Public Service Labour Relations Board

Parliamentary Employment and Staff Relations Act

Annual Report 2007-2008

Canada

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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 84 of the *Parliamentary Employment and Staff Relations Act*, the Annual Report of the administration of that Act by the Public Service Labour Relations Board covering the period from April 1, 2007 to March 31, 2008.

Yours sincerely,

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

PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT

Public Service Labour Relations Board

2007–2008

Chairperson:	Casper M. Bloom, Q.C., Ad. E.
Vice-Chairpersons:	Marie-Josée Bédard Ian R. Mackenzie Georges Nadeau Michele A. Pineau
Full-time Members:	Roger Beaulieu Dan Butler Barry Done Léo-Paul Guindon John A. Mooney Dan R. Quigley Renaud Paquet
Part-time Members:	Christopher James Albertyn Bruce Archibald, Q.C. Ruth Elizabeth Bilson, Q.C. George P.L. Filliter Joan M. Gordon Deborah M. Howes Margaret E. Hughes Thomas Kuttner, Q.C. Allen Ponak John J. Steeves

PRINCIPAL STAFF OFFICERS OF THE PSLRB

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

Message from the Chairperson

I am pleased to submit to Parliament the annual report on the administration of the *Parliamentary Employment and Staff Relations Act* (*PESRA*) for 2007-2008.

The Public Service Labour Relations Board (PSLRB) administers the legislative framework within which labour relations are conducted in the institutions of Parliament. Our clients are the 10 employers and bargaining agents covered by the Act.

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

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

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

We have met with success using mediation to reduce the number of cases that go to formal adjudication. In the period under review, we strengthened our efforts to promote our mediation services, recognizing that mediation is a very effective use

of resources in the pursuit of harmonious labour relations. A single mediation can often resolve numerous similar cases. Going forward, the PSLRB will build on its strong reputation for mediation by exploring additional ways to promote our services.

On December 17, 2007, I appeared before the House of Commons Standing Committee on Government Operations and Estimates to support our request for supplementary funding for 2007-2008. I shared with committee members my concern that the PSLRB lacks the permanent stable funding base required to fulfill its responsibilities under the Acts we administer. Although the new *Public Service Labour Relations Act*, which came into force on April 1, 2005, has given us an expanded role, particularly in compensation analysis and research, we have still not received the resources we need on a consistent basis to fully deliver on our obligations. I remain hopeful that efforts in 2008-2009 will yield a funding solution that supports full implementation of our mandate in the years ahead.

Casper M. Bloom, Q.C., Ad. E.
Chairperson
Public Service Labour Relations Board

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Introduction

In 1986, the Parliament of Canada passed the *Parliamentary Employment and Staff Relations Act* (*PESRA*). Part I of this Act gives employees of parliamentary institutions the right to form a union in order to negotiate collectively the conditions of their employment. Part I also gives employees the right to lodge grievances concerning these conditions and, in certain cases, to refer these grievances to adjudication before a neutral third party.

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

Under the *PESRA*, the Board hears various matters: applications by employee organizations for certification to become the bargaining agent representing employees; complaints of unfair labour practices; designation of persons employed in managerial and confidential capacities; and adjudication of disputes.

The Board also adjudicates grievances concerning the interpretation and application of provisions of collective agreements, significant disciplinary action, and all forms of termination of employment except rejection on probation during initial appointments. Grievances concerning demotion, appointment and classification may also be referred to adjudication but are determined not by a Board member but by an external adjudicator chosen by the parties, which are equally responsible for the adjudicator's compensation and expenses.

Through its mediation services, the PSLRB also assists parties unable to resolve their disputes at the bargaining table. This assistance may lead to a resolution without the need for the dispute to be heard formally by the Board or may limit the number of issues.

Under the *PESRA*, arbitration is the only means of resolving disputes if bargaining comes to an impasse. In these situations, the Board acts as an arbitration board. Upon receiving a request for arbitration, the Chairperson appoints a tripartite panel

composed of two persons representing the interests of each party, along with a Board member who chairs the panel. Such panels are deemed to act as the Board for the purposes of dealing with the dispute. After hearing the parties, the panel renders a decision on the issues in dispute. These decisions form part of collective agreements and are binding on the parties and on employees.

