



Federal Public Sector
Labour Relations and
Employment Board

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

2019–2020 Annual Report

***Federal Public Sector Labour Relations
and Employment Board***

Canada 



The Honourable Anita Anand MP
Minister of Public Services and Procurement
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, 2019, to March 31, 2020, for submission to Parliament.

Yours sincerely,

Catherine Ebbs
Chairperson
Federal Public Sector Labour Relations and Employment Board

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Message from the Chairperson



It is my pleasure to submit to Parliament the Annual Report of the Federal Public Sector Labour Relations and Employment Board (the “Board”) for 2019-2020. This report describes our statutory responsibilities and activities, and it provides an overview of our accomplishments, priorities and challenges.

The Board is an independent, quasi-judicial tribunal that oversees labour relations in the federal public sector and Parliament, as well as staffing in the public service. While an important part of its mandate involves resolving labour relations grievances, as well as staffing and other complaints, it also includes certifying bargaining agents and facilitating the resolution of disputes that arise in the context of collective bargaining. As well, the Board’s Mediation and Dispute Resolution Services team assists employers and employees to resolve their disputes without resorting to a formal hearing.

Again this year, we worked to further enhance the efficiency of our processes. With that goal in mind, we also continued our consultations with the parties through our Client Consultation Committee, which comprises representatives from our organization, employers and bargaining agents. As a result of our case management initiatives, the Board was able to close over 2300 files, compared to about 1700 files in 2018-2019.

I am happy to announce that the past fiscal year marked the beginning of collective bargaining for Royal Canadian Mounted Police (RCMP) regular members and reservists. On July 2019, the Board certified the National Police Federation as the RCMP’s first bargaining agent, and notice to bargain was subsequently served. While at the end of the reporting period no official proposals were exchanged, negotiations are ongoing, and the Board heard and determined several matters that involved the RCMP.

In 2019, the Board’s mandate was expanded with the coming into force of the *Accessible Canada Act* (the “ACA”), which establishes a framework for the proactive identification, removal, and prevention of barriers to accessibility for persons with disabilities. Under the ACA, the Board acquired an unprecedented appeal function of accessibility commissioner decisions as they relate to complaints from members of the public, and certain Parliamentary employees, in matters that are related to Parliamentary entities.

As everyone is well aware, the Covid-19 pandemic marked the end of this reporting period. Its impact required the Board to examine alternative ways to conduct its operations to fulfill its mandate. While the Board adapted well to the pandemic by ensuring its activities were maintained as much as possible during the last few weeks of the reporting period, we expect that its impact will be felt well into 2020-2021.

I am very proud of the progress and efficiency gains that the Board achieved again this year in meeting our mandated responsibilities and in collaborating with our clients to ensure we continue to meet their needs. I believe that the success we achieved this past year would not have been possible without the consistent and outstanding work of the Board’s secretariat employees, Board members and other Administrative Tribunals Support Service of Canada staff.

On a final note, I would like to remember our dear friend and colleague, Stephan Bertrand, who passed away on May 24, 2019. Stephan was a respected lawyer and Board adjudicator who made a significant contribution to the federal public sector.

Catherine Ebbs

Chairperson

Federal Public Sector Labour Relations and Employment Board

Part I – The Federal Public Sector Labour Relations and Employment Board

Who we are

Composition of the Board

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

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

During the reporting period, the Board comprised the following members:

Catherine Ebbs, Chairperson
David P. Olsen, Vice-Chairperson
Margaret T.A. Shannon, Vice-Chairperson

Full-time Board 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 Board members

Joanne Archibald
Dan Butler
Paul Fauteux
Linda Gobeil
Ian R. Mackenzie
Renaud Paquet
Augustus Richardson

Mandate of the Board

The Board is an independent, quasi-judicial statutory tribunal that offers dispute resolution and adjudication services in key labour relations and employment areas of the federal public sector and Parliament. It administers the related collective bargaining and grievance adjudication processes and it helps resolve complaints about internal appointments, appointment revocations, and layoffs.

The Board also has jurisdiction to resolve human-rights issues in areas ranging from labour relations grievances and staffing complaints, to unfair labour practices and collective bargaining. It is also responsible for administering public-sector-employee-reprisal complaints under the *Canada Labour Code (CLC)*.

With respect to its mandate to advance the protection of human rights, in 2019, the Board gained the jurisdiction to hear complaints from federal public sector and parliamentary employees that are related to the *Accessible Canada Act* (the “ACA”), which establishes a framework for the proactive identification, removal, and prevention of barriers to accessibility for persons with disabilities (see Part III – Changes and Challenges of this annual report for more information about the *ACA*).

Specifically, the Board aims to do the following:

- contribute to productive and efficient workplaces and help achieve harmonious labour relations and a fair employment environment for federal public sector employers, employees, and employee bargaining agents;
- resolve labour relations and employment issues impartially and fairly;
- help parties resolve disputes through case management initiatives, dispute resolution, and adjudication;
- conduct hearings in accordance with the law and the principles of natural justice; and
- educate and inform clients and the public about its role, services and jurisprudence.

The open court principle

The Board’s decisions can impact the entire public sector and Canadians in general. In accordance with the constitutionally protected open court principle, the Board’s hearings are open to the public, except for exceptional circumstances. As such, it acts according to its Policy on openness and privacy to foster transparency in its processes, as well as accountability and fairness in its proceedings.

With advances in technology, and given that the Board posts material electronically, including its decisions, it recognizes that sometimes, it may be appropriate to limit the concept of openness as it relates to the circumstances of parties or witnesses in its proceedings. At those times, and following the applicable legal principles, the Board may depart from its open justice principles and grant requests to maintain the confidentiality of specific evidence, and it may tailor its decisions to accommodate protecting an individual’s privacy.

The Board also gives the public and parties access to case files, with the exception of information that is protected by solicitor-client privilege. Parties may consult case files at the Board’s offices, providing they give appropriate notice.

The Board’s jurisdiction

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

- *Federal Public Sector Labour Relations Act (FPSLRA)*;
- *Public Service Employment Act (PSEA)*;
- *Canadian Human Rights Act (CHRA)*;
- *Parliamentary Employment and Staff Relations Act (PESRA)*¹;
- *Public Sector Equitable Compensation Act (PSECA)*; and
- *Canada Labour Code (CLC)*, Part II.

¹ A separate annual report is issued for the *PESRA*.

