

Public Service Labour
Relations Board



Annual Report
2012 - 2013

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The Honourable Shelly Glover, 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, 2012 to March 31, 2013, for submission to Parliament.

Yours sincerely,

David Paul Olsen

Acting Chairperson

PUBLIC SERVICE LABOUR RELATIONS BOARD 2012 - 2013



Chairperson: Casper M. Bloom, Q.C., Ad. E. (term ended January 2, 2013)
David Paul Olsen, Acting Chairperson (January 2, 2013 to March 31, 2013)

Vice-Chairpersons: Linda Gobeil
David Paul Olsen (appointed August 27, 2012)
Renaud Paquet

Full-time Members: Stephan J. Bertrand
John G. Jaworski (appointed November 5, 2012)
Steven B. Katkin
Michael F. McNamara (appointed June 1, 2012)
Catharine (Kate) Rogers
Margaret Shannon (appointed April 16, 2012)

Part-time Members: Christopher James Albertyn
Michael Bendel (appointed April 5, 2012)
Ruth Elizabeth Bilson, Q.C.
George P.L. Filliter
Deborah M. Howes
Margaret E. Hughes
William H. Kydd
Paul E. Love
Joseph William Potter
W. Augustus (Gus) Richardson

EXECUTIVE OFFICERS OF THE PSLRB

Executive Director:	Guy Lalonde
General Counsel:	Sylvie M.D. Guilbert
Director, Compensation Analysis and Research Services:	Suzanne Payette
Director, Corporate Services:	Alison Campbell
Director, Dispute Resolution Services:	Gilles Grenier
Director, Financial Services:	Robert Sabourin
Director, Human Resources Services:	Chantal Bélanger
Director, Registry Operations and Policy:	Susan J. Mailer



MESSAGE FROM THE CHAIRPERSON

As Acting Chairperson of the Public Service Labour Relations Board (PSLRB), I am pleased to submit to Parliament our annual report for 2012-2013.

I am proud of the progress and efficiency gains that the PSLRB achieved this year, particularly the strides we made in dealing with a caseload of more than 6,500 files. Our efforts in this area focused on managing our hearing process more aggressively by more strategically scheduling our adjudicators for hearings to optimize the use of their time; holding more pre-hearing conferences, via teleconference when possible, to deal with procedural matters upfront; using written submissions more often for cases in which there is no dispute about the facts; reducing last-minute hearing postponement requests, which are unproductive and costly for the PSLRB; and developing a policy to articulate the limited circumstances in which postponements may be granted.

We also continued to use analytics and our case management tools, and we worked with the parties to customize our processes to address their specific needs.

In the area of mediation, we continued to review and improve our processes. I am pleased to report that the parties who used those services experienced considerable success in resolving their issues. As well, in cases where preventive mediations were undertaken and matters were resolved, this resulted in many fewer potential files that would otherwise have been brought before the PSLRB, which is efficient and cost-effective.

Our Compensation Analysis and Research Services unit continued its compensation survey and study activities, which included launching the first wave of its national compensation study, based on approximately 100 benchmark jobs within the provincial and territorial governments, the private sector, and several large municipalities across Canada.

We also made steady progress preparing to implement both our electronic case management and records management systems. Built on a state-of-the-art, sustainable technology platform, they will enable us to better manage our caseload and the hearing process and more efficiently manage, store and retain our information assets. The net result is that we will better serve our clients.

I believe that the success we achieved this past year would not have been possible without the consistent and outstanding work of my colleagues and all employees, under the direction of Chairperson Casper Bloom until January 2013. Thanks to their efforts, we have maintained an enviable reputation as a highly respected partner in the labour relations field.

David Paul Olsen

Acting Chairperson
Public Service Labour Relations Board

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PART ONE:

About the Public Service Labour Relations Board



The PSLRB contributes to a productive and efficient workplace that ultimately benefits Canadians through the smooth delivery of government programs and services.

RAISON D'ÊTRE

The Public Service Labour Relations Board (PSLRB) is an independent quasi-judicial tribunal mandated by the *Public Service Labour Relations Act (PSLRA)* to administer the collective bargaining and grievance adjudication systems in the federal public service. It is also mandated by the *Parliamentary Employment and Staff Relations Act (PESRA)* to perform the same role for the institutions of Parliament.

The PSLRB is unique in that it is one of the few bodies of its type in Canada that combine both adjudication functions and responsibilities as an impartial third party in the collective bargaining process. By resolving labour relations issues in an impartial manner, the PSLRB contributes to a productive and efficient workplace that ultimately benefits Canadians through the smooth delivery of government programs and services.

OUR RESPONSIBILITIES

The PSLRB came into being on April 1, 2005, with the enactment of the *PSLRA*, replacing the Public Service Staff Relations Board, which had existed since 1967, when collective bargaining was first introduced in the federal public service.

The PSLRB's three main services are as follows:

- adjudication - hearing and deciding grievances, complaints and other labour relations matters;
- mediation - helping parties reach collective agreements, manage their relations under collective agreements and resolve disputes without resorting to a hearing; and
- compensation analysis and research - compiling, analyzing and disseminating information to compare the compensation of federal public servants with those of other levels of government

and the private sector and to support the collective bargaining and compensation determination processes in the federal public service.