Appointments to the Public Service Labour Relations Board

In 2007-2008, a number of new appointments were made to the Board. Marie-Josée Bédard was appointed as a Vice-Chairperson, joining Ian R. Mackenzie and Michele A. Pineau, who continued in their appointments as Vice-Chairpersons. John Mooney, Roger Beaulieu and Renaud Paquet were appointed as new full-time Board members, joining Dan R. Quigley and Dan Butler who continued in their appointments. Georges Nadeau retired from the Board as a Vice-Chairperson, Barry Done retired as a full-time Board member and Léo-Paul Guindon completed his term as a full-time Board member. Christopher James Albertyn, George P.L. Filliter, Deborah M. Howes, Margaret E. Hughes and Allen Ponak were appointed as part-time Board members, and Bruce Archibald, Q.C., Ruth Elizabeth Bilson, Q.C. and John J. Steeves were reappointed as part-time Board members.

Proceedings before the Public Service Labour Relations Board

In 2007-2008, the PSLRB dealt with 41 cases under the *Parliamentary Employment and Staff Relations Act* (*PESRA*). Of these, 29 were grievances, 1 was a complaint and 11 pertained to other applications.

1. Grievance Adjudication

In 2007-2008, the PSLRB processed 29 grievances. Of these cases, 23 had been carried over from previous years and 6 were new.

Under the *PESRA* there are three types of adjudicable grievances. The first type arises from the application or interpretation of a collective agreement or an arbitral award. Such grievances cannot be referred without the approval and support of the bargaining agent. In 2007-2008, the PSLRB processed 3 of these grievances; 2 were from the House of Commons and 1 was from the Library of Parliament.

The second type refers to disciplinary actions resulting in suspension or financial penalty as well as to terminations of employment, other than rejection on probation. A member of the Board acting as an adjudicator hears these grievances. In 2007-2008, the PSLRB dealt with 7 such grievances; 6 were from the House of Commons and 1 was from the Senate.

The third type includes grievances relating to the demotion of an employee, to the denial of appointment and to classification. These are heard and determined by an adjudicator selected by the parties. The PSLRB processed 19 of these grievances. Five (5) were from the House of Commons and 14 were from the Library of Parliament. All but 1 of the latter pertained to classification grievances.

As of March 31, 2008, of these 29 grievances, 2 were on hold pending the outcome of mediation, 12 were on hold pending other reasons, 6 were scheduled for a hearing, and 2 were awaiting the scheduling of a hearing. Of the 7 cases considered completed, all had been withdrawn.

2. Complaint Adjudication

Section 13 of the *PESRA* requires the Board to examine and inquire into an alleged failure to observe any prohibition contained in sections 6, 7 or 8, to comply with any regulation respecting grievances made by the PSLRB pursuant to section 71, or to give effect to any provision of an arbitral award or to a decision of an adjudicator with respect to a grievance.

Where the Board upholds a complaint, it has authority under this section to order remedial action. If such action is not carried out, section 14 provides that it shall make a report to Parliament. One (1) complaint was processed in 2007-2008. As of March 31, 2008, this case was scheduled to be heard in 2008-2009.

3. Other Proceedings

Requests for extensions of time

Section 79 of the *P.E.S.R.A. Regulations and Rules of Procedure* provides for applications to extend the time to present a grievance. One (1) such application carried over from a previous year was completed in 2007-2008.

Enforcement of obligations of employer and employee organizations

Section 70 of the *PESRA* requires the PSLRB to inquire into allegations that cannot be the subject of a grievance by an individual employee. These come about when an employer or bargaining agent seeks to enforce an obligation alleged to arise out of a collective agreement or an arbitral award. One (1) new case of this type was received in 2007-2008.

Applications for certification

Under section 18 of the *PESRA*, an employee organization may submit an application to be certified as bargaining agent for a bargaining unit. The PSLRB did not receive any such applications in 2007-2008.

Application to review certification

On November 14, 2005, the House of Commons employer filed an application with the PSLRB under section 17 of the *PESRA* requesting a review of the existing bargaining unit structure. The four respondents — the Professional Institute of the Public Service of Canada, the Public Service Alliance of Canada, the House of Commons Security Service Employees Association, and the Communications, Energy and Paperworkers Union of Canada — represent 7 bargaining units affected by this application. The matter is awaiting a decision.

Determination of membership in bargaining unit

Under section 24 of the *PESRA*, an employer or an employee organization may ask the PSLRB to determine whether an employee or class of employees is included in a bargaining unit. The PSLRB dealt with no such applications in 2007-2008.

Application for declaration of successor rights

Section 36 of the *PESRA* provides for the PSLRB to determine what rights, privileges and duties are acquired or retained by an employee organization after a merger or amalgamation or a transfer of jurisdiction, other than as a result of revocation of certification. The PSLRB did not receive any such applications in 2007-2008.

Notice to bargain collectively

Section 37 of the *PESRA* provides that either the bargaining agent or the employer may require, by written notice, to commence bargaining collectively with a view to concluding a collective agreement. In 2007-2008, the PSLRB dealt with 2 notices to bargain collectively; both were submitted by the bargaining agent and both were for the Senate of Canada.

