# PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT **2004-2005 ANNUAL REPORT PUBLIC SERVICE LABOUR RELATIONS BOARD**

# PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT

**2004-2005 ANNUAL REPORT** 

PUBLIC SERVICE LABOUR RELATIONS BOARD The Honourable Beverley J. Oda Minister of Canadian Heritage and Status of Women House of Commons OTTAWA

Dear Madam Minister,

It is my pleasure to transmit to you for submission to Parliament, pursuant to section 84 of the *Parliamentary Employment and Staff Relations Act*, the Annual Report on the administration of that Act by the Public Service Staff Relations Board, covering the period from 1 April 2004 to 31 March 2005.

Please note that the Public Service Staff Relations Board ceased to exist on 1 April 2005, with the coming into force of the *Public Service Labour Relations Act* and the establishment of the new Public Service Labour Relations Board.

Yours sincerely,

Sylvie Matteau Acting Chairperson

#### PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT Public Service Staff Relations Board 2004 – 2005

Chairperson: Yvon Tarte Vice-Chairperson: J. W. Potter

Deputy Chairpersons: G. Giguère, S. Matteau

Full-Time Members: L.-P. Guindon, I.R. Mackenzie,

D. Quigley, J.-P. Tessier, E. Henry

Part-Time Members: B. Archibald, Q.C., R. E. Bilson, Q.C.,

F. Chad Smith, Q.C., I. Christie, Q.C.,

M. E. Cummings, J. M. Gordon,

T. Kuttner, Q.C., P.E. Love, K. E. Norman, J.J. Steeves, C. Taylor, Q.C., D. T. Wilson

#### PRINCIPAL STAFF OFFICERS OF THE BOARD

Secretary of the Board and General Counsel:
Director, Dispute Resolution Services:
Assistant Secretary, Operations:
Assistant Secretary, Corporate Services:
Director, Compensation Research and Analysis:

P. Hamel
G. Baron
S. Mailer
D. Benoit
G. Lalonde

#### TABLE OF CONTENTS

		PAGE
INT	RODUCTION	1
	Organization and Functions of the Board	1
PRC	OCEEDINGS BEFORE THE BOARD	3
	Complaints under Section 13  Application for Certification  Determination of Membership in Bargaining Unit  Request for the Appointment of a Conciliator  Arbitration Proceedings  Adjudication Proceedings  Enforcement of Obligations of Employer and Employe	3 4 4 5
	Organizations	7 7
ME	DIATION	9
TAE	BLES	
1	Bargaining Units and Bargaining Agents under the Parliamentary Employment and Staff Relations Act 1 April 2004 – 31 March 2005	11
2	Adjudication References 1 April 2000 – 31 March 2005	13
3	Adjudication References Brought Forward and Received 1 April 2000 – 31 March 2005	

#### INTRODUCTION

## ORGANIZATION AND FUNCTIONS OF THE BOARD

The former Public Service Staff Relations Board, which was established in 1967 with the inception of collective bargaining in the Public Service of Canada, ceased to exist on 1 April 2005, with the coming into force of the *Public Service Labour Relations Act* and the establishment of the new Public Service Labour Relations Board.

The Parliamentary Employment and Staff Relations Act (the Act) provides that Part I of the Act (Staff Relations) is to be administered by the Public Service Labour Relations Board, a quasi-judicial statutory tribunal established under the Public Service Labour Relations Act. The Board consists of a Chairperson, three Vice-Chairpersons, and such other full-time members and part-time members as the Governor in Council considers necessary.

Proceedings before the Board under the Parliamentary Employment and Staff Relations Act may include applications for certification, complaints of unfair labour practices, designation of persons employed in a managerial or confidential capacity, and interest arbitration. The Board also deals with the adjudication of grievances concerning the interpretation or application of provisions of collective agreements, major disciplinary action, and grievances relating to any form of termination of employment other than a rejection on probation on an initial appointment. Grievances relating to demotion, appointment and classification may also be referred to adjudication; however, these are not to be determined by a Board member, but rather by an outside adjudicator selected by the parties, who will bear equally the adjudicator's remuneration and expenses. The Board also acts through its mediation and conciliation services to assist the parties when they are unable to resolve their disputes. In this way, settlements may be reached without resort to formal proceedings before the Board, or the number of issues in dispute may be reduced.

#### PROCEEDINGS BEFORE THE BOARD

During the year under review, the Board dealt with 39 cases, of which 32 were carried over from the previous fiscal year. The cases are discussed below under appropriate headings.