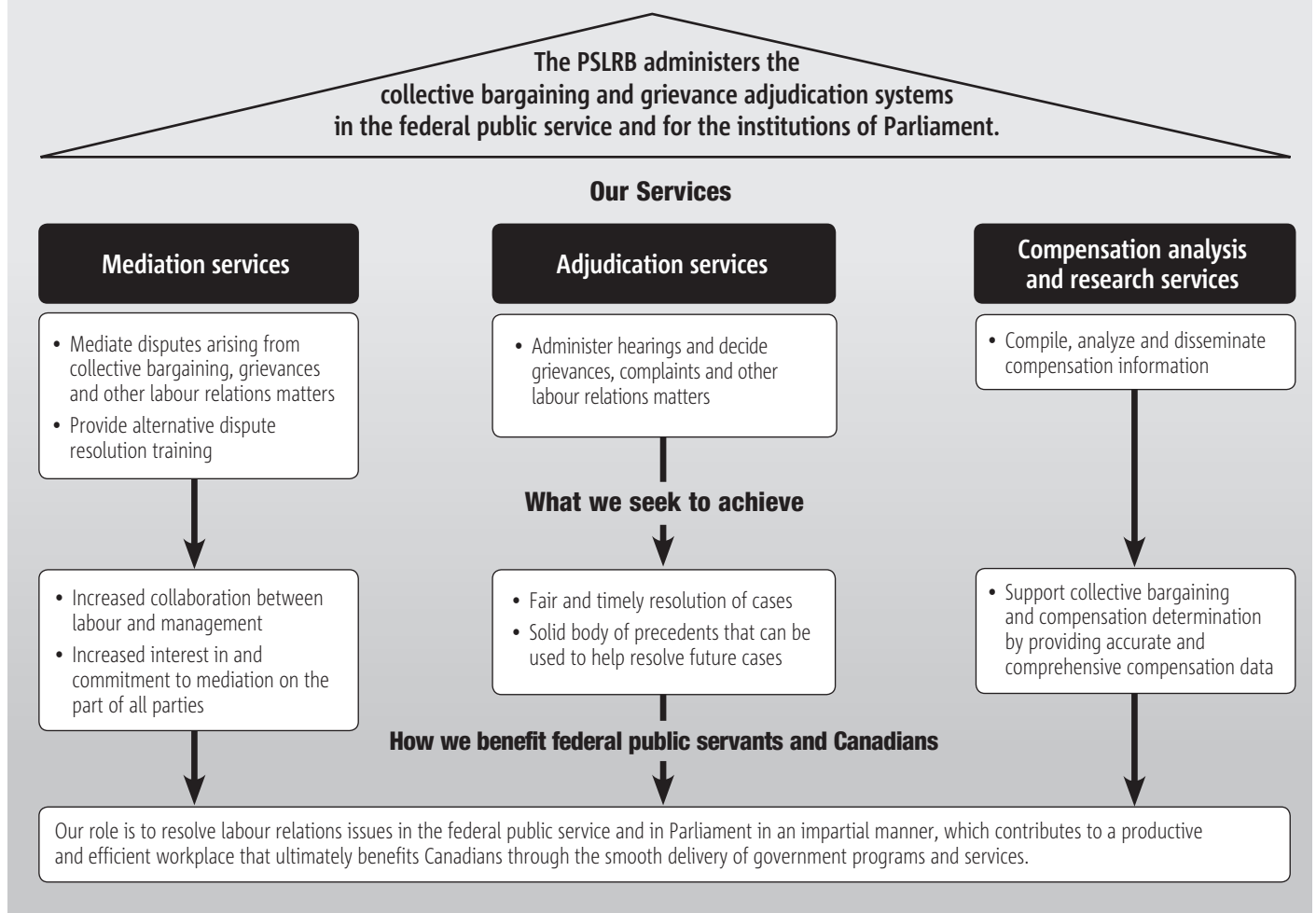
For more information about these services, please see Figure 1, *The Public Service Labour Relations Board at a Glance*.

The PSLRB is also responsible for administering the *PESRA* and acts as the labour board and grievance system administrator for all employees of Parliament (the House of Commons, the Senate, the Library of Parliament, the Office of the Conflict of Interest and Ethics Commissioner, and the Office of the Senate Ethics Officer).

As well, 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, 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 those Acts and are available on the PSLRB's website at <http://www.pslrb-crtfp.gc.ca>.

The mandate of the PSLRB has been further expanded as a result of transitional provisions under section 396 of the *Budget Implementation Act, 2009*. Specifically, the PSLRB is responsible for dealing with existing pay equity complaints for the public service that were, and could be, filed with the Canadian Human Rights Commission and with those that may arise in the future under the *Public Sector Equitable Compensation Act (PSECA)*.

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



Finally, 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. For more information about the NJC, please see the annual report on its website at <http://www.njc-cnm.gc.ca>.

OUR CLIENTS

The PSLRB's clients comprise approximately 240,000 federal public service employees covered under the *PSLRA* and by numerous collective agreements, as well as employers and bargaining agents. The *PSLRA* applies to departments named in Schedule I to the *Financial Administration Act (FAA)*, the other portions of the core public service administration named in Schedule IV and the separate agencies named in Schedule V (see Appendix 1).

The Treasury Board employs about 174,000 public servants in federal 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 Energy Board. For a list of employers, please refer to Appendix 1, Table 1.

Sixty-two percent of unionized federal public service employees are represented by the Public Service Alliance of Canada, 23% by the Professional Institute of the Public Service of Canada and the remainder by 18 other bargaining agents. Table 2 in Appendix 1 reports the number of public service employees in non-excluded positions by bargaining agent.

Other PSLRB clients include employees excluded from bargaining units and those who are not represented.

The success and efficiency of the PSLRB's daily operations would not be possible without the solid teamwork and professionalism demonstrated by Board members and the organization's employees.

OUR PEOPLE

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

As per section 44 of the *PSLRA*, the Chairperson is the PSLRB's chief executive officer and has overall responsibility and accountability for managing the work of the PSLRB.

The Executive Director is responsible for leading and supervising the daily operations of the PSLRB. Reporting to the Chairperson, he is directly supported by six directors and three managers, who are responsible and accountable for establishing priorities, managing the work and reporting on the performance of their specific units. The General Counsel also reports to the Chairperson and is responsible for providing legal advice and support to the Chairperson, the Board members and the organization.

Full- and part-time Board members administer the *PSLRA*, rendering decisions on matters brought before the Board. Part-time Board members play a valuable role in addressing the PSLRB's overall workload. Appointed by the Governor in Council for terms of no longer than five years, Board members may be reappointed. Biographies of full- and part-time Board members are available on the PSLRB website at <http://www.pslrb-crtfp.gc.ca>.