Applications under section 38

Section 38 of the *PESRA* requires the parties to bargain collectively in good faith and make every reasonable effort to conclude a collective agreement. The PSLRB did not deal with any allegations of a violation of section 38 in 2007-2008.

Request for the appointment of a conciliator

Under section 40 of the *PESRA*, parties unable to reach agreement on any term or condition of employment embodied in a collective agreement may ask the Chairperson to appoint a conciliator to assist them in reaching an agreement. In 2007-2008, the PSLRB dealt with 2 requests for conciliators for the House of Commons. Conciliators were appointed. Not all issues could be resolved, and the 2 cases went to arbitration. Arbitral awards were issued in both cases.

Arbitration proceedings

Section 46 of the *PESRA* provides for binding arbitration as the only method available to resolve interest disputes; there is no right to strike under the Act. In 2007-2008, the PSLRB dealt with 4 requests for arbitration, all for the House of Commons. Three (3) arbitral awards were issued and one case was scheduled for 2008-2009.

Mediation

When a proceeding is brought before the PSLRB, dispute resolution services are offered to help parties resolve their differences without resorting to a formal hearing. Mediations may be conducted by staff mediators or Board members; the latter may remain seized of the matter for a decision on the merits, with the consent of the parties. In 2007-2008, the PSLRB dealt with 4 grievance mediation cases. Two (2) are to be scheduled for mediation in 2008-2009, and 1 was settled. Another case was not settled and will be going to a formal adjudication hearing.

In 2007-2008, the parties requested the PSLRB's mediation services in 2 cases of preventive mediation in an effort to resolve a dispute before continuing with the grievance process. As of March 31, 2008, one case was scheduled for mediation in 2008-2009, and the other was settled.

Tables

Table 1: Bargaining Units and Bargaining Agents under the *Parliamentary Employment and Staff Relations Act* April 1, 2007 to March 31, 2008

BARGAINING UNITS	BARGAINING AGENTS
House of Commons as Employer	
Technical Group	Communications, Energy and Paperworkers Union of Canada
Protective Services Group	House of Commons Security Services Employees Association
Procedural Subgroup and Analysis/ Reference Subgroup in the Parliamentary Programs Group	Professional Institute of the Public Service of Canada
Operational Group (except for part-time cleaners classified at the OP A level)	Public Service Alliance of Canada
Reporting Subgroup and Text Processing Subgroup in the Parliamentary Programs Group	Public Service Alliance of Canada
Postal Services Subgroup in the Administrative Support Group	Public Service Alliance of Canada
Scanners	Public Service Alliance of Canada
Senate of Canada as Employer	
Legislative Clerk Subgroup in the Administrative Support Group	Professional Institute of the Public Service of Canada
Protective Service Subgroup in the Operational Group	Senate Protective Service Employees Association
Operational Group (except for employees in the Protective Service Subgroup)	Public Service Alliance of Canada

Library Science (Reference) and Library Science (Cataloguing) Subgroups in the Research and Library Services Group	Public Service Alliance of Canada
Administrative and Support Group	Public Service Alliance of Canada
Library Technician Subgroup in the Research and Library Services Group	Public Service Alliance of Canada
Research Officer and Research Assistant Subgroups in the Research and Library Services Group	Canadian Association of Professional Employees

Table 2: Adjudication References, April 1, 2000 to March 31, 2008

	Interpretations [Para. 63(1)(*a*)]	Discipline [Paras. 63 (1) (*b*) & (*c*)]	Party & Party [Sec. 70]	Sub-Total	Paras. 63(1) (*d*), (*e*) & (*f*)	Total
2007–2008	2	7	1	10	19	29
2006–2007	6	12	0	18	28	46
2005–2006	4	11	0	15	25	40
2004–2005	2	4	0	6	0	6
2003–2004	2	2	0	4	0	4
2002–2003	51	3	0	54	29	83
2001–2002	7	0	0	7	0	7
2000–2001	2	2	1	5	12	17
Cumulative Totals December 24, 1986 to March 31, 2008						
	358	84	11	453	310	763

Table 3: **Adjudication References Carried Forward and Received April 1, 2000 to March 31, 2008**

Fiscal Year	Carried Forward	Received	Overall Total	Dispositions Total
2007–2008	23	6	29	7
2006–2007	41	5	46	23
2005–2006	26	14	40	1
2004–2005	26	6	32	4
2003–2004	33	4	37	7
2002–2003	3	83	86	55
2001–2002	10	7	17	14
2000–2001	41	17	58	45