

Public Service Labour
Relations Board



Annual Report
2014 - 2015

© Minister of Public Works and Government Services 2015
Cat. No. SR1 | pdf Version: SRIE-PDF

This publication is also available on the PSLRB website at
<http://www.pslrb-crtfp.gc.ca>.

PUBLIC SERVICE LABOUR RELATIONS BOARD 2014 - 2015



Chairperson: Catherine Ebbs

Vice-Chairpersons: Linda Gobeil
David Paul Olsen
Renaud Paquet (Departed July 14, 2014)

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

Part-time Members: Michael Bendel
Ruth Elizabeth Bilson, Q.C.
Emily M. Burke (Departed May 13, 2014)
George P.L. Filliter
Deborah M. Howes
William H. Kydd
Paul E. Love
Joseph William Potter
W. Augustus (Gus) Richardson

EXECUTIVE OFFICERS OF THE PSLRB

Executive Director¹:	Guy Lalonde
General Counsel¹:	Sylvie M.D. Guilbert
Director, Compensation Analysis and Research Services:	Suzanne Payette
Director, Dispute Resolution Services:	Gilles Grenier ²
Director, Financial Services:	Robert Sabourin
Director, Human Resources Services:	Chantal Bélanger
Director, Registry Operations and Policy:	Susan J. Mailer

¹ These two positions were combined on July 1, 2014, at which time Sylvie Guilbert was appointed Executive Director and General Counsel.

² Serge Roy, as of September 25, 2014.



MESSAGE FROM THE CHAIRPERSON

It is my privilege as Chairperson of the Public Service Labour Relations Board (PSLRB) to submit to Parliament our final annual report. As the PSLRB ceased to exist on November 1, 2014, due to the coming into force of the *Economic Action Plan 2013 Act, No. 2*, this report covers the period April 1, 2014 to October 31, 2014.

It is often said that endings open the door to new beginnings. This is certainly true for the PSLRB.

My appointment as Chairperson occurred on the heels of significant legislative change, most notably the consolidation on November 1, 2014 of the PSLRB and the Public Service Staffing Tribunal into a new organization to be called the Public Service Labour Relations and Employment Board (PSLREB). Finally, the coming into force of the *Economic Action Plan 2014 Act, No. 1* and subsequently, the *Administrative Tribunals Support Service of Canada Act* would create a new entity to be called the Administrative Tribunals Support Service of Canada (ATSSC). To be established on November 1, 2014, the ATSSC will provide comprehensive support and facilities to 11 tribunals — one of which is the PSLREB — via a single, integrated organization.

Needless to say, a tremendous amount of work was done during the reporting period to ensure a smooth transition. This included ensuring that the regulations for what would be the new PSLREB would take into consideration the *Public Service Labour Relations and Employment Board Act* and the *Administrative Tribunals Support Services of Canada Act*, as well as other legislative modifications.

As well, PSLRB employees engaged in an important change management exercise to understand how the subsequent amendments to the existing *Public Service Labour Relations Act* would affect their work. Many employees worked tirelessly to develop a myriad of adjudication and communications tools. I should also note that during a very tumultuous few months, members and staff continued the Board's business with no disruption in service to our clients and Canadians.

All of this work was undertaken with enthusiasm, professionalism and unwavering team spirit. I feel very proud to have worked alongside such champions during a time of unprecedented change.

While the PSLRB ceased to exist on October 31, 2014, its important legacy, which includes an enviable reputation in the labour relations field, will continue through the work of the PSLREB.

Catherine Ebbs

Chairperson and Chief Executive Officer
Public Service Labour Relations Board

TABLE OF CONTENTS

- PART ONE: ABOUT US 2**
 - Our Clients..... 3
 - Our People..... 4

- PART TWO: A LOOK BACK 5**
 - Caseload Overview 5
 - Grievances..... 5
 - Complaints 6
 - Applications..... 6
 - Mediation Services 6
 - Collective Bargaining 7
 - Mediation Training..... 7
 - Challenges and Opportunities 7
 - Legislative Changes..... 7
 - Case Management..... 8
 - Openness and Privacy 8
 - Judicial Review..... 9
 - Notable Decisions..... 9

- ORGANIZATIONAL CONTACT INFORMATION 9**

- APPENDIX 1 10**
 - Grievances, Complaints and Certain Applications Before the Public Service Labour Relations Board April 1, 2014 to October 31, 2014..... 10

- APPENDIX 2 11**
 - Synopsis of Applications for Judicial Review of Decisions..... 11

- APPENDIX 3 12**
 - Noteworthy Public Service Labour Relations Board Decisions 12



PART ONE: About Us



The PSLRB served approximately 220,000 federal public service employees covered under the PSLRA and by numerous collective agreements, as well as employers and bargaining agents.