The success and efficiency of the PSLRB's daily operations would not be possible without the solid teamwork and professionalism demonstrated by Board members and the organization's employees. Their combined complementary skill set in a broad range of disciplines enables the PSLRB to resolve labour relations issues in the federal public service and in Parliament in an impartial manner. The net result is a productive and efficient workplace that ultimately benefits Canadians through the smooth delivery of government programs and services.

PART TWO:

The Year in Review



In 2012-2013, the PSLRB had 90 full-time equivalent positions and expenditures of \$13.6 million.

The PSLRB deals with grievance referrals, complaints and other labour relations applications involving disputes between employees, their employers or their bargaining agents, which have not been resolved to the parties' satisfaction. Matters 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.

PSLRB hearings, which are similar to court proceedings but less formal, can be conducted orally or, when appropriate, through written submissions. Regardless of the format, matters are managed fairly for all parties, from the beginning of the process through to the final disposition, and in accordance with the law and principles of justice.

Under the *PSLRA*, Board members and adjudicators have the authority to summon witnesses, administer oaths and solemn declarations, compel the production of documents, hold pre-hearing conferences, accept evidence whether or not it is admissible in court, and inspect and view an employer's premises, when necessary.

CASELOAD OVERVIEW

The PSLRB continued to focus its efforts on reducing a caseload that has grown from 1,200 a decade ago to more than 4,400 by March 31, 2013.

While the PSLRB closed more cases than it opened during the year (i.e., 2,101 and 1,972 respectively), its goal is to further increase the number of cases it closes each year by continuing to work with bargaining agents and employers to seek innovative ways to more proactively

plan and manage its caseload and the hearing process, while optimizing its resources. This is critical as the continual growth of the PSLRB's caseload has a direct impact on its ability to effectively and efficiently deliver its adjudication and mediation services — a key priority for the organization.

Grievances

As previously mentioned, grievances continued to comprise the largest volume of the PSLRB's workload.

During the year, the PSLRB dealt with 3 of the 4 types of individually filed grievances (a total of 1,607 new cases) that may be referred to adjudication under the paragraphs of subsection 209(1) of the *PSLRA* as follows:

- interpretations or applications with respect to employees of collective agreement or arbitral award provisions, which accounted for 73% of the carried-forward cases and 84% of the new grievances received during the year;
- disciplinary actions resulting in terminations, demotions, suspensions or financial penalties, which represented 26% of the carried-forward cases and 14% of the year's new cases; and
- 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, of which 20 were received (i.e., less than 2% of the total number of new grievances received), and which are only for employees for whom the Treasury Board is the employer.

The PSLRB also received 23 new group grievances (i.e., grievances that may be filed by several employees in a department or agency who believe their collective

Matters are managed fairly for all parties, from the beginning of the process through to the final disposition, and in accordance with the law and principles of justice.

Parties may participate in case settlement discussions with the adjudicator at any time during the process.

agreement has not been administered correctly). As well, 19 new policy grievances (i.e., grievances that may be filed by the bargaining agent or the employer and must be related to an alleged violation of the collective agreement that affects employees in general) were received.

It is important to note that the PSLRB encourages parties to continue to work toward a settlement throughout the adjudication process, as a solution created by the parties is always preferable. Parties may participate in case settlement discussions with the adjudicator at any time during the process.

Finally, when grievances referred to adjudication involve certain issues under the *Canadian Human Rights Act*, adjudicators may determine that monetary relief must 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, 112 such grievance referrals were accompanied by notification to the CHRC.

Complaints

Historically, a smaller proportion of the PSLRB's overall active caseload has involved complaints, yet they consume a substantial amount of its time and resources either because of their complexity or because they may involve self-represented complainants who may require assistance throughout the process.

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.

Complaints against bargaining agents about failures to fairly represent members comprised 43% of the PSLRB's total complaints. The PSLRB also hears complaints about reprisals under the *Canada Labour Code (CLC)*. This year, the PSLRB received 4 new complaints of this nature.

The PSLRB also received 7 new complaints under the pay equity provisions of the *Budget Implementation Act, 2009*.

Applications

During the review period, there were 258 applications (11% of all cases before the PSLRB): 241 were for a determination of management and confidential positions, 11 were requests for extensions of time to file a grievance or to refer a grievance to adjudication, 4 were for reviews of prior PSLRB decisions, and 2 were essential service applications.

More detailed information about the PSLRB's caseload, including a comparison with previous years, can be found in Appendix 2 and Appendix 3 of this report.

MEDIATION SERVICES

The PSLRB's mediation services provide the parties with an open, collaborative forum to resolve their disputes and spare them from more adversarial processes that could result in additional delays in resolving their issues and in strained relationships. During mediation, the parties are encouraged to explore the underlying reasons for the conflict in order to create solutions that better address the root causes of their problem.

PSLRB mediators are impartial third parties who do not have decision-making powers. They intervene in disputes and help parties explore the underlying reasons for their conflicts and reach mutually acceptable solutions. Mediators are either experienced, in-house professionals, or the PSLRB may appoint external mediators when required.

This year, the PSLRB's mediation services continued to review and improve its processes and discuss options for accelerating mediation to enhance efficiency and effectiveness.

Parties who used those services experienced considerable success. Seventy-eight (78) mediation interventions for grievances and complaints were carried out by the PSLRB's Dispute Resolution Services (DRS), resulting in the resolution of 229 files referred to adjudication that might have proceeded to a hearing. Of those interventions, the parties reached an agreement 82% of the time. In addition to those case files, the DRS conducted 6 preventive mediation interventions, all of which were resolved, meaning there were 65 fewer potential files that could otherwise have been brought before the PSLRB.

Collective Bargaining

The PSLRB also provides mediation support during collective bargaining when the parties are unable to make progress in their face-to-face negotiations.

During the year, the PSLRB received 7 requests for mediation assistance that resulted from the round of collective bargaining that began in early 2011. While the number of issues in dispute for all of those cases was reduced due to the parties' efforts during mediation, tentative settlements were not reached for those files.

As previously mentioned, should the parties be unable to resolve their differences during face-to-face negotiations or with the assistance of a mediator, they may refer their matters in dispute to the PSLRB. Under the *PSLRA*, bargaining agents may choose either binding arbitration or conciliation with the right to strike. Regardless of the option chosen, the DRS helps the Chairperson to set up and administer arbitration boards or public interest commissions (PICs).

