

Public Service Labour
Relations Board



Annual Report
2007–2008


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Cat. No. SR1-2008E-PDF

ISBN 978-1-100-10185-9

This publication is also available on the PSLRB's website at

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The Honourable James Moore, P.C., M.P.
Minister of Canadian Heritage and Official Languages
House of Commons
Ottawa, K1A 0A6

Dear Minister,

It is my pleasure to transmit to you, pursuant to section 251 of the *Public Service Labour Relations Act*, the Annual Report of the Public Service Labour Relations Board, covering the period from April 1, 2007 to March 31, 2008, for submission to Parliament.

Yours sincerely,



Casper M. Bloom, Q.C., Ad. E.
CHAIRPERSON

Public Service Labour Relations Board

2007–2008

Chairperson: Casper M. Bloom, Q.C., Ad. E.

Vice-Chairpersons: Marie-Josée Bédard
Ian R. Mackenzie
Georges Nadeau
Michele A. Pineau

Full-time Members: Roger Beaulieu
Dan Butler
Barry Done
Léo-Paul Guindon
John A. Mooney
Dan R. Quigley
Renaud Paquet

Part-time Members: Christopher James Albertyn
Bruce Archibald, Q.C.
Ruth Elizabeth Bilson, Q.C.
George P.L. Filliter
Joan M. Gordon
Deborah M. Howes
Margaret E. Hughes
Thomas Kuttner, Q.C.
Allen Ponak
John J. Steeves

PRINCIPAL STAFF OFFICERS OF THE PSLRB

Executive Director and General Counsel:	Pierre Hamel
Director, Dispute Resolution Services:	Guy Baron
Director, Compensation Analysis and Research Services:	Guy Lalonde
Director, Registry Operations and Policy:	Susan Mailer
Director, Corporate Services:	Denise Benoit and Céline Laporte (Acting Director as of January 2008)
Director, Financial Services:	Robert Sabourin

Message from the Chairperson

I am pleased to submit to Parliament the Annual Report of the Public Service Labour Relations Board (PSLRB) for 2007-2008.

The PSLRB administers the legislative framework within which labour relations are conducted in the federal public service. Our clients are the more than 50 employers and bargaining agents covered by the *Public Service Labour Relations Act (PSLRA)*. By striving to provide flexible and multi-faceted services to help them achieve harmonious labour relations, we ultimately benefit public service employees and the Canadians they serve.

In 2007-2008, the PSLRB reaffirmed its vision and mission and set out a new strategic plan to guide the organization over the next few years. We remain committed to neutrality, impartiality and fairness in all our proceedings as well as to providing timely services and functions in a manner that is responsive, proactive and consultative. Our goal is to assist in the resolution of workplace differences and to provide tools, training and information that support labour relations processes. Finally, we seek to offer our own employees and Board members a fulfilling and challenging workplace — one that emphasizes continuous learning, strong teamwork and sound management.

To see how well we are doing, every three years we conduct a survey to gauge the extent to which our clients are satisfied with our services. We use this information to identify areas for improvement and to adjust our internal processes.

I am very proud of the results of the most recent Client Satisfaction Survey conducted in 2007. At 83%, the response rate was very high and, in general, client respondents indicated positive levels of satisfaction with all our services. This gratifying assessment is a direct result of the hard work and dedication of our Board members, managers and employees. I pay tribute to them all. There are a few areas, of course, where client satisfaction is not as high, such as the timeliness of some of our processes, and we are committed to intensifying our efforts to address these concerns in the future.

This report highlights the great success we have met with using mediation to reduce the number of cases that go to formal adjudication. In the period under review, we strengthened our efforts to promote our mediation services, recognizing that mediation is a very effective use of resources in the pursuit of harmonious labour relations. A single mediation can often resolve numerous similar cases. In 2007-2008, we were able to provide mediation services that affected a total of 899 grievance and complaint cases. Parties were able to settle or withdraw 807 of those cases before they went to a hearing, resulting in an 89% success rate. Going forward, the PSLRB will build on its strong reputation for mediation by exploring additional ways to promote our services.

Dealing expeditiously with a large and increasingly complex caseload will remain an ongoing challenge for the PSLRB. To this end, we will continue to engage our clients in exploring such approaches as expedited adjudication and more proactive case management and scheduling practices. These will help us deliver adjudication services in as timely and efficient a manner as possible for the benefit of all parties.

On December 17, 2007, I appeared before the House of Commons Standing Committee on Government Operations and Estimates to support our request for supplementary funding for 2007-2008. I shared with committee members my concern that the PSLRB lacks the permanent stable funding base required to fulfill our responsibilities under the *PSLRA*. The new law has given us an expanded role, particularly in compensation analysis and research, yet we have still not received the resources we need on a consistent basis to fully deliver on our obligations. I remain hopeful that efforts in 2008-2009 will yield a funding solution that supports full implementation of the *PSLRA* in the years ahead.

Casper M. Bloom, Q.C., Ad. E.

CHAIRPERSON
PUBLIC SERVICE LABOUR RELATIONS BOARD

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part one

About the Public Service Labour Relations Board

The PSLRB benefits Canadians by supporting a harmonious relationship between federal public service employees and their employers, which improves the ability of the public service to serve the public interest.

Overview

The Public Service Labour Relations Board (the PSLRB) is an independent quasi-judicial tribunal responsible for administering the collective bargaining and grievance adjudication systems in the federal public service.

In accordance with its mandate under the *Public Service Labour Relations Act (PSLRA)*, which was enacted on April 1, 2005, the PSLRB provides three main services: adjudication; mediation and compensation analysis and research.

The PSLRB replaced the Public Service Staff Relations Board (PSSRB), which had existed since 1967 when collective bargaining was first introduced into the federal public service. With the *PSLRA* came an expanded role and services, particularly in compensation research. At the same time, the PSLRB also continued to provide many of the same services as its predecessor and to build upon its solid body of jurisprudence.

The PSLRB benefits Canadians by supporting a harmonious relationship between federal public service employees and their employers, which improves the ability of the public service to serve the public interest.

Mandate in Brief

Adjudication services

Board members render decisions on complaints and labour relations matters and act as adjudicators to decide grievances brought before them under the *PSLRA*.

Adjudication services fall into three main areas:

Grievances (individual, group or policy)

- interpretation of collective agreements and arbitral awards;
- disciplinary action resulting in termination, demotion, suspension or financial penalty;
- demotion or termination for unsatisfactory performance or for any other non-disciplinary reasons; and
- deployment without an employee's consent.

Complaints

- unfair labour practices; and
- reprisal actions taken for raising an issue under Part II of the *Canada Labour Code*.

Applications

- certification and revocation of certification;
- determination of successor rights;
- determination of managerial or confidential positions;
- determination of essential services agreements;
- review of prior Board decisions; and

- requests for extensions of time to present grievances or to refer grievances to adjudication.

Mediation services

Mediators provided by the PSLRB impartially assist parties in reaching collective agreements, managing their relations under collective agreements, and resolving complaints and grievances, which minimizes the need for formal hearings.

Compensation analysis and research services

The PSLRB is a neutral and impartial source of compensation information obtained through comparability studies that can be used by parties engaged in the collective bargaining process in the federal public service, as well as by other public and private organizations and individuals.

Our Clients

In carrying out the activities in its three mandate areas, the PSLRB assists public service employees, employers and bargaining agents in the conduct of their labour relations.

The *PSLRA* covers some 233,000 federal public service employees and applies to departments named in Schedule I of the *Financial Administration Act*, the other portions of the public administration named in Schedule IV, and the separate agencies named in Schedule V.

The Treasury Board, which is the largest of the employers, employs some 170,000 public service employees in federal government departments and agencies. Some 63,000 public service employees work for one of the other employers, which range

The Public Service Labour Relations Board at a Glance

Our role is to administer the collective bargaining and grievance adjudication systems and offer mediation and compensation analysis and research in the federal public service.

Our services

Adjudication services

- Administer a registry of applications, complaints and grievances (individual, group and policy)
- Hold grievance adjudication and complaint hearings throughout Canada
- Render decisions

Mediation services

What we do

- Offer case mediation services that help parties resolve grievances and complaints without resorting to formal hearings
- Offer conciliation and arbitration services that help parties resolve disputes related to the negotiation and implementation of collective agreements
- Receive and investigate requests for certifications, revocations, exclusions and essential services, etc.
- Provide training in alternative dispute resolution

Compensation analysis and research services

- Compile, analyze and disseminate compensation information

What we seek to achieve

- Fair and timely resolution of cases
- Solid body of precedents and case law that can be used to help resolve future cases

- Increased collaboration between labour and management
- Increased interest in and commitment to mediation on the part of all parties

- Support collective bargaining and compensation determination by providing accurate and comprehensive compensation data

How we benefit federal public servants and Canadians

Our work contributes to harmonious labour relations in the public service, which supports healthy and productive workplaces for public servants. By reducing the potential for labour unrest, we improve the ability of the public service to serve Canadians and protect the public interest.

As a quasi-judicial statutory tribunal, the PSLRB is independent of the government of the day.

from large organizations such as the Canada Revenue Agency to small organizations such as the National Capital Commission. For a list of these employers, please refer to Appendix 1, Table 1.

As of March 30, 2008, 21 bargaining agents were certified to represent 84 bargaining units in the federal public service. Fifty-eight percent of unionized employees are represented by the Public Service Alliance of Canada as their certified bargaining agent, a further 27% are represented by the Professional Institute of the Public Service of Canada and the remaining 15% are represented by other bargaining agents.

Table 2 in Appendix 1 reports the number of public service employees in non-excluded positions by employer and bargaining agent.

The PSLRB's clients also include some employees who are excluded from bargaining units. For example, individuals who occupy managerial and confidential positions are entitled to refer certain types of grievances to adjudication.

Any of these employees, employers and bargaining agents may be a party to an adjudication or mediation effort, as may deputy heads of federal departments and agencies, and the departments and agencies themselves. All of the employers and bargaining agents (on behalf of their members) are potential users of the PSLRB's compensation analysis and research services. The PSLRB also offers mediation services to non-represented employees involved in disputes.

Our Organization

As a quasi-judicial statutory tribunal, the PSLRB is independent of the government of the day. It is responsible to Parliament through a designated minister who is not a member of the Treasury Board. The designated minister is currently the Minister of Canadian Heritage and Official Languages.

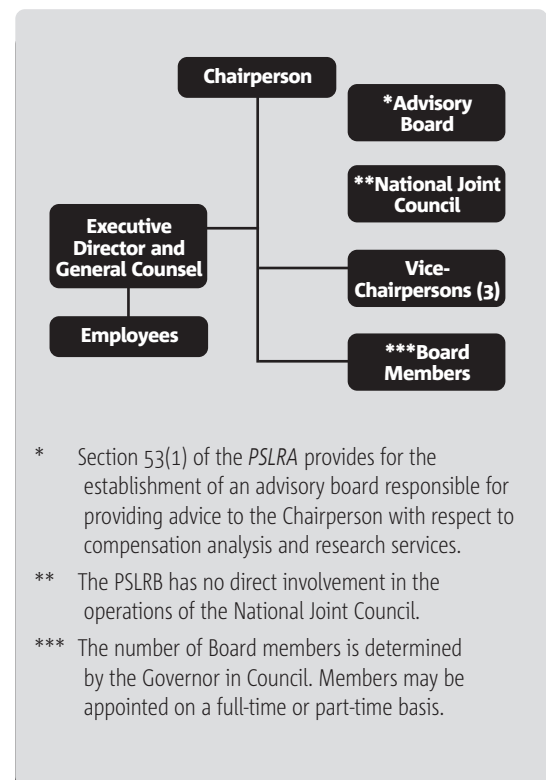
The designated minister is responsible under the *PSLRA* for tabling the PSLRB's Annual Report before Parliament each year and for signing documents required under the *Financial Administration Act*. The minister is also the line of communication with the Governor in Council for the purposes of making appointments to the Board.

Members of the Board

The Board is made up of the Chairperson, up to three Vice-Chairpersons and additional full- and part-time members as required. The members of the Board are responsible for administering the *PSLRA* by conducting hearings throughout Canada and rendering decisions. They are appointed by the Governor in Council for terms of no longer than five years and may be reappointed.

Board members, other than the Chairperson and Vice-Chairpersons, are selected by the Governor in Council from a list prepared by the Chairperson of the Board in consultation with public service bargaining agents and public service employers covered by the *PSLRA*. Recommendations are put forward, and a list of persons eligible to be appointed to the Board is prepared.

To be eligible, an individual must have knowledge of or experience in labour relations. Appointments are to be made so as to ensure that, to the greatest extent possible, there is a balance on the Board between persons recommended by employers and by bargaining agents. However, even though a Board member may have been recommended by



Education and outreach are very important to the PSLRB.

one party or the other, once appointed, he or she does not represent that party and is required to act impartially at all times.

Casper M. Bloom, Q.C., Ad. E., presides over the Board as Chairperson. In 2007-2008, several new appointments were made to the Board. Marie-Josée Bédard was appointed as a Vice-Chairperson, joining Ian R. Mackenzie and Michele A. Pineau, who continued in their appointments as Vice-Chairpersons. John Mooney, Roger Beaulieu and Renaud Paquet were appointed as new Board members, joining Dan R. Quigley and Dan Butler who continued in their appointments. Georges Nadeau retired from the Board as a Vice-Chairperson, Barry Done retired and Léo-Paul Guindon completed his term.

The Chairperson, Vice-Chairpersons and full-time Board members meet monthly to discuss general matters related to the administration of the *PSLRA*.

Education and outreach are very important to the PSLRB. The Chairperson, Vice-Chairpersons and Board members play a key role in building awareness of its mandate and services. They frequently share their professional knowledge and experience with colleagues, clients and stakeholders at conferences, presentations and training sessions, and serve on professional boards and committees.

