



Federal Public Sector
Labour Relations and
Employment Board

Federal Public Sector Labour Relations and Employment Board

2018-2019 Annual Report

Canada

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Federal Public Sector Labour Relations and Employment Board

Chairperson:	Catherine Ebbs
Vice-Chairpersons:	David Paul Olsen Margaret Shannon
Full-time Members:	Stephan J. Bertrand Nathalie Daigle Bryan R. Gray Chantal Homier-Nehmé John G. Jaworski Steven B. Katkin James Knopp David Orfald Marie-Claire Perrault Nancy Rosenberg
Part-time Members:	Dan Butler Paul Fauteux Linda Gobeil Ian R. Mackenzie Augustus Richardson

The Honourable Karina Gould MP
Minister of Democratic Institutions
House of Commons
Ottawa ON K1A 0A6

Dear Minister,

It is my pleasure to transmit to you, pursuant to section 42 of the *Federal Public Sector Labour Relations and Employment Board Act*, the Annual Report of the Federal Public Sector Labour Relations and Employment Board covering the period from April 1, 2018, to March 31, 2019, for submission to Parliament.

Yours sincerely,

Catherine Ebbs
Chairperson

Chairperson's message

It is my privilege to present the 2018-2019 Annual Report of the Federal Public Sector Labour Relations and Employment Board ("the Board").

During the year in review, the Board maintained its ongoing commitment towards resolving labour relations and employment issues in an impartial manner and supporting harmonious labour relations and employment practices in the federal public sector and Parliament. On that note, I am very happy to announce that the Board can now count on the support of a larger complement of members. In the past year, 3 full-time members were appointed as well as 5 part-time members, which brings the Board's composition to 1 chairperson; 12 full-time members, including 2 vice-chairpersons; and 5 part-time members.

A continued focus this past year has been the modernization of our case management strategies through more effective processes. Adversarial hearings are only one approach to dispute resolution. As part of its case management modernization efforts, the Board emphasizes earlier resolution through triage, case management conferences, mediation, and other approaches. This progressive approach represents a shift in the Board's processes and contributes to its three key ongoing priorities: case management modernization, case management effectiveness, and greater efficiency in our overall processes. It is also worth mentioning that the Board created a task force presided over by one of its vice-chairpersons that is prepared to help the parties in their efforts to reach productive settlements with respect to pay-related disputes, should they require our assistance.

The past fiscal year was very active with respect to legislative changes, including the coming into force of two significant acts that address the collective bargaining regimes and harassment and violence issues arising for Parliamentary employees. Those Acts are described in Part II of this report. Finally, the beginning of another major round of collective bargaining will keep us busy as the majority of collective agreements for the federal public service expired in 2018.

I wish to sincerely thank our Board members and our service provider, the Administrative Tribunals Support Service of Canada and its personnel, in particular the employees of the Board's secretariat. Thank you for your support and continuing commitment towards the accomplishments detailed in this report.

Catherine Ebbs
Chairperson
Federal Public Sector Labour Relations and Employment Board

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Part I: Who We Are

Our mandate

The Federal Public Sector Labour Relations and Employment Board (FPSLREB) is an independent quasi-judicial statutory tribunal created by the *Federal Public Sector Labour Relations and Employment Board Act (FPSLREBA)*, which came into force on November 1, 2014.

The Board offers a dispute resolution and adjudication venue, underlined by public sector values, for the federal public sector and Parliament in key labour relations and employment areas. It is committed to resolving labour relations and employment issues impartially and fairly. Specifically, the Board

- administers the collective bargaining and grievance adjudication systems for the federal public sector, as well as for the institutions of Parliament;
- resolves complaints related to internal appointments, appointment revocations, and lay-offs in the federal public service;
- resolves human rights issues in grievances and complaints that are already within its jurisdiction;
- resolves pay equity complaints in the federal public service;
- administers reprisal complaints of public servants under the *Canada Labour Code*; and
- administers the collective bargaining and grievance adjudication systems in its capacity as the Yukon Teachers Labour Relations Board and the Yukon Public Service Labour Relations Board.

In fulfilling its mandate, the Board contributes to a productive and efficient workplace and helps achieve harmonious labour relations and a fair employment environment for federal public sector employers and employees and their bargaining agents.

The Board's mission

GOALS AND OBJECTIVES

- Assist the parties in resolving disputes through case management, dispute resolution, and adjudication services.
- Conduct hearings in accordance with the law and principles of natural justice.
- Render timely decisions.
- Assist the parties in resolving differences on their own.
- Consult with the parties on FPSLREB processes.
- Educate and inform clients and the public on the FPSLREB's role, services, and jurisprudence.

KEY PRIORITIES

The Board has identified the following key priorities: case management modernization, case management effectiveness, and greater efficiency in its overall processes.

To that effect, the launch of our new case management system in March 2018 has helped the Board move towards our goal of modernization by helping with the alignment of procedures and the consolidation and grouping of cases. Other initiatives, such as the adoption of a practice

direction on the exchange of document lists between parties before a hearing, are geared to improving the Board's processes.

The above-mentioned initiatives, among others, are all indicative of the Board's overall commitment to active case management and greater efficiency. The different initiatives and changes taken on by the Board in the past year are described in greater detail later on in this report.

Our responsibilities

Under the *FPSLREBA*, the Board is responsible for interpreting and applying the following legislation:

Federal Public Sector Labour Relations Act (FPSLRA)

- Collective bargaining and grievance adjudication systems for the federal public sector and Parliament, as well as RCMP members and reservists.

Public Service Employment Act (PSEA)

- Complaints related to internal appointments, appointment revocations, and lay-offs in the federal public service.

Canadian Human Rights Act (CHRA)

- Human rights issues in grievances and complaints under *FPSLRA* and *PSEA*.

Parliamentary Employment and Staff Relations Act (PESRA)

- Collective bargaining and grievance adjudication for the institutions of Parliament.*

Public Sector Equitable Compensation Act (PSECA)

- Pay equity complaints in the federal public service.
- Will be repealed and replaced by the *Pay Equity Act*, which is not yet in force (see the proposed and legislative changes on page 20 of this report).

Pay Equity Act

- This Act will replace the *PSECA*.
- While it received Royal Assent on December 13, 2018, it is not yet in force.

Part II of the Canada Labour Code (CLC)

- Complaints related to workplace health and safety and reprisals in the federal public service.

*Cases before the Board in relation to the *PESRA* or to its functions with the Yukon government are outlined in separate annual reports.

Our clients

FPSLRA

Approximately 250 000 federal public service employees

- 16 different employers
- 26 bargaining agents
- 82 bargaining units

PSEA

Approximately 200 000 employees and managers

- Approximately 100 different departments and employers
- 15 bargaining agents
- 27 bargaining units

PESRA

Over 1400 Parliamentary employees

- 7 different employers
- 6 bargaining agents
- 13 bargaining units

The Treasury Board is the main employer covered by our mandate. It employs over 180 000 public servants in 27 bargaining units, while more than 65 000 public service employees work for one of the other employers, such as the Canada Revenue Agency or the National Energy Board.

The majority of unionized federal public service employees are represented by the Public Service Alliance of Canada (60%). The Professional Institute of the Public Service of Canada is the second-largest bargaining agent, representing 23% of unionized employees. The remaining 17% are represented by the other 25 bargaining agents.

Other FPSLREB clients include employees excluded from bargaining units and those who are not represented. Please refer to Appendices 6 and 7 for a list of employers, bargaining agents, and bargaining units.

Our people

THE BOARD

In accordance with section 25 of the *FPSLREBA*, the chairperson supervises and directs the work of the Board, which is composed of the chairperson, up to 2 vice-chairpersons, and 12 full-time members, along with additional part-time members as required to carry out the Board's powers, duties, and functions.

Currently, the Board is composed of the chairperson, 2 vice-chairpersons, and 10 full- and 5 part-time members. Board members are appointed based on their expertise and experience working with either management or bargaining agents in the labour relations field or due to their applied knowledge in areas of expertise such as staffing complaints, human rights, or dispute resolution, to name just a few.

Note that Board members represent neither the employer nor employees. They must be impartial when exercising their powers and performing their duties and functions (see subsection 6(4) of the *FPSLREBA*).

THE ATSSC AND THE FPSLREB SECRETARIAT

The Administrative Tribunals Support Service of Canada's (ATSSC) FPSLREB Secretariat is led by the executive director and general counsel, who is responsible for leading and supervising its daily operations and who is directly supported by its staff of approximately 65 employees within its dispute resolution, registry, legal, and business operational support services. The ATSSC is also responsible for providing support services with respect to information technology, human resources, financial services, and facilities to the FPSLREB and the FPSLREB Secretariat.

Part II: The Year in Review

Case management

ELECTRONIC CASE MANAGEMENT PROCESS INTEGRATION

Building on the Board's priorities of case management modernization and greater efficiency in its overall processes, the 2018-19 fiscal year included a substantial focus on case management initiatives.

With the launch of the Board's integrated electronic case management system, Casebook, in March 2018, the Board gained access to an invaluable tool. As users have gained familiarity with the system and its Board-specific features, Casebook has proven integral to improving case management processes. For example, added capacity for file consolidation, schedule integration, and grouping contributes to streamlining case processes. In addition, improved reporting features, based on the Board's unique needs, strengthen data reliability and allow for ongoing monitoring and goal development. Casebook also includes the functionality necessary for providing e-filing services.

E-FILING

The new e-filing platform was launched in March 2019 and is available for use on the Board's website, beginning with the ability to file complaints pursuant to the *Public Service Employment Act (PSEA)*.

Work is ongoing to broaden e-filing capabilities to include grievance referrals in the near future and ultimately to provide an electronic platform through which everyone can initiate the full range of Board

services through a modern, accessible, and carefully designed tool. The platform is an important step in ensuring that client service stays current in the present-day environment, and it prioritizes access to justice as paramount in tribunal function and service delivery.

PRACTICE DIRECTION

Beyond the Board's dedication to electronic tools, policy changes have also taken place to improve its processes. Beginning in September 2018, the Board adopted a practice direction on the exchange of document lists between parties before hearings in labour relations matters. It requires the sharing between parties of lists of all arguably relevant material in an effort to prevent unexpected adjournments and promote efficiency in the hearing process. It is hoped that this requirement will effectively promote party engagement before a hearing, leading to earlier resolution without adjudication, the reduction of evidentiary issues, and improved clarity in matters that proceed to a hearing.

ACTIVE CASE MANAGEMENT

Previous annual reports have referred to the fact that a hearing is only one way in which disputes may be resolved before the Board. A number of other case management tools are at its disposal. Although case management has long been an identified focus of the Board, recent history has been marked by legislative and structural change requiring the establishment of new

organizational priorities and initiatives between late 2014 and the present day. Throughout the Board's evolution, significant resources were focused on ensuring continued operations. For example, organizational change meant leveraging and integrating staff, examining internal processes, and expanding the Board's capacity for data management and analysis through both technology and human resources. Cumulatively, development since the inception of the modern Board in November 2014 has facilitated a renewal of case management initiatives. It is referred to as "active case management" because it is a more proactive process, with a differentiated case management approach at its heart. It is consistent with the Board's ongoing approach that resolution may happen without holding a hearing and with ensuring greater efficiency in the processes.

The Board is committed to active case management and the development of a cohesive and integrated case management framework. Board discussions throughout 2018-19 have recognized that while additional Board members will allow for scheduling more hearings, active consideration should be given to resolving the matter before a hearing or narrowing the issues significantly before the hearing. To that end, the Board has begun applying differentiated case management as an alternative route to resolution. For example, a task force has been created to assist with prevalent labour relations issues pertaining to the Phoenix pay system, as required.



RCMP-related matters

The Board is now responsible for RCMP matters involving collective bargaining, unfair labour practices, and grievances related to collective agreements.

