

Public Service Labour  
Relations Board



**Annual Report**  
2008-2009


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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, 2008 to March 31, 2009, for submission to Parliament.

Yours sincerely,



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



# Public Service Labour Relations Board

## 2008 - 2009

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

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

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**Full-time Members:** Roger Beaulieu  
Dan Butler  
John A. Mooney  
Renaud Paquet  
Michel Paquette  
Dan R. Quigley

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

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### EXECUTIVE OFFICERS OF THE PSLRB

<b>Executive Director and General Counsel:</b>	Pierre Hamel
<b>Director, Dispute Resolution Services:</b>	Gilles Grenier
<b>Director, Compensation Analysis and Research Services:</b>	Guy Lalonde
<b>Director, Registry Operations and Policy:</b>	Susan Mailer
<b>Director, Corporate Services:</b>	Alison Campbell and Céline Laporte (Acting Director)
<b>Director, Financial Services:</b>	Robert Sabourin

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## Message from the Chairperson

I am pleased to submit to Parliament the Annual Report of the Public Service Labour Relations Board (PSLRB) for 2008-2009.

The year under review was certainly unique from many perspectives, presenting considerable challenges and opportunities for the PSLRB in carrying out the three main services under its mandate: adjudication, mediation and compensation analysis and research.

Of particular note, the PSLRB was called upon to assist parties during the first major round of collective bargaining under the *Public Service Labour Relations Act (PSLRA)*. We received and dealt with many requests to provide mediation and dispute resolution services, including establishing arbitration boards and public interest commissions, during a time of economic uncertainty and a time when legislation was being introduced to restrict economic increases for public servants. I commend those at the PSLRB who were involved in the collective bargaining process for their professionalism and impartiality throughout this tumultuous period and for the assistance they provided to the parties to help them deal with their labour disputes without affecting the delivery of government services to Canadians.

In previous reports, I expressed my concern that the PSLRB was given only temporary incremental funding on a yearly basis to carry out its mandate under the *PSLRA*. I am pleased to report this year that the sustained efforts over the last five years to obtain stable funding have been rewarded. As a result of reinvestment proposals in the context of the Treasury Board's strategic review of the PSLRB's activities, we finally received long-term funding under Budget 2009. This funding will enable us to fully meet our responsibilities under the *PSLRA*, to plan more effectively for the longer term and to readily meet our future commitments. However, I should note that we will require additional resources over and above this funding for the studies that will be undertaken by the Compensation Analysis and Research Services (CARS) to support the collective bargaining process. These resources are still under review.

Effectively managing a sizeable caseload and reducing the amount of time it takes to close cases

through a variety of case management tools has remained a priority for the PSLRB.

The sustained use of case management conferences has made hearings more efficient by clarifying the issues to be decided and by dealing with preliminary matters and procedural issues before the hearing. In some cases, conferences can also eliminate the need for an in-person hearing altogether.

To further our efforts in effective case management, we conducted two pilot projects with our two largest clients: the Public Service Alliance of Canada and the Treasury Board. The cases in the pilot project were conducted more expeditiously than our standard hearings and many were reviewed collectively. The pilots were successful in my view, and the PSLRB and our clients will discuss conducting a similar project in a different part of the country in 2009-2010.

During the review period, a greater number of cases referred to the PSLRB were of a more complex nature — another factor that impacts caseload management. In addition, this year, there was an increase in the number of cases involving individuals who chose to appear before the PSLRB without representation. This trend is not unlike what has occurred with other tribunals and courts. As self-representation can make hearings more difficult to manage and can consume a fair amount of our time and resources, we developed guidelines to assist self-represented individuals in submitting their grievances and complaints and provided a variety of multimedia resources.

Effective case management also implies affording the parties an opportunity to resolve their case without a formal hearing through the use of mediation assistance. Throughout 2008-2009, demand for our mediation services continued to grow, and I am especially pleased with the results that these services provided.

Another area in which the PSLRB made considerable inroads in 2008-2009 and that is particularly noteworthy is the mandate for compensation analysis and research. Created to provide comprehensive, accurate, timely and impartial information to support parties in their collective bargaining efforts, CARS released its first two

nationwide studies in 2008. Entitled *Technical Services Compensation Comparability Study* and *Total Compensation Study on Health-Related Occupations in Canada*, the two studies employ different models and approaches that will assist CARS in developing future studies.

I have every reason to be pleased with the PSLRB's accomplishments this past year. Looking ahead, we will once again be confronted with some difficult challenges, which I am confident will be tackled with optimism and determination and by building on our past experience and success.

One such challenge will be the implementation of the *Public Sector Equitable Compensation Act*, which was enacted by Parliament late in the fiscal year. This Act adds a new dimension to collective bargaining for determining compensation and will significantly impact the delivery of the PSLRB's related services. Furthermore, the PSLRB has been given the mandate to hear complaints presented under that Act. Although the Act is not yet in force, we have already received several pending pay equity complaints that were transferred from the Canadian Human Rights Commission in compliance with transitional

provisions in the *Budget Implementation Act, 2009*. I am mindful that the work required to prepare the PSLRB to carry out this new mandate is daunting. Significant efforts will be required to assess the implications of this new statutory environment on the PSLRB and to obtain the appropriate level of resources that will be needed to enable it to effectively carry out its new role.

I am extremely proud to be leading the PSLRB — an organization that is highly respected and recognized for its contribution to harmonious labour relations in the federal public service. I would like to take this opportunity to thank the Board members and all employees for their dedication and enthusiasm this past year. I look forward to the year ahead as we continue to focus our efforts on meeting our key responsibilities and as we prepare for our mandate under the *Public Sector Equitable Compensation Act*.

**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 is an independent quasi-judicial tribunal that provides three main services: adjudication, mediation, and compensation analysis and research.

### Overview

The Public Service Labour Relations Board (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 maintain the quality of its decision making.

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)*

- the 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.

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.

**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 255 000 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. (See Appendix 1 of this report.)

The Treasury Board, which is the largest of the employers, employs some 188 000 public service employees in federal government departments and agencies. Some 67 000 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.

The PSLRB's clients also include some employees who are excluded from bargaining units or who are not represented.

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

As of March 30, 2009, 23 bargaining agents were certified to represent 90 bargaining units in the federal public service. Some 70 percent of unionized employees are represented by the Public Service Alliance of Canada as their certified bargaining agent, a further 15 percent are represented by the Professional Institute of the Public Service of Canada and the remaining 15 percent are represented by 21 other bargaining agents.

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

The PSLRB's clients also include some employees who are excluded from bargaining units or who are not represented. For example, individuals who occupy managerial and confidential positions are entitled to refer certain types of grievances to adjudication and to avail themselves of the PSLRB's mediation services if they wish.

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 the employers and bargaining agents (on behalf of their members) are potential users of the PSLRB's compensation analysis and research services.

## 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.

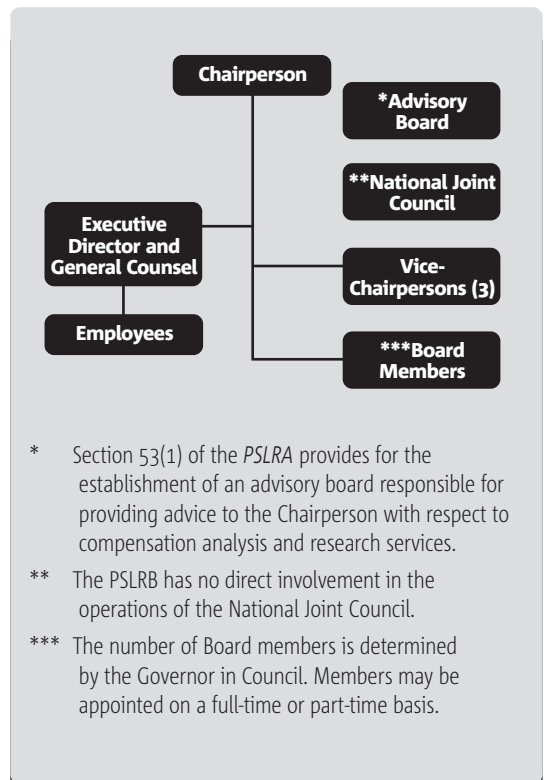
The designated minister is responsible under the *PSLRA* for tabling the PSLRB's annual report before Parliament each year and for signing documents required under the *Financial Administration Act*. The minister is also the line of communication with the Governor in Council for the purposes of making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

## Members of the Board

The Board is made up of the Chairperson, three Vice-Chairpersons, and six full-time and nine part-time members who are appointed by the Governor in Council for terms of no longer than five years and who may be reappointed. The members of the Board are responsible for administering the *PSLRA*, including making orders requiring compliance with that Act, and for deciding matters brought before the PSLRB. This work requires that hearings be conducted throughout Canada or that written submissions be considered without a hearing.

