Public Service Labour Relations Board

Annual Report
2009 - 2010

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 251 of the *Public Service Labour Relations Act*, the Annual Report of the Public Service Labour Relations Board, covering the period from April 1, 2009 to March 31, 2010, for submission to Parliament.

Yours sincerely,

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

PUBLIC SERVICE LABOUR RELATIONS BOARD
2009-2010

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

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

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

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
Paul E. Love
Georges Nadeau
Allen Ponak
Joseph W. Potter
John J. Steeves

EXECUTIVE OFFICERS OF THE PSLRB

Executive Director and General Counsel: Pierre Hamel
Director, Dispute Resolution Services: Gilles Grenier
Director, Compensation Analysis and Research Services: Guy Lalonde
Director, Registry Operations and Policy: Susan Mailer
Director, Corporate Services: Alison Campbell
Director, Financial Services: Robert Sabourin

MESSAGE FROM THE CHAIRPERSON

I am pleased to submit to Parliament the Annual Report of the Public Service Labour Relations Board (PSLRB) for 2009-2010.

During the year under review, the PSLRB strived to enhance our efficiency and effectiveness by continuing to improve the delivery of our adjudication services through ongoing consultations with our clients. In particular, we took the initial steps to create a Client Consultation Committee, in which we will work closely with our clients to gain insight into their views on how we can refine our adjudication and mediation processes and practices.

Exploring innovative ways to effectively manage our sizable caseload to ensure that active cases are kept to a manageable number and to reduce the overall time it takes to complete case files remained a priority. For example, we rendered decisions on some cases based on information already on file or through written submissions, rather than through formal hearings, which represents a proactive shift in our approach to case management and that resulted in enhanced fairness, efficiency and effectiveness, as well as cost savings. As well, pre-hearing and case management conferences continued to yield excellent results by enabling the parties to resolve preliminary issues, such as objections with respect to the Board's jurisdiction to hear certain matters and the timeliness of applications, as well as incidental issues related to disclosure, confidentiality orders, and the identification of witnesses. They also provide the adjudicator or Board member with an opportunity to narrow down the issues in dispute, clarify the number of hearing days required and discuss settlement possibilities. Those factors contribute to making more efficient use of our and the parties' time and resources and, in some cases, can eliminate the need for an oral hearing.

On the mediation side of our business, again this year, the parties were able to achieve considerable success with the support of our PSLRB mediators. Our mediators help parties to resolve their disputes in an open and collaborative environment that is less adversarial than the adjudication process. When resources permitted, preventive mediations were undertaken, which enabled disputes to be resolved before a grievance or a complaint was formally referred to the PSLRB. Board mediators also helped the parties resolve their collective bargaining disputes through either conciliation or arbitration. Conciliation involves appointing a Public Interest Commission that makes settlement recommendations that are not binding on the parties involved. Arbitration allows the parties to obtain a binding decision from an impartial, third-party panel.

While we have achieved considerable success this past year in fulfilling our statutory responsibilities under the *Public Service Labour Relations Act*, as a result of stable, long-term funding, additional financial resources are still required to enable our Compensation Analysis and Research Services to develop the methodology and to initiate the field work for their public-service-wide, market-based compensation comparability study. Those funds are still under review.

Another challenge that we face and that I have raised in previous years is the delays that we have experienced in appointing individuals to fill Board member vacancies. This can affect our ability to expeditiously handle our caseload. We continue to seek ways to minimize the impact of vacancies and to ensure that they are filled as quickly as possible, although it is often beyond our control.

Looking ahead, we will continue to prepare for our new jurisdiction under the *Public Sector Equitable Compensation Act*, which has yet to come into force. However, as I reported last year, under the *Budget Implementation Act, 2009*, the PSLRB has the mandate to decide pay equity complaints that were before the Canadian Human Rights Commission. Seven such complaints were transferred to us, and to date, we have rendered two

interim decisions for all seven, three of which have been closed. The remaining complaints will be proceeding to hearings, likely within the upcoming fiscal year.

Finally, I am pleased to note that I have been reappointed as Chairperson of the PSLRB for a three-year term that began on January 2, 2010. I look forward to continuing to provide leadership to the PSLRB, and I am confident that we can successfully address the challenges before us. I would like to take this opportunity to thank the Board members and all employees for their unfailing dedication and professionalism and their contribution to the efforts of the PSLRB as an impartial third party that fosters harmonious labour relations in the Public Service of Canada.

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

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About the Public Service Labour Relations Board

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

WHO WE ARE AND WHAT WE DO

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. Given its independent status, the PSLRB 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, who is responsible under the *Public Service Labour Relations Act (PSLRA)* for tabling the PSLRB's annual report to Parliament each year and for signing documents required under the *Financial Administration Act (FAA)*.

In accordance with its mandate under the *PSLRA*, the PSLRB provides three main services: adjudication, mediation, and compensation analysis and research. As well, under section 396 of the *Budget Implementation Act, 2009*, the PSLRB is also responsible for dealing with existing pay equity complaints and with those that may arise under the *Public Sector Equitable Compensation Act (PSECA)*, which has not yet come into force.

The PSLRB is strongly committed to contributing to harmonious labour relations in the federal public service by resolving labour relations issues in an impartial manner. The ultimate result is an efficient and productive workplace that ensures the effective delivery of programs and services to Canadians.

OUR THREE MAIN SERVICES

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)

- interpretations of collective agreements and arbitral awards;
- disciplinary actions resulting in terminations, demotions, suspensions or financial penalties;
- demotions or terminations for unsatisfactory performance or for any other non-disciplinary reasons; and
- deployments 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 (CLC)*.

Applications

- certifications and revocations of certifications;
- determinations of successor rights;
- determinations of managerial or confidential positions;
- determinations of essential services agreements;
- reviews of prior Board decisions; and
- requests for extensions of time to present grievances or to refer grievances to adjudication.

Mediation Services

The PSLRB provides mediators who act impartially to assist parties in reaching collective agreements, manage their relations under collective agreements, and resolve 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 of its three mandate areas, the PSLRB assists public service employees, employers and bargaining agents in the conduct of their labour relations activities.

The *PSLRA* covers some 250 000 federal public service employees, who fall under a collective agreement, and applies to departments named in Schedule I of the *FAA*, 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 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	Mediation services	Compensation analysis and research services
What we do		
• Administer a registry of applications, complaints and grievances (individual, group and policy) • Hold grievance adjudication and complaint hearings throughout Canada • Render decisions	• 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	• 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.

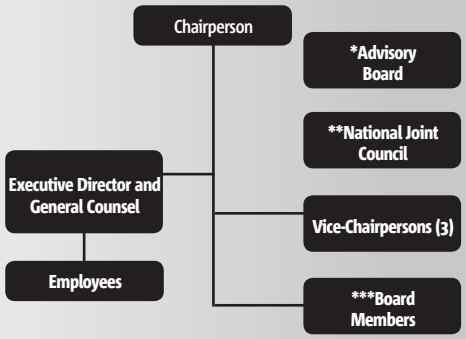
Board member appointments are made so as to ensure that, to the greatest extent possible, there is a balance between people recommended by employers and by bargaining agents.