The following table provides an update on the status of the files that the Board heard with respect to the RCMP in the past year:

NATURE OF APPLICATION	BARGAINING AGENT	EMPLOYEES	STATUS
Determination of membership in bargaining unit (s. 58 of the <i>FPSLRA</i>)	Professional Institute of the Public Service of Canada	All employees occupying positions in the Computer Personnel (SPS-CP) sub-group, other than those appointed to rank or reservists, be included in the Computer Systems (CP) group	Application allowed (April 13, 2018)
Determination of membership in bargaining unit (s. 58 of the <i>FPSLRA</i>)	Professional Institute of the Public Service of Canada	All employees occupying positions in the Forensic Laboratory and Identification (FLI-FLSL) sub-group, other than those appointed to rank or reservists, be included in the Applied Science and Patent Examination (SP) group.	Application allowed (April 13, 2018)
Determination of membership in bargaining unit (s. 58 of the <i>FPSLRA</i>)	Professional Institute of the Public Service of Canada	All employees occupying positions in the Electronics Engineer and Architecture (SPS-EE, EGR) sub-group, other than those appointed to rank or reservists, be included in the Architecture, Engineering and Land Survey (NR) group.	Application allowed (April 13, 2018)
Determination of membership in bargaining unit (s. 58 of the <i>FPSLRA</i>)	Professional Institute of the Public Service of Canada	All employees occupying positions in the Chaplain (SPS-CHP) sub-group, other than those appointed to rank or reservists, be included in the Health Services (SH) group. The class of employees included in the Health Nursing (SPS-HN), Medical Officer (SPS-MO), or Psychologist (SPS-PSY) sub-group, other than those appointed to rank or reservists, is included in the Health Services (SH) group.	Application allowed (April 13, 2018)
Determination of membership in bargaining unit (s. 58 of the <i>FPSLRA</i>)	Professional Institute of the Public Service of Canada	All employees occupying positions in the Research Scientist (SPS-RS) sub-group, other than those appointed to rank or reservists, be included in the Research (RE) group.	Application allowed (April 13, 2018)
Determination of membership in bargaining unit (s. 58 of the <i>FPSLRA</i>)	Professional Institute of the Public Service of Canada	All employees occupying positions in the Purchasing and Supply (SPS-PUR) sub-group, other than those appointed to rank or reservists, be included in the Audit, Commerce and Purchasing (AV) Group.	Application allowed (March 14, 2019)
Application for certification (s. 54 of the <i>FPSLRA</i>)	Association des Membres de la Police Montée du Québec	All employees appointed to rank or reservists working in the province of Quebec.	Pending
Application for certification (s. 54 of the <i>FPSLRA</i>)	National Police Federation	All employees appointed to rank or reservists.	Pending
Determination of membership in bargaining unit (s. 58 of the <i>FPSLRA</i>)	Canadian Merchant Service Guild	All employees, other than those appointed to rank or reservists, occupying positions in the Marine (SPS-MA) group and working as Marine Engineers aboard RCMP patrol vessels on the West Coast of Canada, be included in the bargaining unit composed of all employees of the employer in the Ships' Officers Group.	Pending

The Board's human rights mandate

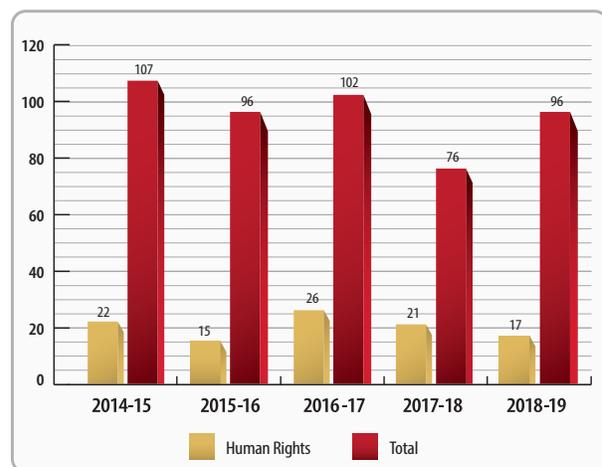
The Board also issues a considerable number of decisions that address human rights issues. These issues are embedded in a variety of matters, from labour relations grievances and staffing complaints to unfair labour practices and collective bargaining. Under the *FPSLRA*, grievance adjudication hearings may include human rights components on a variety of issues, including discrimination and the duty to accommodate. Complaints filed under the *PSEA* may also include a human rights component. At the present time, with the exception of decisions issued after a hearing (see Figure 1), the Board cannot assess precisely the number of cases that are initially referred to it that have a human rights component. There are many reasons for this, namely, because human rights issues are interwoven within the labour relations and employment grievances and complaints. Additionally, some cases involving human rights issues can be settled without a hearing.

In 2018-2019, 17.7% of decisions issued after a hearing included a human rights issue. During the same period, 27% of grievances that proceeded to mediation included a human rights issue. This discrepancy indicates that matters involving a human rights issue, such as discrimination or harassment, are more prone to be

resolved in an earlier stage of the process, for example through mediation or conference settlement, than through a formal hearing.

Figure 1 compares the number of decisions with a human rights component issued after a hearing to the number of overall decisions issued by the Board, from 2014-2015 until March 31, 2019.

Figure 1 - Decisions (labour relations or staffing) with a human rights component issued since 2014-2015 compared to total decisions rendered by the Board from November 1, 2014, to March 31, 2019.



Outreach activities

Outreach activities are an important part of the Board's work. They provide an opportunity to hold high-level discussions with key stakeholders on practices and case management issues, to communicate with and consult stakeholders on the legislative changes impacting the work of the Board, and to discuss the ongoing modernization initiatives the Board is taking with respect to case management and resolution. Outreach activities can take different forms, from stakeholder consultations and training sessions to speaker engagements and professional development, as demonstrated in the following sections of this report.

CLIENT CONSULTATION COMMITTEES

The Client Consultation Committees are an important part of the Board's work. They provide an important means of communicating with the Board's stakeholders on high-level issues related to the Board's operations. In this past fiscal year, the Board continued its pilot project with the Correctional Service of Canada and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN. This project has helped the parties find innovative approaches towards facilitating the resolution of a number of cases before the Board.

PRESENTATIONS

This past year has been very active with respect to speaking engagements and presentations. Here is an overview of the different meetings and conferences where the Board or its representatives accepted speaking engagements related to its mandate and activities:

Association of Labour Relations Agencies (ALRA)
<ul style="list-style-type: none"> • Co-chair of roundtable of adjudicators and chairpersons of labour boards: Chairperson of the Board • Co-chair of roundtable of administrators and lawyers of labour boards: Executive Director and General Counsel of the FPSLREB Secretariat • Panel member of workshop on mental health and the adjudication process: Executive Director and General Counsel of the FPSLREB Secretariat • Panel member of workshop on mental health and the mediation process: Director, Mediation and Dispute Resolution Services (MDRS), FPSLREB Secretariat
Union of Safety and Justice Employees
<ul style="list-style-type: none"> • Presentation on mediation in front of the National Executives of the Union of Safety and Justice Employees: Director, Mediation and Dispute Resolution Services (MDRS), FPSLREB Secretariat, along with a mediator from the MDRS • Training session on staffing complaints in front of regional vice-presidents: Senior Legal Counsel and Legal Counsel, Legal Services, FPSLREB Secretariat
Université de Montréal and McGill University
<ul style="list-style-type: none"> • Panel member of a discussion on the Federal Public Sector Labour Relations and Employment Board and mediation: Articling Student, Legal Services, FPSLREB Secretariat
Ottawa Human Rights and Labour Law Conference
<ul style="list-style-type: none"> • Panel member of a discussion on “How to tell who is telling the truth: How do adjudicators assess credibility”: a Board member
Canadian Institute for the Administration of Justice
<ul style="list-style-type: none"> • Panel member, National Roundtable on Administrative Law: ADR, Access to justice and the public interest: a Board member • Co-chair, National Roundtable on Administrative Law: Senior Legal Counsel, Legal Services, FPSLREB Secretariat
Public Service Alliance of Canada
<ul style="list-style-type: none"> • Presenters, overview of the mediation and adjudication process in front of grievance and adjudication officers: Acting Director, Registry Services, FPSLREB Secretariat; Mediator, Mediation and Dispute Resolution Services, FPSLREB Secretariat
Canadian Council of Administrative Tribunals
<ul style="list-style-type: none"> • Presenters, interactive course on adjudication, Canadian Council of Administrative Tribunals: Chairperson of the Board; Executive Director and General Counsel, FPSLREB Secretariat, along with a senior legal counsel and two legal counsel, Legal Services, FPSLREB Secretariat • Panel members, Annual Symposium of the Canadian Council of Administrative Tribunals: Introduction to administrative law, jurisdiction and fairness: Executive Director and General Counsel along with a senior legal counsel, FPSLREB Secretariat
Employment and Social Development Canada (ESDC)
<ul style="list-style-type: none"> • Training session on staffing complaints before ESDC employees: Senior Legal Counsel and Legal Counsel, Legal Services, FPSLREB Secretariat

Intervention before the Federal Court of Appeal

This past year, the Board made the exceptional decision to exercise its right to seek standing to make submissions in two applications for judicial review of its decisions. Those two applications, along with the Board's submissions, were addressed by the Federal Court of Appeal in *Canada (Attorney General) v. Public Service Alliance of Canada*, 2019 FCA 41, which is summarized in Appendix 9 of this report.

The Board's submissions were on the interpretation and application of s. 34(1) of the *FPSLREBA*, the Board's privative clause, which on a plain reading limits the grounds available to applicants seeking judicial review of Board decisions (see section 34(1) of the *FPSLREBA*). It is noteworthy that aside from the Board, only six other federal tribunals have a similar privative clause.¹

The Board argued that the applicant was trying to relitigate the Board's findings of fact and law. As the Board's privative clause excludes questions of law or fact from the purview of judicial review, the Board requested that the applications be dismissed on that basis.

Among other things, the Board maintained that the privative clause supports the fair, credible, and efficient resolution of labour relations disputes and harmonious labour-management relations by ensuring that the Board's decisions are not routinely subject to judicial review. Such routine review creates uncertainty, undermines the breadth of its privative clause, and does not support judicial economy or efficiency.

The Federal Court of Appeal upheld the Board's two decisions and dismissed the applications for judicial review. However, it determined that s. 34(1) of the *FPSLREBA* cannot exclude any ground of review provided under the *Federal Courts Act*. The Court did specify that the presence of the privative clause is to be interpreted as meaning that the Court should give considerable deference to the Board when reviewing its decisions.

¹ The Canada Industrial Relations Board; the Conflict of Interest and Ethics Commissioner; a verifier, ratification officer, arbitrator, or neutral evaluator under the *First Nations Land Management Act*; a pipeline claims tribunal established under the *National Energy Board Act*; and a nuclear claims tribunal established under the *Nuclear Liability and Compensation Act*.



