

Public Service Labour
Relations Board

Parliamentary Employment
and Staff Relations Act
Annual Report 2010-2011

Canada



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

Dear Minister,

It is my pleasure to transmit to you, pursuant to section 84 of the *Parliamentary Employment and Staff Relations Act*, the Annual Report of the administration of that Act by the Public Service Labour Relations Board covering the period from April 1, 2010 to March 31, 2011, for submission to Parliament.

Yours sincerely,

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

PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT

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.

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Message from the Chairperson



I am pleased to submit to Parliament the annual report on the administration of the *Parliamentary Employment and Staff Relations Act (PESRA)* for 2010-2011.

As in previous years, the Public Service Labour Relations Board (PSLRB) sustained its case management efforts to deal with its caseload in the most efficient manner.

In 2010-2011, there were 5 full-time and 12 part-time Board members. Some changes occurred among the members of the Board, including the departure of Vice-Chairperson Marie-Josée Bédard to fulfill an appointment with the Federal Court. Renaud Paquet, a full-time Board member since 2008, was appointed as a Vice-Chairperson, and Dan Quigley, who had served four full-time terms, retired. As well, two new full-time Board members were appointed, Catharine Rogers and Stephan Bertrand, as well as three part-time members, Steven Katkin, William Kydd and Gus Richardson.

Another notable change was the retirement of Pierre Hamel, Executive Director and General Counsel. 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 in the coming years. As a result, the combined functions of Executive Director and General Counsel were divided into two separate positions. Guy Lalonde, Director, Compensation Analysis and Research Services, was appointed to the Executive Director position in February 2011. The General Counsel position will be staffed in 2011-2012.

I am confident that the outstanding team that we have in place, which includes a group of dedicated and highly skilled employees, will serve us well in meeting the challenges to come. I look forward to continuing to lead an organization that enjoys an enviable reputation in the labour relations realm.

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

Introduction



Under Part I of the *Parliamentary Employment and Staff Relations Act (PESRA)*, employees of parliamentary institutions have the right to form a union in order to negotiate collectively the conditions of their employment. Part I also gives employees the right to file grievances concerning those conditions and, in certain cases, to refer grievances to adjudication before a neutral third party.

Part I is administered and applied by the Public Service Labour Relations Board (PSLRB), an independent quasi-judicial tribunal that was established under the *Public Service Labour Relations Act*. The Board of the PSLRB comprises a Chairperson, three Vice-Chairpersons and other members that the Governor in Council may appoint for terms of no longer than five years and who may be reappointed.

Under the *PESRA*, the Board hears such matters as applications for certification by employee organizations to become bargaining agents representing employees; complaints of unfair labour practices; designations of persons employed in managerial and confidential capacities; and arbitrations of disputes.

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

The PSLRB's mediation services provide a collaborative way to informally resolve disputes, sparing parties more adversarial processes. Through mediation, the parties are encouraged to explore the underlying reasons for their conflict, allowing them to find solutions that better address the root causes of their problem.

Under the *PESRA*, arbitration is the only means of resolving disputes if bargaining reaches an impasse. In those situations, the Board acts as an arbitration board. On receiving a request for arbitration, the Chairperson appoints a tripartite panel comprising two persons representing the interests of each party along with a Board member who chairs the panel. Such panels are deemed to act as the Board for the purposes of dealing with the dispute. After hearing the parties, the panel renders a decision on the issues in dispute. Those decisions then form part of collective agreements and are binding on the parties and on employees.

Proceedings before the Public Service Labour Relations Board



In 2010-2011, the PSLRB processed 56 cases under the *Parliamentary Employment and Staff Relations Act (PESRA)*. Of those cases, 25 were grievances, 2 were complaints and 29 pertained to other applications.

1) GRIEVANCE ADJUDICATION

Of the 25 grievances processed by the PSLRB in 2010-2011, 16 were carried over from previous years and 9 were new.

There are four types of adjudicable grievances under the *PESRA*. The first type arises from the application or interpretation of collective agreements or arbitral awards. Such grievances cannot be referred to adjudication without the approval and support of the bargaining agent. In 2010-2011, the PSLRB processed 6 such grievances from the House of Commons.

The second type refers to disciplinary actions resulting in suspension or financial penalty and to termination of employment for reasons other than rejection on probation for an initial appointment. A member of the Board acting as an adjudicator hears these types of grievances. In 2010-2011, the PSLRB processed 4 such grievances, 3 of which were from the House of Commons and 1 of which was from the Library of Parliament.

The third type includes grievances relating to the demotion of an employee, to the denial of appointment and to classification. They are heard and determined by an adjudicator selected by the parties. In 2010-2011, the PSLRB processed 12 such grievances. Three (3) were from the House of Commons, 3 were from the Library of Parliament and 6 were from the Senate. All but 2 of the latter pertained to allegations of incorrect classification.

The fourth type refers to grievances under section 70 of the *PESRA*, which requires that the PSLRB look into allegations that cannot be the subject of a grievance by an individual employee. These situations occur when the employer or the bargaining agent seeks to enforce an obligation alleged to arise from a collective agreement or an arbitral award. Three (3) such cases were processed in 2010-2011.