The Treasury Board, as the largest employer, employs about 186 000 public service employees in federal government departments and agencies. About 66 000 public service employees work for one of the other employers, which range from large organizations such as the Canada Revenue Agency to smaller organizations such as the National Capital Commission. For a list of employers, please refer to Appendix 1, Table 1.

As of March 31, 2010, 22 bargaining agents were certified to represent 88 bargaining units in the federal public service. About 63 percent of unionized employees are represented by the Public Service Alliance of Canada, a further 22 percent are represented by the Professional Institute of the Public Service of Canada and the remaining 15 percent are represented by the 20 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.



* Subsection 53(1) of the *PSLRA* provides for the establishment of an advisory board responsible for providing advice to the Chairperson with respect to compensation analysis and research services.

** The PSLRB has no direct involvement in the operations of the National Joint Council.

*** The number of Board members is determined by the Governor in Council. Members may be appointed on a full-time or part-time basis.

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

OUR PEOPLE

Board Members

The Board comprises the Chairperson, 3 Vice-Chairpersons and other members that the Governor in Council may appoint for terms of no longer than 5 years and who may be reappointed. In 2009-2010, there were 6 full-time and 11 part-time Board members. 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. While the PSLRB head office is located in the National Capital Region, hearings are conducted throughout Canada.

Board members, other than the Chairperson and Vice-Chairpersons, are selected by the Governor in Council from a list of recommended candidates prepared by the Chairperson 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 made so as to ensure that, to the greatest extent possible, there is a balance on the Board between persons recommended by employers and by bargaining agents. However, even though a Board member may have been recommended by 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., has been Chairperson of the PSLRB since 2007 and was reappointed for an additional three-year term, which began in January 2010. No new full-time Board members were appointed during the year. However,

Mr. John A. Mooney left the PSLRB in September, and Mr. Michel Paquette retired in December 2009. Mr. Paul E. Love, a former part-time Board Member, and Mr. Joseph W. Potter, a former Board Member, Deputy Chairperson and Vice-Chairperson, were appointed as part-time Board members in November 2009.

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

MANAGEMENT

In 2009-2010, the PSLRB had expenditures of $12.9 million and 90 full-time equivalent positions. Under its governance structure, the Chairperson is the PSLRB's chief executive officer and has overall responsibility for supervising and directing the work of 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 2009-2010, the PSLRB reaffirmed its commitment to continue to improve service delivery to its clients by implementing a more streamlined, responsive and effective adjudication process. Most notably, the PSLRB took steps to create a Client Consultation Committee that will enable it to gain insight into its clients' views of how it can improve service delivery. The terms of reference for the committee have been approved, and its members have committed to meet several times in fiscal year 2010-2011.

Among other things, committee discussions will focus on the PSLRB's processes and practices, including case management, scheduling hearings and case mediation.

The PSLRB also gauges client satisfaction by conducting a Client Satisfaction Survey every three years. The next survey will be undertaken in 2010.

OTHER RESPONSIBILITIES

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

As well, 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. The PSLRB will also be called upon to act under the *PSECA*, once it comes into force by an Order in Council.

Furthermore, under an agreement with the Yukon government, the PSLRB 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.

In 2009-2010, the PSLRB had expenditures of $12.9 million and 90 full-time equivalent positions.

The PSLRB administers the collective bargaining and grievance adjudication systems required by the Yukon Education Labour Relations Act *and the Yukon* Public Service Labour Relations Act.

PART TWO:

The Year in Review

Hearings before the Board can be oral and may be conducted solely through the filing of written documents.

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

Hearings before the Board can be oral and may be conducted solely through the filing of written documents. Oral hearings before Board members and adjudicators are similar to court proceedings, but the rules are less formal. As hearings are conducted to collect evidence and to hear arguments that enable the Board to fulfill its statutory mandate, they are conducted in accordance with the law and the principles of natural justice.

In exercising its statutory powers to make decisions that affect rights, the Board must conduct hearings in a way that is fair for all the parties concerned. Thus, the *PSLRA* grants Board members and adjudicators 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 court, and, where necessary, inspect and take a view of an employer's premises.

To assist the parties in preparing for hearings, the PSLRB has developed questions and answers and other information, which are available on its website.

CASELOAD OVERVIEW

In 2009-2010, the PSLRB's caseload was reduced from the previous year, partly because of initiatives that it had undertaken to deal with cases in a more efficient manner, and also because of a decrease in the number of new cases received. More detailed information about the PSLRB's caseload can be found in Appendix 2.

Total Caseload 2009-2010

- Total active caseload: 5185
- Active cases were up 3% from 2008-2009 (5022) and up 8% from 2007-2008 (4819) but down 13% from 2006-2007 (5928)
- New cases: 1331
- New cases were down 13% from 2008-2009 (1532), down 13% from 2007-2008 (1528) and down 21% from 2006-2007 (1693)
- Cases carried forward from previous years: 3966 or 76% of total caseload
- Cases closed: 1482 or 29% of total caseload
- Cases carried forward to next year: 3308 or 64% of total caseload

Grievances

As in previous years, grievances referred to adjudication continued to constitute the bulk of the PSLRB's workload.

Grievances are referred to the PSLRB mainly as a result of "rights disputes" that relate to the application or interpretation of collective agreements or arbitral awards; disciplinary actions resulting in terminations, demotions, suspensions or financial penalties; non-disciplinary demotions or terminations; and deployments without the employee's consent, where consent is required.

If a public service employee presents a grievance to 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 previously mentioned.

When the PSLRB receives a grievance for adjudication, it gives priority to exploring options for resolving the matter voluntarily through mediation. (For more information on mediation, please refer to the Mediation Services section of this report.)

Cases that are not settled or withdrawn through mediation or other interventions proceed to a hearing before a member of the Board selected by the Chairperson to act as the adjudicator.

The PSLRB encourages parties to continue working toward a settlement throughout the adjudication process as a solution designed by the parties is always a preferable resolution. As such, the PSLRB offers the parties the opportunity to participate in case settlement discussions at any time during the adjudication process with the adjudicator, should the parties wish.

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 an 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 (CHRC) must be notified of such grievances and has standing to make submissions to an adjudicator. In most cases, the CHRC declined to make any submissions. Under the *Budget Implementation Act, 2009,* the PSLRB was also given jurisdiction over pay equity complaints that have not yet been referred by the CHRC to the Canadian Human Rights Tribunal.

In 2009-2010, 8 percent fewer new grievances were referred to adjudication than in the previous year.

