



Federal Public Sector
Labour Relations and
Employment Board

Parliamentary Employment and Staff Relations Act

Annual Report

April 1, 2018, to March 31, 2019

Canada 



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Federal Public Sector Labour Relations and Employment Board

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Message from the Chairperson

I am pleased to submit to Parliament the annual report on the administration of the *Parliamentary Employment and Staff Relations Act (PESRA)* for April 1, 2018, to March 31, 2019.

During the year in review, the Federal Public Sector Labour Relations and Employment Board (“the Board”) maintained its ongoing commitment to 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 case management. Adversarial hearings are only one approach to dispute resolution. The Board emphasizes earlier resolution, namely, through triage, case management conferences, and mediation-arbitration and interest based mediation. This approach contributes to the Board’s priorities pertaining to case management modernization, case management effectiveness, and greater efficiency in our overall processes.

The past fiscal year was very active with respect to legislative changes, including the passage of *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*, which amends Part II of the *Canada Labour Code* and provides a framework for the prevention of harassment and violence issues in the workplace. As well, Bill C-86, which received Royal assent on December 2018, enacts the *Pay Equity Act* and amends the *PESRA* to provide for the application of the *Act* to parliamentary employees. Finally, proposed Bill C-81, *An Act to ensure a barrier-free Canada*, proposes to amend a number of acts, including the *PESRA*, and to establish a framework for processing accessibility-related complaints. These bills all expand the Board’s mandate to include employees in the labour relations legislative mandate within the parliamentary context, while protecting parliamentary privilege.

As with previous years, this year has been exceptionally busy. I would like to take this opportunity to sincerely thank our Board members and the personnel of the Administrative Tribunals Support Services of Canada, in particular all Board Secretariat employees, for their support and continuing commitment to the accomplishments detailed in this report.

Catherine Ebbs
Chairperson
Federal Public Sector Labour Relations and Employment Board

About the Board

The Federal Public Sector Labour Relations and Employment Board (“the Board”) 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. It 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.

The Board has extensive expertise in adjudication and dispute resolution. In addition to hearing labour relations complaints and applications, the Board hears individual, group, and policy grievances filed under collective agreements. Excluded employees, who are not covered by a collective agreement also have recourse to the Board for disciplinary matters.

The Board’s main goals and objectives are the following:

- help parties resolve disputes through case management, dispute resolution, mediation and adjudication services;
- conduct hearings in accordance with the law and principles of natural justice;
- render timely decisions;
- consult parties on Board processes; and
- educate and inform clients and the public on the Board’s role, services, and jurisprudence.

The Board’s work is also centred on three priorities: case management modernization, case management effectiveness, and greater efficiency in its overall process.

The *Parliamentary Employment and Staff Relations Act*

Among other legislation, the Board is charged with administering Part I of the *Parliamentary Employment and Staff Relations Act (PESRA)* and resolving disputes that arise between parliamentary employees and their employer. Labour relations at the Library of Parliament, the House of Commons, the Senate, the Office of the Senate Ethics Officer, the Office of the Conflict of Interest and Ethics Commissioner, the Parliamentary Protective Service, and the Parliamentary Budget Officer are governed by the *PESRA*. Ultimately, the *PESRA* covers over 1400 Parliamentary employees working for 7 different employers represented by 6 bargaining agents and 13 different bargaining units.

Part I of the *PESRA* gives parliamentary employees the right to form a union and to engage in collective bargaining in order to establish their terms and conditions of employment. It also gives them the right to file grievances about those conditions and, in certain cases, to refer them to adjudication before a neutral third party. In addition, under the *PESRA*, the Board can hear many different matters, such as applications for certification, unfair labour practice complaints, designations of persons employed in managerial and confidential capacities, and adjudications of grievances. Finally, the Board hears grievances about the interpretation and application of provisions of collective agreements, disciplinary action, and all forms of termination of employment except rejection on probation during initial appointments.

Under the *PESRA*, interest arbitration is the only means of resolving a bargaining impasse. In these situations, the Board acts as an interest arbitration board. The Board's chairperson appoints a tripartite panel composed of a Board member to chair a three person panel, with the other two persons representing the interests of the parties. Such panels are deemed to act as the Board for the purpose of dealing with the bargaining dispute and they render binding decisions, which form parts of collective agreements.