Biographies of full-time and part-time Board members are included in Appendix 2.

Funding

In 2007-2008, the PSLRB had expenditures of \$11.7 million and had 87 full-time equivalent positions.

For several years now, the PSLRB has been seeking adequate and stable funding. As a result of the coming into force of the *Public Service Modernization Act* in 2003, the PSLRB has been allocated transitional funding to develop, implement and administer the new legislative regime for public service labour relations, which includes a new compensation analysis and research function, enhanced mediation and conflict resolution services, an increased adjudication function, and revamped collective bargaining processes.

This additional funding was allocated only on a temporary basis, and the PSLRB has been required to reapply for it every year, hindering its ability to

carry out effective long-term planning and make future commitments. The PSLRB requires a permanent adjustment to its approved funding level to close the gap between the amount authorized in the past to undertake a much narrower mandate under the former Act and the amount required to carry out its current statutory mandate.

Management

Under its governance structure, the Chairperson is the PSLRB's Chief Executive Officer and has overall responsibility for managing the organization. As provided by section 45 of the *PSLRA*, the Chairperson has authorized the three Vice-Chairpersons to act on his behalf in relation to matters before the Board.

The Executive Committee is responsible for managing the resources allocated to the PSLRB and for providing strategic direction and oversight to the management of the organization. It is composed of the Chairperson, the three Vice-Chairpersons, the Executive Director and General Counsel of the PSLRB, and the Directors of Dispute Resolution Services, Compensation Analysis and Research, Registry Operations and Policy, Corporate Services and Financial Services.

The Executive Director and General Counsel of the PSLRB assists the Chairperson in the exercise of his functions and, subject to his direction, directs and supervises the day-to-day operations of the PSLRB, the management of its internal affairs, and the work of employees. As General Counsel, he also directs the work of the members of the Legal Services team, who provide Board members with technical support in the writing of their decisions. Legal Services also advises the Chairperson about operational and policy considerations and Board members about procedural and substantive issues that arise in connection with the hearing process.

The PSLRB has instituted key elements to ensure good governance, management and accountability. These include a strategic plan that takes into account operational priorities, resources, key risks faced by the organization and expectations of key stakeholders.

In 2007-2008, the PSLRB reaffirmed its vision and mission and produced a new multi-year strategic plan, which includes a well-defined performance measurement framework and performance targets

for future years. Data sources to measure future performance will include manual data collection, the Client Satisfaction Survey undertaken every three years, service-specific databases and a new automated case management system (CMS). The CMS has been under development since late 2005 and will allow the PSLRB to manage case information electronically from initial intake to the resolution of the matter. It will also facilitate more detailed performance reporting by allowing the collection of initial data in 2008-2009. Enhanced data collection will be possible in the years that follow.

The PSLRB also has in place a Management Resources and Results Structure that supports well-defined and long-term program activity, a Results-based Management and Accountability Framework and a risk-based internal audit plan. The organization regularly updates these plans and monitors and reports its progress in achieving the goals set out in them.

In 2007-2008, the PSLRB was asked to participate in the government-led Horizontal Strategic Review of the Human Resource Agencies, which was to be undertaken in 2008-2009 in order to streamline central human resources functions.

Other Responsibilities

As required by the *PSLRA*, the PSLRB provides physical and administrative support services to the National Joint Council (NJC), an independent consultative body of employer and employee representatives. The NJC exists to facilitate consultation on, and the co-development of, policies and terms of employment that do not lend themselves to unit-by-unit bargaining. The PSLRB houses the NJC but plays no direct role in its operation. An annual report with more information on the NJC's activities can be found on its website at www.njc-cnm.gc.ca.

The PSLRB administers the collective bargaining and grievance adjudication systems under the *Parliamentary Employment and Staff Relations Act (PESRA)*, which governs labour relations in Parliament. The *PESRA* covers employees working in the House of Commons, the Senate, the Library of Parliament, and the Office of the Conflict of Interest and Ethics Commissioner.

Under an agreement with the Yukon government, the PSLRB also administers the collective bargaining and grievance adjudication systems required by the Yukon *Education Labour Relations Act* and the Yukon *Public Service Labour Relations Act*. When performing those functions funded by the Yukon government, the PSLRB acts as the Yukon Teachers Labour Relations Board and the Yukon Public Service Labour Relations Board, respectively.

Separate annual reports are issued for all of these acts and are available on the PSLRB's website at www.pslrb-crtfp.gc.ca.

part two

The Year in Review

Grievances referred to adjudication continue to constitute the bulk of the PSLRB's workload.

Caseload Overview

In 2007-2008, the PSLRB had a smaller active caseload than in the preceding two fiscal years. This is largely because the number of cases carried forward and the number of new cases were both lower than in previous years. The PSLRB began the period under review with significantly fewer open cases than in the past and by the end of it had closed 30% of its total active caseload. More detailed data on the PSLRB's caseload can be found in Appendix 3.

Total Caseload 2007-2008

- Total active caseload: 4819
- Active cases were down 19% from 2006-2007 (5928) and down 15% from 2005-2006 (5682)
- New cases: 1528 or 32% of total caseload
- New cases were down 10% from 2006-2007 (1693) and down 12% from 2005-2006 (1736)
- Cases carried forward from previous years: 3291 or 68% of total caseload
- Cases closed: 1454 or 30% of total caseload
- Cases carried forward to next year: 3366 or 70% of total caseload

Grievances

Grievances referred to adjudication continue to constitute the bulk of the PSLRB's workload.

Grievances are referred to the PSLRB mainly as a result of "rights disputes" that relate to the application or interpretation of collective agreements or arbitral awards; actions resulting in termination, demotion, suspension or financial penalty; demotion or termination that does not result from a disciplinary action; and deployment without an employee's consent, where consent is required.

If a public service employee presents a grievance within a department or agency and it reaches the end of the internal grievance process without having been resolved to the employee's satisfaction, he or she may refer the grievance to adjudication before the PSLRB if the subject matter falls within the areas mentioned above.

When the PSLRB receives a grievance for adjudication, it gives priority to exploring options for resolving the matter voluntarily through mediation. PSLRB mediators and Board members acting as mediators have a strong record of success in helping parties find solutions to their problems without the need for more formal hearings.

The purpose of mediation is not to determine who is right or wrong but rather to define the issues in dispute more clearly and to find creative and acceptable solutions that are not always available at adjudication and that will satisfy the needs of all the parties.

The PSLRB encourages both parties to continue working towards a settlement throughout the adjudication process since it is preferable that the parties resolve the dispute on their own.

Cases that are not settled or withdrawn proceed to a hearing before a member of the Board selected by the Chairperson. Board members sitting in this capacity are acting as adjudicators.

The PSLRB encourages both parties to continue working towards a settlement throughout the adjudication process since it is preferable that the parties resolve the dispute on their own. The PSLRB offers the parties the opportunity to participate in mediation at any time during the adjudication process with the adjudicator usually conducting the mediation.

Under the *PSLRA*, group grievances and policy grievances can now be referred to adjudication in addition to individual grievances. A group grievance may be presented when two or more employees in a single department or agency are similarly affected by the interpretation or application of a collective agreement or arbitral award. A policy grievance relates to the interpretation or application of a collective agreement or an arbitral award. A policy grievance may be referred by either the bargaining agent or the employer.

It is also now possible for grievances to be referred to adjudication that involve issues under the *Canadian Human Rights Act* (except those related to pay equity) and for monetary relief to be awarded. The Canadian Human Rights Commission must be notified of such grievances and has standing to make submissions to an adjudicator.

In 2007-2008, there were 30% fewer new grievances referred to adjudication than in the previous year. The number of new grievance cases received by the PSLRB has been declining since the peak years of 2003 to 2005, when the number approached the 2000 mark.

The PSLRB closed just over a quarter of all grievance cases. The vast majority of these cases were settled by the parties involved or withdrawn as a result of mediation; the rest were closed as a result of decisions rendered after adjudication hearings. For the second year running, the PSLRB was successful in closing more grievance cases than it opened, thus reducing its overall caseload.

It has now been three years since the *PSLRA* replaced the *Public Service Staff Relations Act (PSSRA)*. While grievance cases submitted under

the *PSSRA* now make up a minority of all grievance cases, the PSLRB continues to receive cases that fall under it. In 2008-2009, the PSLRB seeks to close all cases referred to adjudication under the former *PSSRA*.

Grievances 2007-2008

- Grievances referred to adjudication: 3885 or 81% of all cases before the PSLRB
- New grievance cases: 893 (877 individual, 8 group and 8 policy)
- Grievance cases involving terminations: 38
- Grievance cases closed: 1028 or 26% of all grievance cases
- 1028 cases were closed compared with 893 cases opened for an overall caseload reduction of 135
- Of cases closed, 895 cases were settled or withdrawn by the parties and 133 cases were decided by 65 decisions

Several factors make the PSLRB's grievance caseload appear larger than it actually is. First, under the *PSSRA*, there was no formal provision for submitting a group grievance as there is under the *PSLRA*. As a result, in the past, employees who shared a common concern had no option but to submit many separate references to adjudication on the same subject at the same time.

Second, bargaining agents may file large numbers of grievances as part of a strategy to press for solutions to common problems experienced by their members. This has led to a large volume of similar grievances being referred over short periods of time, such as several hundred in the course of a week. These groups of cases can and have been withdrawn without formal PSLRB intervention once the matter has been resolved during collective bargaining or elsewhere.

Third, the PSLRB frequently receives multiple references to adjudication from a single grievor, either at the same time or sequentially. In most situations where it is possible, PSLRB mediators and adjudicators address these cases together in one proceeding. Often, multiple cases reveal related problems in the workplace that can best be solved through an integrated approach.

The PSLRB's true caseload of grievances is smaller than the number of cases formally referred to it and is not always easy to quantify.

Finally, some cases come to the PSLRB when a party needs to comply with collective agreement or statutory time limits to protect its rights. A number of those cases are subsequently withdrawn when the parties themselves resolve the matter voluntarily prior to PSLRB involvement.

Given these types of situations, the PSLRB's true caseload of grievances is smaller than the number of cases formally referred to it and is not always easy to quantify.

Complaints

While only a small proportion of the PSLRB's active caseload in 2007-2008 involved complaints, these consume a substantial amount of its time and resources.

Two types of complaints are heard by the PSLRB — complaints of unfair labour practices under the new Act and complaints related to reprisals under the *Canada Labour Code*.

The first type includes complaints by employees, bargaining agents and employers in which:

- an employer is alleged to have engaged in unfair labour practices (for example, by interfering with the creation or administration of a union or by engaging in discrimination based on union membership);
- a bargaining agent is alleged to have acted in bad faith in the representation of an employee; or
- an employer or bargaining agent is alleged to have failed to bargain in good faith.

The second type includes complaints about disciplinary actions or discrimination resulting from the exercise by federal public service employees of workplace health and safety rights under Part II of the *Canada Labour Code*.

The bulk of active complaint cases are complaints of unfair labour practices under the *PSLRA*. The number of these new complaints received continues to go up. The remaining cases are complaints related to reprisals under the *Canada Labour Code*. The number of these new complaints continues to decline. The PSLRB closed just over a third of all complaint cases.

Complaints 2007-2008

- Complaints referred to adjudication: 173 or 4% of all cases before the PSLRB
- Unfair labour practice complaints: 152 or 88% of complaint caseload
- *Canada Labour Code* complaints: 21 or 12% of complaint caseload
- New unfair labour practice complaints: 63 in 2007-2008, 50 in 2006-2007 and 31 in 2005-2006
- New *Canada Labour Code* complaints: 3 in 2007-2008, 5 in 2006-2007 and 18 in 2005-2006
- Complaint cases closed: 61 or 35% of all complaint cases
- Of cases closed, 29 were settled or withdrawn by the parties and 32 were settled by 18 decisions

Applications

The Board renders decisions on a variety of labour relations applications such as the certification of bargaining units, the revocation of certification, displacement, and the determination of successor rights. It also hears cases involving the determination of managerial or confidential positions and the determination of essential services agreements.

In addition, the Board reviews applications for compliance orders submitted by applicants contending that other parties did not adhere to provisions of the *PSLRA* and issues compliance orders in response to those found to be valid. It may review, rescind, alter or vary any of its decisions or orders in response to the receipt of an application for such a decision review.

It also receives applications related to the review of prior Board decisions and requests for extensions of time to present grievances or to refer grievances to adjudication. The latter can be heard and decided only by the Chairperson or a Vice-Chairperson as delegated by the Chairperson.

Certification is the process by which an employee organization (bargaining agent) is recognized by the Board to represent a group of employees in their labour relations with their employer. It is granted when the employee organization applying for it is able to demonstrate to the Board that the majority of employees within the bargaining unit wish to be

The PSLRB continually strives to keep active cases to a manageable number and to reduce the time taken to close cases by innovating and improving its practices.

represented by it. This can be achieved by presenting signed membership cards indicating a majority of support or by conducting a secret-ballot vote administered by PSLRB employees.

Certification brings with it the right to bargain collectively on behalf of the employees included in the bargaining unit and to become their bargaining agent. The bargaining agent must choose the dispute resolution mechanism — either arbitration or conciliation/strike — that will apply in the event of an impasse at the bargaining table. Certification is granted for an indeterminate period and is valid until another employee organization is certified by the Board and takes the place of the certified bargaining agent or until certification is revoked by the Board upon application.

A new certification application or an application for revocation of an existing certification can be filed with the PSLRB only at certain times, that is, within two months of the date on which the collective agreement or arbitral award expires or during the two-month period immediately before the end of each year that the agreement or award continues to be in force after the second year of its term. Anyone representing a majority of employees who no longer wish to be represented by the certified union can apply for revocation of certification. Revocation can also be granted for abandonment or for fraud.