In 2012-2013, the PSLRB received 8 conciliation requests. It also received 23 new requests for binding arbitration; 8 files resulted in an arbitral award, 1 resulted in a tentative agreement by the parties during hearings, 5 were heard and 10 will be finalized in 2013-2014.

During mediation, the parties are encouraged to explore the underlying reasons for the conflict in order to create solutions that better address the root causes of their problem.

An ongoing challenge for the PSLRB is to continue to improve service delivery to its clients by enhancing its capacity to address its large caseload and achieve greater efficiency.

Mediation Training

In 2012-2013, the DRS delivered seven interest-based negotiation and mediation courses. These sessions are designed for staff relations officers, union representatives, managers and supervisors, as well as those working in related fields.

During the year, approximately 150 public servants participated in the two-and-a-half-day interactive courses, enabling them to familiarize themselves with, and better understand the use of, interest-based approaches and mediation skills, which help to resolve workplace conflict and communication issues through role play.

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

During the year, the Compensation Analysis and Research Services (CARS) unit continued to work towards developing and sustaining its capacity to conduct compensation analysis and research surveys, consulting with the parties and working collaboratively with stakeholders and experts to finalize the necessary methodology, tools and processes. It also optimized efficiency and productivity by developing in-house expertise, rather than using external consulting services.

The unit launched the first phase of its national compensation study, based on more than 100 benchmark jobs within the provincial and territorial governments, the private sector, and a selection of large municipalities across the country.

Challenges and Opportunities

Case Management

An ongoing challenge for the PSLRB is to continue to improve service delivery to its clients by enhancing its capacity to address its large caseload and achieve greater efficiency.

Specific initiatives the PSLRB undertook during the reporting period included managing its hearing schedule more aggressively by strategically scheduling adjudicators for hearings to optimize resources; holding more pre-hearing conferences, via teleconference when possible, to deal with procedural matters upfront; using written submissions more frequently for cases in which there is no dispute about the facts of those cases; putting in place solutions to reduce last-minute hearing postponement requests; and developing a policy that articulates the limited circumstances when postponements may be granted.

The PSLRB also used analytics and case management tools and customized its processes with the parties in the workplace to address their specific needs. For example, as over half of the PSLRB's existing workload has been filed by a single group of employees, a special task force was established to address the needs of those parties. This included grouping the grievances together and dealing with policy issues by priority.

During the year, the PSLRB made steady progress in its preparations to implement a state-of-the-art electronic case management system that, when implemented, will contribute to better caseload management. The implementation of the new system experienced some delays due to certain development challenges. However, following stringent quality assurance testing and the exploration of feature enhancements, the PSLRB is confident that the system will be in place by the end of the next fiscal year. The new system will ensure a migration to a sustainable technology platform and provide the organization with enhanced tools to assist with file tracking, caseload monitoring

and statistical capabilities, all of which will result in more efficient analysis and processing of its large inventory of case files.

Information Management

The PSLRB also continued to work towards implementing its information management (IM) strategy and action plan, focusing on migrating to the new version of its electronic records management system (i.e., Documentum). Key activities included updating the PSLRB's records management processes and procedures and providing information and tools to help employees to prepare for the launch, which is planned for summer 2013.

The capacity to efficiently manage, store and retain its information resources and provide a sustainable IM framework is one of the PSLRB's priorities as it will enable the organization to meet its mandated responsibilities and effectively serve its clients and Canadians.

Board Member Appointments

An ongoing challenge for the PSLRB is to have an appropriate complement of full- and part-time Board members, appointed by the Governor in Council. When Board members' terms expire, it can be a challenge to identify and recommend qualified individuals to fill those vacancies.

To address this issue, the PSLRB Chairperson and Board officials continued to work proactively with the Minister's office to ensure both full- and part-time Board member positions were filled as quickly as possible.

Several Governor in Council appointments were made to the Board during the year: David Paul Olsen, Vice-Chairperson; John G. Jaworski, Michael F. McNamara and Margaret Shannon, full-time members; and Michael Bendel, part-time member. The PSLRB now has a full-time roster of members, with the exception of the Chairperson's position, which was vacated on January 2, 2013, when Casper Bloom completed his term. That position is currently occupied on an interim basis by David Paul Olsen.

Shared Corporate Services

The PSLRB continued its efforts to further enhance efficiency and cost savings through engaging in partnerships with other similar organizations, such as the Public Service Staffing Tribunal, to provide back-office services under formal shared services agreements, a model that continues to serve the organization and its partners well. Those services include information technology, web, finance and library services and compensation and other human resources services.

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 Council of Canadian 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 in review.

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 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.

Judicial Review

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 applications for judicial review from April 1, 2008 to March 31, 2013.

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 Court Act*. On average, of the total decisions sent for a judicial review, more than 85 percent of all decisions rendered stand as final decisions. Overall, 98 percent of all decisions rendered by the Board in 2012-2013 stand as final decisions. Descriptions of several notable grievance and complaint decisions can be found in Appendix 5.

ORGANIZATIONAL CONTACT INFORMATION

Public Service Labour Relations Board
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Ottawa, Ontario, Canada
K1P 5V2

Tel: 613-990-1800
Toll-free: 866-931-3454
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Registry Operations and Policy:	Fax: 613-990-3927
Dispute Resolution Services:	Fax: 613-990-6685
Website:	www.pslrb-crtfp.gc.ca

Email address: mail.courrier@pslrbcrtfp.gc.ca

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent
April 1, 2012 to March 31, 2013***

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	4,211
Association of Justice Counsel	1	2,511
CATCA, CAW Local 5454	1	6
CAW Local 2182	1	331
Canadian Association of Professional Employees	2	12,859
Canadian Federal Pilots Association	1	391
Canadian Merchant Service Guild	1	1,079
Canadian Military Colleges Faculty Association	1	192
Communications, Energy and Paperworkers Union of Canada, Local 588 G	1	10
Federal Government Dockyard Chargehands Association	1	80
Federal Government Dockyard Trades and Labour Council (East)	1	744
Federal Government Dockyards Trades and Labour Council (Esquimalt, B.C.)	1	767
International Brotherhood of Electrical Workers, Local 2228	1	1,114
Professional Association of Foreign Service Officers	1	1,278
Professional Institute of the Public Service of Canada	6	35,076
Public Service Alliance of Canada	5	106,048
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN	1	6,980
Total for the Treasury Board of Canada	27	173,677