The Board also provides a variety of mediation and dispute resolution services to help parties reach an agreement without the need to resort to a formal hearing.

Types of grievances under the *PESRA*

The following four types of grievances may be adjudicated under the *PESRA*:

- a grievance related to the interpretation or application of a provision of a collective agreement or an arbitral award;
- a grievance against a disciplinary action resulting in a suspension or financial penalty, or a termination of employment for a reason other than a rejection on probation in respect of an initial appointment;
- a grievance related to a demotion, a denial of appointment, or classification (they are heard and determined by an adjudicator selected by the parties who is not a Board member); and
- a policy grievance filed under section 70 of the *PESRA*, which requires that the Board look into allegations that cannot be the subject of a grievance by an individual employee (occurs when an employer or a bargaining agent seeks to enforce an obligation alleged to have arisen from a collective agreement or an arbitral award).

Between April 1, 2018, and March 31, 2019, 14 grievances were referred to the Board. More than half (57%) related to the interpretation or application of a collective agreement; 7% to allegations of disciplinary action resulting in a suspension, financial penalty, or termination; 14% to demotions and denials of appointment or classification, and 21% were policy grievances.

Other matters filed this past fiscal year with the Board under the *PESRA* include four complaints alleging, respectively, employer interference, failure to implement an arbitral award, modifications to conditions of employment, or a violation of a statutory freeze. The Board also received seven applications, three of which concerned arbitration requests. See Figure 1 for a breakdown of grievances, complaints, and applications received under the *PESRA* from 2015-2016 to 2018-2019.

Figure 1: Grievances, complaints, and applications received under the *PESRA* from April 1, 2015, to March 31, 2019

Fiscal year	Grievances				Complaints s. 13(1)	Applications		TOTAL
	Interpretation or application; s. 63(1)(a)	Discipline - suspension, financial penalty, and termination; ss. 63(1)(b) & (c)	Demotion, denial of appointment, and classification; ss. 63(1)(d), (e), & (f) ¹	Policy; s. 70(1)		Request for arbitration; s. 50	Other sections of the <i>PESRA</i>	
2015-2016	12	8	1	2	0	5	4	32
2016-2017	8	2	9	2	2	1	1	25
2017-2018	15	7	1	5	2	0	4	34
2018-2019	8	1	2	3	4	3	5	26

In 2018-2019, the Board disposed of 15 cases under the *PESRA*. Of those, 4 resulted in a decision being issued, 3 were closed after a directive of the Board was issued, 1 was settled between the parties, and 7 were withdrawn.

Seventy-seven (77) cases will be carried forward into the next fiscal year, 57 of which involve the Parliamentary Protective Service, including 3 applications for the Board to determine an appropriate unit for collective bargaining. The remaining cases being carried forward into next year include 8 matters involving the House of Commons, 4 involving the Library of Parliament, and 8 involving the Senate. See Figure 2 for an overview of the number of cases carried forward, received, and closed under the *PESRA* from April 1, 2015, to March 31, 2019.

Figure 2: Cases carried forward, received, and closed under the *PESRA* from April 1, 2015, to March 31, 2019

Fiscal year	Carried forward from previous years	Received	Closed	Carried forward to next year
2015-2016	12	32	8	36
2016-2017	36	25	11	50
2017-2018	50	35	19	66
2018-2019	66	26	15	77

¹ These will be heard and determined by an adjudicator selected by the parties who is not a Board member.

COLLECTIVE BARGAINING

The Board carried forward three requests for arbitration from the previous year for which arbitral awards were issued in April 2018, concluding that round of collective bargaining. Negotiations evolved at a faster pace in the current round, and the Board received three new requests between December 2018 and the end of the fiscal year. All three arbitration boards have been established, and the hearings are scheduled to take place in the next fiscal year.

MEDIATION

Mediation is a voluntary process made available to all parties with a case before the Board. Parties may agree to engage in this process when the related file is referred to the Board, as well as at any time before an adjudicator renders a decision. In mediation, parties are assisted by an impartial third party, who has no decision-making power. The mediator facilitates the process. Any settlement reached is confidential and does not create a precedent.

Three mediation sessions were conducted this year, pertaining to three different types of issues: a grievance about a termination, a group grievance about classification, and an unfair labour practice complaint. Parties successfully reached settlements in two of the three cases.



