

Public Service Labour
Relations Board



Annual Report
2010-2011



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, 2010 to March 31, 2011, for submission to Parliament.

Yours sincerely,

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



PUBLIC SERVICE LABOUR RELATIONS BOARD 2010 - 2011



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

Vice-Chairpersons¹: Marie-Josée Bédard
Ian R. Mackenzie
Renaud Paquet
Michele A. Pineau

Full-time members: Roger Beaulieu
Stephan J. Bertrand
Dan Butler
Dan R. Quigley
Catharine (Kate) Rogers

Part-time members: Christopher James Albertyn
Ruth Elizabeth Bilson, Q.C.
George P.L. Filliter
Deborah M. Howes
Margaret E. Hughes
Steven B. Katkin
William H. Kydd
Paul E. Love
Allen Ponak
Joseph William Potter
W. Augustus (Gus) Richardson
John J. Steeves

EXECUTIVE OFFICERS OF THE PSLRB

Executive Director and General Counsel:	Pierre Hamel
Executive Director:	Guy Lalonde ²
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

¹ Section 12 of the *Public Service Labour Relations Act* states that the PSLRB may have up to three Vice-Chairpersons. During the reporting period, two Vice-Chairpersons left the Board, one of whom was replaced; therefore, four names appear in this report.

² Guy Lalonde was appointed Executive Director of the PSLRB effective February 7, 2011.



MESSAGE FROM THE CHAIRPERSON

It is my pleasure to submit to Parliament the Annual Report of the Public Service Labour Relations Board (PSLRB) for 2010-2011.

This report not only describes our statutory responsibilities, it provides our clients and stakeholders with a snapshot of our accomplishments, priorities and challenges.

The PSLRB is an independent, quasi-judicial tribunal that is mandated by the *Public Service Labour Relations Act* to administer the collective bargaining and grievance adjudication systems in the federal public service. Our goal is to resolve labour relations issues in the federal public service and in Parliament in an impartial manner. This ultimately contributes to a productive, efficient workforce, which ensures the fluid delivery of valuable programs and services to Canadians.

Again this year, we strived to improve service delivery to our clients by implementing more streamlined, responsive and effective adjudication and mediation services by seeking innovative ways to manage our caseload, which increased significantly again this year. Compared to the previous year, we received 58% more new cases. The case management tools that we used included grouping similar grievances and holding more pre-hearing conferences to reduce as much as possible the number of required hearing days.

We also continued to make inroads in mediation by offering timely and impartial services to the parties, including providing interest-based negotiation and mediation courses to nearly 200 participants. I am pleased to report that, with the assistance of our mediators, of the clients who participated in preventive mediations, 89% were able to resolve their issues without filing formal complaints or grievances.

During the reporting period, our Compensation Analysis and Research Services continued to develop the methodology, tools and processes, including consulting comprehensively with the parties, in preparation for the next compensation comparability study, which will be launched in 2011-2012.

I am confident that, with the continued efforts of our dedicated and highly skilled employees, we will successfully meet the challenges to come.

It is an honour to lead an organization that continues to enjoy a sound reputation in the labour relations realm. I wholeheartedly applaud the efforts of all Board members and employees, without whom our success this past year would not have been possible.

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

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PART ONE:

About the Public Service Labour Relations Board



The PSLRB is strongly committed to resolving labour relations issues in the federal public service and in Parliament in an impartial manner.

WHO WE ARE AND WHAT WE DO

The Public Service Labour Relations Board (PSLRB) is mandated by the *Public Service Labour Relations Act (PSLRA)* to administer 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 *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 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 resolving labour relations issues in the federal public service and in Parliament in an impartial manner. This contributes to a productive and efficient workplace that ultimately benefits Canadians across the country through the effective delivery of a broad range of government programs and services. Please see Figure 1, *The Public Service Labour Relations Board at a Glance*, for additional information about the PSLRB's key services.

OTHER RESPONSIBILITIES

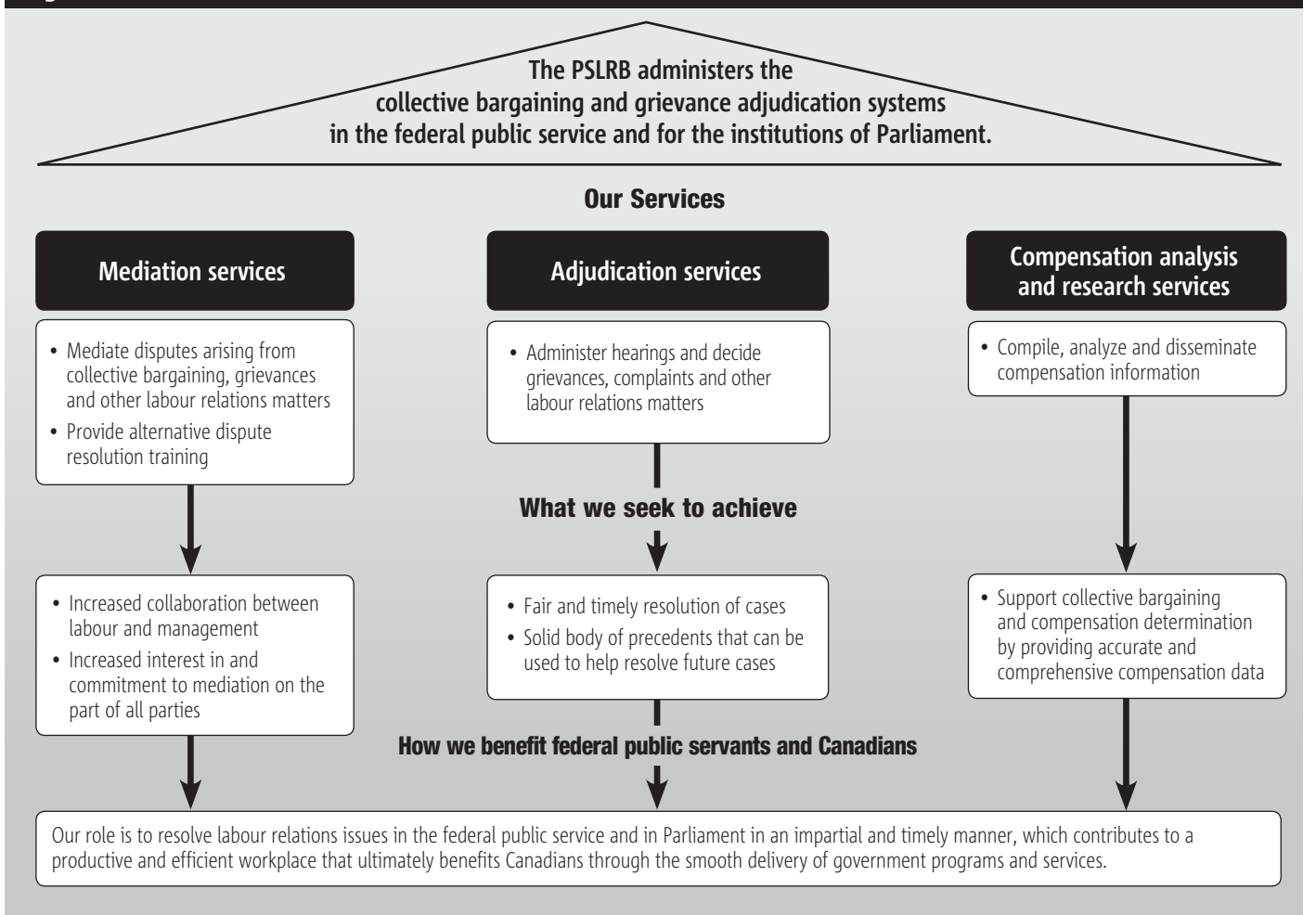
The PSLRB also administers the collective bargaining and grievance adjudication systems under the *Parliamentary Employment and Staff Relations Act (PESRA)*, which governs labour relations in Parliament. The *PESRA* covers employees working in the House of Commons, the Senate, the Library of Parliament,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

