Federal Public Sector
Labour Relations and
Employment Board

Federal Public Sector Labour Relations and Employment Board

2017–2018 Annual Report

Canada

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Federal Public Sector Labour Relations and Employment Board

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Vice-Chairpersons: David Paul Olsen

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Part-time Member: Dev A. Chankasingh

The Honourable Carla Qualtrough MP
Minister of Public Services and Procurement and Accessibility
House of Commons
Ottawa ON K1A 0A6

Dear Minister,

It is my pleasure to transmit to you, pursuant to section 42 of the *Federal Public Sector Labour Relations and Employment Board Act*, the Annual Report of the Federal Public Sector Labour Relations and Employment Board, covering the period from April 1, 2017, to March 31, 2018, for submission to Parliament.

Yours sincerely,

Catherine Ebbs
Chairperson

Message from the Chairperson

I am pleased to present the 2017-18 Annual Report of the Federal Public Sector Labour Relations and Employment Board (FPSLREB or "the Board").

The Board has a mandate of remarkable scope in supporting harmonious labour and employment relations in the federal public sector. It operates with neutral and impartial Board members with extensive experience acquired through past work as either management or bargaining agent representatives or as neutral decision makers. Their expertise spans a wide range of matters related to labour relations, staffing, health and safety reprisal actions, and human rights.

The past year has been quite dynamic for the Board on many fronts, including the coming into force of three important bills, the proposal of additional legislative changes, the near conclusion of a major round of collective bargaining in the federal public service, and the implementation of initiatives to address the Board's case inventory and to enhance the management of its cases. These events are in addition to continued work in the administration of our statutory mandates with respect to labour relations and staffing matters.

In June 2017, three Parliamentary bills were passed. First, Bill C-7 brings Royal Canadian Mounted Police (RCMP) members under the Board's mandate and provides a labour relations regime for those members and RCMP reservists. The regime includes a process for employee organizations to acquire collective bargaining rights, and provisions that regulate collective bargaining, adjudication, unfair labour practices, and grievances. A number of RCMP-related matters are currently before the Board. The legislative change also resulted in yet another name for the Board, the Federal Public Sector Labour Relations and Employment Board, and brought in the renamed and revised *Federal Public Sector Labour Relations Act* (*FPSLRA*). Second, Bill C-44 extends the Board's mandate in relation to the *Canada Labour Code* (*CLC*) and parliamentary employees. Finally, Bill C-4 eliminates mandatory secret ballot representation votes and restores the former card check model, which requires evidence of majority support from employees and gives the FPSLREB the discretion to order a representation vote.

The Board continued to resolve a variety of labour relations and staffing disputes and complaints coherently and consistently, often without resorting to a hearing. Through its adjudication services and expertise, the Board also issued decisions for the federal public sector, adding to its jurisprudence in both staffing and labour relations.

In renewing its broad public sector mandate, the Board has identified three key priorities: modernizing its case management, reducing its case inventory, and achieving greater efficiency in its overall processes while

encompassing the values of fairness and transparency in its proceedings. It has also revisited how best to ensure uninterrupted service excellence while looking ahead to integrating its additional mandates.

In this fiscal year, the Board had another member vacancy. I have continued to make every effort to ensure a full complement of members, both full-time and part-time, as this is vital to our efforts in reducing the case inventory. It is anticipated that vacancies will be filled in the next fiscal year. I have also engaged in activities that encourage dialogue with stakeholders on different approaches to case reduction and have worked with two stakeholders in particular on a case management project. Again, I must sincerely thank the members of the Client Consultation Committees for their ongoing engagement in the work of the Board.

Finally, our Board has engaged in important innovations this past year. It advanced a new scheduling process last spring while simultaneously processing thousands of cases, with over 2300 cases received and close to 2000 cases closed in the past year. I am also very pleased that the Board and its supporting Secretariat now have access to a consolidated electronic case management system. While modest in scope, the system allows the Board to function in a more integrated way and advances the grouping of files, amongst other benefits. Work has continued with the Administrative Tribunals Support Service of Canada (ATSSC) to ensure that the Board is well supported. This includes the last of three mergers of key teams within the FPSLREB Secretariat dedicated to the Board's combined labour relations and employment mandate, namely, Mediation and Dispute Resolution Services.

In the past year, the Board also celebrated an important milestone with respect to its mandate: the 50th anniversary of the labour relations legislative framework that provides collective bargaining and unionization in the federal public sector. The past year also marked 14 years since the independent adjudicative staffing regime was implemented for the federal public service.

We have come a long way since the first footsteps of the new Board in November 2014. I am well aware that there continues to be much work that needs to be done but am constantly impressed by the commitment of our Board and of the staff of the Secretariat to work towards meeting our objectives. Likewise, our stakeholders demonstrate tremendous commitment to public sector labour relations and staffing matters. I wish to expressly thank our Board members, the employees of the FPSLREB Secretariat, and others within the ATSSC for their continued commitment to working together to reach the next milestones associated with the Board's mandate.

Catherine Ebbs

Chairperson
Federal Public Sector Labour Relations and Employment Board

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Who We Are

Our mandate

At its foundation, the Board's purpose is to bring the highest values of Canadian justice to bear on labour relations and staffing matters in the federal public sector. It is committed to resolving those issues impartially and fairly. This contributes to a productive and efficient workplace and helps achieve harmonious labour relations and a fair employment environment for public-sector employers and employees and their bargaining agents.

The Board offers an adjudicative and dispute resolution venue for the public sector in key labour relations and employment areas, underlined by public-sector values. It hears and decides grievances, labour relations matters, and staffing complaints.

When a matter reaches a hearing, the Board provides a fair and full hearing and a well-reasoned decision, if it is not resolved in the case management process or via mediation. The body of case law developed by the Board and its predecessors is informative to its stakeholders.

Through the Board's dispute resolution services, expert mediators and panels of the Board help parties resolve a variety of labour relations and staffing disputes and complaints coherently and consistently and reach collective agreements, often without resorting to a hearing.

Our responsibilities

The FPSLREB is responsible for interpreting and applying the following legislation:

- the *Federal Public Sector Labour Relations and Employment Board Act* (FPSLREBA);
- the *Federal Public Sector Labour Relations Act* (FPSLRA);
- the *Public Service Employment Act* (PSEA);
- the *Canadian Human Rights Act* (CHRA);
- the *Parliamentary Employment and Staff Relations Act* (PESRA);
- the *Public Sector Equitable Compensation Act* (PSECA);
- the Yukon *Public Service Labour Relations Act* and the Yukon *Education Labour Relations Act*;
- certain provisions of Part II of the *Canada Labour Code* (CLC); and
- other relevant legal and labour relations standards.

The FPSLREB, as the administrative tribunal charged with administering the *FPSLRA*, resolves disputes between federal employees and their employer on all matters pertaining to the following:

- unionization;
- collective bargaining for conditions of employment;
- requests for collective agreement interpretations;
- unfair labour practice complaints; and
- grievances filed by employees.

The FPSLREB has extensive expertise in adjudication and dispute resolution, including mediation. The FPSLREB conducts hearings, issues decisions, holds settlement conferences, conducts mediations, and engages in other case-management strategies to resolve matters in dispute.

In addition to hearing labour relations complaints and applications, the Board hears individual, group, and policy grievances filed under collective agreements. This mandate is unique among labour relations boards in Canada. Excluded employees, who are not part of a bargaining unit, also have recourse to the Board for matters of discipline.

The FPSLREB is also responsible for the impartial and timely consideration and disposition of complaints made under the *PSEA* with respect to internal appointment and layoff processes in the federal public service. In fulfilling its mandate, the FPSLREB fosters fair and transparent staffing practices, which contribute to a public service that is based on merit and that embodies linguistic duality and human rights.

The Board also resolves pay equity, harassment, and other human rights matters. It has a mandate to interpret the *CHRA* and to adjudicate human rights issues as they relate to its statutory mandate and to order remedies, including damages under that Act.

Parliament has also determined that Part II of the *CLC* applies to federal employees as it pertains to reprisals. For example, the FPSLREB is the administrative tribunal charged with ruling on all complaints filed by federal employees when their employer has imposed disciplinary measures on them for acting in accordance with Part II of the *CLC*.

For all those activities, the Board provides mediation and dispute resolution services to help parties reach fair and negotiated collective agreements, manage their labour relations under collective agreements, and resolve grievances and staffing complaints without resorting to a hearing, whenever possible.

Labour relations at the Library of Parliament, the House of Commons, the Senate, the Office of the Senate Ethics Officer, the Office of the Conflict of Interest and Ethics Commissioner, the Parliamentary Protective Service, and the Office of the Parliamentary Budget Officer are governed by the *PESRA*. The FPSLREB is the

administrative tribunal charged with administering that legislation. It resolves disputes between parliamentary employees and their employer.

Under an agreement with the Yukon government, the FPSLREB administers its collective bargaining and grievance adjudication systems, acting as the Yukon Teachers Labour Relations Board and the Yukon Public Service Labour Relations Board.

Cases before the Board in relation to the *PESRA* or to its functions with the Yukon government are outlined in separate annual reports each year.

Our clients

The *FPSLRA*'s legislative framework covers numerous collective agreements for 16 employers and 26 bargaining agents. Approximately 220 000 employees in 82 bargaining units are covered by its collective bargaining and other provisions. The *PSEA* applies to employees and managers in over 100 departments and agencies.

The *PESRA*, for which a separate report on its activities is prepared, applies to seven employers and six bargaining agents.

The Treasury Board employs over 174 000 public servants in 27 bargaining units, while more than 60 000 public service employees work for one of the separate employers, which range from large organizations, such as the Canada Revenue Agency, to smaller organizations, such as the Canadian Dairy Commission.

The majority of unionized federal public service employees are represented by the Public Service Alliance of Canada (60%), followed by the Professional Institute of the Public Service of Canada with approximately 23.5% of unionized employees. The remaining 16.5% are represented by 24 other bargaining agents.

Other FPSLREB clients include employees excluded from bargaining units and those who are not represented. Please refer to Appendices 6 and 7 for a list of employers, bargaining agents, and bargaining units under the *PSEA* and the *FPSLRA*.

Our people

Before November 1, 2014, the two legacy tribunals combined had 27 Governor-in-Council (GIC) appointed members: 2 chairpersons, 3 vice-chairpersons, and 10 full- and 12 part-time members.

In accordance with the new *FPSLREBA*, the Board is to be composed of the chairperson, 2 vice-chairpersons, 12 full-time members, and any part-time members that the GIC considers necessary to carry out the Board's powers, duties, and functions.

At the end of this fiscal year, the FPSLREB had five full-time vacancies. It consisted of the chairperson, two vice-chairpersons, seven full-time members, and one part-time member. A process is underway to appoint full-time members in the coming year, and part-time member appointments are anticipated.

The FPSLREB upholds its neutrality, impartiality, and independence. Most appointed Board members have expertise and experience gained by working on either or both the management or the bargaining agent side of labour relations. As prescribed by the *FPSLREBA*, their appointments are made in recognition of that expertise, with, to the extent possible, an equal number appointed from among persons recommended by the employer and by the bargaining agents. However, despite such recommendations, they do not sit on the Board as representatives of the viewpoints or interests of either side. The Board also has substantial expertise to consider and dispose of staffing complaints.

The Administrative Tribunals Support Service of Canada (ATSSC) is responsible for providing support services and facilities to 11 federal administrative tribunals, including the FPSLREB, by way of a single integrated organization, including the specialized secretariat services required by each tribunal, as well as internal services.

The FPSLREB Secretariat is led by the executive director and general counsel, who is responsible for leading and supervising its daily operations and who is directly supported by its staff of approximately 68 employees within dispute resolution, registry, legal, and administrative services.

A retrospective of the past 50 years

This last year was significant as it marked the 50th anniversary of collective bargaining in Canada and the 14th since the independent adjudicative staffing regime was implemented for the federal public service. With that in mind, it is useful to consider some of the key events pertaining to the Board over those 50 years.