Successor rights involve the transfer of the rights and obligations associated with certification, in certain circumstances. For example, if a department or a portion of a department or agency becomes a separate agency or becomes a part of an existing separate agency, the union's representation rights are protected and the collective agreements

continue to apply to the employees who will be transferred to their new employer. The Board may be called upon to render orders to ensure that these transitions take place in an orderly manner.

Issues, Challenges and Innovations

The PSLRB continually strives to keep active cases to a manageable number and to reduce the time taken to close cases by innovating and improving its practices. Last year, new case management tools were introduced that allow for the screening of new grievance and complaint cases. This screening identifies trends and permits matters to be heard together to be grouped for administrative purposes and tracked as a common element.

However, the size of the caseload and the timeliness of the PSLRB's adjudication services are often well outside of the PSLRB's control. There are several key factors that have an impact. One is the availability of resources devoted to labour relations cases by the parties appearing before it. When employers and bargaining agents experience reduced capacity to deal with the existing volume of grievances and complaints — as they have in recent years — requests for postponements increase, which introduce delays in the processing of cases by the PSLRB.

For some time now, the PSLRB and its two largest clients (the Public Service Alliance of Canada and the Treasury Board) have been discussing ways to better manage the large number of cases involving the two organizations. In the period under review, the three organizations met to consider new ways to tackle the large number of cases that are filed with the PSLRB each year. A project piloting various approaches to manage the caseload will be launched in 2008-2009.

Another factor affecting the timeliness of services is the growing complexity of cases being referred to the PSLRB, including those involving human rights and duty-to-accommodate issues and the ever-increasing number of grievors and complainants appearing before the Board without representation. These individuals are not generally familiar with the complexities of a quasi-judicial process and may need assistance as they go through the process of filing their cases. Those who are represented are guided through the process and are given advice by

Applications 2007-2008

- Total: 761 or 15% of all cases before the Board
- Certification or revocation of certification: 5
- Successor rights: 0
- Designation of essential services positions: 7
- Review of prior Board decisions: 12
- Determination of management and confidential positions: 594
- Requests for extensions of time to file a grievance or to refer a grievance to adjudication: 150

Labour-management relations are enhanced when both parties work with the same compensation information.

their counsel or bargaining agents. The PSLRB ensures that self-represented grievors are aware of the resources available in print, video and on the Web to assist them in submitting their grievances and complaints.

Yet another factor is the availability of a full complement of Board members to adjudicate cases and render decisions. Cases can only be heard and decided by full- and part-time Board members, thus a reduced complement of members lowers the number of cases that can go to hearing. Delays in appointing individuals to fill Board vacancies and in reappointing current Board members diminish its ability to function expeditiously. The fact that the Board lacked a full roster of members through the beginning of the fiscal year led to fewer cases being heard than in previous years. By March 31, 2008, however, a number of new appointments had been made and the Board lacked only one full-time member.

The PSLRB is working to make increased use of *PSLRA* provisions that allow for the convening of pre-hearing conferences. These have proven to be effective in clarifying issues before the start of a hearing, and, in some cases, they eliminate the need for an in-person hearing altogether. Pre-hearing conferences still present a challenge for the parties, who have to balance their availability not just for the formal hearing but also for these conferences.

The Board has used teleconferences and videoconferences on a selective basis for certain portions of hearings, such as closing arguments, where parties are already well known to each other and no witnesses are required to testify. Using such technology only under limited circumstances alleviates concerns about credibility and the right of individuals to face those who have alleged misconduct on their part. It also has the potential to save parties from having to travel long distances for short periods of time.

For a number of years, the PSLRB has offered expedited adjudication to parties who want to save time and resources. This allows certain grievances to be dealt with without resorting to a full hearing process. In the expedited process, the parties normally file an agreed statement of facts, and no witnesses are heard. The parties agree that decisions rendered in the expedited process are not

precedent-setting and will not be subject to judicial review. Oral decisions are given to the parties at the hearing. A short written decision follows within five days.

Either party may apply for an expedited hearing, but for this process to be used, both parties (employer and bargaining agent) must have previously signed a memorandum of understanding with the PSLRB. Self-represented individuals may not apply for expedited adjudication.

In 2007-2008, the Professional Institute of the Public Service of Canada agreed to proceed with expedited adjudication with the Canada Revenue Agency, bringing the total number of bargaining units availing themselves of expedited adjudication to 18. The Public Service Alliance of Canada and the Canada Revenue Agency revised their Memoranda of Understanding with the PSLRB, as did the Public Service Alliance of Canada and the House of Commons and the Public Service Alliance of Canada and the Treasury Board of Canada.

In 2007-2008, no new cases filed with the PSLRB requested the expedited adjudication process. Seven expedited adjudication hearings were scheduled during the year, however no such cases were heard.

Compensation Studies

Labour-management relations are enhanced when both parties work with the same compensation information. The PSLRB's Compensation Analysis and Research Services (CARS) exists to support the parties to collective bargaining in the federal public service in their discussions and negotiations over compensation issues by providing them with comprehensive, accurate, timely and impartial information. It also aims to assist arbitration boards and public interest commissions in resolving disputes by providing relevant comparative analyses of compensation data.

In 2007-2008, after extensive consultations, the PSLRB initiated three compensation comparability studies to assist the parties in their 2008 round of collective bargaining.

The first was a pan-Canadian study of current wages and benefits offered by public and private sector employers for 30 technical services occupations.

Hearings before Board members and adjudicators are similar to those in a court of law, but the rules of evidence are more relaxed.

It was steered by the PSLRB in consultation with the Public Service Alliance of Canada and the Treasury Board of Canada Secretariat. Conducted by AON Consulting, it was published in April 2008.

The second was a study of health services occupations that was conducted for the Treasury Board of Canada Secretariat and the Professional Institute of the Public Service of Canada. It was launched in February 2007 with a scheduled completion date of June 2008 and with results to be published shortly thereafter. Although the study was to be conducted by Statistics Canada in collaboration with l'Institut de la statistique du Québec, Statistics Canada withdrew from the project in the fall of 2007 after concluding that it could not meet the PSLRB's timelines and that it required greater internal compensation expertise.

The PSLRB undertook to complete the study on its own, with the assistance of a team of consultants from Hackett Consulting who were responsible for the field visits and data collection. Within the short period set for the study, the PSLRB will have completed all aspects required: developing the job-matching specifications for all occupations included in the survey; preparing the total compensation questionnaire in paper, electronic and interactive formats and the database and calculation programs; conducting field visits to nearly 200 respondent organizations representing the health sector across Canada; and analyzing and publishing the results.

These two studies will add to the wealth of information and experience that will serve as a solid foundation for the PSLRB's national compensation research strategy to be implemented in 2009-2010. The two studies can be found on the PSLRB's website at www.pslrb-crtfp.gc.ca.

A third study of selected security enforcement-related occupations was to be conducted with the Treasury Board of Canada Secretariat and the Public Service Alliance of Canada. However, the parties were unable to come to an agreement on a fundamental issue, and the PSLRB was compelled to discontinue the study.

2007 Client Satisfaction Survey

The PSLRB conducts a Client Satisfaction Survey every three years with a view to tracking the extent to which clients are satisfied with its services and helping to identify areas for improvement. The information will also be used in the future to measure and report on the PSLRB's performance under its new performance measurement framework.

The survey was administered to 376 clients. With 234 surveys completed and compiled, the survey's response rate of 82.9% was high, yielding valid results. Respondents were given an opportunity to indicate how satisfied they were with such key services as adjudication, dispute resolution and registry operations. The largest numbers of survey respondents had accessed the PSLRB's website, used mediation services for grievances or complaints and appeared in person at an adjudication hearing. Respondents generally indicated positive levels of satisfaction with all services.

The complete report on the client satisfaction survey can be found on the PSLRB's website at www.pslrb-crtfp.gc.ca.

Adjudication Services

Hearings

If parties decline to participate in mediation or if a grievance or complaint case cannot be resolved through that means, an adjudication hearing is scheduled. Hearings are held across Canada, generally in the large metropolitan area nearest the applicant's work location. Normally, the PSLRB sets tentative hearing dates four months in advance.

Board members hear complaints and applications and Board members sitting as adjudicators hear grievances that are referred to adjudication. Hearings before Board members and adjudicators are similar to those in a court of law, but the rules of evidence are more relaxed. They are conducted fairly and impartially in accordance with the law and principles of natural justice.

The PSLRB assists the parties in preparing for hearings by answering common questions and describing what to expect in resources posted on its website.

An adjudicator can also interpret, apply and give relief in accordance with the *Canadian Human Rights Act*, except for matters relating to the right to equal pay for equal work.

Powers of adjudicators

In exercising its statutory powers to make decisions that affect individual rights, the Board must conduct hearings in a way that is fair for the parties concerned. Thus, the *PSLRA* grants Board Members (who decide complaints and applications) and adjudicators (who adjudicate grievances) powers similar to those of a court of law.

These powers include the authority to summon witnesses, administer oaths and solemn declarations, compel the production of documents, hold pre-hearing conferences, hold hearings in person or in writing, accept evidence whether or not it is admissible in a court of law, and, where necessary, inspect and take a view of an employer's premises.

When a grievance or complaint is well founded, a remedy will be ordered that may include compensation for losses suffered. Thus, disciplinary action may be rescinded or varied, the time for filing a grievance may be extended, or in the case of a termination of employment, a grievor may be reinstated in his or her job with back pay and benefits. Where a collective agreement has been violated, a declaration, or in some cases monetary compensation, may be ordered.

An adjudicator can also interpret, apply and give relief in accordance with the *Canadian Human Rights Act*, except for matters relating to the right to equal pay for equal work. Where appropriate, interest can also be awarded. Finally, a grievance, application or complaint may be dismissed if deemed to be frivolous or vexatious.

The decisions of Board members and adjudicators are final and are not subject to judicial review except under limited circumstances. The Federal Court may judicially review a decision on the grounds set out in sections 18 and 28 of the *Federal Courts Act*.

Pre-hearing conferences are held at the discretion of the adjudicator or Board member. Pre-hearing conferences allow the parties to consider settlement possibilities, consolidate matters, raise preliminary objections, discuss procedural matters, narrow the issues or agree to statements of facts and discuss witness lists, all of which assist in streamlining the hearing.

Notable decisions

Decisions rendered by the Board or by members of the Board in their role as adjudicators contribute to the elaboration of jurisprudence in labour relations, specifically in the context of the federal public service, but more widely as well. Brief descriptions of a number of notable decisions in grievance and complaint cases can be found in Appendix 4.

Privacy issues

As a quasi-judicial tribunal that renders decisions on a variety of labour relations matters in the federal public service, the Board operates very much like a court. As such, it is bound by the constitutionally protected open court principle. This means that most information filed with it becomes part of a public record and is generally available to the public to support transparency and accountability. These last two considerations are central to the values of the PSLRB.

The principles of administrative law require that the Board issue a written decision when deciding a matter. This decision is to include a summary of the evidence presented and the arguments of the parties, as well as an articulation of the reasons supporting the findings. Board members include in their decisions only that personal information that is relevant and necessary for their reasons. For example, the identity of disinterested persons (third parties), such as taxpayers, can be protected by order of a Board member. Also, documents filed as exhibits before a Board member that contain sensitive medical or financial information about a person can be sealed by an order upon request.

The written decisions of the Board are available to the public in many ways. They may be consulted in its library. Most are published by specialized private publishers. The full text of decisions has been posted on the PSLRB's website since 2000, when its predecessor, the Public Service Staff Relations Board, began the practice. Also, some decisions are freely accessible on the Internet from sources other than its website.

Privacy complaints

Two privacy complaints were filed with the Privacy Commissioner against the PSLRB in relation to the posting of decisions on its website. The complainants,

Mediation and conflict resolution are key elements of the PSLRB's statutory mandate under the new *PSLRA*.

who were both grievors in proceedings before adjudicators, alleged that the PSLRB had contravened the use and disclosure provisions of the *Privacy Act* (sections 7 and 8), by posting all decisions rendered by the Board and adjudicators on the PSLRB's website.

In response to those complaints, the PSLRB has argued that because it is bound by the open court principle, both its proceedings and the documents filed in relation to them are public. It is also the PSLRB's position that the posting of decisions on its website is consistent with case law, the purpose of deciding disputes before the Board and the purpose for which personal information is obtained in the course of proceedings.

As a means to balance the open court principle and the privacy rights of persons availing themselves of their rights under the *PSLRA*, the PSLRB has voluntarily introduced measures that restrict global search engines from accessing decisions posted on its website by blocking the full names of individuals.

The Privacy Commissioner found that the posting of decisions on the PSLRB's website was not a use of personal information consistent with the purpose for which it had been obtained and agreed with the complainants that the PSLRB's practice contravened the *Privacy Act*. The Privacy Commissioner essentially recommended that the PSLRB depersonalize decisions posted on its website through the use of randomly assigned initials in place of the names of individuals or that it post only summaries of decisions with no identifying personal information. Also, the posting of full-text decisions on the website should be subject to very stringent guidelines supporting a case-by-case analysis based on the public interest and prior written notification to the Privacy Commissioner.

The PSLRB informed the Privacy Commissioner that, in the final analysis, it was satisfied that the measures that had already been taken were adequate to protect the personal information contained in its decisions and that no further action would be taken on the complaints. However, the PSLRB also indicated that it would actively participate in any discussions of policy issues to be led by the responsible authorities about the posting of decisions of administrative tribunals on their websites, which the Privacy Commissioner strongly suggested should take place. This important issue

extends beyond the PSLRB and touches on long-established practices of a vast number of federal administrative tribunals that exercise quasi-judicial functions.