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 about, 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>.

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

Separate annual reports are issued for all of those Acts and are available on the PSLRB's website at <http://www.pslrb-crtfp.gc.ca>.

Figure 1: The Public Service Labour Relations Board at a Glance



OUR CLIENTS

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

The *PSLRA* applies to some 252 000 federal public service employees, who are covered by several collective agreements, and applies to departments named in Schedule I to the *FAA*, the other portions of the public administration named in Schedule IV and the separate agencies named in Schedule V. (See Appendix 1.)

The Treasury Board, as the largest employer, employs about 185 000 public service employees in federal government departments and agencies. About 67 000 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, 2011, 27 bargaining agents were certified to represent 85 bargaining units in the federal public service. About 62% of unionized employees are represented by the Public Service Alliance of Canada, a further 20% are represented by the Professional Institute of the Public Service of Canada and the remaining 18% are represented by the 25 other bargaining agents.

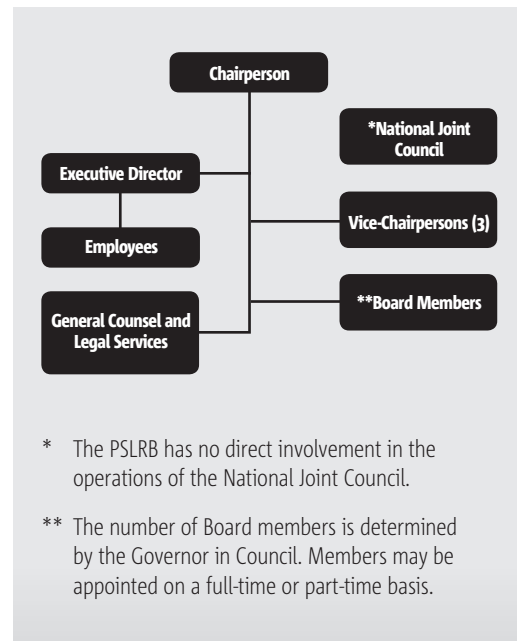
Table 2 in Appendix 1 reports the number of public service employees in non-excluded positions by bargaining agent.

Part-time members continue to help reduce the overall workload, and the Board appreciates their valuable contribution.

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 excluded positions are entitled to refer certain types of grievances to adjudication and to avail themselves of the PSLRB's mediation services if they wish.

Any of those employers, bargaining agents and employees may be a party to an adjudication or a 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.

Again this year, the PSLRB committed to improving service delivery to its clients. To that end, it convened its Client Consultation Committee three times. The Committee sought new ways to increase the use of mediation, to effectively manage the PSLRB's increasingly complex workload (e.g., grouping similar grievances) and to speed up file completions through case management tools (e.g., earlier pre-assessments of case files and increased use of pre-hearing conferences).



OUR PEOPLE

Board Members

The Board currently comprises the Chairperson, three Vice-Chairpersons and full- and part-time Board members who the Governor in Council may appoint for terms of no longer than five years and who may be reappointed. All Board members are responsible for administering the *PSLRA*, including making orders under it, and for deciding matters brought before the PSLRB.

After receiving recommendations from public service employers and bargaining agents covered by the *PSLRA*, the Chairperson prepares a list of persons eligible for a Board member appointment. The Governor in Council then appoints members from that list.

To be considered eligible for an appointment, a candidate must have labour relations knowledge or experience. Appointments are made to ensure, to the greatest extent possible, a balance on the Board of members recommended by employers and those by bargaining agents. However, even though a Board member might have been recommended by a given party, once appointed, he or she does not represent that party and is required to act impartially at all times.

In addition to the Vice-Chairpersons, there were 5 full-time and 12 part-time Board members in 2010-2011. Part-time members continue to help reduce the overall workload, and the Board appreciates their valuable contribution.

The following notable changes occurred on the Board this year:

- Vice-Chairperson Marie-Josée Bédard left to fulfill an appointment to the Federal Court;
- Renaud Paquet, a full-time Board Member since March 2008, was appointed as a Vice-Chairperson in March 2011 for five years;
- Dan Quigley retired in July after serving four full-time terms;
- Two new full-time members were appointed, Catharine Rogers and Stephan Bertrand, and both will serve for five years; and
- Steven Katkin, William Kydd and W. Augustus Richardson were appointed as part-time Board members.

Biographies of full-time and part-time Board members are available on the PSLRB's website at <http://www.pslrb-crtfp.gc.ca>.

The PSLRB Executive Committee comprises the Chairperson, the three Vice-Chairpersons, the Executive Director, the General Counsel, and five directors. The Committee provides strategic direction and oversight for the priorities and projects established in the PSLRB's annual strategic plan.

During the year, Pierre Hamel, Executive Director and General Counsel, announced his plans to retire from the PSLRB on April 1, 2011. As the PSLRB's mandate and activities have expanded over the years, it was determined that there would be more significant management, legal, learning and training challenges over the next several years. As a result, it was decided that the combined functions of Executive Director and General Counsel would be divided into two separate positions. Guy Lalonde, Director, Compensation Analysis and Research, was appointed to the Executive Director position in February 2011. The General Counsel position will be staffed in 2011-2012.

