Federal Public Sector Labour Relations and Employment Board

Commission des relations de travail et de l'emploi dans le secteur public fédéral

ANNUAL REPORT

2022 2023

FEDERAL PUBLIC SECTOR LABOUR RELATIONS AND EMPLOYMENT BOARD

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This publication will also be available on the Board's website.

The Honourable Dominic Leblanc
Minister of Public Safety and Emergency Preparedness
House of Commons
Ottawa ON K1A 0A6

Dear Minister,

As Chairperson of the Federal Public Sector Labour Relations and Employment Board, it is my pleasure to transmit to you, pursuant to section 42 of the *Federal Public Sector Labour Relations and Employment Board Act*, this Annual Report of the Federal Public Sector Labour Relations and Employment Board, covering the period from April 1, 2022, to March 31, 2023, for submission to Parliament.

Yours sincerely,

Edith Bramwell
Chairperson
Federal Public Sector Labour Relations and Employment Board

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Land Acknowledgment

Our offices are located on the traditional unceded, unsurrendered territory of the Anishinaabe Algonquin Nation. We also conduct hearings and mediations across Canada on various other traditional territories of Indigenous peoples.

The Algonquin people have inhabited and cared for these lands from time immemorial. We take this time to show our gratitude and respect to them. We recognize the ongoing courage, fortitude and resilience of indigenous people in the face of the continuing effects of colonization and cultural genocide, including, but not limited to, the tragic and cruel history of residential schools in this country.

We recognize that acknowledging territory is only a small step along the path of reconciliation and right relations. The Board is committed to decolonizing its processes and improving access to justice.

We all have a role to play in the ongoing process of reconciliation.

Message from the Chairperson

I am pleased to present the 2022-2023 Annual Report of the Federal Public Sector Labour Relations and Employment Board (FPSLREB or "the Board").

The Board's mandate is to support harmonious labour relations and employment relations in the federal public sector. To accomplish that mandate, it must serve and protect the public interest through promoting collaboration and sustained dialogue between parties, as well as through fair, credible, and accessible processes that facilitate resolving matters.

In the 2022-2023 reporting period, several new initiatives were piloted pursuant to the Case Flow Initiative, including the re-introduction of settlement conferences and their expansion to encompass labour relations matters, significant increases in scheduled hearings, close examination of long-term inventory, the use of multi-docket scheduling and the addition of the role of the early resolution officer to the Board's dispute resolution services.

In light of the success of those initiatives, it is with great pleasure that I take this opportunity to announce that settlement conferences for all types of matters are now part of the Board's standardized processes and that we will extend the duration of, and expand, the early resolution officer pilot project. Significant progress has been made in advancing long term inventory files toward resolution. These initiatives demonstrate the value of diversifying our services to better suit the needs of our stakeholders and the parties before us. They also support our objective of further enhancing alternate dispute resolution options.

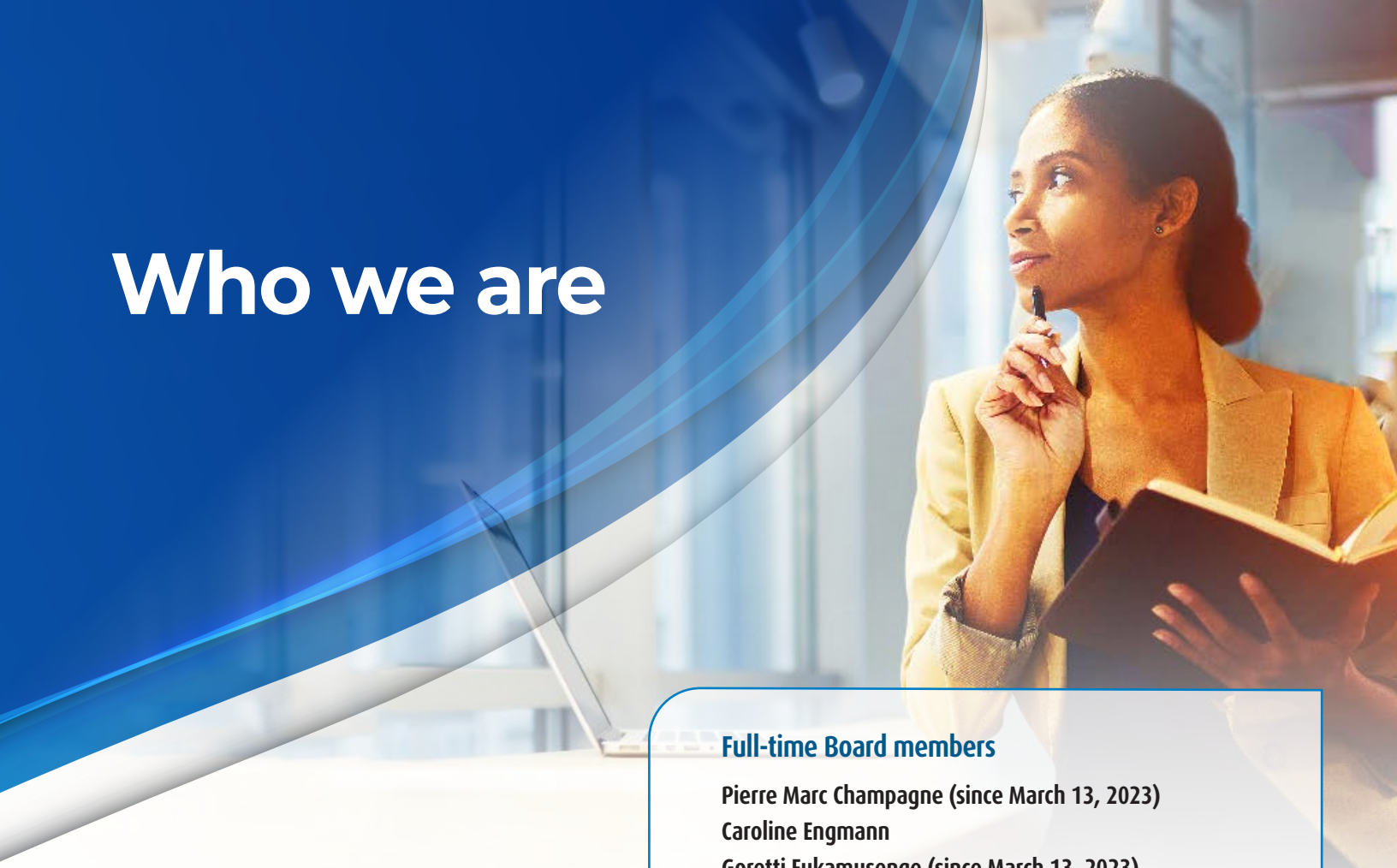
This past year was a period of reflection on the future of work after three years of pandemic. In order to better understand the needs of our clients, a survey on the different modes of hearings was conducted in winter 2023. The results showed that while there is significant support for continued use of videoconference or hybrid hearing options, in some cases, an in-person hearing is preferable. As we gradually resumed in-person hearings and mediations, it was important to draw some lessons from our experience with videoconferencing as an effective means of providing greater access to justice in a timely and accessible manner.

I am also happy to announce that following new Governor-in-Council appointments, the Board will operate with a full complement of full-time Board members starting at the beginning of April 2023, for the first time since its creation in 2014. These new appointments are an opportunity to enhance the Board's capacity to deliver its mandate in an efficient manner and to maintain its commitment to resolve labour relations and employment matters in an impartial and timely manner.

Finally, I wish to sincerely thank our Board members and the employees of the Board's secretariat for their dedicated support and ongoing commitment to excellence in the accomplishment of the Board's mandate.

Edith Bramwell, Chairperson
Federal Public Sector Labour Relations and Employment Board

Who we are



Composition

The *Federal Public Sector Labour Relations and Employment Board Act* establishes the Board's composition as follows:

- 1 full-time chairperson;
- not more than 2 full-time vice-chairpersons;
- not more than 12 full-time members; and
- as many part-time members as necessary to carry out the Board's powers, duties, and functions.

During the reporting period, the Board was composed of the following members:

- **Edith Bramwell, Chairperson**
- **Marie-Claire Perrault, Vice-chairperson**
- **Amélie Lavictoire, Vice-chairperson**

Full-time Board members

Pierre Marc Champagne (since March 13, 2023)
Caroline Engmann
Goretti Fukamusenge (since March 13, 2023)
Bryan R. Gray
Patricia Harewood (since March 13, 2023)
Chantal Homier-Nehmé
John G. Jaworski
James Knopp
Audrey Lizotte (since August 8, 2022)
Ian R. Mackenzie
David Orfald
Nancy Rosenberg

Part-time Board members

Joanne Archibald
Fazal Bhimji (since February 3, 2023)
Guy Giguère
Guy Grégoire
David Jewitt (since February 3, 2023)
Steven B. Katkin
David P. Olsen
Renaud Paquet
Leslie Anne Reaume
Augustus Richardson

Mandate

The Federal Public Sector Labour Relations and Employment Board ("the Board") is an independent, quasi-judicial statutory tribunal that offers dispute resolution and adjudication services in key labour relations and staffing matters of the federal public sector and Parliament[1].

The Board's mandate includes the following:

- administering the collective bargaining and adjudication processes in the federal public sector;
- resolving complaints about internal appointments, appointment revocations, and layoffs;
- resolving human rights issues arising in, among other areas, labour relations grievances, staffing complaints, unfair labour practices, and collective bargaining matters;
- administering public-sector-employee reprisal complaints under the *Canada Labour Code* (*CLC*); and
- resolving complaints made by federal public sector and parliamentary employees related to the *Accessible Canada Act*, which establishes a framework for the proactive identification, removal, and prevention of barriers to accessibility for persons with disabilities.