Having come into being with the enactment of the *Public Service Labour Relations Act (PSLRA)* on April 1, 2005, the Public Service Labour Relations Board (PSLRB) replaced the Public Service Staff Relations Board, which had existed since 1967, when collective bargaining was first introduced in the federal public service.

The PSLRB's mandate was amended on December 12, 2013 when the *Economic Action Plan 2013 Act, No. 2 (EAP 2013 Act, No. 2)* received royal assent. Among the changes immediately introduced was the elimination of the PSLRB's compensation analysis and research services function. The new legislation also introduced changes to the collective bargaining process and called for the consolidation of the PSLRB and the Public Service Staffing Tribunal (PSST) into a new organization to be called the Public Service Labour Relations and Employment Board (PSLREB). That new organization would be created on November 1, 2014, as outlined below.

Certain parts of the *EAP 2013 Act, No. 2* and the *Economic Action Plan 2014 Act, No. 1 (EAP 2014 Act, No. 1)* would come into force on November 1, 2014. As a result of those changes, the *Public Service Labour Relations and Employment Board Act* would come into force and create the PSLREB, which would perform the functions that were previously exercised by the PSST and the PSLRB. In addition, the *Administrative Tribunals Support Service of Canada Act* would come into force on November 1, 2014 and would create the Administrative Tribunals Support Service of Canada (ATSSC), which would become the provider of resources, support services, facilities and staff for 11 administrative tribunals, including the new PSLREB.

The PSLRB's two main services are as follows:

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

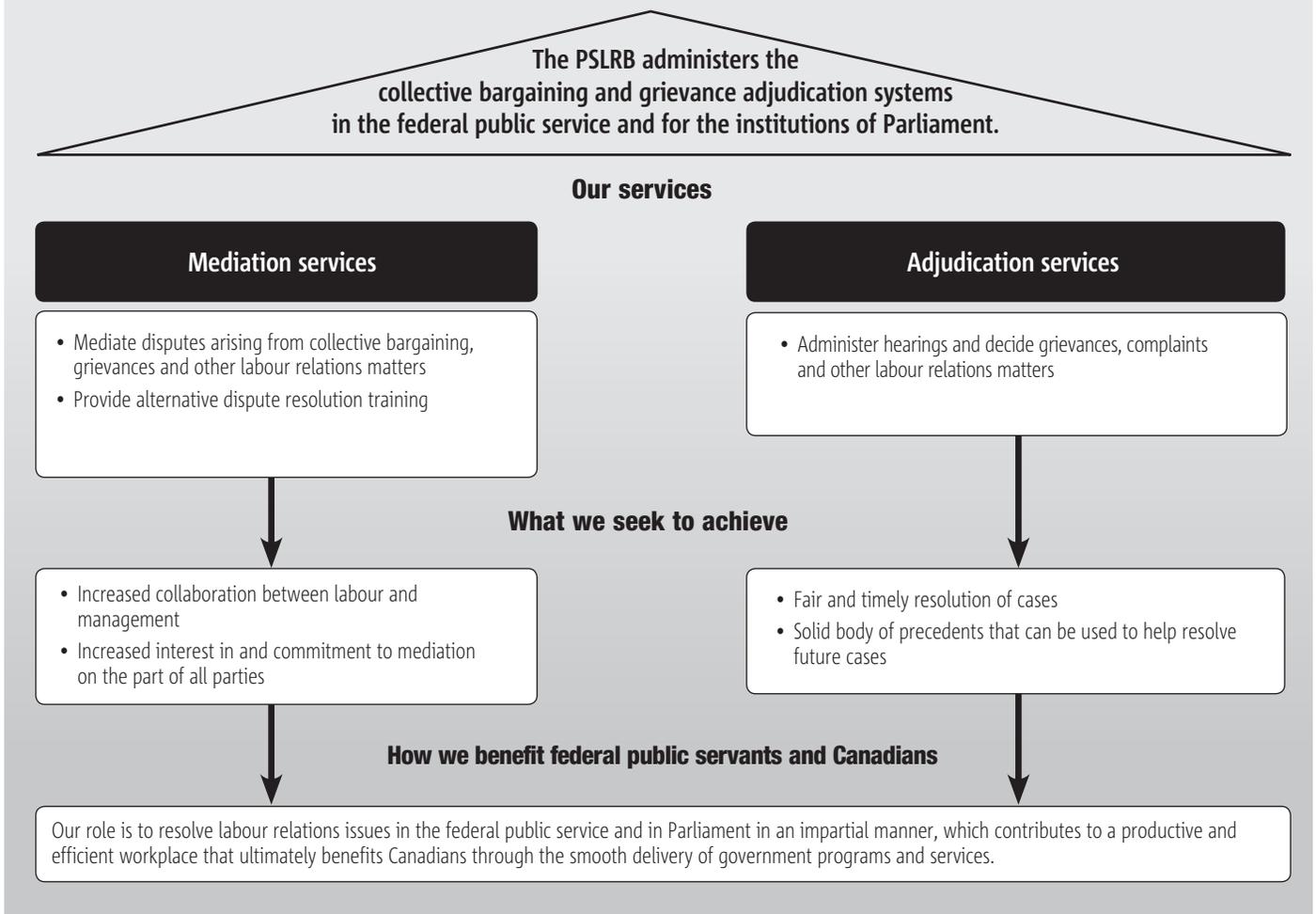
For more information about these services, please see Figure 1, *The Public Service Labour Relations Board at a Glance*.