Proposed and recent legislative changes

The following table provides an overview of proposed or recent legislative changes that impact or that may impact the FPSLREB's mandate and work. These legislative changes were moving through Parliament or the Senate or had been passed into law as of March 31, 2019:

BILLS OR LEGISLATION	GENERAL SUMMARY	STATUS AS OF MARCH 31, 2019
<p><i>Budget Implementation Act, 2009</i> (S.C. 2009, c. 2)</p> <p>Tabled in the House of Commons on February 2, 2009.</p>	<p>The Act enacts the <i>Public Sector Equitable Compensation Act</i> and makes consequential amendments to other Acts. The purpose of the Act is to ensure that proactive measures are taken to provide employees in female-predominant job groups with equitable compensation.</p> <p>The Act requires public sector employers that have non-unionized employees to determine periodically whether any equitable compensation matters exist in the workplace and, if so, to prepare a plan to resolve them. With respect to public sector employers that have unionized employees, the employers and the bargaining agents are to resolve those matters through the collective bargaining process.</p> <p>The Act sets out the procedure for informing employees as to whether an equitable compensation assessment was required to be conducted and, if so, how it was conducted, and how any equitable compensation matters were resolved. It also establishes a recourse process for employees if the Act is not complied with.</p> <p>Finally, since the Act puts in place a comprehensive equitable compensation scheme for public sector employees, the Act amends the <i>Canadian Human Rights Act</i> so that the provisions of that Act dealing with gender-based wage discrimination no longer apply to public sector employers. It extends the mandate of the Public Service Labour Relations Board to allow it to hear equitable compensation complaints and to provide other services related to equitable compensation in the public sector.</p> <p><i>A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures</i>, S.C. 2018, c. 27 (Bill C-86), not yet in force, repeals the provisions of the <i>Budget Implementation Act, 2009</i> that enact the <i>Public Sector Equitable Compensation Act</i>, which has not yet been brought into force.</p>	<p>The Act received Royal Assent on November 26, 2018.</p> <p>The <i>Public Sector Equitable Compensation Act</i> was not yet in force.</p>
<p>Bill C-5, <i>An Act to repeal Division 20 of Part 3 of the Economic Action Plan 2015 Act, No. 1</i></p> <p>Tabled in the House of Commons on February 5, 2016.</p>	<p>The Bill proposes to repeal Division 20 of Part 3 of the <i>Economic Action Plan 2015 Act, No. 1</i>, which authorizes the Treasury Board to establish and modify, despite the <i>Federal Public Sector Labour Relations Act</i>, terms and conditions of employment related to the sick leave of employees who are employed in the core public administration.</p> <p>The Bill is incorporated in <i>An Act to amend the Federal Public Sector Labour Relations Act and other Acts</i>, S.C. 2018, c. 24 (Bill C-62).</p>	<p>The Bill was introduced and received first reading in the House of Commons on February 5, 2016.</p> <p>The Bill was awaiting second reading in the House of Commons.</p>

<p>Bill C-34, <i>An Act to amend the Public Service Labour Relations Act and other Acts</i></p> <p>Tabled in the House of Commons on November 28, 2016.</p>	<p>The Bill proposes to amend the <i>Federal Public Sector Labour Relations Act</i> to restore the procedures for the choice of process of dispute resolution including those involving essential services, arbitration, conciliation, and alternative dispute resolution that existed before December 13, 2013.</p> <p>The Bill also proposes to amend the <i>Public Sector Equitable Compensation Act</i> to restore the procedures applicable to arbitration and conciliation that existed before December 13, 2013.</p> <p>The Bill proposes to repeal provisions of the <i>Economic Action Plan 2013 Act, No. 2</i> that are not in force that amend the <i>Federal Public Sector Labour Relations Act</i>, the <i>Canadian Human Rights Act</i>, and the <i>Public Service Employment Act</i> and to repeal provisions of the <i>Economic Action Plan 2014 Act, No. 1</i> that, once in force, will amend those provisions of the <i>Economic Action Plan 2013 Act, No. 2</i>.</p> <p>The Bill is incorporated in <i>An Act to amend the Federal Public Sector Labour Relations Act and other Acts</i>, S.C. 2018, c. 24 (Bill C-62).</p>	<p>The Bill was introduced and received first reading in the House of Commons on November 28, 2016.</p> <p>The Bill was awaiting second reading in the House of Commons.</p>
<p>Bill C-44, <i>An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures</i></p> <p>Tabled in the House of Commons on April 11, 2017.</p>	<p>The Bill extends the Board's mandate with respect to the <i>Canada Labour Code (CLC)</i> and parliamentary employees.</p> <p>It amends Part III of the <i>CLC</i>, which deals with occupational health and safety. Pursuant to section 88(1) of the <i>PESRA</i>, an applicable employee will have the opportunity to file a complaint with the Board alleging that an employer has taken action against him or her in contravention of the <i>CLC</i>. The Board also acquires jurisdiction with respect to appeals of ministerial decisions and directions under section 146(1) of the <i>CLC</i>.</p> <p>Further, the definitions of employee and employer in Part III of the <i>PESRA</i> will be broader than in Part I. New sections will also be added providing that the Board must notify the speaker of the Senate or of the House of Commons, or both, of a complaint or an appeal of a direction under the <i>CLC</i>.</p>	<p>The Bill received Royal Assent on June 22, 2017.</p> <p>The relevant provisions, under section 88, had not come into force during the year in review.</p>
<p><i>An Act to amend the Federal Public Sector Labour Relations Act and other Acts</i>, S.C. 2018, c. 24 (Bill C-62)</p> <p>Tabled in the House of Commons on October 17, 2017.</p>	<p>The Act combines elements of both Bill C-5 and Bill C-34 and restores the federal public sector labour relations regime that existed before the coming into force of both the <i>Economic Action Plan 2013 Act, No. 2</i> and the <i>Economic Action Plan 2015 Act, No. 1</i>.</p> <p>The Act amends the <i>Federal Public Sector Labour Relations Act</i> to restore the procedures for the choice of process of dispute resolution, essential services, arbitration, conciliation, and alternative dispute resolution that existed before December 13, 2013.</p> <p>Before December 13, 2013, a bargaining agent could choose the process for dispute resolution — either arbitration or conciliation. However, as of December 13, 2013, unless the level of essential services (designated at the sole discretion of the employer) was at least 80% of the employees in a bargaining unit, the conciliation/strike route was the only dispute resolution option. The Act repeals this requirement and reverts to allowing a bargaining agent to choose either arbitration or conciliation as the process for dispute resolution.</p>	<p>The Act received Royal Assent on November 26, 2018, and came into force on that day.</p>

	<p>The Act essentially restores the essential services procedure that existed before December 13, 2013.</p> <p>The Act also amends the <i>Public Sector Equitable Compensation Act</i> to restore the procedures applicable to arbitration and conciliation that existed before December 13, 2013.</p> <p>The Act also repeals provisions of the <i>Economic Action Plan 2013 Act, No. 2</i> that were never brought into force. These included (1) the creation of free-standing human rights grievances and the elimination of an employee's right to access the Canadian Human Rights Commission's complaints process, (2) mandatory bargaining agent representation before the Board with respect to grievances, except those relating to <i>Canadian Human Rights Act</i> discriminatory practices, (3) the cost recovery of adjudication expenses from bargaining agents and deputy heads, and (4) restrictions on the ability of the Board to extend timelines with respect to grievances to "exceptional circumstances".</p> <p>The Act repeals Division 20 of Part 3 of the <i>Economic Action Plan 2015 Act, No. 1</i>, which authorized the Treasury Board to establish and modify, despite the <i>Federal Public Sector Labour Relations Act</i>, terms and conditions of employment related to the sick leave of employees who were employed in the core public administration.</p>	
<p><i>An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1, S.C. 2018, c. 22 (Bill C-65)</i></p> <p>Tabled in the House of Commons on November 7, 2017.</p>	<p>The Act brings protection from workplace harassment and violence into Part II of the <i>Canada Labour Code's</i> (CLC) occupational health and safety regime.</p> <p>The Act amends Part II of the <i>CLC</i> to strengthen its framework for the prevention of harassment and violence, including sexual harassment and violence, in the workplace. The Board retains its current mandate for reprisal complaints from federal public service employees, and its mandate will expand to include health and safety matters under Part II of the <i>CLC</i> for employees within the parliamentary context.</p> <p>There is currently no legislative recourse mechanism for health and safety matters under Part II of the <i>CLC</i> for parliamentary employees covered by the <i>PESRA</i>. Once the new Part III of the <i>PESRA</i> comes into force, the FPSLRB will acquire a new mandate for parliamentary employees, including most political staffers, for (1) complaints of reprisals, (2) appeals of ministerial "work refusal" decisions with respect to an "absence of danger", and (3) appeals of ministerial directions with respect to a complaint related to a contravention of the <i>CLC</i>. All these recourse mechanisms could be used by employees alleging violence or harassment in the workplace as well as any other matters that relate to the prevention of any accidents, illnesses, or injuries, including psychological illness and injury.</p>	<p>The Act received Royal Assent on October 25, 2018.</p> <p>The Act was not yet in force.</p>

<p>Bill C-81, <i>An Act to ensure a barrier-free Canada</i></p> <p>Tabled in the House of Commons on June 20, 2018.</p>	<p>The Bill proposes to enact the <i>Accessible Canada Act</i>. Its goal is to create a barrier-free Canada by enhancing the “full and equal” participation of all individuals in society, especially those with disabilities, by identifying, removing, and preventing barriers in areas under federal jurisdiction.</p> <p>The Bill also proposes to make related amendments to a number of acts, including the <i>PESRA</i>, the <i>FPSLRA</i>, and the <i>PSEA</i>.</p> <p>The Bill authorizes the Governor in Council to make regulations to establish accessibility standards. The Bill provides that certain federal public sector and parliamentary employees may present grievances alleging a contravention of these regulations, which could be referred to the Board for adjudication without being linked to any of the other types of grievances that are currently referred to the Board for adjudication. The Board would be entitled to interpret and apply the <i>Accessible Canada Act</i> in adjudicating those grievances.</p> <p>Similarly, the Bill proposes that, with respect to some internal staffing matters in the federal public sector, employees would be able to raise an issue involving the contravention of these regulations and the Board would be entitled to interpret and apply the <i>Accessible Canada Act</i> in determining if the complaint is substantiated.</p> <p>There is an additional appeal framework applicable to the Board under the <i>Accessible Canada Act</i>. The legislation provides for the appointment of the Accessibility Commissioner as a member of the Canadian Human Rights Commission. Parliamentary staff who do not have recourse under the <i>PESRA</i> as well as members of the public can file complaints with the Accessibility Commissioner that a parliamentary entity is in contravention of the regulations. If their complaint is dismissed, these complainants can appeal the Accessibility Commissioner’s decision to the Board. The appeal function is a new procedural framework for the Board.</p>	<p>The Bill was referred to the Standing Senate Committee on Social Affairs, Science and Technology on March 21, 2019.</p> <p>The Bill was not yet in force.</p>
<p><i>A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures</i>, S.C. 2018, c. 27 (Bill C-86)</p> <p>Tabled in the House of Commons on October 29, 2018.</p>	<p>Division 14 of Part 4 of Bill C-86 (“Division 14”) enacts the <i>Pay Equity Act</i>, which establishes a process for remedying systemic gender-based discrimination experienced by employees who work in predominantly female job classes.</p> <p>Division 14 also amends the <i>PESRA</i> to provide for the application of the Act to parliamentary employees, with certain adjustments. Once the amendments to <i>PESRA</i> come into force, the Board will administer those provisions. Division 14 repeals the provisions of the <i>Budget Implementation Act, 2009</i> that enact the <i>Public Sector Equitable Compensation Act</i>, which has not yet been brought into force.</p>	<p>The Bill received Royal Assent on December 13, 2018.</p> <p>Division 14 comes into force on a day fixed by order of the Governor in Council. No order was issued yet, and these provisions were not yet in force.</p>

Part III: The Board's Activities

Since 2014, the year of the merger of the Public Service Staffing Tribunal and the Public Service Labour Relations Board, the Board has had to deal with an increasing workload. Gladly, the Board now has a larger complement of Board members which will assist in tackling this ongoing challenge. As mentioned earlier in this report, the Board is also conducting a review of its case management strategies with a view to reducing delays and facilitating timely resolution of cases (see the section on Case management at page 11 of this report).

Cases opened and closed under the *FPSLRA* and the *PSEA*

In 2018-2019, the Board opened 2214 new files under the *FPSLRA* (74%) and the *PSEA* (26%). This increased number of new files is tied to the high number of pay-related grievances that were referred to the Board at the end of the fiscal year and that arise from Phoenix-related issues (Figures 6 and 7).

During that same year, the Board closed 1678 files under the *FPSLRA* (72%) and the *PSEA* (28%), a decrease from 2017-2018, when 1996 files were closed under those two Acts. In addition, 946 files were pending closure or, precisely, 24 were awaiting confirmation of withdrawal, and 922 were awaiting confirmation of the implementation of the settlement.

Of the 922 files that are awaiting confirmation of settlement, 598 are directly linked to the CX Grievance reduction strategy

pilot project, for which the Board continues its work with Correctional Service of Canada and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN.

As shown with the CX Grievance Reduction Strategy pilot project, not all Board cases proceed to a formal hearing with the Board member issuing a final decision through reasons for decision. There are many other methods of resolution, including decisions on jurisdiction, mediation, and mediation/arbitration. In addition, through the steps of the case management process, parties often resolve matters before a hearing. Figure 2 provides an overview of the number of files opened and closed under the *FPSLRA* and the *PSEA* in 2017-2018 and 2018-2019.

