Public Service Labour Relations Board

Annual Report
2013 - 2014

Canada

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http://www.pslrb-crtfp.gc.ca

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, 2013, to March 31, 2014, for submission to Parliament.

Yours sincerely,

Catherine Ebbs
Chairperson

PUBLIC SERVICE LABOUR RELATIONS BOARD
2013 - 2014

Chairperson: Catherine Ebbs
David Paul Olsen (Acting Chairperson from January 2, 2013, to March 31, 2014)

Vice-Chairpersons: Linda Gobeil
David Paul Olsen
Renaud Paquet

Full-time Members: Stephan J. Bertrand
John G. Jaworski
Steven B. Katkin
Michael F. McNamara
Catharine (Kate) Rogers
Margaret Shannon

Part-time Members: Michael Bendel
Ruth Elizabeth Bilson, Q.C.
Emily M. Burke (October 1, 2013, to March 31, 2014)
George P.L. Filliter
Deborah M. Howes
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, 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

It is my privilege as the new Chairperson of the Public Service Labour Relations Board (PSLRB) to submit to Parliament our Annual Report for 2013-2014.

Before joining the PSLRB, I was well aware of its coveted reputation in the labour relations realm, which can in part be attributed to the professionalism and commitment to excellence my colleagues and all employees demonstrate on a daily basis. Under the leadership of Acting Chairperson David Paul Olsen, their skill and expertise, combined with their desire to make a difference, enabled the PSLRB to effectively and efficiently meet its mandated responsibilities during a time of significant change.

One such change was the coming into force of *Bill C-4, Economic Action Plan 2013 Act, No. 2*, on December 12, 2013, which modified the collective bargaining process, eliminated the PSLRB's compensation analysis and research services function, and called for the consolidation of the PSLRB and the Public Service Staffing Tribunal into a new board to be known as the Public Service Labour Relations and Employment Board (PSLREB). As well, towards the end of the fiscal year, the government introduced *Bill C-31, Economic Action Plan 2014 Act, No. 1*, which will centralize and coordinate the provision of support services to some administrative tribunals, including the PSLREB, through a single, integrated organization — the Administrative Tribunals Support Service of Canada (ATSSC).

During the past several months, the PSLRB has spent considerable effort preparing for the transition to both the new PSLREB and the ATSSC. Throughout this process, my colleagues and employees have demonstrated their ability to embrace change while continuing to complete the job at hand. I am confident that the organization is well equipped to confront the many challenges ahead as it continues to provide the best possible service to its clients and Canadians.

Catherine Ebbs
Chairperson
Public Service Labour Relations Board

MESSAGE FROM THE ACTING CHAIRPERSON

It has been a great pleasure to have served as the PSLRB's Acting Chairperson this past year. I am very proud of the progress we made in carrying out our work, particularly during a time of transition.

I am especially pleased with the new caseload management initiatives and methodologies we tested on certain case files, which yielded excellent results. Furthermore, our commitment to further streamline our adjudication and mediation processes through pre-hearing conferences, expedited arbitration, and pre-mediation conference calls enabled parties to resolve their preliminary issues upfront and narrow down the issues in dispute. This in turn resulted in more efficient use of the parties' time and resources, and in many cases, eliminated the need for an oral hearing or mediation.

We also continued to move forward with preparations to implement a new case management system, which will enable us to better analyze our cases, track files more effectively and process them more quickly.

I should also note that due to the coming into force of *Bill C-4, Economic Action Plan 2013 Act, No. 2*, our compensation analysis and research unit was eliminated. Thanks to their efforts, that group successfully launched the first phase of the *Comparability Study on Total Compensation in Canada*.

I wish to express my sincere thanks to the managers, employees and Board members who supported me in my time as Acting Chairperson. I am grateful for their expertise, sound work ethic, team spirit and determination to succeed, regardless of the challenges before them.

David Paul Olsen
Acting Chairperson
Public Service Labour Relations Board

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PART ONE:

About Us

The PSLRB serves approximately 230 000 federal public service employees covered under the PSLRA *and by numerous collective agreements, as well as employers and bargaining agents.*

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 mandate was amended on December 12, 2013, when *Bill C-4, Economic Action Plan 2013 Act, No. 2*, received royal assent. Among the changes introduced was the elimination of the PSLRB's compensation analysis and research services function. The new legislation also introduced changes to the collective bargaining process and called for the consolidation of the PSLRB and the Public Service Staffing Tribunal into a new organization, to be called the Public Service Labour Relations and Employment Board (PSLREB). That new organization will be created on a date to be fixed by order of the Governor in Council. More specific information about that legislation can be found in this annual report in Part Two: The Year in Review, Challenges and Opportunities.

The PSLRB's two main services are as follows:

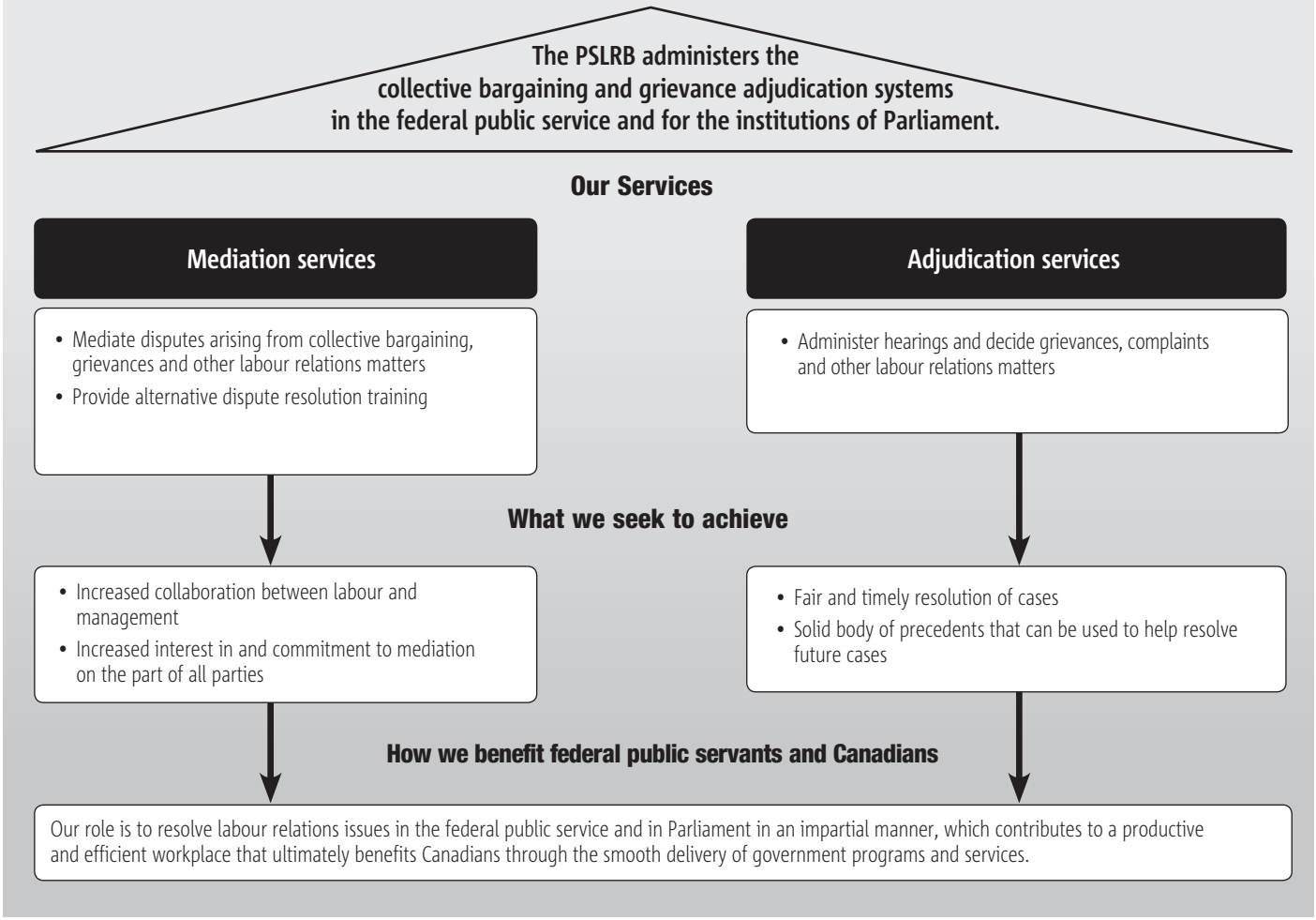
- adjudication - hearing and deciding grievances, complaints and other labour relations matters; and
- mediation - helping parties reach collective agreements, manage their relations under collective agreements and resolve disputes without resorting to a hearing.