1 A separate annual report is issued for the Board's activities under the *Parliamentary Employment and Staff Relations Act*.

Commitment

- Support a fair staffing environment and harmonious labour relations within the federal public sector.
- Resolve labour relations and employment issues impartially and fairly and in a manner that accords with the legislation that the Board is mandated to interpret and apply
- Help parties resolve disputes in a fair, credible, and efficient manner that respects the objectives outlined in the Board's enabling legislation.

Jurisdiction

As part of its responsibilities, the Board interprets and applies the following legislation:

- *Federal Public Sector Labour Relations Act* (*FPSLRA*)
- *Public Service Employment Act* (*PSEA*)
- *Canadian Human Rights Act* (*CHRA*)
- *Parliamentary Employment and Staff Relations Act* (*PESRA*)
- *Public Sector Equitable Compensation Act* (*PSECA*)
- *Canada Labour Code* (*CLC*), Part II
- *Accessible Canada Act* (*ACA*)

The legislative framework of the *FPSLRA* covers numerous collective agreements, bargaining agents, and employers. It applies to departments listed in *Schedule I* to the *Financial Administration Act (FAA)*, other portions of the core public administration listed in *Schedule IV*, and separate agencies listed in *Schedule V*. The *FPSLRA* covers over 325 000 federal public sector employees, including RCMP members and reservists.

The legislative framework of the *PSEA* applies to any organization for which the Public Service Commission (PSC) or its delegate has the authority to make appointments and covers approximately 240 000 employees and managers in the federal public service.[2]

2 See the PSC's *Reference List* of organizations and deputy heads for which it has delegated appointment (and related) authority

Legislative changes impacting our mandate

Regulations Amending the Public Service Staffing Complaints Regulations

As of December 7, 2022, portions of the *Public Service Staffing Complaints Regulations* relating to matters before the Board were amended due to the coming into force of *An Act to amend the Canada Labour Code*, the *Parliamentary Employment and Staff Relations Act*, the *Public Service Labour Relations Act* and the *Income Tax Act* (S.C. 2017, c. 12; Bill C-4), *An Act to amend the Public Service Labour Relations Act*, the *Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9; Bill C-7), and the ACA.

The changes relate solely to the Board's practices and procedures. They are expected to address concerns raised by stakeholders and help parties and the Board manage cases more efficiently.

The new regulations were also amended to give the Board more latitude to extend timelines. Guidance as to how the Board conducts its proceedings was extended to all staffing proceedings before it. A provision was added for providing notice to the Accessibility Commissioner. Finally, gender-neutral wording was adopted for the English version of the regulations.

The open court principle

In accordance with the constitutionally protected open court principle, the Board's hearings are open to the public, save in unusual circumstances. The Board acts according to its *Policy on Openness and Privacy* to foster transparency in its processes, as well as accountability and fairness in its proceedings.

Activities

Collective bargaining

- The Board administers collective bargaining processes within the federal public sector, (including the RCMP), and Parliament that are covered by the *FPSLRA* and the *PESRA*.
- The Board provides arbitration and conciliation services to facilitate the resolution of disputes that arise in the context of collective bargaining.

Mediation

- Mediation helps parties resolve their conflicts through a mutually acceptable agreement and without resorting to a hearing. It is a confidential, voluntary process led by a neutral and impartial third party.
- Through mediation, the Board promotes open and respectful communication, fair and transparent employment practices, and effective dialogue.

Adjudication

- Through adjudication, the Board achieves the fair resolution of cases through several forms of dispute resolution approaches, including case management conferences and hearings.
- The Board has developed a substantial body of precedents that are relevant in the resolution of disputes on an ongoing basis.

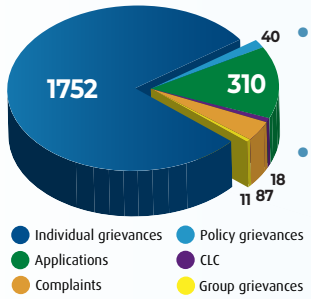
Please consult the Board's website for more information on its activities.

2022-2023 at a glance

(See "Highlights of 2022-2023" for more information about the Board's performance.)

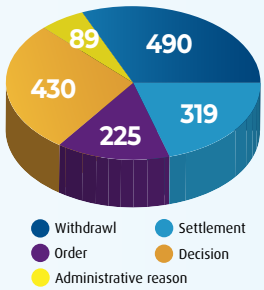
Labour relations (*FPSLRA*)

Opened labour relations files, by type



- **2218** labour relations files were opened — an increase of almost **100%** from the prior year.
- **80%** of new labour relations referrals were individual grievances related to a disciplinary matter or the interpretation or application of a collective agreement.

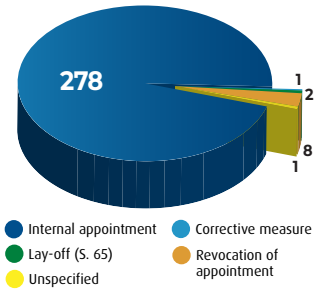
Closed labour relations files – Method of closure



- **1553** labour relations files were closed.
- Labour relations cases resulting in a decision being issued accounted for **28%** of all file closures. Other closures were the result of withdrawals and settlements, often resulting from the Board's intervention.

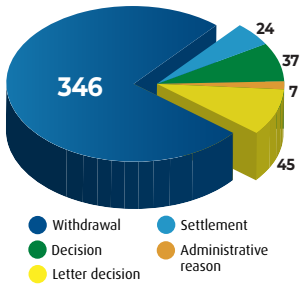
Staffing (*PSEA*)

Opened staffing files, by type



- **290** staffing files were opened, compared to **306** in 2021-2022.
- For the **7th** consecutive year, the number of staffing complaints received decreased.

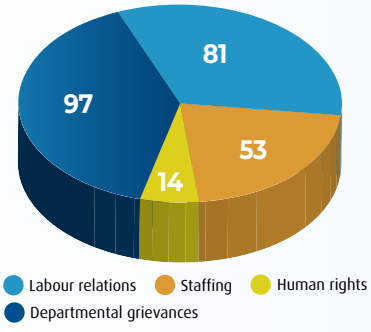
Closed staffing files – Method of closure



- **459** staffing files were closed in **2022-2023**, representing a **20%** increase in staffing file closures from **2021-2022**.
- **75%** of the closures were due to withdrawals. Other closures were due to decisions issued and settlements, many of which were facilitated by the Board.

Mediation and dispute resolution services (MDRS)

Resolved files, by type - MDRS



- **124** mediation interventions
  - Labour relations – **63%** settlement rate
  - Staffing – **64%** settlement rate
- Formal mediation sessions are also an opportunity to discuss other matters that are associated with the file. Through those discussions, **97** departmental grievances as well as **14** human rights complaints were withdrawn.
- Total files resolved through formal or informal mediation – **245** files

Highlights of 2022-2023

Number of hearings scheduled

In 2022-2023, a total of 506 hearings were scheduled, an increase of 45% compared to the previous fiscal year. The scheduling of a hearing almost always promotes a resolution, either before the hearing, due to a settlement or a withdrawal, or after, through the issuance of reasons for decisions.

Collective bargaining

The 2022-2023 fiscal year was a contentious period for public service negotiations, setting the stage for the work stoppages that would occur in April 2023.

In the summer of 2022, following an extended period of negotiations, the Public Service Alliance of Canada (PSAC), representing over 155 000 employees in the broader federal public service, submitted five requests for the establishment of Public Interest Commissions (PICs) to assist the parties through the issuance of non-binding recommendations.PIC recommendations are a key prerequisite to a bargaining agent attaining the legal right to give notice of strike action.

These requests captured four bargaining units for which the Treasury Board serves as the employer, as well as the PSAC bargaining unit at the Canada Revenue Agency. Later in the fiscal year, the PSAC followed suit with PIC requests for its units at the Canadian Food Inspection Agency, Parks Canada, and several bargaining units at the Staff of the Non-Public Funds. They are scheduled to be heard in the next fiscal year.

The PSAC also sought the exercise of the Chairperson's discretion to refuse its requests for the establishment of PICs. After assessing the bargaining agent's requests, the volume of outstanding issues, and the employer opposition, the Chairperson established the requested PICs while at the same time appointing mediators to work with the parties in the period leading up to the PIC hearings. While mediation reduced the number of outstanding issues, the PIC hearings proceeded in the fall and winter of 2022.

The PIC reports were submitted at the end of January. Among other observations, one of the PIC reports noted the lack of meaningful bargaining and encouraged the parties to return to the table. Shortly after the reports were released, the bargaining agent announced a coordinated schedule for conducting strike votes for the respective units. As the close of the fiscal year approached, Board secretariat staff worked with the parties to establish another series of mediations, scheduled for the month after the end of the fiscal year.

The Board's mediation service was also asked to provide mediation services for three other bargaining disputes involving the Canadian Association of Professional Employees (Translation and Economics and Social Science Services groups) and the Canadian Union of Public Employees (Law Enforcement Support and Police Operations group).

Finally, during the fiscal year, the Board received four requests to establish arbitration boards. Two of them resulted in arbitral awards being issued, one was carried over into the next fiscal year, and one was withdrawn as a result of a tentative settlement.