Grievances 2009-2010

- Grievances referred to adjudication: 3812 or 74% of all cases before the PSLRB
- New grievance cases: 864 (812 individual, 11 group and 41 policy)
- Grievance cases involving terminations: 65 (a 13% decrease from the previous year but still more than in 2007-2008, when there were 38)
- Grievance cases closed: 977 or 26% of all grievance cases
- 977 cases were closed compared with 864 cases opened, for an overall caseload decrease of 113
- Of cases closed, 322 cases were settled, 200 were withdrawn by the parties and 321 cases were decided by 117 decisions

Complaints

Although a smaller proportion of the PSLRB's overall active caseload in 2009-2010 involved complaints, they consumed a substantial amount of its time and resources. Many complaints are complex, and some also involve self-represented complainants.

Two types of complaints are heard by the PSLRB — complaints of unfair labour practices under the *PSLRA* and complaints related to reprisals under the *CLC*. The bulk of the PSLRB's active complaint cases are complaints of unfair labour practices under the *PSLRA*.

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.

When the PSLRB receives a grievance for adjudication, it gives priority to exploring options for resolving the matter voluntarily through mediation.

The bulk of the PSLRB's active complaint cases are complaints of unfair labour practices under the PSLRA.

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

Complaints 2009-2010

- Complaints referred to adjudication: 290 or 6% of all cases before the PSLRB
- Unfair labour practice complaints: 257 or 89% of the complaint caseload, a very small percentage of which were allegations that the employer failed to bargain in good faith
- *CLC* complaints: 33 or 11% of complaint caseload
- New unfair labour practice complaints: 57 in 2009-2010; 167 in 2008-2009; 63 in 2007-2008 and 50 in 2006-2007
- New *CLC* complaints: 13 in 2009-2010; 16 in 2008-2009; 3 in 2007-2008 and 5 in 2006-2007
- Complaint cases closed: 116 or 40% of all complaint cases
- Of cases closed, 80 were settled or withdrawn by the parties, and 36 were decided by 35 decisions

Applications

Applications 2009-2010

- Total: 863 or 17% of all cases before the PSLRB
- Certification or revocation of certification: 0
- Successor rights: 0
- Essential services agreements: 9
- Review of prior PSLRB decisions: 13
- Determination of management and confidential positions: 551
- Requests for extensions of time to file a grievance or to refer a grievance to adjudication: 46

The PSLRB's mediation services – a key component of its statutory mandate under the PSLRA *– provide a collaborative forum for early dispute resolution, rather than subjecting the parties to other, more adversarial resolution processes.*

MEDIATION SERVICES

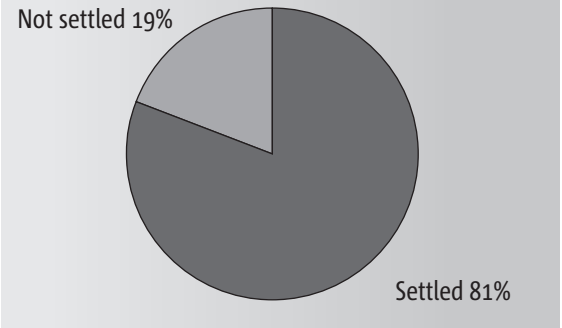
Case Mediation

The PSLRB's mediation services — a key component of its statutory mandate under the *PSLRA* — provide a collaborative forum for early dispute resolution, rather than subjecting the parties to other, more adversarial resolution processes. Through mediation, the parties are encouraged to explore the underlying reasons for their conflict, allowing them to craft solutions that better address the root causes of their problem. 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 acting as mediators or experienced persons appointed from outside the PSLRB.

In 2009-2010, the PSLRB continued its efforts to promote mediation to the parties involved in adjudication cases. As a voluntary alternative, the PSLRB's clients have made considerable use of mediation and with noted success. During the year, in response to grievances and complaints referred to the Board, the PSLRB conducted 85 separate mediation interventions. With the assistance of the Board's mediation services, parties were able to achieve settlements in approximately 80 percent of the cases. As a result, a total of 197 case files that had been referred to the PSLRB were resolved.

The PSLRB's mediation services have also included, resources permitting, dealing with cases identified as "preventive" mediations. Such cases attempt to resolve disputes before a grievance or complaint is formally referred to the PSLRB, reducing the number of files brought before the PSLRB. In 2009-2010, the PSLRB's Dispute Resolution Services conducted 32 preventive mediation interventions. Through those efforts, the PSLRB was able to assist parties in resolving their disputes in over 90 percent of the cases.

Figure 1: Mediation Interventions 2009-2010 (117)*



*These mediation interventions resulted in the resolution of an aggregate of 226 files (i.e., cases referred to the PSLRB and preventive mediations).

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 conciliation.

As reported by the PSLRB last year, the major round of public service negotiations that began in 2007-2008 presented certain challenges. Not only was this the first round of bargaining conducted under the *PSLRA*, several significant changes to the legal framework within which negotiations occur were also introduced. As well, the federal government announced early on in the parties' bargaining process legislation that was subsequently enacted as the *Expenditure Restraint Act* to restrict increases in wages and remuneration applicable to federal public servants.

While the majority of the negotiations involving the Treasury Board and separate-employer bargaining units were concluded by the end of 2008-2009, the PSLRB assisted in resolving several bargaining disputes that represented the tail end of that bargaining round. Eight mediation interventions were conducted with the assistance of PSLRB mediators, resulting in four settlements. In the other four cases, the parties, with the assistance of the mediators, were able to reduce the number of outstanding issues in dispute.

Conciliation

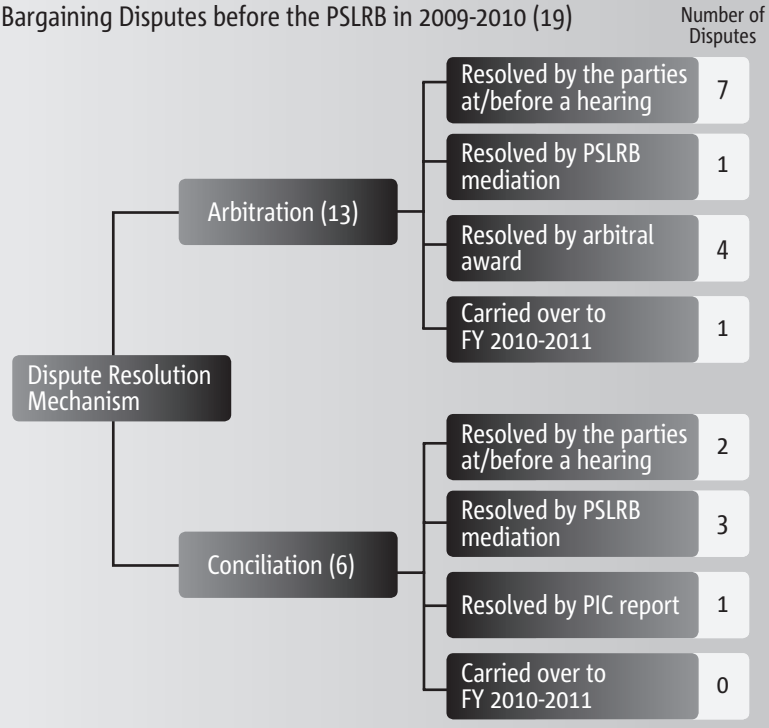
If the parties are unable to resolve their differences, their dispute may be referred to the Board for third-party resolution. Bargaining agents may opt for either conciliation (and the right to strike) or arbitration. Conciliation involves the appointment of a Public Interest Commission (PIC). PICs are non-permanent bodies that comprise one or three people appointed by the responsible minister on the recommendation of the PSLRB Chairperson. They assist the parties by making collective bargaining settlement recommendations, which are not binding on them. While some requests for conciliation were received in 2008-2009, it was only in 2009-2010 that the PSLRB began to establish and complete a full conciliation cycle. Specifically, in 2009-2010, six conciliation requests were before the PSLRB, including four that had been carried over from the previous year. One file proceeded to a hearing and a Public Interest Commission report; the balance was resolved by the parties either independently or with the assistance of a PSLRB mediator.