Employees

During the reporting period, the PSLRB had 87 full-time equivalent positions. The PSLRB workforce is made up of professional, dedicated employees with complementary skills and expertise in areas that include labour relations, law, research, finance, information technology, information management, human resources and communications. In the challenging field of labour relations, they work hard to maintain the PSLRB's high integrity through their discretion, impartiality, respect and cooperation. While their skill sets are diverse, their goal is common — to work as a team to help the PSLRB achieve its mandate.

The PSLRB workforce is made up of professional, dedicated employees with complementary skills and expertise.

PART TWO: The Year in Review



The PSLRB has developed a wealth of information to help parties prepare for hearings.

During the year, the number of new cases was up 58% from the previous year.

In 2010-2011, the PSLRB had expenditures of \$11.9 million.

Board members heard complaints, applications and grievances that were referred to adjudication.

Hearings before the Board may be oral or may be conducted solely through filing 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 concerned parties. 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, when necessary, inspect and view an employer's premises.

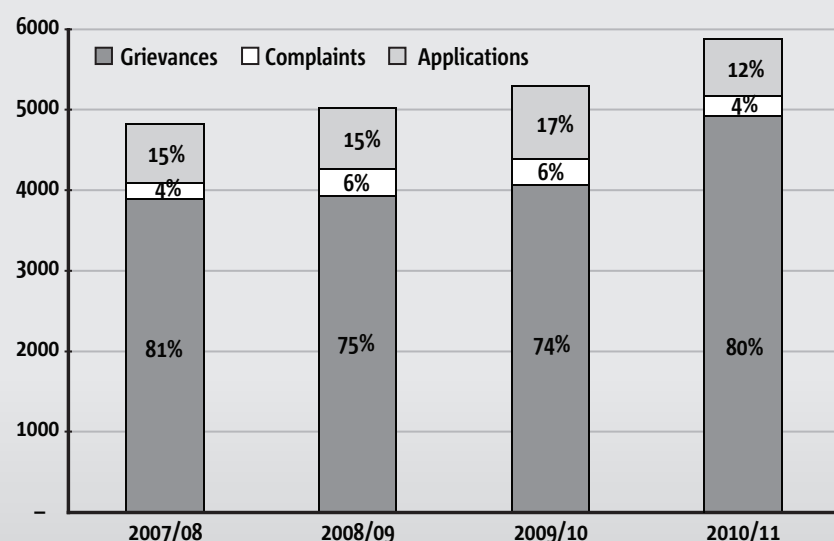
The PSLRB has developed a wealth of information to help parties prepare for hearings, including guides, questions and answers, and practice notes, all of which are available on its website.

CASELOAD OVERVIEW

In 2010-2011, the PSLRB's caseload increased significantly from the previous year due to the greater number of new files received, particularly grievance referrals.

During the year, the number of new cases was up 58% from the previous year. More detailed information about the PSLRB's caseload, including a comparison with previous years, can be found in Appendix 2, Tables 1 and 2.

Figure 2: Total Caseload - A Historical Perspective



Grievances

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

Four types of grievances may be referred to adjudication under the paragraphs of subsection 209(1) of that Act.

The first type covers interpretations or applications with respect to employees of collective agreement or arbitral award provisions. To refer such a grievance to the PSLRB, an aggrieved employee must have the approval of his or her bargaining agent, which must express its willingness to represent the employee at adjudication. Paragraph 209(1)(a) of the *PSLRA* provides no exceptions. Collective agreement grievances comprised 47% of the carried-forward cases and 84% of the year's new cases.

The second type deals with disciplinary actions resulting in terminations, demotions, suspensions or financial penalties. To refer a grievance under paragraph 209(1)(b), an aggrieved employee must clearly indicate that he or she was disciplined and that one of the prescribed outcomes took place. Disciplinary grievances comprised 6.5% of the carried-forward cases and 10% of this year's new cases.

The third type, of which a very small number were received during the year, is for employees for whom the Treasury Board is the employer. These grievances cover demotions or terminations for unsatisfactory performance or any other reason that is not a breach of discipline or misconduct, or deployment without the employee's consent when consent is required. The PSLRB received 17 new grievances in this category; 30 will be carried over into 2011-2012.

The fourth and final type is for demotions or terminations made for any reason other than breaches of discipline or misconduct and apply only to employees of designated separate agencies, which currently means only employees of the Canadian Food Inspection Agency. One new case was received during the year, and a total of 5 cases will be carried over into 2011-2012.

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 preferable. Thus, the PSLRB offers parties the opportunity to participate in case settlement discussions at any time during the adjudication process with the adjudicator, should they wish.

When grievances referred to adjudication involve certain issues under the *Canadian Human Rights Act*, adjudicators may determine that monetary relief is to be awarded. The Canadian Human Rights Commission (CHRC) must be notified of such grievances and has standing to make submissions to an adjudicator. During the year, 166 grievance referrals were accompanied by notifications to the CHRC.

In 2010-2011, almost twice as many new grievances were referred to adjudication than in the previous year and represented 80% of all cases before the PSLRB. Please see Figure 2, *Total Caseload - A Historical Perspective*, for more information about the PSLRB's grievances, complaints and applications.

Complaints

Complaints may be filed under section 190 of the *PSLRA* for any of the following:

- the failure (by the employer, a bargaining agent or an employee) to observe terms and conditions of employment;
- the failure (by the employer, a bargaining agent or a deputy head) to bargain in good faith;
- the failure (by the employer or an employee organization) to implement provisions of a collective agreement or arbitral award; or
- the commission (by the employer, an employee organization or any person) of an unfair labour practice.

In 2010-2011, almost twice as many new grievances were referred to adjudication than in the previous year and represented 80% of all cases before the PSLRB.

Under the Budget Implementation Act, 2009, the PSLRB has the mandate to decide public service employee pay equity complaints that were before the Canadian Human Rights Commission.

Although a smaller proportion of the PSLRB's overall active caseload in 2010-2011 involved complaints, they consumed a substantial amount of its time and resources. Many complaints are complex, and some involve self-represented complainants.

Complaints against bargaining agents about failures to fairly represent members comprised 31% of the carried-forward complaints and 24% of this year's new cases. The PSLRB also hears complaints about reprisals under the *Canada Labour Code (CLC)*.