Other responsibilities of the PSLRB included administering the *Parliamentary Employment and Staff Relations Act* and acting as the labour board and grievance system administrator for all employees of Parliament (the House of Commons, the Senate, the Library of Parliament, the Office of the Conflict of Interest and Ethics Commissioner, and the Office of the Senate Ethics Officer).

As well, under an agreement with the Yukon government, the PSLRB administered the collective bargaining and grievance adjudication systems required by the *Yukon Education Labour Relations Act* and the *Yukon Public Service Labour Relations Act*. When performing those functions, the PSLRB acted as the Yukon Teachers Labour Relations Board and the Yukon Public Service Labour Relations Board, respectively. Separate annual reports were issued for those Acts and are available on the PSLRB's website at <http://www.pslrb-crtfp.gc.ca>.

As a result of transitional provisions under section 396 of the *Budget Implementation Act, 2009*, the PSLRB was responsible for dealing with existing pay equity complaints for the public service that were, and could

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



be, filed with the Canadian Human Rights Commission and with those that may arise in the future under the *Public Sector Equitable Compensation Act (PSECA)*.

Finally, the PSLRB provided physical and administrative support services to the National Joint Council (NJC), an independent consultative body of employer and employee representatives. The NJC exists to facilitate consultation about, and the co-development of, policies and terms of employment that do not lend themselves to unit-by-unit bargaining. The PSLRB housed the NJC but played no direct role in its operation. For more information about the NJC, please see the annual report on its website at <http://www.njc-cnm.gc.ca>.

OUR CLIENTS

During the reporting period, the PSLRB served approximately 220,000 federal public service employees covered under the *PSLRA* and by numerous collective agreements, as well as employers and bargaining agents.

The *PSLRA* applies to departments named in Schedule I to the *Financial Administration Act*, the other portions of the core public service administration named in Schedule IV and the separate agencies named in Schedule V.

The Treasury Board employs about 163,000 public servants in federal departments and agencies. More than 66,000 public service employees work for one of the other employers, which range from large organizations, such as the Canada Revenue Agency, to smaller organizations, such as the National Energy Board. The majority of unionized federal public service employees (60%) are represented by the Public Service Alliance of Canada, 23% by the Professional Institute of the Public Service of Canada, and the remainder by 20 other bargaining agents. Please refer to the PSLREB website at <http://www.pslreb-crtefp.gc.ca> for tables that show those departments named in Schedule I to the *Financial Administration Act*, the other portions of the core public service administration named in Schedule IV and the separate agencies named in Schedule V.

The PSLRB's management team identified ways to support employees to help them effectively cope with the challenges before them.

Other PSLRB clients included employees excluded from bargaining units and those not represented.

During the period under review, there was one request for decertification granted following an application by employees in the Administrative Support group of the Canadian Institutes of Health Research (CIHR), a separate employer that was previously represented by the Public Service Alliance of Canada. See *McCuaig v. Public Service Alliance of Canada*, 2014 PSLRB 55: http://www.pslrb-crtfp.gc.ca/decisions/summaries/2014-55_e.asp.

The Office of the Auditor General of Canada had only one bargaining unit represented by the Public Service Alliance of Canada. Prior to this fiscal year, there were two bargaining units.

OUR PEOPLE

Under section 44 of the *PSLRA*, the Chairperson was the PSLRB's chief executive officer and had overall responsibility and accountability for managing the work of the PSLRB.

The PSLRB's Executive Director was responsible for leading and supervising the daily operations of the PSLRB. Reporting to the Chairperson, he was directly supported by five directors and three managers, who were responsible and accountable for establishing priorities, managing the work and reporting on the performance of their specific units. The General Counsel also reported to the Chairperson and was responsible for providing legal advice and support to the Chairperson, the Board members and the overall organization. In anticipation of the creation of the new PSLREB, in July 2014, the Executive Director and the General Counsel positions were combined into one. The PSLRB Executive Committee comprised the

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

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

With the considerable change brought about by the preparations for the transition to the new PSLREB and the ATSSC, the PSLRB's management team identified ways to support employees to help them effectively cope with the challenges before them. To better understand the collective needs of PSLRB employees and to provide them with helpful tools, a series of change management focus groups were held in September 2014. Those sessions offered employees an opportunity to raise their individual and collective questions and concerns.