Each of these *Acts* covers different labour relations areas as follows:

- *FPSLRA*: sets out collective bargaining and grievance adjudication systems for the federal public sector and Parliament, as well as for RCMP members and reservists;
- *PSEA*: sets out a system for complaints about internal appointments, appointment revocations, and layoffs in the federal public service;
- *CHRA*: sets out a framework for human-rights issues in grievances filed and complaints made under the *FPSLRA* and the *PSEA*;
- *PESRA*: sets out collective bargaining and grievance adjudication systems for Canadian parliamentary institutions;

- *PSECA*: sets out a framework for pay-equity complaints in the federal public service; and
- *CLC*: sets out a system for workplace health-and-safety and reprisal complaints in the federal public service.

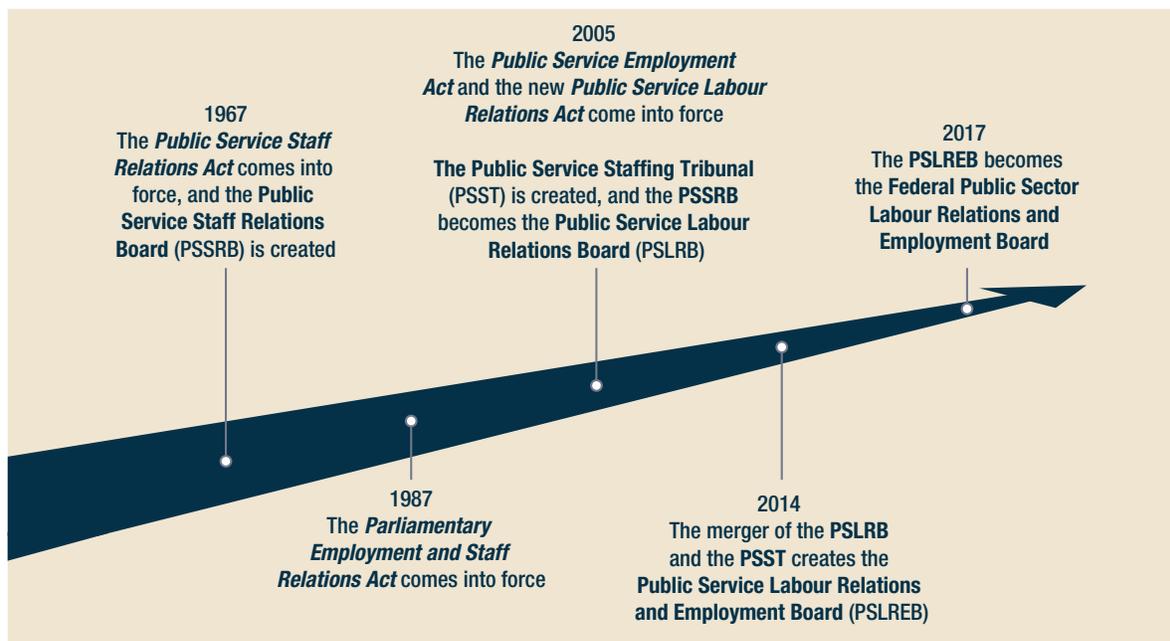
The legislative framework of the *FPSLRA* covers numerous collective agreements, bargaining agents and employers. The *FPSLRA* applies to departments listed in Schedule I of the *Financial Administration Act (FAA)*, other portions of the core public administration listed in Schedule IV of the *FAA* and separate agencies listed in Schedule V of the *FAA*. The *FPSLRA* covers over 280 000 federal public sector employees, including RCMP ranked members and reservists.

The legislative framework of the *PSEA* applies to any organization for which the Public Service Commission (PSC) or its delegate has the authority to make appointments and covers over 220 000 employees and managers of the federal public service.²

The Board since its beginning

The Board has undergone many changes since its creation in 1967. Figure 1 shows the key phases of the metamorphosis of the Board.

FIGURE 1
Metamorphosis of the Board



² See PSC's [Reference List](#) to know if it has delegated appointment (and related) authority to your organization or deputy head.

Matters filed with the Board

Matters filed with the Board fall into three main categories as shown in Figure 2.

FIGURE 2
Types of matters filed with the Board

Applications	Complaints	Grievances (including individual, group, and policy grievances)
<ul style="list-style-type: none">• Certifications and revocations of certifications• Determinations of successor rights• Determinations of managerial or confidential positions• Determinations of essential services agreements• Reviews of Board decisions• Requests for extensions of time to present grievances or to refer them to adjudication	<ul style="list-style-type: none">• Labour relations – unfair labour practices and reprisals for raising issues under Part II of the <i>Canada Labour Code</i>• Staffing – internal appointment processes, layoffs, appointment revocations, and failures to implement corrective action	<ul style="list-style-type: none">• Interpretations of collective agreements and arbitral awards• Disciplinary actions resulting in terminations, demotions, suspensions, or financial penalties• Demotions or terminations for unsatisfactory performance or for any other non-disciplinary reasons• Deployments without employee consent

What we do

Collective bargaining

The *FPSLRA* provides a comprehensive framework for conducting collective bargaining in the broader federal public sector, including the RCMP. It also provides for certifying groups of employees appropriate for bargaining; acquiring bargaining-agent rights to represent employees in those groups; selecting a dispute resolution process; issuing notices to bargain; and administering the two formal dispute resolution processes, which are arbitration and conciliation (known as conciliation-strike). The scope of bargaining is large, with over 200 000 employees dispersed across 85 bargaining units that fall under the provisions of the *FPSLRA*.

The Board is responsible for administering the collective bargaining process largely through its Mediation and Dispute Resolution Services (MDRS) team, which registers the bargaining agents' dispute resolution mechanism selections and records when notices to bargain are served. It also receives and processes applications that seek access to either of the formal dispute resolution processes. For matters that are in dispute, parties may apply for those processes after they have bargained sufficiently, seriously, and in good faith.

Conciliation involves the Minister appointing a public interest commission (PIC), which helps the parties by issuing non-binding recommendations. The report of the PIC's recommendations is a key prerequisite to a bargaining agent attaining the legal right to conduct a strike. If arbitration is selected, the Board's Chairperson appoints an arbitration board that has the authority to issue a final and binding award.

The Board's mediation services are also offered to parties involved in collective bargaining and have proven successful in helping them conclude collective agreements.

The [Board's website](#) provides more detailed information on the collective bargaining process, as well as information on the status of collective bargaining. More information about the Board's collective bargaining activities during the reporting period can be found in Part II: The Board's Activities of this annual report.

Processing case files

All complaints, applications, and grievances made, filed with, or referred to, the Board are initially processed by the Board's registry services, which verifies the completeness of the submitted information and subsequently opens the case file.