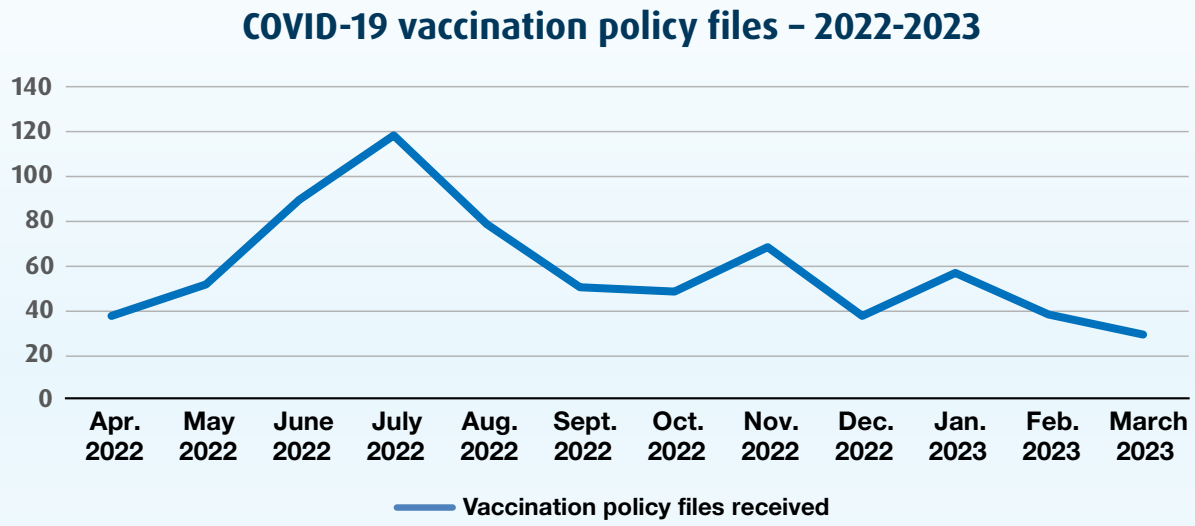
Accelerated adjudication process for Phoenix pay-related grievances

Phoenix pay-related grievances before the Board arise from the implementation of the Phoenix pay system in 2015, following which a large number of pay-related grievances were eventually referred to the Board. Since then, the Board's inventory of Phoenix pay-related files has been steadily declining, with 42 closures in 2022-2023, for a total of 548 remaining open files. As of March 31, 2023, Phoenix pay-related grievances constituted 8% of the Board's overall caseload inventory.

To address the inventory of Phoenix pay-related files, the Board, in collaboration with the parties to the *Phoenix Pay System Damages Agreement (2019)*, has developed a process for the accelerated adjudication of grievances that fall under that agreement and other similar agreements for separate agencies. The process will be implemented in the next fiscal year through a coordinated approach with the parties to the agreement. Further detail on the *Phoenix Pay System Damages Agreement (2019)* may be found here.

COVID-19 vaccination policy grievances

In addition to the usual caseload inventory, the COVID-19 vaccination policy led to a total of 696 referrals in 2022-2023, equivalent to 31% of all new files received that year. Since the implementation of the vaccination policy, a total of 979 related files have been received by the Board. While the inflow of such files is ongoing, it has been steadily decreasing since July 2022, as shown in the graphic below.



The Board convened a meeting of stakeholders to invite proposed test cases. Eight proposed test cases were scheduled in order to develop jurisprudence that might serve as a guide to possible outcomes of other similar cases. Of those eight scheduled hearings, five were cancelled due to settlement, one is awaiting a decision and two have been postponed.

In addition, several duty of fair representation complaints related to vaccination policies were decided in 2022 – 2023. Case management for several other vaccination policy grievances and complaints also began in the same year.

Outreach and training

In 2022-2023, MDRS offered three mediation training sessions to universities, one in French and two in English, as well as a mediation presentation to the participants of the Association of Labor Relations Agencies (ALRA) Conference. MDRS also offered one bilingual collective bargaining training session and another on interest-based bargaining, as well as six virtual mediation training sessions (three in French and three in English).

Case Flow Initiative

The Case Flow Initiative aimed to increase access to justice by reducing unnecessary delays and resolving disputes as quickly and efficiently as possible while maintaining high-quality service.

Since its inception, the initiative has paved the way for the implementation of several pilot projects. The past fiscal year saw a shift from the initial pilot phase of many projects, to a more formal adoption of the beneficial practices piloted. As just one example, the settlement conference pilot project is now an official Board process, and the Early Resolution Officer pilot project, which was initially to be for a period of six months, has been extended for another year and is now supported by more resources. Overall, the Board's adoption of multiple dispute resolution, analysis and scheduling mechanisms has streamlined cases into more active processes, increased access to justice, improved efficiencies, and reduced the time spent waiting for a hearing.

The paragraphs that follow are an overview of the some of the projects piloted under the auspices of the Case Flow Initiative. While the Board will continue to innovate and analyze, the case flow initiative has now concluded and many of its pilot projects have become standardized Board policies.

Transparent staffing complaint scheduling

At the end of the 2021-2022 fiscal year, the Board implemented a new staffing complaint scheduling process to address and schedule the staffing caseload based on the age of a file, linguistic balance, and special or urgent circumstances. For efficiency and transparency purposes, the Board publishes the order in which staffing cases will be scheduled on its website. With modifications as needed to ensure linguistic balance, the Board now schedules staffing complaints from oldest to newest. Guidance is provided on the website for stakeholders who wish to make submissions to the board which would vary their position on the published staffing complaint scheduling list.

This new initiative further enhances the Board's commitment to encourage the use of alternate dispute resolution mechanisms to resolve matters, as well as its commitment to facilitate access to justice by providing parties an opportunity to view the progress made and to provide submissions should they believe that their case should proceed more expeditiously.

In the 2022-2023 fiscal year significant progress was made in addressing the Board's inventory of staffing complaints. The staffing complaint scheduling list shrank by more than 60%, as these cases were directed to hearings or settlement conferences or resolved by the parties themselves. It is anticipated that the Board will eliminate or nearly eliminate its staffing complaint inventory in the 2023-2024 fiscal year.

Settlement conference pilot project

The Settlement conference pilot project was implemented in March 2022 as part of the Board's commitment to improve access to justice and to increase the use of alternative dispute resolution mechanisms.

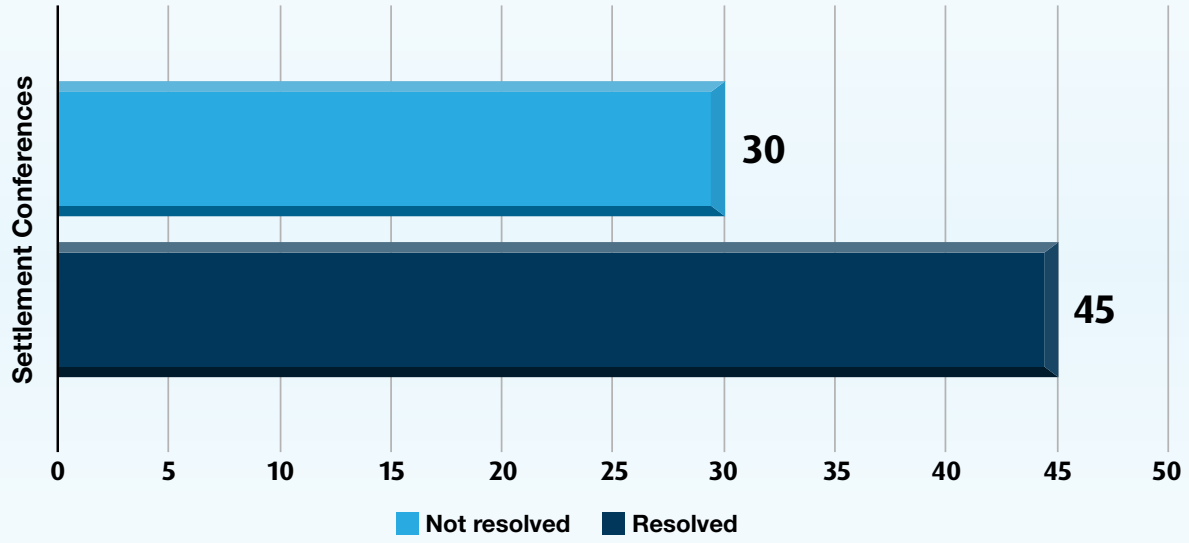
By engaging the parties in the context of an evaluative dispute resolution process and offering an alternative stream for resolving grievances and complaints, settlement conferences help resolve matters more efficiently and, in cases in which a conference does not conclude in a resolution, help narrow down the issues at hand through enhanced communication between the parties. Alternate dispute resolution mechanisms such as this will continue to be important as the Board escalates its engagement on matters filed before it.

A **SETTLEMENT CONFERENCE** is an evaluative process that allows the parties to better understand the strengths and weaknesses of their case, and the options and benefits of a resolution, with the assistance of a Board member.

One year after the implementation of the pilot project, settlement conferences are now part of ongoing dispute resolution mechanisms offered by the Board.

In 2022-2023, the Board scheduled 110 settlement conferences. Thirty-five (35) of the scheduled matters were rescheduled or adjourned to the next fiscal year. Of the remaining 75 matters, 45 were resolved and 30 were not resolved.

Settlement Conference – Outcome



Early resolution officer

An early resolution officer (ERO) helps parties to bring matters to a swift resolution. The ERO reviews complaints and grievances submitted to the Board and then engages the parties, together or separately, in settlement discussions.