Binding Arbitration

Binding arbitration is the other option for resolving bargaining disputes under the *PSLRA*. If the parties are unable to settle their collective agreements through negotiation, then binding arbitration, if it was selected by the bargaining agent 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. In 2009-2010, 13 arbitration requests were before the PSLRB, including 7 that were carried over from the previous year. Of those, a total of 4 arbitral awards were issued; the rest were resolved by the parties independently or with the assistance of a PSLRB mediator.

If the parties are unable to resolve their differences, their dispute may be referred to the Board for third-party resolution.

Table 1: Resolution of Collective Bargaining Disputes



PSLRB mediators also delivered several presentations and special sessions, both inside and outside the federal public service, to help build a general understanding of mediation as a dispute resolution mechanism.

Conflict can be reduced and negotiations can proceed more smoothly when all parties have equal access to accurate and comprehensive compensation information provided by a neutral, reliable and authoritative third party.

Mediation Training

In 2009-2010, members of the Dispute Resolution Services team delivered nine interest-based negotiation and mediation courses. The training sessions' mixed composition of union representatives, managers and human resources specialists enabled participants to exchange views about a variety of aspects related to conflict resolution.

The 2.5-day interactive sessions enabled about 170 participants from within the federal public service to become familiar with and to understand interest-based approaches and mediation skills, which can be used to resolve workplace disputes. The courses 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 target audience includes individuals responsible for workplace conflict resolution, such as staff relations officers, union representatives, managers and supervisors, and others working in related fields, such as Employee Assistance Program officers.

PSLRB mediators also delivered several presentations and special sessions, both inside and outside the federal 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 PSLRB's mediation approach.

COMPENSATION ANALYSIS AND RESEARCH SERVICES

The PSLRB's Compensation Analysis and Research Services (CARS) support the collective bargaining and compensation determination processes in the federal public service. This is accomplished by collecting, compiling, analyzing and disseminating impartial, accurate and timely information on comparative rates of pay, employee wages, terms and conditions of employment, and benefits in the public and private sectors.

Compensation is a key issue for both employers and employees at the bargaining table. Conflict can be reduced and negotiations can proceed more smoothly when all parties have equal access to accurate and comprehensive compensation information provided by a neutral, reliable and authoritative third party. When parties begin negotiations by agreeing to use the PSLRB's compensation survey data as a reference point, they can focus their time and efforts more efficiently on other substantive issues.

National Compensation Comparability Study

In 2009-2010, considerable work was accomplished in preparation for the launch of the PSLRB's National Compensation Comparability Study. The study was originally to have been undertaken in fall 2010, but as a result of the coming into force of Bill C-10 and specifically the *Expenditure Restraint Act*, it was postponed to coincide with the next round of collective bargaining in 2011. Based on the experience of its two first compensation studies completed in 2008 (i.e., *Technical Services Compensation Comparability Study* and *Total Compensation Study on Health-Related Occupations in Canada*), the CARS has begun to implement a comprehensive project management framework, staffed several key positions, held discussions on collaborative approaches or partnership agreements with provincial governments, and established contractual arrangements to obtain the services of experienced classification specialists, and is developing the tools and appropriate technology to collect and manage study-related data. The PSLRB also continued to work closely with Statistics Canada to benefit from their expertise in addressing methodological and process issues related to conducting a compensation comparability study on a national scale.

Consultations and Collaborative Agreements

The *PSLRA* provides for the appointment of an advisory board to advise the Chairperson on the PSLRB's compensation analysis and research services. The mandate of the first advisory board members extended from January 2006 to November 2007. While no new members

have since been appointed, the CARS has strived to maintain communication with several stakeholders on upcoming study-related issues and activities. Earlier this year, the CARS initiated a comprehensive consultation process with all the parties to bargaining under the *PSLRA* on the scope, methodology and processes for the upcoming national compensation comparability study. In the absence of an advisory board, the consultation process provides the CARS with a renewed opportunity to promote effective labour-management relationships through facilitated discussions and cooperation between the parties away from the pressures of the bargaining table. It will also help to determine the national study's parameters, including the total compensation model, the selection of benchmark positions, the sample design and other related processes.

Over the next year, the CARS' activities will focus on the continued development of the tools and systems required for job matching, data collection, data analysis and warehousing, and the dissemination of results, while taking into consideration stakeholder input provided during the consultation process.

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, including the availability of the parties to proceed to a hearing, requests for postponements and continuances.

In 2009-2010, many of the PSLRB's clients were not equipped to participate in new case-management initiatives such as fast-tracked hearings, which it conducted as a pilot project in 2008. As a result, the organization examined other ways to increase its effectiveness, namely, reviewing a large number of duty of fair representation cases, and it was able to render decisions based on the information on file or with additional written submissions.

The PSLRB is also exploring a similar initiative with grievances that result from the termination of a probationary period, which is also known as rejection on probation. Other continuing challenges to delivering adjudication services include human rights complaints, duty-to-accommodate issues, and self-represented grievors and complainants.

The PSLRB has been actively using the *PSLRA* provisions that allow for the convening of pre-hearing conferences, which have been effective in clarifying issues in dispute or reducing their numbers and, in some cases, eliminating the need for an oral hearing altogether if it is felt that the case may proceed by way of written submissions. Pre-hearing conferences still present a challenge for the parties, which have to balance their availabilities for formal hearings and for pre-hearing conferences.

The PSLRB also offers expedited adjudication to employers and bargaining agents. It allows certain grievances to be dealt with without resorting to an oral 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. A verbal decision is given to the parties at the hearing. A short written decision follows within five days. Self-represented individuals may not apply for expedited adjudication.

Either party may apply for expedited adjudication, but for this process to be used, both parties must have previously signed a memorandum of understanding with the PSLRB.

In 2009-2010, four new cases filed with the PSLRB requested expedited adjudication. Three hearings, which involved 15 cases, were heard during the year.

The PSLRB continually strives to keep active cases to a manageable number and to reduce the time taken to close cases.

The written decisions of the Board are available to the public in many ways.

Privacy and Openness

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 it is bound by the constitutionally protected open-court principle, it conducts its oral hearings in public, save for exceptional circumstances. This means that most information filed with it becomes part of a public record and is generally available to the public to support transparency, accountability and fairness.