1967 – EXTENSION OF COLLECTIVE BARGAINING RIGHTS TO FEDERAL GOVERNMENT WORKERS

In 1967, the federal government introduced the *Public Service Staff Relations Act* (*PSSRA*), which extended collective bargaining rights to government workers and created the first public service labour relations board, the Public Service Staff Relations Board (PSSRB). Its first chairperson was Dr. Jacob Finkelman. His reputation as one of the giants of labour relations remains to this day.

The passage of the PSSRA in 1967 allowed federal employees to bargain collectively and provided access to both adjudication and the right to strike — at the time meaning that Canada became only the third country (after Sweden and France) to extend that right to its public sector. For the most part, its framework has served the parties' interests well and has facilitated the successful negotiations of hundreds of contracts. However, it has not been without challenging times punctuated by large-scale strikes and legislative interventions to restrict access to collective bargaining or to limit its scope.

Although the basic framework or context might have been relatively stable, the approach to negotiations has changed significantly. Most notable is the increased level of coordination and consolidation that has evolved. Initially, 50 years ago, each occupational group represented a distinct bargaining unit for the purpose of collective bargaining, and the contracts for these units were reached via separate negotiations. Over time, this unwieldy prospect has prompted the parties to seek ways to streamline the bargaining process.

The pattern of consolidation might be best illustrated by the evolution of bargaining between the Treasury Board and its largest bargaining agent, the Public Service Alliance of Canada. In 1985, after having experienced several rounds of distinct occupational group bargaining, the parties entered into the negotiation of a "master" collective agreement, in which a broad range of items having common application across different groups were resolved. Other issues, relating more directly to the employment circumstances of the different occupational groups, were negotiated and embedded in "group-specific" contracts that operated in tandem with the provisions of the master agreement. In the late '90's, further consolidation occurred as the "master" approach was abandoned in favour of the "table" model in which the different bargaining units represented by the PSAC were grouped into tables, each consisting of multiple groups, the largest of which, the Program and Administrative Services (PA) table, would comprise over 67 000 federal employees. Later, those tables were formally designated as bargaining units, to the point today where the PSAC's negotiations with the Treasury Board are organized into 5 groups encompassing approximately 90 000 employees.

1970S – ADDITIONAL MANDATE FOR THE BOARD

Under an agreement with the Government of the Yukon, beginning in the early 1970s, the Board became responsible for administering the collective bargaining and grievance adjudication systems for the Yukon public service and teachers.

During fiscal year 1975-1976, the *PSSRA* was amended. The changes provided for the appointment of a Board consisting of a Chairperson, a Vice-Chairperson, and at least three deputy chairpersons as well as other full- and part-time Board members. It also provided that bargaining agents and the Treasury Board be consulted with respect to appointing Board members.

1987 – THE *PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT*

In 1987, the *PESRA* was passed, extending the right to bargain collectively to employees of parliamentary institutions.

Part I of the *PESRA* gives those employees the right to form a union to negotiate collectively their employment conditions. It also gives them the right to file grievances about those conditions and, in certain cases, to refer them to adjudication before a neutral third party. Part I is administered and applied by the FPSLREB.

2005 – THE *PUBLIC SERVICE MODERNIZATION ACT* (*PSMA*)

The *PSMA* was passed in 2003 and came into force in 2005. As a result, the name of the Public Service Staff Relations Board was changed to the Public Service Labour Relations Board, and the new *Public Service Labour Relations Act* (*PSLRA*) came into force, replacing the *PSSRA*. In addition, a new independent and impartial tribunal was established, the Public Service Staffing Tribunal (PSST). Unlike its federal public service predecessors, it was an entirely quasi-judicial tribunal, and it was independent, impartial, and neutral. Until 2005, the Public Service Commission completely administered staffing complaints. The first chair of the PSST was Guy Giguère.

Several key changes came with this legislation in recourse related to both labour relations and staffing. Of direct importance to both tribunals was the express legislative recognition of the mediation provision in the *PSMA*. Also of key importance to both was the conferral of powers to interpret the *CHRA* in situations in which there was already jurisdiction to hear a grievance, for the Public Service Labour Relations Board, or a complaint, for the PSST.

2014 – THE CREATION OF THE NEW BOARD

The *Public Service Labour Relations and Employment Board Act* (*PSLREBA*) came into force on November 1, 2014, creating the Public Service Labour Relations and Employment Board (PSLREB). This newly named Board replaced the former labour relations board and staffing tribunal and became responsible for performing the functions that those former bodies had exercised.

2017 – EXTENSION OF COLLECTIVE BARGAINING RIGHTS TO THE RCMP

Another legislative change took place in June of this year with the passage of Bill C-7, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures*. The Act was created in response to the Supreme Court of Canada's decision in 2015 that recognized the constitutional right of members of the RCMP to bargain collectively. With this legislative change, the Board has been renamed the Federal Public Sector Labour Relations and Employment Board. The newly named *FPSLRA* brings members of the RCMP into the Board's mandate and provides a labour relations regime for them and for reservists. This includes a process for employee organizations to acquire collective bargaining rights and provisions that regulate collective bargaining, adjudication, unfair labour practices and grievances. The Board currently has a number of RCMP-related matters before it.

PART ONE:

The Year in Review

Case management

Since 2014-15, when the new Board was created from the merger of its legacy tribunals, it has experienced continued growth of its caseload with a reduced complement of members. More specifically, the number of active case files dealing with labour relations matters increased from approximately 4900 files in March 2015 to slightly under 6800 by March 2018, while the number of staffing complaints carried forward from year to year grew from slightly over 200 staffing complaints in 2014-15 to slightly under 500 at the end of 2017-18. Therefore, the Board's total caseload currently consists of approximately 7300 active cases, while in March 2015, it was approximately 5100.

In the past year, the Board received over 2300 new cases — a moderate decline from the previous year — and closed approximately 2000 cases. Overall, although generally the numbers are trending upward, they have fluctuated and continue to from year to year based on a variety of factors. For example, the continued growth in the Board's labour relations case file inventory can be partly attributed to the influx of pay-related grievances and the level of collective bargaining activity in the federal public sector of the past two years, while the fluctuation in the number of staffing complaints filed is conceivably associated with the corresponding volume of staffing actions. The number of files closed yearly since 2014-15 has customarily been linked to the Board's complement of full- and part-time members and the parties' availability for hearings and mediation.

In response, the Board has sought additional part- and full-time members. As well, it has integrated its electronic case management system — "Casebook"— built on the platform of one of the legacy board's electronic case management systems. It provides all Board members and support staff with an integrated application that facilitates monitoring and processing all the Board's case files. It will also provide greater portability and ease the way towards full e-filing for the Board. The system will also help the Board group files that might be heard together or that might be managed more systematically. This new integrated system was launched on March 28, 2018.

The Board values opportunities for collaboration on case management with its stakeholders. It continues to involve them in considering alternatives to a formal hearing for dispute resolution. In fact, in the Board's processes, dispute resolution can occur at several stages of case management. Even if a matter proceeds to a hearing, it may reach that stage with fewer issues than were initially presented. Furthermore, a hearing often involves more than one case file. In 2017-18, 177 hearings were held, involving 491 case files.

In the second quarter of the fiscal year, the Board initiated a new and more efficient scheduling process for labour relations matters. It is designed to reduce steps, focus resources, and facilitate case resolution through a longer span of time in the schedule before the hearing date. For example, the new scheduling process is expected to result in assigning cases to Board members earlier, to allow parties more lead time, and to remove steps from the internal process.

Collective bargaining

Over the last year, the Board has continued to be involved in collective bargaining under the *FPSLRA*. The year was also notable in that it marked the effective conclusion of one of the more protracted rounds of collective bargaining in the federal public service.

The majority of collective agreements in the federal public service expired during the summer of 2014, and the parties had commenced negotiations in advance of that, triggered by the notice to bargain served by the employer. The previous annual report described the context that governed these negotiations, particularly the legislative changes ushered in with the passage of Bill C-4 — the government's stated intention to overhaul the sick leave regime, the unified response of the bargaining agents, and a federal election — all of which contributed to a long and difficult round of negotiations. Nonetheless, at the conclusion of this fiscal year, only a handful of bargaining units had yet to conclude their negotiations.

The human rights mandate of the Board

The Board's legislative mandate provides that human rights issues can be interwoven within labour relations grievances and staffing complaints and that such issues may also arise in the context of unfair labour practices and collective bargaining.

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

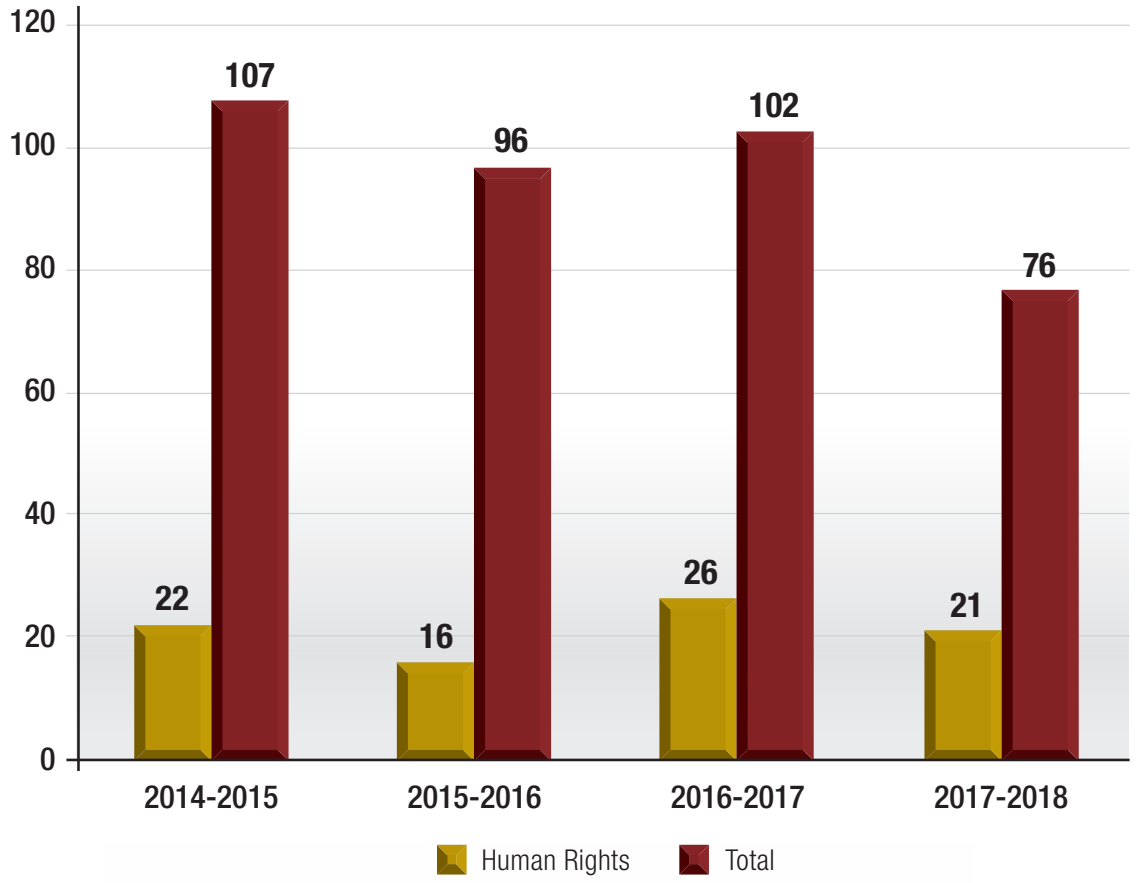
Currently, under s. 208 of the *FPLSRA*, employees can file grievances involving issues under the *CHRA*, except in relation to pay equity, and they may be awarded monetary relief. When a grievance has been referred to adjudication or a staffing complaint has been filed with the Board and a party to the grievance or complaint raises an issue involving interpreting or applying the *CHRA*, then, in accordance with the regulations, that party must give notice of the issue to the Canadian Human Rights Commission (CHRC), which in turn can make submissions before the adjudicator.

If the Board determines that discrimination occurred, the corrective action may include an order for relief in accordance with paragraph 53(2)(e) (pain and suffering up to $20 000) or subsection 53(3) (special compensation) of the *CHRA*, and it can award interest in the case of grievances involving a termination, demotion, suspension, or financial penalty at a rate and for a period that it considers appropriate.