Mediation Services

Mediation and conflict resolution are key elements of the PSLRB's statutory mandate under the new *PSLRA*. Mediators provided by the PSLRB are impartial third parties with no decision-making power who intervene in a dispute to help parties reach their own mutually acceptable solutions. They may be professional mediators employed by the PSLRB, Board members or experienced persons appointed from outside the PSLRB.

Mediation contributes directly to harmonious labour relations in the public service since it is generally preferable to resolve disputes early on and at the lowest possible level than to resort to adversarial processes such as adjudication to settle them.

In recent years, the PSLRB had had significant success using mediation to help reduce the number of cases that must go to formal hearing as prescribed by the *PSLRA* if the case is not resolved. Given this potential, in 2007-2008 the PSLRB increased its efforts to promote its mediation services to the parties involved in adjudication cases.

In the period under review, the PSLRB offered mediation services that affected a total of 899 grievance and complaint cases. A single mediation can often resolve numerous similar cases. With the assistance of PSLRB-appointed mediators, parties were able to settle or withdraw 807 cases before they went to a hearing, resulting in an 89% success rate.

The PSLRB's mediation services also include "preventive" mediation, which is aimed at resolving disputes even before an application is filed. This can help reduce the number of cases brought before the PSLRB. In 2007-2008, there were 74 cases of preventive mediation, with a 91% success rate. (See Appendix 5 for data on the PSLRB's mediation caseload in 2007-2008.)

The demand for the PSLRB's mediation services has grown in tandem with the large volume of grievance adjudication cases submitted to it. There have also been new requests for mediation assistance from

The PSLRB also assists parties in their collective bargaining efforts through its mediation, conciliation and arbitration services.

employers stemming from the requirements in the *PSLRA* for departments and agencies to put in place labour-management consultation committees and informal conflict management systems.

The PSLRB offers a range of other mediation services, which include:

- facilitating discussion between parties within specific departments and agencies, often in the context of labour-management consultation committees;
- conducting strategic interventions, through which broad issues likely to generate disputes are discussed;
- assisting in the investigation of cases involving applications for certification, the determination of membership on a specific date, and successor rights; and
- facilitating discussions on the determination of positions/employees who are to provide essential services in case of a strike (employees holding these positions are not eligible to strike).

Mediation training

In 2007-2008, members of the Dispute Resolution Services team delivered nine courses on interest-based negotiation and mediation. To date, nearly 3,000 people have attended this training through the PSLRB's national training program, which was established in 2000-2001.

The two-and-a-half-day interactive session enables participants from within the federal public service to acquire basic interest-based negotiation and mediation skills that can be used to resolve disputes in the workplace. It also provides an opportunity to explore conflict issues and communication problems that arise among parties. Through role plays, participants are able to practise the skills and techniques they have acquired in negotiation and grievance mediation. The training session also enables them to exchange views on mediation issues.

The target audience includes individuals responsible for workplace conflict resolution, such as staff relations officers, union representatives, managers and supervisors, and others working in this field, such as employee assistance program officers. Online registration can be done through the PSLRB's website at www.pslrb-crtfp.gc.ca.

In 2007-2008, PSLRB mediators delivered presentations and special sessions both inside and outside the public service to help build understanding of mediation as a dispute resolution mechanism.

Collective bargaining

The PSLRB also assists parties in their collective bargaining efforts through its mediation, conciliation and arbitration services. In providing these services, the PSLRB either helps parties reach agreements or establishes mechanisms by which disputes between the parties can be resolved by an independent third party, thus avoiding potential labour disruptions that could adversely affect the provision of government services to Canadians.

This responsibility involves a current and in-depth knowledge of labour relations issues among parties to bargaining on the part of the PSLRB, so that once disputes reach the dispute resolution stage — arbitration or conciliation — decisions made by the Chairperson are fully informed and are made in the interest of fostering a settlement between the parties.

With the launch of a major round of public service collective bargaining in 2007-2008, the PSLRB was called upon five times to provide the services of a mediator to assist parties in the negotiation of their collective agreements.

Conciliation gives employees the right to strike under certain prescribed conditions, and is therefore often referred to as the “conciliation/strike route.” The *PSLRA* introduced a new process for helping parties settle their collective agreements — the Public Interest Commission (PIC). These non-permanent bodies consist of one or three persons who are appointed by the Minister on the recommendation of the Chairperson of the Board to assist the parties by making recommendations for settlement. The recommendations are not binding on the parties. In 2007-2008, there were no requests for PICs, but some are expected with the round of collective bargaining that will take place in the next fiscal year.

Compensation is a key issue and often represents the major challenge for the parties to reach a settlement at the collective bargaining table.

If parties are unable to settle their collective agreements through negotiation, binding arbitration can also be undertaken. This culminates in an arbitral award (a decision) that is legally binding upon both parties and thus precludes any legal strike action. Arbitration boards are established by the Chairperson of the Board. Six arbitration boards were established in 2007-2008, five of which resulted in arbitral awards.

Compensation Analysis and Research Services

The enactment of the *PSLRA* on April 1, 2005 conferred on the PSLRB the mandate to conduct compensation analysis and research to support the collective bargaining process within the federal public service. The Compensation Analysis and Research Services of the PSLRB (CARS) was established in 2005-2006 to work in consultation with the parties to bargaining and other stakeholders to provide impartial, accurate and timely information on comparative rates of pay, employee earnings, conditions of employment and benefits in the public and private sectors.

Compensation is a key issue and often represents the major challenge for the parties to reach a settlement at the collective bargaining table. Conflict can be reduced when both parties can rely on accurate and comprehensive compensation data that is collected and provided by a neutral and authoritative third party. When both parties can begin negotiations by agreeing on the market-based compensation data that they will use as a reference point, they can focus their time and effort more efficiently on negotiating substantive issues, such as adjustments to rates of pay and related issues.

The compensation studies undertaken by CARS in 2007-2008 are described in a previous section of this report.

Independent Advisory Board

The *PSLRA* provides for the establishment of an independent advisory board to give advice to the Chairperson on the compensation analysis and research services provided by the PSLRB.

The first Advisory Board, chaired by Maryanne Webber of Statistics Canada, presented its final report to the Chairperson in November 2007. The report outlines the Advisory Board's accomplishments during its two-year term and offers a number of recommendations to assist the Chairperson in improving the Advisory Board's overall effectiveness.

Once new appointments to the Advisory Board have been made, the members will be asked to reflect on the methodology, tools, processes used to date and the results achieved and to make recommendations relating to the timely launch of a broader national compensation survey.

Outreach and communications

The PSLRB continues to recognize the importance of consulting with the parties to bargaining and other stakeholders. The parties directly affected by the two current studies were actively involved in developing all survey parameters and tools. In addition to working with the Advisory Board on the development of its longer term survey strategy, the PSLRB will seek ways to engage the collective bargaining community within the federal public service in similar consultations.

The PSLRB is also committed to working in partnership with provincial and territorial governments in an effort to foster collaborative approaches that meet the needs and interests of all jurisdictions and avoid the unnecessary duplication of efforts and services and undue burden on survey respondents. The study covering health occupations proved to be an excellent opportunity to demonstrate the benefits of working together in areas of common interest.

After publishing the results of its first two compensation studies, the PSLRB will be reviewing different approaches to determine the best strategy to adopt in conducting a broader national compensation study.

Looking ahead

After publishing the results of its first two compensation studies, the PSLRB will be reviewing different approaches to determine the best strategy to adopt in conducting a broader national compensation study the following year.

In consultation with all stakeholders, the PSLRB must have fully developed its national compensation survey strategy, methodology and tools by the end of 2008-2009 in order to meet its target of delivering the first results of a major national compensation study in 2010.

Statistics Canada has indicated its interest in pursuing further discussions and assessments of its role in conducting a broad compensation survey across Canada on behalf of the PSLRB. Such consultations will be held early in 2008-2009 to allow Statistics Canada sufficient time to launch field survey activities in the fall of 2009.

Finally, the PSLRB will need to secure permanent funding to provide the necessary long-term commitments required for substantial investments by service providers.

More Information on the Public Service Labour Relations Board

The PSLRB's mailing address is:

*Public Service Labour Relations Board
P.O. Box 1525, Station B
Ottawa, Ontario
Canada
K1P 5V2*

The PSLRB may also be contacted by telephone or fax between the weekday hours of 08:00 and 16:00 (EST).

Telephone: 613-990-1800
Fax: 613-990-1849

The PSLRB may be reached by email at mail.courrier@pslrb-crtfp.gc.ca

The PSLRB's library houses a large collection of labour relations resources and provides reference assistance in person, by telephone and by email.

CD Howe Building
240 Sparks St.
West tower, 6th floor
Ottawa, Ontario

Telephone: 613-990-1813
Toll-free: 866-931-3454
Email: library-bibliotheque@pslrb-crtfp.gc.ca

The PSLRB's website, which can be visited at www.pslrb-crtfp.gc.ca, contains a wealth of useful information, including:

- summary and full-text versions of all Board decisions
- information on the Board's mandate, membership and functions
- hearing schedules
- information on the status of collective bargaining
- annual reports and publications
- frequently asked questions, fact sheets, practice notes, guides and videos
- labour relations legislation, regulations and forms
- newsletters
- how to register for mediation training

Appendix 1

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent
April 1, 2007 to March 31, 2008**

Treasury Board of Canada

Bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Association of Canadian Financial Officers	1	3399
Association of Justice Counsel	1	2138
CAW – CANADA	1	8
CAW – CANADA, Local 2182	1	339
Canadian Association of Professional Employees	2	12 721
Canadian Federal Pilots Association	1	437
Canadian Merchant Service Guild	1	1000
Canadian Military Colleges Faculty Association	1	191
Communications, Energy and Paperworkers Union of Canada, Local 588	1	31
Federal Government Dockyard Chargehands Association	1	82
Federal Government Dockyard Trades and Labour Council (East)	1	846
Federal Government Dockyards Trades and Labour Council (Esquimalt, B.C.)	1	880
International Brotherhood of Electrical Workers, Local 2228	1	1060
Professional Association of Foreign Service Officers	1	1146
Professional Institute of the Public Service of Canada	6	32 499
Public Service Alliance of Canada	4	107 904
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN	1	5680
Total for Treasury Board of Canada	26	170 361

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent
April 1, 2007 to March 31, 2008**

Other Employers

Bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
CANADA INVESTMENT AND SAVINGS		
	No data	No data
CANADA REVENUE AGENCY		
Professional Institute of the Public Service of Canada	1	26 009
Public Service Alliance of Canada	1	10 236
Total	2	36 245
CANADIAN FOOD INSPECTION AGENCY		
Professional Institute of the Public Service of Canada	3	1829
Public Service Alliance of Canada	1	4469
Total	4	6298
CANADIAN INSTITUTES OF HEALTH RESEARCH		
Public Service Alliance of Canada	1	32
Total	1	32
CANADIAN NUCLEAR SAFETY COMMISSION		
Professional Institute of the Public Service of Canada	1	430
Total	1	430
CANADIAN POLAR COMMISSION		
No bargaining agents	0	5
Total	0	5
CANADIAN SECURITY INTELLIGENCE SERVICE		
Public Service Alliance of Canada	1	208
Total	1	208
COMMUNICATION SECURITY ESTABLISHMENT		
Public Service Alliance of Canada	1	1624
Total	1	1624
FINANCIAL CONSUMER AGENCY OF CANADA		
No bargaining agents	0	40
Total	0	40

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent
April 1, 2007 to March 31, 2008**

Other Employers (continued)

Bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
FINANCIAL TRANSACTIONS AND REPORTS ANALYSIS CENTRE OF CANADA		
No bargaining agents	0	329
Total	0	329
INDIAN OIL AND GAS CANADA		
No bargaining agents	0	72
Total	0	72
NATIONAL CAPITAL COMMISSION		
Public Service Alliance of Canada	1	365
Total	1	365
NATIONAL ENERGY BOARD		
Professional Institute of the Public Service of Canada	1	278
Total	1	278
NATIONAL FILM BOARD		
Canadian Union of Public Employees, Local 2656	2	142
Professional Institute of the Public Service of Canada	2	141
Syndicat général du cinéma et de la télévision (CUPE LOCAL 9854)	1	122
Total	5	405
NATIONAL RESEARCH COUNCIL CANADA		
Professional Institute of the Public Service of Canada	4	1721
Research Council Employees' Association	6	2291
Total	10	4012
NATIONAL ROUND TABLE ON THE ENVIRONMENT AND THE ECONOMY		
No bargaining agents	0	24
Total	0	24
NATURAL SCIENCES AND ENGINEERING RESEARCH COUNCIL OF CANADA		
No bargaining agents	0	363
Total	0	363
NORTHERN PIPELINE AGENCY		
No bargaining agents	0	0
Total	0	0

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent
April 1, 2007 to March 31, 2008**

Other Employers (continued)

Bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
OFFICE OF THE AUDITOR GENERAL OF CANADA		
Public Service Alliance of Canada	2	475
Total	2	475
OFFICE OF THE CORRECTIONAL INVESTIGATOR		
No bargaining agents	0	25
Total	0	25
OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS		
Professional Institute of the Public Service of Canada	1	359
Public Service Alliance of Canada	1	17
Total	2	376
PARKS CANADA		
Public Service Alliance of Canada	1	7585
Total	1	7585
SECURITY INTELLIGENCE REVIEW COMMITTEE		
No bargaining agents	0	0
Total	0	0
SOCIAL SCIENCES AND HUMANITIES RESEARCH COUNCIL OF CANADA		
Public Service Alliance of Canada	1	181
Total	1	181
STAFF OF THE NON-PUBLIC FUNDS, CANADIAN FORCES		
Public Service Alliance of Canada	11	846
United Food and Commercial Workers Union	12	899
Total	23	1745
STATISTICAL SURVEY OPERATIONS		
Public Service Alliance of Canada	2	1951
Total	2	1951
Total for other employers	58	63 068
Total for all employers	84	233 429

**Table 2: Number of Bargaining Units and Public Service Employees by Bargaining Agent
April 1, 2007 to March 31, 2008**

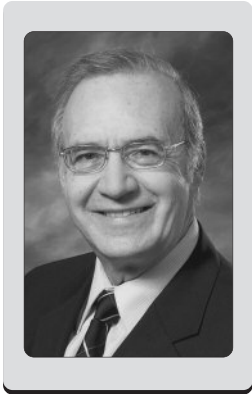
Certified Bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Association of Canadian Financial Officers	1	3399
Association of Justice Counsel	1	2138
CAW – CANADA	1	8
CAW – CANADA, Local 2182	1	339
Canadian Association of Professional Employees	2	12 721
Canadian Federal Pilots Association	1	437
Canadian Merchant Service Guild	1	1000
Canadian Military Colleges Faculty Association	1	191
Canadian Union of Public Employees, Local 2656	2	142
Communications, Energy and Paperworkers Union of Canada, Local 588	1	31
Federal Government Dockyard Chargehands Association	1	82
Federal Government Dockyard Trades and Labour Council (East)	1	846
Federal Government Dockyards Trades and Labour Council (Esquimalt, B.C.)	1	880
International Brotherhood of Electrical Workers, Local 2228	1	1060
Professional Association of Foreign Service Officers	1	1146
Professional Institute of the Public Service of Canada	19	63 266
Public Service Alliance of Canada	28	135 893
Research Council Employees' Association	6	2291
Syndicat général du cinéma et de la télévision (CUPE LOCAL 9854)	1	122
United Food and Commercial Workers Union	12	899
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN	1	5680
Total	84	232 571*

*This does not equal the 233 429 employees indicated in Table 1 because 858 of the employees in non-excluded positions included in that table are not represented by a bargaining agent.