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

Other responsibilities of the PSLRB include administering the *PESRA* and acting 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.

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



As a result of transitional provisions under section 396 of the *Budget Implementation Act, 2009*, 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)*.

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 serves approximately 230 000 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*, 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 166 000 public servants in federal departments and agencies. More than 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.

Much of the PSLRB's success in meeting its responsibilities, particularly during times of change, can be attributed to the unceasing support, commitment and dedication of its employees.

The majority of unionized federal public service employees, 63%, are represented by the Public Service Alliance of Canada, 22% by the Professional Institute of the Public Service of Canada and the remainder by 19 other bargaining agents.

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

OUR PEOPLE

Under 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 PSLRB's internal affairs and the work of its employees. Reporting to the Chairperson, he is directly supported by five 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 overall organization.

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

Full- and part-time Board members administer the *PSLRA*, rendering decisions on matters brought before the PSLRB. 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.

Employees

Adapting to the legislative changes that have modified the PSLRB's mandate over the years has required the organization to be resourceful and flexible. Much of the PSLRB's success in meeting its responsibilities, particularly during times of change, can be attributed to the unceasing support, commitment and dedication of its employees. Their diverse skill set, combined with their flexibility and creativity, have enabled the PSLRB to remain effective and efficient, serve the public interest by minimizing the possibility of labour unrest, and enjoy a stellar reputation in the labour relations field.

PART TWO:

The Year in Review

In 2013-2014, the PSLRB had 90 full-time equivalent positions and expenditures of $12.7 million.

The PSLRB's work entails dealing with grievance referrals, complaints and other labour relations applications involving disputes between employees and their employers or bargaining agents that 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 Board member 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

Since its inception, the PSLRB's caseload has continued to climb steadily year by year, both in terms of the number of files referred to the PSLRB and in the complexity of those cases. Several factors beyond the PSLRB's control also affect the organization's ability to deliver its services as promptly as it would like, such as parties' availability to proceed to a hearing and requests for postponements and continuances, all of which may have a budgetary impact.

Given its large and complex caseload, an ongoing priority for the PSLRB is to improve service delivery by implementing more streamlined, responsive and effective adjudication processes through more proactive case management and in-depth case analysis. Its goal is to further increase the number of cases it closes each year, 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. For specific initiatives and tools that the PSLRB uses to manage its caseload, please refer to Part II of this report, Challenges and Opportunities, Case Management.

As it did last year, the PSLRB closed more cases than it opened during the year (i.e., 1 876 and 1 661 respectively). In spite of its efforts to close as many case files as possible, its active caseload was over 4 200 files as of March 31, 2014.

Grievances

Grievances continued to represent the largest portion of the PSLRB's workload again this year. Of the grievances it dealt with, 5 159 were individually filed grievances, 1 360 of which were new cases. Individual grievances are those 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;
- disciplinary actions resulting in terminations, demotions, suspensions or financial penalties; 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, which are only for employees for whom the Treasury Board is the employer.

Since its inception, the PSLRB's caseload has continued to climb steadily year by year, both in terms of the number of files referred to the PSLRB and in the complexity of those cases.

Of those categories, the PSLRB was referred grievances dealing with 108 termination cases during the year.

As well, the PSLRB received 17 new group grievances (i.e., grievances that are filed by several employees in a department or agency who believe their collective agreement has not been administered correctly). It also received 22 new policy grievances (i.e., grievances that are 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).

It is important to note that the PSLRB encourages parties to continue to work toward a settlement throughout the adjudication process, as a solution they create 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, 215 such grievance referrals were accompanied by a CHRC notification — almost twice as many as those received the previous year.

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. This year, the PSLRB received 77 new complaints.

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

- 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 51% of the PSLRB's total complaints.

The PSLRB also received 14 new complaints for reprisals under the *Canada Labour Code* (CLC).

Finally, the PSLRB received 1 new complaint under the pay equity provisions of the *Budget Implementation Act, 2009*.

Applications

Throughout the year, the PSLRB received more than 224 applications, which represented 13% of all cases received; 190 were determinations of management and confidential positions, 19 were requests for extensions of time to file a grievance or to refer a grievance to adjudication, 4 were reviews of prior PSLRB decisions, and 3 were determinations of successor rights applications.

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

MEDIATION SERVICES

The PSLRB's mediation services offer the parties an opportunity to meet in an open and less-confrontational environment where they can resolve their disputes and avoid more adversarial processes that could result in additional delays in resolving their issues and in strained relationships.

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

As in previous years, the PSLRB's mediation services reviewed its processes and worked to improve them and discussed options for accelerating mediation to enhance efficiency and effectiveness.

Parties that participated in mediation experienced considerable success. Specifically, the PSLRB's Dispute Resolution Services (DRS) carried out 92 mediation interventions for grievances and complaints, resulting in 185 files that had been referred to adjudication being resolved without a hearing. Of those interventions, the parties reached an agreement 83% of the time. The DRS also conducted 9 preventive mediation interventions, all of which were resolved, meaning fewer potential files were brought before the PSLRB than otherwise could have been.

Collective Bargaining

When the parties are unable to make progress in their face-to-face negotiations during collective bargaining, the PSLRB may provide mediation support.