The focus group discussions centered on four broad areas: the new organizational culture, understanding the direction of the new organizations, the impact of change on employees and building a collective capacity to effectively deal with change.

The results of those focus group sessions were shared with all employees and served to formulate recommendations for specific follow-up action.

PART TWO: A Look Back



During the review period, the PSLRB had 76 full-time equivalent positions and expenditures of \$8 million.

The work of the PSLRB entailed dealing with grievance referrals, complaints and other labour relations applications involving disputes between employees and their employers or their bargaining agents, which were not resolved to the parties' satisfaction. Matters that were not settled or withdrawn through mediation or other interventions proceeded to a hearing before a member of the Board selected by the Chairperson.

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

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

CASELOAD OVERVIEW

Since its creation in 2005, the PSLRB's caseload consistently increased, both in terms of the number of files referred to the Board and in the complexity of those cases. The first seven months of this fiscal year reflected that pattern.

As of October 31, 2014, the PSLRB had a caseload of over 5,000 files, of which, 1,164 were settled, withdrawn or decided, for a total active caseload

of over 3,800 files. There were pressures that could not be directly controlled by the PSLRB that affected its caseload, including the availability of parties to proceed to a hearing and hearing postponements. During the year, the PSLRB focused on improved service delivery by implementing more streamlined, responsive and effective adjudication processes through more proactive case management and in-depth case analysis. Its goal was to further increase the number of cases it closed, while optimizing its resources. For specific initiatives and tools that the PSLRB used to manage its caseload, please refer to Part II of this report, Challenges and Opportunities, Case Management. As it did last year, the PSLRB closed more cases than it opened during the review period (i.e., 1,164 and 812, respectively).

Key highlights pertaining to the PSLRB's caseload follow. More detailed information can be found in Appendix 1 of this report.

Grievances

Individual grievances are those that could be referred to adjudication under the paragraphs of subsection 209(1) of the *PSLRA* as follows:

- interpretations or applications with respect to employees of collective agreement or arbitral award provisions;
- disciplinary actions resulting in terminations, demotions, suspensions or financial penalties; and
- demotions or terminations for unsatisfactory performance or any other reasons that were not breaches of discipline or misconduct, or deployment without the employee's consent when consent was required and which were only for employees for whom the Treasury Board was the employer.

Since its creation in 2005, the PSLRB's caseload consistently increased, both in terms of the number of files referred to the Board and in the complexity of those cases.

In many cases, mediation assisted in resolving disputes before the Board more quickly and could also result in less strained working relationships.

The PSLRB received grievance referrals dealing with 45 termination files during the review period, for a total of 134 grievances related to disciplinary matters. There were also 321 new grievances related to collective agreement interpretations and 10 new grievances related to demotions or terminations for non-disciplinary reasons. As well, the PSLRB received 10 new group grievances (i.e., grievances that were filed by several employees in a department or agency who believed their collective agreements were not administered correctly). It also received 13 new policy grievances (i.e., grievances that were filed by the bargaining agent or the employer and that were related to an alleged violation of collective agreements that affected employees in general). There were also 10 requests for extensions of time to file a grievance or to refer a grievance to adjudication.

The PSLRB's longstanding practice was to encourage parties to continue to work toward a settlement throughout the adjudication process, as a solution created by the parties is always preferable. Parties could participate in case settlement discussions with the adjudicator at any time during the process.

Finally, when grievances referred to adjudication involved certain issues under the *Canadian Human Rights Act*, adjudicators could determine that monetary relief be awarded. The Canadian Human Rights Commission (CHRC) had to be notified of such grievances and had standing to make submissions to an adjudicator. Between April 1 and October 31, 2014, 59 such grievance referrals were received that were specifically related to discrimination.

Complaints

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

- the failure (by the employer, a bargaining agent or an employee) to observe terms and conditions of employment;
- the failure (by the employer, a bargaining agent or a deputy head) to bargain in good faith;
- the failure (by the employer or an employee organization) to implement provisions of a collective agreement or arbitral award; or

- the commission (by the employer, an employee organization or any person) of an unfair labour practice.

During the year, the PSLRB received 38 new complaints (slightly fewer than those received in the previous fiscal year).

Complaints against bargaining agents about failures to fairly represent members comprised 63% of the PSLRB's total complaints (up 12% from the previous year).

The PSLRB also received 5 new complaints for reprisals under the *Canada Labour Code (CLC)*, 30% less than it received the previous year.

Applications

During the reporting period, more than 273 applications were received. Two hundred and fifty-four (254) were for a determination of management and confidential positions (a 33% increase from the previous year), 4 were for reviews of prior PSLRB decisions, and 1 was a determination of successor rights application.