Over the past year, the Board continued to receive many grievances and complaints with a human rights component and to render decisions dealing with human rights issues. The table below provides a snapshot of decisions issued since 2014-15 under either the labour relations or staffing areas of the Board's mandate. In that time frame, a steadily increasing number of decisions have been issued in human rights areas, from approximately 6% of all decisions rendered in 2009-10 to slightly over 25% in 2017-2018.

As noted last year, when data in this area was provided, it addressed only final decisions issued and did not reflect the number of grievances actually filed with the Board that contained human rights issues or resolved before a decision was rendered after a hearing. It does not reflect situations in which multiple matters were brought by the same individual; nor does it show the total number of human-rights matters that came to the Board and that might have been resolved before a hearing through mediation or adjudication, a mediation settlement, or withdrawal for some other reason.

Figure 1 – Human rights issues in labour relations decisions and staffing decisions compared to total decisions rendered by the Board from November 1, 2014, to March 31, 2018



Proposed and recent legislative changes

The following table provides an overview of proposed legislative changes or recent legislative changes that impact or that may impact the FPSLREB's mandate and work. These legislative changes were moving through Parliament or the Senate or had been passed into law as of March 31, 2018.

Legislation	Summary	Status as of March 31, 2018
Bill C-7: An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures Tabled in the House of Commons on March 9, 2016	The legislation responds to the Supreme Court's decision in *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, which found that excluding RCMP members from collective bargaining under the *PSLRA*, along with management's imposition of a non-unionized labour relations regime, was unconstitutional. The Bill amends the *PSLRA* and the *Royal Canadian Mounted Police Act* to create a new labour relations regime for RCMP members and reservists. The Bill recognizes the Board's expertise in federal public sector labour relations matters by making it responsible for adjudicating matters related to the RCMP bargaining unit, unfair labour practices, and grievances related to a collective agreement. The legislation also requires the FPSLREB to take into account the RCMP's unique operational reality. It also requires that in the appointment process, the Board's chairperson take into account the need for the Board to have two members with knowledge of police organizations. Lastly, the bill changed the Board's name from the PSLREB to the FPSLREB.	The Bill came into force on June 19, 2017.
Bill C-4: An Act to amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act, the Public Service Labour Relations Act and the Income Tax Act Tabled in the House of Commons on January 28, 2016	Bill C-4 repeals and replaces legislative changes made under Bill C-525, the *Employees' Voting Rights Act*, which came into force on June 16, 2015. Bill C-525 affected how unions were certified and decertified by the FPSLREB under the *PESRA* and the *PSLRA*, including requiring the use of secret ballots on all votes pertaining to labour relations certification issues. Bill C-4 eliminates mandatory secret ballot representation votes and restores the former card check model, which requires evidence of majority support from employees and gives the FPSLREB the discretion to order a representation vote.	The Bill came into force on June 22, 2017.

Legislation	Summary	Status as of March 31, 2018
Bill C-44: An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures Tabled in the House of Commons on April 11, 2017	Bill C-44 makes the Parliamentary Budget Officer an independent officer of Parliament, separate from the Library of Parliament. Consequential and transitional amendments are made to extend the application of the *PESRA* to the new Office of the Parliamentary Budget Officer, to ensure that no change in status of employment occurs and so that existing collective agreements or arbitral awards remain in force. The Bill also aims to repeal s. 88(b) of the *PESRA*, which is found in Part III of that Act, under Occupational Safety and Health. Note that s. 88(b) never came into force. The Bill extends the Board's mandate in relation to the *Canada Labour Code* and parliamentary employees.	The Bill received Royal Assent on June 22, 2017. Only the provisions relating to the Office of the Parliamentary Budget Officer have come into force. The provision relating to s. 88(b) of the *PESRA* and other provisions will come into force on a day to be fixed by order of the Governor in Council.
Bill C-10: An Act to implement certain provisions of the budget tabled in Parliament on January 27, 2009 and related fiscal measures Tabled in the House of Commons on February 6, 2009	Part 11 of Bill C-10 enacts the *Public Sector Equitable Compensation Act* (*PSECA*) and creates a separate equal pay for work of equal value regime for federal public sector employers, their employees, and bargaining agents. The Bill makes the Board responsible for adjudicating all complaints under the new public sector pay equity regime.	The Bill received Royal Assent on March 12, 2009. The parts of the Bill relating to the *PSECA* and the *PSLRA* have not yet come into force.* The Board has jurisdiction to hear pay equity matters due to the Bill's transitional provisions. * On February 2 and 3, 2016, in the House of Commons, and in its October 5, 2016, response to the report of the Special Committee on Pay Equity, the government signaled its intention not to bring those parts of the Bill into force. *In the 2018 Federal Budget, tabled in the House of Commons on February 27, 2018, the government affirmed its commitment to repeal and replace the *Public Sector Equitable Compensation Act*.
Bill C-5: An Act to repeal Division 20 of Part 3 of the Economic Action Plan 2015 Act, No. 1 Tabled in the House of Commons on February 5, 2016	Bill C-5 repeals legislative changes made under Bill C-59 - *Economic Action Plan 2015 Act, No. 1*, which allows the Treasury Board to establish and modify terms and conditions of employment related to the sick leave and disability regime of employees of the core federal public administration despite the *PSLRA*.	The Bill received first reading on February 5, 2016.* * The Bill was incorporated into s. 36 of Bill C-62 - *An Act to amend the Federal Public Sector Labour Relations Act and other Acts*.
Bill C-34: An Act to amend the Public Service Labour Relations Act and other Acts Tabled in the House of Commons on November 28, 2016	The Bill restores the public service labour relations regime that existed before the coming into force of Bill C-4 - *Economic Action Plan 2013 Act, No. 2*, specifically with respect to essential services and resolving collective bargaining disputes.	The Bill received first reading on November 28, 2016.* * The Bill was largely incorporated into Bill C-62 - *An Act to amend the Federal Public Sector Labour Relations Act and other Acts*.

Legislation	Summary	Status as of March 31, 2018
Bill C-62: An Act to amend the Federal Public Sector Labour Relations Act and other Acts Tabled in the House of Commons on October 17, 2017	Bill C-62 combines elements of both Bill C-5 and Bill C-34 and restores the public service labour relations regime that existed before the coming into force of both Bill C-4 - *Economic Action Plan 2013 Act, No. 2* and Bill C-59 - *Economic Action Plan 2015 Act, No. 1*. This Bill amends the *FPSLRA* to restore the procedures for the choice of process of dispute resolution, essential services, adjudication, conciliation, and alternative dispute resolution that existed before December 13, 2013. Before that date, a bargaining agent could choose the process for dispute resolution — either adjudication or conciliation. However, as it stands now, unless the level of essential services (designated at the employer's sole discretion) is at least 80%, the conciliation or strike route is the only dispute resolution option. Bill C-62 aims to repeal this and to revert to allowing bargaining agents to choose either adjudication or conciliation as the process for dispute resolution. The Bill also aims to restore, almost word-for-word, the essential services procedure that existed before December 13, 2013. Bill C-62 also aims to repeal provisions of the *Economic Action Plan 2013 Act, No. 2* that are not in force and that will not be implemented, once Bill C-62 comes into force. Those provisions were to (1) give the Board a mandate to deal with freestanding human rights complaints and eliminate an individual employee's right to access the CHRT, (2) make the bargaining agent representation of grievors mandatory for all grievances except those relating to *CHRA* discriminatory practices, (3) mandate cost recovery by forcing bargaining agents and deputy heads to pay adjudication expenses, and (4) restrict the FPSLREB's abilities, such that it could make regulations to provide for extensions of time only in "exceptional circumstances". This Bill also repeals Division 20 of Part 3 of the *Economic Action Plan 2015 Act, No. 1*, which authorizes the Treasury Board to establish and modify, despite the *FPSLRA*, terms and conditions of employment related to the sick leave of core public administration employees.	On February 1, 2018, the Bill received second reading and was referred to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities for further study.

Legislation	Summary	Status as of March 31, 2018
Bill C-65: An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1 Tabled in the House of Commons on November 7, 2017	Bill C-65 proposes to bring protection from workplace harassment and violence into Part II of the *CLC*'s occupational health and safety regime. Bill C-65 amends Part II of the CLC to strengthen its framework for the prevention of harassment and violence, including sexual harassment and violence, in the workplace. The FPSLREB will retain its current mandate for reprisal complaints from federal public service employees, and the Bill will expand the FPSLREB's mandate to include health and safety matters under Part II of the *CLC* for employees within the parliamentary context. There is currently no legislative recourse mechanism for health and safety matters under Part II of the *CLC* for parliamentary employees covered by the *PESRA*. Once the new Part III comes into force, the FPSLREB will acquire a new mandate for parliamentary employees, including most political staffers, for (1) complaints of reprisals, (2) appeals of ministerial "work refusal" decisions with respect to "absence of danger", and (3) appeals of ministerial directions on contravention complaints. All these recourse mechanisms could be used by employees alleging violence or harassment in the workplace, as well as any other matters that relate to the prevention of any accidents, illnesses, or injuries, including those that are psychological.	On January 29, 2018, the Bill received second reading and was referred to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities for further study.

Parliamentary committee appearances

In February 2018, the Board's chairperson and the Secretariat's executive director and general counsel appeared before the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) to discuss the impact on the Board's mandate of Bill-C-65, *An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1*.

Outreach activities

Outreach remains an important aspect of the Board's work in maintaining high-level discussions with its key stakeholders on practices and caseload issues, in communicating with and consulting stakeholders on the legislative changes taking place, and with respect to initiatives the Board has undertaken to promote more efficient case management and resolution.

CLIENT CONSULTATION COMMITTEE (CCC)

The Client Consultation Committee continues to provide an important means of outreach with the Board's stakeholders on a number of issues affecting its work. The Board is committed to working with its stakeholders towards implementing more pilot projects such as grouping cases, case-management-related process changes, expedited hearings, and other projects that will help it reduce the case inventory. The Board has also continued its ongoing pilot project with the Correctional Service of Canada and the Union of Canadian Correctional Officers – Syndicat des agents correctionnels du Canada - CSN.

TRAINING AND PRESENTATIONS

This year, representatives of the Board or its Secretariat offered training or presentations on the Board's mandate and activities at several meetings and conferences, such as the Association of Labour Relations Agencies (ALRA), which is an association of impartial government agencies in the United States and Canada responsible for administering labour-management laws or services. The Board and Secretariat are also very engaged with the Canadian Council of Administrative Tribunals (CCAT), a national non-profit organization that provides a forum for discussion, education, research, and policy development in the field of administrative justice.

The Secretariat was also involved in the training offered to Board members. Additionally, the Chairperson presented information on the trends related to the Board's cases and caseload and highlights of legislative changes at a meeting of the Chairpersons of Federal/Provincial Labour Relations Boards in September 2017.

PART TWO:

Activities of the Board

Under the *FPSLRA* and the *PSEA*

In 2017-18, the Board received 2318 new cases, closed 1996 cases, and carried forward 7261 cases to the next fiscal year. While the number of new cases was considerably lower than the 2715 in the previous year, the Board closed 225 more cases than it did in 2016-17. Although the lower number of new cases involved matters under both the *FPSLRA* (285 fewer cases) and the *PSEA* (112 fewer cases), the larger number of cases closed was tied to labour relations matters under the *FPSLRA*, with 348 more closed in 2017-18. Conversely, 123 fewer staffing cases were closed under the *PSEA* than in the previous year.

Appendix 1 provides additional details on the FPSLREB's total caseload from 2014-15 to 2017-18.

Overview of cases under the *FPSLRA*

Labour relations proceedings before the Board include grievance adjudication (individual, group, or policy), applications for certification, revocations of certification, complaints of unfair labour practices, identifying positions with duties of a managerial and confidential nature, determining essential services agreements if the parties fail to agree on them, determining successor rights, enforcing the obligations of the employer and employee organizations, and complaints against reprisals that resulted when federal employees exercised their workplace health and safety rights under Part II of the *CLC*.