Appendix 2

Members of the Public Service Labour Relations Board

Full-time Board members



Casper Bloom, Q.C., Ad. E.

Chairperson

Born in Montréal, Casper M. Bloom received a Bachelor of Arts from McGill University, a Master of Business Administration from the University of Western Ontario, and a Licence en Droit from the Université de Montréal. Mr. Bloom was admitted to the Bar of Quebec and began practising law at Ogilvy Renault, where he subsequently became a senior partner and continued practising until 2000.

As a specialist in labour and employment law, Mr. Bloom has been an active litigator in both official languages before many courts and administrative tribunals, including the Quebec Provincial and Superior Courts and Court of Appeal, the Federal Court, arbitration boards of several provinces, various labour relations boards, and the Quebec and Canadian Human Rights Commissions. Mr. Bloom was appointed Queen's Counsel in 1985 and Advocatus Emeritus in 2007.

From 2000 to 2002, Mr. Bloom served as President and Chief Executive Officer of the Canadian Lake Carriers Association, where he was responsible for the labour relations of all the major carriers in the Great Lakes St. Lawrence Seaway system. From 2002 to 2006, Mr. Bloom served as Legal Counsel and Director of Academic and Employee Relations at Concordia University.

Mr. Bloom has frequently been called upon by governments to advise and consult on matters related to public policy and the public interest, including electoral law, linguistic and equality rights and Canadian unity. He is recognized both nationally and internationally for his public-law advocacy, having served in many capacities, including terms as the Batonnier of the Bar of Montreal, National Chair of the Labour Law Section of the Canadian Bar Association, Chair of the Labour Law Section of Quebec, President of the Lord Reading Law Society and President of the Quebec Branch of the Canadian Bar Association. In addition, he has served as a member of the Federal Court Challenges Program, has been a Governor of the Quebec Bar Foundation and is currently a trustee of the Foundation for Legal Research. His community activities include serving on the boards of the Canadian Jewish Congress, Canadian Friends of Tel Aviv University and on the board and executive of the McGill University Health Centre. Mr. Bloom also lectured at McGill University in Labour and Employment Law from 1972 to 1977.

Mr. Bloom has received many awards and distinctions in his career, including the 1998 Award of Distinction of the Department of Justice for his contributions to Canada's legal, linguistic and cultural duality, the 2000 Award of Merit of the Barreau du Québec and the 1994 Human Rights Award of the Lord Reading Law Society.

Mr. Bloom was appointed Chairperson of the Public Service Labour Relations Board on January 2, 2007 for a period of three years.



Marie-Josée Bédard

Vice-Chairperson

Marie-Josée Bédard possesses extensive experience in labour law, labour relations and human resources. She holds a bachelor's degree in administration and a degree in civil law (*magna cum laude*), both from the University of Ottawa, and was called to the Quebec Bar in 1993.

Ms. Bédard practised labour law in a private-sector firm for over eight years. During that time, she argued numerous grievances before adjudicators and acted in other cases involving union organization, employment issues and working conditions before various administrative and judicial bodies. She prosecuted a number of cases, including those involving the application and interpretation of collective agreements, the imposition of disciplinary or administrative measures, and litigation arising from collective bargaining. Many of those cases raised complex law issues and questions of fundamental rights. As well, Ms. Bédard took part in a number of mediations and acted as a spokesperson in negotiations aimed at reaching or renewing collective agreements.

Ms. Bédard then joined the Société de transport de l'Outaouais (STO) as Director of Human Resources and Legal Counsel on labour relations. In that capacity, she was responsible for administering all human resources and occupational safety and health programs as well as the STO's labour relations. In addition, she negotiated more than five collective agreements and set up an employment equity plan, a workplace harassment prevention policy and a wage-parity process.

In 2002, Ms. Bédard was appointed Special Advisor to senior management, in addition to her responsibilities as Director of Human Resources. In September 2006, she was appointed General Manager of the STO. In that capacity, she was responsible for managing all human and financial resources at the STO, directing day-to-day operations, and chairing the management board.

Ms. Bédard was appointed as a Vice-Chairperson of the Public Service Labour Relations Board on March 10, 2008 for a period of five years.



Ian R. Mackenzie

Vice-Chairperson

Ian R. Mackenzie is a graduate of Carleton University, where he received a B.A. (Hons.) in Political Science and an M.A. in Sociology. He received his law degree from the University of Windsor and has been a member of the Ontario Bar since 1992. He worked in private practice with an Ottawa law firm from 1992 to 1993, where he practiced labour and employment law. He was a research officer with a federal public service bargaining agent from 1994 to 1997, and Executive Director of the Professional Association of Foreign Service Officers from 1998 to 2000. He was also a legal counsel with the Department of Justice in 1997-1998 and 2000-2002, working in the areas of judicial compensation and benefits and administrative law.

Mr. Mackenzie was a member of the National Joint Council from 1993 to 2000, where he served on a number of committees, including those dealing with the Foreign Service directives, workforce adjustment and employment equity. From 2001 to 2002, he was Chair of the NJC Foreign Service Directives Committee. He was a member of the Law Society of Upper Canada's Equity Advisory Group from 1999-2002. He has also taught employment law and public law at Carleton University and for the Ontario Bar Admission program. He is a member of the Ontario Labour-Management Arbitrators Association and is on the Executive Committee of the Labour and Employment Law Section of the Ontario Bar Association.

He was first appointed as a full-time member of the Public Service Staff Relations Board on July 3, 2002. He was appointed as a Vice-Chairperson of the Public Service Labour Relations Board on May 5, 2005 for a period of five years.

Mr. Mackenzie served as the Acting Chairperson from September 2, 2006 to January 1, 2007.



Michele A. Pineau

Vice-Chairperson

Michele A. Pineau is an experienced mediator and arbitrator specializing in the resolution of labour and employment disputes.

Ms. Pineau is a law graduate of McGill University (B.C.L.) and has been a member of the Quebec Bar since 1981. She received a Bachelor of Arts degree from St. Patrick's College (Carleton University) and a French Baccalaureate from the Université de Paris (Sorbonne) in 1968. She has also received extensive arbitration and mediation training in both Canada and the United States and was one of the first dispute resolution trainers in Canada.

Most recently, Ms. Pineau served as Vice-Chair of the Canada Industrial Relations Board for eight years and in 2002 was awarded the Queen's Golden Jubilee Medal for her significant contribution to its work.

Before that she conducted a private arbitration and mediation practice in Ontario and Quebec. She developed dispute resolution programs for the Department of Justice, Agriculture Canada, the Arbitration and Mediation Institute of Quebec, the Chambre des notaires du Québec, the Quebec Ministry of Hospital Services, the Canadian Dispute Resolution Corporation (Quebec), the Société Québécoise de développement de la main-d'oeuvre and the Université de Sherbrooke.

Ms. Pineau has worked as legal counsel for the Treasury Board, Revenue Canada and the Immigration and Refugee Board and has held the post of National Director of Labour Relations for Canada Post Corporation. She has also served as employer counsel for various Quebec corporations.

Prior to taking her law degree, she was a private industry human resources specialist and worked briefly as a union services officer with the Public Service Alliance of Canada (National Component) and the Pay Research Bureau.

Ms. Pineau is a Chartered Arbitrator and a Chartered Mediator (Arbitration and Mediation Institute of Canada). She is a member of the Ontario Labour-Management Arbitrators Association, the Canadian Institute for the Administration of Justice and the Canadian Council of Administrative Tribunals. She has worked throughout Canada and has participated in exchanges with labour relations boards and employment tribunals in the United States, Japan, New Zealand and Australia.

Ms. Pineau was appointed as a Vice-Chairperson of the Public Service Labour Relations Board on January 1, 2007 for a period of five years.



Roger Beaulieu

Board member

Roger Beaulieu brings to the Public Service Labour Relations Board extensive senior management level experience in providing legal advice, directing human resources, including labour relations, and negotiating mergers and acquisitions for large corporations based in Canada, the United States and globally. In the course of his career, he has been responsible for the negotiation of hundreds of collective agreements.

Mr. Beaulieu holds a B.A. and a law degree and is a member of the Quebec Bar. He began his career as chief labour lawyer for a variety of large companies beginning with Canadian National Railways. In 1977, he moved to the Iron Ore Company of Canada where he held the position of General Counsel and Senior Executive of Human Resources and was responsible for all collective bargaining agreements, arbitrations and legal disputes. He next served as Vice-President, Human Resources, Secretary and General Counsel at the Carling O'Keefe Brewing Company, where he represented the company before labour relations tribunals and superior courts. He also planned and concluded a major merger with another brewing company.

At Quebecor Printing Inc., he was responsible for the company's human resources globally and for spearheading its acquisition strategy. He established Quebecor's professional human resources department and managed 78 collective agreements with 15 international unions. At the Laurentian Bank of Canada, the only unionized Canadian bank, Mr. Beaulieu was again Vice-President of Human Resources, Labour Relations and Acquisitions.

At the creation of NAV CANADA and the privatization of air traffic control, Mr. Beaulieu negotiated that organization's first collective agreement. Most recently, Mr. Beaulieu was Canadian Vice-President of Business Development for Computer Sciences Corporation where he focused on negotiating major global contracts.

Mr. Beaulieu was appointed as a full-time member of the Public Service Labour Relations Board on November 19, 2007 for a period of five years.

Dan Butler

Board member

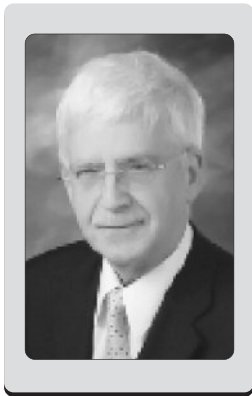


Dan Butler brings to the Public Service Labour Relations Board more than 25 years of experience in labour relations in the public sector. After undergraduate and graduate studies in political science at York University and Carleton University, Mr. Butler joined the Professional Institute of the Public Service of Canada in January 1980 as a research officer.

At PIPSC, he subsequently served as Chief Research Officer (1981 to 1986), Negotiator (1986 to 1997) and finally, Head of Negotiations and National Employment Relations (1999-2001). Mr. Butler's primary focus throughout these assignments was on collective bargaining and dispute resolution, with negotiation experience under six different labour laws, representing scientific and professional employees working for a dozen different public employers. Mr. Butler also acted as a principal union spokesperson on national files including classification modernization, pay equity and staffing reform. From 1997 to 1999, he provided policy and strategic advice to the Public Service Commission under an interchange agreement, as Senior Advisor and Project Leader in the PSC Research Directorate.

In May 2001, Mr. Butler was appointed General Secretary of the National Joint Council of the Public Service. In this capacity, Mr. Butler undertook broad responsibilities as a third-party neutral facilitating relations between the Government of Canada and its bargaining agents. The mandate of the NJC as the Public Service "Forum of Choice" included co-development of directives establishing terms and conditions of employment with public service-wide application, national consultations on employer policies and legislative modernization, resolution of NJC grievances and insurance plan appeals, and the development of methodologies for a comprehensive compensation research capacity. Mr. Butler also held parallel responsibilities as General Secretary of the Public Service Commission Advisory Council and as Co-Secretary of the *Public Service Modernization Act* Union Management Advisory Committee.

Mr. Butler was appointed as a full-time member of the Public Service Labour Relations Board on October 24, 2005 for a period of three years.



John A. Mooney

Board member

John Mooney possesses extensive experience in adjudicating employment cases as well as in managing quasi-judicial bodies related to employment litigation. In addition, he has participated in the design and drafting of laws, regulations and recourse mechanisms related to employment, most notably, the federal *Public Service Employment Act (PSEA)*.

Mr. Mooney holds a B.A from the University of Ottawa along with a Licence in Civil Law (LL.L).

Most recently, Mr. Mooney held the position of Director, Regulations and Legislation with the Public Service Commission of Canada (PSC), where he was responsible for managing the development of the policies and regulations needed to implement the *PSEA*.