Figure 2 - Files opened and closed under the *FPSLRA* and the *PSEA*, 2017-2018 and 2018-2019

LEGISLATION	FILES OPENED 2018-2019	FILES OPENED 2017-2018	FILES CLOSED 2018-2019	FILES CLOSED 2017-2018
<i>Federal Public Sector Labour Relations Act (FPSLRA)</i>	1630	1355	1204	1451
<i>Public Service Employment Act (PSEA)</i>	584	624	474	545
Total	2214	1979	1678	1996

Overview of cases filed under the *FPSLRA*

GRIEVANCES

The majority of cases before the Board under the *FPSLRA* are grievances. They can be divided into three main types: individual grievances (section 209), group grievances (section 216), and policy grievances (section 221) (see Figure 3). Individual grievances comprise 98% of all grievances filed with the Board. The majority (83%) of individual grievances referred to the Board involve the interpretation of a wide range of provisions under collective agreements, from anti-discrimination clauses to the duty to accommodate employees. Individual grievances involving disciplinary actions, such as terminations, suspensions, or demotions, account for the remaining 17% of individual grievances referred to the Board (see Figure 4).

Figure 3 provides an overview of grievances referred to adjudication by type in the past four fiscal years. Figure 4 breaks down the main subject area of individual grievances referred to adjudication in the past year.

Figure 3 - Types of grievances referred under Part II of the *FPSLRA*: 2015-2016 to 2018-2019

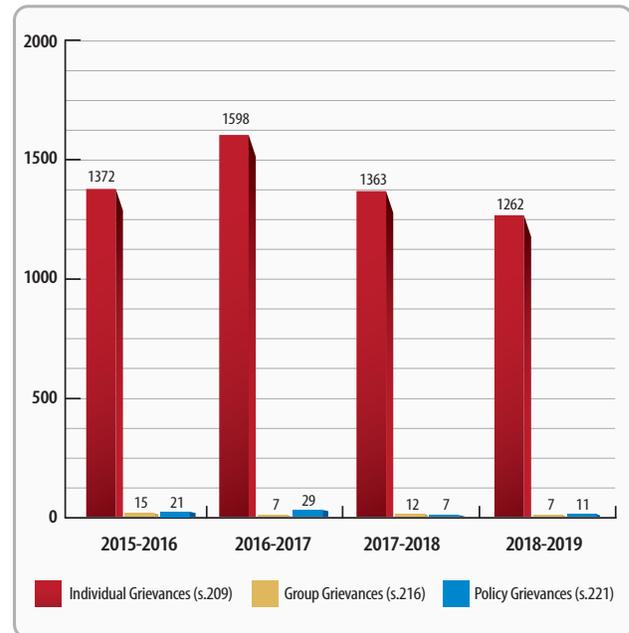
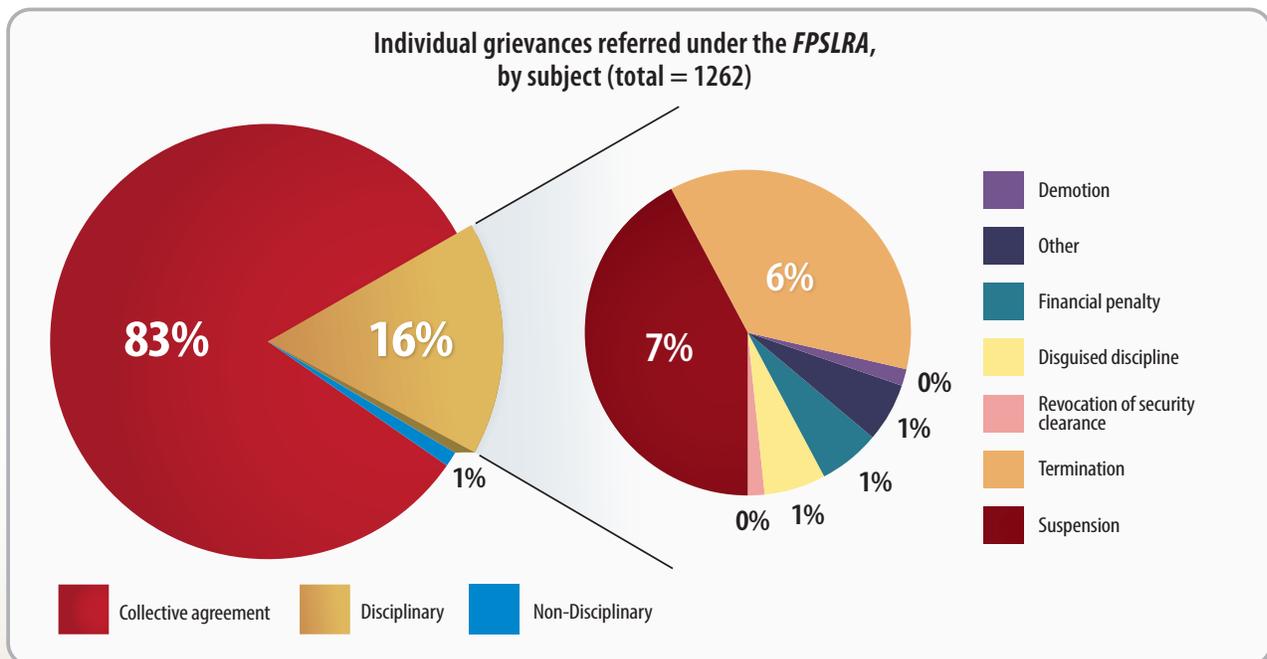


Figure 4 - Types of Individual grievances filed under the *FPSLRA*, by main subject area, 2018-2019

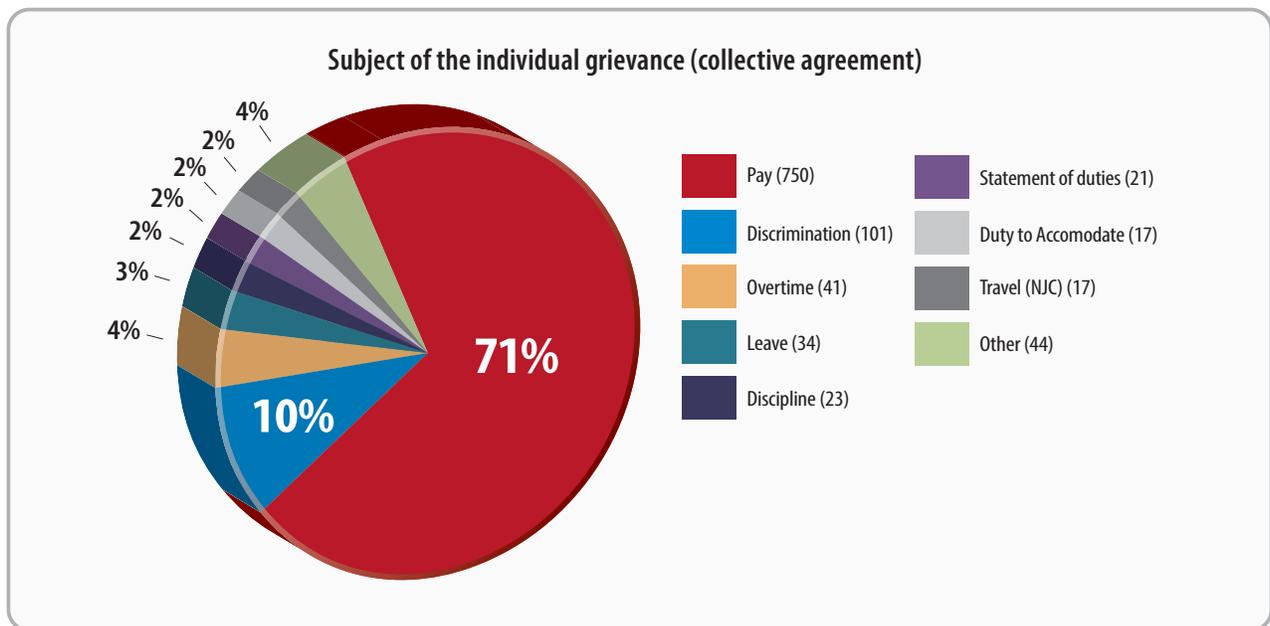


INTERPRETATION AND APPLICATION OF A PROVISION OF A COLLECTIVE AGREEMENT

Individual grievances related to the interpretation and application of a provision of a collective agreement involve a wide range of subjects, from discrimination and duty-to-accommodate matters, to leave, travel, overtime, and pay. As in the last year, it is reasonable to assume that the increase in the number of pay-related grievances is attributable to the issues with the Phoenix pay system.

Figure 5 provides an overview of grievances related to the interpretation and application of a provision of a collective agreement.

Figure 5 - Individual grievances (collective agreement) filed under the *FPSLRA*, by subject, 2018-2019



PAY-RELATED GRIEVANCES

This past fiscal year, the Board received 758 pay-related grievances under section 209(1)(a) of the *FPSLRA*, which represents 61% of all grievances filed with the Board. Pay-related grievances have increased since 2015-2016, when they accounted for approximately 12% of new grievances referrals. In 2016-2017 and 2017-2018, they accounted for 50% and 41%, respectively, of all grievance referrals under section 209(1)(a).

As mentioned earlier, the high percentage of pay-related grievances since 2015-2016 most likely arises from the issues with the Phoenix pay system and are not representative of historic trends.

Figure 6 provides a breakdown of pay-related grievances by department or employer, while Figure 7 provides one by bargaining agent.

Figure 6 - Number of pay-related grievances by department or employer, 2018-2019

DEPARTMENT OR EMPLOYER	NUMBER OF GRIEVANCES
Department of Employment and Social Development	529
Department of Veterans Affairs	116
Correctional Service of Canada	28
Department of Fisheries and Oceans	30
Department of National Defence	12
Canada Revenue Agency	11
Department of the Environment	7
Department of Transport	5
Department of Public Works and Government Services	4
Department of Health	3
Department of Foreign Affairs, Trade and Development	2
Department of Natural Resources	2
Immigration and Refugee Board	2
Department of Citizenship and Immigration	2
Canada Border Services Agency	1
Department of Justice	1
Parks Canada Agency	1
Canadian Food Inspection Agency	1
Department of Indigenous Services Canada	1
Total	758

Figure 7 - Number of pay-related grievances by bargaining agent, 2018-2019

BARGAINING AGENT	NUMBER OF PAY-RELATED GRIEVANCES
Public Service Alliance of Canada	692
Professional Institute of the Public Service of Canada	41
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada	10
Canadian Association of Professional Employees	4
UNIFOR Local 2182	2
Association of Canadian Financial Officers	1
Total	750

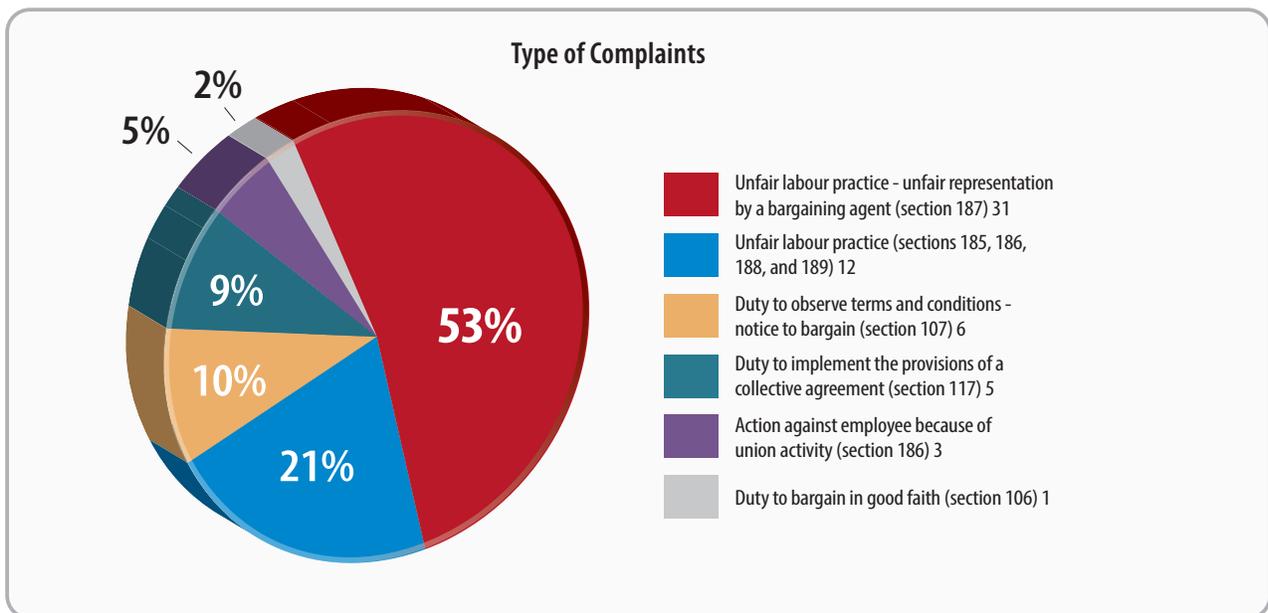
**COMPLAINTS UNDER PART 1 OF THE *FPSLRA*
- UNFAIR LABOUR PRACTICES**

Under Part 1 of the *FPSLRA*, an employer, a bargaining agent, or an employee is allowed to file a complaint with the Board. Complaints under Part 1 include allegations of an unfair labour practice by an employer, bad-faith representation by a bargaining agent, and the failure of an employer or a bargaining agent to bargain collectively in good faith.