Cases filed with the Board in these areas in 2017-18 included 1694[1] new ones, compared to the 1979 received in 2016-17. During the same period, 1451 files were closed — a significant increase from the 1103 closed the previous fiscal year and representing 36% more cases than were closed on average since 2014-15. This increase is largely due to the consolidation of 305 case files into 12 dealing primarily with collective agreement provisions under paragraph 209(1)(a) of the *FPSLRA*, such as hours of work and pay and leave provisions, as well as objections filed in the context of identifying managerial or confidential positions.

In the past fiscal year, the Board scheduled 337 hearings for labour relations matters. Of those, 199 (59%) were cancelled, either because the complaint or the grievance was withdrawn or settled (or both) or because the hearing was postponed.

Still in that fiscal year, the Board issued 76 decisions under its labour relations mandate, which is somewhat less than the 89 decisions issued the previous year. Other activities that help the Board resolve labour relations matters and staffing complaints without resorting to a hearing are presented under the Mediation and Dispute Resolution Services section of this report.

[1] Includes approximately 300 cases received in March 2017 that were processed through the case management system later in 2017-18, following a consultation with the parties involved.

GRIEVANCES UNDER PART II OF THE *FPSLRA*

The large majority of cases before the Board arise from grievances filed under Part II of the *FPSLRA*. They may involve interpretations of collective agreements and arbitral awards; disciplinary action resulting in termination, demotion, suspension, or financial penalty; a demotion or termination for unsatisfactory performance or for any other non-disciplinary reasons; and deployment without an employee's consent.

Once again this year, a significant number of pay-related grievances were referred to the Board, accounting for 41% of new grievances referred under paragraph 209(1)(a) of the *FPLSRA* for that period (558 of 1363 grievances). It is reasonable to assume that this continues to be attributable in part to the Phoenix pay system.

Pay-related matters currently before the Board (1400 files) account for approximately 21% of its 6800 active labour relations case files.

Over the past year, the Board also received 80 termination grievances, 5 duty-to-accommodate grievances, and 170 discrimination grievances.

Grievances represented 82% of the total cases received in 2017-18, compared to 82.5% in 2016-17, 80.0% in 2015-16, and 74.8% in 2014-15. Figure 2 represents the volume of grievances referred to adjudication, by type, in the past four fiscal years.

Figure 3 breaks down the grievances referred to adjudication:

Figure 2 – Types of grievances filed under Part II of the *FPSLRA* - 2014-2015 to 2017-2018

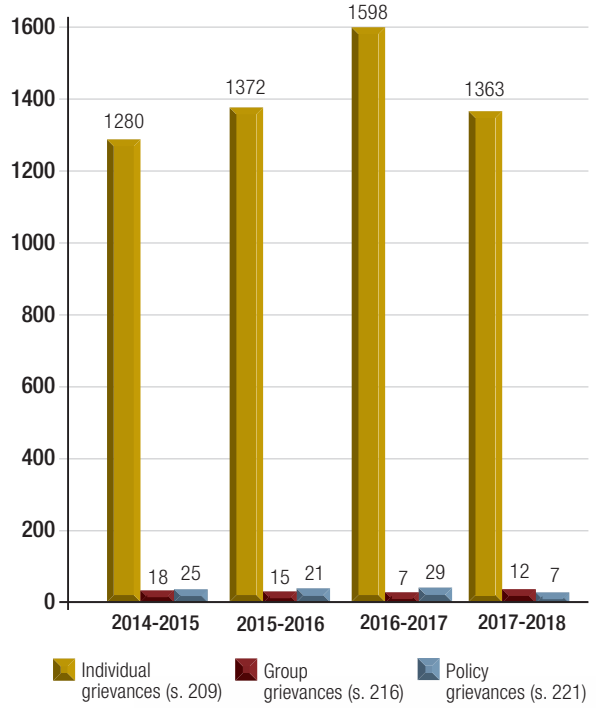
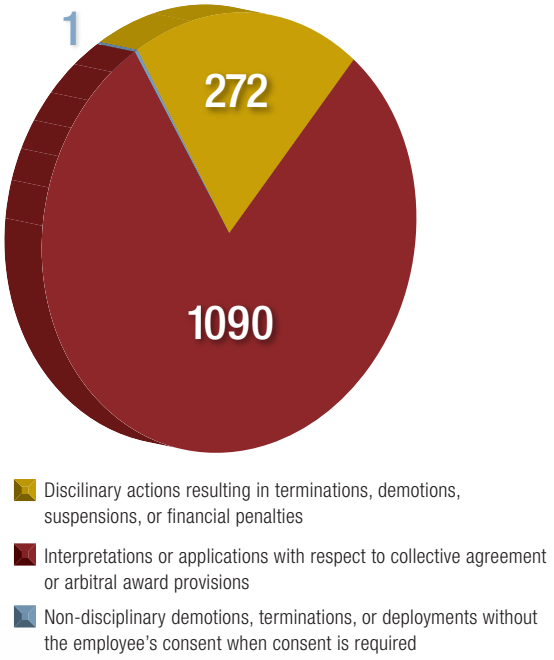


Figure 3 – Types of individual grievances - 2017-2018



COMPLAINTS UNDER PARTS I AND III OF THE *FPSLRA*

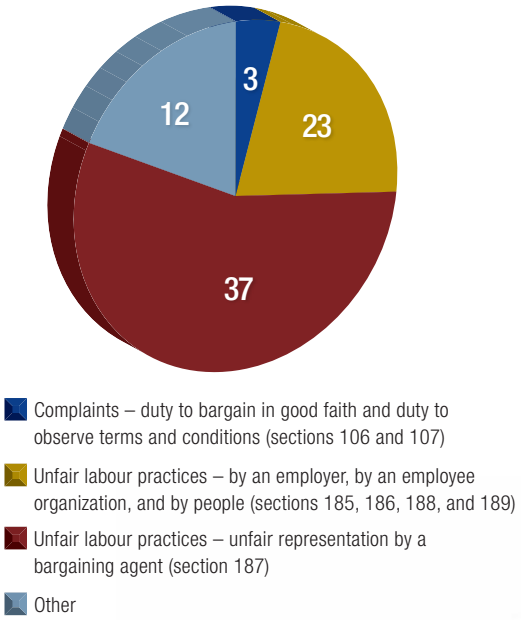
Parts I and III of the *FPSLRA* allow employees, bargaining agents, and employers to make a complaint to the Board under certain circumstances, such as:

- allegations that an employer committed an unfair labour practice (interfering with the creation of a union or its administration, discriminating against someone because he or she is a member of a union, etc.);
- allegations that a bargaining agent acted in bad faith in representing an employee; or
- allegations that an employer or bargaining agent failed in its duty to bargain collectively in good faith.

Under Part I, the Board received 52 complaints alleging that an unfair labour practice occurred, 37 of which alleged a breach of the bargaining agent's duty of fair representation, while the remaining 15 alleged other unfair labour practices.

This chart breaks down those complaints:

Figure 4 – Types of complaints received under Part I of the *FPSLRA*



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

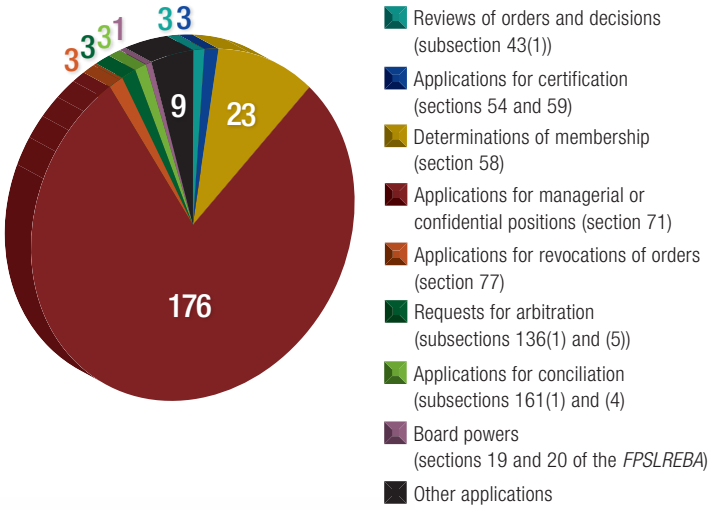
APPLICATIONS UNDER PART I OF THE *FPSLRA*

Part I of the *FPSLRA* includes applications made to the Board about determining bargaining agent membership, certifications, decertifications, and successor rights, as well as managerial or confidential positions. In 2017-18, the Board received 224 applications, compared to the average of 330 applications received over the three previous fiscal years.

The majority (78%) of the applications were for orders declaring positions managerial or confidential. Applications represented 13% of all cases received in 2017-18.

Some applications in Figure 5 involve the RCMP and are discussed below it.

Figure 5 – Types of applications



Please refer to Appendix 2 for a detailed breakdown of the number of matters per parts of the *FPLSRA*.

RCMP-related matters

As indicated earlier in this report, the FPSLREB's mandate has been broadened. It is now responsible for RCMP matters involving collective bargaining, unfair labour practices, and grievances related to collective agreements.

With respect to both uniformed and civilian RCMP members, the Board has dealt with and continues to deal with a number of things, including the following:

- applications for certification under section 23 of the *PSLRA*;
- applications for determination of membership under section 58 of the *FPSLRA*;
- unfair labour practice complaints under paragraph 186(1)(a) of the *FPSLRA*; and
- complaints about the duty to observe terms and conditions of employment during an application for certification under section 56 of the *FPSLRA*.

Once a collective agreement is in place, an RCMP member will be able to file a grievance related to a collective agreement or an arbitral award up to the final level of the grievance process. If the member believes that the grievance has not been dealt with to his or her satisfaction, then he or she can refer it to adjudication, but the member must obtain his or her bargaining agent's approval to represent him or her during the adjudication process. Once the grievance is filed with the Board, it could be mediated, withdrawn, or heard by a panel of the Board.

In addition to the three applications for certification received in 2016-17 for which the Canadian Union of Public Employees has been certified as the bargaining agent for civilian members and a sub-group of Treasury Board employees, the Board also received the following applications:

Nature of Application	Date Filed	Proposed Bargaining Unit	Status
Application for certification filed under s. 54 of the *PSLRA*	Apr. 5, 2017	All members of the RCMP, within the meaning of the *Royal Canadian Mounted Police Act*, based in the Province of Quebec except for the Commissioner, the officers, the civilian employees and members, and all excluded persons under the *PSLRA*.	Consolidated with the application described below this one. A decision was issued on April 17, 2018, for a hearing to determine the constitutionality of the provision mandating a single bargaining unit for RCMP members.
Application for certification filed under s. 54 of the *PSLRA*	Apr. 18, 2017	All members of the RCMP, as defined in subsection 2(1) of the *Royal Canadian Mounted Police Act*, appointed to a rank, and RCMP reservists who are not officers.	Consolidated with the previous application. Certification vote to be held.
Application for certification filed under s. 54 of the *FPSLRA*	Jan. 8, 2018	Engineering officers aboard RCMP patrol vessels based at several locations along the British Columbia coast.	Hearing underway.

In the past year, the Board also received 23 RCMP-related applications for the determination of membership for positions within different groups and sub-groups for which the Treasury Board is the employer and for which the Public Service Alliance of Canada, the Professional Institute of the Public Service of Canada, and the International Brotherhood of Electrical Workers are the certified bargaining agents. Furthermore, the Board received one application for consent to alter terms and conditions of employment, six complaints related to the duty to observe terms and conditions of employment during an application for certification, and one unfair labour practice complaint.