Using a candid, pragmatic, and evaluative approach, based on knowledge of the legislation, jurisprudence, and the facts of the case, the ERO helps parties understand the relative strengths and weaknesses of their cases and the pros and cons of settling their matters.

The ERO can also:

- help parties narrow the issues in dispute,
- help parties agree on key facts,
- identify any preliminary or procedural issues,
- propose an appropriate alternative dispute resolution mechanism, and
- recommend early, active case management by a Board member.

Through its first 6 months of implementation, from October 2022 to April 2023, the ERO role has shown its value to improved case-flow management. Fifty-four (54) early interventions were conducted, engaging parties on their files and offering several dispute resolution services. Some of the results of those interventions include the following: 30 interventions led to either settlement discussions or settlement conferences, 4 led to mediations, and 4 interventions clarified some issues and led to preliminary motions that could be addressed before a hearing.

Long-term inventory reduction

This exercise involves a review of cases filed prior to 2015, consultations with the associated parties and, depending on the outcome of those consultations, assignment to one of our dispute resolution services or adjudication for further action. In the current reporting period, 67 cases covering 127 files were engaged. Of those, 25 cases were closed, 17 were scheduled for a hearing, 9 are being processed through one of the Board's dispute resolution or adjudication mechanisms and 8 were assigned and awaiting further direction. The remaining 11 are either awaiting final responses, settled awaiting withdrawal or identified as part of a settlement group. The Board intends to continue this practice of review and engagement on its long-term inventory into the coming fiscal year.

Multi-docket scheduling

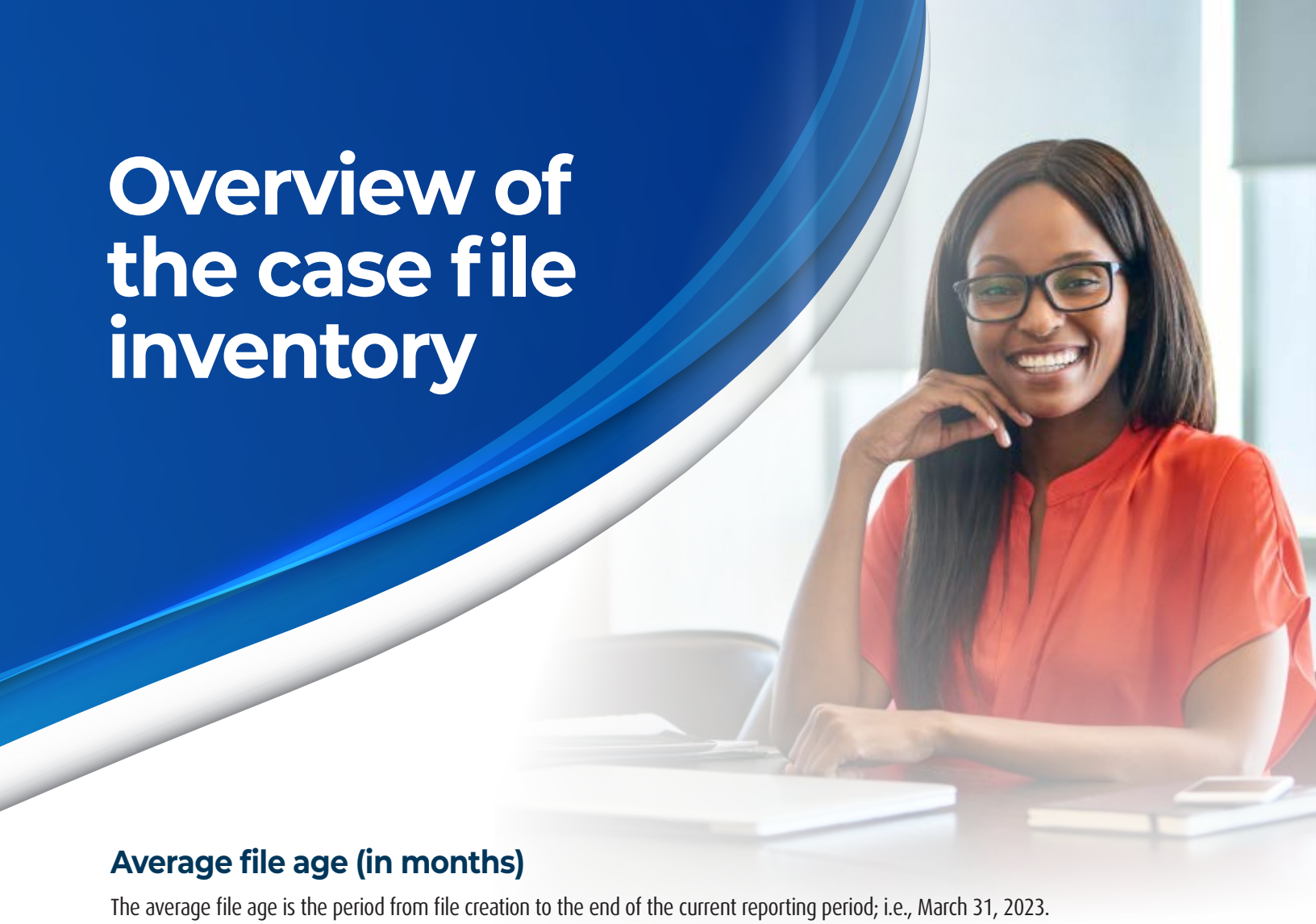
In an effort to improve access to justice, respond to the high number of hearing cancellations and postponements and to ensure the effective and timely resolution of labour relations and staffing disputes, the Board examined new ways of scheduling cases. As a result, the Board implemented the Multi-Docket Scheduling System Pilot at the end of fiscal year 2021-2022. The pilot consisted of scheduling two or more cases for the same week of hearing in an assigned sequence. Whenever a hearing was cancelled or postponed, the second scheduled hearing could then proceed. The Public Service Alliance of Canada, the Professional Institute of the Public Service of Canada and the Canadian Association of Professional Employees participate in the pilot.

Although muti-docket scheduling is a valuable tool that can be useful in specific circumstances, for example where there are similar grievances involving the same bargaining agent, the Board has decided to conclude this pilot to pursue other more efficient and useful avenues of addressing postponement issues. However, the Board has retained the option of reverting to multi-docket scheduling under special circumstances.

Dedicated termination grievance case management pilot project

Termination grievances often have significant impacts for employees and departments alike. At the end of the 2022-2023 fiscal year at the Board debuted a more targeted approach to proactive case management of termination grievances, in order to ensure that these often-complex files are ready for hearing well in advance of the hearing dates scheduled or even in advance of the scheduling process itself. Board members have met with parties to ensure that preliminary issues such as jurisdictional and timeliness objections, needs for simultaneous interpretation and accommodation of witnesses can be ensured well in advance of what are often lengthy hearings, thereby reducing preventable postponements.

Overview of the case file inventory



Average file age (in months)

The average file age is the period from file creation to the end of the current reporting period; i.e., March 31, 2023.

An **active case file** is currently in mediation, is awaiting a decision, is awaiting the parties' submissions, is waiting to be scheduled for a hearing, or has already been scheduled for a hearing.

An **inactive case file** is held in abeyance or is awaiting final withdrawal.

A file can be **held in abeyance**, or put on hold, on the request of the parties. Typically this is for reasons related to the settlement of the matter, sickness, family related obligations, or other personal reasons. A file can also be put in abeyance while awaiting the outcome of a similar case.

A file **awaiting withdrawal** has a settlement that has been agreed to but that has not yet been implemented. The file is officially withdrawn once the settlement is implemented.

The average file age for labour relations case files (*FPSLRA*) shifted meaningfully in fiscal 2022-2023. The average age of active labour relations (*FPSLRA*) cases decreased to 29 months in 2022-2023 from 41 months in 2021-2022, due to an increased number of older active files that were closed. For staffing case files (*PSEA*), the active file age has remained near static at 21 months in 2022-2023 from 22 months in 2021-2022.

Clearance rate

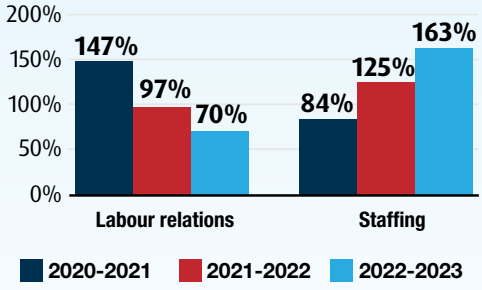
In 2022-2023, the Board received an influx of individual grievances related to COVID-19 vaccination policy (696 files), equivalent to 31% of all new files received that year. As a result, the number of labour relations files received increased significantly compared to the previous reporting period in that 2195 new labour relations files were received in 2022-2023 compared to 1133 in 2021-2022. The number of files closed also increased, albeit not as significantly, from 1099 in 2021-2022 to 1553 in 2022-2023.

The clearance rate for staffing matters has consistently improved since 2020-2021. In large part, this is because the Board has taken a highly proactive approach to using mandatory settlement conferences in respect of staffing complaints, allowing parties more say in the resolution achieved. As well, the number of staffing complaints has gradually declined for 7 consecutive years. Given the structure of the legislation and regulations, staffing complaints benefit from stringent timelines and a narrower scope that allows for a greater number of closures at the outset of the process (see Clearance rate (incl. vaccination policy grievances), as of March 31, 2023).