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent
April 1, 2012 to March 31, 2013***

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	11,200
Public Service Alliance of Canada	1	32,000
Total	2	43,200
CANADIAN FOOD INSPECTION AGENCY		
Professional Institute of the Public Service of Canada	3	2,013
Public Service Alliance of Canada	1	4,614
Total	4	6,627
CANADIAN INSTITUTES OF HEALTH RESEARCH		
Public Service Alliance of Canada	1	13
Total	1	13
CANADIAN NUCLEAR SAFETY COMMISSION		
Professional Institute of the Public Service of Canada	1	710
Total	1	710
CANADIAN POLAR COMMISSION		
No bargaining agents	0	5
Total	0	5
CANADIAN SECURITY INTELLIGENCE SERVICE		
Public Service Alliance of Canada	1	146
Total	1	146
COMMUNICATIONS SECURITY ESTABLISHMENT		
Public Service Alliance of Canada	1	1,656
Total	1	1,656

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent
April 1, 2012 to March 31, 2013***

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	384
Total	0	384
INDIAN OIL AND GAS CANADA		
No bargaining agents	0	88
Total	0	88
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	351
Total	1	351
NATIONAL FILM BOARD		
Canadian Union of Public Employees, Local 2656	2	100
Professional Institute of the Public Service of Canada	2	149
Syndicat général du cinéma et de la télévision, CUPE Local 9854	1	111
Total	5	360
NATIONAL RESEARCH COUNCIL CANADA		
Professional Institute of the Public Service of Canada	4	1,505
Research Council Employees' Association	6	1,838
Total	10	3,343

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent
April 1, 2012 to March 31, 2013***

Other Employers (continued)

Separate employers (by bargaining agent)	Number of bargaining units	Number of public service employees in non-excluded positions
NATURAL SCIENCES AND ENGINEERING RESEARCH COUNCIL OF CANADA		
No bargaining agents	0	428
Total	0	428
SOCIAL SCIENCES AND HUMANITIES RESEARCH COUNCIL OF CANADA		
Public Service Alliance of Canada	2	192
Total	2	192
NORTHERN PIPELINE AGENCY		
No bargaining agents	0	4
Total	0	4
OFFICE OF THE AUDITOR GENERAL OF CANADA		
Public Service Alliance of Canada	1	153
Total	1	153
OFFICE OF THE CORRECTIONAL INVESTIGATOR		
No bargaining agents	0	30
Total	0	30
OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS		
Professional Institute of the Public Service of Canada	1	465
Public Service Alliance of Canada	1	25
Total	2	490
PARKS CANADA AGENCY		
Public Service Alliance of Canada	1	3,909
Total	1	3,909

**Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent
April 1, 2012 to March 31, 2013***

Other Employers (continued)

Separate employers (by bargaining agent)	Number of bargaining units	Number of public service employees in non-excluded positions
STAFF OF THE NON-PUBLIC FUNDS, CANADIAN FORCES		
Public Service Alliance of Canada	10	690
United Food and Commercial Workers Union	12	661
Total	22	1,351
STATISTICS SURVEY OPERATIONS		
Public Service Alliance of Canada	2	1,749
Total	2	1,749
Total for other employers	57	65,649
Total from the Treasury Board	27	173,677
Total for all employers	84	239,326

*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, 2012 to March 31, 2013***

Certified bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Public Service Alliance of Canada	28	143,150
Professional Institute of the Public Service of Canada	19	53,225
Canadian Association of Professional Employees	2	12,953
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada – CSN	1	7,672
Association of Canadian Financial Officers	1	4,518
Association of Justice Counsel	1	2,752
Research Council Employees' Association	6	1,674
Professional Association of Foreign Service Officers	1	1,338
International Brotherhood of Electrical Workers, Local 2228	1	1,114
Canadian Merchant Service Guild	1	922
Federal Government Dockyards Trades and Labour Council (Esquimalt, B.C.)	1	850
Federal Government Dockyard Trades and Labour Council (East)	1	750
Canadian Federal Pilots Association	2	387
CAW Local 2182	1	350
United Food and Commercial Workers Union, Local 175 and 633	6	273
United Food and Commercial Workers Union, Local 864	3	216
Canadian Military Colleges Faculty Association	1	207
Syndicat général du cinéma et de la télévision, CUPE Local 4835	1	124
United Food and Commercial Workers Union, Local 1518	2	112
Canadian Union of Public Employees, Local 2656	1	100
Federal Government Dockyard Chargehands Association	1	72
Communications, Energy and Paperworkers Union of Canada, Local 588	1	27
CATCA, CAW Local 5454	1	7
United Food and Commercial Workers Union, Local 1400	1	4
Total	84	232,797**

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

**The total in Table 2 does not equal the 239,326 employees indicated in Table 1 (from the Treasury Board and separate employers) because 6,529 of the employees included in Table 1 were not represented by a bargaining agent or were not tabulated in their calculations.

Grievances, Complaints and Certain Applications Before the Public Service Labour Relations Board 2012-2013

	Number of cases brought forward from previous years	Number of new cases received	Number of cases closed (includes cases settled, withdrawn and decided)		Number of cases carried forward to 2013-2014	Decisions or orders
			Settled & withdrawn	Decided		
Individual	3,885	1,607	1,505	149	3,838	59
Group	59	23	15	8	59	10
Policy	13	19	5	3	24	3
Total grievances	3,957	1,649	1,685		3,921	72
Complaints of unfair labour practices	38	26	8	10	46	14
– DFR						
– Other	51	35	19	8	59	
Complaints under the <i>Canada Labour Code</i>	31	4	9	3	23	5
Total complaints	120	65	57		128	19
Request to file certified copy of order with Federal court	0	0		0	0	0
Certifications	0	0		0	0	0
Revocations of certification	0	0		0	0	0
Determination of successor rights	0	0		0	0	0
Membership in a bargaining unit	6	0		3	3	1
Designation of essential services positions	6	2		2	6	0
Applications for review of Board decisions	1	4		4	1	3
Requests for extension of time	57	11		32	36	5
Subtotal applications¹	70	17	41		46	9
Determination of management and confidential positions	400	241		318	323	1 ²
TOTAL	4,547	1,972	2,101		4,418	101³

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

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

³ This reflects the decisions for which citation numbers were assigned.