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 decision. The *Protocol for the Use of Personal Information in Judgments*, approved by the PSLRB and endorsed by the Canadian Council of Administrative Tribunals, 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 to report in their decisions only that personal information that is relevant and necessary to the determination of the dispute. Also, documents filed as exhibits before a Board member that contain medical, financial or other sensitive information about a person may be sealed by order of a Board member, if appropriate. The PSLRB and other tribunals have been granted intervenor status in a case before the Federal Court that will examine these issues.

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 accessible on the Internet from publicly available databases. In addition, the full texts of decisions have been posted on the Board's website since 2000. 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 their entirety on the Board's website.

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 85 percent of the decisions issued by the PSLRB and its adjudicators are upheld when subject to judicial review. Overall, 98 percent of all decisions rendered stand as final decisions. Brief descriptions of several notable grievance and complaint case decisions can be found in Appendix 3.

MORE INFORMATION ABOUT 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
Toll free: 866-931-3454

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

The PSLRB's Jacob Finkelman Library houses a collection of labour relations resources, which 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. Library hours are weekdays from 08:00 to 16:00 (EST).

The library's address is:
C.D. Howe Building
240 Sparks Street
West tower, 6th floor
Ottawa, Ontario
Telephone: 613-990-1800
Toll free: 866-931-3454
Email: 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, 2009 to March 31, 2010*

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	3997
Association of Justice Counsel	1	2411
CAW – CANADA	1	5
CAW – CANADA, Local 2182	1	360
Canadian Association of Professional Employees	2	13 279
Canadian Federal Pilots Association	2	422
Canadian Merchant Service Guild	1	1080
Canadian Military Colleges Faculty Association	1	219
Communications, Energy and Paperworkers Union of Canada, Local 588	1	22
Federal Government Dockyard Chargehands Association	1	88
Federal Government Dockyard Trades and Labour Council (East)	1	836
Federal Government Dockyards Trades and Labour Council (Esquimalt, B.C.)	1	958
Graphic Communications International Union	1	38
International Brotherhood of Electrical Workers, Local 2228	1	1143
Professional Association of Foreign Service Officers	1	1324
Professional Institute of the Public Service of Canada	7	37 119
Public Service Alliance of Canada	5	116 658
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN	1	6558
Total for Treasury Board of Canada	**30**	**186 517**

Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent April 1, 2009 to March 31, 2010*

Other Employers

Separate employers (by bargaining agent)		Number of public service employees in non-excluded positions
CANADA REVENUE AGENCY		
Professional Institute of the Public Service of Canada	1	12 030
Public Service Alliance of Canada	1	28 259
Total	2	40 289
CANADIAN FOOD INSPECTION AGENCY		
Professional Institute of the Public Service of Canada	3	1829
Public Service Alliance of Canada	1	4469
Total	4	6298
CANADIAN INSTITUTES OF HEALTH RESEARCH		
Public Service Alliance of Canada	1	26
Total	1	26
CANADIAN NUCLEAR SAFETY COMMISSION		
Professional Institute of the Public Service of Canada	1	510
Total	1	510
CANADIAN POLAR COMMISSION		
No bargaining agents	0	4
Total	0	4
CANADIAN SECURITY INTELLIGENCE SERVICE		
Public Service Alliance of Canada	1	218
Total	1	218
COMMUNICATIONS SECURITY ESTABLISHMENT CANADA		
Public Service Alliance of Canada	1	1467
Total	1	1467

Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent April 1, 2009 to March 31, 2010*

Other Employers *(continued)*

Separate employers (by bargaining agent)	Number of bargaining units	Number of public service employees in non-excluded positions
FINANCIAL CONSUMER AGENCY OF CANADA		
No bargaining agents	0	50
Total	0	50
FINANCIAL TRANSACTIONS AND REPORTS ANALYSIS CENTRE OF CANADA		
No bargaining agents	0	307
Total	0	307
INDIAN OIL AND GAS CANADA		
No bargaining agents	0	83
Total	0	83
NATIONAL CAPITAL COMMISSION		
Public Service Alliance of Canada	1	410
Total	1	410
NATIONAL ENERGY BOARD		
Professional Institute of the Public Service of Canada	1	308
Total	1	308
NATIONAL FILM BOARD OF CANADA		
Canadian Union of Public Employees, Local 2656	2	123
Professional Institute of the Public Service of Canada	2	163
Syndicat général du cinéma et de la télévision, CUPE Local 9854	2	124
Total	6	410
NATIONAL RESEARCH COUNCIL CANADA		
Professional Institute of the Public Service of Canada	4	1915
Research Council Employees' Association	6	2362
Total	10	4277

Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent April 1, 2009 to March 31, 2010*

Other Employers *(continued)*

Separate employers (by bargaining agent)	Number of bargaining units	Number of public service employees in non-excluded positions
NATIONAL ROUND TABLE ON THE ENVIRONMENT AND THE ECONOMY		
No bargaining agents	0	33
Total	0	33
NATURAL SCIENCES AND ENGINEERING RESEARCH COUNCIL OF CANADA		
No bargaining agents	0	219
Total	0	219
NORTHERN PIPELINE AGENCY CANADA		
No bargaining agents	0	0
Total	0	0
OFFICE OF THE AUDITOR GENERAL OF CANADA		
Public Service Alliance of Canada	2	483
Total	2	483
OFFICE OF THE CORRECTIONAL INVESTIGATOR		
No bargaining agents	0	29
Total	0	29
OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS CANADA		
Professional Institute of the Public Service of Canada	1	533
Public Service Alliance of Canada	1	22
Total	2	555
PARKS CANADA AGENCY		
Public Service Alliance of Canada	1	5591
Total	1	5591
SECURITY INTELLIGENCE REVIEW COMMITTEE		
No bargaining agents	0	0
Total	0	0

Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent April 1, 2009 to March 31, 2010*

Other Employers *(continued)*

Separate employers (by bargaining agent)		Number of public service employees in non-excluded positions
SOCIAL SCIENCES AND HUMANITIES RESEARCH COUNCIL OF CANADA		
Public Service Alliance of Canada	1	200
Total	1	200
STAFF OF THE NON-PUBLIC FUNDS, CANADIAN FORCES		
Public Service Alliance of Canada	10	846
United Food and Commercial Workers Union	12	899
Total	22	1745
STATISTICS SURVEY OPERATIONS		
Public Service Alliance of Canada	2	2063
Total	2	2063
Total for other employers	**58**	**65 575**
Total from the Treasury Board	**30**	**186 517**
Total for all employers	**88**	**252 092**

*The figures in Table 1 were provided by the employers.

Table 2: Number of Bargaining Units and Public Service Employees by Bargaining Agent April 1, 2009 to March 31, 2010*

	Number of bargaining units	Number of public service employees in non-excluded positions
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
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	20	54 100
Public Service Alliance of Canada	28	153 556
Research Council Employees' Association	6	2351
Syndicat général du cinéma et de la télévision, CUPE Local 9854	2	124
United Food and Commercial Workers Union	12	1362
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN	1	6000
Total	**88**	**242 746****

* The figures in Table 2 were provided by the bargaining agents.