Applications

Applications 2010-2011

- Total: 1499, or 25% of all cases before the PSLRB
- Certification or revocation of certification: 2
- Successor rights: 0
- Review of prior PSLRB decisions: 13
- Determination of management and confidential positions: 614
- Requests for extensions of time to file a grievance or to refer a grievance to adjudication: 46

BUDGET IMPLEMENTATION ACT, 2009 Public Service Pay Equity Complaints

Number of cases brought forward from previous years	Number of new cases received in 2010-2011	Total number of cases	Number of cases closed (includes cases settled, withdrawn and decided)		Number of cases carried forward to 2011-2012	Decisions or orders
			Settled & withdrawn	Decided		
7	1	8	3		5	1

Essential services are necessary for the safety and security of all or part of the Canadian public during a strike. When requested, the Board determines an employer's essential services, which some of its employees deliver during a strike. Those employees are members of specific bargaining units. During the year, the PSLRB did not receive any essential services agreement applications.

As previously mentioned in this report, under the *Budget Implementation Act, 2009*, the PSLRB has the mandate to decide public service employee pay equity complaints that were before the CHRC. During the year, the PSLRB received one new pay equity complaint under that Act. A summary of the cases brought before the PSLRB under that Act is provided in the chart below.

MEDIATION SERVICES

Case Mediation

The PSLRB mediation services — a key part of its mandate under the *PSLRA* — provide a collaborative way to informally resolve disputes, sparing parties more adversarial processes.

PSLRB mediators are impartial third parties without decision-making powers. They intervene in disputes and help parties explore the underlying reasons for their conflicts and reach mutually acceptable solutions. All are experienced. Some are professionals on staff while others are appointed from outside the PSLRB.

As in previous years, the PSLRB encouraged mediation to parties at adjudication. In some cases, adjudicators may act as mediators and may help parties resolve issues through settlement discussions at adjudication.

Parties using mediation as a voluntary alternative have experienced considerable success. This past year, the PSLRB conducted 86 separate mediation interventions for grievances and complaints that had been referred to adjudication; 81 percent resulted in settlements. As a result of those interventions, 119 files that had been referred to adjudication were resolved.

When its resources permit, the PSLRB's mediation services also handle cases not yet referred to adjudication. Called "preventive" mediations, they attempt to resolve disputes before a grievance or complaint is formally referred to adjudication, reducing referrals. In 2010-2011, the PSLRB's Dispute Resolution Services (DRS) conducted 18 preventive mediations; over 89 percent led to resolutions, meaning 16 fewer potential files were brought before the PSLRB.

Collective Bargaining

The PSLRB helps parties bargain collectively by providing mediation services when they reach an impasse during their face-to-face negotiations. By 2010-2011, the major round of negotiations begun in 2007-2008, involving the Treasury Board, separate employers and bargaining agents, had nearly completed. The PSLRB had to provide only limited assistance. A PSLRB mediator helped with one intervention, which led to a settlement.

Parties unable to resolve their differences during collective bargaining, or with the assistance of a mediator, may refer their disputes to the PSLRB for resolution. Under the *PSLRA*, bargaining agents may opt for either binding arbitration or conciliation (with the right to strike).

Once the parties begin their dispute resolution processes (either conciliation or arbitration under the *PSLRA*), DRS provides assistance and support to the Chairperson to set up and administer arbitration boards and Public Interest Commissions (PICs). A PIC is not permanent and comprises one or three members, appointed by the responsible minister on the PSLRB Chairperson's recommendation. The PIC's findings and recommendations are not binding on the parties. No new requests for conciliation were received in 2010-2011.

As previously mentioned, parties who are unable to reach collective agreements through negotiation may proceed to arbitration if the bargaining agent selected that as the method of dispute resolution. Arbitration results in an arbitral award (a decision), legally binding on the parties, which precludes legal strike action. In 2010-2011 the PSLRB received two arbitration requests, as well as one carried over from the previous fiscal year. One arbitral award was issued; the others were resolved either independently by the parties or with help from a PSLRB mediator.

This past year, the PSLRB conducted 86 separate mediation interventions for grievances and complaints that had been referred to adjudication; 81 percent resulted in settlements.

CARS is a critical part of the changes mandated in the Public Service Modernization Act (PSMA) and has been described as a key lever to improving collective bargaining between the parties in the areas of wages and benefits.

Mediation Training

In 2010-2011, DRS delivered 10 interest-based negotiation and mediation courses. They are designed for staff relations officers, union representatives, managers and supervisors, and for those working in related fields, such as in employee assistance programs. The participants, a mix from both the management and the bargaining agent sides, were encouraged to share their views on conflict resolution.

The two-and-a-half-day interactive courses made nearly 200 public service participants familiar with and helped them understand interest-based approaches and mediation skills, which are useful when resolving workplace disputes. They allowed the participants to explore workplace conflict and communication issues. Through role play, the participants were able to practice the skills and techniques that they had learned.

PSLRB mediators also delivered presentations and special sessions, both within and outside the public service, to help build understanding of mediation as a dispute resolution mechanism and to provide insight into the PSLRB's mediation approach.

Compensation Analysis and Research Services (CARS)

One of the PSLRB's key roles is supporting collective bargaining and compensation determination processes for the federal public service. It achieves that objective by collecting, compiling and analyzing impartial, accurate and timely information about comparative rates of pay, employee wages, terms and conditions of employment, and benefits. It collects that information from the public and private sectors and disseminates it both to the parties to bargaining under the *PSLRA* and to the public.

An independent advisory board provides advice to the Chairperson on CARS' priorities and requirements. Established in 2005 under the *PSLRA*, its members include bargaining agents and employers.

CARS is a critical part of the changes mandated in the *Public Service Modernization Act (PSMA)* and has been described as a key lever to improving collective bargaining between the parties in the areas of wages and benefits.

Compensation Comparability Study

In 2010-2011, preparations continued for launching the PSLRB's next compensation comparability study. Some achievements during the year included conducting comprehensive consultations with the parties, described later in this report, and fine-tuning the tools and technology used to collect and manage study-related data. Collaborations continued with Statistics Canada to finalize the study's sample design and application.

Stakeholder Consultations

The PSLRB's ongoing approach to conducting its compensation studies has been to ensure that the parameters encompass all stakeholder requirements, while keeping the process manageable in terms of resources and administration (given its scope), and ultimately, to ensure that comprehensive, relevant and reliable results are disseminated.

To achieve those goals, CARS led a series of consultations from June 2010 to March 2011. All parties were invited to participate and to share their views about the study parameters and its related processes. Some of the topics discussed included the study's proposed timing, its frequency and processes; the identification of the target groups, the job matching process, and the sampling process and parameters; issues arising from the *PSECA*; the total compensation model, and the incidence and characteristics of benefits; the quality control of the data; and the publication of, and access to, the study results. In addition to the PSLRB website, on which a new section was created for their exclusive use in September 2010, the parties were also asked to provide input on other potential mechanisms for their ongoing communications with the PSLRB and for the dissemination of the study results.