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 for an appointment to the Board, 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



A Board member, once appointed, is required to act impartially at all times.

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 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 2008-2009, Michel Paquette was the only new, full-time Board member to be appointed to the Board. Georges Nadeau, who retired from the Board in 2007-2008 as a Vice-Chairperson, became a part-time Board member.

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 available on the PSLRB's website at <http://www.pslrb-crtfp.gc.ca>.

### Funding

In 2008-2009, the PSLRB had expenditures of \$12.9 million and had 90 full-time equivalent positions.

For several years, 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 had 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 a revamped collective bargaining process.

This past year, as a result of Budget 2009, the PSLRB received more stable, long-term funding and, therefore, will no longer need to rely on temporary funding to carry out many of the responsibilities assigned to it under its expanded mandate. This additional funding will enable the Board to improve its ability to fully implement the *PSLRA* in the years ahead, to carry out effective long-term planning and to make future commitments.

As the Board is proceeding with establishing its new compensation analysis and research services, the resources required to deliver those services in the longer term are still under review.

### 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.

In 2008-2009, the PSLRB reaffirmed its vision and mission and produced a 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 is currently being developed and, when implemented, will enable the PSLRB to manage case information electronically from initial intake to resolution. When implemented, it will also facilitate more detailed performance reporting by allowing the collection of initial data. Enhanced data collection will be possible in the years that follow.

### 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

In 2008-2009, the PSLRB reaffirmed its vision and mission and produced a multi-year strategic plan.

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 <http://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 <http://www.pslrb-crtfp.gc.ca>.

# part two

## The Year in Review

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

### Adjudication Services

Board members hear complaints and applications, and Board members sitting as adjudicators hear grievances that are referred to adjudication. 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.

Hearings before Board members and adjudicators are similar to those in a court of law, but the rules of evidence are less formal. Hearings are conducted in accordance with the law and principles of natural justice. 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. Those 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.

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

### Caseload Overview

In 2008-2009, the PSLRB maintained a constant caseload when compared to previous years, largely because of an increase in the number of new cases. More detailed data on the PSLRB's caseload can be found in Appendix 2.

#### Total Caseload 2008-2009

- Total active caseload: 5022
- Active cases were up 4% from 2007-2008 (4819) but down 15% from 2006-2007 (5928) and down 12% from 2005-2006 (5682)
- New cases: 1532
- New cases were up slightly (less than 1%) from 2007-2008 (1528) but down 10% from 2006-2007 (1693) and down 13% from 2005-2006 (1763)
- Cases carried forward from previous years: 3490 or 70% of total caseload
- Cases closed: 1543 or 31% of total caseload
- Cases carried forward to next year: 3479 or 69% 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

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.

awards; actions resulting in termination, demotion, suspension or financial penalty; demotion or termination that does not result from 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. 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 yet will satisfy the needs of all the parties.

Cases that are not settled or withdrawn then 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 parties to continue working towards a settlement throughout the adjudication process with the view that 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*, in addition to individual grievances, group grievances and policy grievances can be referred to adjudication. 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 and must relate to an alleged violation of the collective agreement that affects employees generally. A policy grievance may be referred by either the bargaining agent or the employer.

It is also possible for grievances to be referred to adjudication that involve certain issues under the

*Canadian Human Rights Act* 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. As well, under the new *Public Sector Equitable Compensation Act*, which will come into force on a date that will be determined by an order of the Governor in Council, the PSLRB will be called upon to adjudicate pay equity complaints. More information about the Board's responsibilities under this Act is available in the Expanded Jurisdiction section of this report.

In 2008-2009, 5 percent more new grievances were referred to adjudication than in the previous year, but that was less than during the peak years of 2003 to 2005, when the number approached the 2000 mark.

#### Grievances 2008-2009

- Grievances referred to adjudication: 3796 or 75% of all cases before the PSLRB
- New grievance cases: 939 (922 individual, 9 group and 8 policy)
- Grievance cases involving terminations: 75 (a 97% increase from 2007-2008, when there were 38)
- Grievance cases closed: 1365 or 36% of all grievance cases
- 1365 cases were closed compared with 939 cases opened, for an overall caseload decrease of 426
- Of cases closed, 286 cases were settled, 609 were withdrawn by the parties and 470 cases were decided by 59 decisions

The PSLRB closed just over one-fifth of all grievance cases. A majority of these cases were settled or withdrawn by the parties involved, and this year, a large number (470) were closed as a result of decisions rendered after adjudication hearings.

It has now been four 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 2009-2010, the PSLRB seeks to close all cases referred to adjudication before the *PSLRA* came into force. There are 734 grievance referrals from the former Act that are still open.



Often, multiple cases that reveal related problems in the workplace can be solved through an integrated approach.

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*. Although that provision now exists, its uptake (9 group grievances filed in 2008-2009) is small.

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. Such groups of cases have been withdrawn without formal PSLRB intervention once the matters have 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 those cases together in one proceeding. Often, multiple cases that reveal related problems in the workplace can be solved through an integrated approach.

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 resolve the matter voluntarily before PSLRB involvement.

#### Complaints

While only a small proportion of the PSLRB's active caseload in 2008-2009 involved complaints, they consumed a substantial amount of its time and resources.

Two types of complaints are heard by the PSLRB — complaints of unfair labour practices under the *PSLRA* and complaints related to reprisals under the *Canada Labour Code (CLC)*.

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;
- an employer or bargaining agent is alleged to have failed to bargain in good faith; or
- a union member alleges that the bargaining agent has applied its membership rules in a discriminatory manner.

The second type also 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 *CLC*.

The bulk of active complaint cases are complaints of unfair labour practices under the *PSLRA*. The number of new complaints received of that type continues to increase. The remaining cases are complaints related to reprisals under the *CLC*. In 2008-2009, the number of new complaints under the *CLC* increased by 70 percent.

#### Complaints 2008-2009

- Complaints referred to adjudication: 295 or 6% of all cases before the PSLRB
- Unfair labour practice complaints: 266 or 90% of complaint caseload, approximately 9% of which were allegations that the employer failed to bargain in good faith
- *CLC* complaints: 29 or 10% of complaint caseload
- New unfair labour practice complaints: 167 in 2008-2009; 63 in 2007-2008; 50 in 2006-2007 and 31 in 2005-2006
- New *CLC* complaints: 16 in 2008-2009; 3 in 2007-2008; 5 in 2006-2007 and 18 in 2005-2006
- Complaint cases closed: 75 or 25% of all complaint cases
- Of cases closed, 34 were settled or withdrawn by the parties and 41 were decided by 29 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 of essential services agreements.

While only a small proportion of the PSLRB's active caseload in 2008-2009 involved complaints, they consumed a substantial amount of its time and resources.

The PSLRB and its two largest clients conducted a pilot project in the National Capital Region in June 2008.

In some cases, pre-hearing conferences eliminate the need for an in-person hearing altogether.

### Applications 2008-2009

- Total: 773 or 15% of all cases before the PSLRB
- Certification or revocation of certification: 3
- Successor rights: 0
- Designation of essential services positions: 8
- Review of prior PSLRB decisions: 7
- Determination of management and confidential positions: 640
- Requests for extensions of time to file a grievance or to refer a grievance to adjudication: 115

### Issues, Challenges and Innovations

#### Case Management

The PSLRB continually strives to keep active cases to a manageable number and to reduce the time taken to close cases through efforts such as screening new grievance and complaint cases and identifying trends and group cases that have common elements.