** The total in Table 2 does not equal the 252 092 employees indicated in Table 1 (the Treasury Board and separate employers) because 9346 of the employees included in Table 1 were not represented by a bargaining agent or tabulated in their calculations.

APPENDIX 2

Cases before the Public Service Labour Relations Board 2009 - 2010

	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 2010-2011	Decisions or orders	Number of cases covered by decisions or orders
				settled	withdrawn	decided			
Grievances	2431	864	3295	322	200	321	2452	117	321
Total grievances	**2431**	**864**	**3295**	**843**			**2452**	**117**	**321**
Complaints of unfair labour practices	200	57	257	0	75	36	146	35	36
Complaints under the *Canada Labour Code*	20	13	33	0	5	0	28	0	0
Total complaints	**220**	**70**	**290**	**116**			**174**	**35**	**36**
Requests to file certified copy of order with Federal Court	0	5	5	2 withdrawn 2 decided **Total: 4**			1	2	2
Certifications	0	0	0	0			0	0	0
Revocations of certification	0	0	0	0			0	0	0
Determinations of successor rights	0	0	0	0			0	0	0
Memberships in a bargaining unit	5	3	8	0 withdrawn 1 decided **Total: 1**			7	1	1
Determinations of management and confidential positions	196	355	551	28 settled or withdrawn 220 decided[1] **Total: 248**			303	220	220
Designations of essential services positions	5	4	9	0 withdrawn 2 decided **Total: 2**			7	2	2
Applications for reviews of Board decisions	1	12	13	3 withdrawn 7 decided **Total: 10**			3	7	7
Requests for extensions of time	26	20	46	11 settled or withdrawn 9 decided **Total: 20**			26	6	9
Total applications	**233**	**399**	**632**	**285**			**347**	**238**	**241**
TOTAL	**2884**	**1333**	**4217**	**1244**			**2973**	**390**	**598**

[1] In all cases, the determinations were made by an order rendered by the PSLRB on consent.

NOTABLE PUBLIC SERVICE LABOUR RELATIONS BOARD DECISIONS

Essential Services Agreements

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 in preparation for a strike. Under the former Act, the employer "designated" certain positions as essential for the safety or security of the public. If the bargaining agent disagreed, and the parties could not resolve the matter, the Board had the authority to make a formal ruling to decide which positions were to be "designated." Under the *PSLRA*, the parties must establish an essential services agreement as a precondition to employees exercising their right to strike. If they reach an impasse, the Board must determine any dispute resulting from the negotiation process.

The first essential services agreements decisions set the parameters of how those agreements will be approached by the Board. Several decisions this year required determining whether certain duties constituted essential services and keeping in mind the following part of the definition of "essential service" in section 4 of the *PSLRA*: ". . . necessary for the safety or security of the public or a segment of the public."

In **Public Service Alliance of Canada v. Treasury Board (Program and Administrative Services Group)**, 2009 PSLRB 55, the Board determined that the duties of citizenship service officers (CSOs) involved in helping claimants obtain or maintain Employment Insurance (EI) or Old Age Security (OAS) benefits constituted an essential service. Although Service Canada offers claimants online access, the CSOs offer an essential service because claimants do not necessarily have access to a computer or know how to use one, and some issues are best dealt with in person. The CSOs help clients overcome different barriers to obtaining benefits, whether language, literacy or numeracy issues, physical or developmental disabilities, etc. The Board heard evidence that a very high percentage of claimants who receive help from the CSOs would not otherwise have access to the benefits to which they are entitled. The decision was important in that it determined that income security might be fundamental to the "security of the public" because the class of clients served by the CSOs is highly dependent on welfare payments.

By contrast, in **Public Service Alliance of Canada v. Treasury Board (Program and Administrative Services Group)**, 2009 PSLRB 56, no services were identified as essential. This decision concerned assistant bankruptcy analysts (ABAs), whose role is to help those filing for bankruptcy. In this case, the Board found that there was little evidence linking the duties of the ABAs to the safety or security of the public.

Again, in **Treasury Board v. Professional Institute of the Public Service of Canada**, 2009 PSLRB 120, the Board found that no link could be established between the safety or security of the public and the duties carried out by computer specialists (CSs) working for Elections Canada.

In **Treasury Board v. Professional Institute of the Public Service of Canada**, 2009 PSLRB 128, the CS staff in question worked for the Canada Border Services Agency, and some essential services were identified. The dispute centred on whether essential services should be viewed in terms of the computer systems (the bargaining agent's view) or in terms of the program activities (the employer's view). The Board determined that tying essential services to a piece of equipment was too narrow but that not all activities were necessary for the safety or security of the public. Essential services in this case meant protecting Canadians from the entry into the country of persons and goods posing a risk to safety or security. Therefore, the Board ruled that essential services in this case meant the provision of computer systems and services related to managing the access of people and goods to and from Canada to protect the safety or security of the public. The bargaining agent has applied for judicial review.

In **Public Service Alliance of Canada v. Treasury Board**, 2009 PSLRB 155, the matter also involved border services, but this time the occupational group was border services officers (BSOs). The BSOs are the front-line workers at the border — they assess travelers and goods coming into Canada and determine whether they pose a risk to the safety or security of the country. To the extent that their jobs are concerned with preventing the entry of undesirable persons or goods, their services are essential, and there was no dispute on that point. The bargaining agent argued against finding other components of their duties essential, such as collecting customs taxes, completing reports not related to border security, and providing educational workshops to clients and stakeholders.

The Board agreed that no evidence showed that those duties constituted essential services. However, the Board found that, contrary to the bargaining agent's position, maintaining effective relationships with clients, stakeholder organizations and law enforcement agencies, as well as analyzing data and completing reports to maintain border integrity and security, constituted essential services.

Essential services performed by the CS group within Public Safety Canada was the concern in **Treasury Board v. Professional Institute of the Public Service of Canada**, 2010 PSLRB 15. The parties agreed on the principle that the emergency response capability of the Government Operation Centre (GOC) had to be password maintained at all times to ensure the safety or security of the public. The parties disagreed about the definition of the resources necessary for that purpose. The Board found that neither position was satisfactory for defining the essential services. The bargaining agent took too narrow a view, linking essential services again to equipment, which created logistical and other problems. On the other hand, the employer's view was too vague. Preciseness was necessary, stated the Board, to strike the proper balance between ensuring the right to strike and the safety or security of the public.

Within the GOC, one organization protects against cyber attacks — the Canadian Cyber Incident Response Centre (CCIRC). It made sense, stated the Board, to divide essential services along the two business lines. The CSs performed essential services in maintaining the computers within the GOC, while their services were required as users in the CCRIC. The Board defined essential services within the GOC and stated that its intent was to restrict the essential support services to those having a clear and direct link with listed emergency management functions. For the CCIRC, the essential services were assessing and responding to cyber threats.

