority when it appointed the appointee to the position.

Discrimination and Employment Equity

In the following decision, the Tribunal reiterated its role with respect to employment equity issues when dealing with complaints of abuse of authority.

Abi-Mansour v. the Deputy Minister of Aboriginal Affairs and Northern Development Canada, 2013 PSST 0006 (judicial review pending)

<http://www.psst-tdfp.gc.ca/article.asp?id=5445>

In this decision, the Tribunal addressed its role with respect to employment equity issues. The complainant argued that the *Employment Equity Act* (EEA), the *Canadian Human Rights Act* (CHRA) and the *Public Service Employment Act* (PSEA) are intended to create a representative workforce and should be read together to accomplish this objective. The Tribunal indicated that it is not its role to enforce compliance with the EEA. Citing the Federal Court of Appeal, the Tribunal noted that Parliament bestowed that role on the Canadian Human Rights Commission (CHRC). Therefore, the Tribunal indicated that it had no jurisdiction to consider whether a respondent fulfilled its responsibilities under the EEA.

The mandate of the Tribunal, as it is set out in s. 88(2) of the PSEA, is limited to the consideration and disposition of complaints made under ss. 65(1), 74, 77 and 83 of the PSEA. The Tribunal however indicated that although the CHRC has the role of enforcing compliance with the EEA, employment equity matters may nonetheless be relevant to complaints made before the Tribunal under s. 77.

In this case, the deputy head established an organizational need in the Statement of Merit Criteria which stated that it may limit selection to candidates self-identifying as belonging to one of the following employment equity groups: Aboriginal peoples and visible minorities. As such, the Tribunal considered evidence as to whether the respondent abused its authority in the present case when it had regard to this organizational need in this appointment process.

Mootness

The following facts led the Tribunal to determine that the complaint was moot because the complainant was appointed to the position after the complaint was filed.

Dubord v. the Commissioner of the Correctional Service of Canada, 2013 PSST 0010

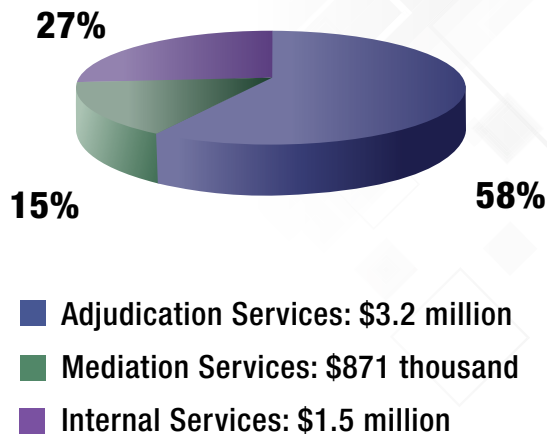
<http://www.psst-tdfp.gc.ca/article.asp?id=5468>

The complainant had alleged, among other things, that the respondent abused its authority in the assessment of his answers to the written exam. The respondent denied the allegation and submitted that the complaint was moot because after the complaint had been filed, it reassessed the complainant's answers, determined that he was qualified and appointed him to the position. The Tribunal found that the tangible and concrete dispute between the parties had disappeared.

Pursuant to s. 77 of the *Public Service Employment Act*, the complaint must deal with the fact that the complainant was not appointed to the position in question because of an abuse of authority. In this case, there had been an initial dispute between the parties because the complainant had not been appointed to the position at the time the complaint was filed with the Tribunal. However, that tangible and concrete dispute disappeared when the respondent appointed him to the position after reassessing his written exam. The Tribunal pointed out that a complaint does not necessarily become moot merely because a complainant is later appointed to the position at issue. In some cases, there may still be a dispute if there are reasons to take corrective action, even if the person is appointed to the position. The Tribunal found that there were no grounds in this case for ordering corrective action. The complaint was dismissed.