Several key factors affect the PSLRB's ability to deliver its services as promptly as it would like, such as the availability of the parties to proceed to a hearing, requests for postponements and continuances.

To help it more effectively manage its sizeable caseload, the PSLRB and its two largest clients (the Public Service Alliance of Canada and the Treasury Board), conducted a pilot project in the National Capital Region in June 2008. Cases were either mediated and settled or sent to a fast-track hearing that consisted of agreed-upon statements of facts followed by arguments in which few witnesses were heard.

A similar project was successfully conducted in Vancouver, B.C. in the spring of 2009. In 2009-2010, the Board anticipates that it will conduct a similar project in different parts of the country.

Other continuing challenges to delivering adjudication services include human rights complaints, duty-to-accommodate issues, and self-represented grievors and complainants.

The PSLRB is working to make increased use of *PSLRA* provisions that allow for the convening of pre-hearing conferences. They have proven to be very valuable in clarifying issues before the start of a hearing and, in some cases, in defining the order of proceedings, exchanging witness lists and making better estimates of the number of hearing days required so that they can be scheduled sooner, rather than later. In some cases, pre-hearing conferences eliminate the need for an in-person hearing altogether perhaps because the parties are able to agree with the Board member or adjudicator to proceed with written submissions. 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 the conference.

For a number of years, the PSLRB has offered expedited adjudication to parties who want to save time and resources. It 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 that they will not be subject to judicial review. Verbal 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 2008-2009, the Professional Institute of the Public Service of Canada agreed to proceed with expedited adjudication with the National Research Council of Canada, bringing the total number of bargaining units availing themselves of expedited adjudication to 18. The Federal Government Dockyard Workers Trades and Labour Council - East and the Treasury Board revised their Memoranda of Understanding with the PSLRB.

In 2008-2009, no new cases filed with the PSLRB requested the expedited adjudication process. One expedited adjudication hearing was scheduled and heard during the year.

### 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. Those last two considerations are central to the values of the Board.

The principles of administrative law require that the Board issue a written decision when deciding a matter. The 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. In December 2008, the Board adopted the *Protocol for the Use of Personal Information in Judgments* approved by the Canadian Judicial Council in March 2005. It reflects the ongoing commitment of Board members to seek a balance between the open-court principle and the privacy expectations of individuals, in accordance with accepted legal principles, and reporting in their decisions only that personal information that is relevant and necessary for their reasons. Also, documents filed as exhibits before a Board member that contain medical, financial or other sensitive information about a person can be sealed by an order on 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. Also, some decisions are freely accessible on the Internet from sources other than the Board's website.

Furthermore, the full texts of decisions have been posted on the Board's website since 2000 when its predecessor, the Public Service Staff Relations Board, began the practice. As a means to balance the open-court principle and the privacy expectations of individuals availing themselves of their rights under the *PSLRA*, the Board has voluntarily introduced measures that restrict global search engines from accessing full-text decisions posted on its website.

The Board has also modified its website and administrative letters opening case files to notify individuals who initiate proceedings that its decisions are posted in full on the Board's website.

### Expanded Jurisdiction

The *Budget Implementation Act, 2009* (Bill C-10) received Royal Assent on March 12, 2009. Part 11 of that Act enacts the *Public Sector Equitable Compensation Act (PSECA)*. The *PSECA* removes the public service from the application of the "pay equity" regime, currently found under the *Canadian Human Rights Act*, and replaces it with a new "equitable compensation" process. In addition to providing the parties with compensation data in support of their collective bargaining (which it currently does under the *PSLRA*), the Board will be called on to adjudicate complaints filed by employees under the *PSECA*.

The Board will need to invest significant efforts to prepare for the coming-into-force of the *PSECA*. Much remains to be clarified in the *PSECA*, not the least of which is the body of regulations that are to be made by the Governor in Council and that will serve to define most of the key terms of the Act and to make it operational.

The *PSECA* will come into force on a date yet to be fixed by order of the Governor in Council. However, under transitional provisions contained in the *Budget Implementation Act, 2009*, complaints under the *Canadian Human Rights Act* relating to wage differences between male and female employees that were before the Canadian Human Rights Commission when Bill C-10 received royal assent were transferred to the Board. The transitional provisions set the process by which the Board is to deal with those complaints.

Although the *PSECA* is not yet in force, the Board was immediately given jurisdiction to deal with pending complaints and to eventually render a decision under the *Canadian Human Rights Act*. Seven such files have already been received and are being reviewed by the Board.

### Notable Decisions

Decisions rendered by the Board or by its members in their roles 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. Those decisions are final and binding on the parties and are subject only to judicial review under the *Federal Courts Act*. On average, more than 98 percent of the decisions issued by the PSLRB and its adjudicators are upheld

Mediation contributes directly to harmonious labour relations in the public service as it provides a forum for early dispute resolution rather than resorting to adversarial processes to settle them.

The PSLRB's dispute resolution processes help to avoid potential labour disruptions that could adversely affect the provision of government services to Canadians.

when subject to judicial review. Brief descriptions of several notable decisions in grievance and complaint cases can be found in Appendix 3.

## Mediation Services

### Case Mediation

Mediation and conflict resolution continue to be key elements of the PSLRB's statutory mandate under the *PSLRA*. Mediators provided by the PSLRB are impartial third parties without decision-making power who intervene in a dispute to help parties reach their own mutually acceptable solutions. They may be professional staff 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 as it provides a forum for early dispute resolution at the appropriate organizational level rather than resorting to adversarial processes such as adjudication to settle them.

Given the PSLRB's significant success using mediation to reduce the number of cases that would otherwise go to a hearing as prescribed by the *PSLRA*, in 2008-2009 the Board continued 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 152 grievance and complaint cases. Parties were able to settle or withdraw 124 cases before the adjudication hearing, resulting in an 82 percent success rate.

The PSLRB's mediation services have also included, resources permitting, dealing with cases that are identified as "preventive" mediations. These cases attempt to resolve disputes before a grievance or complaint is formally referred to the Board. Successful interventions help reduce the number of files brought before the PSLRB. In 2008-2009, the Board's Dispute Resolution Services dealt with 79 cases of preventive mediation. For some of these cases, a single mediation resolved numerous files that were similar in nature. (See Appendix 4, table 2 for data on the PSLRB's mediation caseload in 2008-2009.)

The demand for the PSLRB's mediation services has grown in tandem with the volume of grievances and complaints submitted to adjudication. There have also been requests for mediation assistance from the parties 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 related mediation services, which include the following:

- facilitating discussions 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 numbers for certification purposes and successor rights; and
- facilitating discussions and mediating the determination of positions/employees that are to provide essential services in the case of a strike (employees holding those positions are not eligible to strike).

### Collective Bargaining

The PSLRB also assists parties in their collective bargaining efforts through the provision of the dispute resolution processes provided for under the *PSLRA*: mediation, arbitration and public interest commissions. The processes help to avoid potential labour disruptions that could adversely affect the provision of government services to Canadians.

Although collective bargaining in the federal public service is rarely a simple task for the parties involved, the major round of public service negotiations that began in 2007-2008 was particularly challenging. To a certain extent, it was expected as this round of bargaining was the first to be conducted under the *PSLRA*, which contains many new provisions that have a direct and significant impact on the negotiation of collective agreements, as well as on the resolution of disputes arising from that process (e.g., essential services and specific timelines surrounding secret-ballot strike votes).

A significant challenge for the Board was the federal government's announcement of legislation to restrict economic increases for public servants.

The training sessions' mixed composition of union representatives, managers and human resources specialists enables participants to exchange views about a variety of aspects related to conflict resolution.