Equal Pay for Work of Equal Value

The transitional provisions of the *Budget Implementation Act, 2009* (*BIA*), provided that, before the coming into force of the new *Public Service Equitable Compensation Act*, the Board would have the mandate to decide the cases that were currently before the Canadian Human Rights Commission (CHRC). Accordingly, seven files were transferred to the Board. The first two decisions under the transitional provisions dealt with jurisdiction. In both **Hall et al. v. Treasury Board**, 2010 PSLRB 19, and **Melançon et al. v. Treasury Board et al.**, 2010 PSLRB 20, the employer objected to the Board's jurisdiction.

In **Hall et al.**, the issue was whether classification could include the establishment and maintenance of a difference in wages. Classification is not an issue over which the Board has jurisdiction. However, in this context, the Board ruled that the transfer from the Canadian Human Rights Tribunal (CHRT) to the Board to examine all pay equity matters in the public sector necessarily means that nothing remains with the CHRT with respect to pay equity; the process cannot be bifurcated. The prohibition that applies to the Board under the *PSLRA* (to not deal with matters of classification) does not exist under the regimes of the *Canadian Human Rights Act* (*CHRA*) and the *BIA*.

Some details differed in **Melançon et al.**, but essentially, both the objection (lack of jurisdiction over classification) and the ruling (the new regime gives the Board jurisdiction over the whole of the pay equity complaint) were the same.

The employer has applied for judicial review of both decisions.

Disclosure

Disclosure is a procedural matter that sometimes arises as a contentious issue at a hearing. The following cases illustrate the difficulties that adjudicators and Board members face in deciding disclosure issues while acting within the confines of the *PSLRA*.

In **Tipple v. Deputy Head (Department of Public Works and Government Services)**, 2009 PSLRB 110, the adjudicator provided an interlocutory decision relating to media access. In the context of a highly publicized termination case, the CBC applied for access to the exhibits once all the evidence had been entered. The CBC argued that there was a presumptive right of access to exhibits and added that such access was routinely provided in courts of law. The employer stated that the adjudicator had the discretion to wait until the final decision was rendered before providing access to the exhibits but did not provide any evidence or argument to counter the open-court principle. The adjudicator ruled that, based on the **Dagenais-Mentuck** principles enunciated by the Supreme Court of Canada (SCC), there was no reason not to apply the open-court principle in

this case. He ordered that the CBC be provided access to the exhibits, except for the few that had been sealed because they contained sensitive personal information (financial statements and tax returns).

In **Quadrini v. Canada Revenue Agency and Hillier**, 2009 PSLRB 104, the issue was whether the Board Member was able to determine whether solicitor-client privilege applied to a document that had been refused to the complainant. The employer argued that a recent decision of the SCC, **Canada (Privacy Commissioner) v. Blood Tribe Department of Health**, 2008 SCC 44, settled the matter and precluded administrative tribunals from deciding whether a document was protected by solicitor-client privilege. In that decision, the SCC ruled that the privacy commissioner could not order the production of a document in order to determine whether it was protected by privilege. The reasoning appears related to the role of the commissioner, who can find herself or himself in an adversarial role and, therefore, should not have access to documents that might be privileged and that could eventually be used against a party. In deciding **Quadrini**, the Board emphasized its quasi-judicial role in deciding complaints. Since that role can never be adversarial and since the Board is enabled by statute to decide all questions of fact and law, the Board ruled that it could decide matters of solicitor-client privilege applicable to documents. In this case, the Board simply ordered the employer to produce a solicitor affidavit, which might prove sufficient to protect the privilege without the Board even seeing the document. Even so, the employer applied for judicial review, as well as for a stay of the order. The stay was granted. The judicial review application is pending.

At issue in **Hopwood-Jones v. Deputy Head (Department of Transport)**, 2010 PSLRB 45, was whether the adjudicator had the authority to order the disclosure of a document that the employer alleged was covered by section 38 of the *Canada Evidence Act*. That section concerns the disclosure of sensitive or potentially dangerous information (relating to national security) and provides a mechanism for disclosure involving review by a Federal Court judge of the information before it is disclosed. The document in question was a binder containing the no-fly list and other secret documents pertaining to air travel and the protection of Canada. The grievor had been dismissed because at one point she had left her post with that document, thus creating a dangerous situation in the employer's view.

The grievor argued that she should have a copy of the document so that the bargaining agent could determine if the document appeared secret on its face and whether it contained any directions on how the information it contained should be stored, retrieved and used. The employer argued that the content of the document was not relevant to the merits of the grievance, since the termination was based on the grievor abandoning her post; the document had only compounded the misconduct.

The employer agreed to disclose some of the contents of the document but stated that, were the adjudicator to order the disclosure of the entire document, it would apply to the attorney general for a review by a Federal Court judge. The adjudicator stated in her decision that, although she had the authority to compel disclosure based on relevance, the *Canada Evidence Act* removed from her the authority to determine whether a document contained sensitive or potentially dangerous information. That determination could be made only by a Federal Court judge in accordance with that Act.

The employer alleged in **Zhang v. Treasury Board (Privy Council Office)**, 2010 PSLRB 46, yet another ground for refusing disclosure, this time labour relations privilege. The employer argued that all communications made in the context of litigation are privileged. In this case, the grievor was seeking communications between labour relations officers and management. The employer objected because the communications related to the litigious matter of the grievance. The employer stressed the importance for management to have complete and frank discussions with labour relations officers in the context of labour disputes and made the analogy between labour relations privilege and solicitor-client privilege.

The context for the request for disclosure was a grievance flowing from the execution of a previous decision that had ordered the employer to conduct a diligent search for a job for the grievor. No job had been found, and the grievor had been terminated a second time. The grievance concerned the insufficiency of the search.

The grievor argued that the communications were relevant to the grievance. The adjudicator first ruled that the requested documents were relevant and then applied the **Wigmore** test to determine if they were privileged, after deciding that a class privilege of labour relations on par

with the solicitor-client privilege did not exist. Rather, it was a matter of deciding if in this case the documents should remain confidential. The following four conditions apply to find a document protected under the **Wigmore** test: 1) the authors of the communications trusted that they would remain confidential; 2) the element of confidentiality is essential to the relationship in which the communication arises; 3) this relationship is perceived as important by the community; and 4) the injury caused to the relationship is greater than the benefit of disclosure.

The adjudicator was willing to agree that the first three criteria favoured the employer. However, the decision turned on the fourth factor and specifically, as stated by the adjudicator, "One should not lose sight that what is at stake in this case is whether the parties complied with an order made by an adjudicator under the *Act*." What made the disclosure necessary was the proper administration of justice. The adjudicator ordered the disclosure of the documents, albeit with some safeguards to protect their confidentiality beyond the disclosure to the grievor and her bargaining agent.