APPENDIX 3

Total Caseload: 2009-2010 to 2012-2013

FY	Carried forward from previous years	New			Total New	Closed	Carried forward to next year
		Grievances	Complaints	Applications			
2009/10	3,966	876	107	348	1,331	1,482	3,815
2010/11	3,774	1,736	64	308	2,108	1,368	4,514
2011/12	4,109	1,655	61	310	2,026	1,587	4,548
2012/13	4,547	1,550	60	362	1,972	2,101	4,418

Synopsis of Applications for Judicial Review of Decisions

April 1, 2008 to March 31, 2013

	Decisions rendered ¹	Number of applications	Applications withdrawn	Applications dismissed	Applications allowed	Applications pending ²	Appeals of applications pending ³
YEAR 1 (April 1, 2008 to March 31, 2009)	114	24	4	18	2	0	0
YEAR 2 (April 1, 2009 to March 31, 2010)	183	30	11	16	3	0	0
YEAR 3 (April 1, 2010 to March 31, 2011)	70	25	2	11	9	3	3
YEAR 4 (April 1, 2011 to March 31, 2012)	150	32	9	8	0	15	0
YEAR 5 (April 1, 2012 to March 31, 2013)	122	21	0	4	0	17	1
TOTAL	639	132	26	57	14	35	4

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 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 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 state of the law for some interesting issues as of March 31, 2013.

Bargaining Agent Activity

In ***Jolivet v. Treasury Board (Correctional Service of Canada)***, 2013 PSLRB 1, the complainant and another individual, both of whom are offenders incarcerated in a federal penitentiary, filed a complaint under paragraph 190(1)(g) of the *Public Service Labour Relations Act* ("the Act"), alleging that the respondent had denied them and other organizers for the Canadian Prisoners' Labour Confederation the right to sign up members in the institution, which interfered with their right to organize a lawful employee organization. The Board held that although the jurisprudence indicated that for some purposes and in some circumstances, offenders who participate in work programs could be found to be employees, the evidence in this case was insufficient as for the factors critical to such a determination. Furthermore, employee status in the federal public service could not be inferred from the facts or on the application of the traditional common law tests. The panel of the Board held that the definition of "employee" in subsection 2(1) of the Act could be understood only in relation to the grants of power in other legislation, such as the *Public Service Employment Act* and the *Financial Administration Act*. The decision of the Supreme Court of Canada in ***Canada (Attorney General) v. Public Service Alliance of Canada***, [1991] 1 S.C.R. 614 (Econosult), continued to apply, despite the change in legislation. To be employed in the public service, a person must have been appointed by the Public Service Commission to a position created by the Treasury Board, and the complaint was therefore outside the Board's jurisdiction. An application for judicial review before the Federal Court of Appeal is pending (Court File No. A-192-13).

In ***Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)***, 2012 PSLRB 58, the bargaining agent negotiator requested access to work sites outside working hours to meet with employees in the bargaining unit to discuss collective bargaining issues. The employer denied access for that purpose. The Board

found that the collective agreement is not a complete code of access to the employer's premises; the employer's discretion to refuse the bargaining agent the use of its facilities for purposes other than those set out in the collective agreement should not be absolute. The Board found that the employer did not have compelling and justifiable business reasons for preventing a lawful activity of the bargaining agent in the workplace and that the employer's denial ran contrary to the Act, particularly when the legislative purposes expressly stated in its preamble are considered.

In ***Sturkenboom v. Professional Institute of the Public Service of Canada et al.***, 2012 PSLRB 81, the complainant alleged that his bargaining agent's policy of restricting ratification votes to union members and barring Rand deductees from voting was unusual and was arbitrary, discriminatory and/or in bad faith. While the Act is silent on the issue of ratification votes, it contains explicit provisions concerning certification votes, decertification votes and strike votes, leading to the conclusion that the regulation of ratification votes is an internal union matter that is not within the powers of the Board.

Unfair Labour Practices, Freeze Provisions and Conditions on Agreement

In ***Research Council Employees' Association v. National Research Council of Canada***, 2013 PSLRB 26, the Research Council Employees' Association ("the RCEA") alleged that the employer had violated paragraph 190(1)(c) of the Act by failing to comply with section 107 of the Act, which requires the parties to observe the terms and conditions of employment during the statutory freeze period following the delivery of notice to bargain collectively. The National Research Council of Canada ("the NRC"), a separate agency, and the RCEA and other bargaining agents had previously incorporated the "Workforce Adjustment Policy" ("the WFAP") into their collective agreements and had agreed to review the policy. However, at the outset of the review, the NRC imposed a condition requiring approval from the Treasury Board Secretariat (TBS) before implementing any changes to the WFAP. Once agreement on the review was reached, the NRC then consulted with the TBS. Following those consultations, the NRC stated that it could not proceed with two changes because it could not secure a mandate from the TBS. The RCEA asserted that the NRC's refusal to implement those changes, on the basis that it had been unsuccessful in securing a negotiations mandate for

WFAP amendments from the TBS, constituted an unfair labour practice because no legal authority required TBS approval. The Board held that when parties to a collective agreement agree to incorporate a policy in a collective agreement, the policy becomes part of the agreement, and it must be treated like any other clause. The sole issue to be determined was whether there was an agreement to modify the terms of the collective agreement during the statutory freeze period. The NRC had imposed a condition on the completion of any deal with the complainant related to WFAP amendments, and no agreement could be crystallized without the TBS's approval. There was no evidence that the RCEA had objected to that approach, that it was misled or that it could have been misled as to the effect of the condition.