Among the changes featured in the legislation was the replacement of the former "conciliation board" mechanism as a necessary precursor in acquiring the right to strike with a new process for helping parties settle their collective agreements through a Public Interest Commission (PIC). PICs are non-permanent bodies that consist of one or three persons who are appointed by the responsible Minister on the recommendation of the PSLRB Chairperson to assist the parties by making settlement recommendations, which are not binding on the parties involved. In 2008-2009, five requests were received for PICs, mostly in the year's final quarter. One did not proceed because the parties resolved their dispute before the hearing with the assistance of a PSLRB mediator. Four will carry over into the next fiscal year.

The other option for resolving bargaining disputes that remains unchanged under the *PSLRA* is binding arbitration. If the parties are unable to settle their collective agreements through negotiation then binding arbitration, if it was selected as the method of dispute resolution, culminates in an arbitral award (a decision) that is legally binding on both parties and that precludes any legal strike action. Arbitration boards are established by the PSLRB Chairperson. A total of 12 arbitration boards were established in 2008-2009, 9 of which resulted in arbitral awards.

Another significant challenge for the Board in the area of collective bargaining was the federal government's budget announcement in the fall of 2008 that legislation would be introduced to restrict economic increases applicable to federal public servants. That announcement, which was soon followed by the employers tabling final offers for settling collective bargaining, generated considerable consternation within the bargaining agent community, each of which was at some stage of the bargaining process. It resulted in a flurry of activity within the Board's Dispute Resolution Services team. Many bargaining agents immediately opted to submit requests for arbitration boards or PICs, depending on the method they chose to resolve their dispute.

The subsequent *Budget Implementation Act, 2009*, (Bill C-10) that received royal assent on March 12, 2009, enacted the *Expenditure Restraint Act*, introduced stringent controls on wages and remuneration that impacted negotiations underway

at the time, and applied retroactively to settlements and awards that had been completed.

In the highly charged environment of this fiscal year, the Board received (and is dealing with) 22 complaints of bad faith bargaining, assisted the parties with the new requirement for the production of essential service agreements and marshalled requests received for establishing arbitration boards and PICs — some of which remain active and will be completed in 2009-2010.

### Mediation Training

In 2008-2009, members of the Dispute Resolution Services team delivered six courses on interest-based negotiation and mediation.

The two-and-a-half-day interactive sessions enable participants from within the federal public service to become familiar with and to understand interest-based negotiation and mediation skills, which can be used to resolve disputes in the workplace. They also enable participants to explore workplace conflict and communication issues that may arise. Through role play, participants are able to practice the skills and techniques acquired during the training. The training sessions' mixed composition of union representatives, managers and human resources specialists enables participants to exchange views about a variety of aspects related to conflict resolution and to develop an enhanced appreciation of each other's realities.

The target audience includes individuals responsible for workplace conflict resolution, such as staff relations officers, union representatives, managers and supervisors, and others working in that field, such as Employee Assistance Program officers.

In 2008-2009, PSLRB mediators also delivered several presentations and special sessions, both inside and outside the public service, to help build a general understanding of mediation as a dispute resolution mechanism, as well as to provide more in-depth knowledge of the Board's mediation approach.

In 2008-2009, the Board released its first nationwide compensation studies.

The parties affected by the two PSLRB studies published to date have helped set study parameters and develop survey tools.

## 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 (CARS) division of the PSLRB was established in 2005-2006 to work in consultation with parties on collective bargaining and with other stakeholders to provide impartial, accurate and timely information on comparative rates of pay, employee wages, terms and conditions of employment, and fringe benefits in the public and private sectors.

Compensation is a key issue and often represents a major challenge for the parties in reaching 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.

### Compensation Studies

In 2008-2009, the Board released its first nationwide compensation studies, *Technical Services Compensation Comparability Study* in April 2008 and *Total Compensation Study on Health-Related Occupations in Canada* in November 2008.

The first study, steered by the PSLRB in consultation with the Public Service Alliance of Canada (PSAC) and the Treasury Board of Canada Secretariat (TBS), was conducted by AON Consulting. It provides information on current wages and benefits offered by public- and private-sector employers for 30 technical services occupations that are comparable to those found in bargaining units represented by the PSAC.

The second study was for the Health Services group represented by the Professional Institute of the Public Service of Canada (PIPSC). It was conducted by CARS in consultation with the TBS and the PIPSC, as well as Statistics Canada, which developed the survey sample, and Hackett Consulting, which collected data

from the respondent organizations. The study provides detailed information about total compensation and wage scales and about the frequency and characteristics of certain fringe benefits and working conditions in the Canadian health-care sector.

The two studies, which provided an opportunity to test various compensation models and approaches, will provide the Board's CARS with a solid foundation as it undertakes future studies. However, because of the enactment of the *Expenditure Restraint Act* in March 2009, which imposes limits on public service wages until 2011, CARS has postponed its national compensation study until the fall of 2010, in anticipation of the next round of collective bargaining. During the coming year, and following the enactment of the *Public Sector Equitable Compensation Act*, CARS will need to consider the manner in which it will meet the compensation information needs of the parties so that it can support them in the collective bargaining process.

Both studies are available on the PSLRB website at <http://www.pslrb-crtfp.gc.ca>.

### Outreach and Communications

The PSLRB recognizes the importance of consulting bargaining parties and other stakeholders. The parties affected by the two PSLRB studies published to date have helped set study parameters and develop survey tools. In the upcoming year, the PSLRB will hold consultations with parties for collective bargaining in the federal public service to keep abreast of their needs and expectations.

The PSLRB is also committed to working with provincial and territorial governments to promote the use of common approaches that meet the needs and interests of everyone in order to prevent the duplication of effort and over-solicitation of respondents. The *Total Compensation Study on Health-Related Occupations in Canada* is an example of how cooperation can provide benefits in areas of mutual interest.

## 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.courier@pslrb-crtfp.gc.ca](mailto:mail.courier@pslrb-crtfp.gc.ca).

The PSLRB's library houses a large collection of labour relations resources. They can be viewed via the library catalogue on the website or by contacting the library directly.

The library is pleased to furnish copies of Board decisions and to respond to reference questions.

The library's address is:

C.D. Howe Building  
240 Sparks Street  
West tower, 6th floor  
Ottawa, Ontario

Telephone: 613-990-1813  
Toll free: 866-931-3454

Email: [library-bibliotheque@pslrb-crtfp.gc.ca](mailto:library-bibliotheque@pslrb-crtfp.gc.ca)

The PSLRB's website, <http://www.pslrb-crtfp.gc.ca>, contains a wealth of useful information, including:

- summary and full-text versions of 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, 2008 to March 31, 2009**

### Where Treasury Board of Canada is the Employer

Bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Association of Canadian Financial Officers	1	13 690
Association of Justice Counsel	1	2285
CAW - CANADA	1	7
CAW - CANADA, Local 2182	1	344
Canadian Association of Professional Employees	2	12 438
Canadian Federal Pilots Association	2	422
Canadian Merchant Service Guild	1	1020
Canadian Military Colleges Faculty Association	1	210
Canadian Union of Public Employees, Local 2656	2	236
Communications, Energy and Paperworkers Union of Canada, Local 588	1	24
Federal Government Dockyard Chargehands Association	1	85
Federal Government Dockyard Trades and Labour Council (East)	1	840
Federal Government Dockyards Trades and Labour Council (Esquimalt, B.C.)	1	933
Graphic Communications International Union	1	38
Hospitality and Services Trades Union	1	4
International Brotherhood of Electrical Workers, Local 2228	1	1111
Professional Association of Foreign Service Officers	1	1201
Professional Institute of the Public Service of Canada	7	34 041
Public Service Alliance of Canada	5	113 141
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN	1	5808
<b>Total for Treasury Board of Canada</b>	<b>33</b>	<b>187 878</b>