MEDIATION SERVICES

The PSLRB mediation services offered the parties an opportunity to meet in an environment that was less confrontational in scope, where they could attempt to resolve their dispute without resorting to an adversarial hearing. In many cases, mediation assisted in resolving disputes before the Board more quickly and could also result in less strained working relationships. PSLRB mediators were experienced, in-house professionals who did not have decision-making powers. They intervened in disputes and helped the parties explore the underlying reasons for their conflicts and find mutually acceptable solutions. In some cases, an external mediator was used.

Forty-three (43) mediation interventions for grievances and complaints were carried out by the PSLRB's Dispute Resolution Services (DRS) during the reporting period. Of those interventions, the parties reached an agreement 72% of the time. As a result,

80 files that had originally been referred to adjudication were resolved without having to proceed to a hearing. The DRS also conducted 3 preventive mediation interventions, 2 of which were resolved, reducing the number of potential files that could otherwise have been brought before the PSLRB.

Collective Bargaining

When the parties were unable to make progress in their face-to-face negotiations during collective bargaining, the PSLRB could provide mediation support through its DRS. This unit also helped the Chairperson set up and administer arbitration boards or public interest commissions (PICs), as appropriate.

The reporting period in question coincided with the tail end of the last round of collective bargaining that initially began in early 2011. This explains the very modest level of activity requested of the Board. In fact, the PSLRB received only 1 new request for mediation assistance, which resulted in a settlement being reached by the parties.

The PSLRB published one PIC report for a conciliation request that was received the previous year. The PSLRB also issued 8 arbitral awards for arbitration requests that were brought forward from the previous year.

Mediation Training

Over the years, the DRS enjoyed a very good reputation for its interest-based negotiation and mediation training sessions. These sessions were designed for labour relations officers, union representatives, managers and supervisors, as well as those working in related fields. During the reporting period, 2 interest-based negotiation and mediation courses were delivered, and approximately 30 public servants participated in the two-and-a-half day course. The course enabled participants to familiarize themselves with, and better understand the use of, interest-based approaches and mediation skills, which helped to resolve workplace conflict and communication issues through role play.

PSLRB mediators also delivered presentations and special sessions, both within and outside the public service, to help build an understanding of mediation as a dispute resolution mechanism and to provide insight into the PSLRB's mediation approach.

CHALLENGES AND OPPORTUNITIES

Legislative Changes

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

Provisions of the *EAP 2013 Act, No.2* that were not yet in force but that had a significant impact on the activities of the PSLRB included those that consolidated the PSLRB and the PSST into the new PSLREB. In cooperation with the PSST, the PSLRB reviewed its regulations and consulted its stakeholders to ensure it was ready to transfer its responsibilities to the new PSLREB when that organization would be created. The PSLRB also engaged in other preparations for this consolidation at the operational level, in relation to the needs of the new PSLREB and at the corporate level in relation to the needs of the new ATSSC.

There were many other significant changes to the *PSLRA* that arose from the *EAP 2013 Act, No.2*. Those already in force during the reporting period of this annual report included a new regime for essential services and the removal of the choice of a dispute resolution method other than conciliation, which can potentially lead to a strike.

Provisions of the *EAP 2014 Act, No. 1* centralized and coordinated the provision of support services to some administrative tribunals, including the new PSLREB, through a single, integrated organization: the Administrative Tribunals Support Service of Canada (ATSSC). During this reporting period, the PSLRB prepared for the simultaneous transition of its responsibilities to the new PSLREB and its employees and facilities to the new ATSSC. In short, it had to address two major legislative changes while maintaining its operational services.

PSLRB mediators also delivered presentations and special sessions, both within and outside the public service, to help build an understanding of mediation as a dispute resolution mechanism and to provide insight into the PSLRB's mediation approach.

The open court policy describes the principles of open justice, access to case files and decisions, and how the PSLRB effectively balanced openness and privacy concerns.

Case Management

The PSLRB engaged in innovative strategies to enhance its capacity to address a caseload that had grown from 1,200 more than a decade ago to almost 5,000 as of October 31, 2014. The increase in the number of cases and in the complexity of many of the organization's cases could be attributed to several factors. These included the expansion of its mandate; the prolonged adjudication processes that could occur with complex cases; an increase in unfair labour practice complaints; the capacity to address issues that could arise for self-represented individuals navigating through quasi-judicial procedures and processes; the specific challenges that could arise with human rights cases, including those that fall under the PSLRB's jurisdiction for pay equity under the *Canadian Human Rights Act*; and the marked increase in the number of applications for managerial and confidential exclusion orders and for the revocation of existing orders, both of which required monitoring and had tight timeframes.