Maternity Leave and Discrimination

In last year's report, the Board reported on *Association of Justice Counsel v. Treasury Board*, 2012 PSLRB 32, in which the bargaining agent had contested the application of the performance pay provisions of the collective agreement to parents taking maternity or parental leave. The adjudicator had dismissed the grievance, finding that there was a difference between plans or benefits that are compensatory and non-compensatory, as well as between seniority-driven and work-driven benefits. As performance pay was compensatory and work driven, the employer had not discriminated by prorating the performance pay of those on maternity or parental leave. The application by the bargaining agent for judicial review before the Federal Court was discontinued (Court File No. T-751-12).

In *Grierson-Heffernan v. Treasury Board (Canada Border Services Agency)*, 2013 PSLRB 30, the grievor, a term employee, grieved her termination 14 days short of attaining the service she needed to obligate the Canada Border Services Agency (CBSA) to change her status to that of an indeterminate employee. The grievor lacked the requisite number of days because she had been absent on maternity leave, and the employer's policy at the time stated that any break in service of longer than 60 days would not be counted towards service. In 2008, the Canadian Human Rights Tribunal (CHRT) issued a decision about the same policy, which held that it was discriminatory. The Treasury Board changed the policy to comply with the CHRT's direction and did not seek judicial review of the decision but did not apply the decision retroactively to the grievor, as her maternity leave had occurred before the CHRT's decision was issued. While

the CHRT's decision was not binding, the adjudicator held that it should be considered determinative on the issue of the discriminatory nature of the policy and that permitting a relitigation of the same issues by the CBSA would be an abuse of process. He found that the policy was discriminatory and that that finding should have retroactive effect, just as it did in the CHRT decision. The grievor was entitled to a declaration that she was an indeterminate employee and that by failing to offer her available alternative employment, the CBSA had breached its obligations under the collective agreement.

Disciplinary Actions

The decision in *Christenson et al. v. Deputy Head (Canada Border Services Agency)*, 2013 PSLRB 25, discusses the issue of discipline in a situation in which the policy that had allegedly been violated was ambiguous. The grievors were use-of-force/firearms instructors and were assigned to conduct a duty firearm practice session in another city. Five-day suspensions were issued against them for wearing their firearms on a meal break at a restaurant. The thrust of the employer's case against the grievors was that misconduct occurred, which gave rise to discipline due to the alleged violation of its arming policy. In allowing the grievance, the adjudicator noted that the wording of the policy at the relevant time did not specifically identify its application to the grievors' positions. In addition, the employer was aware of that gap in the policy and of the practice of trainers wearing their firearms during breaks. The grievors did not act in bad faith when they wore their duty firearms on the date of the incident in question. In concluding that the grievance should be allowed, the adjudicator emphasized a key maxim of labour law: while employers have the right to establish rules and policies, they must be clear, unequivocal, brought to the attention of employees before being acted upon and consistently enforced. The adjudicator also noted that the newly implemented policy on firearms instructors wearing duty firearms required several adjustments. However, on the date of the incident in question, the policy was not clear with respect to trainers; nor was it consistently applied to them.

Damages

Last year's report detailed that Board adjudicators had 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. The Federal Court rendered its decisions on the judicial reviews of those decisions.

In ***Canada (Attorney General) v. Tipple***, 2011 FC 762, the Court found that the damages awarded for psychological injury were excessive. Although some evidence supported an award for such damages, the reasons did not clearly explain the calculations for the amount awarded. With respect to the award for a loss of reputation, the Court found that the employer had no duty to protect the grievor's reputation, since it had not given any such assurances; nor did the employer attack the grievor's reputation. Therefore, the grievor was not entitled to those damages. On the issue of damages for obstruction of process based on the employer's failure to follow through on an order of disclosure, the Court found that it was, in essence, an improper award of costs, for which the adjudicator had no jurisdiction. The Court specifically confirmed that the remedial powers granted under subsection 228(2) of the *Act* did not include the authority to award costs, since costs are not remedial. In ***Tipple v. Canada (Attorney General)***, 2012 FCA 158, the Federal Court of Appeal confirmed the award damages for loss of reputation resulting from a breach of the employer's duty of good faith in the manner of termination, because public knowledge of false allegations relating to the termination, for which the employer had taken no reasonable corrective steps, impaired the grievor's ability to find new employment. The Court of Appeal also confirmed that the adjudicator did not have the authority to award costs. However, an award of damages for obstruction of process is different from a traditional award of costs, and the adjudicator had an inherent authority to control the proceedings before him and to remedy its abuse. The Court of Appeal confirmed the adjudicator's award of damages for obstruction of process.

In ***Canada (Attorney General) v. Robitaille***, 2011 FC 1218, the Court found that the adjudicator did not have the power to order legal costs since she could not do indirectly what the *Act* did not authorize her to do. However, the Court confirmed that the adjudicator had the authority to award compensatory

damages, including damages to cover the loss of career advancement, and punitive damages. During the period under review, the Federal Court of Appeal declined to deal with the appeal of the Federal Court's decision (2012 FCA 270).

In ***Lâm v. Deputy Head (Public Health Agency of Canada)***, 2012 PSLRB 96, a Board adjudicator considered the appropriate remedy to be awarded to an employee whose termination she held unjustified but whose reinstatement she refused to order. The adjudicator accepted the concept of remedy proposed by Arbitrator Sims in ***Hay River Health and Social Services Authority v. Public Service Alliance of Canada*** (2010), 201 L.A.C. (4th) 345, as the most congruent with this case. She held that a distinction existed between unionized and non-unionized regimes with respect to assessing damages following an unjustified termination and that in that case, the remedy had to be assessed based on the value of the employment prospects lost at the time of the termination rather than on the concept of reasonable notice. The adjudicator held that the value of the employment capital was the biggest difference between a unionized employee and one who is not unionized and that employment capital was subject to the same weighting factors as for a non-unionized employee, i.e., opportunities for advancement, loss of employment for economic or technological reasons, a decision to change jobs or retire, compromised health, unforeseen family obligations, etc. In applying the weighting factors, the adjudicator decided that the grievor's long disciplinary record most compromised her chances of keeping a job for the long term, thus reducing her employment capital by 50%. The other factors reduced her employment capital by a further 25%. The adjudicator also held that the obligation to mitigate damages did not align with the principle of the value of employment loss.