#### **COMPLAINTS UNDER SECTION 13**

Section 13 of the Act requires the Board to examine and inquire into an alleged failure to observe any prohibition contained in sections 6, 7 or 8; to comply with any regulation respecting grievances made by the Board pursuant to section 71; and to give effect to any provision of an arbitral award or to a decision of an adjudicator with respect to a grievance. Where the Board upholds a complaint, it has authority under this section to order remedial action. If such action is not carried out, section 14 provides that the Board shall make a report to Parliament. Two complaints were dealt with during the year under review.

One complaint, submitted by the Public Service Alliance of Canada (PSAC), was carried over from the previous fiscal year. It stated that the employer had violated subsection 6(2) of the Act by discriminating against a member of an employee organization. A mediation session was held during the year under review and the parties reached a settlement (Board file 461-HC-21).

A complaint received during the year in review, filed by the Senate Protective Service Employees Association (SPSEA), stated that the employer had violated subsection 6(1) of the Act by interfering with the administration of an employee organization. This complaint is to be scheduled for hearing in the new year (Board file 461-SC-22).

#### APPLICATION FOR CERTIFICATION

Under section 18 of the Act, an employee organization may submit an application to be certified as bargaining agent for a bargaining unit. During the year under review, one such application was carried over from the previous year.

The Professional Institute of the Public Service of Canada (PIPSC) had applied to represent all unrepresented employees including, but not exclusively, employees classified as LM and LAS who are employed by the Library of Parliament (LP). The Public Service Alliance of Canada (PSAC) filed for intervener status. The matter was heard and the application was dismissed (Board file 442-LP-15).

## DETERMINATION OF MEMBERSHIP IN BARGAINING UNIT

Under section 24 of the Act, the employer or an employee organization may ask the Board to determine whether an employee or class of employees is included in a bargaining unit. No new cases were received during this year.

## REQUEST FOR THE APPOINTMENT OF A CONCILIATOR

Under section 40 of the Act, parties unable to reach agreement on any term or condition of employment embodied in a collective agreement may ask the Chairperson to appoint a conciliator to assist them in reaching an agreement. There were no such applications before the Board in the year under review.

#### ARBITRATION PROCEEDINGS

Section 46 of the Act provides that binding arbitration is the only method available for the resolution of interest disputes; there is no right to strike under the Act. The Board dealt with two requests for arbitration carried over from the previous year.

The Communications, Energy and Paperworkers Union of Canada had requested arbitration for employees of the House of Commons in the Technical Group. The parties reached a settlement in this dispute before an arbitral award was rendered (Board file 485-HC-28).

In 2003-2004, the Public Service Alliance of Canada had applied for arbitration for all House of Commons employees in the Reporting Sub-group and Text Processing Sub-group in the Parliamentary Programs Group. During 2004-2005 and before an arbitral award was rendered, the parties reached a settlement in this matter (Board file 485-HC-29).

#### ADJUDICATION PROCEEDINGS

Section 63 of the Act provides for three kinds of adjudicable grievances. Paragraph 63(1)(a) refers to grievances arising out of the application or interpretation of collective agreements or arbitral awards. Such grievances cannot be referred without the approval and support of the bargaining agent. Two such cases were received in the year under review.

Paragraphs 63(1)(b) and (c) refer respectively to disciplinary actions resulting in suspension or a financial penalty and to termination of employment, other than rejection on probation in respect of an initial appointment. A member of the Board acting as an adjudicator hears all grievances referred to above. Four such cases were received in the year under review.

The Board also processes grievances referred under paragraphs 63(1)(d), (e) and (f) of the Act. These cases include grievances concerning demotion of employees, denials of appointment, and classification; they are heard and determined by an adjudicator selected by the parties. No such cases were received in the year under review.

During the year, the Board processed 32 grievances, including 26 carried over from the previous year.

In the previous year, the Professional Institute of the Public Service of Canada (PIPSC) had filed 21 grievances alleging that the employer had incorrectly reclassified positions. The grievances are to be scheduled for hearing in the next fiscal year (Board files 467-LP-216 to 236).

In a case of termination of employment, the employer had investigated an allegation that the grievor had without authorization accessed the personal e-mail account of another employee. The investigation revealed that the grievor had over two years provided a former colleague with sensitive information. This information included access codes to Senate offices, the telephone numbers of security service employees, a document containing security measures taken to protect a Minister who had received threats, the operations manual of the security service, a list of persons considered to be security threats, and the names, photos and telephone numbers of all Senators. Moreover, the grievor had improperly disclosed that the employer considered the former colleague, who had been terminated for sending Senators anonymous and injurious notes, to be a security threat.

The grievor alleged that his own work termination had been influenced by his involvement in a staffing grievance filed by the son of the former colleague. He claimed that he had sent some of the documents as a joke, others to assist the former colleague in the preparation of his own grievance, and still others to boost the colleague's morale, or simply out of friendship.