**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent  
April 1, 2008 to March 31, 2009**

### Other Employers

Separate employers (by bargaining agent)	Number of bargaining units	Number of public service employees in non-excluded positions
<b>CANADA REVENUE AGENCY</b>		
Professional Institute of the Public Service of Canada	1	11 057
Public Service Alliance of Canada	1	30 281
Total	2	41 338
<b>CANADIAN FOOD INSPECTION AGENCY</b>		
Professional Institute of the Public Service of Canada	3	1829
Public Service Alliance of Canada	1	4469
Total	4	6298
<b>CANADIAN INSTITUTES OF HEALTH RESEARCH</b>		
Public Service Alliance of Canada	1	24
Total	1	24
<b>CANADIAN NUCLEAR SAFETY COMMISSION</b>		
Professional Institute of the Public Service of Canada	1	510
Total	1	510
<b>CANADIAN POLAR COMMISSION</b>		
No bargaining agents	0	4
Total	0	4
<b>CANADIAN SECURITY INTELLIGENCE SERVICE</b>		
Public Service Alliance of Canada	1	210
Total	1	210
<b>COMMUNICATIONS SECURITY ESTABLISHMENT</b>		
Public Service Alliance of Canada	1	1742
Total	1	1742

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent  
April 1, 2008 to March 31, 2009**

**Other Employers (continued)**

<b>Separate employers (by bargaining agent)</b>	<b>Number of bargaining units</b>	<b>Number of public service employees in non-excluded positions</b>
<b>FINANCIAL CONSUMER AGENCY OF CANADA</b>		
No bargaining agents	0	48
<b>Total</b>	<b>0</b>	<b>48</b>
<b>FINANCIAL TRANSACTIONS AND REPORTS ANALYSIS CENTRE OF CANADA</b>		
No bargaining agents	0	329
<b>Total</b>	<b>0</b>	<b>329</b>
<b>INDIAN OIL AND GAS CANADA</b>		
No bargaining agents	0	75
<b>Total</b>	<b>0</b>	<b>75</b>
<b>NATIONAL CAPITAL COMMISSION</b>		
Public Service Alliance of Canada	1	393
<b>Total</b>	<b>1</b>	<b>393</b>
<b>NATIONAL ENERGY BOARD</b>		
Professional Institute of the Public Service of Canada	1	287
<b>Total</b>	<b>1</b>	<b>287</b>
<b>NATIONAL FILM BOARD</b>		
Canadian Union of Public Employees, Local 2656	2	128
Professional Institute of the Public Service of Canada	2	135
Syndicat général du cinéma et de la télévision, CUPE Local 9854	1	115
<b>Total</b>	<b>5</b>	<b>378</b>

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent**  
April 1, 2008 to March 31, 2009

**Other Employers (continued)**

<b>Separate employers (by bargaining agent)</b>	<b>Number of bargaining units</b>	<b>Number of public service employees in non-excluded positions</b>
<b>NATIONAL RESEARCH COUNCIL CANADA</b>		
Professional Institute of the Public Service of Canada	4	1833
Research Council Employees' Association	6	2349
<b>Total</b>	<b>10</b>	<b>4182</b>
<b>NATIONAL ROUND TABLE ON THE ENVIRONMENT AND THE ECONOMY</b>		
No bargaining agents	0	33
<b>Total</b>	<b>0</b>	<b>33</b>
<b>NATURAL SCIENCES AND ENGINEERING RESEARCH COUNCIL OF CANADA</b>		
No bargaining agents	0	387
<b>Total</b>	<b>0</b>	<b>387</b>
<b>NORTHERN PIPELINE AGENCY CANADA</b>		
No bargaining agents	0	0
<b>Total</b>	<b>0</b>	<b>0</b>
<b>OFFICE OF THE AUDITOR GENERAL OF CANADA</b>		
Public Service Alliance of Canada	2	507
<b>Total</b>	<b>2</b>	<b>507</b>
<b>OFFICE OF THE CORRECTIONAL INVESTIGATOR</b>		
No bargaining agents	0	24
<b>Total</b>	<b>0</b>	<b>24</b>

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent  
April 1, 2008 to March 31, 2009**

**Other Employers** *(continued)*

<b>Separate employers (by bargaining agent)</b>	<b>Number of bargaining units</b>	<b>Number of public service employees in non-excluded positions</b>
<b>OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS</b>		
Professional Institute of the Public Service of Canada	1	382
Public Service Alliance of Canada	1	22
<b>Total</b>	<b>2</b>	<b>404</b>
<b>PARKS CANADA AGENCY</b>		
Public Service Alliance of Canada	1	5430
<b>Total</b>	<b>1</b>	<b>5430</b>
<b>SECURITY INTELLIGENCE REVIEW COMMITTEE</b>		
No bargaining agents	0	0
<b>Total</b>	<b>0</b>	<b>0</b>
<b>SOCIAL SCIENCES AND HUMANITIES RESEARCH COUNCIL</b>		
Public Service Alliance of Canada	1	200
<b>Total</b>	<b>1</b>	<b>200</b>
<b>STAFF OF THE NON-PUBLIC FUNDS, CANADIAN FORCES</b>		
Public Service Alliance of Canada	10	846
United Food and Commercial Workers Union	12	899
<b>Total</b>	<b>22</b>	<b>1745</b>
<b>STATISTICS SURVEY OPERATIONS</b>		
Public Service Alliance of Canada	2	2063
<b>Total</b>	<b>2</b>	<b>2063</b>
<b>Total for other employers</b>	<b>57</b>	<b>66 611</b>
<b>Total for all employers</b>	<b>90</b>	<b>254 489</b>

**Table 2: Number of Bargaining Units and Public Service Employees by Bargaining Agent  
April 1, 2008 to March 31, 2009**

<b>Certified bargaining agent</b>	<b>Number of bargaining units</b>	<b>Number of public service employees in non-excluded positions</b>
Association of Canadian Financial Officers	1	3691
Association of Justice Counsel	1	2600
CAW – CANADA	1	7
CAW – CANADA, Local 2182	1	350
Canadian Association of Professional Employees	2	12 525
Canadian Federal Pilots Association	2	420
Canadian Merchant Service Guild	1	983
Canadian Military Colleges Faculty Association	1	219
Canadian Union of Public Employees, Local 2656	2	236
Communications, Energy and Paperworkers Union of Canada, Local 588	1	27
Federal Government Dockyard Chargehands Association	1	84
Federal Government Dockyard Trades and Labour Council (East)	1	831
Federal Government Dockyards Trades and Labour Council (Esquimalt, B.C.)	1	940
Graphic Communications International Union	1	38
Hospitality and Services Trade Union	1	4
International Brotherhood of Electrical Workers, Local 2228	1	1102
Professional Association of Foreign Service Officers	1	1200
Professional Institute of the Public Service of Canada	19	31 439
Public Service Alliance of Canada	24	150 070
Research Council Employees' Association	6	2351
Syndicat général du cinéma et de la télévision, CUPE Local 9854	1	126
United Food and Commercial Workers Union	19	1362
Union of Canadian Correctional Officers – Syndicat des agents correctionnels du Canada – CSN	1	6000
<b>Total</b>	<b>90</b>	<b>216 605*</b>

\*The total in Table 2 does not equal the 254 489 employees indicated in Table 1 (the Treasury Board and separate employers) because 37 928 of the employees in non-excluded positions included in that table must not be represented by a bargaining agent.