In 2013-2014, the PSLRB received 2 new requests for mediation assistance that resulted from the round of collective bargaining that initially began in early 2011. The number of issues in dispute for those cases was reduced due to the parties' efforts during mediation, and a tentative settlement was reached in one case. The other will be dealt with in 2014-2015.

As mentioned earlier, 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 set up and administer arbitration boards or public interest commissions (PICs).

During the year, the PSLRB received 2 requests for conciliation, both of which will take place in 2014-2015. The PSLRB also published 3 PIC reports, and settlements were reached for 2 other PIC files. As well, the PSLRB processed 17 arbitration requests, along with 3 that were brought forward from previous years. Of those total hearings, 5 resulted in an arbitral award, 5 were settled by the parties during the hearings and 10 will be finalized in 2014-2015.

Mediation Training

Over the years, the DRS has enjoyed a sound reputation for its mediation training sessions. This year, seven interest-based negotiation and mediation courses were delivered. 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 130 public servants participated in the 2½-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 an understanding of mediation as a dispute resolution mechanism and to provide insight into the PSLRB's mediation approach.

PSLRB mediators intervene in disputes and help parties explore the underlying reasons for their conflicts and find mutually acceptable solutions.

The PSLRB dealt with two legislative changes during the year, which modified its structure and its mandate.

CHALLENGES AND OPPORTUNITIES

Legislative Changes

Bill C-4, Economic Action Plan 2013 Act, No. 2

As mentioned earlier, the PSLRB dealt with two legislative changes during the year, which modified its structure and its mandate.

The coming into force in December 2013 of *Bill C-4, Economic Action Plan 2013 Act, No. 2*, introduced several changes to the *PSLRA*, as well as other legislation. In addition to the elimination of the PSLRB's compensation analysis and research function and the consolidation of the PSLRB and the PSST into a new organization (the PSLREB), other changes to the *PSLRA* — some already in force, others coming into force at a date to be determined by Order in Council — included the following:

- amendments to the collective bargaining process, including a new regime for essential services and the removal of the choice of a dispute resolution method between arbitration and conciliation/strike;
- mandatory representation of unionized grievors by bargaining agents in certain grievance matters;
- adjudication expenses associated with certain grievances are to be borne equally by the employer or deputy head and the bargaining agent representing the employee in adjudication proceedings; and
- the addition of a new mandate for human rights complaints.

As a result of these changes, the PSLRB closed its compensation analysis and research services unit, ensuring that its records of business value were archived. It also offered support to affected employees during their career transitions.

The PSLRB also reviewed the collective bargaining changes and then updated and adjusted the relevant work processes to meet the new requirements, particularly those associated with essential services and the choice of dispute resolution mechanisms, both of which came into force in December 2013. In cooperation with the PSST, the PSLRB reviewed its regulations to ensure it will be ready to transfer its existing responsibilities to the new PSLREB and meet its new mandate when that organization is created.

The appointments of the existing PSLRB Chairperson, Board members and Vice-chairpersons will end when the PSLREB is created in 2014-2015.

Bill C-31, Economic Action Plan 2014 Act, No. 1

Towards the end of the fiscal year, the government introduced *Bill C-31, Economic Action Plan 2014 Act, No. 1*, which will centralize and coordinate support services to some administrative tribunals, including the PSLREB, through a single, integrated organization: the Administrative Tribunals Support Service of Canada (ATSSC). The creations of both the PSLREB and the ATSSC are likely to come into force in fall 2014. As a result, the PSLRB has had to cope with maintaining its level of service while preparing for the transition to the new PSLREB and the ATSSC.

Case Management

As mentioned previously, an ongoing challenge for the PSLRB is to enhance its capacity to address a caseload that has grown from 1 200 more than a decade ago to over 6 000 in 2013-2014.

The increase in the complexity of many of the PSLRB's cases can be attributed to several factors, including an increase in restrictions to filing labour relations complaints, which requires greater scrutiny of those cases when they are first received; the receipt of multiple types of grievances (individual, group and policy), each of which has different reporting requirements; the expansion of the PSLRB's mandate to include existing pay equity complaints for the public service that were, or could be, filed with the Canadian Human Rights Commission; the growing number of self-represented individuals; and the addition of new requirements for managerial and confidential exclusion orders, which are monitored by registry officers and which must respect tight deadlines. Complex cases can result in a prolonged adjudication process, meaning lengthy hearings. For example,

in human rights cases, expert witnesses could be required, as well as medical, scientific and sector-specific specialists, which can result in multiple days of testimony and cross-examination. As well, for such cases, adjudicators or Board members must be familiar with their intricacies before they can render a decision.

The PSLRB has introduced several initiatives and tools to more effectively deal with its caseload, many of which have been highly successful, as well as strategies to help it more aggressively manage its hearing schedule. These initiatives have included convening the Client Consultation Committee, which enables the PSLRB to work closely with its clients to gain insight into their views on how the organization can refine its adjudication processes and practices, and holding pre-hearing conferences (via teleconference, when possible), which have yielded excellent results as they enable the parties to resolve preliminary issues upfront and narrow down the issues in dispute. This ultimately contributes to making more efficient use of the parties' time and resources and, in certain cases, to eliminating the need for an oral hearing.

As well, the PSLRB has strategically scheduled adjudicators for hearings to optimize resources, used written submissions more frequently for cases in which the facts are not in dispute, put in place solutions to reduce last-minute hearing postponement requests and reinforced its policy on the limited circumstances when postponements may be granted.

With a view to further enhancing productivity, the PSLRB assigned a labour relations analyst to the Chairperson's office to review various options and innovative case methodologies, the goal of which was to come up with recommendations for the Chairperson as to how the PSLRB can improve its processes and deal with its ever-increasing caseload. Although in its infancy as a project, several options and methodologies were tested on actual case files.

Finally, as over half of the PSLRB's existing workload belongs to a single group of employees (i.e., correctional officers represented by the Correctional Services bargaining unit, the Union of Canadian Correctional Officers and Correctional Service of Canada), a special task force was established to address the specific needs of those parties. More than 1 660 case files for this group remain open and continue to be treated as a priority.

Case Management System

Another factor that can optimize caseload management is a state-of-the-art electronic case management system with enhanced performance measurement and reporting capabilities, which has been a key priority for the PSLRB for the past several years.

During the year, the PSLRB continued to make steady progress in preparing to implement the new system. While some delays occurred due to certain development challenges, following stringent quality assurance testing and the exploration of feature enhancements, the PSLRB is confident that the system will be in place in the second quarter of 2014-2015. The new system will ensure a migration to a sustainable technology platform and will 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

For the past several years, another key priority for the PSLRB has been to continue to improve its information management (IM) infrastructure, which contributes to its capacity to efficiently manage, store and retain its information resources, meet its mandated responsibilities, and effectively serve its clients and Canadians.

Initiatives to address this priority included establishing the necessary governance and expertise (i.e., creating a steering committee and a project management office) to ensure the IM project's success and helping employees to better manage their information through various tools and opportunities.

With a view to further enhancing productivity, the PSLRB assigned a labour relations analyst to the Chairperson's office to review various options and innovative case methodologies.