During the year, the PSLRB continued to undertake several initiatives and tools to more effectively deal with its caseload, many of which were highly successful, as well as strategies to help it more effectively manage its hearing schedule. These initiatives included more routine use of pre-hearing conferences (via teleconference, when possible), which yielded excellent results, allowing the parties to resolve preliminary issues up-front and narrow down the issues in dispute. This ultimately contributed to the more efficient use of the parties' time and resources and, in certain cases, eliminated the need for an oral hearing. As well, the PSLRB adopted the use of written submissions more frequently for cases in which there was no dispute about the facts of those cases, put in place solutions to reduce last-minute hearing postponement requests and reinforced its policy on the limited circumstances when postponements may be granted.

The PSLRB also continued to make steady progress in preparing to implement and optimize an electronic case management system.

Openness and Privacy

The PSLRB adopted a *Policy on Openness and Privacy*, which is available on its website at http://www.pslrb-crtfp.gc.ca/about/policy_openness_privacy_e.asp. The policy describes the principles of open justice, access to case files and decisions, and how the PSLRB effectively balanced openness and privacy concerns. The policy endorses the open court principle, which recognizes that as a quasi-judicial tribunal that renders decisions on a broad range of labour relations matters in the federal public service, the Board operated very much like a court. Bound by the constitutionally protected open-court principle, it conducted its oral hearings in public, save for exceptional circumstances. As a result, most information filed with the Board became part of the public record and is generally available to the public, ensuring transparency, accountability and fairness. This principle was balanced with the Board's commitment to take into account privacy concerns, in accordance with accepted legal principles that only personal information that is relevant and necessary to the determination of the dispute be subject to the open court principle.

The PSLRB's written decisions were made available to the public in many ways. For example, they could be obtained from its Jacob Finkelman Library. Most are published by specialized private publishers, and some can be accessed on the Internet via publicly available databases. In addition, since 2000, the full texts of decisions were posted on the PSLRB website. As a means to balance the open court principle and the privacy concerns of individuals availing themselves of their rights under the *PSLRA*, the PSLRB voluntarily introduced measures via a web robot exclusion protocol that restricted global search engines from accessing full-text decisions posted on its website and from yielding specific information (e.g., a person's name) contained in decisions. It also modified its website and administrative letters opening case files to notify individuals who initiated proceedings that its decisions were posted in their entirety on its website.

Judicial Review

Occasionally, parties applied for the judicial review of a decision rendered either by an adjudicator or by the Board. Decisions of adjudicators were reviewed by the Federal Court, whereas Board decisions were reviewed by the Federal Court of Appeal. Please refer to Appendix 2 for a summary of applications for judicial review from April 1, 2010 to October 31, 2014.

Notable Decisions

Decisions rendered by the Board or by its members in their roles as adjudicators, contributed to the elaboration of jurisprudence in labour relations, specifically in the context of the federal public service, but more widely as well. Those decisions were final and binding on the parties and were subject only to judicial review under the *Federal Court Act*. Descriptions of several notable grievance and complaint decisions can be found in Appendix 3.

ORGANIZATIONAL CONTACT INFORMATION

Public Service Labour Relations Board*
P.O. Box 1525, Station B
Ottawa, Ontario, Canada
K1P 5V2

Tel: 613-990-1800
Toll-free: 866-931-3454
Fax: 613-990-1849

General:	Fax: 613-990-1849
Registry Operations and Policy:	Fax: 613-990-3927
Dispute Resolution Services:	Fax: 613-990-6685
Website:	http://www.pslrb-crtfp.gc.ca

Email address: mail.courrier@pslr-crtfp.gc.ca

*Please direct all future inquiries to the Public Service Labour Relations and Employment Board (PSLREB) at the following address: http://pslreb-crtefp.gc.ca/index_e.asp. The email address of the PSLREB is mail.courrier@pslreb-crtefp.gc.ca.

Grievances, Complaints and Certain Applications Before the Public Service Labour Relations Board April 1, 2014 to October 31, 2014

		Number of cases brought forward from previous years	Number of new cases received Apr 1 – Oct 31	Number of cases closed (includes cases settled, withdrawn and decided)		Number of cases carried forwarded to the PSLREB	Decisions or orders
				Settled & withdrawn	Decided		
Individual		3779	467	814	87	3345	29
Group		66	10	11	5	60	2
Policy		30	13	18	1	24	-
Total grievances		3875	490	843 + 93 = 936		3429	31
Complaints under the <i>PSLRA</i>		96	38	2	9	123	5
Complaints under the <i>Canada Labour Code</i>		28	5	10	0	23	-
Total complaints		124	43	21		146	5
Notable Applications during period under review	Requests to file certified copy of order with Federal Court	0	0				0
	Certifications	0	0		0	0	0
	Revocations of certification	1	0		1	0	1
	Determination of successor rights	0	1		0	1	0
	Applications for review of Board decisions	3	4		5	2	3
	Powers and Functions of the Board	2	2		2	2	0
	Requests for extension of time	41	10		13 / 3	35	3
	Revocation of management and confidential position determination	0	8		2 / 4	2	4
Subtotal notable applications¹		47	25	30		42	11
Determination of management and confidential positions		154	254	56 withdrawals + 121 orders issued ² = 177		231	0
TOTAL		4200	812	1164		3848	47³

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

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

³ This reflects decisions for which citation numbers were assigned.