As in previous years, most of the complaints filed under Part 1 related to an unfair labour practice by an employer, an employee organization, an individual, or unfair representation by a bargaining agent. This year, the Board received 47 complaints alleging an unfair labour practice out of a total of 58 complaints.

Figure 8 provides an overview of complaints filed under Part 1 of the *FPSLRA*, by type, in 2018-2019.

Figure 8 - Types of complaints received under Part 1 of the *FPSLRA*



APPLICATIONS UNDER PART 1 OF THE *FPSLRA*

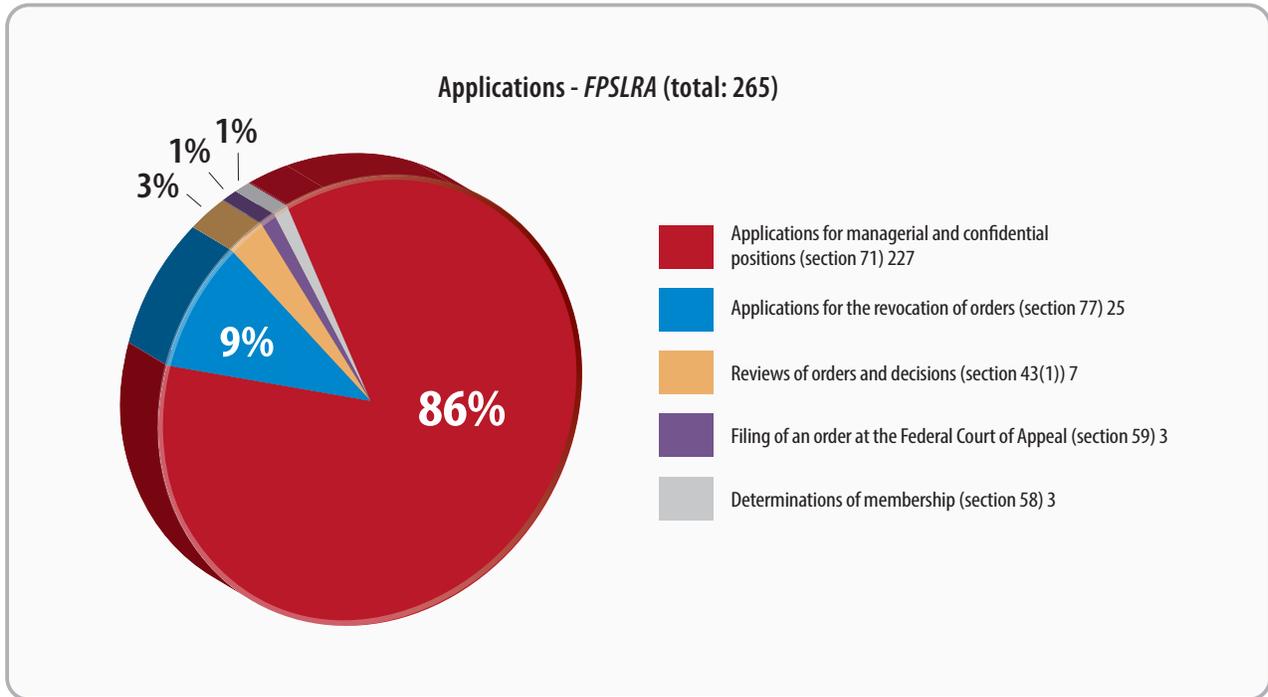
In the past year, the Board received 265 applications pertaining to Part 1 of the *FPSLRA*. This represents a slight increase from the 224 applications received last year.

Applications made to the Board include bargaining agent membership, certification of a bargaining agent, decertification of a bargaining agent, and successor

rights, as well as applications pertaining to the managerial or confidential exclusions of positions. The applications received represented 16% of the total cases received in 2018-2019. The majority of applications received this year were for orders declaring positions managerial or confidential (86%).

Figure 9 provides an overview of the applications filed with the Board under the *FPSLRA* by type in 2018-2019.

Figure 9 - Applications filed under the *FPSLRA* by type, 2018-2019



COMPLAINTS UNDER PART 3 OF THE *FPSLRA* - REPRISALS UNDER THE *CANADA LABOUR CODE*

Under Part 3 of the *FPSLRA*, the Board may hear complaints under Part II of the *CLC* alleging a reprisal by the employer against an employee invoking his or her rights under the *CLC*. There has been a substantial increase in the number of complaints for reprisals filed under the *CLC* this year, rising from 7 complaints in 2017-2018 to 24 complaints in 2018-2019.

This increase is due to the referral of 10 complaints from the same department arising from allegations of harassment following claims of workplace violence.

Overview of cases filed under the *Public Service Employment Act (PSEA)*

The Board has authority under the *PSEA* to examine and resolve complaints involving lay-offs (section 65(1)), revocations of appointments (section 74), internal appointments (section 77(1)), and failures to implement corrective action (section 83). This past fiscal year, the number of complaints filed with the Board under the *PSEA* was consistent with previous years. Cases filed under the *PSEA* represented 26% of all files received by the Board in 2018-2019. Specifically, in the past year, the Board received 584 complaints under the *PSEA*.

Figure 10 provides a breakdown of staffing complaints file under the *PSEA* in 2018-2019.

Figure 10 - Number of complaints filed under the PSEA by type, 2018-2019

TYPE OF STAFFING COMPLAINTS	NUMBER OF STAFFING COMPLAINTS
Complaints to the Board about lay-offs (section 65(1))	3
Revocations of appointment (section 74)	6
Internal appointments (section 77(1))	575
Advertised	244
Non-advertised	327
Lack of jurisdiction	4
Total	584

During 2018-2019, the majority of complaints received were about internal appointments (98.5%). Other complaints filed with the Board under the *PSEA* are related to layoffs (0.5%) or revocation of appointments (1%). These percentages have been consistent for the last three years. However, we have noticed a decrease in the number of complaints filed under the *PSEA*, from 734 complaints in 2016-2017 to 584 in 2018-2019.

Fifty-seven percent (57%) of complaints related to internal appointments were about non-advertised processes. This percentage represents an increase from last year, when complaints related to non-advertised processes represented 45% of all complaints received. This increase could be linked to the implementation of the Public Service Commission's new appointment policy that was introduced in 2016.

Collective Bargaining

Under the *FPSLRA*, the Board is responsible for the administration of two formal dispute resolution processes provided for under that legislation once an impasse has been reached in collective bargaining. Conciliation involves the appointment by the minister of a Public Interest Commission (PIC) to assist the parties through the issuance of non-binding recommendations. The report of the PIC's recommendations is a key prerequisite to a bargaining agent attaining the legal right to conduct strike action.

The second option is arbitration. In that case, the chairperson of the FPSLRB appoints an arbitration board that has the authority to issue a final and binding award.

The 2018-2019 fiscal year marked the beginning of another round of negotiations in the broader federal public service. Between April and September 2018, notice to bargain was served for most bargaining units, signaling the commencement of the negotiation process. In 2018-2019, three arbitral awards were issued, which related to the previous round of collective bargaining. Of that number, two involved requests for arbitration that had been carried forward from the previous fiscal year, and one involved a request for arbitration covering two bargaining units for which requests had been received in August 2018. Two additional requests for arbitration were received this fiscal year, one with respect to the previous round of collective bargaining, and the other with respect to the current round. Both will be carried over into the 2019-2020 fiscal year.

No PICs were held in the current fiscal year. The Board did receive four coordinated requests for the establishment of PICs from one of the largest bargaining agents operating within its jurisdiction. However, after reviewing those requests, the Chairperson elected to delay the establishment of any PIC and directed the parties to return to the bargaining table for further negotiations. Another request was likewise delayed, although in that case, the Chairperson appointed a

mediator to assist the parties. The mediation is scheduled to take place early in the next fiscal year.

During the latter part of this fiscal year, the Board received one request for mediation in relation to collective bargaining. Due to the date of this request, the mediation is scheduled to be conducted in the following fiscal year.

Mediations of grievances and complaints

Mediation is a voluntary process that is made available to all parties with matters before the Board. Parties may agree to proceed to mediation when the file is referred to the Board as well as at any time before a decision is rendered by an adjudicator. In mediation, parties are assisted by an impartial third party with no decision-making power. Any settlement reached by the parties

in this process is confidential and does not create a precedent. When mediation is successful, other disputes may also be resolved at other agencies or at the internal departmental grievance level.

In 2018-2019, the Board completed 160 mediations of grievances and complaints; 87 were conducted under the *PSEA*, with a settlement rate of 79%, and 73 were conducted under the *FPSLRA*, with a settlement rate of 87%. As a result, 239 files at the Board were settled without the need for a hearing. These mediations also led to the settlement of 28 files still at the departmental level, 6 complaints before the Canadian Human Rights Commission, and 1 complaint before the Occupational Health and Safety Tribunal Canada. A further 14 files were settled with the assistance of a mediator but without the need for formal mediation.

Figure 11 provides an overview of the types of files settled at mediation.

Figure 11 - Number of files by type, 2018-2019

TYPE	NUMBER
Staffing complaints	111
Individual grievances	101
Unfair labour practices	24
Policy grievances	1
<i>Canada Labour Code</i> complaints	1
Group grievances	1
Total	239

Figures 12 and 13 provide a breakdown of staffing complaints and individual grievances that account for 46% and 42%, respectively, of all files settled at mediation. Twenty-eight (28) individual grievances related to claims of discrimination for which the following grounds were cited : disability (23), gender (2), race (2) and family status (1).