## Appendix 2

### Cases Before the Public Service Labour Relations Board 2008-2009

	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 2009-2010	Decisions or orders	Number of cases covered by decisions or orders
				settled	withdrawn	decided			
Grievances	2857	939	3796	286	609	470	2431	59	470
<b>Total grievances</b>	<b>2857</b>	<b>939</b>	<b>3796</b>	<b>1365</b>			<b>2431</b>	<b>59</b>	<b>470</b>
Complaints of unfair labour practices	99	167	266	10	18	38	200	26	38
Complaints under the <i>Canada Labour Code</i>	13	16	29	3	3	3	20	3	3
<b>Total complaints</b>	<b>112</b>	<b>183</b>	<b>295</b>	<b>75</b>			<b>220</b>	<b>29</b>	<b>41</b>
Certifications	0	0	0				0	0	0
Revocations of certification	0	3	3		3		0	1	3
Determination of successor rights	0	0	0		0		0	0	0
Determination of management and confidential positions	284	356	640	198 settled or withdrawn 246 decided <sup>1</sup> Total: 444			196	246	246
Designation of essential services positions	3	5	8	1 withdrawn 2 decided Total: 3			5	2	2
Applications for review of Board decisions	0	7	7	0 withdrawn 6 decided Total: 6			1	6	6
Requests for extension of time	109	6	115	83 settled or withdrawn 6 decided Total: 89			26	5	6
<b>Total applications</b>	<b>396</b>	<b>377</b>	<b>773</b>	<b>545</b>			<b>228</b>	<b>260</b>	<b>263</b>
<b>TOTAL</b>	<b>3365</b>	<b>1499</b>	<b>4864</b>	<b>1985</b>			<b>2879</b>	<b>348</b>	<b>774</b>

<sup>1</sup>One case proceeded to a full hearing; 245 determinations were made by an order rendered by the PSLRB on consent.

## Appendix 3

An employer or a bargaining agent may now refer any question concerning the interpretation or application of a collective agreement or an arbitral award to an adjudicator.

### Notable Public Service Labour Relations Board Decisions

#### Policy Grievances

The *Public Service Labour Relations Act (PSLRA)* created a new type of grievance, the policy grievance. Formerly, under the *Public Service Staff Relations Act (PSSRA)*, an employer or a bargaining agent could refer a question concerning the enforcement of an obligation under a collective agreement or an arbitral award to adjudication but only in a limited fashion. An employer or a bargaining agent may now refer any question concerning the interpretation or application of a collective agreement or an arbitral award to an adjudicator regardless of whether that question can be raised in an individual or group grievance.

This year, some decisions were rendered on policy grievances. Those decisions help to better define the terms of the legislative provisions in question.

In **Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)**, 2008 PSLRB 84, and **Professional Institute of the Public Service of Canada v. Treasury Board (Correctional Service of Canada)**, 2008 PSLRB 95, the issue was what the legislator meant by the expression "... as it relates to ... the bargaining unit generally." The employer argued that it must mean that all bargaining unit members were directly affected. The adjudicators found that the expression had to be understood in a different way.

In **PSAC v. TB (CBSA)**, the Canada Border Services Agency had adopted a policy on arming and defence tactics. The bargaining agent challenged it in a policy grievance, but the employer objected that a policy grievance could not relate to an employer's policy but only to a collective agreement or an arbitral award. The employer also argued that the policy only affected certain employees and not the bargaining unit "generally." The adjudicator held that the bargaining agent could challenge the policy since it was arguing that the policy contravened the collective agreement. The adjudicator found that the term "generally" had to be interpreted in a broad and qualitative rather than a quantitative manner. That was because the legislator's intent was to provide effective mechanisms for resolving issues that might arise in interpreting a collective agreement.

The issue with the expression "bargaining unit generally" arose markedly in **PIPSC v. TB (CSC)**. The parties agreed that only a small percentage of the unit's members were affected at the time of the grievance. However, the adjudicator stated that the expression had to be understood in a general sense and not given a narrow application. In this case, the bargaining agent filed a policy grievance on behalf of computer services employees who worked in the correctional system and who were entitled to a penological factor allowance. That group represented only 1 percent of the employees covered by the collective agreement. However, the adjudicator held that the issue arose generally for all employees in the computer sector who had to work in correctional services — in theory, any of them — and therefore the question was of general interest to the bargaining unit.

Moreover, the *PSLRA* specifically sets out the adjudicator's remedial powers if a grievance could have been the subject of an individual or a group grievance. Section 232 of the *PSLRA* limits the adjudicator's remedial powers to the following three measures when dealing with a collective agreement or an arbitral award: declaring a correct interpretation, declaring a contravention and ordering a specific application.

In **Canadian Merchant Service Guild v. Treasury Board (Department of Fisheries and Oceans)**, 2008 PSLRB 52, the bargaining agent challenged a circular that, in its view, contravened the collective agreement and penalized ship captains who had to devote a few hours to familiarization when they took control of a new vessel. The adjudicator ruled in the bargaining agent's favour and ordered that a compensatory payment be made retroactively to the captains who would have been aggrieved by the circular's application.

The employer applied to the Federal Court for judicial review. The employer accepted the decision about the circular and the need to amend it. However, it argued that the adjudicator had exceeded his jurisdiction by ordering a retroactive payment. In **Canada (Attorney General) v. Canadian Merchant Service Guild**, 2009 FC 344 (at the time this report was written, the decision had not yet been translated), the Federal Court upheld the adjudicator's decision. First, the judge was of the view that section 232 of the *PSLRA* was inapplicable

While historically the employer designated certain positions as essential, under the *PSLRA* the parties must now agree to establish an essential services agreement.

The Board allowed the preliminary objection that the application for arbitration was incompatible with the subsequent filing of a complaint for failing to bargain in good faith.

because the bargaining agent had filed a grievance against the circular without even knowing whether an employee had been affected. Second, the judge stated that, even if section 232 applied, the adjudicator would have had the power to order the retroactive payment because he could order that his interpretation apply “in a specified manner.”

### Essential Services

The *PSLRA* created the concept of essential services agreements. In **Public Service Alliance of Canada v. Parks Canada Agency**, 2008 PSLRB 97, the Board explained how the new provisions changed the procedure for declaring positions as essential during a strike. While historically the employer designated certain positions as essential, even if it ended up being challenged by the bargaining agent, under the *PSLRA* the parties must now agree to establish an essential services agreement. If they reach an impasse, the Board must make the decision.

In **Parks Canada Agency**, the Board declared (1) that the burden is still on the employer to convince the Board that a service is essential for the safety and security of the public and (2) that those services that are essential in the event of a strike must be determined. In this case, the public could still enter a park even if the employer had closed it during a strike, which meant that public safety and security had to be ensured through the following services: monitoring forest fires, search and rescue, water supply, and garbage handling. However, the employer had not established that support for recreational services was an essential service. Based on the Board’s definition of essential services, it was the employer’s responsibility to determine the level of essential services to provide, after which the parties had to resume their discussions to establish the type and number of positions required for essential services.

In **Public Service Alliance of Canada v. Treasury Board (Border Services, Program and Administrative Services and Operational Groups)**, 2009 PSLRB 37, the Board ruled that it remained seized of an application for the determination of essential services. That was so even though the parties in this case had entered into a collective agreement during the proceedings, which had since come into force. According to the Board (and the parties), nothing in the *PSLRA* prevented the Board

from remaining seized of the essential services agreement out of a concern to promote the scheme of the *PSLRA*.

### Bad Faith Bargaining

In **Professional Institute of the Public Service of Canada v. Canadian Food Inspection Agency**, 2008 PSLRB 50, the bargaining agent filed a bad faith bargaining complaint since the employer had not tabled a monetary offer after 18 months of negotiations because it lacked a mandate from the Treasury Board. The bargaining agent had previously requested the establishment of an arbitration board, which had already met and rendered its decision before the complaint was heard. The Board allowed the preliminary objection that the application for arbitration, which had as a prerequisite good faith bargaining by the parties, was incompatible with the subsequent filing of a complaint for failing to bargain in good faith.

The same parties were again opposed in **Professional Institute of the Public Service of Canada v. Canadian Food Inspection Agency**, 2008 PSLRB 78, in which the bargaining agent alleged that the employer had breached its duty to bargain in good faith under section 106 of the *PSLRA* for the following reasons: payroll data had not been provided in a timely manner, several bargaining sessions had been cancelled and the employer had abolished four positions, two of which belonged to bargaining agent representatives.

The bargaining agent later requested arbitration because of the parties’ inability to enter into a collective agreement. The employer objected that the bargaining agent could not file a bad faith bargaining complaint and request arbitration at the same time. The Board found that the complainant was not precluded from pursuing its complaint because it later requested arbitration, and it distinguished its earlier decision on the facts. The Board found that the employer was partly to blame for delaying collective bargaining.