Synopsis of Applications for Judicial Review of Decisions*

April 1, 2010 to October 31, 2014

	Decisions rendered ¹	Number of applications	Applications withdrawn	Applications dismissed	Applications allowed	Applications pending ²	Appeals of applications pending ³
YEAR 1 (April 1, 2010 to March 31, 2011)	126	25	3	19	9	0	0
YEAR 2 (April 1, 2011 to March 31, 2012)	150	32	11	14	8	1	4
YEAR 3 (April 1, 2012 to March 31, 2013)	122	23	3	24	1	0	1
YEAR 4 (April 1, 2013 to March 31, 2014)	173	28	6	15	4	3	6
YEAR 5 (April 1, 2014 to October 31, 2014)	55	13	1	2	0	10	0
TOTAL	626	121	24	74	22	14	11

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

¹ Decisions rendered do not include cases dealt with under the expedited adjudication process and managerial exclusion orders issued by the Board upon consent of the parties.

² Applications that have yet to be dealt with by the Federal Court. Does not include appeals pending before the Federal Court of Appeal or the Supreme Court of Canada.

³ Results of appeals disposed of have been integrated into the statistics in this table.

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

NOTEWORTHY PUBLIC SERVICE LABOUR RELATIONS BOARD DECISIONS

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

Duty of fair representation

In *Benoit v. Trimble et al.*, 2014 PSLRB 46, the complainant had brought to his employer’s attention safety and security concerns that he had about an incident involving one of his co-workers. The employer responded to the complainant and provided a copy of its response to the local representatives of his bargaining agent. The local representatives of his bargaining agent then shared the employer’s response with the co-worker involved in the incident, who had filed a harassment complaint against the complainant. On receiving a copy of the employer’s response from the local representatives of the bargaining agent, that co-worker filed a second harassment complaint against the complainant.

The complainant submitted that the local representatives of his bargaining agent had committed an unfair labour practice by sharing the employer’s response with his co-worker and had displayed bias and bad faith in their dealings with him.

The panel of the Board determined that a bargaining agent’s duty to represent an employee in the bargaining unit is not limited to the grievance process but applies to all matters related to its exclusive representation rights. The panel found that communications from the local representatives of the bargaining agent showed that they were biased against the complainant and that their conduct was offensive and harassing. The panel further found that the local representatives of the bargaining agent were not acting in good faith in dealing with the complainant.

The panel of the Board allowed the complaint, awarded damages to the complainant, and ordered that the decision be posted both in the workplace and on the bargaining agent’s website and that it be mailed to each employee in the bargaining unit that worked with the complainant.

Work assignment outside the bargaining unit

In *Federal Government Dockyard Trades and Labour Council (East) v. Treasury Board (Department of National Defence)*, 2014 PSLRB 51, the bargaining agent filed a group grievance alleging that the employer had violated the Ship Repair-East Group collective agreement by assigning duties related to sea trials to employees in another bargaining unit.

The adjudicator found that the bargaining agent’s certification had no effect on the employer’s right to organize the public service and to assign work outside the bargaining unit. Although a bargaining unit is generally coextensive with an occupational group, positions in a bargaining unit may contain duties that fall within more than one occupational group. The purpose of determining a unit appropriate for collective bargaining is to define the scope of the bargaining agent’s representation for collective bargaining.

The adjudicator further found that the collective agreement contained no express limitation of the employer’s right to assign duties described in the Ship Repair-East occupational group definition outside the bargaining unit.

The adjudicator denied the grievance and stated that the bargaining agent could apply under section 58 of the *PSLRA* to bring within the bargaining unit employees who performed a significant range of duties described in the Ship Repair-East occupational group definition and to protect the security of the bargaining unit.

Board’s power to amend collective agreements

In *Professional Institute of the Public Service of Canada v. National Research Council of Canada*, 2014 PSLRB 57, *Professional Institute of the Public Service of Canada v. National Research Council of Canada*, 2014 PSLRB 58, and *Professional Institute of the Public Service of Canada v. National Research Council of Canada*, 2014 PSLRB 59, the employer applied for the removal of some clauses of the collective agreements, while collective bargaining was still underway, because they allegedly contravened section 7 of the *Public Service Labour Relations Act* and paragraph 5(1)(g) of the *National Research Council Act* by restricting the employer’s authority to appoint persons to and to staff positions.