Once a file is open, an acknowledgment letter containing the assigned file number and regulatory deadlines is sent to all parties that may be affected by the proceedings. The acknowledgment letter proposes mediation as a method of settling the differences. The parties have 15 days from the date in which they receive that letter to indicate whether they are interested in participating in mediation.

If the parties agree to mediation, their file is referred to the Board's MDRS team. Otherwise, the matters will be referred to be scheduled for a hearing or, before that, assigned to a Board member for a case-management conference.

Matters may be settled other than via a hearing. For example, the Board can hold case-management conferences before a hearing to deal with procedural

issues and technical questions. In some cases, a settlement conference can also be held, which enables the Board member and the parties to discuss the case and find a way to settle it without resorting to a hearing. A Board member might also issue a decision without holding a hearing, either through written submissions or through a settlement conference (see Figure 9 in Part II – The Board's Activities of this annual report for more information on how many cases were closed during the reporting period using these methods).

Mediation

When a file is referred to the Board's MDRS team, the parties are asked to provide their contacts for mediation. Once those contacts are identified, a mediator is assigned to the case and will communicate with the parties to schedule mediation and initiate preparatory work.

Mediation is a voluntary process, in which an independent, impartial, third party helps the parties resolve their conflict by reaching a mutually acceptable agreement. The process is confidential and any settlements that the parties may reach are confidential. Unlike in adjudication, the mediator possesses no decision-making authority, and settlements do not establish precedents.

The Board's MDRS team operates through expert mediators who help parties resolve staffing complaints and the full range of labour relations matters coherently and consistently, using interest-based approaches. Its mediators respond to conflict across the federal public sector from coast to coast and are committed to fulfilling their mission to serve their clients fairly, courteously, respectfully, and in accordance with the principles outlined in their [Standards of Practice](#).

Their practice model includes separate, pre-mediation sessions in which each party learns about the mediation process, and is given an opportunity to help the mediator fully understand the context of the dispute, the parties' issues and interests, and the realm of possible outcomes. This is usually followed by a full

day of mediation, in which the mediator works with the parties to facilitate the discussion, foster effective communication, broaden mutual understanding, and help them explore resolution options.

Over the past 20 years, the MDRS team has worked hard to earn and maintain its reputation as an effective and impartial resource for dealing with what are often very challenging matters before the Board.

Adjudication

Adjudication aims to resolve disputes through a legal process in which parties present their evidence and make their arguments, after which a binding decision is issued. The process is similar to that of a court hearing but is less formal. When a matter is not resolved through the case-management process or mediation, it proceeds to a hearing, which the Board ensures is fair and comprehensive.

At the hearing, each party is given the opportunity to submit evidence by way of witnesses and relevant documents, and to make submissions to support their position. Testifying witnesses and parties may

be subject to cross-examination. All exhibits must be provided in sufficient copies for the presiding Board member, all the parties, and any witnesses, as needed.

When the hearing ends, a well-reasoned decision is issued and each party receives a copy. Once they are available in both official languages, all decisions are posted on the Board's [website](#).

Outreach

The Board actively conducts outreach activities, such as speaking engagements and training sessions. Its goal is to educate stakeholders on how to foster harmonious labour relations. The Board also collaborates and discusses with its stakeholders key labour relations and employment issues, including case management. Through knowledge sharing, the Board and its stakeholders contribute to finding innovative ways to resolve cases before the Board in a timely manner.

Outreach helps the Board maintain up-to-date knowledge about labour relations and employment in the federal public sector, which in turn contributes to exemplary practices and service delivery.

Part II – The Board’s activities

Overview of 2019-2020 cases

Cases opened and closed under the *FPSLRA*

The volume of files the Board receives varies from year to year. After several years of receiving a higher than usual number of files, mainly for pay-related grievances linked to the federal Phoenix pay system (see pay-related grievances in this section of this annual report), the number of files received during the reporting period was considerably lower than in the past (see Figure 3).

Overview of cases under the *FPSLRA*

As in previous years, the majority of cases under the *FPSLRA* (62%) before the Board consisted of individual grievances. This high proportion of individual

grievances can mostly be attributed to the fact that this type of grievance includes multiple subjects (i.e., collective agreement interpretations, disciplinary actions, demotions, and deployments).

Of the 852 new files received, 76 included a discrimination allegation under the *Canadian Human Rights Act (CHRA)*.

While the number of individual grievances referred to the Board decreased significantly during the reporting period, the number of files received for other matters covered by the *FPSLRA* was consistent with previous years (see Figure 4).

FIGURE 3

Files opened and closed (*FPSLRA*) – 2017-2018, 2018-2019 and 2019-2020

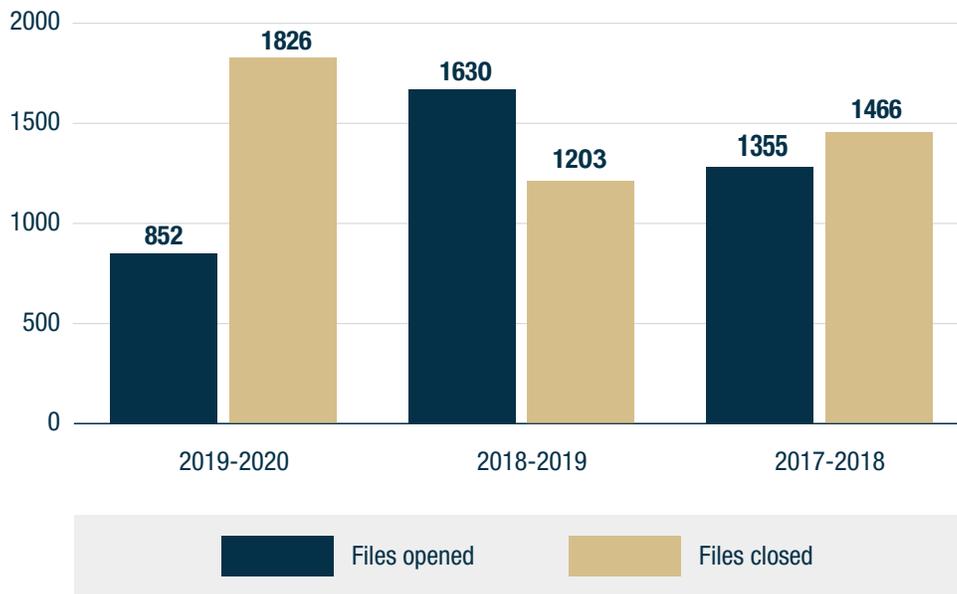


FIGURE 4

Labour relations matters filed or referred to the Board (FPSLRA) – 2018-2019 and 2019-2020