The adjudicator held that the evidence did not support the allegation that the grievor's termination had been motivated by his involvement in an earlier staffing grievance. Rather, the grievor had irreparably broken the bond of trust by actions that were contrary to his fundamental duty to protect the Senate, its offices, employees, visitors, and the Senators themselves. The grievance was dismissed (Board file 466-SC-345).

Three cases carried over from the previous year were settled prior to a hearing and the remaining seven cases, of which two were carried over from the previous year, are or will be scheduled for hearing in the next fiscal year.

## ENFORCEMENT OF OBLIGATIONS OF EMPLOYER AND EMPLOYEE ORGANIZATIONS

Section 70 of the Act requires the Board to enquire into allegations that cannot be the subject of a grievance by an individual employee. They come about when the employer or the bargaining agent seeks to enforce an obligation alleged to arise out of a collective agreement or arbitral award. No new cases were received during this year.

#### APPLICATIONS UNDER SECTION 38

Section 38 of the Act requires the parties to bargain collectively in good faith and make every reasonable effort to conclude a collective agreement. In the year under review, the Board dealt with two allegations of violation of section 38 carried over from the previous year.

In these two cases, the Communications, Energy and Paperworkers Union of Canada (CEP) complained of bad faith bargaining by the House of Commons (Board files 448-HC-8 & 448-HC-9). Both these applications were settled by the parties during the year.

### APPLICATION FOR DECLARATION OF SUCCESSOR RIGHTS

Section 36 of the Act provides for the Board to determine what rights, privileges and duties are acquired or retained by an employee organization subsequent to a merger or amalgamation or a transfer of jurisdiction, other than as a result of revocation of certification. No new applications were received during this year.

#### **MEDIATION**

Under the Act, arbitration is the only method of resolving collective bargaining disputes. The Dispute Resolution Services of the Public Service Labour Relations Board provide conciliation and mediation services to assist the parties in resolving disputes prior to an arbitration hearing.

During 2004-2005, the Board provided the services of a mediator in eight cases involving grievances and other matters. Of the eight cases, three cases were resolved at mediation. One case was not settled and will proceed to a formal hearing. Another case was dealt with through our preventive mediation program but was not resolved. The remaining three cases are carried over to the following year.

## Bargaining Units and Bargaining Agents under the Parliamentary Employment and Staff Relations Act 1 April 2004 – 31 March 2005

Bargaining Units	Bargaining Agents
(HOUSE OF COMMONS	AS EMPLOYER)
Technical Group	Communications, Energy and Paperworkers Union of Canada
Protective Services Group	House of Commons Security Services Employees Association
Procedural Sub-group and Analysis/ Reference Sub-group in the Parliamentary Programs Group	Professional Institute of the Public Service of Canada
Operational Group (except for part-time cleaners classified at the OP A level)	Public Service Alliance of Canada
Reporting Sub-group and Text Processing Sub-group in the Parliamentary Programs Group	Public Service Alliance of Canada
Postal Services Sub-group in the Administrative Support Group	Public Service Alliance of Canada
(SENATE OF CANADA A	AS EMPLOYER)
Legislative Clerk Sub-group in the Administrative Support Group	Professional Institute of the Public Service of Canada
Protective Service Sub-group in the Operational Group	Senate Protective Service Employees Association
Operational Group (except for employees in the Protective Service Sub-group)	Public Service Alliance of Canada

#### (LIBRARY OF PARLIAMENT AS EMPLOYER)

Library Science (Reference) and Library Science (Cataloguing) Sub-groups in the Research and Library Services Group Public Service Alliance of Canada

Administrative and Support Group

Public Service Alliance of

Canada

Library Technician Sub-group in the Research and Library Services Group Public Service Alliance of

Canada

Research Officer and Research Assistant Sub-groups in the Research and Library Services Group Canadian Association of Professional Employees

2

#### Adjudication References 1 April 2000 – 31 March 2005

	Interpretations [Para. 63(l)(a)]	L (/	Party & Party [Sec. 70]	Sub- Total	Paras. 63(1) (d), (e) & (f)	Total
2004-2005	2	4	0	6	0	6
2003-2004	2	2	0	4	0	4
2002-2003	51	3	0	54	29	83
2001-2002	7	0	0	7	0	7
2000-2001	2	2	1	5	12	17

#### Cumulative Totals 24 December 1986 – 31 March 2005

346 54 10 410 238 648

## Adjudication References Brought Forward and Received 1 April 2000 – 31 March 2005

Fiscal Year	Brought Forward	Received	Overall Total	Dispositions Total
2004-2005	26	6	32	4
2003-2004	33	4	37	7
2002-2003	3	83	86	55
2001-2002	10	7	17	14
2000-2001	41	17	58	45