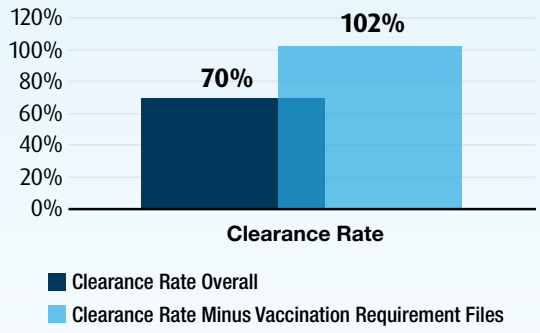
As shown below, the unprecedented volume of COVID-19 vaccination policy grievances had a significant impact on the overall clearance rate of labour relations matters (see Clearance rate (Labour relations), as of March 31, 2023).

The **CLEARANCE RATE** is the Board's capacity to close as many files as it opens in a given year. If, in a year, the Board closes more files than it opens (higher than 100%), it means that its workload is manageable. If it opens more files than it closes (lower than 100%), it means that adjustments are required to address the workload more effectively.

Clearance Rate (incl. vaccination policy grievances), as of March 31, 2023

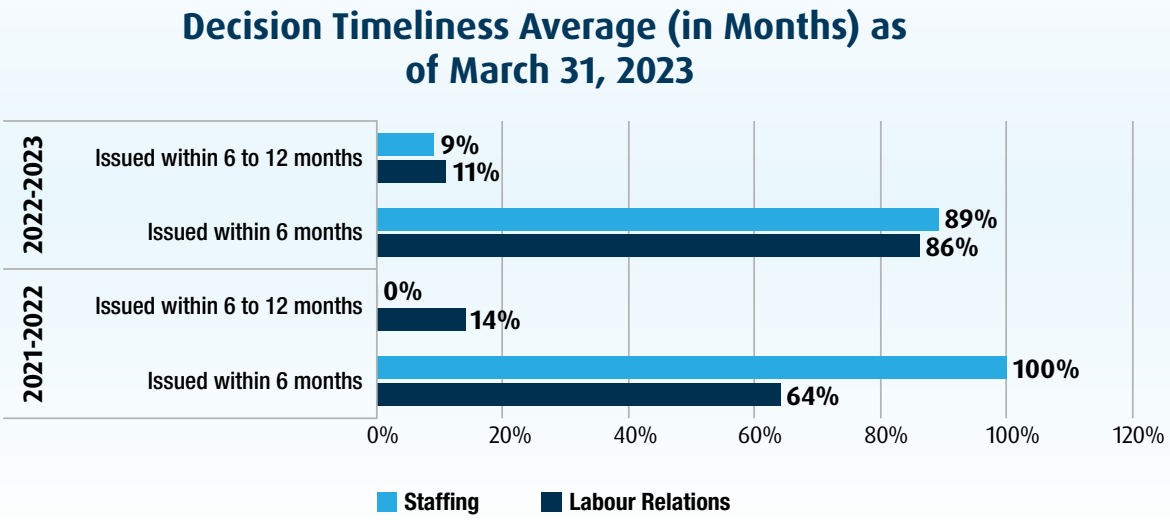


Clearance rate (Labour Relations), as of March 31, 2023



Decision timeliness average

In 2022-2023, 88% of decisions were issued within 6 months of the hearing (Labour relations: 89%; Staffing: 86%). Two (2) of the 89 labour relations decisions were issued more than 12 months after the hearing, representing less than 1% of the total decisions issued for the year.



Number of reasons for decision issued

In the past fiscal year, the Board issued 108 reasons for decisions in both official languages. Of that number, 89 dealt with labour relations matters, and 19 dealt with staffing matters.

Reasons for decisions that are issued sometimes address multiple files. For example, if the Board receives multiple files from the same bargaining agent that address the same topic, it may hear them simultaneously, and only one decision will be issued for all those files. As a result, in a given year, there may be fewer decisions issued, but more files may be closed.

In 2022-2023, there was an overall decrease of 14% in the number of reasons of decision issued compared to 2021-2022. However, the number of files closed resulting from a decision was 430, or 28% of all files closed 2022-2023, which represents a 13% increase. In addition, Board members expanded the services offered to the parties through pro-active case management conferences and settlement conferences.

Moving Forward

As we move forward, we will continue to focus on providing timely access to justice through respectful, accessible, and fair processes as well as promoting harmonious labour relations in the public sector.

We will continue to review processes and outcomes of our processes with a view to ensuring access to justice and fair and accessible processes. In addition, we will pursue the in-depth analysis of our caseload using triage after intake to determine where action may be required, particularly when emerging case trends arise. This will better equip us to plan for the future, assess our needs, allocate resources, and serve the stakeholder community.

The next fiscal year will also be an opportunity to reacquaint ourselves with in-person hearings, which provide us with closer contact to our parties and stakeholders, while continuing to leverage the use of technology. One of our goals will be to find the right balance between old and new practices to improve our service delivery, ensuring that parties appearing before the Board have the ability to attend hearings in person, virtually, or in a hybrid setting. This will allow us to overcome some barriers and modernize our approach to delivering access to justice.

Finally, consultations with our stakeholders will continue to be a priority, as they give us the opportunity to reflect, engage, and act on common issues, as well as collaborate on future improvements. We are looking forward to diversifying our means of communications with our stakeholders, specifically through the use of surveys, to obtain their feedback on our processes and initiatives, as this is imperative to guaranteeing efficient access to justice and providing more effective and timely support to the parties that appear before us.

Key decisions

Summaries of key Board decisions

***Lyons v. Deputy Head (Correctional Service of Canada)*, 2022 FPSLREB 95 — Orders of aggravated and punitive damages**

The grievor, a correctional officer, grieved the termination of her employment following allegations by an inmate informant that she was bringing drugs into an institution and video footage that showed her passing items between cells. The grievor admitted to passing personal items between cells as seen on the video, but she denied bringing drugs into the institution. The Board determined that the grievor's actions of passing items between cells were contrary to established policy and procedures and were worthy of discipline. However, while the employer accepted the informant's allegations as entirely truthful, it adduced no direct evidence at the hearing to support the veracity of the informant's allegations. The Board concluded that the employer did not establish that the grievor had engaged in inappropriate relationships with inmates by bringing drugs into, and distributing them in, the institution. As such, the Board found the termination of employment excessive, substituted for the termination a one-month suspension without pay, and reinstated the grievor (see *Lyons v. Deputy Head (Correctional Service of Canada)*, 2020 FPSLREB 122).

The Board held a separate hearing on the grievor's request for aggravated (moral) damages for psychological harm and punitive damages.

Following that hearing, the Board awarded $135 000 to the grievor in aggravated damages, $75 000 in punitive damages for the Correctional Service of Canada's ("CSC") conduct during the investigative and grievance processes, and an additional $100 000 in punitive damages specifically for the CSC's conduct on the final day of the hearing before the Board.

The Board determined that the CSC acted in bad faith by being untruthful and misleading about the grievor's termination. The CSC was found to have submitted false and misleading statements about the grievor, namely, she had been compromised by organized crime, without any evidence to support them. The Board found that this was the real reason for the grievor's termination, even though the CSC had attempted to cite other reasons to justify the termination. By doing so, the CSC was found to have acted in bad faith and to have violated the grievor's right to natural justice. The CSC's conduct was the primary cause of the grievor's suffering of severe symptoms of ill health, including long-term stress, anxiety, and depression that went beyond the ordinary psychological upset resulting from loss

of employment and that continued to prevent her from returning to work. The Board awarded the grievor $135 000 in aggravated damages for psychological harm.

The Board also awarded $75 000 in punitive damages. The Board found that the CSC's conduct of concealing the true reasons for the grievor's termination constituted an independent and actionable wrong that denied the grievor's right to natural justice. When assessing the criteria established in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, the Board found that the CSC's misconduct was planned and deliberate, its intention was to end the grievor's employment and hide the true reason for it, its conduct continued over several years, it concealed its conduct, it knew that its conduct was wrong, and it profited from its conduct, and the violation was deeply personal to the grievor.

The Board also granted an additional award of punitive damages for the CSC's conduct on the final hearing day. Specifically, it made a motion to amend the reasons for the grievor's termination. It alleged that she had recently been admitted to a hospital for a drug overdose. It offered no evidence to support the allegation. Ultimately, the Board found that the allegation had been fabricated and that the CSC had attempted to deliberately mislead the Board by again attempting to link the grievor to the illicit drug trade. The Board held that such behaviour amounted to obstruction of the administration of justice, which merited a significant award of damages to deter similar future conduct. The Board awarded $100 000 in punitive damages.

The Board denied the grievor's request for damages based on loss of reputation, finding that none of the harm to her reputation was related to an impairment to her ability to find new employment.

The Board ordered an award of damages totalling $310 000, plus interest.

An application for the judicial review of the decision has been filed with the Federal Court of Appeal (file no. A-277-22).

***Gagnon v. Canadian Association of Professional Employees*, 2022 FPSLREB 91 — Duty of fair representation**

The complainant worked as a translator, classified at the TR-02 group and level, in Parliamentary Debates. She was rejected on probation.

The complainant made two complaints under s. 190(g) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"). She made a first complaint against her bargaining agent, alleging that it did not adequately support her in contesting her termination. She made a second complaint, alleging that a shop steward actively collaborated with the employer in a process that led to her rejection on probation.