	Number of files 2019-2020	Number of files 2018-2019
Grievances		
Individual grievances (s. 209)	525	1262
Policy grievances (s. 221)	13	11
Group grievances (s. 216)	0	7
Order – Federal Court (s. 234 (1))	0	3
Total	538	1283
Complaints		
Duty to observe terms and conditions during a certification application (s. 56)	1	0
Duty to implement provision of the collective agreement (s. 117)	0	5
Duty to bargain in good faith (ss. 106 and 107)	3	7
Unfair labour practices (ss. 185, 186, 188, and 189)	21	15
Unfair labour practices – unfair representation (s. 187)	22	31
Reprisals under s. 133 of the <i>Canada Labour Code</i> (s. 240)	23	24
Other	5	0
Total	75	82
Applications		
Reviews of orders and decisions (s. 43(1))	10	7
Application for certification (ss. 54 and 59)	0	0
Determinations of membership (s. 58)	2	3
Successor rights and obligations (s. 79)	1	0
Applications for managerial or confidential positions (s. 71)	211	227
Revocations of managerial or confidential positions (s. 77)	10	25
Extension of time (s. 61)	5	3
Applications – Other	0	0
Total	239	265
	852	1630

Pay-related grievances

In June 2019, the Treasury Board and all federal public sector bargaining agents, with the exception of the Public Service Alliance of Canada, that are certified to represent employees under the *FPSLRA*, entered into a memorandum of agreement (MOA) for ongoing grievances related to the government's Phoenix pay system. Specifically, the MOA covers 1123 pay-related grievances that were referred to the Board. Under that MOA, those grievances, as well as any other future pay-related grievances referred to the Board, must be put in abeyance while negotiations between the parties on that matter continue.

In the meantime, the Chairperson of the Board convened a group, led by a Board vice-chairperson, and composed of Secretariat representatives, to meet with the parties to discuss case management strategies to deal with these grievances.

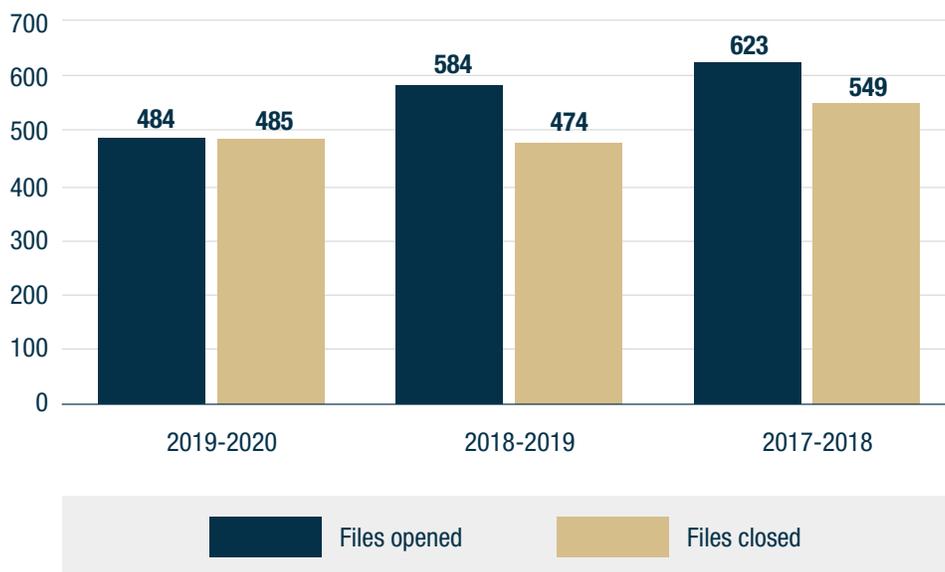
Cases opened and closed under the *PSEA*

Similarly, in 2019-2020, the Board received fewer staffing complaints under the *PSEA* than in the previous year (i.e., 484 compared to 584). Of those 484 complaints, 28 included a discrimination allegation under the *CHRA*.

The 485 files that were closed was comparable to the average number of files closed in previous years as shown in Figure 5.

FIGURE 5

Files opened and closed – *PSEA*, 2017-2018, 2018-2019 and 2019-2020



Overview of cases under the PSEA

In 2019-2020, the Board received 484 staffing complaints, the majority (463) of which involved internal appointment processes. Of those cases, 254 related to advertised appointment processes, and 205 to non-advertised appointment processes. These numbers are consistent with those in previous years (see Figure 6).

FIGURE 6

Complaints filed under the PSEA by type, 2018-2019 and 2019-2020

Type of staffing complaint	Number of staffing complaints 2019-2020	Number of staffing complaints 2018-2019
Layoff complaints (s. 65(1))	8	3
Appointment revocations (s. 74)	5	6
Internal appointments (s. 77(1))	463	575
Advertised	254	244
Non-advertised	205	327
Not applicable	4	4
Corrective measures (s. 83)	4	0
Lack of jurisdiction	4	0
Total	484	584

Processes and outcomes

Collective bargaining

For Canada's federal public sector, 2019-2020 marked a robust year of negotiations. The collective agreements of most of the bargaining units for which the Treasury Board is the employer expired in 2018. Their notices to bargain were served in the spring and summer of 2018, and negotiations began shortly after that. Bargaining for the separate employer community trailed the Treasury Board's schedule by a few months.

By early 2019, the parties had settled 34 collective agreements for about 65 000 employees in the broader federal public sector.

The Board received 5 requests for mediation assistance, 2 of which were subsequently withdrawn. One (1) mediation resulted in the conclusion of a collective agreement, while for 2 others, the parties were able to significantly reduce the number of outstanding issues.

One (1) arbitration request was carried over from the previous fiscal year. After the hearing, an award was issued in December 2019. Only 1 arbitration request was received in 2019-2020, which was withdrawn after the parties reached a settlement.

While arbitration requests were few, the Board received several requests that sought access to the conciliation-strike option provided under the *FPSLRA*. The Public Service Alliance of Canada (PSAC) submitted all but 1 of them. The PSAC submitted 11 requests to establish Public Interest Commissions (PICs), 6 of which involved separate employer bargaining units.

Seven (7) PICs were held in 2019-2020 and of those, 5 submitted reports that contained non-binding recommendations before the end of the fiscal year. Two (2) others were issued in the first quarter of 2020-2021. Due to the COVID-19 pandemic, the PSAC's remaining 4 PICs were postponed until 2020-2021, as was a single PIC request that was submitted by the Professional Institute of the Public Service of Canada.

Mediation

In 2019-2020, the Board conducted 152 mediations of grievances that were referred to adjudication, staffing and other complaints provided for under the *FPSLRA*, of which 76% resulted in the parties reaching a settlement. Figure 7 illustrates the geographical distribution of the mediations conducted during the reporting period. Figure 8 provides an overview of types of files settled in mediation.