As part of the Privy Council Task Force on Modernizing Human Resources Management from 2001 to 2003, he helped draft the new employment legislation for federal public service employees that became the *PSEA*. Before that, he worked as a counsel for the PSC. He was also Acting Director of Recourse Operations of the PSC where he managed quasi-judicial investigations and appeals under the previous *PSEA* and introduced mediation into the appeals process. He was Chairperson of the Appeal Board for the PSC from 1992 to 1996.

Mr. Mooney was also Senior Legal Officer of the International Civil Service Commission of the United Nations in 1998 and 1999, where he defended cases before the International Labour Organization Administrative Tribunal and the United Nations Administrative Tribunal. He has also acted as counsel for pension applicants before the Canadian Pension Commission. Prior to joining the public service, Mr. Mooney was Legal Counsel of the Quebec Chamber of Commerce. He also worked as a legal analyst for the Canadian Union of Public Employees.

Mr. Mooney was appointed as a full-time member of the Public Service Labour Relations Board on August 7, 2007 for a period of four years.



Renaud Paquet

Board member

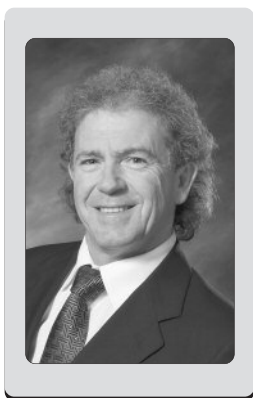
Renaud Paquet possesses wide-ranging labour relations experience as a practitioner, trainer and third party in the federal public service, municipal government and the private sector. Mr. Paquet holds a Ph.D. in Industrial Relations from the Université de Montréal and a Master's degree in the same discipline from the Université du Québec en Outaouais. He also pursued post-doctoral studies at the New York State School of Industrial Relations at Cornell University in Ithaca, New York.

Most recently, Mr. Paquet was a professor at the Université du Québec en Outaouais in Gatineau, Quebec. He began his career at the university in June 1993, where he taught in the fields of collective bargaining, applying collective agreements, labour relations in the public sector and statistical analysis. Over the years, he published a large number of papers and numerous books on diverse topics, particularly labour relations, conflict management and collective bargaining. He also participated in many commissions and work groups, such as the Advisory Committee on Labour Management Relations in the Federal Public Service (the Fryer Committee). He has received numerous awards for teaching and research throughout his academic career.

Since 2002, Mr. Paquet has acted as an arbitrator under the *Canada Labour Code*. Between 1975 and 1991, before embarking on his academic career, he held a variety of positions in the federal public service. From 1982 to 1989, he was National President of the Canada Employment and Immigration Union, and he was a member of the National Board of Directors of the Public Service Alliance of Canada.

Mr. Paquet brings to the Board solid academic training, wide-ranging experience in labour relations and a deep knowledge of the public sector.

Mr. Paquet was appointed as a full-time member of the Public Service Labour Relations Board on March 3, 2008 for a period of five years.



Dan R. Quigley

Board member

Mr. Quigley attended the School for Workers at the University of Wisconsin where he successfully completed his studies in labour relations and collective bargaining.

Mr. Quigley began his public service career as a boiler-maker apprentice in Victoria in 1976. He became a journey person in 1980 and, from 1986 until his appointment to the Public Service Staff Relations Board, he was the National President of the Federal Government Dockyards Trades and Labour Council (Esquimalt, British Columbia).

Mr. Quigley was a member of the National Joint Council of Canada for some 15 years, where he was involved in major policy developments and directives such as workforce adjustment, civilian reduction plan, and the Public Service Health Care, Disability and Dental Plans.

He has held various positions, most notably as Chief Negotiator for the Federal Government Dockyards Trades and Labour Council (Esquimalt); Chairman of the National Joint Council Union-Management Relations Committee; Co-Chair and a founder of the Public Service Commission Advisory Committee; Co-Chair of the Department of National Defence (DND) Union-Management Human Resources Sub-Committee and National Advisor to DND's Employee Assistance Program; and a member of the International and Canadian Representatives Liaison Committee.

Mr. Quigley has worked with and advised the Civil Service Commission and the National Unions of the Philippines on collective bargaining, staffing and labour relations.

Mr. Quigley was first appointed as a full-time member of the Public Service Staff Relations Board on November 19, 2001. His appointment was renewed on November 19, 2003, for a period of three years. His appointment was continued with the Public Service Labour Relations Board for the remainder of his term. Mr. Quigley was reappointed as a member of the Board for a term of three years on November 19, 2006.

Part-time Board members

Christopher James Albertyn

Christopher James Albertyn has been a mediator and an arbitrator for more than 20 years and is currently a Vice-Chair of the Ontario Labour Relations Board. He was educated in South Africa and holds a Bachelor of Arts (Honours), a Baccalaureus Procuratoris and a Bachelor of Laws. He has practised as an attorney of the Supreme Court of South Africa and the High Court of Lesotho. He was the founding director of the Centre for Socio-Legal Studies at the University of Natal and served as a delegate to the Convention for a Democratic South Africa. He is on arbitration panels in Canada, South Africa and the United States and has been admitted to the Minister's list of arbitrators of the Ontario Office of Arbitration. Mr. Albertyn was appointed as a part-time member of the Public Service Labour Relations Board on February 18, 2008 for a period of five years.

Bruce Archibald, Q.C.

Bruce Archibald is a professor at Dalhousie Law School where he has taught a variety of subjects since 1976, including Labour Law, Criminal Law, Criminal Procedure, Evidence, Comparative Law and Restorative Justice. In addition to his teaching duties, Professor Archibald has acted as a labour arbitrator in the public and private sectors since 1984 and has been a part-time Vice-Chair of the Nova Scotia Labour Relations Board since 1992. He is currently part-time Chair of the Nova Scotia Civil Service Employee Relations Board. He also chairs Nova Scotia's Provincial Court Judges' Salary and Benefits Tribunal and the province's Correctional Facilities Employee Relations Board. He has served as a consultant to the Law Reform Commission of Canada, the federal Department of Justice, the Nova Scotia Department of Justice and the Royal Commission on the

Donald Marshall Jr. Prosecution. Professor Archibald's current research interests include labour law, restorative justice, human capital investment strategies and social capacity building. He was appointed as a part-time Board member of the Public Service Labour Relations Board on December 9, 2004 for a period of five years.

Ruth Elizabeth Bilson, Q.C.

Professor Bilson is a professor at the College of Law at the University of Saskatchewan. She holds a B.A., an M.A., an LLB and a PhD and is a Member of the Law Society of Saskatchewan. Professor Bilson has served as Assistant Dean of Law and Dean of Law at the College as well as Assistant Vice-President (Administration) for the University. She held the position of Chair of the Saskatchewan Labour Relations Board from 1992 to 1997. She has published and lectured widely on labour and administrative law. In 2000, she received the designation of Queen's Counsel. She was appointed for a second term (five years) as a part-time member of the Public Service Labour Relations Board on December 3, 2007.

George P.L. Filliter

George P.L. Filliter received an LLB from the University of New Brunswick in 1978. He has practised law since then, specializing in labour and employment law, administrative law and general litigation. In 1985 he obtained a Master of Laws degree from the London School of Economics. In private practice he has represented both labour and management and has served as a third-party arbitrator. He was appointed as Chair of the Labour and Employment Board of New Brunswick in March 2003. He also lectures at the University of New Brunswick. He was appointed as a part-time member of the Public Service Labour Relations Board on January 14, 2008 for a period of five years.

Deborah M. Howes

Deborah M. Howes has more than 25 years' experience in dispute resolution and labour relations. She serves as an arbitrator and mediator on a variety of provincial, national and international rosters. She is President of High Clouds Incorporated, an Alberta-based company that provides seminars and dispute resolution services. A Chartered Arbitrator and Chartered Mediator, Ms. Howes holds a Bachelor of Laws and a Conflict Management Certificate from the Alberta Arbitration and Mediation Society. She served as Vice-Chair with the Alberta Labour Relations Board for 11 years and before that practised law at the firm of Duncan and Craig. Co-founder of the Foundation of Administrative Justice, a non-profit society dedicated to training the members and staff of administrative tribunals, Ms. Howes continues to serve as its Executive Director. Ms. Howes was appointed as a part-time member of the Public Service Labour Relations Board on August 1, 2007 for a period of three years.

Margaret E. Hughes

Margaret E. Hughes is Professor Emerita of Law at the University of Calgary. Professor Hughes holds a B.A., a Bachelor and Master's of Laws and a Master's of Social Work. From 2001 to 2005, she was the Associate Vice-President (Human Resources) at the University of Calgary and provided strategic leadership as a member of the University's bargaining team during negotiations with the Faculty Association in 2002 and 2004. Professor Hughes previously served as Dean of the Faculty of Law during which time she negotiated the establishment and funding of the law faculty's first graduate program and co-chaired a successful initiative to establish an interdisciplinary research institute for the study of law and the family. Professor Hughes co-chaired the University of Calgary's Annual Labour Arbitration Conference for 10 years, and she has served as an arbitrator in Alberta. She has also taught law at the University of Saskatchewan and the University of Windsor. Professor Hughes was appointed as a part-time member of the Public Service Labour Relations Board on August 1, 2007 for a period of three years.

Georges Nadeau

Georges Nadeau received a Bachelor's degree in business administration in 1978 from the Centre des études universitaires dans l'Ouest québécois of the Université du Québec. From 1978 to 1983, Mr. Nadeau served as a union representative with the Supply and Services Union, a component of the Public Service Alliance of Canada. In 1983, he became an officer with the Alliance's grievance and adjudication section, a position he occupied until 1996. During those 13 years, Mr. Nadeau argued a large number of grievance cases in a variety of jurisdictions in Canada. From 1996 to 1998, he was in charge of coordinating the Alliance's collective bargaining section.

In 1998, the Professional Institute of the Public Service of Canada, one of Canada's largest professional unions, hired Mr. Nadeau as Senior Manager, Representational Services, a position he occupied until 2005. Mr. Nadeau's responsibilities included collective bargaining, member representation services, research, pension and benefit services, and recruiting and retaining union delegates, members and bargaining units.

In 2004-2005, Mr. Nadeau co-chaired the task force on corrective action in staffing matters set up by the Deputy Ministers' Sub-Committee on Staffing and Staffing Recourse. From 2001 to 2005, he sat on the National Joint Council Union-Management Relations Committee. In 1995-1996 he represented the Alliance on the Canadian Labour Congress task force on the revision of the *Canada Labour Code*. From 1992 to 1995, he was a member of the Conseil du module des études de premier cycle en relations industrielles of the Université du Québec.

Mr. Nadeau was appointed as a Vice-Chairperson of the Public Service Labour Relations Board in June 2005 and served in that capacity until his retirement in early 2008. On January 29, 2008 he was appointed as a part-time Board member for a two-year term.

Allen Ponak

Allen Ponak is Professor Emeritus of Industrial Relations at the University of Calgary. He holds a Bachelor of Arts, a Master of Labour and Industrial Relations and a Ph.D. in Industrial Relations. From 1976 to 2006, he was a professor at the University of British Columbia, McGill University and the University of Calgary. His research has been widely published and focuses on public policy, dispute resolution and public sector labour relations. He co-authored the leading textbook *Union-Management Relations in Canada*, served as National President of the Canadian Industrial Relations Association and chairs the editorial board of *Relations industrielles / Industrial Relations*. Dr. Ponak produced and narrated the documentary film *Beyond Collision: High Integrity Labour Relations*, which won the Silver Screen Award at the 2006 Los Angeles International Video and Film Festival. As an arbitrator since 1984, he has issued more than 450 decisions. He is a member and Vice-Chair (Canada) of the National Academy of Arbitrators. He founded the Calgary Labour Arbitration and Policy Conference and chaired it from 1983 to 2007. Dr. Ponak was appointed as a part-time member of the Public Service Labour Relations Board on February 18, 2008 for a period of four years.

John James Steeves

John James Steeves is an arbitrator, mediator, barrister and solicitor in Vancouver, British Columbia. He has been involved in a number of disputes in the federal and provincial sectors. Mr. Steeves holds B.A., M.A. and Bachelor of Law degrees and is a Chartered Arbitrator and a member of the law societies of British Columbia and Yukon. Mr. Steeves is also a public-interest representative of the Discipline Committee of the Canadian Society of Immigration Consultants. He was a vice-chairperson with the Labour Relations Board of British Columbia from 2006 to 2007, and he was Chief Appeal Commissioner with the Workers Compensation Board of British Columbia from 2000 to 2002. He has spoken and written on various topics in labour relations and administrative justice and is a chapters' author of a major revision of Palmer's *Collective Agreement Arbitration in Canada* (LexisNexis). Mr. Steeves was appointed as a part-time member of the Public Service Labour Relations Board on December 3, 2007 for a five-year term.

Appendix 3

Cases Before the Public Service Labour Relations Board 2007-2008

	Number of cases brought forward from previous years	Number of new cases received	Total number of cases	Number of cases closed (includes cases settled, withdrawn and decided)			Number of cases carried forward to 2008-2009	Decisions or orders	Number of cases covered by decisions or orders
				settled	withdrawn	decided			
Grievances	2992	893	3885	286	609	133	2857	65	133
Total grievances	2992	893	3885	1028			2857	65	133
Complaints of unfair labour practices	89	63	152	5	19	29	99	15	29
Complaints under <i>Canada Labour Code</i>	18	3	21	4	1	3	13	3	3
Total complaints	107	66	173	61			112	18	32
Certifications	0	1	1	1 decided			0	1	1
Revocations of certification	3	1	4	4 decided			0	2	4
Determination of successor rights	0	0	0	0			0	0	0
Determination of management and confidential positions	64	530	594	310 decided			284	310	310
Designation of essential services positions	0	7	7	4 withdrawn			3	0	0
Applications for review of Board decisions	2	3	5	1 withdrawn 4 decided Total: 5			0	4	4
Requests for extension of time	123	27	150	25 settled or withdrawn 16 decided Total: 41			109	16	16
Total applications	192	569	761	365			396	333	335
TOTAL	3291	1528	4819	1454			3365	416	500

Appendix 4

Notable PSLRB Decisions

Human rights

The *PSLRA* gave grievance adjudicators a new jurisdiction to decide cases involving the alleged violation of human rights. This power, which has yet to be fully defined, was central to the case of **Pepper v. Treasury Board (Department of National Defence)**, 2008 PSLRB 8.