Overview of staffing complaints under the *PSEA*

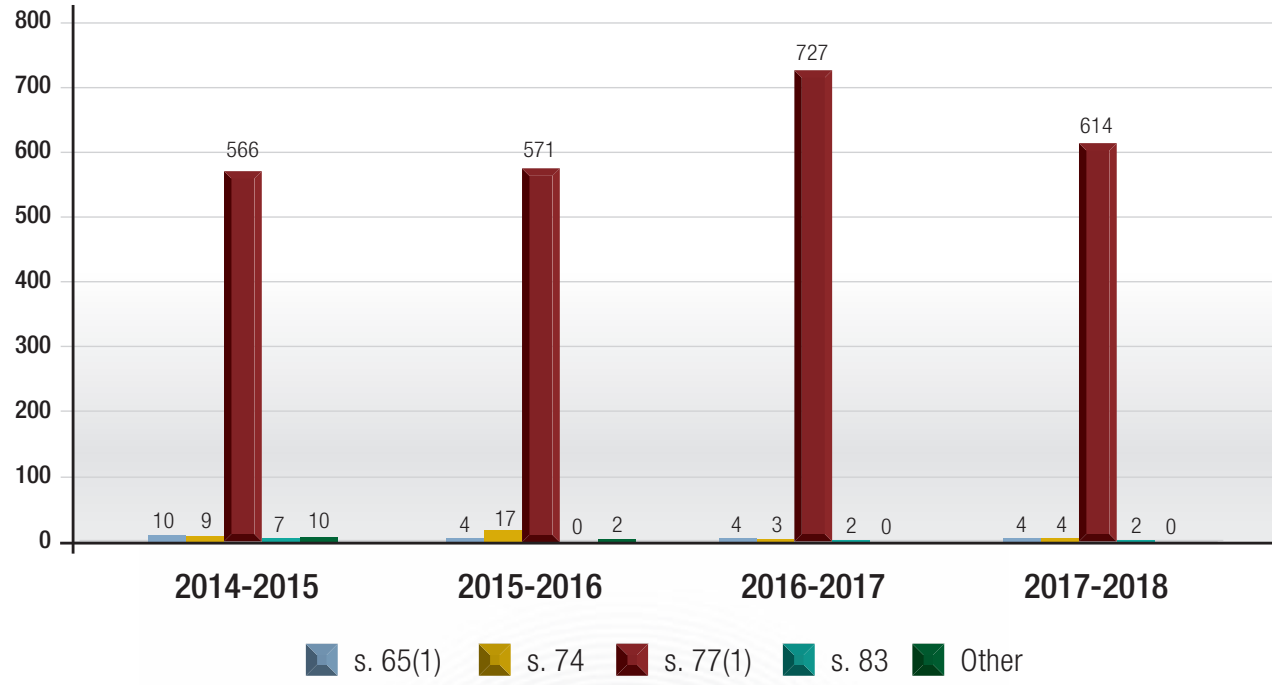
The *PSEA* provides the FPSLREB with the authority to consider, to help resolve, and to hear and decide complaints involving layoffs (s. 65 (1)), revocations of appointment (s. 74), internal appointments (s. 77 (1)), and failures to implement corrective action (s. 83). The FPSLREB conducts hearings, settlement conferences, and mediation sessions to resolve such complaints.

The number of staffing complaints received annually has increased to an average of 639 since 2014-15. The Board closed 567 complaints per year on average over the past 4 years. During the year in review, it received 624, closed 545 of them, and had an inventory of 496 at fiscal year-end.

During 2017-18, the FPSLREB received 624 staffing complaints, almost half of which (272) were about non-advertised processes, which is similar to last year's proportion of 47% (344 of 736 complaints). The past two years showed a significant increase in the number of such complaints when compared to the 143 received in 2015-2016, which accounted for only 24% of all staffing complaints received that fiscal year. It has been surmised that this surge can be linked to the Public Service Commission's new appointment policy, introduced in 2016, to modernize, simplify, and streamline the public service staffing process.

Internal appointment complaints (s. 77), while fluctuating in number from year to year since 2014-15, consistently comprise the majority of staffing complaints referred to the Board every year, as depicted in this chart:

Figure 6 – Nature of staffing complaints from 2014-2015 to 2017-2018



Over the past fiscal year, the Board closed 545 staffing files, which although fewer in number than the previous year, is comparable to the proportion of cases closed per cases received in both years — 668 cases closed and 736 received in 2016-17, compared to the 545 closed and 624 received in 2017-18. While the number closed in 2017-18 was 123 fewer than in 2016-17, the Board also received 112 fewer complaints in 2017-18. Therefore, the ratio of cases received to cases closed is very similar, the difference being only 11 or 5% fewer cases closed during the year under review.

Of the 77 staffing cases scheduled for hearings in the past year, 21 hearings were held, resulting in 36 cases being closed. Comparatively, in 2016-17, 27 scheduled hearings were held, resulting in 43 cases being closed. The remaining 56 cases scheduled for hearing in 2017-18 (73%) were cancelled, including 29 hearings (52%) that were postponed and 27 hearings (48%) that were withdrawn by the filing party after they were scheduled for a hearing, 1 of which was withdrawn further to a settlement conference. This represents a 4% increase in the number of cases cancelled compared to 2016-17.

For both staffing and labour relations, the Board often addresses a motion to make a decision or order on a matter before or during a hearing, including to extend or shorten time limits, to consolidate cases, or to disclose information (an order to provide information). At times, dismissals due to jurisdiction are requested.

In 2017-18, the Board issued 627 such letter decisions, more than half of which (357, or 56%) were related to requests for extensions of time and 14% (87) of which involved dismissals of complaints.

Please refer to Appendix 1 for an overview of the Board's total caseload under the *FPSLRA* and the *PSEA* from 2014-15 to 2017-18.

Mediation and Dispute Resolution Services

The FPSLREB Secretariat's Mediation and Dispute Resolutions Services (MDRS) provides a full spectrum of mediation and dispute resolution services for which the Board is mandated. Section 97 of the PSEA establishes that the Board may provide mediation services to resolve a complaint. Section 14 of the *FPSLRA* outlines the Board's mandate as it relates to mediation services as follows:

- assisting parties in negotiating collective agreements and renewals;
- assisting parties in managing the relations resulting from implementing collective agreements;
- mediating grievances; and
- helping the Chairperson discharge his or her responsibilities under this Act.

COLLECTIVE BARGAINING

In 2017-18, MDRS provided mediation services to parties from six different bargaining units that resulted in settlements for five of them. In the other case, the parties were able to significantly reduce the volume of outstanding issues in dispute.

MDRS also coordinates the two formal dispute resolution processes provided for under the *FPSLRA* once an impasse has been reached in collective bargaining. Conciliation involves the Minister appointing a Public Interest Commission (PIC) to help the parties by issuing non-binding recommendations. The report of the PIC's recommendations is a key prerequisite to a bargaining agent attaining the legal right to conduct strike action. The second option is arbitration, in which the FPSLREB's chairperson appoints an arbitration board that has the authority to issue a final and binding award.

Three requests to establish a PIC were carried forward from the previous fiscal year. In one of them, the parties settled at mediation before their scheduled hearing date. In another, the PIC was established, and the parties reached a tentative agreement with its assistance. In the remaining case, the parties reached a tentative agreement subsequent to the PIC report being issued. In addition, the Board received three

new requests to establish a PIC, which all were settled before one was convened — two at mediation, and one through direct negotiations between the parties.

In terms of arbitration, the Board received three requests to establish an arbitration board. One group reached a settlement during the course of a hearing, eliminating the requirement for an award. The other two groups have hearing dates scheduled in fiscal year 2018-19.

Three times in the current round, the parties used a third method of dispute resolution that is commonly referred to as "binding conciliation", per s. 182 of the *FPSLRA*. This process provides parties with the latitude to design their own process to resolve their dispute. MDRS helped the parties craft memoranda to govern those processes and helped with their administration. All three processes were conducted during the fiscal year; one decision was issued, and the remaining two decisions are to be issued early in the next year.

MEDIATING GRIEVANCES AND COMPLAINTS

Parties with matters before the Board may choose mediation as a mechanism to resolve the issues underlying their grievances or complaints referred to adjudication. As shown in Figures 7 and 8, a variety of matters can proceed to mediation, which is a voluntary and confidential process that provides parties with the opportunity to find their own solutions to the issues in dispute. An impartial third party with no decision-making powers facilitates the process, and its outcome creates no precedents.

During 2017-18, 173 mediations of grievances and complaints were conducted, and the parties reached a settlement in 124 of those cases, which led to the settlement of 205 files before the Board. This year, the parties also settled 27 files while still at the departmental level as well as 9 complaints before the CHRC. Four of the mediations conducted were preventative in nature, which therefore possibly prevented five files from being referred to the Board.

Overall, parties reached a settlement at mediation in 73% of cases. However, their success at mediation cannot be defined in terms of settlement rates alone. Indeed, parties may gain a better understanding of underlying matters, which in turn can have a positive impact on the work environment.

Figure 7 breaks down the types of files settled at mediation, which fall into five categories: staffing complaints, unfair labour practice (ULP) complaints, CLC complaints, and individual and group grievances. The staffing complaints, which represented 51% of all files, were all related to internal appointments, and most ULP complaints fell under the duty of fair representation.

Here is a breakdown of individual grievances, which account for 44% of all files settled:

Figure 7 – Types of files settled at mediation

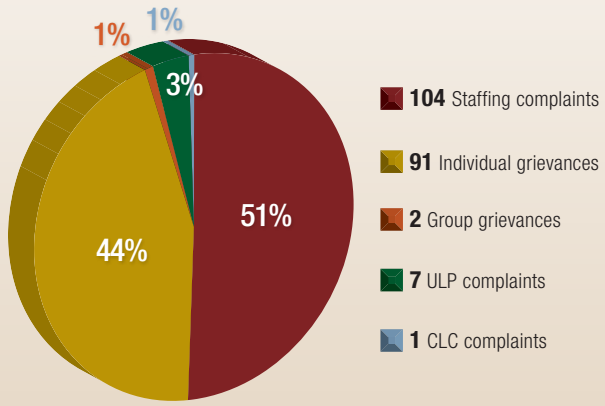
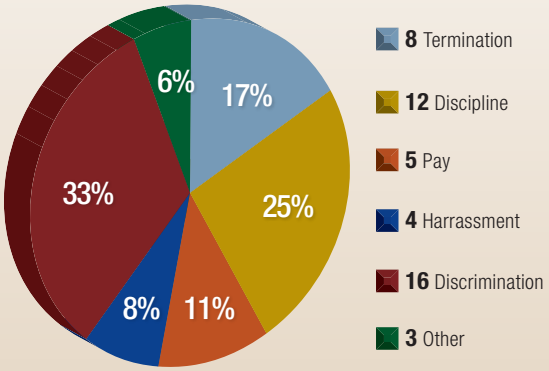


Figure 8 – Types of individual grievances settled at mediation



Openness and privacy

Open justice

The FPSLREB is an independent quasi-judicial tribunal that operates very much like a court when it conducts proceedings. Its mandate means that its decisions can affect the entire public service and Canadians in general. This section outlines its policy on the openness of its processes and describes how it handles privacy issues. For your information, that policy can be found at http://pslreb-crtefp.gc.ca/privacy_e.asp.

The open court principle is significant in our legal system and is constitutionally protected. It is vital because among other things it prevents abuses that can occur in closed-door hearings and promotes the rule of law and the administration of justice. In accordance with it, the Board conducts its hearings in public, save for exceptional circumstances.

Because of its mandate and the nature of its proceedings, the Board maintains an open justice policy to foster transparency in its processes, accountability, and fairness in its proceedings.

Its website and other publications advise that its hearings are open to the public. Parties that engage its services should be aware that they are embarking on a process that presumes a public airing of the dispute between them, including the public availability of decisions. Parties and their witnesses are subject to public scrutiny when giving evidence before the Board. The identity of the party or witness is generally considered essential to endorsing the public accountability of a specific person and what he or she has to say in a proceeding. Board decisions identify parties and their witnesses by name and set out information about them only to the extent that is relevant and necessary to determining the dispute.

With advances in technology and the possibility of posting material electronically — including its decisions — the Board recognizes that in some instances, it may be appropriate to limit openness with respect to the circumstances of parties or witnesses that appear in proceedings before it.

In exceptional circumstances, the Board departs from its open justice principles, and in doing so, it may grant requests to maintain the confidentiality of specific evidence and tailor its decisions to accommodate protecting an individual's privacy (including holding a hearing in private, sealing exhibits containing sensitive medical or personal information, or protecting the identities of witnesses or third parties). The Board may grant such requests when they accord with applicable recognized legal principles.