As of March 31, 2011, of the total of 25 grievances that were processed, 4 were on hold awaiting nomination of an independent adjudicator as per subsection 66(3) of the *PESRA*, 4 were to be scheduled, 3 were awaiting decision, and 1 was pending the outcome of mediation. Thirteen (13) cases were considered completed. Of those cases, 3 were settled, 9 were dismissed and 1 was withdrawn.

2) COMPLAINT ADJUDICATION

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

Where the Board upholds a complaint, it has authority under section 13 to order remedial action. If such action is not carried out, section 14 provides that the PSLRB shall make a report to Parliament. The PSLRB processed 2 complaints in 2010-2011, both of which were on hold as of March 31, 2011.

3) OTHER PROCEEDINGS

Application for a declaration of successor rights

Section 36 of the *PESRA* provides for the PSLRB to determine the rights, privileges and duties that are required or retained by an employee organization after a merger or amalgamation or a transfer of jurisdiction, other than as a result of a revocation of certification. In 2010-2011, the PSLRB did not receive any such applications.

Applications for certification

Under section 18 of the *PESRA*, an employee organization may submit an application to be certified as a bargaining agent for a bargaining unit. The PSLRB did not receive any such applications in 2010-2011.

Applications to review a decision

Under section 17 of the *PESRA*, the PSLRB dealt with 1 application requesting a review of a decision. The bargaining agent (i.e., the Canadian Association of Professional Employees) applied for a review in order to amend the description of a bargaining unit. That application was determined on the basis of written submissions and was upheld.

Applications under section 38

Section 38 of the *PESRA* requires parties to bargain collectively in good faith and to make every reasonable effort to conclude a collective agreement. The PSLRB did not receive any allegations of a violation under section 38 in 2010-2011.

Arbitration proceedings

Section 46 of the *PESRA* provides that binding arbitration is the only method available to resolve interest disputes; there is no right to strike under the *PESRA*. In 2010-2011, the PSLRB dealt with 4 requests that were carried over from the previous year to establish an arbitration board. Two (2) of those requests resulted in an arbitral award; the other 2 were settled by the parties before a hearing.

Determination of membership in a bargaining unit

Under section 24 of the *PESRA*, the employer or an employee organization may ask the PSLRB to determine if an employee or class of employees is included in a bargaining unit. The PSLRB processed 1 such application in 2010-2011, which was to be scheduled as of March 31, 2011.

Notice to bargain collectively

Section 37 of the *PESRA* provides that either the bargaining agent or the employer may require the other party, by written notice, to commence bargaining collectively, with a view to concluding a collective agreement. In 2010-2011, the PSLRB did not receive a notice to bargain for any of the bargaining units for which the collective agreement had expired.

Request for the appointment of a conciliator

Under section 40 of the *PESRA*, parties that are unable to reach agreement on any term or condition of employment embodied in a collective agreement may ask the Chairperson to appoint a conciliator to assist them in reaching an agreement. In 2010-2011, the PSLRB did not receive any new requests for a conciliator.

Requests for extensions of time

In 2010-2011, the PSLRB did not receive any requests for extensions of time for the presentation of a grievance, as provided for under section 79 of the *P.E.S.R.A. Regulations and Rules of Procedure*.

Mediation



When a proceeding is brought before the PSLRB, dispute resolution services are offered to help parties resolve their differences without resorting to a formal hearing. As well, the parties may request the Board's assistance in resolving a dispute before the matter is referred to adjudication. In 2010-2011, the PSLRB's Dispute Resolution Services held 2 mediation interventions, both of which were settled.

Tables

TABLE 1: Bargaining Units and Bargaining Agents under the *Parliamentary Employment and Staff Relations Act*, April 1, 2010 to March 31, 2011

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

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

TABLE 2: Adjudication References, April 1, 2001 to March 31, 2011

	Interpretations [Para. 63(1)(a)]	Discipline [Paras. 63(1)(b) & (c)]	Policy [Sec. 70]	Sub- Total	Paras. 63(1) (d), (e) & (f)	Total
2010-2011	6	4	3	13	12	25
2009-2010	1	5	1	7	14	21
2008-2009	1	9	1	11	24	35
2007-2008	2	7	1	10	19	29
2006-2007	6	12	0	18	28	46
2005-2006	4	11	0	15	25	40
2004-2005	2	4	0	6	0	6
2003-2004	2	2	0	4	0	4
2002-2003	51	3	0	54	29	83
2001-2002	7	0	0	7	0	7
Cumulative Totals, April 1, 2001 to March 31, 2011						
	82	57	6	145	151	296

TABLE 3: Adjudication and Board Cases Carried Forward, Received and Completed, April 1, 2007 to March 31, 2011

Fiscal Year	Carried Forward	Received	Overall Total	Dispositions Total
2010-2011	44	12	56	14
2009-2010	51	16	67	20
2008-2009	57	33	90	39
2007-2008	33	45	78	21

Note: As of 2009-2010, Table 3 includes section 70 of the *PESRA*, policy proceedings.