In this case, a grievor was terminated after a lengthy period of leave during which the grievor and the employer had engaged in a mediation process. The adjudicator ordered the grievor reinstated, finding that the employer had not fulfilled its duty to accommodate the grievor, contrary to its obligations under the *Canadian Human Rights Act*, and noting a serious breach of confidentiality in the mediation process. Given the importance of mediation to resolving hundreds of cases filed with the PSLRB, the case underlined the necessity for all parties to understand and respect the confidentiality of the mediation process.

Power to award interest

Do adjudicators have the power to grant interest on overdue payments? This question remains to be settled. In **Nantel v. Treasury Board (Correctional Service of Canada)**, 2007 PSLRB 66, the adjudicator awarded the grievor interest on retroactive pay. The employer objected that the adjudicator did not have the jurisdiction to award interest, based on the common law principle that interest cannot be claimed against the Crown.

The grievor argued that the Crown was liable to pay interest in order to make a grievor whole, given that a contractual relationship existed because of the bargaining regime and given that legislative changes had been made to the *Federal Courts Act* and the *Crown Liability and Proceedings Act* that specifically modified the common law principle.

The fact that the Crown was bound by contract through the collective agreement and the fact that the adjudicator had authority to order compensation for harm done by the employer led the adjudicator

to find that he had the power to grant interest on the retroactive payment.

The Federal Court, on judicial review (2008 FC 84), however, overturned the adjudicator's decision.

Extensions of time

Under the new *PSLRB Regulations*, the Chairperson of the Board has the authority to grant extensions of time for the filing of grievances. The Board has developed a consistent approach to such requests, based on the criteria outlined in **Schenkman v. Treasury Board (Public Works and Government Services Canada)**, 2004 PSSRB 1.

In making a determination to extend time, the following criteria are usually considered:

- clear, cogent and compelling reasons for the delay;
- the length of the delay;
- the due diligence of the applicant;
- the balancing of the injustice to the employee against the prejudice to the employer in granting an extension; and
- the chance of success of the grievance.

This approach was applied in a number of decisions in 2007-2008: for example, **Thompson v. Treasury Board (Canada Border Services Agency)**, 2007 PSLRB 59, and **Gill v. Treasury Board (Department of Human Resources and Skills Development)**, 2007 PSLRB 81.

The approach was confirmed by the Federal Court in **Vidlak v. Canada (Attorney General)**, 2007 FC 1182. In this case, Mr. Vidlak sought an extension of time to file a grievance against his termination by his former employer, CIDA.

In January 2001, Mr. Vidlak was told that he should find another position within CIDA or in another department. After a series of temporary secondments, he was told in July 2003 that his position at CIDA was being terminated, and he was deployed to another department. Mr. Vidlak alleged before the adjudicator that these measures were taken because he had questioned financial arrangements with foreign recipients of CIDA grants.

The criminal behaviour of employees presents challenging issues for public service employers as it does for employers in other spheres.

In October 2003, Mr. Vidlak wrote to the Minister responsible for CIDA to denounce certain of these arrangements. The Minister commissioned an independent study that ultimately confirmed some of Mr. Vidlak's assertions. Mr. Vidlak received the report at the end of February 2005. In November 2005, Mr. Vidlak applied to the Chairperson for an extension of time to file a grievance against CIDA relating to the difficulties that had begun in 2001 and that had culminated with the termination of his position in July 2003.

In deciding the case, the Vice-Chairperson applied the Schenkman analysis, ruling that Mr. Vidlak had presented no clear and cogent evidence to explain the delay in filing a grievance and little evidence that the grievance would be successful should it go forward. The Federal Court upheld the ruling, which confirmed the soundness of applying the Schenkman analysis to such applications.

The issue in applications for time extensions often comes down to the timelines that apply. Timelines generally start to run when the grievor first becomes aware of the employer's decision, action or omission.

However, in **Mark v. Canadian Food Inspection Agency**, 2007 PSLRB 34, the grievor argued that ongoing discussions had delayed the filing of the grievance. In that case, the grievance concerned sick leave. The grievor presented a request for sick leave for five days in October 2004. On December 3, 2004, the employer verbally informed the grievor that sick leave would not be granted for those days since there was no supporting documentation. On December 22, 2004, the employer confirmed this decision in writing. The grievor countered with some medical documents. On February 17, 2005, the employer granted sick leave for two days but maintained the refusal for the other three. On February 24, 2005, the grievor filed a grievance for those three days. The grievances were denied at each level, with the employer stating its objection each time that the grievance had been submitted too late.

The Vice-Chairperson ruled that the grievance was indeed out of time and that no extension would be granted. Ongoing discussions did not change the fact that the grievor had been fully informed of the employer's decision as of December 3, 2004, and in

writing on December 22, 2004. Applying the Schenkman analysis, the Vice-Chairperson ruled that there was no clear and compelling reason for the grievor to wait to file his grievance, and that given no persuasive reasons to the contrary, "labour relations policy considerations of closure and workplace stability" should prevail.

In **McWilliams et al. v. Treasury Board (Correctional Service of Canada)**, 2007 PSLRB 58, an adjudicator also established, based on the new *Regulations*, that where an employer does not raise the timeliness issue at each level of the grievance process, and again when the grievance is referred to adjudication, the employer is considered to have waived its right to object to the referral on the basis of time. In this case, grievances were filed by the grievors in 2006 alleging that they had been improperly paid since 1996. The employer objected to the adjudicator's jurisdiction to consider the grievances on the grounds that they were untimely.

Under the new *Regulations*, however, there are procedural requirements to be followed if a party seeks to raise the issue of timeliness. Although neither party raised the issue, the adjudicator found that he was under a positive obligation to do so himself. The employer had failed to comply with the *Regulations* by not rejecting the grievances based on timeliness at the first level of the grievance procedure, and by failing to issue a response at the third level of the grievance procedure. Therefore, the employer had not met the threshold condition that would allow the adjudicator to consider the timeliness objection. The adjudicator accepted the jurisdiction to consider the grievances.

Criminal offences

The criminal behaviour of employees presents challenging issues for public service employers as it does for employers in other spheres. Employers must decide the weight to give criminal charges and criminal investigations and the extent to which an employee's continued employment should be contingent on the result of criminal proceedings.

The Board heard two key cases dealing with criminal behaviour in 2007-2008. One dealt with off-duty behaviour and the other dealt with on-duty misconduct that could eventually lead to criminal charges.

Under the *PSLRA*, it is the employer's motive when reacting to an allegation of criminal conduct on the part of an employee that determines the jurisdiction of the adjudicator.

In **Basra v. Deputy Head (Correctional Service of Canada)**, 2007 PSLRB 70, the grievor was a correctional officer who was suspended indefinitely after his supervisor received a letter from the Crown office concerning an allegation of sexual assault. In November 2004, a female complainant had given information to the police about a sexual assault involving the grievor. He was questioned by the RCMP at the time and released. The grievor was only charged 18 months later, at the same time as the Correctional Service was informed of the matter.

The Correctional Service suspended the grievor without pay in April 2006, pending a disciplinary investigation that was to be completed by May 2006. At the time of the hearing in October 2006, the investigation had still not been completed, nor had the grievor been contacted by the investigators. The adjudicator found as a fact that there had been no consideration of the grievor's unblemished work record before the suspension was imposed. The Correctional Service had received no information about the case other than the initial letter about the November 2004 complaint and the imminent charge.

The grievor argued essentially that a proper risk assessment had not been carried out. The Correctional Service relied on the fact that the charge was serious and on its perception that the grievor's continued employment could bring discredit to the Correctional Service. Other employees, male and female, testifying on behalf of the grievor, stated that he had always done his job competently and that they felt confident that they could continue to work with him, despite the criminal charge.

Although the Correctional Service argued that the suspension was administrative and not disciplinary, the adjudicator found otherwise. Given the length of time that had elapsed without serious pursuit of the investigation by the employer, the suspension had become disciplinary. The adjudicator allowed the grievance, stating that: "It was not explained in the evidence how Mr. Basra would present a risk to himself or others if he continues to work in a CX-01 position." The grievor was to be presumed innocent until found guilty in a court of law; in the meantime, the employer had not established that maintaining him in his position would cause any hardship to the

employer, the other employees, the inmates or the general public. The adjudicator quashed the grievor's suspension.

The employer applied for judicial review, which was allowed by the Federal Court (**Canada (Attorney General) v. Basra**, 2008 FC 606). Justice Pinard held that the adjudicator, in deciding that he had jurisdiction because this was a disciplinary matter, had applied the wrong test. To determine whether the suspension was administrative or disciplinary, the adjudicator should have considered the employer's intentions. The matter was remitted to a different adjudicator for a redetermination on the merits of the case.

In **Laplante v. Treasury Board (Canada Border Services Agency)**, 2007 PSLRB 104, the grievor's initial suspension pending investigation and subsequent termination were both upheld by the adjudicator, even though no criminal charges had been laid at the time of the hearing.

In that case, the grievor worked as a border inspector at a small border crossing in rural Quebec. The police received information that a drug shipment was due to cross the border at a time the grievor was on duty. A sting operation was carried out. The grievor denied any knowledge of the drug shipment and any complicity with his brother, who was the importer. The grievor emphasized at the hearing that nothing had yet been proven in a court of law. However, the adjudicator found, on a balance of probabilities, that the grievor had been an accomplice in the importation of the drug shipment. The adjudicator found that the employer had valid grounds for dismissing the grievor based on the evidence presented in the case.

Under the *PSLRA*, it is the employer's motive when reacting to an allegation of criminal conduct on the part of an employee that determines the jurisdiction of the adjudicator, as the Federal Court decision in *Basra* shows. If the measure taken is administrative, the adjudicator has no jurisdiction. In the case of termination because of misconduct, the employer's action is clearly disciplinary. But when an employer suspends an employee pending an investigation, and when there has been no misconduct in the workplace itself, it may become more difficult to establish the disciplinary nature of the measure.

The limits of adjudicators' jurisdiction arises as an issue in many cases and is further defined by case law.

Jurisdiction of adjudicators

The jurisdiction of adjudicators is defined by statute — the *PSLRA*. The limits of their jurisdiction arises as an issue in many cases and is further defined by case law.

In **Dubé and Piton v. Treasury Board (Department of National Defence)**, 2007 PSLRB 77, the employer objected to the adjudicator's jurisdiction because the contested decision was not directly covered by the collective agreement. The grievors had both requested leave with pay to attend a medical appointment and had been denied. They were told to use sick-leave credits instead.

The collective agreement did not provide for leave with pay for medical appointments. It simply gave the employer the discretion to grant leave with or without pay for situations not specifically covered by the collective agreement. Two other authorities applied: a Treasury Board policy on leave with pay, which stated that it was the employer's practice to grant up to one-half day for routine medical appointments and the Civilian Personnel Administrative Order, which allowed for such a practice.

Although the adjudicator found that he did not have jurisdiction under the collective agreement, he ruled that "an adjudicator can assess the employer's discretionary authority under the collective agreement when the employer has acted in a manner that is discriminatory, arbitrary or in bad faith" and concluded that such was the case here. The employer had acted in a manner that was contrary to past practice and the expectations of the employees, in an arbitrary fashion. Leave with pay was granted for the appointments.

The grievor in **Spencer v. Deputy Head (Department of the Environment)**, 2007 PSLRB 123, was on seasonal layoff from Parks Canada when she won a competition for term employment at Environment Canada. She won a subsequent competition within Environment Canada for another term position, which was extended. The terms added up to the three-year period that, according to the employer's policy, allowed for the transition from term employment to indeterminate status. However, the employer did not feel under an obligation to grant her an indeterminate position, since her substantive position was unclear.

The adjudicator found that she did not have jurisdiction to determine whether the grievor should be granted indeterminate status. The *PSLRA* gives the adjudicator limited jurisdiction. The action of the employer — to not grant indeterminate status — could not be considered a termination. An application for judicial review of this decision is now before the Federal Court.

In **Matear v. Treasury Board (Department of Industry)**, 2008 PSLRB 11, the grievor sought the enforcement of his interpretation of a pre-hiring agreement made with the employer. The pre-hiring agreement had provided that he would be paid at the mid-range of the applicable salary scale. A year and a half after being hired, a new collective agreement had been signed, which resulted in a modification of the salary scale. The salary the grievor had been offered was now at the fourth step of a nine-step scale, instead of the fifth as before. The grievor argued he was entitled to the new mid-range salary, retroactively.

The employer objected that the adjudicator did not have jurisdiction to decide a matter that was related to a pre-hiring agreement rather than to a collective agreement. However, the adjudicator found that since the matter had arisen because of the new terms of a collective agreement, there was a sufficient link to consider the grievance "related to" the interpretation or application of the collective agreement. He dismissed the objection.

In **Estwick v. Canada (Attorney General)**, 2007 FC 894, the grievors were hired on contract by the Correctional Service of Canada to work on a sex offender program in a correctional facility. Their contracts were renewed a number of times. At one point, for income tax purposes, they were deemed to be employees by the Canada Revenue Agency (CRA). In addition, the CRA required the Correctional Service to pay Canada Pension Plan and Employment Insurance premiums on their behalf. Despite this, the Correctional Service continued to consider them contractors. When the employer ended their contract, they grieved what they considered to be wrongful dismissal.