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

ACCESS TO CASE FILES BY A PARTY OR BY THE PUBLIC

The *Access to Information Act and the Privacy Act* do not apply to Board case files. However, the Board provides public access to case files for consultation in accordance with the open court principle and the rules of natural justice.

The Board provides access to its case files only in paper format and only at its offices, with appropriate notice. However, the public cannot access information such as an individual's home address, personal email address, personal phone number, date of birth, financial details, SIN, driver's license number, or credit card or passport details. Nor can it access information protected through other forms of privilege, such as solicitor-client privilege. Some case files, for grievances that Canadian Security Intelligence Service employees have referred to adjudication, are not available to the public for consultation.

The case files, including exhibits filed at a hearing, are available to the public once the decision on the merits of the case has been rendered or the Board has otherwise closed the file. However, exhibits ordered sealed are not available.

ACCESS TO DECISIONS BY THE PUBLIC

By posting them on its website, the Board provides public access to its decisions in accordance with the open court principle. To balance public access and privacy concerns, the Board has taken measures to prevent Internet searches of full-text posted decisions by using the "web robot exclusion protocol", which Internet search engines recognize (e.g., Google or Yahoo). A search of a person's name will not yield any information from full-text posted decisions.

DISPOSITION OF CASE FILES

Board case files are disposed of in accordance with the schedule approved by the Librarian and Archivist of Canada. Exhibits are generally kept for two years following the final decision on a case.

Organizational contact information

For all inquiries, including hearing confirmations, mediation questions, and questions from the media, please see the contact information detailed below. The Board's hours of operation are from 8:00 a.m. to 4:00 p.m. (EST), Monday to Friday. Before making an inquiry, we encourage you to visit http://fpslreb-crtespf.gc.ca/index_e.asp for information about the Board.

Labour relations email:
mail.courrier@fpslreb-crtespf.gc.ca

Staffing complaints email:
director.directeur@fpslreb-crtespf.gc.ca

Telephone: 613-990-1800

Toll-free: 866-931-3454

Fax: 613-990-1849

TTY (teletype): 866-389-6901

Access to information and privacy:
613-957-3169

Jacob Finkelman Library:
library-bibliotheque@tribunal.gc.ca

Media enquiries: 613-954-0452
or media-medias@tribunal.gc.ca

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

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

Appendix 1

Total caseload, FPSLREB: 2014-2015 to 2017-2018

LABOUR RELATIONS:

Fiscal Year	Carried forward from previous years	New			Total new	Closed	Carried forward to next year
		Grievances	Complaints	Applications			
2014-2015*	4537	1365	73	387	1825	1465	4897
2015-2016	4897	1424	50	306	1780	1031	5646
2016-2017	5646	1633	47	299	1979	1103	6522
2017-2018	6522	1396	74	224	1694	1451	6765

STAFFING:

Fiscal year	Carried forward from previous years	New complaints	Complaints closed	Carried forward to next year
2014-2015*	206	602	604	204
2015-2016	204	594	449	349
2016-2017	349	736	668	417
2017-2018	417	624	545	496

* The 2014-15 data reflect caseloads under the *PSLRA* and the *PSEA* from the former PSLRB and PSST for the period from April 1, 2014, to October 31, 2014, and from the PSLREB for the period from November 1, 2014, to March 31, 2015.

Appendix 2

Matters per parts of the *FPSLRA*, 2017-2018

Part I – Labour Relations	Number of matters
Reviews of orders and decisions (subsection 43(1))	3
Applications for certification (sections 54 and 59)	3
Determinations of membership (section 58)	23
Complaints	
Complaints (sections 106 and 107)	3
Unfair labour practices (sections 185, 186, 188, and 189)	15
Unfair labour practices - unfair representation (section 187)	37
Other	12
Managerial or confidential positions	
Applications for managerial or confidential positions (section 71)	176
Applications for revocation of order (section 77)	3
Preventative mediations	5
Requests for arbitration (subsections 136(1) and (5))	3
Appointments of mediators	4
Applications for conciliation (subsections 161(1) and (4))	3
Part II – Grievances	
Individual grievances (section 209)	1363
Group grievances (section 216)	12
Policy grievances (section 221)	7
Filings of orders in Federal Court (subsection 234(1))	1
Part III – Occupational health and safety	
Reprisals under section 133 of the *Canada Labour Code* (section 240)	7
Federal Public Sector Labour Relations Regulations	
Part II - Grievances	
Extension of time (section 61)	13
Federal Public Sector Labour Relations and Employment Board Act	
Powers of the Board (sections 19 and 20)	1
TOTAL	1694

Appendix 3

Matters per parts of the *PSEA*, 2017-2018

Part 4 – Employment	Number of matters
Complaints to the Board about a layoff (subsection 65(1))	4
Part 5 – Investigations and complaints relating to appointments	
Revocations of appointment (section 74)	4
Internal appointments (subsection 77(1))	614
Failures of corrective action (section 83)	2
TOTAL	624

Appendix 4

Complaints filed under the *PSEA* by department, 2017-2018

Department	Number of complaints received in 2017-2018	Percentage
Administrative Tribunals Support Service of Canada	4	0.6%
Canada Border Services Agency	62	10%
Canadian Environmental Assessment Agency	2	0.3%
Canadian Human Rights Commission	1	0.2%
Canadian Space Agency	2	0.3%
Correctional Service of Canada	61	10%
Department of Agriculture and Agri-Food	2	0.3%
Department of Canadian Heritage	1	0.2%
Department of Citizenship and Immigration	41	7%
Department of Employment and Social Development	116	19%
Department of Fisheries and Oceans	20	3%
Department of Foreign Affairs, Trade and Development	27	4%
Department of Health	13	2%
Department of Indian Affairs and Northern Development	1	0.2%
Department of Industry	14	2%
Department of Justice	20	3%
Department of National Defence	59	10%
Department of Natural Resources	9	1%
Department of Public Works and Government Services	33	5%
Department of the Environment	19	3%

Department	Number of complaints received in 2017-2018	Percentage
Department of Transport	8	1%
Department of Veterans Affairs	5	1%
Immigration and Refugee Board	6	1%
Library and Archives of Canada	2	0.3%
Office of the Commissioner for Federal Judicial Affairs	1	0.2%
Office of the Commissioner of Official Languages	1	0.2%
Office of the Privacy Commissioner of Canada	1	0.2%
Office of Infrastructure of Canada	1	0.2%
Parks Canada	2	0.3%
Parole Board of Canada	2	0.3%
Privy Council Office	3	0.5%
Public Health Agency of Canada	1	0.2%
Public Prosecution Service of Canada	1	0.2%
Public Safety Canada	7	1%
Royal Canadian Mounted Police	40	6%
Shared Services Canada	10	2%
Statistics Canada	21	3%
Treasury Board Secretariat	3	0.5%
TOTAL	622	100%

Appendix 5

Synopsis of applications for judicial review of decisions tendered by the FPSLREB, the PSLREB, the PSLRB, and the PSST over the past five years

Fiscal Year	Decisions rendered[1]	Number of applications	Applications withdrawn	Applications dismissed	Applications allowed	Applications pending[2]	Appeals of applications pending
Under the PSLRB and PSST							
2013-2014	203	37	11	23	3	0	0
Apr. 1 - Oct. 31, 2014	68	17	4	12	1	0	0
TOTAL PSLRB and PSST	271	54	15	35	4	0	0
Under the PSLREB							
Nov. 1, 2014 - Mar. 31, 2015	30	8	0	6	2	0	0
2015-2016	96	27	7	15	4	1	0
2016-2017	125	21	5	12	4	0	0
Apr. 1 - Jun. 18, 2017	33	9	2	1	0	6	0
TOTAL PSLREB	284	65	14	34	10	7	0
Under the FPSLREB							
Jun. 19, 2017 - Mar. 31, 2018	71	10	1	0	0	9	0
TOTAL FPSLREB	71	10	1	0	0	9	0
GRAND TOTAL	626	129	30	69	14	16	0

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

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

Note: The figures for the last five fiscal years are not final, as not all the judicial review applications filed in those years have made their way through the courts system.

Appendix 6

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

WHERE THE TREASURY BOARD OF CANADA IS THE EMPLOYER:

Bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Association of Canadian Financial Officers	1	4547
Association of Justice Counsel	1	2433
Canadian Association of Professional Employees	2	15 146
Canadian Federal Pilots Association	1	380
Canadian Merchant Service Guild	1	1074
Canadian Military Colleges Faculty Association	1	177
Federal Government Dockyard Chargehands Association	1	52
Federal Government Dockyard Trades and Labour Council (East)	1	590
Federal Government Dockyard Trades and Labour Council (Esquimalt, B.C.)	1	610
International Brotherhood of Electrical Workers, Local 2228	1	1050
Professional Association of Foreign Service Officers	1	1497
Professional Institute of the Public Service of Canada	6	35 450
Public Service Alliance of Canada	5	104 815
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN	1	6544
UNIFOR	3	270
Total for the Treasury Board of Canada	27	174 635

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

* The number shown is as of March 31, 2017.

OTHER EMPLOYERS:

Separate employers	Number of bargaining units	Number of public service employees in non-excluded positions
Canada Revenue Agency (CRA)		
Professional Institute of the Public Service of Canada	1	11 715
Public Service Alliance of Canada	1	28 690
Total	2	40 405
Canadian Food Inspection Agency (CFIA)		
Professional Institute of the Public Service of Canada	3	2011
Public Service Alliance of Canada	1	4175
Total	4	6186
Canadian Nuclear Safety Commission (CNSC)		
Professional Institute of the Public Service of Canada	1	770
Total	1	770
Canadian Security Intelligence Service (CSIS)		
Public Service Alliance of Canada	1	97
Total	1	97
Communications Security Establishment (CSE)		
Public Service Alliance of Canada	1	2163
Total	1	2163
National Capital Commission (NCC)		
Public Service Alliance of Canada	1	338
Total	1	338
National Energy Board (NEB)		
Professional Institute of the Public Service of Canada	1	412
Total	1	412
National Film Board (NFB)		
Canadian Union of Public Employees, Local 2656	1	82
Canadian Union of Public Employees, Local 4835 - Syndicat général du cinéma et de la télévision (SGCT)	1	102
Professional Institute of the Public Service of Canada	2	160
Total	4	344

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

* The number shown is as of March 31, 2017.

OTHER EMPLOYERS:

Separate employers	Number of bargaining units	Number of public service employees in non-excluded positions
National Research Council of Canada (NRCC)		
Professional Institute of the Public Service of Canada	4	1777
Research Council Employees' Association (RCEA)	6	1795
Total	10	3572
Office of the Auditor General of Canada (OAG)		
Public Service Alliance of Canada	1	141
Total	1	141
Office of the Superintendent of Financial Institutions (OSFI)		
Professional Institute of the Public Service of Canada	1	556
Public Service Alliance of Canada	1	10
Total	2	566
Parks Canada Agency (PCA)		
Public Service Alliance of Canada	1	*4848
Total	1	4848
Social Sciences and Humanities Research Council of Canada (SSHRC)		
Public Service Alliance of Canada	2	192
Total	2	192
Staff of the Non-Public Funds, Canadian Forces (SNPF-CF)		
Public Service Alliance of Canada	10	601
United Food and Commercial Workers Union	12	683
Total	22	1284
Statistical Survey Operations (SSO)		
Public Service Alliance of Canada	2	1627
Total	2	1627
TOTAL FOR SEPARATE EMPLOYERS	55	62 945
TOTAL FOR THE TREASURY BOARD OF CANADA	27	174 635
TOTAL FOR ALL EMPLOYERS	82	237 580

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

* The number shown is as of March 31, 2017.