The mediations where parties reached a settlement resulted in the resolution of 197 Board files. The settlements also resulted in the closures of 69 grievances and 3 complaints at the departmental level, 10 complaints before the Canadian Human Rights Commission, and 16 matters before other tribunals.

This year, labour relations issues resolved at mediation were highly distributive. The largest percentage of settled mediations, 21%, involved termination grievances. Discrimination and accommodation grievances accounted for 20%, unfair-labour-practice complaints represented 12%, and disciplinary issues and matters related to statement of duties accounted for 14% of settled mediations. The remainder involved various other issues, including demotion and harassment matters.

Staffing complaints that were resolved through mediation included those related to advertised staffing processes (55%); 45% involved non-advertised staffing processes.

FIGURE 7

Geographical distribution of mediations, 2019-2020

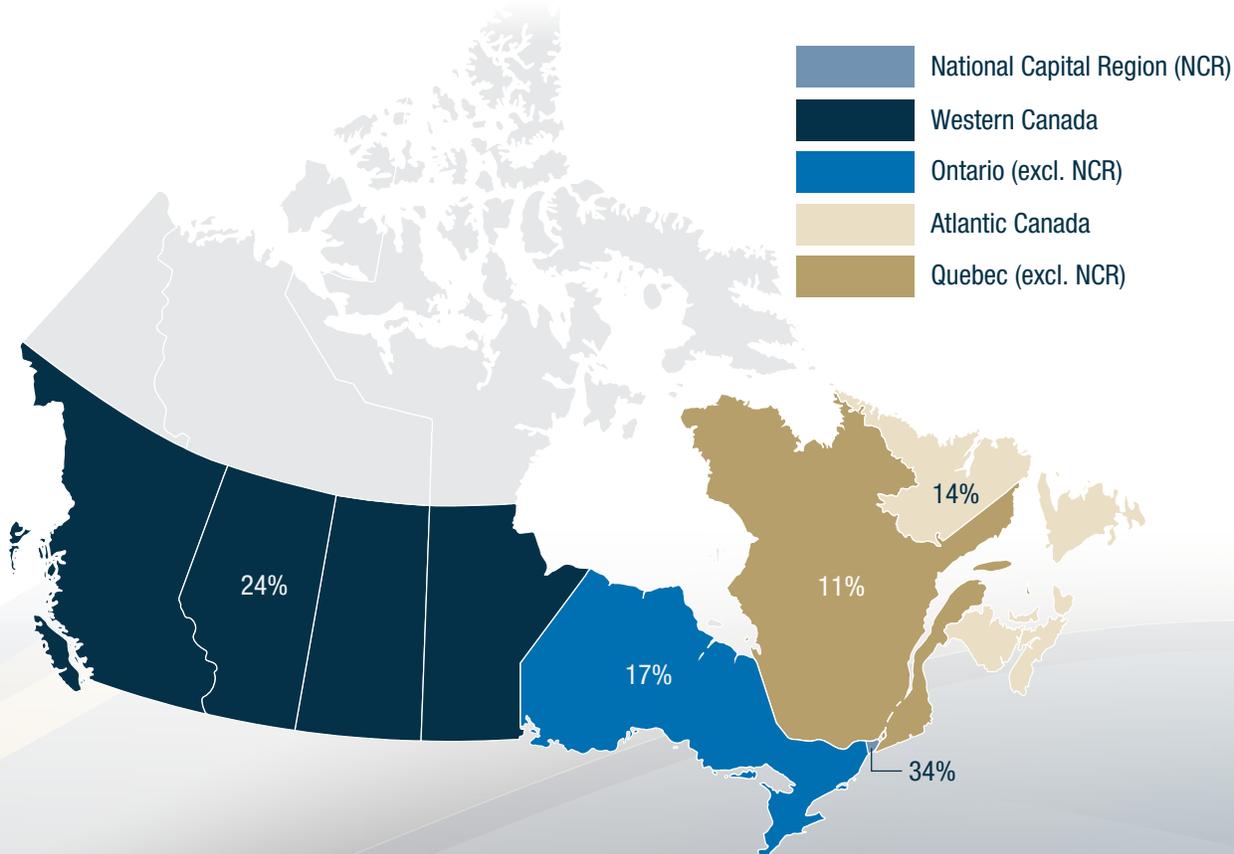
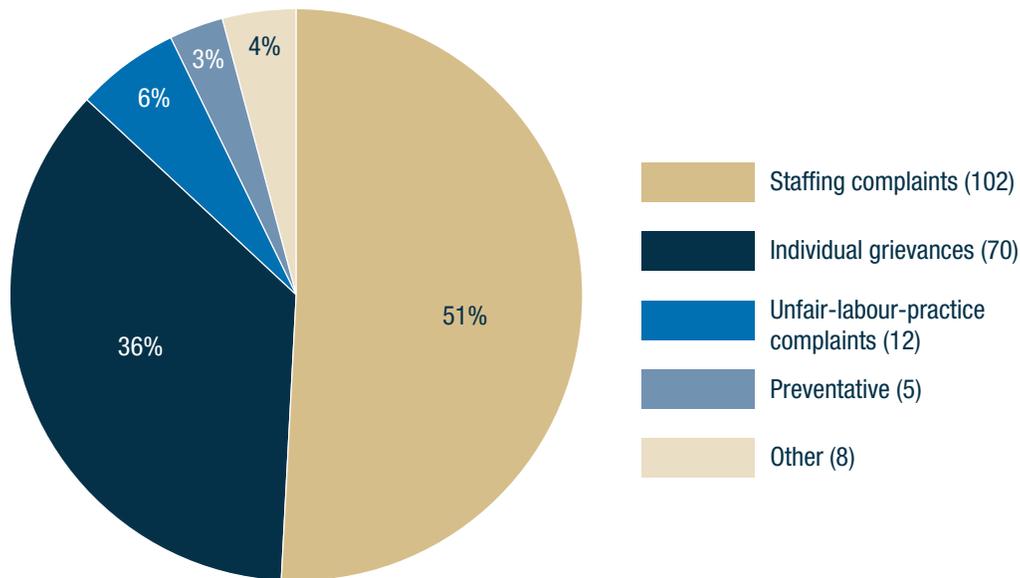


FIGURE 8

Files settled in mediation, by type



Adjudication

As mentioned earlier in this annual report, not all Board cases proceed to a formal hearing. In some cases (e.g., applications related to managerial and confidential positions), an order will be issued. A file can also be closed for administrative reasons, following a formal request by the Board's chairperson. Matters can also be settled before a hearing, either through mediation or mediation-arbitration, the latter of which is facilitated by a Board member, and which can result in a settlement agreement or a withdrawal. There are also cases where a party may decide to withdraw a matter before the Board. Figure 9 shows the number and the method of files closed under the *FPSLRA* and the *PSEA* during the reporting period.