The adjudicator refused to take jurisdiction on the matter, having found that since the grievors had never been hired under the *Public Service Employment Act*, they could not be considered "employees" and thus had no recourse under the *PSLRA*.

The issue of jurisdiction is sometimes raised but defeated as an objection because the underlying motivation for a measure is disciplinary, even though the employer describes it as administrative.

On judicial review, the Federal Court first established that although the matter was one of jurisdiction, the applicable standard of review was patent unreasonableness (jurisdictional issues are usually dealt with on a standard of correctness). The issue according to the Court was the level of formality necessary for employment to have occurred under the *PSEA*.

Based on the Supreme Court of Canada's landmark decision on this issue in **Canada (Attorney General) v. Public Service Alliance of Canada**, [1991] 1 S.C.R. 614 ("Econosult"), the Federal Court ruled that the adjudicator's decision was not patently unreasonable. There was no evidence of a position being created or staffed under the *PSEA* and no instrument of appointment. In other words, there had never been an appointment under the *PSEA*. The grievors were arguing that they were in a de facto position, exactly the situation which the Supreme Court had clearly rejected in *Econosult*.

Discipline

The issue of jurisdiction is sometimes raised but defeated as an objection because the underlying motivation for a measure is disciplinary, even though the employer describes it as administrative. In **Courtemanche v. Parks Canada Agency**, 2007 PSLRB 119, the employer imposed a one-day suspension on the grievor for having taped to her locker an historic quotation that the employer perceived as insubordinate ("I should like to see, and this will be the last and most ardent of my desires, I should like to see the last king strangled with the guts of the last priest.") The employer then proceeded to temporarily transfer the grievor to another work location, against her wishes, and then made the transfer permanent.

The employer objected to the adjudicator's jurisdiction to issue a decision on the temporary transfer, which it characterized as an administrative measure, and contested the adjudicator's jurisdiction to issue a decision on the permanent transfer, arguing that it did not form part of the grievance that was referred to adjudication, since the grievance referred only to the temporary transfer. The adjudicator found that the employer had blown the incident out of proportion and that the grievor had never intended to threaten her managers nor challenge their authority. He held that the transfer

was motivated by bad faith, and, given that finding, that he had jurisdiction to reinstate the grievor in her original position and location.

In **Demers v. Deputy Head (Correctional Service of Canada)**, 2007 PSLRB 89, the issue was whether the employer had been unreasonable in forbidding the grievor to wear a tie to work. The grievor worked as a correctional officer. He was found to be insubordinate and fined \$75 for insisting on wearing a tie with his new uniform even though the tie was no longer part of it. The employer and the union had agreed on the uniform but not on the enforcement policy for wearing it. The supervisors' ridicule of the grievor in front of his peers, insistence that he not wear a tie and ultimate discipline caused the grievor to take sick leave and eventually disability leave.

The employer ordered the grievor to attend two psychiatric assessments to determine his fitness for work. The second assessment concluded that the grievor had been traumatized by the employer's actions to the point that he would be unable to return to the workplace unless the employer allowed him to wear his tie. It was the psychiatrist's view that after 28 years of wearing a tie, it had become part of his persona in dealing with inmates and that he could not work in a detention facility without one. Accordingly, the grievor could not return to work unless the employer relented on its decision.

The employer's objection to the adjudicator's jurisdiction to examine the dress code was dismissed because the \$75 penalty imposed on the grievor for insubordination was an issue of discipline with a financial penalty, thus making it adjudicable under the *PSLRA*.

The adjudicator reviewed the jurisprudence of the Board and the private sector concerning the reasonableness and enforceability of a dress code. While the employer may apply a dress code, it must be workplace appropriate and reasonably applied, as well as being considerate of individual employees. The adjudicator found that the policy had been enforced flexibly except in the case of the grievor, where it had been strictly enforced. The wearing by employees of a mix of the old and the new uniform as well as toques as scarves that were not part of the uniform was tolerated by the employer. It was only the grievor who was disciplined.

Both cases point to the fact that while employers are within their rights to impose discipline to ensure a functional workplace, they must exercise care to respect the boundaries set by individual employees to protect their privacy and dignity.

The adjudicator held that the wearing of the tie did not affect the grievor's work since he worked the evening shift and had no contact with the public. Therefore, the employer's operations or image were not at risk.

The adjudicator allowed the grievance, ruling that the discipline was improper and that the fine was inappropriate. The issue of compensation was returned to the parties, but the adjudicator remained seized of the matter should the parties be unable to agree. The employer has applied for judicial review of the adjudicator's decision.

Both cases point to the fact that while employers are within their rights to impose discipline to ensure a functional workplace, they must exercise care to respect the boundaries set by individual employees to protect their privacy and dignity.

Unfair labour practices

The *PSLRA* provides that an employee may present a complaint against an employer for interfering in the activities of an employee organization. The following case deals with what is necessary to make a finding that a complaint is well founded.

In **Perka et al. v. Department of Transport and Treasury Board**, 2007 PSLRB 92, the complainants alleged that the respondents had unlawfully interfered in their right to participate in the affairs of an employee organization, contrary to the *PSLRA*. The bargaining agent and two of its representatives for the Aircraft Operations Group bargaining unit complained that the respondents had interfered with their representation of employees and had sought to restrain an employee from seeking their representation. The Board found that the respondents had contravened the *PSLRA* by taking a disciplinary action against the local representatives who had questioned staffing practices and were thus discharging their statutory duty of fair representation. The Board also found that the respondents had contravened the *PSLRA* by instructing an employee not to speak to the bargaining agent representatives.

Judicial review of PSLRB cases

The decisions of the Board and its adjudicators are subject to judicial review by the Federal Court and the Federal Court of Appeal. Only a very small number of decisions have been overturned upon

judicial review. For example, in the five-year period ending March 31, 2008, 97 of the Board's 698 decisions (14%) had been referred to the Federal Court and only 12 (2%) had been overturned.

Since 1997, there have been three standards of review: "correctness," where the reviewing court shows the least deference to the original decision-maker, "patent unreasonableness," where the court shows the most deference and only overturns decisions that are obviously unreasonable, and between the two, "reasonableness *simpliciter*," where the decision stands if it is rational, even if the court might have decided differently.

The law changed considerably in the period under review with the Supreme Court decision in **Dunsmuir v. New Brunswick**, 2008 SCC 9. Here the Supreme Court did away with the distinction between the standard of reasonableness *simpliciter* and patent unreasonableness. The Court stated: "[t]here cannot be shades of irrationality," quoting Professor David Mullan approvingly.

The Federal Court of Appeal referred to the *Dunsmuir* decision in **Canada (Attorney General) v. Grover**, 2008 FCA 97, in a brief analysis of the standard of review. In effect, the Court simply stated that the adjudicator's decision fell within the range of reasonable outcomes. The Court spent no time establishing which of the standards — correctness or reasonableness — should apply.

A recent decision of the Federal Court also applied the *Dunsmuir* decision to determine the standard of review. In **Canada (Procureur général) c. Lamothe et al.**, 2008 CF 411, the issue was whether veterinarians employed by the Canadian Food Inspection Agency and on mandatory training were entitled to be compensated for their traveling time to the training site. The adjudicator had ruled that they were entitled to such compensation, since she found that mandatory training was equivalent to work. The collective agreement specifically excluded compensation for traveling to training or conference sites.

Both parties agreed that the standard of review was patent unreasonableness, perhaps following the case law that states that the interpretation of the collective agreement is reviewable on a standard of patent unreasonableness (see, for example,

The hope is that *Dunsmuir* will simplify an area of law that has become extremely complex, and somewhat contradictory.

Wry v. Canada (Attorney General), 2007 FC 1038). However, the Federal Court stated that *Dunsmuir* offered only two choices, correctness or reasonableness. Since there was no applicable privative clause in the *PSSRA*, and since this was, according to the Court, a jurisdictional issue (whether the adjudicator had gone beyond her jurisdiction in amending the collective agreement), the standard was correctness. The Court ruled that the adjudicator had wrongly decided the entitlement to compensation for traveling time to training and conference sites.

The hope is that *Dunsmuir* will simplify an area of law that has become extremely complex, and somewhat contradictory. Since *Dunsmuir* occurred rather late in the year (March 2008), our summary of judicial review by the Federal Courts is still coloured by the presence of the three standards of review.

Some observers have noted that whether courts uphold or overturn tribunal decisions depends less on the standard of review than on a number of complex factors, not the least of which is whether or not the court agrees with the decision.

This is illustrated by two judicial reviews of adjudicators' decisions, in which the Federal Court stated that the standard of review did not matter. In **Canada (Attorney General) v. O'Leary**, 2008 FC 212, the grievor had been hired to manage staffing in a remote location, but was given little help or training despite the fact that the job was unfamiliar and that he needed accommodation for a visual disability. His work performance was judged unsatisfactory and he was demoted. The adjudicator ruled that the employer had done nothing to ensure that Mr. O'Leary could succeed in his position and ordered the employer to reinstate him at the same level and find him a position, but not in a remote location.

The Federal Court upheld the adjudicator's decision. The Court ruled that while remedial jurisdiction was perhaps reviewable on a standard of correctness, the rational connection between the order of the adjudicator and the employer's breach was reviewable on the basis of reasonableness *simpliciter*. In the end, stated the Court, the standard of review did not matter, since there was no reviewable error in the adjudicator's decision.

In **Canada (Attorney General) v. Frazee**, 2007 FC 1176, the grievor was the veterinarian in charge of inspecting meat at a hog-processing plant in New Brunswick. Pork producers complained that the rate at which hogs were being rejected for medical reasons was much too high. Pending the completion of an investigation, the employer removed Dr. Frazee from the meat-inspection process. Dr. Frazee grieved the interference and the absence of an investigation of the measures taken. The adjudicator found the removal of Dr. Frazee to be disciplinary in nature and ordered that all reference to the complaints by the pork producers be removed from Dr. Frazee's file. He ordered that the employer investigate the measures taken against Dr. Frazee as provided by the collective agreement.

On judicial review, the Federal Court ruled that the decision was to be reviewed on a standard of correctness, since the adjudicator had decided on his jurisdiction by considering the employer's actions as disciplinary. The parties had agreed on reasonableness as the standard for review. In the end, the Court stated that the decision could not stand on either standard because it was deficient. The Court overruled the adjudicator about what constitutes a disciplinary measure as opposed to an administrative measure.

As a general rule, decisions of adjudicators are reviewed on a standard of correctness for matters of jurisdiction. For example, in **Olson v. Canada (Attorney General)**, 2008 FC 209, the adjudicator had ruled that the transition provisions following a layoff were entirely the prerogative of the employer and consequently that he did not have jurisdiction. The Federal Court disagreed and overturned the decision, finding that the adjudicator did have jurisdiction on what was essentially a term of the collective agreement, since the latter contained a provision concerning transition measures in cases of layoff.

In **Garcia Marin v. Canada (Treasury Board)**, 2007 FC 1250, the grievor had sought at adjudication to recast his initial grievance as a disciplinary matter. The adjudicator ruled, following the well-established precedent in **Burchill v. Canada (Attorney General)**, [1981] 1 F.C. 109 (C.A.), that the grievor could not change the characterization of the grievance at adjudication and that the grievance, as presented

through the various levels, was not adjudicable. The Federal Court applied the standard of correctness and upheld the adjudicator's decision.

On mixed questions of fact and law, the standard will generally be reasonableness *simpliciter*.

For instance, in **Canada (Treasury Board) v. Huppée**, 2007 FC 570, the grievors had followed a course in the handling of dangerous goods and did in fact handle such goods. Those were the two prerequisites, according to the collective agreement, for the payment of an allowance, which the employer refused to pay. The adjudicator ruled that the grievors were entitled to the allowance.

The standard of review was reasonableness *simpliciter*, stated the Federal Court. In arriving at her decision, the adjudicator had to determine if the conditions of the collective agreement for payment of the allowance had been met. Given the evidence, her decision had been reasonable and was upheld.

On issues of fact, the standard is patent unreasonableness. In **Rhéaume v. Canada (Attorney General)**, 2007 FC 1039, the Federal Court applied that standard to the adjudicator's assessment of the facts, and referred at length to the Court's own enabling legislation to further emphasize that findings of facts were entitled to the highest deference.

Appendix 5

**Table 1: Collective Bargaining Cases
2007–2008**

	Carried over from 2006-2007	Received in 2007-2008	Total	Settlements	Arbitral awards	Carried over to next fiscal year
Arbitration boards	4	6	10	0	5	5
	Carried over from 2006-2007	Received in 2007-2008	Total	Settlements	Mediator's report	Carried over to next fiscal year
Requests for mediator	1	5	6	0	3	3
	Carried over from 2006-2007	Received in 2007-2008	Total	Settlements	PIC report	Carried over to next fiscal year
Conciliation boards/PICs	0	0	0	0	0	0

**Table 2: Mediation Services Cases
2007-2008**

	Mediation cases carried over from 2006-2007	Cases received in 2007-2008	Cases in which parties refused mediation	Total number of cases for mediation*	Cases settled or withdrawn	Cases not settled	Success rate (% of all completed mediation cases that were settled or withdrawn)	Total number of cases carried forward to 2008-2009
		New cases in which parties agreed to mediation in 2007-2008			Total number of completed mediation cases			
Mediation of grievances or complaints filed with the Board	1985	1533	1042	2476	807	92	89%	1577
		491			899			
Preventive mediation	34	85		119	68	6	91%	45
					74			

*It is important to note that this figure represents the number of individual files that are created by the PSLRB when it receives cases. Many individual files may fall under one type of case, allowing them to be resolved together, which can result in from 50 to 100 cases being resolved in one mediation process. An example of this is a case that relates to the specifics of a work description that applies to more than one person in the same work unit.