As for the complaint concerning the bargaining agent's representation, the Board found that the bargaining agent did not act arbitrarily, in a discriminatory manner, or in bad faith. The bargaining agent took steps to work with the employer to have the complainant reassigned to a different Translation Bureau position and was prepared to represent her throughout the grievance process. She wanted to have in hand all the evidence possible to support her grievance and put off the second-level hearing. The bargaining agent considered the circumstances of the rejection on probation and the merits of the grievance. It concluded that the employer had identified performance issues. The bargaining agent withdrew its support for the grievance given the difficulty of challenging a rejection on probation, the grievor's lack of cooperation, and her other chosen representative. The duty of fair representation does not require a bargaining agent to pursue a grievor's desired strategy. The Board found that the difference of opinion between the bargaining agent and the complainant as to strategy was insufficient to conclude that the bargaining agent acted in an arbitrary or discriminatory manner or in bad faith in its representation of her.

As for the second complaint, the complainant alleged that the shop steward violated s. 187 of the *Act* while representing her. The Board found that the shop steward was not involved in the decision to reject the complainant on probation and that her role as a shop steward did not conflict with her role as a revisor. The Board found that the shop steward had not been representing the grievor. She attended only one meeting, as a witness. As such, the Board held that there was no violation of the *Act*.

Complaints dismissed.

***Beaulne v. Senate of Canada*, 2022 FPSLREB 88 — Collective agreement interpretation, and overtime allocation**

The bargaining agent referred individual grievances to the Board in which the grievors alleged that the employer had breached the overtime allocation procedure set out in the collective agreement. The parties had signed a memorandum of agreement to settle the grievances and to determine how future errors in allocating overtime shifts would be dealt with. The only issue to be decided was the interpretation of the part of paragraph 3 of the memorandum of agreement about future errors in allocating overtime shifts.

The Board had the jurisdiction to decide whether the memorandum of agreement was final and binding on the parties and whether the employer had complied with its terms and, if not, the appropriate order to render in the circumstances.

The Board considered the words in the memorandum of agreement not only in the context of paragraph 3 but also as a whole. Paragraph 3 stated that the regular salary rate for the next regular shift was to be replaced with the overtime rate. The employer was to make that replacement. The overtime rate was to be equal to the overtime shift hours that were lost because of the allocation error. The Board determined that paragraph 3 should be interpreted based on the written words as a whole, giving them their ordinary and grammatical meanings, consistent with the circumstances of which the parties were aware when the agreement was concluded. The word "substitute" in paragraph 3 meant "replace", which is synonymous with substitute. Paragraph 3 could not be interpreted to mean "replace in addition to" the normal salary; it was clear and unambiguous.

Additionally, the memorandum of agreement's preamble was clear and precise as it indicated that the employer did not agree with the bargaining agent's claimed remedy. Therefore, it was not necessary for the Board to use extrinsic evidence to interpret paragraph 3.

Finally, the bargaining agent alleged that promissory estoppel applied. However, although the evidence showed that the bargaining agent and the employer had different understandings of paragraph 3, it did not amount to promises by the employer.

Grievance files closed.

***McCarthy v. Treasury Board (Correctional Service of Canada)*, 2023 FPSLREB 10 — Collective agreement interpretation, and compensation for travel time and expenses**

The grievor, a correctional officer whose normal workplace was in Dorchester, New Brunswick, was assigned, by the parties' mutual agreement, to an accommodated position performing access-to-information and privacy (ATIP) duties in Moncton, New Brunswick. He referred a grievance to adjudication before the Board in which he alleged that he should have been placed on travel status and that he should have been eligible for the reimbursement of his travel expenses, in accordance with the National Joint Council's *Travel Directive* when he was assigned to an accommodated position, by reason of a disability, at regional headquarters. He further alleged that he signed the assignment agreement under duress, agreeing that he would not be on travel status.

The grievor was no longer able to perform the duties of his correctional officer position in Dorchester due to the limitation that he could no longer work with inmates. He was offered the ATIP regional coordinator job as part of an ongoing accommodation process, which he accepted. The Board noted that accommodation is a cooperative process, which is inconsistent with a process that confers on the employer the unilateral authority to authorize government travel by requiring an employee to perform their duties at a location other than their headquarters area. The accommodation need not be instant, perfect, or the employee's preferred accommodation.

The Board found that the employer did not require the grievor to travel on government business. It determined that he did not work outside his headquarters area while on assignment; he worked in a new headquarters area in a new position. While he worked at an office other than that of his substantive position, his new assigned workplace became that office.

The directive clearly states that the employer has the responsibility to authorize and determine when government travel is necessary and that such travel must be authorized in advance in writing to ensure that all travel arrangements comply with the directive. The Board found that the grievor was neither preauthorized nor authorized to travel for government business.

With respect to signing the assignment agreement under duress, the Board found that the employer did not pressure the grievor to sign and accept the assignment agreement for the new position.

Grievance denied.

White v. Treasury Board (Correctional Service of Canada), 2022 FPSLREB 52, and *Burlacu v. Treasury Board (Canada Border Services Agency)*, 2022 FPSLREB 51 — Complaints under s. 133 of the *Canada Labour Code*

These two decisions were issued at the same time. Together, they offer a reformulation and a simplification of the principles set out in *Vallée v. Treasury Board (Royal Canadian Mounted Police)*, 2007 PSLRB 52, for determining whether an employer violated a prohibition in s. 147 of the *Canada Labour Code* ("the *Code*").

In ***White v. Treasury Board (Correctional Service of Canada)***, the complainant made a reprisal complaint with the Board, alleging that the employer took disciplinary action because he refused to perform a task after raising a health-and-safety issue in the workplace and exercising his right to refuse to work under the *Code*, in contravention its of s. 147. The provisions at issue fell within Part II of the *Code*, which governs occupational health and safety in the federal public service and federally regulated workplaces.

The Board reformulated and simplified the principles set out in *Vallée*, to require a determination that (1) the complainant acted in accordance with Part II of the *Code* or sought the enforcement of any of the provisions of that Part, (2) the respondent took an action against the complainant that is prohibited by s. 147 of the *Code*, and (3) a direct link exists between (a) the action taken against the complainant and (b) the complainant acting in accordance with Part II of the *Code* or seeking the enforcement of any of the provisions of that Part.

The Board found that although the complainant did not refuse work formally under s. 128 of the *Code*, the evidence showed that he refused to perform an activity because of occupational health-and-safety concerns and that the employer was aware of it. The Board noted that s. 133(6) of the *Code* requires that the employer prove that no reprisals were taken against the complainant because of a work refusal. The Board also noted that the complainant had to establish that the employer took reprisals against him because he otherwise acted in accordance with, or in furtherance of, Part II of the *Code*.

The Board noted the parties' agreement that the complainant's actions were motivated by occupational health-and-safety concerns. The Board found that despite the specific burdens of proof applicable in the circumstances, it was more probable than not that the disciplinary action was imposed because the complainant acted in accordance with, or in furtherance of, Part II of the *Code*, including his refusal to perform an activity because he believed that doing so constituted a danger.

Complaint allowed.

In ***Burlacu v. Treasury Board (Canada Border Services Agency)***, the complainant refused work for occupational health-and-safety reasons under the *Code*. The employer directed him to report to a different manager pending the resolution of the work refusal. He challenged the employer's authority to issue that direction. It informed him that he could face disciplinary action unless he complied with the direction.

Before the Board, the complainant complained that his employer had threatened disciplinary action because he had refused work under the *Code*. The Board noted that in such cases, s. 133(6) of the *Code* requires that the employer prove that no reprisals were taken against the complainant because of the work refusal.

The Board applied the reformulated and simplified principles set out in *Vallée* and noted the parties' agreement that the complainant had refused work pursuant to the *Code*. The Board found that the employer threatened possible disciplinary action against the complainant, which is prohibited by s. 147 of the *Code*. However, the Board found that the employer established that the threat of disciplinary action was made not because the complainant refused work under the *Code* but because he would have been considered insubordinate had he failed to comply with the employer's direction to report to a different manager.

Complaint dismissed.

A judicial review application was filed with the Federal Court of Appeal (file no. A-143-22).

***Desalliers v. Deputy Head (Department of Citizenship and Immigration)*, 2022 FPSLREB 70 – Abuse of authority in the application of merit and reasonable apprehension of bias**

The complainant made a complaint with the Board under ss. 77(1)(a) and (b) of the *Public Service Employment Act*. The complaint was about a non-advertised internal appointment process that resulted in a 12-month acting appointment to a senior decision-maker position.

The complainant alleged that the respondent abused its authority in the choice of a non-advertised appointment process and in the application of merit. She also alleged that personal favouritism tainted the appointee's appointment. She argued that the appointee lacked two of the experience criteria in the statement of merit criteria.

As of her appointment, the appointee was a hearing officer with the Canada Border Services Agency in Montréal. She was a former colleague and friend of the delegated manager responsible for the appointment process at issue. The respondent acknowledged that the delegated manager and the appointee were friends and that they had worked together but denied that abuse of authority occurred in the appointment process.

The Board found that the allegations of personal favouritism and abuse of authority in the choice of process were unfounded. However, it found abuse of authority in the application of merit as the respondent relied on insufficient documentation and did not properly assess all the merit criteria. Therefore, the Board determined that the assessment of the application did not demonstrate that the appointee had the required experience in drafting decisions.