Figure 12 - Number of staffing complaints per section of the PSEA

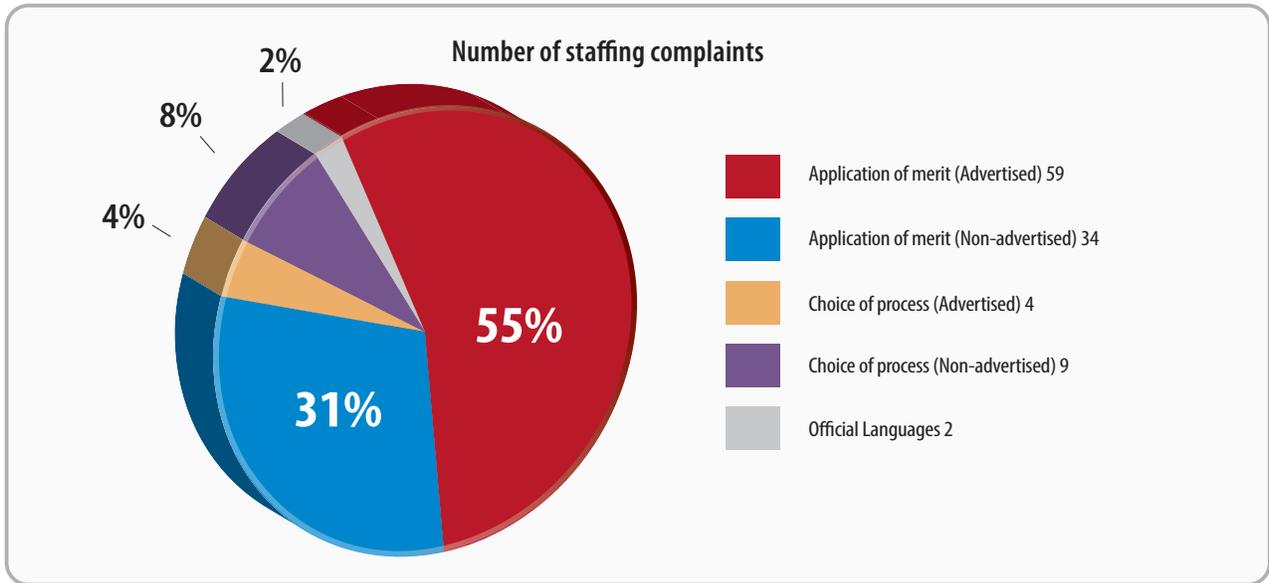
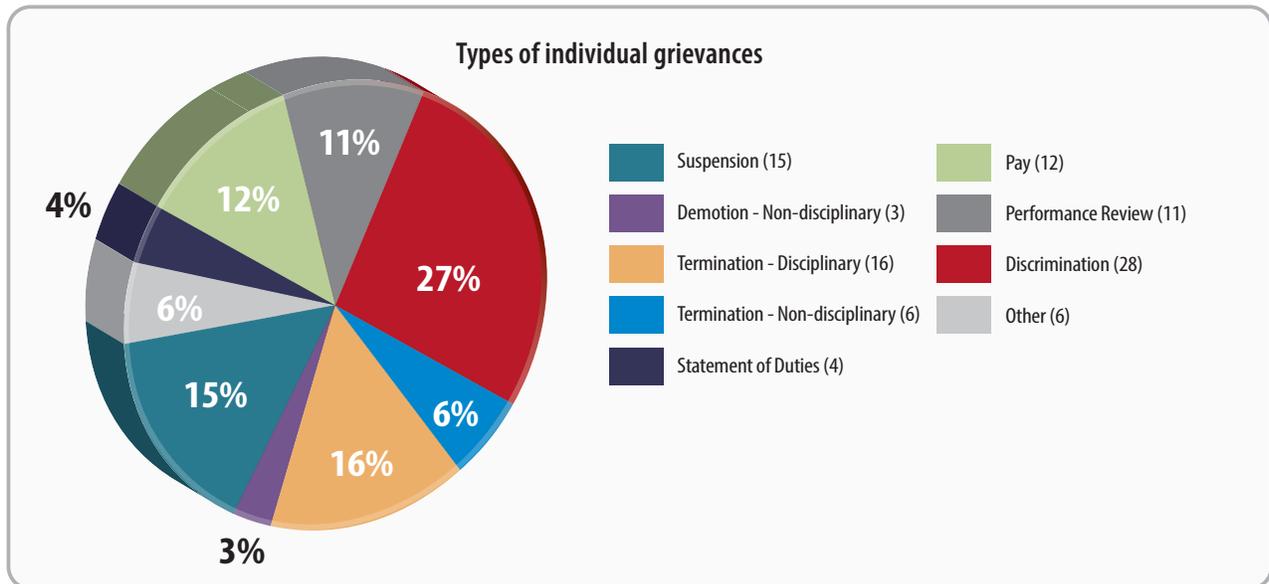


Figure 13 - Individual grievances by type, 2018-2019



Openness and Privacy

Open justice

The FPSLREB is an independent quasi-judicial tribunal, and its decisions can affect the entire public service and Canadians in general.

The open court principle is significant in our legal system and is constitutionally protected. It also prevents abuse that can occur in closed-door hearings and promotes the rule of law and the administration of justice. Accordingly, the Board conducts its hearing in public, save for exceptional circumstances. The Board also maintains an open justice policy to foster transparency in its processes, accountability, and fairness in its proceedings.

Parties that engage the Board's services are made aware that they are embarking on a process that presumes a public airing of the dispute between them, including the public availability of decisions. Parties and their witnesses are subject to public scrutiny when giving evidence before the Board. The identity of the party or witness is generally considered essential to endorsing the public accountability of a specific person and what he or she has to say at a proceeding. Board decisions identify parties and their witnesses by name and set out information about them only to the extent that is relevant and necessary to determining the dispute.

In some instances, the Board may limit openness with respect to the circumstances of parties or witnesses that appear in proceedings before it. In these exceptional circumstances, the Board departs from its open justice principles and may grant requests to maintain the confidentiality of specific evidence and tailor its decisions to accommodate protecting an individual's privacy (including holding a hearing in private, sealing exhibits containing sensitive medical or personal information, or protecting the identities of witnesses or third parties). The Board may grant such requests when they accord with applicable recognized legal principles.

The Board's policy is consistent with the statement (<http://www.hfatf-fptaf.gc.ca/declaration-en.php>) of the Council of Federal Tribunal Chairs (endorsed by the Council of Canadian Administrative Tribunals) and the principles found in the Protocol for the Use of Personal Information in Judgments (http://cjc-ccm.gc.ca/cmslib/general/news_pub_techissues_UseProtocol_2005_en.pdf) approved by the Canadian Judicial Council.

The Board's Policy on Openness and Privacy can be found at https://www.fpslreb-crtespf.gc.ca/privacy_e.asp.

Access to case files

The *Access to Information Act* and the *Privacy Act* do not apply to Board case files. However, the Board provides public access to case files for consultation in accordance with the open court principle and the rules of natural justice.

With appropriate notice, the Board will provide access to its case files — only in paper format, and only at its offices. The case files, including exhibits filed at a hearing, are available to the public once the decision on the merits of the case has been rendered or the Board has otherwise closed the file. However, exhibits ordered sealed are not available.

The public cannot access an individual's personal information such as a home address, personal email address, personal phone number, date of birth, etc. In addition, information protected through other forms of privilege, such as solicitor-client privilege, cannot be accessed. Finally, some case files, i.e., grievances that Canadian Security Intelligence Service employees have referred to adjudication, are not available to the public for consultation.

ACCESS TO DECISIONS BY THE PUBLIC

The Board provides public access to its decisions in accordance with the open court principle, and final decisions are posted on the Board's website. To balance public access and privacy concerns, the Board has taken measures to prevent Internet searches of full-text posted decisions by using the "web robot exclusion protocol", which Internet search engines recognize (e.g., Google or Yahoo). A search of a person's name will not yield any information from full-text posted decisions.

DISPOSAL OF CASE FILES

Board case files are disposed of in accordance with the schedule approved by the Librarian and Archivist of Canada. Exhibits are kept for two years following the final decision on a case.

Organizational Contact Information

For all inquiries, including hearing confirmations, mediation questions, and questions from the media, please see the contact information detailed below. The Board's hours of operation are from 8:00 a.m. to 4:00 p.m. (EST), Monday to Friday. Before making an inquiry, we encourage you to visit http://fpslreb-crtespf.gc.ca/index_e.asp for information about the Board.

Labour relations email:

mail.courrier@fpslreb-crtespf.gc.ca

Staffing complaints email:

director.directeur@fpslreb-crtespf.gc.ca

Telephone: **613-990-1800**

Toll free: **866-931-3454**

Fax: **613-990-1849**

TTY (teletype): **866-389-6901**

Access to information and privacy: **613-957-3169**

Jacob Finkelman Library: library-bibliotheque@tribunal.gc.ca

Media enquiries: **613-954-0452** or media-medias@tribunal.gc.ca

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Federal Public Sector Labour Relations and Employment Board
P.O. Box 1525, Station B
Ottawa, Ontario
Canada
K1P 5V2

Appendix 1

Total caseload for the FPSLREB from 2015-2016 to 2018-2019

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			
2015-2016	4897	1392	39	348	1779	1027	5649
2016-2017	5649	1967	47	269	2283	1167	6765
2017-2018	6765	1072	74	209	1355	1466	6654
2018-2019	6654	1283	82	265	1630	1203	7081

PUBLIC SERVICE EMPLOYMENT ACT:

FISCAL YEAR	CARRIED FORWARD FROM PREVIOUS YEARS	NEW COMPLAINTS	COMPLAINTS CLOSED	CARRIED FORWARD TO NEXT YEAR
2015-2016	203	595	448	350
2016-2017	350	734	683	401
2017-2018	401	623	549	475
2018-2019	475	584	474	585

Appendix 2

Matters filed with the Board under different parts of the *Federal Public Sector Labour Relations Act* 2018-2019

PART 1 - <i>FPSLRA</i>	NUMBER OF MATTERS
Part 1 - Labour Relations	
Review of orders and decisions (section 43(1))	7
Determination of membership (section 58)	3
Filing of order in Federal Court (section 234(1))	3
Complaints	
Complaints (sections 106 and 107)	7
Duty to implement provisions of a collective agreement (section 117)	5
Unfair labour practices (sections 185, 186, 188, and 189)	15
Unfair labour practices - unfair representation (section 187)	31
Managerial or confidential positions	
Application for managerial or confidential positions (section 71)	227
Application for revocation of order (section 77)	25
PART 2 - GRIEVANCES	
Individual grievances (section 209)	1262
Group grievances (section 216)	7
Policy grievances (section 221)	11
PART 3 - OCCUPATIONAL HEALTH AND SAFETY	
Reprisals under section 133 of the <i>Canada Labour Code</i> (section 240)	24
FEDERAL PUBLIC SECTOR LABOUR RELATIONS REGULATIONS	
Part 2 - Grievances	
Extension of time (section 61)	3
Total	1630

Appendix 3

Matters filed under different parts of the *Public Service Employment Act 2018-2019*

PART 4 - PSEA	NUMBER OF MATTERS
Complaint to the Board about a lay-off (section 65(1))	3
PART 5 - INVESTIGATIONS AND COMPLAINTS RELATING TO APPOINTMENTS	
Revocation of appointment (section 74)	6
Grounds of complaint - Internal appointments (section 77(1))	575
Total	584

Appendix 4

Complaints filed under the *Public Service Employment Act* by department 2018-2019

DEPARTMENT	NUMBER OF COMPLAINTS RECEIVED	PERCENTAGE
Administrative Tribunals Support Service of Canada	1	0.2%
Canada Border Services Agency	30	5%
Canada School of Public Service	2	0.3%
Canadian Grain Commission	2	0.3%
Canadian Space Agency	1	0.2%
Correctional Service of Canada	59	10%
Department of Agriculture and Agri-Food	1	0.2%
Department of Canadian Heritage	2	0.3%
Department of Citizenship and Immigration	34	6%
Department of Employment and Social Development	137	23%
Department of Finance	3	0.5%
Department of Fisheries and Oceans	16	3%
Department of Foreign Affairs	12	2%
Department of Health	16	3%
Department of Indigenous Relations and Northern Affairs Canada	13	2%
Department of Industry	10	2%

DEPARTMENT	NUMBER OF COMPLAINTS RECEIVED	PERCENTAGE
Department of Justice	7	1%
Department of National Defence	79	14%
Department of Natural Resources	4	0.7%
Department of Public Safety and Emergency Preparedness	2	0.3%
Department of Public Works and Government Services	22	4%
Department of the Environment	17	3%
Department of Transport	9	2%
Department of Veterans Affairs	4	0.7%
Immigration and Refugee Board	4	0.7%
National Parole Board	1	0.2%
National Research Council of Canada	1	0.2%
Office of Infrastructure of Canada	9	2%
Office of the Co-ordinator, Status of Women	3	0.5%
Office of the Governor General's Secretary	1	0.2%
Office of the Superintendent of Bankruptcy Canada	1	0.2%
Parks Canada Agency	2	0.3%
Privy Council Office	2	0.3%
Public Health Agency of Canada	2	0.3%
Public Prosecution Service of Canada	2	0.3%
Royal Canadian Mounted Police	35	6%
Shared Services Canada	25	4%
Statistics Canada	10	2%
Statistics Survey Operations	1	0.2%
Treasury Board Secretariat	2	0.3%
Total	584	100%

Appendix 5

Applications, complaints, and grievances filed under the *Federal Public Sector Labour Relations Act* by bargaining agent 2018-2019

BARGAINING AGENT	NUMBER OF MATTERS
Public Service Alliance of Canada	1161
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada	144
Professional Institute of the Public Service of Canada	135
Self-represented (other than by bargaining agent)	107
Canadian Association of Professional Employees	33
Professional Association of Foreign Service Officers	11
Association of Canadian Financial Officers	11
Association of Justice Counsel	9
Federal Government Dockyard Trades and Labour Council East	8
Research Council Employees' Association	5
International Brotherhood of Electrical Workers, Local 2228	2
UNIFOR Local 2182	2
Canadian Merchant Service Guild	1
Canadian Federal Pilots Association	1
Total	1630

Appendix 6

Synopsis of applications for judicial review of decisions rendered by the FPSLREB

FISCAL YEAR	DECISIONS RENDERED ²	NUMBER OF APPLICATIONS	APPLICATIONS DISCONTINUED	APPLICATIONS DISMISSED	APPLICATIONS ALLOWED	APPLICATIONS PENDING ³
2015-2016	96	27	7	15	4	1
2016-2017	108	23	4	14	5	0
2017-2018	104	19	3	12	2	2
2018-2019	95	21	4	0	0	17

2 Decisions rendered do not include cases dealt with under the expedited adjudication process and managerial exclusion orders issued by the FPSLREB.