In **Public Service Alliance of Canada v. Senate of Canada**, 2008 PSLRB 100, the Board decided another bad faith bargaining complaint under the *Parliamentary Employment and Staff Relations Act (PESRA)*. The bargaining agent alleged that the employer had bargained in bad faith by changing one of its proposals during negotiations.



Adjudicators rendered three decisions this year defining the parameters of employees' freedom to criticize their employer.

The proposal concerned the reimbursement of benefits when leave was granted for collective bargaining. The employer initially sought an increase in the percentage reimbursed to cover benefit costs, but the bargaining agent refused. The employer then proposed deleting the reimbursement provisions from the collective agreement, which the bargaining agent condemned as an unfair proposal. The Board decided that it would not rule on the content of the proposals but that it would intervene only if bad faith bargaining was actually present. That was not the case, according to the Board. The employer had provided figures to justify the increase it was seeking and had not abruptly changed positions. Therefore, there was no indication that the respondent sought to avoid entering into a collective agreement.

#### Criticism of the Employer – Freedom of Expression

Adjudicators rendered three decisions this year defining the parameters of employees' freedom to criticize their employer. Those decisions are subject to the Federal Court's eventual decision on an application for judicial review of the first of them.

In **King v. Treasury Board (Canada Border Services Agency)**, 2008 PSLRB 64, the grievor, a bargaining agent official, had written to the United States Secretary of Homeland Security to denounce certain Canadian border practices, such as not arming customs officers and hiring students after rudimentary training. The grievor was suspended without pay for 30 days. The adjudicator found that the grievor had exercised his rights as a bargaining agent official and that the contents of the letter were neither malicious nor false. Therefore, the suspension was cancelled. There is now an application before the Federal Court for judicial review of that decision.

However, in **Labadie v. Deputy Head (Correctional Service of Canada)**, 2008 PSLRB 85, the adjudicator ruled in the employer's favour. The grievor, a correctional officer, was dismissed after publishing a book in which he alleged serious wrongdoing by employees and management. The grievor argued that he was not aware of the policies on the media and on the internal disclosure of wrongdoing. He acknowledged that he had erred. The Correctional Service of Canada believed that he had breached its trust. The adjudicator held that the grievor had been terminated for violating his duty of loyalty. He had made serious accusations against management and certain employees without using the internal

mechanisms available to him before making his concerns public. The grievor could not avail himself of the exceptions to the duty of loyalty established by the courts since to do so, an employee must prove that his or her accusations have a rational foundation, which the grievor failed to do.

In the third decision, **Andres et al. v. Canada Revenue Agency**, 2009 PSLRB 36, the adjudicator had to decide whether wearing a button that informed the public that certain services would no longer be provided was misconduct for which the employer could impose a suspension. The adjudicator found that the employees had not breached any rule by wearing the button but that they had only exercised their right to participate in a bargaining agent activity, which was protected by both the collective agreement and the *PSLRA*.

#### Arbitration (Challenge)

The establishment of an arbitration board generally goes smoothly. One party to the negotiations asks the Chairperson of the Board to establish an arbitration board because the parties are unable to agree on certain specific points while negotiating the collective agreement. Therefore, the dispute has to do with content.

It sometimes happens that a party objects to the actual points referred to arbitration. That happened in **Association of Justice Counsel v. Treasury Board**, 2009 PSLRB 20, in which the employer objected to many of the proposals that the bargaining agent intended to refer to arbitration. The parties were still negotiating their first collective agreement.

The employer had many objections to the content of certain proposals because they were contrary to the *PSLRA*, which specifically excludes certain terms and conditions of employment from collective bargaining, such as those relating to pensions and performance appraisal. The Chairperson found partly in the employer's favour and amended the proposals to leave out the items excluded by the *PSLRA*.

The employer was of the opinion that two proposals in particular had not been properly referred to arbitration and, above all, had not been discussed before arbitration, which meant that they could not be referred to an arbitration board under the *PSLRA*. One had to do with lawyers' offices and the other with the rate of pay.

Adjudicators have continued to explore the jurisdiction conferred on them by the *PSLRA* to apply the provisions of the *Canadian Human Rights Act*.

With respect to offices, the parties had already discussed the lawyers' need for closed offices to protect solicitor-client privilege. The bargaining agent's arbitration proposal clarified that the offices should have exterior windows. The Chairperson found that the proposal was similar enough to be acceptable.

With respect to pay, the bargaining agent added a clause to the arbitration request stating that the parties would negotiate the new rates of pay if a new classification standard were established. The employer objected that the clause had never been discussed, but the Chairperson upheld it as an arbitration request because it was a standard clause in many collective agreements and because the issue of pay had already been raised. As well, it was indeed an issue of pay and not classification, which is the employer's exclusive prerogative.

#### Reopening a Settlement Agreement

Under the *PSSRA*, it was consistently found that adjudicators had no jurisdiction to rule on the implementation of a settlement reached by an employer and a grievor. In **Amos v. Deputy Head (Department of Public Works and Government Services)**, 2008 PSLRB 74, the adjudicator called that line of authority into question under the *PSLRA*.

The adjudicator focused in particular on the meaning of section 236 of the *PSLRA*, which provides that an employee's right to file a grievance is in lieu of any other right of action. As a result, and taking into account the Supreme Court of Canada's decisions confirming the exclusivity of the grievance process for resolving disputes in a labour relations context, the adjudicator found that the *PSLRA* gave him jurisdiction to hear an allegation and to make the order that he considered appropriate in the circumstances. The allegation stated that a party was in non-compliance with a final settlement agreement for a grievance that could be referred to adjudication.

There is now an application before the Federal Court for judicial review of that decision.

#### Jurisdiction under the *Canadian Human Rights Act*

Adjudicators have continued to explore the jurisdiction conferred on them by the *PSLRA* to apply the provisions of the *Canadian Human Rights Act (CHRA)*. In **Pepper v. Deputy Head (Department of National Defence)**, 2008 PSLRB 71, the adjudicator had to decide what compensation would be paid under the *CHRA*. There is now an application for judicial review of that decision.

In **Gibson v. Treasury Board (Department of Health)**, 2008 PSLRB 68, the adjudicator found that he had jurisdiction to hear a grievance on a fixed-term contract not being renewed. The employer objected that the *PSLRA* did not give the adjudicator jurisdiction over a contract not being renewed, but the adjudicator disagreed. In particular, he relied on the *PSLRA* provision giving adjudicators the power to apply the provisions of the *CHRA*. Since the grievance alleged that a prohibited ground of discrimination was the reason for not renewing the contract, the adjudicator had jurisdiction to determine whether the *CHRA* had in fact been contravened. After taking jurisdiction over the grievance, the adjudicator ruled that the grievor had not proved any prohibited discrimination.

In **Delage v. Treasury Board (Department of Fisheries and Oceans)**, 2009 PSLRB 43, the adjudicator accepted the argument based on the *CHRA* to support the interpretation of the collective agreement. In this case the grievor, who had taken parental leave, claimed to be entitled to a retroactive increase in parental benefits because he had been reclassified retroactively while on leave. His colleagues had received a retroactive pay increase, but his pay increase had not come into effect until he returned to work.

Considering all the parental leave provisions of the collective agreement, which clearly set out the parties' intention to ensure that parents on leave would receive a certain percentage of their pay, the adjudicator found that it would be unfair and contrary to the *CHRA* to deprive the grievor of an adjustment to his benefits based on his new pay. Not adjusting his benefits would amount to discrimination based on family status under the *CHRA*.

In a previous decision, **Delage v. Treasury Board (Department of Fisheries and Oceans)**, 2008 PSLRB 56, the adjudicator had already found that the grievor could make an argument based on the *CHRA* because, although the *CHRA* had not been raised earlier in the grievance process, its use did not change the basis for the grievance, namely, the discriminatory interpretation of the parental leave clauses.