The PSLRB also continued its efforts to further enhance efficiency and cost savings through engaging in partnerships with other similar organizations.

During the year, the PSLRB continued to work towards implementing its information management strategy and action plan, focusing on training all employees on the upgraded version of its electronic records and document management system (i.e., Documentum). Key activities included finalizing the file classification structure and file naming convention and completing the Documentum user manual.

Board Member Appointments

For the past several years, it has been a challenge for the PSLRB to ensure that it has an appropriate complement of full- and part-time Board members appointed by the Governor in Council.

To address this matter, the PSLRB Chairperson and officials have worked proactively with the Minister's office to ensure those vacancies were filled as quickly as possible. This practice will continue during the transition to the new PSLREB next fiscal year. Having a sufficient number of Board members will ensure that the new organization will operate effectively.

Shared Corporate Services

The PSLRB also 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 and the Canada Industrial Relations Board, providing back-office services under formal shared-services agreements, which has served the PSLRB and its partners well. Those services included information technology, web, finance and library services, as well as compensation and other human resources services.

Openness and Privacy

As a quasi-judicial tribunal that renders decisions on a broad range of labour relations matters in the federal public service, the PSLRB operates very much like a court. Bound by the constitutionally protected open-court principle, it conducts its oral hearings in public, save for exceptional circumstances. As a result, most information filed with the PSLRB becomes part of a public record and is generally available to the public, ensuring transparency, accountability and fairness.

In keeping with the principles of administrative law, the PSLRB is required to issue a written decision when deciding a matter. The decision is to include a summary of the evidence presented, the arguments of the parties and 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 privacy concerns, 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 that Board member, if appropriate.

The PSLRB has adopted a *Policy on Openness and Privacy*, which describes the principles of open justice, access to case files and decisions, and how the PSLRB balances openness and privacy concerns.

The PSLRB's written decisions are made available to the public in many ways; for example, they may be obtained from its Jacob Finkelman Library. Most are published by specialized private publishers, and some can be accessed on the Internet via publicly available databases. In addition, since 2000, the full texts of decisions have been posted on the PSLRB website. As a means of balancing the open-court principle and the privacy concerns of individuals availing themselves of their rights under the *PSLRA*, the PSLRB has voluntarily introduced measures via a web robot exclusion protocol that restrict global search engines from accessing full-text decisions posted on its website and from yielding specific information (e.g., a person's name) contained in decisions. 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

Occasionally, parties may apply for judicial review of a decision rendered either by an adjudicator or by the Board. Adjudicators' decisions are reviewed by the Federal Court, whereas Board decisions are reviewed by the Federal Court of Appeal. Please refer to Appendix 4 for a summary of applications for judicial review from April 1, 2009, to March 31, 2014.

Notable Decisions

Decisions rendered by the Board or by its members in their roles as adjudicators contribute to the elaboration of jurisprudence in labour relations, specifically in the context of the federal public service, but more widely as well. Those decisions are final and binding on the parties and are subject only to judicial review under the *Federal Courts Act*. On average, over the past five years, of all decisions sent for judicial review, more than 85 percent stand as final. During that time, some 98% of all decisions rendered by the Board stood as final. Descriptions of several notable grievance and complaint decisions can be found in Appendix 5.

ORGANIZATIONAL CONTACT INFORMATION

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K1P 5V2

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Dispute Resolution Services:	Fax: 613-990-6685
Website:	www.pslrb-crtfp.gc.ca

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APPENDIX 1

Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent April 1, 2013, to March 31, 2014*

Where the Treasury Board of Canada is the Employer

Certified bargaining agents	Bargaining units	Number of employees
Association of Canadian Financial Officers	1	4 057
Association of Justice Council	1	2 416
Canadian Association of Professional Employees	2	12 328
Canadian Federal Pilots Association	1	371
Canadian Merchant Service Guild	1	1 028
Canadian Military Colleges Faculty Association	1	174
Federal Government Dockyard Chargehands Association	1	80
Federal Government Dockyard Trades and Labour Council (East)	1	708
Federal Government Dockyard Trades and Labour Council (West)	1	752
International Brotherhood of Electrical Workers, Local 2228	1	1 050
Professional Association of Foreign Service Officers	1	1 164
Professional Institute of the Public Service of Canada	6	33 872
Public Service Alliance of Canada	5	100 901
UCCO-SACC-CSN	1	6 971
UNIFOR	3	324
Total:	**27**	**166 196**

Table 1: Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent April 1, 2013, to March 31, 2014*

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	11 000
Public Service Alliance of Canada	1	32 000
Total	**2**	**43 000**
CANADIAN FOOD INSPECTION AGENCY		
Professional Institute of the Public Service of Canada	3	1 954
Public Service Alliance of Canada	1	4 311
Total	**4**	**6 265**
CANADIAN INSTITUTES OF HEALTH RESEARCH		
Public Service Alliance of Canada	1	15
Total	**1**	**15**
CANADIAN NUCLEAR SAFETY COMMISSION		
Professional Institute of the Public Service of Canada	1	686
Total	**1**	**686**
CANADIAN POLAR COMMISSION		
No bargaining agents	0	9
Total	**0**	**9**
CANADIAN SECURITY INTELLIGENCE SERVICE		
Public Service Alliance of Canada	1	129
Total	**1**	**129**
COMMUNICATIONS SECURITY ESTABLISHMENT		
Public Service Alliance of Canada	1	1 967
Total	**1**	**1 967**

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	84
Total	**0**	**84**
FINANCIAL TRANSACTIONS AND REPORTS ANALYSIS CENTRE OF CANADA		
No bargaining agents	0	360
Total	**0**	**360**
INDIAN OIL AND GAS CANADA		
No bargaining agents	0	84
Total	**0**	**84**
NATIONAL CAPITAL COMMISSION		
Public Service Alliance of Canada	1	332
Total	**1**	**332**
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	89
Professional Institute of the Public Service of Canada	2	148
Syndicat général du cinéma et de la télévision, CUPE Local 9854	1	102
Total	**5**	**339**
NATIONAL RESEARCH COUNCIL CANADA		
Professional Institute of the Public Service of Canada	4	1 529
Research Council Employees' Association	6	1 769
Total	**10**	**3 298**

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	420
Total	**0**	**420**
SOCIAL SCIENCES AND HUMANITIES RESEARCH COUNCIL OF CANADA		
Public Service Alliance of Canada	2	204
Total	**2**	**204**
NORTHERN PIPELINE AGENCY		
No bargaining agents	Two employees of Natural Resources Canada (a department of the Treasury Board) are assigned to work for this agency.	
OFFICE OF THE AUDITOR GENERAL OF CANADA		
Public Service Alliance of Canada	2	151
Total	**2**	**151**
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	516
Public Service Alliance of Canada	1	13
Total	**2**	**529**
PARKS CANADA AGENCY		
Public Service Alliance of Canada	1	4 623
Total	**1**	**4 623**

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	676
United Food and Commercial Workers Union	12	688
Total	**22**	**1 364**
STATISTICAL SURVEY OPERATIONS		
Public Service Alliance of Canada	2	1 815
Total	**2**	**1 815**
Total	**58**	**66 055**
Total for other employers	58	66 055
Total from the Treasury Board	27	166 196
Total for all employers	**85**	**232 251**

*The employers provided the figures in Table 1.