Furthermore, the Board also found a reasonable apprehension of bias in that the friendship between the manager and the appointee contributed to bias in the application's favour and led the manager to a disproportionately generous interpretation of the appointee's experience with respect to one of the merit criteria. In addition, the Board concluded that the respondent developed a strategy to facilitate interdepartmental exchanges once the appointee's application had been identified. The Board's opinion was that that reflected the manager's enthusiasm for the appointee's application. The manager did not try to hide her friendship with the appointee and proactively disclosed it to several people. However, the Board determined that a relatively informed bystander aware of all the circumstances could reasonably perceive bias on the respondent's part. In addition, non-advertised processes were not unusual in the directorate, but it was unusual that the appointee came from another department. The manager did not take any other steps to involve a neutral third party in the application's assessment and did not sign a statement confirming that the signatory was in a position to make an impartial decision in the process.

Complaint allowed.

Fortin v. Public Service Alliance of Canada*, 2022 FPSLREB 67 – Duty of fair representation - Arguable case - *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police

The complainant made a complaint in which she alleged that her bargaining agent, the Public Service Alliance of Canada ("the respondent" or PSAC), failed its duty of fair representation by not taking any steps to challenge the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* ("the *Policy*"), which the Treasury Board had adopted, or to assist or support her as a public servant who refused to submit to the *Policy*.

The respondent stated that it discharged its duty to the complainant. Thus, it asked that the matter be summarily dismissed because the allegations revealed no breaches of its duty of fair representation.

Before deciding the case, the Board clarified that a complaint against a union for breaching its duty of fair representation is not a context in which the Board can support a debate about the *Policy*'s legality or reasonableness. The Treasury Board adopted the *Policy* and was not a party to the case, and its actions were not at issue.

The Board granted the application to dismiss the complaint without a hearing and dismissed it. Considering all the facts that the complainant alleged, the Board was unable to find that she made an arguable case that the respondent allegedly violated the *Act* by providing representation that was arbitrary, discriminatory, or in bad faith when it decided not to challenge the *Policy* through a policy grievance or by other means.

The Board determined that the respondent had considered the situation carefully and had made a thoughtful decision in light of the chances of success of a policy grievance or other approach to challenge the *Policy*. It considered the issues and the interests.

The Board reiterated that a union enjoys the discretionary power to weigh divergent interests and to find the solution that appears to it to be the fairest in the circumstances. In this case, the respondent had to account for all its members' interests when it exercised its discretionary power as to whether to pursue a grievance or other means to challenge the *Policy*. The respondent may determine the grievances that it will or will not pursue, based on the circumstances and accounting for different relevant factors, which it did.

Finally, the complainant alleged that the respondent did not communicate with its members and that it ignored their needs. However, the respondent communicated with its members by several means. The communications were also addressed to the complainant. She acknowledged being aware of them. Thus, the communications could not be disregarded when examining the PSAC's conduct because they provided the complainant with an overview of the PSAC's thinking and decision making about the representation that it would provide to those of its members who refused to comply with the *Policy* for personal reasons.

The complainant was dissatisfied with the delay receiving written communications from the respondent, including one about whether she would be offered representation. However, dissatisfaction with the slowness of communication does not constitute evidence of bad faith, arbitrary conduct, or discrimination.

Complaint dismissed.

Public Service Alliance of Canada v. Treasury Board, 2023 FPSLREB 31 — Duty to bargain in good faith - Public Service Dental Care Plan

The Public Service Alliance of Canada ("the PSAC") made a complaint against the Treasury Board ("the employer") with respect to negotiations over the renewal of the Public Service Dental Care Plan ("the Dental Plan"). In the complaint, the PSAC alleged that the employer violated s. 106 of the *Federal Public Sector Labour Relations Act* ("the *Act*"), which requires the parties to bargain in good faith and make every reasonable effort to enter into a collective agreement.

The Dental Plan is a unique feature of the collective bargaining relationship between the parties. It is incorporated by reference into the collective agreements between the PSAC and the employer for 5 bargaining units. In addition, it is also extended to more than 20 separate employers with which the PSAC has collective agreements under the *Act*, as well as a few bargaining units certified under the *Canada Labour Code*.

Further adding to the uniqueness and complexity of negotiations for the Dental Plan is the fact that PSAC members and their dependants comprise just one of five different components in it. Federal public service employees and their dependants who are not in the PSAC are covered by the National Joint Council (NJC) component to the plan. A third component covers reservists of the Canadian Armed Forces. A fourth component covers dependants of the Canadian Armed Forces, and the fifth covers dependants and civilian members of the Royal Canadian Mounted Police. The PSAC component of the plan is the largest of the five.

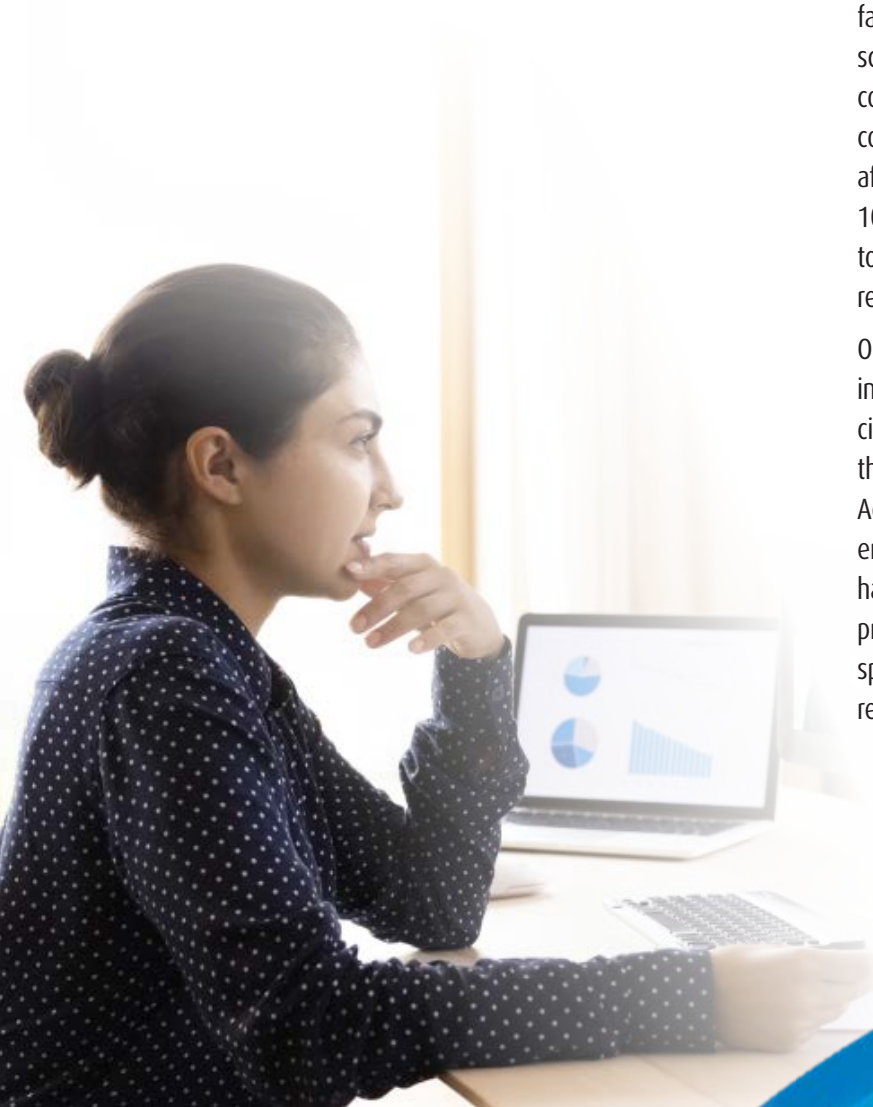
In January 2022, the PSAC informed the Treasury Board that it wished to commence negotiations to renew the Dental Plan. Following an exchange of correspondence between the parties, in May 2022, the employer informed the PSAC that it wanted to delay those negotiations until discussions about the Public Service Health Care Plan's renewal were completed and until a proposed benchmarking study of dental plans it was conducting with the NJC component of the plan could be completed. Therefore, it declined to set dates for an exchange of proposals for changes to the Dental Plan. The complaint followed this communication.

The employer argued that the negotiation of the Dental Plan does not take place under the provisions of ss. 105 and 106 of the *Act*, and therefore, the Board is without jurisdiction to decide a complaint made under s. 190. As such, it requested that the complaint be dismissed.

The Board denied the employer's objection to the Board's jurisdiction. The Board found that while the parties had established a unique form of negotiation for the Dental Plan, it existed within the collective bargaining process. That duty did not end even if the parties signed the collective agreements that they were in the process of negotiating at the time the decision was issued. Further, the Board found that s. 106 of the *Act* applies to the negotiation of the Dental Plan. While the employer's desire to conduct a benchmarking study was reasonable, imposing it as a precondition to commencing negotiations was not and as such was a violation of s. 106 of the *Act*.

The complaint was allowed in part.

A judicial review application was filed with the Federal Court of Appeal (file no. A-118-23).



Summaries of key decisions that were judicially reviewed

***Canada (Attorney General) v. International Brotherhood of Electrical Workers, Local 2228*, 2022 FCA 69 — Collective agreement interpretation, and overtime pay**

The International Brotherhood of Electrical Workers, Local 2228 ("the bargaining agent") represents civilian electronic technologists working at the Department of National Defence. From time to time, these employees participate in "sea trials", during which they conduct testing aboard naval vessels. This requires irregular working hours during which the employees are "captive" onboard. At issue between the parties was the calculation of overtime pay during sea trials.