Appendix 7

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

Certified bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Association of Canadian Financial Officers (ACFO)	1	4600
Association of Justice Counsel (AJC)	1	2624
Canadian Association of Professional Employees (CAPE)	2	15 147
Canadian Federal Pilots Association (CFPA)	1	375
Canadian Merchant Service Guild (CMSG)	1	1105
Canadian Military Colleges Faculty Association (CMCFA)	1	180
Canadian Union of Public Employees, Local 2656 (CUPE)	1	70
Federal Government Dockyard Chargehands Association (FGDCA)	1	50
Federal Government Dockyard Trades and Labour Council East (FGDTLC-E)	1	630
Federal Government Dockyard Trades and Labour Council (Esquimalt) (FGDTLC-Esq)	1	750
International Brotherhood of Electrical Workers, Local 2228 (IBEW)	1	1062
Professional Association of Foreign Service Officers (PAFSO)	1	1495
Professional Institute of the Public Service of Canada (PIPSC)	19	52 015
Public Service Alliance of Canada (PSAC)	27	132 796

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

Certified bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Research Council Employees' Association (RCEA)	6	1676
Syndicat général du cinéma et de la télévision (SGCT) - CUPE 4835	1	96
Unifor, Local 87-M	1	*27
Unifor, Local 2182	1	300
Unifor, Local 5454 (Canadian Air Traffic Control Association (CATCA))	1	7
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN)	1	6815
United Food and Commercial Workers Union, Local No. 175 (UFCWU-175)	4	174
United Food and Commercial Workers Union, Local No. 832 (UFCWU-832)	2	65
United Food and Commercial Workers Union, Local No. 864 (UFCWU-864)	3	165
United Food and Commercial Workers, Local 1400 (UFCW-1400)	1	**4
United Food and Commercial Workers, Local 401 (UFCW-401)	1	70[2]
United Food and Commercial Workers Union, Local 1518 (UFCWU-1518)	1	56
TOTAL	82	222 354

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

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

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

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

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

Appendix 8

FPSLREB decision summaries

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

DISCIPLINARY TERMINATION

***Bétournay v. Canada Revenue Agency*, 2017 FPSLREB 37**

The grievor, a long-time employee of the Canada Revenue Agency ("the Agency"), was involved in negotiating a personal real estate transaction in which she used the Agency's databases and invoked her Agency employee status in an attempt to secure a lower price.

When her employer became aware of the events, it started an investigation. The grievor was interviewed and informed of the results of the investigation. She was then suspended without pay while awaiting the employer's decision from the investigation. She was later terminated retroactively to the suspension date, and her reliability status was revoked. The grievor challenged all these decisions.

This case raised two important issues: the Board's jurisdiction to examine the suspension without pay during the investigation, and the legality of applying the termination retroactively, to the suspension date.

On the first point, it was argued that the suspension was administrative and not disciplinary; as such, the Board could not hear the issue. The Board disagreed; it found that the suspension was disguised discipline on the grounds that a suspension that deprives an employee of his or her salary has a punitive effect and that there was no risk justifying the suspension, given the nature of the grievor's duties.

On the second point, the Board found that the employer cannot impose discipline retroactively. Although the termination was not excessive under the circumstances, it could not be made retroactive to the suspension date. It was unfair to deprive the grievor of her wages when there was no justification for removing her from the workplace during the investigation.

Therefore, the Board ordered the employer to reimburse her the salary and benefits that she would have been entitled to during the suspension.

This decision is under judicial review before the Federal Court of Appeal (court file no. A-346-17).

DISCIPLINARY ACTION - FINANCIAL PENALTY

***Charest v. Deputy Head (Department of Public Works and Government Services)*, 2017 FPSLREB 18**

In this case, the grievor challenged the "satisfactory" rating he received in his 2012-2013 performance evaluation. He did not receive performance pay for that year because he did not obtain a "fully satisfactory" rating. He felt that the decision to assign him a "satisfactory" rating was unreasonable and that his performance evaluation amounted to disciplinary action resulting in a financial penalty.

The employer challenged the Board's jurisdiction to hear the matter, arguing that performance assessment is an administrative matter, which the Board may not examine. The Board agreed that it could not hear a grievance that essentially relates to a performance evaluation; however, it held that it could examine the circumstances of this matter to ensure that the grievor's performance rating was not actually disciplinary action that resulted in a financial penalty.

The key question to determine was whether the grievor's "satisfactory" performance rating could amount to disciplinary action within the meaning of s. 209(1)(b) of the *FPSLRA*. The Board concluded that it could not. His rating had been based on proven good-faith dissatisfaction with his communication methods and did not result from camouflage, deceit, or a contrived interpretation by the deputy head.

The respondent demonstrated that the communication deficiencies for which the grievor was criticized included the fact that he did not "hear" client requests and that he did not act professionally with his managers. The Board also noted that the financial consequences associated with the "satisfactory" rating did not transform performance pay not being paid into a financial penalty within the meaning of s. 209(1)(b).

The grievance was dismissed.

APPLICATION FOR REVOCATION OF CERTIFICATION

***Lala v. United Food and Commercial Workers Canada, Local 401*, 2017 FPSLREB 43 (revocation of certification) with its interim decisions: *Lala v. United Food and Commercial Workers Canada, Local 401,* 2017 PSLREB 7; *Lala v. United Food and Commercial Workers Canada, Local 401*, 2017 PSLREB 23; and *Lala v. United Food and Commercial Workers Canada, Local 401*, 2017 FPSLREB 42.**

In 2015, a decertification campaign was started at Canadian Forces Base (CFB) Edmonton to decertify the bargaining agent, United Food and Commercial Workers Canada, Local 401 ("UFCWC"). On October 26, 2017, an application for revocation was filed with the Board to revoke the UFCWC's certification as the appropriate bargaining agent. The UFCWC requested that the application be dismissed due to alleged employer dominance and inappropriate employer intervention in the application. The employer denied supporting or assisting the application for revocation in any way.

On June 26, 2016, the Board declared that the employer had breached its duty to bargain in good faith when it refused to meet with the bargaining agent while the application for revocation was outstanding.

On July 4, 2016, the Board ordered that a representation vote be taken. It also ordered that the ballots cast be sealed and not be counted until the Board disposed of the allegations about employer dominance and inappropriate intervention.

On November 29, 2017, the Board found that all the allegations of employer dominance and inappropriate employer intervention were unfounded, with the exception of one, alleging bad-faith bargaining when it cancelled bargaining in November 2015. Despite that, the Board concluded that there was no reasonable basis on which the secret-ballot representation vote would not reflect the employees' true wishes, given the subsequent unanimous ratification of a new collective agreement.

The Board adopted the reasoning in decisions issued by both the Saskatchewan courts and the labour relations board to make a series of pronouncements. It stated that paragraph 2(d) of the *Canadian Charter of Rights and Freedoms* ("*the Charter*") protects the interests of the employees seeking to decertify a bargaining agent and not the interests of the bargaining agent. Unfair labour practice provisions protect employees from the improper influence of management and do not protect unions from employees' desire for a representation change.

When a labour board dismisses an application for revocation because of employer interference, it denies employees the right to determine the representation question, which is protected by the *Charter*. A compelling labour relations justification is necessary to deny the right of employees to decide for themselves whether they wish to continue to be represented.

In light of that, on November 29, 2017, the bargaining agent's request to dismiss the application for revocation was denied, and the Board directed that the ballot box be unsealed and that the votes be counted. Since a majority of the employees in the bargaining unit voted against the revocation, the application for revocation was dismissed.

REFERENCE CHECKS

***Hill v. Deputy Minister of Public Works and Government Services*, 2017 FPSLREB 21**

In this case, the complainant applied to an advertised internal appointment process and was eliminated as he was found not qualified on two essential qualifications, namely, adaptability and dependability, which were assessed on the basis of his reference check. He had provided his supervisor as a reference as required by the assessment board. He already had a poor relationship with his supervisor, but it had deteriorated in the months after he submitted his name to the assessment board. He made two requests with the assessment board to change his referee, but they were denied. He filed a complaint with the Board alleging that the respondent abused its authority in the assessment of merit at the reference-check stage of the staffing process.

The key issue for the Board to determine was, when a candidate communicates to an assessment board an apprehension that the reference provided by his or her direct supervisor, which is often mandatory, may be influenced by a tense relationship between them, based on a series of events, should the assessment board agree to consider an alternate reference?

The Board found that given that the complainant had communicated valid concerns about the reliability of his supervisor's reference, the assessment board was obligated to ensure that the information it relied upon to screen him out of the selection process was valid. An assessment board's finding that a referee provided both positive and negative feedback is not an assurance that that feedback was valid and reliable.

The Board found that the assessment board did not take sufficient steps to ensure that the reference was reliable once it was informed of the complainant's concerns about its reliability. As a result, the Board found that the assessment board based its decision to eliminate the complainant from the selection process on incomplete and possibly inadequate information, which amounted to an abuse of authority.

The complaint was substantiated.

"UNSUCCESSFUL CANDIDATE" - PRIORITY PERSON

***Agnew v. Deputy Minister of Fisheries and Oceans*, 2018 FPSLREB 2**

The Board confirmed that in a staffing context, the phrase "unsuccessful candidate" can include a priority person who was referred through the priority administration system but who was screened out due to allegedly not meeting an essential qualification.

The complainant, who had a priority entitlement, submitted her cover letter and résumé for a position for which she had received a referral from the Public Service Commission's priority administration system after the respondent had already assessed the applicants to its

internal advertised appointment process and had selected a person to appoint from the pool of qualified candidates.

The respondent informed the complainant that she had been eliminated from further consideration because she did not meet an essential qualification. Once the respondent appointed someone, the complainant filed her complaint.

The Public Service Commission raised as a preliminary matter that the complainant was not in the area of recourse because she was not an "unsuccessful candidate" within the meaning of s. 77(a) of the *PSEA*. The Board held that it had jurisdiction, noting that the term "unsuccessful candidate" is not defined in that Act and that the complainant met the ordinary dictionary definition of a candidate. She was assessed against the same essential qualifications as were listed in the process, albeit not in the same time frame.

The Board found that the respondent conducted its assessment of the complainant superficially and that the instructions about the qualification at issue did not clearly ask for examples of skills. The Board concluded that the respondent abused its authority by failing to assess the complainant properly, and once alerted to the errors in the assessment in the informal discussion, by refusing to correct the error before proceeding with the appointment.

The complaint was substantiated.

REFUSAL TO WORK - REPRISAL

Sousa-Dias v. Treasury Board (Canada Border Services Agency), **2017 PSLREB 62**

In a *CLC* reprisal case, the Board held that to show that a reprisal occurred, there must be a link between a complainant exercising work refusal rights under the *CLC* and the respondent's administrative or disciplinary action.

The complainant had instituted a work refusal under s. 128 of the *CLC* and was then asked to attend a meeting, at which the employer was to discuss its report on the investigation of the work refusal. He refused to attend unless he was allowed to bring a union representative. As the meeting was not disciplinary, the employer's view was that he was not entitled to a union representative, and it ordered him to attend. He brought the bargaining unit's occupational health and safety representative (whom he was not permitted to bring) and behaved in an intimidating and aggressive manner. Because of his behaviour, he was administratively sent home to cool down for the rest of the day, with pay. After an investigation into his refusals to attend the meeting and his behaviour at the meeting, a one-day disciplinary suspension was imposed on him.

The Board considered whether sending the complainant home to calm down and disciplining him for his behaviour at the meeting were reprisals under ss. 133 and 147 of the *CLC*. For both issues, the Board found that there was no reprisal because there was no link between the complainant exercising his work refusal rights and the respondent's administrative and disciplinary actions.

The complainant had no legitimate reason for not attending the meeting. The order to attend was within the scope of the employer's authority, did not pose a risk to his safety or to the safety of other employees, and was legal. Therefore, the complainant was duty bound to follow it and to attend without a bargaining agent representative and by refusing to, he was insubordinate. There was no nexus between the work refusal and the conduct for which he was disciplined; nor was there a nexus between the work refusal and being sent home to cool down.

The complaint was dismissed.

An application for judicial review before the Federal Court of Appeal is pending (court file no. A-2015-17).

ACCOMMODATION

***Jones v. Deputy Minister of National Defence*, 2017 FPSLREB 49**

The Board held that when a seemingly well-informed employee makes a specific request for accommodation in an appointment process, his or her employer should be able to rely upon that request when it is supported by a professional opinion. In such a circumstance, there is no duty to obtain a third-party assessment of that person's accommodation needs.