3 Applications that have yet to be dealt with by the Federal Court and the Federal Court of Appeal; does not include appeals of applications pending before the Federal Court of Appeal or the Supreme Court of Canada.

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

Appendix 7

Number of Bargaining Units and Public Service Employees by Employer and Bargaining Agent April 1, 2018, to March 31, 2019⁴

WHERE THE TREASURY BOARD OF CANADA IS THE EMPLOYER

BARGAINING AGENT	NUMBER OF BARGAINING UNITS	NUMBER OF PUBLIC SERVICE EMPLOYEES
Association of Canadian Financial Officers	1	4722
Association of Justice Counsel	1	2455
Canadian Association of Professional Employees	2	16 611
Canadian Federal Pilots Association	1	373
Canadian Merchant Service Guild	1	1159
Canadian Military Colleges Faculty Association	1	184
Federal Government Dockyard Chargehands Association	1	54
Federal Government Dockyard Trades and Labour Council East	1	604
Federal Government Dockyard Trades and Labour Council West	1	627
International Brotherhood of Electrical Workers, Local 2228	1	1060
Professional Association of Foreign Service Officers	1	1530
Professional Institute of the Public Service of Canada	6	37 572
Public Service Alliance of Canada	5	110 295
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada	1	6552
UNIFOR	3	259
Total for the Treasury Board of Canada	27	184 057

⁴ The data was provided by the employers.

OTHER EMPLOYERS

BARGAINING AGENT	NUMBER OF BARGAINING UNITS	NUMBER OF PUBLIC SERVICE EMPLOYEES
Canada Revenue Agency (CRA)		
Professional Institute of the Public Service of Canada	1	12 366
Public Service Alliance of Canada	1	30 561
Total	2	42 927
Canadian Food Inspection Agency (CFIA)		
Professional Institute of the Public Service of Canada	3	2028
Public Service Alliance of Canada	1	4194
Total	4	6222
Canadian Nuclear Safety Commission (CNSC)		
Professional Institute of the Public Service of Canada	1	775
Total	1	775
Canadian Security Intelligence Service (CSIS)		
Public Service Alliance of Canada	1	99
Total	1	99
Communications Security Establishment (CSE)		
Public Service Alliance of Canada	1	2684
Total	1	2684
National Capital Commission (NCC)		
Public Service Alliance of Canada	1	372
Total	1	372
National Energy Board (NEB)		
Professional Institute of the Public Service of Canada	1	410
Total	1	410
National Film Board (NFB)		
Canadian Union of Public Employees, Local 2656	1	83
Canadian Union of Public Employees, Local 4835	1	94
Professional Institute of the Public Service of Canada	2	166
Total	4	343

BARGAINING AGENT	NUMBER OF BARGAINING UNITS	NUMBER OF PUBLIC SERVICE EMPLOYEES
National Research Council of Canada (NRCC)		
Professional Institute of the Public Service of Canada	4	1743
Research Council Employees' Association (RCEA)	6	1824
Total	10	3567
Office of the Auditor General Canada (OAG)		
Public Service Alliance of Canada	1	169
Total	1	169
Office of the Superintendent of Financial Institutions (OSFI)		
Professional Institute of the Public Service of Canada	1	577
Public Service Alliance of Canada	1	12
Total	2	589
Parks Canada Agency (PCA)		
Public Service Alliance of Canada	1	5799
Total	1	5799
Social Sciences and Humanities Research Council of Canada (SSHRC)		
Public Service Alliance of Canada	2	204
Total	2	204
Staff of the Non-Public Funds, Canadian Forces (SNPF-CF)		
Public Service Alliance of Canada	10	629
United Food and Commercial Workers Union	12	575
Total	22	1204
Statistical Survey Operations (SSO)		
Public Service Alliance of Canada	2	1951
Total	2	1951
Total for separate employers	55	67 315
Total for the Treasury Board of Canada	27	184 057
Total for all employers	82	251 372

Appendix 8

Number of Bargaining Units and Public Service Employees by Bargaining Agent April 1, 2018, to March 31, 2019⁵

CERTIFIED BARGAINING AGENT	NUMBER OF BARGAINING UNITS	NUMBER OF PUBLIC SERVICE EMPLOYEES IN NON-EXCLUDED POSITIONS
Association of Canadian Financial Officers	1	4800
Association of Justice Counsel	1	2658
Canadian Association of Professional Employees	2	17 635
Canadian Federal Pilots Association	1	367
Canadian Merchant Service Guild	1	1100
Canadian Military Colleges Faculty Association	1	181
Canadian Union of Public Employees, Local 2656	1	80
Canadian Union of Public Employees, Local 4835	1	100
Federal Government Dockyard Chargehands Association	1	*50
Federal Government Dockyard Trades and Labour Council East	1	650

⁵ The data was provided by the bargaining agents.

* The number shown is as of March 31, 2018

**The number shown is as of March 31, 2018

CERTIFIED BARGAINING AGENT	NUMBER OF BARGAINING UNITS	NUMBER OF PUBLIC SERVICE EMPLOYEES IN NON-EXCLUDED POSITIONS
Federal Government Dockyard Trades and Labour Council West	1	800
International Brotherhood of Electrical Workers, Local 2228	1	1050
Professional Association of Foreign Service Officers	1	1550
Professional Institute of the Public Service of Canada	19	53 655
Public Service Alliance of Canada	27	141 704
Research Council Employees' Association	6	1845
Unifor, Local 87-M	1	3
Unifor, Local 2182	1	**300
Unifor, Local 5454 (Canadian Air Traffic Control Association)	1	8
Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN)	1	7011
United Food and Commercial Workers Union, Local 175	4	233
United Food and Commercial Workers, Local 401	1	125
United Food and Commercial Workers Union, Local 832	2	53
United Food and Commercial Workers Union, Local 864	3	179
United Food and Commercial Workers, Local 1400	1	5
United Food and Commercial Workers Union, Local 1518	1	51
Total	82	236 193

Note: The total in Appendix 8 does not equal the total indicated in Appendix 7 (from the Treasury Board and separate employers) because the employees included in Appendix 7 who were not represented by a bargaining agent are tabulated in their calculations.

Appendix 9

FPSLREB Decision Summaries

The Board issues many decisions each year. In addition, the Federal Court of Appeal issues decisions on matters that were before the Board and that were subject to judicial review. The following are representative summaries of key jurisprudence in the past fiscal year.

Discrimination

DISABILITY

Asare v. Treasury Board (Department of Indigenous and Northern Affairs), 2018 FPSLREB 57

The grievor referred a grievance to the Board for having been terminated for abandoning her position at the Department of Indigenous and Northern Affairs (“the employer”). The grievor alleged that the termination was without cause and was discriminatory.

The grievor had asked for unpaid leave to complete her studies, which was denied. She went on sick leave and ceased communicating with her employer. It was later determined that she was working elsewhere during the sick leave.

The Board did not make a determination as to whether she was absent without authorization because it found that she had valid reasons beyond her control. The Board found that her illness prevented her from working in the employer’s workplace during the period of certified illness, which included up to and beyond the date of the termination. The grievor also established a *prima facie* case of discrimination based on the grounds of disability.

The Board further determined that the employer had neither provided a reasonable non-discriminatory explanation for the termination nor met its statutory *bona fide* occupational requirement defence to the *prima facie* discrimination. The employer’s decision to terminate her employment was found discriminatory. Finally, it found that the grievor failed in her obligation to disclose to the employer in a timely way the fact that she pursued her PhD and worked as a teaching assistant while on approved sick leave.

The grievance was allowed.

An application for judicial review is pending before the Federal Court of Appeal.

Nadeau v. Deputy Head (Correctional Service of Canada), 2018 FPSLRB 28

In this case, the grievor filed a grievance contesting the termination of his employment, alleging discrimination under the *Canadian Human Rights Act* on the ground of disability.

The grievor was a correctional officer with the Correctional Service of Canada (“the employer”) and held a dog handler position at a penitentiary. The grievor admitted to using and obtaining cannabis, transporting it in the employer’s vehicle, and exposing his detector dog to the odour of cannabis.

The adjudicator found that the grievor was suffering from a cannabis addiction and that his termination partially constituted a discriminatory measure in that respect. The adjudicator noted that the employer did not submit evidence to show that the discrimination did not take place, that there was a bona fide occupational requirement concerning off-duty cannabis use, or that it had considered providing reasonable accommodation while it was aware of the grievor’s disability.

The adjudicator noted that the employer had paid for the grievor’s rehabilitation program and had terminated his employment after the completion of that program.

On the other hand, the adjudicator found that using the employer’s vehicle to transport cannabis for personal purposes and exposing the detector dog to the odour of cannabis, which could have harmed its abilities, were not connected to the grievor’s disability.

Given that the medical evidence did not indicate that his disability would have eliminated all control over his actions, the employer was justified in taking disciplinary action against the grievor. However, the adjudicator found

that termination was excessive, taking into account the mitigating factors, including that the employer allowed the grievor to continue working at the penitentiary until he was terminated.

The adjudicator substituted a six-month unpaid suspension for the termination, ordered the grievor reinstated at his group and level and ordered the deputy head to offer the grievor a position for which he is qualified, at the same group and level, while appropriately accommodating him if necessary on the basis of medical information to be provided by the grievor.

SEXUAL HARASSMENT

Doro v. Canada Revenue Agency, 2019 FPSLRB 6

The grievor was sexually harassed by her supervisor. On two occasions, the grievor was touched while she was at her desk, with one of those occasions described as a back rub. Among other things, the supervisor also gave the grievor two compact discs of love songs, sent her chocolate in the office mail, texted her in the evening and on weekends, made disturbing comments to her that suggested he was watching her residence, and sent sexually themed emails to her personal email account.

The Canada Revenue Agency (CRA) retained an independent investigator who concluded that 13 different instances of sexual harassment occurred. The supervisor was subsequently suspended without pay for six days.

None of the grievor’s allegations or the guilt of her harasser was at issue before the Board. Rather, the grievor sought compensation for the pain and suffering she endured as a result for the harassment and for the CRA’s behaviour in addressing the harassment along with reimbursement for her out-of-pocket costs for psychological treatment.

The CRA argued that it was not responsible for the actions of its supervisor because it did not consent to the commission of his acts and exercised all due diligence to prevent and subsequently mitigate the effects of the harassment.

The Board found that the CRA failed the grievor and that she was entitled to damages as a result.

In terms of the steps the CRA took to prevent the harassment, the Board found that no evidence was tendered to show that the supervisor attended or participated in any harassment prevention or awareness training or that he otherwise received, read, or understood any of the employer's related policies. Furthermore, while the CRA did not condone the initial harassment, its response to it aggravated the harm to the grievor and allowed the supervisor to continue harassing her. That is, the CRA's response to the harassment was to ask the grievor to move her workplace to a different city. When she refused, it then moved her desk without her agreement a few cubicles away from her original workspace. This new workspace was still in the immediate vicinity of the individual who harassed her and allowed him to watch the grievor from his desk and leer at her as she entered and left her work area. Shortly thereafter, the grievor left the workplace on an extended period of sick leave due to the stress, anxiety, and depression caused by the continuing harassment.