### Review of the Bargaining Structure

Under the *PESRA*, the Board has the power to review its decisions at the request of either party. In **House of Commons v. Professional Institute of the Public Service of Canada et al.**, 2009 PSLRB 23, the employer asked the Board to review the bargaining structure, which it believed was no longer appropriate. The employer argued that the structure — four bargaining agents representing seven bargaining units — was too cumbersome. With the new pay structure applicable to all employees and the integration of certain functions, the employer was of the opinion that a single bargaining unit would suffice. The Board found that the various bargaining units still had their *raison d'être* since the tasks, working conditions and work cultures varied considerably between units. The Board found that the employer had not established that a change in bargaining structures would be conducive to harmonious labour relations. Labour relations were already excellent, and a good percentage of House of Commons employees not being unionized would no doubt have presented a problem in defining the proposed bargaining unit.

### National Joint Council Directives

The National Joint Council (NJC) is an entity made up of employer and bargaining agent representatives. It establishes certain directives that may then be incorporated into collective agreements. In developing those directives, the NJC may use resources such as Statistics Canada.

That was the situation in **Antaya et al. v. Treasury Board (Department of Human Resources and Skills Development)**, 2009 PSLRB 25, in which a group of grievors challenged an amendment to the Isolated Posts and Government Housing Directive (IPGHD) that removed the city of Whitehorse, Yukon, from the list of isolated posts for which the grievors received an isolated post allowance. A Statistics Canada study showed that Whitehorse no longer met the isolated-post criteria.

The grievors challenged the methodology that Statistics Canada used in the study and the NJC's decision to amend the IPGHD as a consequence.

The adjudicator found that her jurisdiction over the grievance extended only to the manner in which the employer had applied or interpreted the directive. The employer had complied with the directive as written. According to the adjudicator, the grievance did not challenge the employer's conduct but rather the NJC's decision to accept the Statistics Canada data. The adjudicator stated that she had no jurisdiction over that decision and dismissed the grievance.

### Jurisdiction

A jurisdictional issue arose again in an entirely different context in **Zhang v. Treasury Board (Privy Council Office)**, 2009 PSLRB 22. That decision followed another decision by an adjudicator (2005 PSLRB 173) ordering the employer to search diligently for a position for the grievor, who had been terminated, and to consider her to be on paid leave in the meantime.

In the newer **Zhang** case, further developments gave rise to a new grievance. As soon as the two-month period that the adjudicator had set for searching for a job ended, the employer again terminated the grievor's employment and cancelled her reliability status. However, the grievor had obtained a position in another part of the public service, which meant that the employer had to cancel her termination. She filed a grievance against the termination. At the hearing, she maintained the part of the grievance about her pay from the time she was terminated until she started her new position, which the employer refused to pay her.

The employer challenged the adjudicator's jurisdiction. In its view, the issue had to do with enforcing another adjudicator's decision, which was subject to judicial review in the Federal Court.

The adjudicator found that she had jurisdiction over the termination grievance, which had evolved into a pay claim. The termination did not arise out of the earlier order since nothing in that order required the employer to terminate the grievor as soon as the two-month period for searching for another job for the grievor had ended. The employer's decision to terminate the grievor was a new decision and had validly been referred to adjudication under section 209 of the *PSLRA*.

The Federal Court ruled that the adjudicator had erred in not determining whether the retraining program was reasonable and appropriate as required by the collective agreement.

The Court criticized the adjudicator for reaching a conclusion about the grievor's psychological distress.

### Employer's Duties with respect to Surplus Employees

**Olson v. Canadian Food Inspection Agency**, 2009 PSLRB 6, completed a process begun in **Olson v. Canadian Food Inspection Agency**, 2007 PSLRB 24, and dealt with the employer's duties with respect to surplus employees.

The grievor's veterinarian position was declared surplus, and the employer offered him another position for which he had to enter a retraining program. The employer terminated his employment during the retraining. The grievor filed a grievance, which the adjudicator dismissed in the 2007 decision. The adjudicator found that the Agency's right to appoint employees to positions included the right to assess whether they met the requirements during the training period preceding their possible appointment.

On judicial review, in **Olson v. Canada (Attorney General)**, 2008 FC 209, the Federal Court ruled that the adjudicator had erred in not determining whether the retraining program was reasonable and appropriate as required by the collective agreement. The Court referred the matter to another adjudicator to determine whether the retraining program was in fact reasonable and appropriate.

In the 2009 decision, the adjudicator found that the employer had put the grievor in a position in which he had to meet considerable challenges even though, in principle, he was still being retrained. In fact, he had to find solutions to personnel management problems without having been adequately trained to handle those issues. Therefore, the employer had not fulfilled its contractual duty to provide reasonable and appropriate retraining. The adjudicator ordered that the grievor be reinstated as a surplus employee.

### Judicial Review of PSLRB Decisions

The Federal Court allowed a few applications for judicial review during the 2007-2008 fiscal year. In addition to those already mentioned above in the discussion of the proceedings before the Board, two decisions are summarized in the text that follows, in which the Court's reasoning was very different from that of the adjudicator.

Last year's report referred to **Demers v. Deputy Head (Correctional Service of Canada)**, 2007 PSLRB 89, in which the adjudicator allowed the grievor's grievance. A disciplinary penalty had been imposed on the grievor because he had insisted on wearing a tie to work, which was contrary to the new dress code. The adjudicator found that the disciplinary action was inappropriate and that wearing a tie had no impact on the employer's operations. The adjudicator ordered the employer to rescind the disciplinary penalty and to reimburse the grievor for the income that he had lost during his extended sick leave, which, in the adjudicator's view, resulted entirely from the employer's intransigence.

In **Canada (Attorney General) v. Demers**, 2008 FC 873, the Federal Court allowed the application for judicial review and referred the matter back to the Board with the direction that the grievance be dismissed. The Court criticized the adjudicator, among other things, for reaching a conclusion about the grievor's psychological distress. In its view, it was a matter for an expert, not an adjudicator. Since the employer had not erred in any way, the adjudicator's decision was unreasonable. The grievor has appealed this decision.

In **Tobin v. Treasury Board (Correctional Service of Canada)**, 2007 PSLRB 26, the adjudicator allowed the employee's grievance against his dismissal. The grievor was charged with criminal offences in relation to his off-duty conduct. He received a suspended sentence and was placed on probation, but most of the charges were withdrawn. Relying on the case law referred to by both parties, the adjudicator found that the employer had no justification for dismissing the grievor for his conduct outside the workplace.

On judicial review in **Canada (Attorney General) v. Tobin**, 2008 FC 740, the Federal Court stated that the dismissal had to be considered in light of the imperative nature of the standards set by the Commissioner of the Correctional Service of Canada, which required that an employee be dismissed if the employee's conduct harmed the Correctional Service of Canada's reputation. The applicability of those standards had not been brought before the adjudicator. In April 2009, the Federal Court of Appeal heard the appeal of the decision but has yet to render its decision.

## Appendix 4

**Table 1: Collective Bargaining Cases  
2008-2009**

	Carried over from 2007-2008	Received in 2008-2009	Total	Settlements	Not settled	Carried over to next fiscal year
Requests for mediator	3	11	14	3	6	5
	Carried over from 2007-2008	Received in 2008-2009	Total	Settlements	Arbitral awards	Carried over to next fiscal year
Arbitration boards	5	14	19	3	9	7
	Carried over from 2007-2008	Received in 2008-2009	Total	Settlements	PIC report	Carried over to next fiscal year
PICs	0	5	5	1	0	4

**Table 2: Mediation Services Cases  
2008-2009**

	Mediation cases carried over from previous years	Cases received in 2008-2009		Completed mediation cases		Success rate (% of completed mediation cases settled or withdrawn)	Total number of cases carried forward to 2009-2010 <sup>1</sup>
		Cases where mediation agreed to in 2008-2009	Cases where mediation refused in 2008-2009	Cases settled or withdrawn	Cases not settled		
Mediation of grievances or complaints filed with the Board	1577	1068		152		82%	1882
		457	611	124	28		
Preventive mediation	45	63		79		87%	11
		57	6	69	10		

<sup>1</sup>The development and introduction of a new case management system will result in this data bank being reviewed in 2009-2010.