The complainant participated in an internal advertised appointment process. He has a disability and requested specific accommodations for a written test, which the employer confirmed with the complainant's health professional and then the respondent implemented. When the complainant failed the test and was eliminated from the process, he alleged that the respondent had abused its authority in that it had discriminated against him by failing to make additional efforts to determine and accommodate his needs.

The Board found that the complainant had established a *prima facie* case of discrimination, since the way the test was administered to him placed him at a disadvantage, given his disability. However, the respondent rebutted that case by showing that it had reasonably accommodated him by verifying and providing the accommodation measures that he had requested.

The employer had no duty to commission a report from the Personnel Psychology Centre of the Public Service Commission to assess the complainant's particular accommodation needs, given his specific accommodation requests and given that his health professional supported them.

The complaint was dismissed.

SYSTEMIC DISCRIMINATION

***Public Service Alliance of Canada v. Treasury Board (Immigration and Refugee Board)*, 2017 FPSLREB 5**

In considering the respondent's preliminary objections to the Board hearing this group grievance, the Board made the important finding that it has jurisdiction to interpret and apply the *CHRA* to evidence of systemic discrimination that extends back in time to before the *PSLRA* came into force.

The respondent argued that the Board lacks jurisdiction over any human-rights grievance if the events that gave rise to the grievance occurred before April 1, 2005. On that date, the *PSLRA*, enacted by section 2 of the *Public Service Modernization Act* (S.C. 2003, c. 22; *PSMA*) was proclaimed into force, giving the Board jurisdiction to interpret and apply the *CHRA* in the context of grievances referred to adjudication pursuant to the *PSLRA*.

The grievors submitted that they had been and continued to be subjected to systemic racial discrimination over a prolonged time, which had led to barriers to employment opportunities.

Because the grievance alleged a pattern of long-term, continuing, and systemic discrimination, the Board recognized that it might be necessary to hear evidence of events from before April 1, 2005, to obtain a complete picture.

Although the *PSMA* contains a transitional measure designed to prevent a flood of human rights grievances based on prior events, the Board found that nothing in the *PSMA* suggests that the Board lacks jurisdiction to fully hear cases containing current allegations of systemic discrimination on human rights grounds when the evidence includes trends and data that extend before the April 1, 2005, enactment of the *PSLRA*.

The Board also held that other jurisdictional frameworks allowed it to consider the historic human rights trends in this case without requiring the statutory framework of

the *PSLRA*. The jurisprudential trend has been moving towards enhancing the obligation on arbitrators and adjudicators to apply substantive rights and obligations under human rights and employment legislation. The Board further held that its power to interpret the collective agreement's no-discrimination clause also provided it with jurisdiction to determine this matter.

In addition to the jurisdictional objection about the *CHRA*, the respondent moved to have the grievance dismissed on other grounds. It argued that the grievance was overbroad, that issue estoppel should apply against one of the grievors, that the grievors were abusing the process, and that the essential character of the grievance was not human rights but classification and staffing. The Board was not persuaded by these objections, dismissed them, and found that a full review of the evidence at a hearing is required to assess whether the grievance has merit.

The motion was denied.

THE FEDERAL COURT OF APPEAL

In the year under review, the Federal Court of Appeal rendered the following decisions with respect to sharing employee home-contact information with a bargaining agent, the amount of time the Board has to render a decision, and family related leave.

EMPLOYEE HOME-CONTACT INFORMATION AND DELAY RENDERING A DECISION

Bernard v. Canada (Attorney General), 2018 FCA 23

The Federal Court of Appeal (FCA) dismissed an application for the judicial review of the Board's decision in *Bernard v. Canada Revenue Agency*, 2017 PSLREB 46, and agreed that the Board's finding that the complainant was attempting to relitigate a settled matter was reasonable.

The Board's decision was connected to a series of cases in which the complainant raised the issue of the employer sharing employee home-contact information with the bargaining agent. She argued that by doing so, the employer was participating in the bargaining agent's representation of employees and in its administration, in violation of s. 186(1)(a) of the *PSLRA*. The Board found the complaint was without standing because only an employee organization or its authorized representative may bring a complaint based on a violation of s. 186(1)(a) and that the matter was vexatious and an abuse of process because the complainant was attempting to relitigate an issue that had already been dealt with fully and finally.

At judicial review, in addition to requesting that the Court set aside the Board's decision on the grounds that it was unreasonable, the applicant sought declaratory relief concerning the amount of time it took the Board to render its decision.

The FCA noted that relief on judicial review is discretionary and that no purpose would be served by issuing a declaration concerning the Board's delay rendering its decision. The Court found that reasons alone would be sufficient to address the issues raised in the application. It stated that the amount of time it took the Board to issue its decision was regrettable and that it considered that the Board's determination of the applicant's complaint should have happened sooner. In obiter, the Court said that to the extent that inadequate resources caused the delay and that the Board needs more resources to fulfil its statutory mandate on a timely basis, it should demand them.

FAMILY RELATED LEAVE

Canada (Attorney General) v. Bodnar, 2017 FCA 171

In this application for judicial review, the applicant sought to set aside the Board's decision in *Bodnar v. Treasury Board (Correctional Service of Canada)*, 2016

PSLREB 71. The Board found that the employer had discriminated against the grievors in the application of its National Attendance Management Policy (NAMP) by including absences covered by the collective agreement for disability and family-related leave in the calculations required under the NAMP. The Board determined that this amounted to discrimination based on family status and disability, thus violating the anti-discrimination article of the collective agreement. This decision was reported on pages 46 and 47 of the Board's 2016-2017 Annual Report.

The FCA found that the Board erred in the following ways: (1) its decision that the NAMP was *prima facie* discriminatory overlooked the essential prerequisite of proof of adverse impact, and (2) it erred by including the broad range of family-related leave available under the collective agreement as leave protected under the *CHRA* when, in fact, the *CHRA* protects a narrower range of leave related to family status.

The FCA noted that the Board had unreasonably found that including absences due to disability or family-related leave in the group average calculation and in calculating an employee's total absences was *prima facie* discriminatory. The presence of adversity is an essential component for establishing a *prima facie* case of discrimination. Nothing adverse flowed from including such absences in the group average, since it was merely the number to which individual employees' statistics were compared. If a person's leave surpassed the average threshold, the supervisor was required to be satisfied as to the legitimacy of the absences and to identify if accommodation was required. If it was required, the employee would be removed from the NAMP. At this initial stage of discussion with the supervisor, nothing adverse occurred.

The FCA also found a distinction between family-related leave, to which an employee is entitled under the collective agreement, and leave based on family status, which entitles an employee to receive accommodation under the *CHRA*. The former is considerably wider than the later, and the Board erred by conflating the two.

The FCA set the Board's decision aside in its entirety and remitted the grievances back to a newly reconstituted panel of the Board for redetermination, in accordance with its reasons.

THE SUPREME COURT OF CANADA

In the year under review, the Supreme Court of Canada rendered a decision in *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55, with respect to the interpretation of a collective agreement, specifically, after-hours standby duty imposed on lawyers. The appeal was allowed in part. In *Attorney General of Canada v. Association of Justice Counsel*, 2016 FCA 92, the Federal Court of Appeal had granted the application for judicial review of the Board's decision in *Association of Justice Counsel v. Treasury Board (Department of Justice)*, 2015 PSLREB 31.

The Supreme Court of Canada also denied an application for leave to appeal the Federal Court of Appeal's decision in *Bergey v. Canada* on February 15, 2018, with costs. (see *Bergey v. Attorney General of Canada, Case number 37657*) (*Bergey, SCC*). See page 42 of last year's annual report for a detailed review of the Federal Court of Appeal's decision.

AFTER-HOURS STANDBY DUTY

Association of Justice Counsel v. Canada (Attorney General), 2017 SCC 55

The Association of Justice Counsel (AJC) filed a grievance concerning a directive making uncompensated after-hours standby shifts mandatory for lawyers working in the Immigration Law Directorate in the Quebec Regional Office of the Department of Justice. The applicable collective agreement was silent on standby duty, and clause 5.01 specified that the employer retained all management rights and powers that had not been modified or limited by the agreement. However,

under clause 5.02, the employer was required to act reasonably, fairly, and in good faith in administering the agreement. And clause 6.01 specified that nothing in the agreement was to be construed as restricting any lawyer's constitutional rights.

The AJC maintained that the employer's standby duty directive was unreasonable because it governed conduct not only outside the workplace but also outside normal work hours. Furthermore, the AJC argued that the constraints that the employer imposed called into question s. 7 of the *Charter*. That is, the AJC's view was that personal, social, cultural, and family activities and responsibilities outside work are private life choices covered by the right to liberty.

In *Association of Justice Counsel v. Treasury Board*, 2015 PSLREB 31, the Board determined that the standby duty directive was not a reasonable or fair exercise of management rights. Among other things, the Board recognized the legitimate need for lawyers to respond to emergencies outside normal office hours but questioned whether standby duty was essential to respond to that need, given that it was not mentioned in the employment contract or job description.

With respect to s. 7 of the *Charter*, the Board determined that the right to liberty includes the right to enjoy a private life and that the employer's directive had intrusive effects on that right. The Board declared that the standby duty directive contravened clauses 5.02 and 6.01 of the collective agreement and ordered the employer to cease applying it.

On judicial review, the Federal Court of Appeal set aside the Board's decision and directed another adjudicator to find that the directive represented a fair and reasonable exercise of management rights (see *Canada (Attorney General) v. Association of Justice Counsel*, 2016 FCA 92). The Court reasoned that the Board had placed an unreasonable burden on the employer to justify the need for the standby directive and that it had unreasonably extended the right to liberty protected by s. 7 of the *Charter*.

On appeal, a majority of the Supreme Court of Canada found the Board's interpretation of clause 5.02 and its assessment of the different interests at stake reasonable and supported by a number of factors, including the surrounding context of the collective agreement and the circumstances that led to the directive. It restored the Board's disposition that the standby duty directive contravened clause 5.02 and reinstated the order that the employer stop applying it. However, the majority determined that the Board overstated the breadth of the right to liberty protected under s. 7 of the *Charter*. The directive's incursion into the private lives of lawyers did not implicate the type of fundamental personal choices protected within the scope of s. 7. As such, the majority did not disturb the Federal Court of Appeal's conclusion on the issue of that section.

The dissenting justices agreed that the directive did not infringe the right to liberty but disagreed that the Board was right to conclude that the directive resulted from an unreasonable exercise of the employer's management power. Their view was that the Board's analysis on the right to liberty tainted the whole of the reasons and that the Board's conclusions were not defensible in respect of either the facts or the law.

REVOCATION OF RELIABILITY STATUS

Bergey v. Attorney General of Canada

In its 2016-2017 Annual Report, the Board reported on *Bergey v. Canada (Attorney General)*, 2017 FCA 30, in which the Federal Court of Appeal (FCA) overturned the decision of the Federal Court in *Bergey v. Canada (Attorney General)*, 2015 FC 617, which had confirmed the decision of an adjudicator in *Bergey v. Treasury Board (Royal Canadian Mounted Police) and Deputy Head (Royal Canadian Mounted Police)*, 2013 PSLRB 80.

This case related to the termination of an indeterminate employee because her reliability status was revoked. The FCA determined that the only reasonable conclusion

in this case was that the suspension and revocation of Ms. Bergey's enhanced reliability status, the suspension pending a determination of her employment status, and the termination of her employment were indeed disguised disciplinary actions. It found that the adjudicator's decision deprived Ms. Bergey of her right under the *PSLRA* to have those actions reviewed for cause.

The FCA remitted the matter to the Board for a new determination in accordance with the Court's reasons and specified that the Board would have no need to address whether Ms. Bergey had been the subject of disguised discipline. The Court also directed the Board to determine whether the deputy head had cause for suspending and revoking Ms. Bergey's reliability status, suspending her pending a determination of her employment status, and terminating her employment and to consider an appropriate remedy, as the case may be.

Ms. Bergey filed an application for leave to appeal to the Supreme Court of Canada of the FCA's decision in *Bergey v. Canada (Attorney General)*, 2017 FCA 30.

The Supreme Court of Canada dismissed the application, with costs (SCC file no. 37657).