During summer 2011, CARS will share with all parties the results of the discussions about the study's different methodological aspects. CARS is also committed to keeping the parties and other stakeholders informed of the study's progress, milestones and related activities (e.g., the start or completion of its different phases).

Challenges and Opportunities

Information Management

The PSLRB recognizes that information is a valuable resource that must be managed effectively to ensure its clients and Canadians are properly served. As a result, the PSLRB identified information management as a key priority this year and developed a strategy that will enable it to comply with the applicable legislation and central agency policies, as well as to align itself with the Government of Canada's vision for information management.

Case Management

Effectively managing its sizeable and complex caseload is an ongoing challenge for the PSLRB.

A variety of factors affect the PSLRB's ability to deliver its services as promptly and efficiently as it would like, including the availability of parties for hearings, requests for postponements and continuances.

In 2010-2011, the PSLRB again focused its efforts on working with the parties to plan hearings and to better manage the hearing process. Several case management tools were employed to help accelerate the completion of the PSLRB's case files, including pre-hearing conferences, fact-finding meetings and rendering decisions based on information on file or with additional written submissions.

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. Either party may apply for expedited adjudication, but both parties must sign or have already signed a memorandum of understanding with the PSLRB in order for it to be employed. In the expedited

process, the parties normally file an agreed statement of facts, and no witnesses are heard. The parties agree that decisions then rendered are not precedent-setting and that they will not be subject to judicial review. A verbal decision may be rendered at the hearing. A short written decision follows within five days.

In 2010-2011, four new cases filed with the PSLRB requested expedited adjudication. One hearing was held, involving two cases. One additional case was withdrawn shortly before the scheduled expedited adjudication.

Privacy and Openness

As a quasi-judicial tribunal that renders decisions on a broad range 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 supporting reasons. 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 were granted intervenor status in a case before the Federal Court to argue those issues. The case was discontinued during the year under review.

The PSLRB developed a strategy that will enable it to comply with the applicable legislation and central agency policies, as well as to align itself with the Government of Canada's vision for information management.

Overall, 98 percent of all PSLRB decisions rendered stand as final decisions.

The PSLRB's written decisions are available to the public in many ways. They may be consulted in its library. Most are published by specialized private publishers. Some are accessible on the Internet from publicly available databases. In addition, the full texts of decisions have been posted on the PSLRB'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 PSLRB has voluntarily introduced measures that restrict global search engines from accessing full-text decisions posted on its website. It 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 its website.

On occasion, parties may apply for judicial review of a decision rendered either by an adjudicator or by the Board. Decisions of adjudicators are reviewed by the Federal Court; Board decisions are reviewed by the Federal Court of Appeal. See Appendix 3 for a summary of such applications from April 1, 2006 to March 31, 2011.

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 PSLRB decisions rendered stand as final decisions. Descriptions of several notable grievance and complaint case decisions can be found in Appendix 4.

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

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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 provide 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:

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

- summary and full-text versions of PSLRB decisions
- information about the PSLRB's mandate, membership and functions
- hearing schedules
- information about 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

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent
April 1, 2010 to March 31, 2011***

Where the 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	4183
Association of Justice Counsel	1	2580
CAW - CANADA	1	5
CAW - CANADA, Local 2182	1	340
Canadian Association of Professional Employees	2	13 848
Canadian Federal Pilots Association	1	423
Canadian Merchant Service Guild	1	1103
Canadian Military Colleges Faculty Association	1	196
Communications, Energy and Paperworkers Union of Canada, Local 588	1	12
Federal Government Dockyard Chargehands Association	1	84
Federal Government Dockyard Trades and Labour Council (East)	1	796
Federal Government Dockyards Trades and Labour Council (Esquimalt, B.C.)	1	848
International Brotherhood of Electrical Workers, Local 2228	1	1135
Professional Association of Foreign Service Officers	1	1390
Professional Institute of the Public Service of Canada	6	36 039
Public Service Alliance of Canada	5	115 623
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN	1	6587
Total for the Treasury Board of Canada	27	185 192

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent
April 1, 2010 to March 31, 2011***

Other Employers

Separate employers (by bargaining agent)	Number of bargaining units	Number of public service employees in non-excluded positions
CANADA REVENUE AGENCY		
Professional Institute of the Public Service of Canada	1	11 511
Public Service Alliance of Canada	1	31 253
Total	2	42 764
CANADIAN FOOD INSPECTION AGENCY		
Professional Institute of the Public Service of Canada	3	2049
Public Service Alliance of Canada	1	4703
Total	4	6752
CANADIAN INSTITUTES OF HEALTH RESEARCH		
Public Service Alliance of Canada	1	19
Total	1	19
CANADIAN NUCLEAR SAFETY COMMISSION		
Professional Institute of the Public Service of Canada	1	744
Total	1	744
CANADIAN POLAR COMMISSION		
No bargaining agents	0	4
Total	0	4
CANADIAN SECURITY INTELLIGENCE SERVICE		
Public Service Alliance of Canada	1	163
Total	1	163
COMMUNICATIONS SECURITY ESTABLISHMENT CANADA		
Public Service Alliance of Canada	1	1563
Total	1	1563

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent
April 1, 2010 to March 31, 2011***

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	62
Total	0	62
FINANCIAL TRANSACTIONS AND REPORTS ANALYSIS CENTRE OF CANADA		
No bargaining agents	0	342
Total	0	342
INDIAN OIL AND GAS CANADA		
No bargaining agents	0	81
Total	0	81
NATIONAL CAPITAL COMMISSION		
Public Service Alliance of Canada	1	435
Total	1	435
NATIONAL ENERGY BOARD		
Professional Institute of the Public Service of Canada	1	328
Total	1	328
NATIONAL FILM BOARD OF CANADA		
Canadian Union of Public Employees, Local 2656	2	107
Professional Institute of the Public Service of Canada	2	147
Syndicat général du cinéma et de la télévision, CUPE Local 9854	1	113
Total	5	367
NATIONAL RESEARCH COUNCIL OF CANADA		
Professional Institute of the Public Service of Canada	4	1769
Research Council Employees' Association	6	2183
Total	10	3952

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent
April 1, 2010 to March 31, 2011***

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	416
Total	0	416
NORTHERN PIPELINE AGENCY CANADA		
No bargaining agents	0	0
Total	0	0
OFFICE OF THE AUDITOR GENERAL OF CANADA		
Public Service Alliance of Canada	1	185
Total	1	185
OFFICE OF THE CORRECTIONAL INVESTIGATOR		
No bargaining agents	0	29
Total	0	29
OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS		
Professional Institute of the Public Service of Canada	1	404
Public Service Alliance of Canada	1	18
Total	2	422
PARKS CANADA AGENCY		
Public Service Alliance of Canada	1	4946
Total	1	4946
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, 2010 to March 31, 2011***