PROPOSED AND RECENT LEGISLATIVE CHANGES

The following table provides an overview of proposed and recent legislative changes that impact or that may impact the Board's mandate and work under the *PESRA*.

Legislation	Summary	Status as of March 31, 2019
<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 s. 88, had not come into force during the year in review</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</i> (S.C. 2018, c. 22)</p> <p>Tabled in the House of Commons on November 7, 2017.</p>	<p>The Bill brings protection from workplace harassment and violence into Part II of the <i>Canada Labour Code's (CLC)</i> occupational health and safety regime.</p> <p>The Bill amends Part II of the <i>CLC</i> to strengthen its framework for the prevention of harassment and violence, including of a sexual nature, in the workplace. The Board maintains 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 Board 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 accidents, illnesses, or injuries, including psychological illness and injury.</p>	<p>The Bill received Royal Assent on October 25, 2018.</p> <p>The Bill is not yet in force in the year in review.</p>

Legislation	Summary	Status as of March 31, 2019
<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>Federal Public Sector Labour Relations Act</i>, and the <i>Public Service Employment Act</i>.</p> <p>The Bill authorizes the Governor in Council to make regulations that establish accessibility standards. It provides that certain federal public sector and parliamentary employees may file grievances alleging a contravention of the regulations, which could be referred to the Board for adjudication without being linked to any of the other types of grievances that may currently be referred. The Board would be entitled to interpret and apply the <i>Accessible Canada Act</i> when 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 issues involving the contravention of these regulations, and the Board would be entitled to interpret and apply the <i>Accessible Canada Act</i> when determining if complaints are substantiated.</p> <p>Another appeal framework applies 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 alleging that a parliamentary entity is in contravention of the regulations. If their complaints are dismissed, they 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>It is 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)</p> <p>Tabled in the House of Commons on October 29, 2018.</p>	<p>Division 14 of Part 4 of Bill C-86 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 the <i>PESRA</i> come into force, the Board will administer those provisions.</p> <p>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 come into force.</p>	<p>The Bill received Royal Assent on December 13, 2018.</p> <p>Division 14 comes into force on a day to be fixed by order of the Governor in Council.</p> <p>No order has yet been issued, and these provisions are not yet in force.</p>

For more information on all the proposed legislative changes affecting the Board’s mandate, please refer to its annual report, available at: https://www.fpslreb-crtespf.gc.ca/about/reports_e.asp.

Tables

TABLE 1: BARGAINING UNITS AND BARGAINING AGENTS UNDER THE PESRA, AS OF MARCH 31, 2019

Bargaining agent	Number of bargaining units	Number of public service employees
House of Commons		
Professional Institute of the Public Service of Canada	1	99
Public Service Alliance of Canada	2	512
UNIFOR, Local 87-M	1	130
Total	4	741
Library of Parliament		
Canadian Association of Professional Employees	1	100
Public Service Alliance of Canada	2	132
Total	3	232
Office of the Conflict of Interest and Ethics Commissioner		
No bargaining agent	0	46
Office of the Senate Ethics Officer		
No bargaining agent	0	4
Office of the Parliamentary Budget Officer		
Canadian Association of Professional Employees ²	1	23
Parliamentary Protective Service		
House of Commons Security Services Employees Association	1	253
Senate Protective Service Employees Association	1	122
Public Service Alliance of Canada	2	120
Total	4	495
Senate of Canada		
Professional Institute of the Public Service of Canada	1	30
Public Service Alliance of Canada	1	86
Total	2	116
Grand total	14	1657

² The certified bargaining agent since May 25, 2018.

TABLE 2: NUMBER OF BARGAINING UNITS AND PUBLIC SERVICE EMPLOYEES BY BARGAINING AGENT AS OF MARCH 31, 2019

Certified bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Canadian Association of Professional Employees	2	127
House of Commons Security Services Employees Association	1	***260
Professional Institute of the Public Service of Canada	2	112
Public Service Alliance of Canada	6	****668
Senate Protective Service Employees Association	1	150
UNIFOR, Local 87-M	1	101
Total	13	1418

*The figures in Table 1 were provided by the employers and those in Table 2 by the bargaining agents.

**The total in Table 2 does not match the total in Table 1 because the employees in Table 1 generally include both those represented and those not represented by a bargaining agent.

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

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