In 2019-2020, for both the *FPSLRA* and the *PSEA* combined, 27% of the files were settled or withdrawn informally before the scheduled hearing, and 8% were settled or withdrawn through mediation or mediation and arbitration.

Twenty-three percent (23%) of the settled or withdrawn files are the result of the Memorandum of Understanding (MOU) between the Union of Canadian Correctional Officers – Syndicat des agents correctionnels du Canada – CSN and the Correctional Service of Canada (CSC). The MOU aims to reduce the number of outstanding CSC grievances. Along with the MOU, the parties put in place the CX Grievances Reduction Strategy, which includes meetings facilitated by the Board. As of March 31, 2020, 524 grievances of the 902 identified grievances were closed as a result of this strategy.

Hearings

When a matter is not resolved through mediation or through a case management process, a hearing will be scheduled, which will provide all parties with an opportunity to submit evidence to support their positions through either written or oral submissions, as well as testimony from witnesses.

In 2019-2020, 165 hearings were held. Figure 10 provides a summary of the types of matters heard by the Board.

FIGURE 9

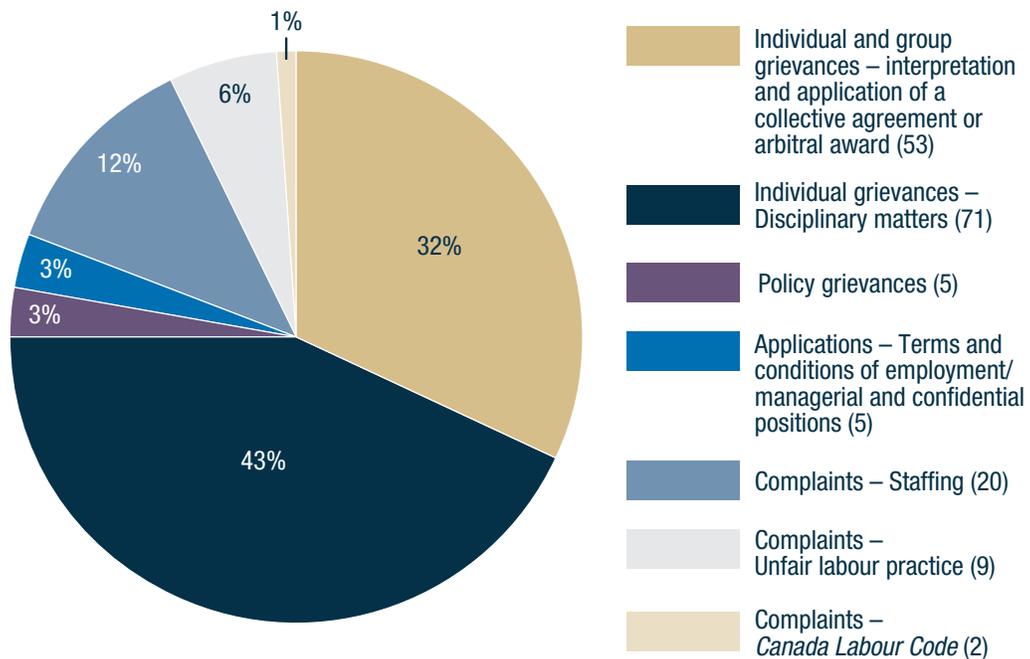
Files closed under the *FPSLR*A and the *PSEA*, 2019-2020

Closure method	Number of files
<i>FPSLR</i>A	
Decision	207*
Closure for administrative reason as requested by the Board's chairperson	42
Order (managerial and confidential positions)	185
Settlement and withdrawal	1392
Total	1826
<i>PSEA</i>	
Decision	17
Letter decision	78
Withdrawal	390
Total	485

*As one decision may involve many files, there can be a gap between the number of decisions issued and the number of files closed.

FIGURE 10

Types of matters heard in 2019-2020



Hearing length

One hundred and sixty-five hearings (165) were held in 2019-2020. While hearings last an average of 2.6 days, their duration varies considerably.

Hearings related to staffing matters or to the interpretation and application of a collective agreement (i.e., the leave, relocation, and workforce adjustment policy provisions) are usually the shortest and last between 1 and 3 days.

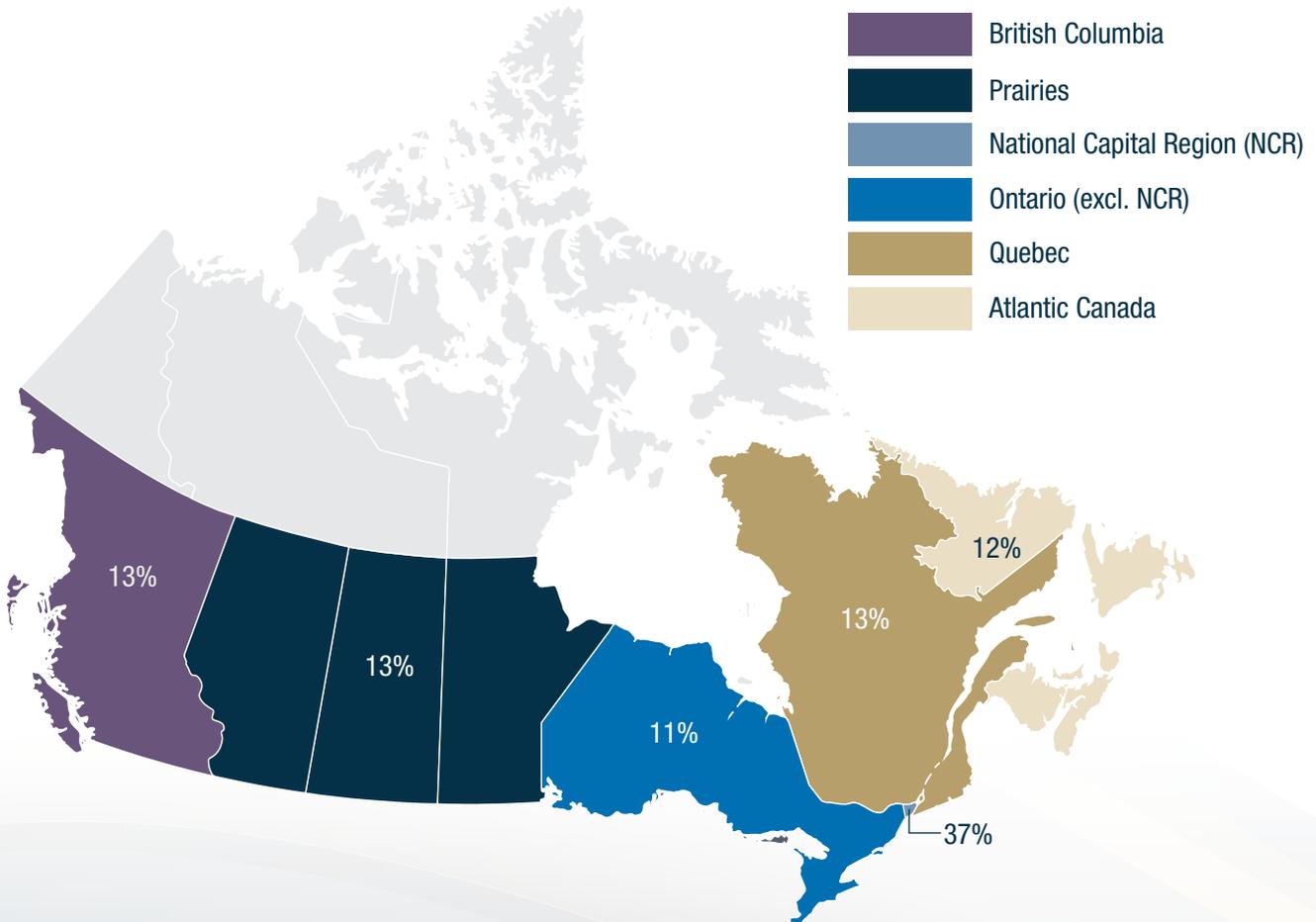
Hearings related to disciplinary matters such as employment terminations and suspensions are usually the longest. In 2019-2020, 3 hearings involving