Table 2: Number of Bargaining Units and Public Service Employees by Bargaining Agent April 1, 2013, to March 31, 2014*

Certified bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Public Service Alliance of Canada	29	141 219
Professional Institute of the Public Service of Canada	19	48 744
Canadian Association of Professional Employees	2	12 708
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	2 689
Research Council Employees' Association	6	1 707
Professional Association of Foreign Service Officers	1	1 350
International Brotherhood of Electrical Workers, Local 2228	1	1 114
Canadian Merchant Service Guild	1	1 049
Federal Government Dockyard Trades and Labour Council (West)	1	800
Federal Government Dockyard Trades and Labour Council (East)	1	709
Federal Government Dockyard Chargehands Association	1	72
Canadian Federal Pilots Association	1	387
United Food and Commercial Workers Union, Locals 175 and 633	6	273
United Food and Commercial Workers Union, Local 864	3	182
Canadian Military Colleges Faculty Association	1	190
Syndicat general du cinema et de la télévision, CUPE Local 4835	1	102
United Food and Commercial Workers Union, Local 1518	2	92
Canadian Union of Public Employees, Local 2656	2	80
United Food and Commercial Workers Union, Local 1400	1	4
Unifor	3***	384
Total for the Treasury Board of Canada	**85**	**226 045****

* The bargaining agents provided the figures in Table 2.

** The total in Table 2 does not equal the 232 251 employees indicated in Table 1 (from the Treasury Board and separate employers) because 6 206 of the employees included in Table 1 were not represented by a bargaining agent or were not included in this table's calculation.

*** During the year in review, UNIFOR sought and was granted the right to succeed three bargaining units previously held by the CAW and the Communications, Energy and Paperworkers Union of Canada.

APPENDIX 2

Grievances, Complaints and Certain Applications Before the Public Service Labour Relations Board 2013-2014

	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	3 838	1 321	1 217	163	3 779	78
Group	59	17	6	4	66	2
Policy	24	22	5	11	30	7
Total grievances	**3 921**	**1 360**	**1 406**		**3 875**	**87**
Complaints under the *PSLRA*:	46	39	19	11	55	22
- DFR - Other complaints and unfair labour practices	59	24	28	14	41	
Complaints under the *Canada Labour Code*	23	14	4	5	28	5
Total complaints	**128**	**77**	**81**		**124**	**27**
Requests to file certified copy of order with Federal Court	0	0			0	0
Certifications	0	0	0		0	0
Revocations of certification	0	1	0		1	0
Determinations of successor rights	0	3	3		0	3
Memberships in a bargaining unit	3	1	1		3	1
Designations of essential services positions	6	0	0		6	0
Applications for review of Board decisions	1	4	4		1	3
Powers and Functions of the Board	4	6	8		2	5
Requests for extension of time	36	19	14		41	8
Subtotal of applications[1]	**50**	**34**	**30**		**54**	**20**
Determinations of management and confidential positions	323	190	190 withdrawn + 169 orders issued[2]= 359		154	0
TOTAL	**4 422**	**1 661**	**1 876**		**4 207**	**134[3]**

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

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

[3] This reflects decisions for which citation numbers were assigned.

APPENDIX 3

Total Caseload: 2010-2011 to 2013-2014

Fiscal year	Carried forward from previous years	New			Total new cases	Closed	Carried forward to the next year
		Grievances	Complaints	Applications			
2010-2011	3 774	1 736	64	308	2 108	1 368	4 514
2011-2012	4 109	1 655	61	310	2 026	1 587	4 548
2012-2013	4 547	1 550	60	362	1 972	2 101	4 418
2013-2014	**4 422**	**1 360**	**77**	**224**	**1 661**	**1 876**	**4 207**

APPENDIX 4

Synopsis of Applications for Judicial Review of Decisions*

April 1, 2009, to March 31, 2014

	Decisions rendered[1]	Number of applications	Applications withdrawn	Applications dismissed	Applications allowed	Applications pending[2]	Appeals of applications pending[3]
April 1, 2009, to March 31, 2010	183	30	13	19	2	0	0
April 1, 2010, to March 31, 2011	126	25	3	19	9	0	0
April 1, 2011, to March 31, 2012	150	32	11	13	8	2	0
April 1, 2012, to March 31, 2013	122	22	3	18	1	1	3
April 1, 2013, to March 31, 2014	173	27	3	5	0	19	0
TOTAL	**754**	**136**	**33**	**74**	**20**	**22**	**3**

Note: The figures for the last five fiscal years as shown are not final, as not all 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 PSLRB upon the parties' consent.

[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 the statistics in this table.

*By the application of section 3 of the *PESRA*, the PSLRB acts as the Board for the purposes of that Act. Therefore, decisions it issued under the *PESRA* are included in this chart.

NOTEWORTHY PUBLIC SERVICE LABOUR RELATIONS BOARD DECISIONS

The Public Service Labour Relations Board ("the Board") addresses a multitude of issues. This overview of decisions of interest offers a snapshot of the state of many areas of labour law from April 1, 2013, to March 31, 2014.

Bargaining in Bad Faith

In ***Professional Association of Foreign Service Officers v. Treasury Board***, 2013 PSLRB 110, a complaint was filed because the parties had reached an impasse in collective bargaining, and the complainant's members had gone on strike. The employer was aware throughout the negotiations that parity between members of the bargaining group and those employed as legal advisors, economists and commerce officers within Canada was a key concern to the complainant and its members.

Section 182 of the *Public Service Labour Relations Act* (*PSLRA*) allows the employer and the bargaining agent to agree to refer any term or condition of employment for final and binding determination at any time in the negotiation of a collective agreement. In accordance with this provision, the complainant wrote to the respondent to suggest that the parties submit to binding arbitration. The respondent accepted the offer, subject to certain conditions, which would have made it impossible for the wage parity issue to be addressed. The complainant alleged that the respondent violated paragraph 106(*b*) of the *PSLRA* by purporting to agree to a final and binding determination while imposing conditions that the complainant could not reasonably have been expected to accept.

The panel of the Board referred to principles of statutory interpretation and stated that the provision for alternate dispute resolution in section 182 is not stand-alone. It must be read in accordance with the governing principle of statutory interpretation: one must read the whole of the statute to fully understand it. The process referred to in subsection 182(1) for binding arbitration was intended as a tool for use in the negotiation process and is not independent of that process. Therefore, the statutory obligations to bargain in good faith and to make every reasonable effort to conclude a collective agreement applied.