Annex III – Financial Highlights

Spending by Operational Priorities



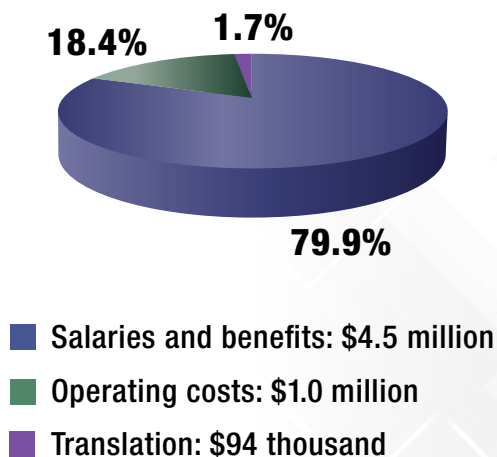
Based on the Tribunal's financial statements, total expenses were \$5.7 million in 2012–13.

The majority of the funds, \$3.2 million or 58%, were spent on the Adjudication Services; while

Mediation Services represented \$871 thousand or 15% of total expenses.

Internal Services represented \$1.5 million or 27% of total expenses.

Spending by Type



Total expenses for the Tribunal were \$5.7 million in 2012–13 of which \$4.5 million or 79.9% were spent on salaries and employee benefits.

\$1.0 million or 18.4% 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 \$94 thousand or 1.7% of the Tribunal costs was for translating its decisions (special purpose allotment).

Annex IV – Members



Guy Giguère, Chairperson and Chief Executive Officer

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 later was appointed Deputy Chairperson of the Board in 2001. Guy Giguère was appointed Chairperson of the Public Service Staffing Tribunal in March 2005 and was reappointed in 2008 and 2013. Mr. Giguère is a frequent speaker on mediation and arbitration and trains new members of administrative tribunals on the conduct of hearings. He is Chairperson 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, which was 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*. 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.



Nathalie Daigle, Member

Nathalie Daigle is from Edmundston, New Brunswick. She was appointed as a permanent full-time member of the Public Service Staffing Tribunal in December 2012. Ms. Daigle began her career as legal counsel for the Information Commissioner of Canada in 1996 and later worked as legal counsel for the Privacy Commissioner of Canada, the Department of Justice, Correctional Service Canada and the Courts Administration Service. Ms. Daigle has developed, over the years, an expertise in administrative law. She obtained her LL.B. from the University of Ottawa in 1994 and was called to the Bar in 1996, after completing her articling at the Federal Court of Appeal. She is a member of the Law Society of Upper Canada.



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, Temporary Member

Mr. Gohier was appointed as a temporary member of the Public Service Staffing Tribunal on May 31, 2012. He previously had been a permanent full-time member since February 2010. He 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 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.



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 the 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.



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 become 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.



Archie Zariski, Temporary Member

Archie Zariski practiced law, including labour relations matters in Edmonton, for 15 years following his admission to the Alberta Bar. In 1988 he retired from practice to complete a Masters in Law degree from Osgoode Hall Law School where he presented a thesis on law and economics in dispute resolution. Archie then took up appointment as a member of the Faculty of Law of Murdoch University in Perth, Australia. At Murdoch he designed and taught courses in dispute resolution, negotiation, and mediation as well as becoming trained and nationally accredited as a mediator. Since returning to Canada he has joined Athabasca University as an Associate Professor of Legal Studies with research interests in mediation and judicial dispute resolution. Archie continues to lead mediator training courses in Australia and is a member of the Institute of Arbitrators and Mediators Australia, ADR Institute of Canada, and the ADR Institute of Alberta. Archie was appointed a temporary member of the Tribunal in October 2012.

How to Contact the Tribunal

General Information

Website: www.psst-tdfp.gc.ca
Telephone: 613-949-6516 or 1-866-637-4491
Facsimile: 613-949-6551
TTY: 1-866-389-6901
Email: info@psst-tdfp.gc.ca

Mailing Address

Public Service Staffing Tribunal
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 0A5