terminations and suspensions each took more than 10 days. Seventeen (17) hearings took more than 5 days but less than 10 days, and involved disciplinary matters, discrimination allegations, and unfair representation complaints against bargaining agents.

Hearing location

The Board holds its hearings across Canada. In 2019-2020, while 37% of hearings were held in the National Capital Region, many other hearings were held across the country (see Figure 11).

FIGURE 11
Hearings across Canada in 2019-2020



Decisions issued

In 2019-2020, 103 decisions were issued. Ninety-three (93) of those decisions involved labour relations matters, while 10 dealt with staffing issues. Most decisions issued were labour relations grievances (68%). Thirteen percent (13%) were applications, 3% were reprisal complaints under the *CLC*, 7% were labour relations complaints, and 9% were staffing complaints.

Figure 12 provides an overview of the outcome of the decisions issued in 2019-2020. In addition to those outcomes, 1 decision that involved an individual grievance and complaint resulted in a dismissal, 1 involved multiple matters that were dismissed, allowed in part and allowed respectively, and 1 application resulted in an order.

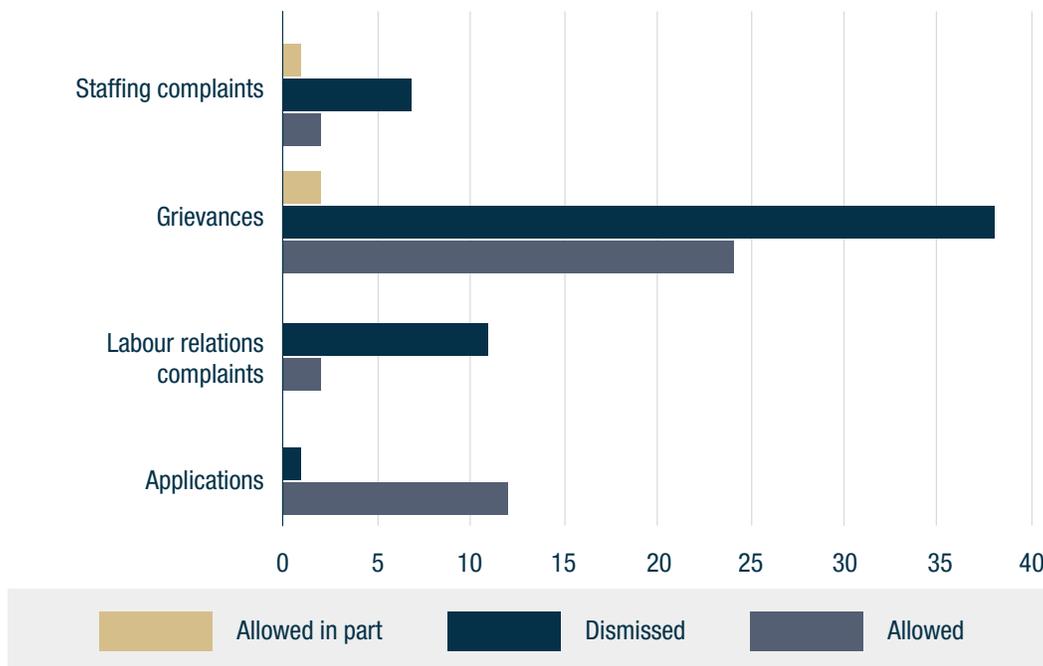
Outreach activities

Client Consultation Committee

The Client Consultation Committee (CCC) provides an important means of collaborating with the Board's stakeholders. The objective of the CCC is to seek clients' views on the Board's processes, practices, policies, and rules for its adjudication and related mediation services. Ongoing stakeholder consultations help the Board develop case-management initiatives, including case groupings and other activities that are aimed at reducing its caseload.

As mentioned earlier, the Board also continued its ongoing pilot project with the Correctional Service of Canada (CSC) and the Union of Canadian Correctional Officers – Syndicat des agents correctionnels du Canada – CSN to reduce the number of outstanding CSC grievances.

FIGURE 12
Outcome of decisions issued, by type, 2019-2020



Training

In 2019-2020, the Board offered the following training sessions:

Participating in Mediation at the Board – This two-and-a-half-day course imparts basic skills in mediation and interest-based negotiation. It focuses on mediation preparation and targets audiences who may be involved as a party, representative, or stakeholder in a workplace dispute that may be referred to the Board. Two sessions of this course, one in French and one in English, were given in the past year.

An Overview of the Board's Mandate, Processes and Jurisprudence – This course consists of one half-day each for staffing and labour relations matters. It provides basic mediation and interest-based negotiation skills. Participants learn how to apply negotiation techniques in the context of labour relations disputes and the staffing complaints process. Its target audience is human resources and bargaining agent representatives who may be involved in labour relations disputes and staffing complaints before the Board. One English course was presented during the year. Other sessions were cancelled because of the COVID-19 pandemic.