The panel of the Board emphasized that the term "collective bargaining" must not be given a narrow construction. The wording of subsection 182(1) establishes that the parties may agree to its application ". . . at any time in the negotiation of a collective agreement . . . ." The panel stated that Parliament intended that section 182 be a tool for use in the negotiation process. Although the respondent was not required to agree to participate in a final and binding determination under section 182, once it entered into the negotiations of the conditions under which the determination would occur, it was obligated to bargain those conditions in good faith and to make every reasonable effort to conclude a collective agreement, as required under section 106. Section 182, its use and the negotiation of the conditions for its use are all part of the negotiation process. The complaint was allowed. An application for judicial review is pending before the Federal Court of Appeal (Court File A-303-13).

Ministerial Authority to Conduct a Vote

In June 2013, the Minister of Canadian Heritage, the designated minister for the Board under the *PSLRA*, exercised his authority under section 183 of the *PSLRA* to issue a direction to the chairperson to conduct a vote among the members of the Border Services Group (FB) bargaining unit on the employer's last offer. It was the first time a minister had exercised this authority. In accordance with the direction from the Minister, the Board operationalized a process to carry out the FB members' vote. The Public Service Alliance of Canada (PSAC) brought an application before the Federal Court to set aside the Minister's decision. Among other allegations, it argued that there was a lack of procedural fairness and a reasonable apprehension of bias in the decision-making process. The Federal Court allowed the application for judicial review in ***Public Service Alliance of Canada v. Attorney General of Canada***, 2013 FC 918.

The Federal Court disagreed with the employer's argument that the PSAC did not have standing. It noted that the collective agreement is the only contract that governs the terms and conditions of employment for FB members and that the employer and the bargaining agent are the only parties to the collective agreement. Contrary to the employer's argument, it found that the issues were justiciable, i.e., that they were issues for which the Court could exercise its judicial authority. The Court did not agree with the PSAC's argument that there was a reasonable apprehension of bias or that the Minister had no basis on which to conclude that a

vote was in the public interest, given the status of the parties' bargaining. However, because the matter was justiciable, the parties had to be afforded the right to procedural fairness, which was at the lower end of the procedural fairness spectrum in that case.

The Court reviewed the points that the PSAC would have made, had it had the opportunity. It reasoned that the denial of notice and of the right to make submissions deprived the Minister of the PSAC's considerations, which might have had an effect on the decision. It set aside the Minister's decision to order a vote among the employees in the bargaining unit on the employer's final offer, which resulted in the Board ceasing all its activities for conducting a vote.

Settlement Agreements and the Jurisdiction of a Board Panel

Fillet v. Public Service Alliance of Canada, 2013 PSLRB 43, revisited the scope of jurisdiction in the case of an allegation that a settlement agreement was not observed. The same issue arose and was decided in ***Amos v. Canada (Attorney General)***, 2011 FCA 38, in which the Federal Court of Appeal confirmed that a *PSLRA*-appointed adjudicator has jurisdiction to hear an allegation that a party breached the terms of a final and binding settlement agreement. *Amos* addressed a grievance that had arisen under Part 2 of the *PSLRA*. In *Fillet*, the issue arose under Part 1.

The complainant alleged that the bargaining agent committed an unfair labour practice, specifically, a violation of its duty of fair representation. The parties entered into a final and binding agreement to settle the complaint. The complainant later argued that the complaint had to be heard on its merits because the bargaining agent failed to comply with the terms of settlement.

The Board did not agree. It interpreted the *PSLRA* and referred to *Amos*, finding that the *PSLRA* gave it jurisdiction to hear an allegation that a party breached the terms of a final and binding settlement agreement about an unfair labour practice complaint and to make any order it judged appropriate to remedy the breach. It ordered that a hearing be held to determine whether the terms of the settlement agreement were observed and, if necessary, to order a remedy.

Remedy for a Violation of a No-discrimination Clause

Last year's annual report discussed ***Grierson-Heffernan v. Treasury Board*** (Canada Border Services Agency), 2013 PSLRB 30, in which a term employee had taken a maternity leave and later grieved her termination, which was imposed when she was just 14 days short of attaining the service required to change her status to an indeterminate employee. The relevant policy that applied stated that any break in service of longer than 60 days would not be counted towards service. In the initial decision, the adjudicator relied upon a decision of the Canadian Human Rights Tribunal (CHRT) to support his finding that the policy was discriminatory and that there should be a retroactive effect to that finding.

The adjudicator issued his decision on the award this year in ***Grierson-Heffernan v. Deputy Head (Canada Border Services Agency)***, 2013 PSLRB 156. The parties agreed to certain terms, including placing the grievor in a position, along with agreeing that she would be considered to have been on leave from the time that she would have become indeterminate had she not been the subject of gender-based discrimination, that the employer would contribute both its and the grievor's shares of pension payments from the time that she would have become indeterminate until the date of the decision, and that the employer and grievor were each responsible for their respective shares of pension payments for the time between the date of the adjudicator's first decision to the date that she was placed in a position. However, the award did not include retroactive pay because the grievor did not provide any evidence of loss. She was working when the adjudicator's initial decision was issued. Moreover, the employer made good-faith efforts to locate a position near her residence in a timely way, and some of the delay in finding a position was attributable to the grievor.

Staffing Issues, No-discrimination Clauses and Intersecting Human Rights Issues

In ***Haynes v. Treasury Board (Canada Border Services Agency)***, 2013 PSLRB 85, a grievance arose from the employer's decision not to offer the grievor an acting position because of its concern that her common-law spouse was an immigration lawyer and the grievor and her spouse would work on the same files. The grievor alleged that the employer acted in a discriminatory manner under the *Canadian Human*

Rights Act (*CHRA*) by violating the no-discrimination clause in the relevant collective agreement. The employer raised a preliminary objection about the adjudicator's jurisdiction because the grievance concerned a staffing issue.

The adjudicator held that he had jurisdiction to hear the grievance as its pith and substance concerned human rights. The no-discrimination clause in the collective agreement provided substantive rights.

The Public Service Staffing Tribunal (PSST) rejected the complaint on the basis of a lack of jurisdiction because acting appointments of less than four months are excluded from the application of the merit principle and from complaints to the PSST. No other administrative procedure for redress was available to the grievor. Parliament's intention could not have been to enforce human rights obligations only in cases of appointments of four months or more, leaving those of shorter duration open to human rights abuses. In addition, the *PSLRA* provides no absolute bar to adjudicating human-rights disputes that involve staffing. Preference in cases of competing provisions should be given to the provision that protects human rights, given their importance to the legal system and the quasi-constitutional nature of human-rights legislation.

The adjudicator dismissed the employer's preliminary objection and ordered that a hearing be scheduled to decide the grievance on its merits.