The Board found that the harassment, and the CRA's failure to respond effectively to it, caused real and ongoing harm to the grievor. The CRA should have taken more effective measures to prevent the sexual harassment, and once evidence of the harassment was discovered shortly after the initial complaint had been filed, it should have acted quickly to remove the harasser from the workplace and to provide the grievor with a safe work environment in her office and at her desk. The Board also found that it was insensitive of the CRA to ask the grievor if she wished to move her workplace to a different city, which only added to the harm she suffered as it made her feel as if she were at fault.

As such, the grievance was allowed and the CRA was ordered to take measures to prevent any further harassment from occurring in the future.

In addition, the Board awarded the grievor \$22 955 for out-of-pocket expenses for treatment and related costs arising from the harm caused to her health and well-being, and, pursuant to the *Canadian Human Rights Act*, \$20 000 for the pain and suffering she experienced due to the sexual harassment and an additional \$20 000 for the reckless manner in which the CRA handled her complaint, which allowed the harassment to continue.

Finally, the Board recommended that the CRA consider a comprehensive anti-sexual-harassment program to raise awareness of what sexual harassment is, how to identify it, the harm it causes, how to help prevent it or stop it, and how to report it.

Duty to accommodate

***Duval v. Treasury Board (Correctional Service of Canada)*, 2018 FPSLRB 52**

The grievor filed a grievance against the Correctional Service of Canada's failure to accommodate his return to work following a workplace injury. In February 2012, the employer had confirmation that the only limitation to his reinstatement was that he could not work in the same penitentiary. The employer asked him to fill out a form to complete a deployment to another institution and to redo his second-language evaluation as his results had expired. Several months passed before the transfer process was completed, and during that time, the employer offered other positions to employees affected by a workforce adjustment. He was eventually reinstated on June 19, 2012.

The Board found that there was *prima facie* discrimination against the grievor on the basis of disability. When he was fit to work, his reinstatement did not take place immediately, and he was thus deprived of his salary. The accommodation was deficient because the employer addressed the issue as a staffing rather than a human rights matter, requiring the grievor to apply for a deployment himself. Furthermore, the employer did not acknowledge that he had a right to return and that the employer itself was responsible to facilitate the return.

The grievance was allowed, and the Board ordered the employer to pay his salary from the date that it was aware of his fitness to return until he was reinstated, or approximately four months. The Board also ordered the employer to pay \$5000 in compensation for pain and suffering, given the stress it caused him while he waited to be reinstated.

This decision is currently under review at the Federal Court of Appeal.

Unfair labour practice complaint

STATUTORY FREEZE PROVISION

***Canada (Attorney General) v. Public Service Alliance of Canada*, 2019 FCA 41**

In this case, the Federal Court of Appeal (FCA) dismissed two applications for judicial review of the following Board decisions: *Public Service Alliance of Canada v. Treasury Board (Correctional Service of Canada)*, 2017 FPSLRB 11, and *Public Service Alliance of Canada v. Canada Revenue Agency*, 2017 FPSLRB 16.

In those decisions, the Board found that the Correctional Service of Canada and the Canada Revenue Agency violated the statutory freeze period, which bars any unilateral changes to terms and conditions of employment while parties are engaged in collective bargaining. Both employers made changes to policies affecting employees' hours of work without the consent of the bargaining agent. The bargaining agent had received advanced notice of the changes but filed a complaint only once the changes were actually implemented. As such, the employer argued that the complaints were untimely as the bargaining agent knew or ought to have known of the circumstances giving rise to the complaint more than 90 days before the complaint was filed, when notice of the changes was provided. However, the Board determined that the complaints were timely. In a statutory freeze complaint, the 90-day period to file a complaint commences only on the date on which the impugned changes are made.

The FCA found that the Board's decisions were reasonable. The Court confirmed that the period in which to file a statutory-freeze complaint starts to run when the changes to the conditions of employment are made and not when advance notice is given. The Court also agreed that there are sound labour relations policy reasons in support of the Board's approach, including providing the parties with additional time to discuss issues when they are bargaining.

As such, the applications were dismissed.

The Board also made submissions to the FCA with respect to these two applications for judicial review. Those submissions and the Court's treatment of them are discussed in more detail at page 16 of this Report (Intervention before the Federal Court of Appeal).

EMPLOYER INTERFERENCE

Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency), 2018 FPSLRB 66

The Public Service Alliance of Canada (“the bargaining agent”) made a complaint alleging that the Canada Border Services Agency (“the employer”) committed an unfair labour practice by violating sections 5 and 186 of the *FPSLRA* and the relevant collective agreement, which ensures the right to lawful union activity without the threat of, for example, discipline.

In the context of a difficult collective bargaining relationship, border services officers began wearing bright orange shoelaces in support of their bargaining team other than in their footwear; for example, to tie their hair or as braided bracelets. The employer made a blanket prohibition on the use of shoelaces for anything other than as intended.

The Board affirmed that union members have a right to wear items that reflect union support in accordance with the *FPSLRA* and the relevant collective agreement. An employer may have legitimate concerns when the activity poses a threat to the workplace or its reputation. The employer claimed that the shoelaces were a health and safety concern. The Board found this argument unconvincing, stating that it was only a pretext to impose the means by which these employees may express their solidarity with their bargaining team. If the employer has genuine concerns based on real threats to its operations, the solution is not a blanket prohibition, but rather, the employer is to determine with the bargaining agent how rights can be exercised without risk of damage.

The complaint was founded.

Grievance - workforce adjustment agreement

Choinière v. Treasury Board (Department of Fisheries and Oceans), 2018 FPSLRB 36

The grievor was a team leader with the Department of Fisheries and Oceans. She was informed that she was an affected and then a surplus employee under the workforce adjustment provisions of her collective agreement. She applied to a position at the same level within her department but was found to lack leadership skills. She filed a grievance after she was offered a position at a lower level with salary protection, although her collective agreement provided that departments should avoid appointing employees to a lower level except when all other avenues have been exhausted.

The employer objected to the Board's jurisdiction to deal with staffing matters. The Board found that although the employer used a staffing process to reorganize the department, the employer's obligations towards the grievor arose from the collective agreement. The Board found that the employer is required to treat employees equitably and that it indeed had jurisdiction to determine whether the employer's discretion was exercised fairly and reasonably.

The Board found that the employer breached the collective agreement by failing to evaluate whether a retraining period would have allowed the grievor to acquire the competencies needed to hold a position at a comparable level to the one she had held before the workforce adjustment. The Board also found that the employer had acted arbitrarily because it had contravened its policies by not offering the grievor retraining.

The Board ordered the employer to offer the grievor a retraining period.

Grievance - disguised disciplinary action: termination

Canada (Attorney General) v. Bétournay, 2018 FCA 230

The grievor, a long-time employee of the Canada Revenue Agency (“the Agency”), was involved in negotiating a personal real estate transaction in which she used the Agency’s databases and invoked her Agency employee status in an attempt to secure a lower price.

When her employer became aware of the events, it started an investigation. The grievor was interviewed and informed of the results of the investigation. She was then suspended without pay while awaiting the employer’s decision from the investigation. She was later terminated retroactively to the suspension date, and her reliability status was revoked. The grievor challenged all these decisions.

This case raised two important issues: the Board’s jurisdiction to examine the suspension without pay during the investigation, and the legality of applying the termination retroactively, to the suspension date.

On the first point, it was argued that the suspension was administrative and not disciplinary. As such, the Board could not hear the issue. The Board disagreed. It found that the suspension was disguised discipline on the grounds that a suspension that deprives an employee of his or her salary has a punitive effect.

On the second point, the Board found that the employer could not impose discipline retroactively. Although the termination was not excessive under the circumstances, it could not be made retroactive to the suspension date. It was unfair to deprive the grievor of her wages when there was no justification for removing her from the workplace during the investigation.

Therefore, the Board ordered the employer to reimburse her the salary and benefits that she would have been entitled to during the suspension.

The Attorney General filed an application for judicial review. With respect to the suspension grievance, the Federal Court of Appeal found that while the Board was entitled to look at the true nature of the suspension to determine its jurisdiction, it had to go further and determine whether the employer had cause to take the disguised disciplinary measure, and if so, whether that measure was excessive.

With respect to the termination grievance, the Court found that the Board’s reasoning did not consider jurisprudence that allows for the retroactivity of a termination date. The Court also found that nothing appears to limit the powers of the deputy head to determine the effective date of a disciplinary measure, as long as it is with cause. In this case, the Court found that there was cause to terminate the grievor at the start of the suspension as the reasons to terminate her were in existence and were identifiable as of the start date of the suspension.

The Court allowed the application for judicial review and dismissed the grievances.

Abuse of process – leave to file the deputy head’s reply and to participate in the next steps of proceedings

Taticek v. President of the Canada Border Services Agency, 2018 FPSLRB 44

In this decision, the Board considered whether a request for leave to file a reply to allegations by the President of the Canada Border Services Agency (“the employer”) should be allowed after it was precluded from raising any issue or leading any evidence.

The employer had missed several procedural deadlines and been granted extensions by the Board. The employer filed another extension request. The Board denied the request and concluded that the employer was precluded from raising any issue or leading any evidence except with prior leave and subject to any conditions. Subsequently, the employer filed a request for leave and at the same time, submitted its reply to the complainant’s allegations.

Having heard submissions from the parties on the leave request, the Board found that there was no evidence to merit granting the leave. The employer did not use its leave application to present any new information, including raising any extenuating circumstances, which would have warranted varying the Board’s earlier determination. The Board also stated that workload alone is an insufficient reason for filing late and confirmed that it was an insufficient ground to grant an application for leave in this case.

Furthermore, contrary to the previous order of the Board, the employer had submitted its reply without first obtaining leave from the Board. This was found to have demonstrated disrespect for the Board’s orders and regulations.

The respondent’s pattern of behaviour, including repeatedly missing deadlines, failing to seek extensions in a timely manner, and providing little or no explanation for its actions amounted to an abuse of process.

The application for leave was denied.

Abuse of authority – appointee did not meet the official language proficiency qualification for the acting appointment

Burt v. Deputy Minister of Veterans Affairs, 2019 FPSLRB 31

In this decision, the Board was asked to consider a complaint that raised a number of issues concerning an acting appointment. The position in question had a designated official language profile qualification of BBB/BBB. There was no dispute between the parties that the person appointed to the acting position (the appointee) did not meet the position’s language requirements. However, the respondent claimed that the only qualified candidate in the bilingual imperative pool from a 2013 advertised process was not available. As a result, the respondent believed that the appointee was the only candidate in the English essential pool from that advertised process who met the requirements for the position. According to the respondent, given these circumstances, the appointee was permitted to fill the acting position for a period up to one year.

The complainant worked in the same unit as the appointee. At the time of the appointment, he had the required language profile. The respondent did not consider the complainant for the acting position because his name was not on the list of eligible candidates in the pool, and he was therefore not part of the pool of qualified candidates for the position.

Under the applicable regulations pertaining to appointments, there is an exemption for official language proficiency for an appointment on an acting basis that cannot be filled with someone who meets the required language proficiency. It may continue for a period of no more than 12 months. The key issue in the case was whether the respondent demonstrated that it could not fill the appointment on an acting basis with someone who met the language proficiency qualification for the position.

The Board determined that the respondent had not met its onus of showing that it could not have filled the position with a bilingual employee. While the respondent established that no bilingual candidate was available in the pool, the appointee was not appointed under the 2013 advertised process but under a non-advertised process. Therefore, pursuant to the regulations, the respondent had to conduct a proper search for a qualified candidate outside that pool.

The Board found on the evidence at the hearing that the complainant was a bilingual candidate who was most likely qualified for the position at the time of the appointment. In fact, he later acted in the position. As the Board emphasized, it was the respondent, not the complainant, who had to satisfy the Board that it could not have filled the position with an acting appointment of a person who met the required language proficiency qualification. At a minimum, the complainant had been available and interested at the time; he should have been assessed to see if he qualified for the position.

The Board concluded that the exemption under the regulations did not apply. Since the appointee did not meet the language requirement for the position, his appointment was not based on merit.

The complaint of abuse of authority was substantiated, and the respondent was ordered to revoke the appointment.