Filing of Orders in Federal Court

The *PSLRA* now includes a provision, found in other administrative tribunal legislation, which provides for filing an order of the Board in the Federal Court (FC), thus making it an order of the Court. The purpose of section 52 is to facilitate enforcement, since contempt proceedings can be entertained by the Court in the event that a party does not comply with an order. This year, for the first time, parties applied for an order of the Board to be filed in the FC. In **Bremsak v. Professional Institute of the Public Service of Canada**, 2009 PSLRB 159, and **Veillette v. Professional Institute of the Public Service of Canada**, 2009 PSLRB 174, the Board concluded that there was evidence that the order would not be complied with and that filing it in the FC would serve a useful purpose.

Section 230

The decision in **Raymond v. Treasury Board**, 2010 PSLRB 23, marked the first time that an adjudicator interpreted section 230 (a new provision in the *PSLRA*), which limits the scope of the adjudicator's authority. In the case of a demotion (as in this case) or a termination based on unsatisfactory performance, the adjudicator found that the intent of Parliament was clear: since the adjudicator must conclude that the measure taken was for cause if the deputy head's conclusion of unsatisfactory performance was reasonable, there is no discretion for the adjudicator to modulate the employer's action.

Federal Courts

Decisions of the Board and of adjudicators may be judicially reviewed by the Federal Courts (i.e., the FC can review adjudicators' decisions, and the Federal Court of Appeal [FCA] can review Board decisions). Obviously, court decisions have a considerable impact on our work. The decisions that follow are particularly significant.

Follow up to Last Year's Report

A few of the decisions that the Board reported on in 2008-2009 ended with an indication that judicial review had been sought.

In the original **Amos v. Deputy Head (Department of Public Works and Government Services)**, 2008 PSLRB 74, the adjudicator decided that the *PSLRA* gave him jurisdiction to consider whether a settlement agreement had been duly executed. In **Attorney General of Canada v. Amos**, 2009 FC 1181, the FC ruled that, once the parties sign a memorandum of agreement, they have signalled that they have abandoned the grievance procedure, and thus, it cannot be revived. With the end of the dispute, the jurisdiction of the adjudicator ceases. An appeal of the decision has been filed in the FCA.

In **Pepper v. Deputy Head (Department of National Defence)**, 2008 PSLRB 71, the adjudicator granted an award under the *CHRA* — a first under the *PSLRA*, which now gives that authority to adjudicators. The employer applied for judicial review, but in **Attorney General of Canada v. Pepper**, 2010 FC 226, the FC upheld the award.

The FC (**Attorney General of Canada v. King**, 2009 FC 922) also upheld the adjudicator's decision in **King v. Treasury Board (Canada Border Services Agency)**, 2008 PSLRB 64. In that case, a union official had been suspended for sending a letter to a U.S. official that was critical of the Canadian government's border policies. The adjudicator ruled that, as a union official, the grievor was entitled to more latitude in his comments about the employer.

In **Attorney General of Canada v. Tobin**, 2008 FC 740, the FC remitted to the adjudicator a decision (2007 PSLRB 26) in which the adjudicator had allowed a termination grievance for off-duty conduct. In **Tobin v. Attorney General of Canada**, 2009 FCA 254, the FCA confirmed the remittal to another adjudicator, based on the Correctional Service of Canada's *Code of Conduct*, which had not been considered by the adjudicator as the parties had not raised it.

Other Significant Decisions

While not flagged as notable in last year's report, these decisions rendered by the FC or the FCA will certainly have an impact on the Board's handling of similar matters in the future.

The case of **Bernard v. Attorney General of Canada**, 2010 FCA 40, is in fact a judicial review where the applicant, Ms. Bernard, was not a party to the original case. However, as a person directly affected, she had the right to apply for judicial review.

In **Professional Institute of the Public Service of Canada v. Canada Revenue Agency**, 2008 PSLRB 58, the Board issued a consent order for the employer to provide personal information about employees to the bargaining agent. The information would allow the bargaining agent to contact employees in the event of a strike vote. In an earlier decision, the Board had emphasized that privacy considerations were to be taken into account, and in the consent order, several safeguards were spelled out to ensure the protection of the personal information. Even so, the FCA found in **Bernard** that the Board had erred in not exercising its jurisdiction by accepting without any modification the agreement proposed by the parties and by not reviewing the agreement in light of privacy considerations. Therefore, the FCA returned the consent order to the Board to be considered in terms of privacy concerns, with the Privacy Commissioner to be given full intervenor status to represent the interests of Ms. Bernard and others in the same situation, i.e., employees who do not want to share their personal information with the bargaining agent. The impugned decision was not the only one of its kind. Other agreements were reached between other bargaining agents and employers to similar effect. Therefore, the **Bernard** decision will have considerable ramifications.

In **Lâm v. Deputy Head (Public Health Agency of Canada)**, 2008 PSLRB 61, the adjudicator found that, although the dismissal of the grievor was not valid, reinstatement was not the proper remedy, given the circumstances in the workplace. This was a significant departure from jurisprudence under the previous Act, which had established that reinstatement was the only remedy for dismissal without cause. In **Lâm v. Attorney General of Canada**, 2009 FC 913, the FC confirmed that the *PSLRA* gave the adjudicator the authority to order an alternative remedy to reinstatement. However, in this case, an alternative remedy had not been discussed at the hearing, and the parties should have been given an opportunity to be heard on its appropriateness. The case was remitted to the same adjudicator.

In **Attorney General of Canada v. Basra**, 2008 FC 606, the FC allowed the judicial review of **Basra v. Deputy Head (Correctional Service of Canada)**, 2007 PSLRB 70, in which the adjudicator had reinstated a grievor who had been indefinitely suspended pending an investigation into the grievor's off-duty conduct. The adjudicator ruled that, after a month, the administrative suspension had become punitive and disciplinary and that it had never been justified by the employer. The FC ruled that the adjudicator had not applied the proper test in deciding whether the employer's action was disciplinary, since he had not considered the intent of the employer when imposing the suspension. Moreover, the adjudicator had disregarded evidence to reach the conclusion that the grievance should be allowed. The grievor appealed. In **Basra v. Attorney General of Canada**, 2010 FCA 24, the FCA somewhat modulated the ruling of the lower court. According to the FCA, the adjudicator had rightly decided that the measure was disciplinary. However, the proper analysis was first to determine whether the discipline was justified and then to determine if the sanction was proportionate. The FCA has left it to the adjudicator to decide whether additional evidence may be received. This case will continue.

Related Proceedings Before the Federal Court — Human Rights

Given the new jurisdiction under the *PSLRA* for adjudicators to interpret and apply the *CHRA,* it is not surprising to find parallel proceedings before the CHRT of matters that the Board has already dealt with. By giving jurisdiction to adjudicators under the *PSLRA*, the legislator

meant to streamline the process, as seen in **English-Baker v. Attorney General of Canada**, 2009 FC 1253, where the FC reviewed a decision of the CHRC to dismiss a complaint without investigation. The CHRC reasoned that the matter had already been thoroughly dealt with by the adjudicator in **English-Baker v. Treasury Board (Department of Citizenship and Immigration)**, 2008 PSLRB 24. The FC agreed.