The panel of the Board found that, as the employer had consented to limit its managerial rights when the clauses in question were incorporated in the collective agreements, the clauses in question did not really encroach on section 7 of the *Public Service Labour Relations Act* or paragraph 5(1)(g) of the *National Research Council Act*. The panel further found that, although section 36 of the *Public Service Labour Relations Act* and the doctrine of necessary implication gave it the authority to deal with situations for which no remedy is expressly provided in the *Act*, it did not have that authority in these cases because the clauses were continued in force by the operation of the bargaining freeze provision set out in section 107 of the *Public Service Labour Relations Act*.

The panel of the Board dismissed the application.

Sex-based discrimination

In ***Nadeau v. Deputy Head (Correctional Service of Canada)***, 2014 PSLRB 82, the grievor filed a grievance about the employer's refusal to pay her a \$600 clothing allowance, as well as its refusal to provide her with a maternity uniform while she was assigned to administrative duties because of her pregnancy.

The adjudicator found that discrimination on the basis of pregnancy or childbirth constitutes discrimination on the basis of sex and that the provisions of the collective agreement could not violate human rights legislation.

The adjudicator further found a lack of coherence in the management of uniform standards and uniform allowances. The evidence did not establish that the employer's operations would have been excessively interfered with had it applied the collective agreement provision more flexibly. Under the circumstances, the adjudicator found that the employer had failed to establish that the standards in question were justifiable requirements.

The adjudicator allowed the grievance and ordered the employer to pay the grievor the clothing allowance under the collective agreement provision, prorated for the time she worked during her assignment to administrative tasks. The adjudicator also awarded \$1500 for pain and suffering under paragraph 53(2)(e) of the *Canadian Human Rights Act*.

An application for judicial review of this decision is pending before the Federal Court of Canada (File T-2076-14).

Paid leave to observe religious holidays

In ***Andres v. Canada Revenue Agency***, 2014 PSLRB 86, the grievor filed a grievance about the employer's refusal to change approved vacation leave to paid leave to observe Orthodox religious holidays. The adjudicator examined whether the employer met its obligation to accommodate the grievor's religious obligations.

In confirming the principle that accommodation does not need to be perfect and that the employee also has obligations to fulfill in the accommodation process, the adjudicator found that the collective agreement provided reasonable options to allow the grievor to fulfill his religious obligations, including options other than using vacation leave. The adjudicator further found that the grievor did not meet his obligation in the accommodation process because he had not told the employer that he wanted a specific accommodation, and the employer could not have known that a specific accommodation was being requested. The adjudicator finally found that the accommodation offered by the employer satisfied its legal duty.

The adjudicator denied the grievance.

Conflict of interest and working somewhere else while on paid sick leave

In ***Pouliot v. Deputy Head (Canadian Forces Grievance Board)***, 2014 PSLRB 94, the grievor, counsel at the Canadian Forces Grievance Board ("the Grievance Board"), was also a reservist with the Canadian Forces. She filed a grievance against her suspension pending an investigation and her termination.

A first ground advanced by the Grievance Board was that the grievor had performed paid work for the reserve while on paid sick leave. The adjudicator found that this did not in itself warrant termination.

A second ground was that the grievor had participated in a military exercise while on paid sick leave. The adjudicator found that after the Grievance Board had denied her leave

with income averaging for operational reasons, the grievor requested and was granted sick leave based on a medical note. The adjudicator also found that the grievor's physician knew that the grievor would participate in the military exercise and wrote the note because she thought that physical exercise would be beneficial to the grievor's health, unaware that the grievor's participation in the military exercise would be mostly in an administrative support role. The adjudicator further found that the grievor had not informed the Grievance Board that she would perform administrative duties in a military exercise during that period, although she had been warned by the Grievance Board upon hiring to avoid conflicts of interest and not to perform administrative duties as a reservist.

A third ground was that the grievor had compromised the Grievance Board's computer system by migrating military information via email exchanges and working on reserve electronic documents. The adjudicator found that the grievor maintained correspondence with her reserve colleagues

during working hours above acceptable levels, even in a workplace that permitted exchanging personal emails. The adjudicator also found that the grievor knowingly used her Grievance Board account for her reserve work and moved military information to the Grievance Board's system, blurring the line between the mandates of the Grievance Board and the reserve and undermining the Grievance Board's efforts to be seen as independent of the Canadian Forces.

A fourth ground was that the grievor had placed herself in a conflict of interest situation by being involved in a reserve grievance that could have come before the Grievance Board. The adjudicator found that although a real conflict of interest had not been established, the evidence demonstrated an appearance of a conflict of interest.

The adjudicator finally found that the grievor had irreparably broken the relationship of trust to which the Grievance Board was entitled, and she denied the grievance.