Other Employers (continued)

Separate employers (by bargaining agent)	Number of bargaining units	Number of public service employees in non-excluded positions
SOCIAL SCIENCES AND HUMANITIES RESEARCH COUNCIL OF CANADA		
Public Service Alliance of Canada	2	206
Total	2	206
STAFF OF THE NON-PUBLIC FUNDS, CANADIAN FORCES		
Public Service Alliance of Canada	11	725
United Food and Commercial Workers Union	12	715
Total	23	1440
STATISTICS SURVEY OPERATIONS		
Public Service Alliance of Canada	2	1894
Total	2	1894
Total for other employers	58	67 147
Total from the Treasury Board	27	185 192
Total for all employers	85	252 339

*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, 2010 to March 31, 2011***

Certified bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Association of Canadian Financial Officers	1	4529
Association of Justice Counsel	1	2850
CAW - CANADA	1	7
CAW - CANADA, Local 2182	1	350
Canadian Association of Professional Employees	2	13 891
Canadian Federal Pilots Association	1	393
Canadian Merchant Service Guild	1	1073
Canadian Military Colleges Faculty Association	1	212
Canadian Union of Public Employees, Local 2656	2	102
Communications, Energy and Paperworkers Union of Canada, Local 588	1	27
Federal Government Dockyard Chargehands Association	1	71
Federal Government Dockyard Trades and Labour Council (East)	1	831
Federal Government Dockyards Trades and Labour Council (Esquimalt, B.C.)	1	958
International Brotherhood of Electrical Workers, Local 2228	1	1138
Professional Association of Foreign Service Officers	1	1317
Professional Institute of the Public Service of Canada	19	53 612
Public Service Alliance of Canada	29	152 616
Research Council Employees' Association	6	1960
Syndicat général du cinéma et de la télévision, CUPE Local 4835	1	124
United Food and Commercial Workers Union	12	1362
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN	1	6637
Total	85	244 060**

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

**The total in Table 2 does not equal the 252 339 employees indicated in Table 1 (from the Treasury Board and separate employers) because 8279 of the employees included in Table 1 were not represented by a bargaining agent or tabulated in their calculations.

Table 1: Total Caseload: 2007-2008 to 2010-2011

Fiscal year	Caseload					Grievances	Complaints	Applications
	Carried forward from previous years	New	Total number of active cases	Closed	Carried forward to next year	Active	Active	Active
2007/08	3291	1528	4819	1454	3365	3885	173	761
2008/09	3490	1532	5022	1543	3479	3796	295	773
2009/10	3966	1331	5297	1482	3815	3812	290	863
2010/11	3774	2108	5882	1487	4395	4148	235	1499

Table 2: Grievances, Complaints and Applications Before the Public Service Labour Relations Board 2010-2011

	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 2011-2012	Decisions or orders
				Settled & withdrawn	Decided		
Individual	2452	1672	4148	323	155	3574	73
Group		16		0	0	36	0
Policy		8		8	33	19	3
Total grievances	2452	1696	4148	519		3629	76
Complaints of unfair labour practices	146	25	200	42	52	32	17
– Duty of fair representation		29				74	
– Other							
Complaints under the <i>Canada Labour Code</i>	28	7	35	8	2	25	3
Total complaints	174	61	235	104		131	20
Request to file certified copy of order with Federal court	0	2	2		1	1	1
Certifications	0	1	1		1	0	1
Revocations of certification	0	1	1		1	0	1
Determination of successor rights	0	0	0		0	0	0
Membership in a bargaining unit	7	4	11		4	7	1
Designation of essential services positions	7	0	7		3	4	4
Applications for review of Board decisions	3	10	13		7	6	7
Requests for extension of time	26	20	46		18	28	6
Subtotal applications¹	43	38	81	35		46	21
Determination of management and confidential positions	303	311	614		185	429	372 ²
Other applications (not specified above)	802	2	804		644	160	N/A ³
Total applications	1148	351	1499	864		635	393³
TOTAL	3774	2108	5882	1487		4395	489³

¹ This subtotal excludes the work done on managerial and confidential exclusion proposals.

² In all cases, the determinations were made by an order rendered by the PSLRB on consent.

³ The total number of decisions/orders does not include those issued for "other applications."

Synopsis of Applications for Judicial Review of Decisions

April 1, 2006 to March 31, 2011

	Decisions rendered ¹	Number of applications	Applications withdrawn	Applications dismissed	Applications allowed	Applications pending ²	Appeals of applications pending ³
YEAR 1 (April 1, 2006 to March 31, 2007)	116	25	9	11	4	1	0
YEAR 2 (April 1, 2007 to March 31, 2008)	112	23	8	9	6	0	0
YEAR 3 (April 1, 2008 to March 31, 2009)	114	24	4	18	2	0	0
YEAR 4 (April 1, 2009 to March 31, 2010)	183	30	11	15	3	1	0
YEAR 5 (April 1, 2010 to March 31, 2011)	126	25	0	1	2	22	1
TOTAL	651	127	32	54	17	24	1

Note: The figures for the last four fiscal years are not final, as not all the judicial review applications filed in those years have made their way through the court system.

¹ Decisions rendered do not include cases dealt with under the expedited adjudication process and Managerial Exclusion Orders issued by the Board upon consent of the parties.

² Applications that have yet to be dealt with by the Federal Court. Does not include appeals pending before the Federal Court of Appeal or the Supreme Court of Canada.

³ Results of appeals disposed of have been integrated into the statistics in this table.

NOTABLE PUBLIC SERVICE LABOUR RELATIONS BOARD DECISIONS

From year to year, different issues come to the fore. In addition, the federal courts render decisions on cases reviewed earlier in the Board’s annual reports. These notable decisions provide a glimpse of the current state of the law for some interesting issues.

Disclosure

In *Quadrini v. Canada Revenue Agency and Hillier*, 2009 PSLRB 104, the Board Member was confronted with an issue of solicitor-client privilege. The complainant had requested a number of documents under access to information legislation, and the respondents had refused to release one document on the grounds of solicitor-client privilege. The Board ordered the employer to produce an affidavit that would establish that the document was in fact covered by the privilege.