The bargaining agent filed a policy grievance that challenged the employer's interpretation of the collective agreement language setting out the calculation of overtime pay during sea trials. The Board found that it was not bound by the interpretation that it gave to the same collective agreement in previous proceedings and allowed the grievance in part. The Board found that both the English and French versions of the collective agreement favoured including all hours worked, whether or not regularly scheduled, in the 12 hours of work needed to qualify for overtime compensation at double time. The Board also found that the collective agreement was silent as to the compensation rate after a period of overtime at triple time that is followed by a 10-hour rest period and that the employer was within its rights to determine the compensation rate that applies after such a rest period.

On judicial review, the employer claimed that the Board erred in finding that the doctrine of *res judicata* did not apply in the circumstances and in failing to follow a precedent endorsing the employer's interpretation of the collective agreement. According to the employer, in the event that the Board did not err in refusing to apply the doctrine of *res judicata*, it should have found that the policy grievance amounted to an abuse of process. The employer further submitted that the Board failed to specifically engage with arguments that the employer made with respect to the interpretation.

The Federal Court of Appeal determined that the Board clearly explained why it disagreed with its previous analysis in *Ducey v. Treasury Board (Department of National Defence)*, 2016 PSLREB 114. Although the Board departed from its precedent endorsing the employer's interpretation of the relevant provision of the collective agreement, the Board provided reasonable justification on why it came to the opposite conclusion and why the doctrine of *res judicata* did not apply in that case. The Court further found the Board's decision reasonable as its reasoning went beyond a mere difference of opinion with Mr. Ducey and engaged in a meaningful analysis of the parties' submissions.

Application dismissed.

Singh v. Senate of Canada, 2022 FC 840 — Non-disciplinary termination

The applicant filed a judicial review application to set aside the adjudicator's decision in *Singh v. Senate of Canada*, 2021 FPSLREB 2. The adjudicator had dismissed the grievance that the applicant had presented under the *Parliamentary Employment and Staff Relations Act* and that alleged that among other things, his termination was retaliation for having raised discrimination allegations, which the Senate had failed to investigate.

The adjudicator found that the applicant had not made any formal complaint under the *Senate Policy on the Prevention and Resolution of Harassment in the Workplace*, that he had specifically requested that the Senate not investigate his allegations, and that therefore, the Senate had no obligation under that policy to conduct a formal investigation into his allegations. The adjudicator further found that the applicant failed to establish any *prima facie* case of discrimination and that based on *Scaduto v. Insurance Search Bureau*, 2014 HRTO 250, the Senate had no obligation under the *Canadian Human Rights Act* to investigate the allegations.

Nevertheless, the Senate had conducted an informal investigation of the applicant's informal allegations. The adjudicator found that the Senate had shown due diligence and that its informal investigation was sufficiently thorough and reasonable in the circumstances. However, the Court found that the adjudicator failed to consider that the Senate had ignored the most fundamental requirement of any investigation: hearing the applicant's side. The Court also found that the adjudicator failed to consider that the investigator was never made aware of documentation that the applicant had provided about a potential Senate investigation of his allegations. The Court found that the facts in *Scaduto* were different from those before the adjudicator and disagreed with the adjudicator's application of that precedent. In the Court's view, the adjudicator's findings as to the Senate's investigation were unreasonable.

The adjudicator did find that despite the applicant having established a *prima facie* case that his termination was a retaliatory action for having raised discrimination allegations, the Senate had rebutted that case by demonstrating that the termination was based on the applicant's unwillingness to continue working within the Senate's new management structure. The Court found that the adjudicator did not provide reasons to support her finding that the applicant established a *prima facie* case of retaliation and that she failed to explain how she assessed the applicant's evidence that his discrimination allegations were a factor that led to the termination of his employment.

Finally, the Court found that although the adjudicator outlined the applicant's arguments on aggravated damages for bad-faith dismissal, she failed to address those arguments on their merits. The Court found that that error, considered with the other ones that she made, required that the applicant's grievance be heard anew.

Application granted, and grievance sent back to the Board for a new adjudication hearing.

Canada (Attorney General) v. National Police Federation, 2022 FCA 80 - statutory freeze

In its 2020-2021 annual report, the Board reported on its decision in *National Police Federation v. Treasury Board*, 2020 FPSLREB 44. That decision was about an unfair-labour-practice complaint made by the National Police Federation ("the Federation") concerning a unilateral change to terms and conditions of employment during the freeze period that follows a bargaining agent's certification application. The Federation challenged changes to the promotions policy for the Royal Canadian Mounted Police (RCMP) while the bargaining agent's certification application was pending before

the Board. The Board found that the changes did not accord with the employees' reasonable expectations, past management practices, or what a reasonable employer would have done in the same situation. The Board noted that although the *Federal Public Sector Labour Relations Act* allowed the RCMP to seek the Board's consent for making the changes, the employer did not pursue that option. As a result, the Board declared that the RCMP breached the statutory freeze by changing its promotion policy.

The Attorney General of Canada ("the applicant") filed a judicial review application with the Federal Court of Appeal (file no. A-123-20). It argued that the Board reached an unreasonable determination because the result was at odds with the Supreme Court of Canada's decision in *United Food and Commercial Workers, Local 503 v. Wal-Mart Canada Corp.*, 2014 SCC 45 ("*Wal-Mart*"), which the applicant submitted fundamentally changed the interpretation of statutory freeze provisions. The applicant further argued that the Board improperly reversed the onus of proof and that it reached an unreasonable factual determination when it concluded that the decision in question was not made until after the onset of the freeze period.

The Court agreed with the Board's conclusion that *Wal-Mart* confirmed, rather than fundamentally altered, decades of labour board jurisprudence. In the Court's view, the Board undertook a lengthy review of the *Wal-Mart* decision, its case law, and the case law of several other labour boards, many of which have applied a reasonable employee expectation test in circumstances similar to those in this case. The Court found reasonable the Board's conclusion that the employer could not rely on the business-as-usual exception in the absence of a prior practice of making similar changes or a notification to employees before the freeze commenced. The impugned policy change could not have been reasonably anticipated by employees in the absence of any prior pattern of making similar changes or in the absence of any communication to them about the impending change before the statutory freeze began.

The Court also found that the Board did not commit a reviewable error concerning the burden of proof. The Board's reasons demonstrated that it did not stray from established principles or cast the burden on the employer. Indeed, it made its evidentiary determinations based on all the evidence it heard, and the question of which party bore the onus of proof did not play any role in its decision.

Finally, the Court reiterated that freeze cases are inherently factual in nature. In such cases, labour boards are required to determine whether a change is reasonable and that the employer is permitted to make it in light of all the relevant surrounding circumstances and a purposive interpretation of the statutory freeze provisions. When there is evidence to support a labour board's factual conclusions, a reviewing court owes deference to the board's assessment. Legislators have determined that these questions are for labour boards to decide, not reviewing courts.

An application for leave to appeal the Federal Court of Appeal's decision, which was filed with the Supreme Court of Canada (file no. 40307), was denied on March 2, 2023.

Application dismissed.

Appendix 1 – Total FPSLREB caseload, 2020-2021 to 2022-2023

Federal Public Sector Labour Relations Act

Fiscal Year	Carried Forward from Previous Years	New			Total New	Closed	Carried Forward to Next Year
		Grievances	Complaints	Applications			
2020-2021	6107	545	64	107	716	1050	5773
2021-2022	5773	871	66	196	1133	1099	5807
2022-2023	5807	1803	105	310	2218	1553	6431

Public Service Employment Act

Fiscal Year	Carried Forward from Previous Years	New Complaints	Complaints Closed	Carried Forward to Next Year
2020-2021	584	319	269	634
2021-2022	634	306	383	557
2022-2023	557	290	459	383

Appendix 2 – Matters filed per part of the *Federal Public Sector Labour Relations Act* in 2022-2023

Federal Public Sector Labour Relations Act	Number of Matters
PART I - LABOUR RELATIONS	
Reviews of orders and decisions (s. 43(1))	**4**
Requests for arbitration (s. 136)	**3**
Complaints	**87**
Complaints (ss. 106 and 107)	29
Duty to implement a provision of collective agreement (s. 117)	0
Unfair labour practices (ss. 185, 186, 188, and 189)	11
Unfair labour practices - unfair representation (s. 187)	45
Other	2
Managerial or confidential positions	**285**
Applications for managerial or confidential positions (s. 71)	256
Applications for revocation of order (s. 77)	29
Applications - Consent to prosecution (s. 205)	**2**
PART II - GRIEVANCES	
Individual grievances (s. 209)	**1752**
Policy grievances (s. 221)	**40**
Group grievances (s. 216)	**11**
PART III - OCCUPATIONAL HEALTH AND SAFETY	
Reprisals under s. 133 of the *Canada Labour Code* (s. 240)	**18**
Federal Public Sector Labour Relations Regulations	
PART II - GRIEVANCES	
Extensions of time (s. 61)	**16**
Total	**2218**

Appendix 3 – Matters filed per part of the *Public Service Employment Act* in 2022-2023

Public Service Employment Act	Number of Matters
PART 4 - EMPLOYMENT	
Complaints to the Board re: layoff (s. 65(1))	2
PART 5 - INVESTIGATIONS AND COMPLAINTS RELATED TO APPOINTMENTS	
Revocations of appointment (s. 74)	8
Internal appointments grounds of complaint (s. 77(1))	278
Failures of corrective action (s. 83)	1
Unspecified	1
Total	**290**