Other Employers

A great number of the cases decided by the Board or by adjudicators are covered by the *Public Service Employment Act*, but not all. Some separate employers have their own employment legislation, a situation that lends itself to challenges in statutory construction.

Boutziouvis v. Financial Transactions and Reports Analysis Centre of Canada, 2010 PSLRB 135, was covered in the last two annual reports. It was noted that under the Financial Transactions and Reports Analysis Centre of Canada's

(FINTRAC) enabling statute, the FINTRAC 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 other than for cause. The employee established that the termination was disciplinary and thus adjudicable. The adjudicator found that the employer did not show that the discipline was justified, and he reinstated the grievor.

An application for judicial review before the Federal Court was allowed in ***Financial Transactions and Reports Analysis Centre of Canada v. Boutziouvis***, 2011 FC 1300. On the standard of correctness, the Court found that the adjudicator erred because, when read as a whole, section 49 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* encompasses the power to terminate employment other than for cause. Therefore, the separate agency was entitled to terminate the employee’s employment on payment in lieu of reasonable notice.

The Court found further that were it wrong on the first issue, on the standard of reasonableness, the adjudicator did not err in his decision because the evidence presented to him inescapably led to a finding that discipline was the primary reason for termination.

Note that an application for judicial review is pending before the Federal Court (Court File No. T-319-11) and that an appeal is pending before the Federal Court of Appeal (Court File No. A-472-11).

Procedure and Recording Proceedings

In ***Boshra v. Canadian Association of Professional Employees***, 2012 PSLRB 78, the complainant filed an unfair labour practice complaint against his bargaining agent. He was refused permission by the Board to record the proceedings. The Board held that the complainant had not advanced any submissions in support of his argument based on section 7 of the *Canadian Charter of Rights and Freedoms* and held that it was not required by legislation to record proceedings. Its policy had withstood legal challenges, and while the Board had made

occasional exceptions to its practice to not record hearings, it did so only in cases in which the issues were particularly complex or in which the hearing was likely to be extremely protracted. This was not a case in which to diverge from its policy as it involved a relatively straightforward issue, and the hearing would be short. The complainant’s application for judicial review before the Federal Court was dismissed (Court File No. T-1623-12), and his appeal before the Federal Court of Appeal has also been dismissed (Court File No. A-22-13).

Abuse of Process

In ***Bremsak v. Professional Institute of the Public Service of Canada et al.***, 2013 PSLRB 22, the complainant had a series of disputes with her bargaining agent. She had been suspended from elected positions for two years, pursuant to a policy of her bargaining agent, and had filed a complaint with the Board to challenge her suspension. In ***Veillette v. Professional Institute of the Public Service of Canada and Rogers***, 2009 PSLRB 64, the Board found that the bargaining agent’s policy violated the Act and ordered that the policy be modified to comply with the Act; however, the Board found that it had no jurisdiction to order Mr. Veillette’s reinstatement into his positions with the bargaining agent. The complainant in 2013 PSLRB 22 then filed a new complaint, alleging that the respondent continued to apply the policy to her by not reinstating her into her elected positions as a result of *Veillette*. Later, members of her bargaining agent filed harassment complaints against her, and the complainant then filed a complaint, alleging that the harassment complaints were in retaliation for her disputes with her bargaining agent. Finally, the complainant was suspended from membership in her bargaining agent for five years as the result of harassment complaints made against her. She filed a complaint to challenge that suspension and the process followed by her bargaining agent to impose it. She also filed numerous applications for consent to prosecute.

The Board found that the bargaining agent had legitimate reasons not to reinstate the complainant into her elected positions as a result of *Veillette*. The Board further found that the complainant was pursuing a personal agenda by using the complaint process to undermine the bargaining agent’s

position in other proceedings. The evidence showed that members of the complainant's bargaining agent genuinely felt harassed by the complainant, and the Board found that they did not retaliate against her by filing harassment complaints; she retaliated against them by filing her complaint. The Board found the complaints abusive. It found that the bargaining agent was diligent in investigating the harassment complaints, and the evidence showed that the complainant had harassed fellow members of her bargaining agent. The Board also found that the process followed by the bargaining agent to impose the suspension was reasonable and that it sufficiently respected procedural fairness. The Board further found that the decision to suspend the complainant was made by persons vested with the authority to make that decision and that those persons were not in a conflict of interest. Furthermore, the Board found that the length of the suspension was an appropriate and proportional response to the toxic environment that the complainant had created and that the immediacy of the suspension was consistent with common practice in labour relations. Finally, the Board found that the complainant did not avail herself of her bargaining agent's appeal process to challenge her suspension.

Note that an application for judicial review is pending before the Federal Court of Appeal (Court File No. A-131-13).

In ***Bremsak v. Professional Institute of the Public Service of Canada et al.***, 2011 PSLRB 95, the Board denied its consent to institute prosecution against the respondents. That decision was upheld by the Federal Court of Appeal in ***Bremsak v. Professional Institute of the Public Service of Canada***, 2012 FCA 91. In ***Bremsak v. Professional Institute of the Public Service of Canada et al.***, 2013 PSLRB 28, the applicant requested that the Board review part of its earlier decision. The Board found that the decision review process is not meant to be an opportunity to reargue the merits of a matter that has been finally decided but that it is intended to deal with new evidence or new arguments that could not have been presented at the original hearing. The Board

further found that there was no material and determinative change to the circumstances of the matter since the earlier decision was rendered. The Federal Court of Appeal rejected the arguments presented in support of the application for decision review. If the applicant was unsatisfied with the decision of the Federal Court of Appeal, she could have sought leave to appeal to the Supreme Court of Canada instead of filing the application for decision review. The Board found the application constituted an abuse of process.