The Attorney General applied for judicial review. The Board sought intervenor status before the Federal Court of Appeal (a rare occurrence), believing that this case would be a good test for defining the parameters of the Board’s authority to look into a solicitor-client privilege claim. Leave was granted in *Attorney General of Canada v. Quadrini*, 2010 FCA 246, and the Court heard from the parties and the intervenor on December 15, 2010. The respondent argued that he was entitled to receive the document and that the Board should be able to determine whether the privilege applied. The Attorney General argued that the Board attempted to breach the privilege by ordering an affidavit. The Board submitted that it was in the interest of fair and expeditious hearings that it be able to at least determine whether the privilege applied.

In its decision (*Attorney General of Canada v. Quadrini*, 2011 FCA 115), the Federal Court of Appeal did not answer the question of whether the Board had the authority to consider solicitor-client privilege. The Court neither expressly ruled out the possibility of the Board deciding issues of solicitor-client privilege nor affirmed its jurisdiction to do so. Rather, the Court decided the issue on the basis of relevance; before even considering whether solicitor-client privilege is at stake, the Board must determine whether the document sought is truly relevant to the proceedings. The Court determined

that, based on the surrounding evidence, the document in question could not have been relevant, and that, therefore, the issue of solicitor-client privilege did not even arise.

The question of the Board’s jurisdiction with respect to solicitor-client privilege remains unresolved.

Essential Services Agreements

Last year’s report noted that the Board was developing jurisprudence on the new concept of essential services agreements (ESA), introduced in the *Public Service Labour Relations Act* (“the Act”), which came into force in 2005.

Last year’s report dealt with *Treasury Board v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 128, a decision in which the Board defined the essential services performed by Computer Services (CS) staff of the Canada Border Services Agency. The dispute centred on whether the 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 essential services in that case meant the provision of computer systems and services related to managing the access of people and goods to and from Canada for the purpose of protecting the safety or security of the public. The bargaining agent applied for judicial review. At the hearing, the bargaining agent argued that the Board’s definition was too vague, thus making it impossible to identify the types and numbers of positions necessary to provide those essential services. The respondent submitted that the definition was sufficient to establish the positions necessary to maintain essential services.

In *Professional Institute of the Public Service of Canada v. Attorney General of Canada*, 2011 FCA 143, the Federal Court of Appeal allowed the application for judicial review and remitted the matter back to the Board for redetermination.

The Court ruled that the Act clearly makes the definition of essential services, as opposed to essential positions, paramount. However, the Board’s definition, which used the words, “... for the purpose of protecting the safety or security of the public,” paraphrasing the Act, did not help the parties determine the positions, types or numbers. It left the issue to the parties for resolution, rather than defining the essential services, as it was tasked by the initial application.

By allowing the judicial review, the Court directed the Board to more precisely define the essential services.

By contrast, in *Treasury Board v. Professional Institute of the Public Service of Canada*, 2010 PSLRB 60, the Board precisely defined the tasks to be considered essential services. That decision also dealt with the CS group. In *Attorney General of Canada v. Professional Institute of the Public Service of Canada*, 2011 FCA 20, the Federal Court of Appeal dismissed the application for judicial review.

In that decision, the parties had jointly requested that the Board consider whether the content of the ESA, in the context of the CS group at Public Safety Canada, was limited to the three elements listed (types of positions, number of positions and specific positions) in the definition of “essential services agreement” in subsection 4(1) of the Act or whether it could also include the definition of essential services as determined by the Board in its first ESA decision (*Treasury Board v. Professional Institute of the Public Service of Canada*, 2010 PSLRB 15). The Board held that it must be guided by its rulings about the meaning and intent of the essential services features of the Act and that paragraphs (a) to (c) of the definition of “essential services agreement” could have no comprehensible meaning without the modifying reference to essential services.

The Board held that the legislative regime governing essential services had changed under the Act from a position- to a service-based scheme. The overarching practical requirements are that employees must know precisely the services that they are required to perform in the event of a strike and that they should not be expected to intuit those services from a list of positions in an ESA. Therefore, the Board necessarily had the authority to define the essential services for the purposes of the ESA.

The Federal Court of Appeal agreed.

In a further development, in *Public Service Alliance of Canada v. Treasury Board*, 2010 PSLRB 88, the Board considered the extent to which it could review an employer decision on a matter for which the Act grants the employer exclusive authority.

The Board had rendered an initial decision about the ESA negotiation for citizen service officers at Service Canada. In that decision, the Board identified the services necessary for the safety and security of the public and directed the employer to determine the level at which the services would be delivered to the public in the event of a strike. The employer set the level of service, and the parties resumed discussions with a view to completing the ESA, but issues then arose.

The bargaining agent made a disclosure request to the Board that the employer provide it with documents about its decision to set the level of service at 100%. The employer replied that, under section 120 of the Act, it had the exclusive right to set the level of service and that, therefore, it was under no obligation to provide the requested information. Section 120 is the only provision that specifically qualifies an employer right as exclusive; however, although it is an exceptionally strongly stated grant of exclusive authority, it does not contain words to oust review for compliance with certain standards, such as the duty of fairness. The Board found that there may be circumstances under which it is appropriate to review the exercise of discretion. The purpose of such a review would not be to substitute another determination of the level of service but would be limited to determining whether any circumstances existed that vitiated the employer’s determination of the level of service as an abuse of authority. A review would be an unusual and exceptional occurrence. The Board held that section 36 provided it with the authority to review and that the authority was rationally related and necessary to the Act’s object of maintaining effective labour-management relations. The Board added that setting certain administrative parameters within which the employer was to exercise its exclusive right under section 120, and requiring the employer to disclose information about how it set the level of service, did not limit or derogate from that exclusive right.

The Board directed the parties to attempt to resolve the outstanding disclosure issues, and if they were unsuccessful, the Board would convene a case-management meeting to hear submissions and rule on the request.

The application for judicial review is pending (Federal Court of Appeal File No. A-320-10).

Damages

As the law evolves, so does the issue of damages. Labour arbitration case law supports adjudicators’ authority to grant damages, as does the Act. However, the fact that an administrative tribunal does not have all of the powers of an ordinary court leads to the question of the limits to an adjudicator’s authority to grant damages.

The issue was again tested this past year. Board adjudicators rendered two decisions dealing mainly with damages, *Tipple v. Deputy Head (Department of Public Works and Government Services)*, 2010 PSLRB 83, and *Robitaille v. Deputy Head (Department of Transport)*, 2010 PSLRB 70. Both decisions are now under judicial review.

In *Tipple*, the adjudicator concluded that the layoff alleged by the deputy head was not the true reason for the termination. In addition to damages for lost wages and benefits, the adjudicator granted other unusual damages for loss of reputation and for psychological injury, as well as damages for obstruction of process by the employer.