Pay Equity and the *Public Sector Equitable Compensation Act*

The Board issued six consent orders endorsing six memoranda of agreement in long-standing complaints relating to employees of separate agencies. The Canadian Human Rights Commission had transferred the complaints to the Board in early 2011, pursuant to the transitional measures under the *Public Sector Equitable Compensation Act*. The employees in the agencies at issue had alleged that the Treasury Board had failed to extend to them the remedies afforded to public servants in pay equity complaints, which were contained in Canadian Human Rights Tribunal orders made on July 29, 1998, and November 16, 1999, contrary to sections 7, 10 and 11 of the *CHRA*. Consent orders were issued in the following decisions: ***Public Service Alliance of Canada v. Canadian Institutes of Health Research,*** 2013 PSLRB 108, ***Public Service Alliance of Canada v. Office of the Superintendent of Financial Institutions***, 2013 PSLRB 107; ***Public Service Alliance of Canada v. Social Sciences and Humanities Research Council***, 2013 PSLRB 106; ***Public Service Alliance of Canada v. Communications Security Establishment***, 2013 PSLRB 105; ***Public Service Alliance of Canada v. Canadian Security Intelligence Service***, 2013 PSLRB 104; and ***Public Service Alliance of Canada v. Office of the Auditor General of Canada***, 2013 PSLRB 103.

Disclosure: the *Privacy Act*, Pre-existing Agreements and Subsequent Events

Sather v. Deputy Head (Correctional Service of Canada), 2013 PSLRB 95, dealt with the breadth of disclosure, the *Privacy Act* and subsequent-event evidence. The adjudicator issued an order for the respondent to produce unredacted copies of a disciplinary investigation report and related documents and information related to video surveillance. The bargaining agent then applied for a declaration that other categories of documents be included in that order and alleged bad faith in the respondent's vetting process. It requested confirmation from the respondent that it had provided all the arguably relevant documents in its possession. The respondent requested that the union produce a criminal disclosure package and other documents in the grievor's possession that might be relevant, including the recordings and notes of the disciplinary process of the bargaining agent and the grievor. A pre-existing agreement was in place that the information not be shared.

The adjudicator granted the bargaining agent's request. He outlined his broad powers under paragraph 226(1)(*e*) of the *PSLRA* to compel the production of documents and noted that the test of "arguable relevance" for a pre-hearing production of documents is much broader than the test for relevance during a hearing. The adjudicator also stated that the *Privacy Act* has no bearing on a party's duty to provide disclosure pursuant to an order.

In partially granting the respondent's request, the adjudicator noted that the information being sought was related to the same events that were at issue during the disciplinary investigation and actually was not subsequent-event evidence, as envisioned in the jurisprudence. In addition, the grievor had not provided details of any restriction to disclosing the information, although invited to. He noted that the test to be applied to disclosure — the broad duty to produce arguably relevant documents — is not related to who has the onus of proof. The adjudicator declined to order the production of notes and recordings that were subject to a pre-existing agreement because the respondent had precluded its right to be provided with copies of them. He cautioned that he had reached that conclusion on the understanding that the union would not attempt to introduce the recordings or notes as evidence during the hearing.

Time Limits and Bargaining Agent Error

Bargaining agent error and applications for extensions of time were discussed in ***International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board***, 2013 PSLRB 144. The bargaining agent conceded that it had failed to refer a group grievance to adjudication. It applied for an extension of time to refer the grievance to adjudication, which the respondent opposed. The Board's acting chairperson emphasized that extensions of time should be allowed sparingly but that the *Public Service Labour Relations Board Regulations* ("the *Regulations*") allow for them in the interests of fairness. He reviewed the *Schenkman* criteria, which were identified in ***Schenkman v. Canada (Treasury Board)***, 2004 PSSRB 1, that are often applied in extension-of-time applications. These are as follows:

- clear, cogent and compelling reasons for the delay;
- the length of the delay;
- the due diligence of the grievor;
- balancing the injustice to the employee against the prejudice to the employer in granting an extension; and
- the chances of success of the grievance.

He stated that the criteria are not subject to a threshold effect or to fixed presumptive calculations that prevent a decision maker from considering whether, in the interests of fairness, an extension of time ought to be granted. The particular set of circumstances of each case will define the weight to be given to each criterion, relative to the others. The criteria ought simply to guide a determination of fairness within the meaning of paragraph 61(*b*) of the *Regulations* and are not subject to a compartmentalized or formulaic approach. The Acting Chairperson found that a bargaining agent error may be considered a clear, compelling and cogent reason for a delay in certain circumstances, particularly if the grievor or grievors establish their due diligence. In terms of the other criteria, the delay in this case was not insignificant but, when examined contextually, was not a bar to the extension being allowed; the grievors had no reason to pursue the matter personally because the bargaining agent had indicated that it had the matter in hand and that it was following up by referring the grievance to adjudication; no labour relations purpose would have been served by refusing to hear the grievance; and the chances of success should not be considered prematurely to examine the merits of a case. The application was allowed.

FEDERAL COURT AND FEDERAL COURT OF APPEAL

The Definition of "Employee"

In ***Jolivet v. Canada (Correctional Service)***, 2014 FCA 1, the Federal Court of Appeal dismissed an application for judicial review of a panel of the Board's decision in ***Jolivet v. Treasury Board (Correctional Service of Canada)***, 2013 PSLRB 1. The latter decision was discussed in last year's annual report. The Board dismissed the complainant's allegation that the respondent committed an unfair labour practice by denying him and another individual, both incarcerated offenders in a federal penitentiary, the right to sign up fellow inmates in the institution to the Canadian Prisoners' Labour Confederation. Referring to and applying ***Canada (Attorney General) v. Public Service Alliance of Canada***, [1991] 1 S.C.R. 614 (*Econosult*), the panel dismissed the complaint. It held that the definition of "employee" in the *PSLRA* must be considered in relation to other statutes, such as the *Public Service Employment Act* and the *Financial Administration Act*. The Federal Court of Appeal found the Board's reasons sound and stated that the outcome would be the same, whether on correctness or on a reasonableness standard. It noted that the fundamental principle that employment in the public service is subject to specific legislated formalities remains

valid. Inmates participating in work programs organized by the Correctional Service of Canada were not appointed to a position in the federal public service and therefore are not "employees" within the meaning of the *PSLRA*.

Policy Grievance and Jurisdiction

In ***Association of Justice Counsel v. Treasury Board***, 2011 PSLRB 135, The Association of Justice Counsel (AJC) filed a policy grievance against changes the employer made to standby duty, which was required outside work hours. Historically, it was voluntary and compensated. The changes made it mandatory and removed the compensation. The AJC submitted that the employer acted unreasonably when exercising its managerial rights and when administering an earlier arbitral award on the issue. It also argued that the changes violated section 7 of the *Canadian Charter of Rights and Freedoms*, which it submitted includes the right of respect for private life. The adjudicator allowed the employer's preliminary objection on jurisdiction. The AJC filed an application for judicial review.

In ***Association of Justice Counsel v. Canada (Attorney General)***, 2013 FC 806, the Federal Court set aside the decision and referred the matter back to the Board. The Court disagreed with the adjudicator's conclusion that the policy grievance depended on the existence of a specific provision in the relevant collective agreement about standby duty on Friday nights and weekends. It found that the grievance was based on a collective agreement provision that requires the employer to act reasonably, fairly and in good faith when administering the collective agreement, including in any of the policies or decisions made under its managerial rights authority. The adjudicator also had jurisdiction under the *PSLRA* to determine the constitutional issues in the grievance and failed to take into account the applicable legislation, the scheme of the legislation and the collective agreement. The addition of a compensation provision to the parties' new collective agreement did not render the matter moot. At play were not only procedural but also substantive rights.