In *Robitaille*, the adjudicator found that senior management had treated the grievor egregiously in a harassment investigation and that he had been unjustly demoted. The adjudicator awarded compensatory and punitive damages, including damages to cover the loss of property that the grievor incurred to pay for legal representation.

Legislative Changes - Rejection on Probation

Under the Act, as under the *Public Service Staff Relations Act* (“the former Act”), adjudicators do not have jurisdiction to hear grievances about rejections on probation. However, the jurisprudence has established that adjudicators may consider whether such a dismissal was truly for employment-related reasons, as opposed to any bad-faith motives on the part of the employer.

The wording of the new *Public Service Employment Act* (PSEA) has increased the employer’s discretion to end the employment of an employee on probation — now with a simple notice. In both *Tello v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 134, and *Ducharme v. Deputy Head (Department of Human Resources and Skills Development)*, 2010 PSLRB 136, the adjudicators had to weigh whether the new legislation changed the test to determine whether an adjudicator had jurisdiction to hear

a termination grievance about a rejection on probation. Both adjudicators concluded that the new provisions of the PSEA changed the onus of proof. While historically, the employer had the onus of showing that the rejection was for employment-related reasons, now a grievor must establish that the rejection was not about dissatisfaction with his or her performance but rather that it was a sham hiding an improper motive.

Other Employers

A great number of the cases decided by the Board or by adjudicators are covered by the PSEA, but not all. Some separate employers have their own employment legislation, a situation that lends itself to challenges in statutory construction. Such was the case in *Boutziouvis v. Financial Transactions and Reports Analysis Centre of Canada*, 2010 PSLRB 135. Under the FINTRAC’s enabling statute, the employer can terminate employment “otherwise than for cause.” Even so, the adjudicator ruled that the statute did not import common-law employment contract principles into the employer-employee relationship. The employer could not terminate employment at will. The employee established that the termination was disciplinary and thus adjudicable. The adjudicator found that the employer had not shown that the discipline was justified and reinstated the grievor.

The employer has applied for judicial review.

Discrimination

In *LaBranche v. Treasury Board (Department of Foreign Affairs and International Trade)*, 2010 PSLRB 65, the adjudicator found a clear case of discrimination based on religious beliefs, which does not happen frequently in the Board’s jurisdiction. The grievor was an Orthodox Jew. One of her requested accommodations was to leave early on Fridays to celebrate the Sabbath. Since the proper celebration time includes sunset, she would leave earlier in the winter. That accommodation, and other manifestations of her faith, apparently led to friction. In the end, a poisoned work atmosphere was created, which ended the grievor’s secondment early. The adjudicator found that the employer had failed to prevent harassment and discrimination in the workplace. In her order, the adjudicator detailed the employer’s violations of the relevant collective agreement and the *Canadian Human Rights Act* and left it to the parties to determine the appropriate monetary compensation.

Follow-up in the Federal Courts

An important component of Legal Services' work is staying current with the courts' pronouncements on the Board's decisions. The following three very different judicial reviews will impact our decisions and processes.

Last year's report included a paragraph about the follow-up in the Federal Court of the *Amos* decision. This year, the Federal Court of Appeal overturned the Federal Court's decision and restored the original Board decision.

In *Amos v. Deputy Head (Department of Public Works and Government Services)*, 2008 PSLRB 74, the adjudicator ruled that the Act gave him jurisdiction to consider whether a settlement agreement had been duly executed, thus reversing the jurisprudence developed under the former Act. In *Attorney General of Canada v. Amos*, 2009 FC 1181, the Federal Court ruled that, once the parties sign a memorandum of agreement, they abandon the grievance procedure, and thus, it cannot be revived. The settlement puts an end to an adjudicator's jurisdiction.

In *Amos v. Attorney General of Canada*, 2011 FCA 38, the Federal Court of Appeal confirmed that adjudicators have jurisdiction to hear a dispute affecting the execution of a settlement agreement about a grievance validly referred to adjudication. The Court restored the adjudicator's decision, overturning the Federal Court's decision. That court had ruled that the adjudicator did not have the authority to consider the grievance once the settlement agreement was signed.

The Federal Court of Appeal stated that both the legislative changes contained in the Act and the general shift in the jurisprudence confirmed the adjudicator's authority to remain seized if the terms of the agreement were not honoured. The Court's conclusion, as follows at paragraph 77, finally settled an important point for deciding whether an adjudicator may be seized anew of a grievance that has not been truly resolved by a settlement agreement:

...The Adjudicator's considerations are consistent with achieving the fundamental objects of the Act. The appellant's settlement agreement dispute is intrinsically related to his underlying and persisting grievance, originally referred to adjudication, and properly within the jurisdiction of the Adjudicator.

In *Lâm v. Attorney General of Canada*, 2010 FCA 222, the Federal Court of Appeal set a clear limit on the jurisdiction of the reviewing court. Once the judicial review was allowed, the Federal Court had to return the decision to the same adjudicator for a new decision. The Federal Court had partly allowed the judicial review (in 2009 FC 913) of the adjudicator's decision. In the original decision (*Lâm v. Deputy Head (Public Health Agency of Canada)*, 2008 PSLRB 61), the adjudicator ruled that the grievor should not have been terminated. However, rather than reinstating her, the adjudicator decided to award damages.

The Federal Court ruled that the adjudicator had failed to allow the parties to make submissions about the appropriate remedy and added a comment about the existing case law as to whether reinstatement is the only remedy available. The Federal Court of Appeal stated that, once the procedural defect had been noted, i.e., not hearing the parties about the remedy, then there could be no further comment, and the matter simply had to be remitted to the adjudicator for another hearing and decision.

Boshra v. Canadian Association of Professional Employees, 2011 FCA 98, was an appeal of a Board decision on the duty of fair representation. The appellant disagreed with how his bargaining agent had handled a grievance about privacy and discrimination.

The interesting point for the Board was the Court's comment about the expectations of self-represented litigants. Although the Court ruled in the end that there had been no procedural unfairness, as the complainant argued, it suggested that, when dealing with self-represented litigants, a tribunal such as the Board must be very careful to state explicitly how matters will proceed. In that case, the Board had returned to the complainant the evidence that he had submitted, along with his complaint application, stating that evidence could be presented again at the hearing stage. The Board decided that the matter would be dealt with by way of written submissions and invited the parties to submit whatever arguments and evidence they thought relevant. The complainant still expected an oral hearing, and failed to present one piece of evidence, which he believed was crucial. In the end, the Court agreed with the Board that the evidence itself would not have changed the decision. Still, the Court expressed some sympathy for the complainant's dismay at not having been able to present what he considered important evidence.