The Court observed that the scope of the managerial rights clause continues to be disputed and that the constitutional issue continues to be an open question.

Disguised Discipline, a Separate Agency and Jurisdiction

The Federal Court of Appeal allowed the grievor's appeal in ***Boutziouvis v. Financial Transactions and Reports Analysis Centre of Canada***, 2013 FCA 118 ("*Boutziouvis FCA*"). This matter has been covered in earlier annual reports but not in relation to the Federal Court of Appeal decision. Under its enabling statute, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) can terminate employment "otherwise than for cause." In this case, the FINTRAC, a separate agency, purported to terminate the grievor's employment "otherwise than for cause" and paid the grievor compensation in lieu of notice at common law.

The FINTRAC had not been designated under subsection 209(3) of the *PSLRA* for the purposes of allowing its employees to refer to adjudication grievances relating to ". . . termination for any reason that does not relate to a breach of discipline of misconduct," as stated in paragraph 209(1)(*d*).

In ***Boutziouvis v. Financial Transactions and Reports Analysis Centre of Canada***, 2010 PSLRB 135, the adjudicator ordered that the grievor be reinstated on the basis that the employer's termination decision had been disciplinary.

The employer's application for judicial review was allowed in ***Financial Transactions and Reports Analysis Centre of Canada v. Boutziouvis***, 2011 FC 1300. The Federal Court found that the adjudicator's decision must be reviewed on the standard of correctness and that the adjudicator could not assume jurisdiction. The employer was entitled to terminate the grievor's employment on payment in lieu of reasonable notice.

In *Boutziouvis FCA*, the Federal Court of Appeal reversed the Federal Court's decision and determined that the adjudicator's finding was reasonably open to him to make. In addition, the adjudicator's finding contained no error because the employer decided to produce no evidence in support of the termination. The Court also commented that the question of whether an adjudicator has the jurisdiction to look into a matter when a dismissal takes place "otherwise than for cause" did not arise on the facts of this case and that there was no need to express any opinion on this issue.

Counselling and Procuring an Illegal Strike

King v. Canada (Attorney General), 2013 FCA 131, and the subsequent refusal of an application for leave to the Supreme Court of Canada (SCC), ended the journey of the issues raised in the adjudicator's decision in ***King v. Deputy Head (Canada Border Services Agency)***, 2010 PSLRB 125. The adjudicator upheld the deputy head's decision to suspend the grievor, a representative of his bargaining agent, for 30 days and to subsequently terminate him for posting on the bargaining agent's website two statements that violated the prohibition on counselling and procuring an illegal strike contained in subsection 194(1) of the *PSLRA*.

In ***King v. Canada (Attorney General)***, 2012 FC 488, the Federal Court dismissed the application for judicial review. It found that the adjudicator based his findings of fact on the totality of the evidence and supported them by reasons and that it was open to the adjudicator to conclude that the grievor's postings were not a form of expression in representational duties that were protected in the legislation. The 30-day suspension and termination were within the appropriate range for discipline despite the fact that at the hearing, the disciplinary measures that had been imposed were substantially reduced.

The Federal Court of Appeal also denied the grievor's appeal, stating that the Federal Court judge had fully reviewed the arguments and that the adjudicator's reasons met the criteria with respect to justification, transparency and intelligibility. The decision was defensible in respect of the facts and the law and was within the range of possible and acceptable outcomes. Leave to appeal before the Supreme Court was refused in ***King v. Canada (Attorney General)***, [2013] S.C.C.A. No. 316 (QL).

The PSLRB's Intervention Before the SCC

This year, the Board applied for and was granted intervener status before the SCC. The Board also made oral arguments at the SCC hearing. The SCC issued its reasons in ***Bernard v. Canada (Attorney General)***, 2014 SCC 13. The decision under review pertained to whether the Board's decision in ***Professional Institute of the Public Service of Canada v. Canada Revenue Agency***, 2011 PSLRB 34, ("*PIPSC v. CRA*, 2011") was reasonable.

The SCC described the circumstances of the case as a "legal odyssey." Long before making its way to the country's highest court, the Professional Institute of the Public Service of Canada (PIPSC) made an unfair labour practice complaint when the Canada Revenue Agency refused to provide it with its members' contact information. The Board found that the employer's refusal to provide contact information to the PIPSC violated the principles underlying the duty to bargain in good faith (***Professional Institute of the Public Service of Canada v. Treasury Board and Canada Revenue Agency***, 2008 PSLRB 13).

The Board subsequently issued consent orders endorsing an agreement that the union and the employer had reached (***Professional Institute of the Public Service of Canada v. Canada Revenue Agency***, 2008 PSLRB 58). The order required the employer to provide the union, on a quarterly basis, with the home mailing addresses and home telephone numbers of all bargaining unit employees, which the employer had in its human resources information systems.

Elizabeth Bernard, a bargaining unit employee, had not participated in the development of the consent order. As a Rand-formula employee, she was not a member of the union but was entitled to the benefits of the collective agreement and to union representation. She did not have the right to opt out of the union's role as exclusive bargaining agent. She filed an application for judicial review, objecting to the Board's order that required her employer to disclose her home address and telephone number to the bargaining agent. She argued that disclosing the information to the PIPSC violated her privacy rights and her constitutional right to freedom of association. The Federal Court of Appeal remitted the matter back to the Board in ***Bernard v. Attorney General of Canada***, 2010 FCA 40.

In its second decision on the substantive issue, the Board heard from Ms. Bernard and the Privacy Commissioner. In *PIPSC v. CRA*, 2011, it concluded that employers are required to provide bargaining unit members' home-contact information to the bargaining agents that represent them because they need that information to carry out their representational duties. The bargaining agents must ensure that the information is kept secure and that it is used only for representational purposes. The Board put other safeguards

in place with respect to encryption and to disposing of out-of-date contact information, in addition to the safeguards provided in its earlier consent order. The Board did not address Ms. Bernard's constitutional argument because the Federal Court of Appeal's directions required it to only assess the privacy rights of the employees in the bargaining unit.

Ms. Bernard brought an application for judicial review before the Federal Court of Appeal, which was dismissed in ***Bernard v. Canada (Attorney General)***, 2012 FCA 92. Her appeal to the SCC was dismissed.

The SCC found that the Board's decision was reasonable. Unions have the exclusive right to bargain on behalf of all employees in a bargaining unit, including Rand employees. They also require an effective means of contacting employees to discharge their representational duties. The employer vetted work contact information before it reached the bargaining agents, and it was insufficient. The majority of the SCC found that the Board was entitled not to hear the constitutional arguments on the redetermination of the matter. However, even had the Federal Court of Appeal erred with respect to the scope of the Board's mandate on reconsideration, Ms. Bernard's arguments about paragraph 2(*d*) (freedom of association) and section 8 (search or seizure) of the *Canadian Charter of Rights and Freedoms* would not have succeeded.