Presentations

The Board or its representatives also delivered speaking engagements at meetings and conferences during the year, as follows.

MDRS

In June 2019, the director of MDRS and one of its mediators made a presentation to a visiting delegation from South Korea about the Board's mediation services, collective bargaining in the federal public sector, and interest-based negotiations.

During that month, a mediator was a guest speaker at McGill University and gave a presentation on conflict resolution in the workplace and the Board's mediation services.

In July 2019, the director of MDRS participated in the annual conference of the Association of Labour Relations Agencies where she presented best practices in grievance mediation and facilitated roundtable discussions for mediators.

In November 2019, the director of MDRS participated in a joint union-management event at the Canada School of Public Service where she gave a presentation on how to prepare for mediation.

Legal Services and Board members

Members of the Board's Legal Services and the chairperson participated in an annual, week-long conference organized by the Council of Canadian Administrative Tribunals where they gave a presentation on the Board's adjudication services. One of the Board members also delivered a presentation on active adjudication.

A senior legal counsel also gave a presentation entitled Principles of Jurisdiction, Rule of Law and Procedural Fairness to members of the Ontario Association of Committees of Adjustment & Consent Authorities in Cornwall, Ontario. He also delivered a presentation on the Board's adjudication services at the annual conference of the Association of Labor Relations Agencies, and a training session to law students at the University of Ottawa. Another senior counsel provided a presentation on mediation to those law students.

A Board member and representatives from the Canada Industrial Relations Board and the Canadian Human Rights Tribunal gave a presentation to the Canadian Bar Association on the steps to take and the considerations required to prepare and represent a client's workplace interests. The presentation outlined which tribunal to apply to, and the tools to help prepare and argue a case. A Board member participated in a panel discussion during a session entitled Adjudicators at work: Rapid rulings on controversial issues at the Lancaster House 2019 Ottawa Human Rights on Labour Law Conference, where another Board member acted as co-chair of the Conference.

Part III – Changes and challenges

Royal Canadian Mounted Police (RCMP)

While the Board's mandate to oversee collective bargaining and grievance adjudication in the federal public sector dates back to 1967, its authority to adjudicate such matters for members of the RCMP is relatively recent. Following a successful challenge in 2016 to the legislation that prohibited the RCMP from collectively bargaining, the Board's mandate was broadened. In 2017, Parliament made changes to the legislation, making the Board responsible for RCMP matters involving collective bargaining, unfair labour practices, and grievances related to collective agreements.

Since then, the RCMP has marked a significant milestone on its path to collective bargaining. On July 12, 2019, the National Police Federation (NPF) was certified as the bargaining agent for the RCMP regular members and reservists. Following its successful certification, the NPF served notice to bargain on July 15, 2019.

Those negotiations represent a considerable challenge, as is often the case for first collective agreements. For decades, employees in this bargaining unit were governed by the terms and conditions of employment outlined in various employer policies and directives, which covered many aspects that could potentially have formed part of a collective agreement.

Once a collective agreement is in place, an RCMP member will be able to file a grievance related to a collective agreement or an arbitral award up to the final level of the grievance process. If the member believes that the grievance has not been dealt with to his or her satisfaction, he or she can refer it to adjudication, but the member must obtain his or her bargaining agent's approval to represent him or her during the adjudication process. Once the grievance is referred to the Board, it can be mediated, withdrawn, or heard by a panel of the Board.

To date, in addition to the application for certification, the Board has already heard and determined several different matters relating to the RCMP, including applications for determinations of membership, unfair labour practice complaints, and complaints about the duty to observe terms and conditions of employment. As set out in s. 238.05 of the *FPSLRA*, in all of the matters related to RCMP members, the Board will take into account the unique role of the RCMP as a police organization in protecting public safety and national security.

Regulations amending the Federal Public Sector Labour Relations Regulations

As of March 18, 2020, portions of the regulations relating to the matters arising before the Board were amended to reflect a number of changes brought about by the coming into force of *An Act to amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act, the Public Service Labour Relations Act and the Income Tax Act* (S.C. 2017, c. 12; Bill C-4), *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9; Bill C-7), and *An Act to amend the Federal Public Sector Labour Relations Act and other Acts* (S.C. 2018, c. 24; Bill C-62).

Key amendments include a new status review provision for "dormant cases", which enables the Board to better manage its caseload; the right for parties to send or file documents by electronic means; the removal of the 4:00 p.m. deadline, Ottawa time, and added clarifications for documents that are deemed to have been received by the Board; greater flexibility for the Board to alter the content of its forms; the addition of a definition of "day" for added clarity given the introduction

of electronic filing, and of “signature” and “contact information” to reflect the requirements of electronic filing; and the addition of the RCMP in the procedures for applications for certification and revocation.

The new *Regulations* also include many new dispute resolution provisions, including an amended definition of “initiating documents” to include applications for an essential services agreement, applications to amend an essential services agreement, applications for the amendment or suspension of an essential services agreement in an emergency situation, and applications for an extension of time under s.133 of the *FPSLRA*. As well, new provisions were also introduced that essentially restored the dispute resolution provisions that existed before December 13, 2013. Finally, a new provision was added to address the representation of a grievor who is not included in a bargaining unit.

The changes to the *Regulations* relate solely to the Board’s practices and procedures. They should address stakeholder concerns, and assist parties and the Board to manage cases more efficiently.

Accessible Canada Act (ACA)

This fiscal year, Parliament entrusted the Board with a new and very important responsibility: adjudicating grievances and complaints filed by public servants, Parliamentary employees, and certain members of the public who face barriers as persons living with disabilities.

On July 11, 2019, the *Accessible Canada Act* (“ACA”, S.C. 2019, c. 10), came into force. Its objective is to enhance the full and equal participation in Canadian society of everyone (especially those living with disabilities) through the identification, removal, and prevention of barriers in areas under federal jurisdiction.

The *ACA* applies to the federally regulated private sector, which includes the banking, transportation, and telecommunications industries, as well as the Government of Canada, Crown corporations, and Parliament. It establishes new structures and positions, including the accessibility commissioner, which will spearhead com-

pliance and enforcement activities under the legislation, and the Canadian Accessibility Standards Development Organization, which will develop accessibility standards and regulations in collaboration with industry and the disabled community.

Anyone who suffers physical or psychological harm, property damage, or economic loss, or who is otherwise adversely affected when a provision of the regulations, once they have been created, is contravened, has recourse under the *ACA*. For most Canadians, the recourse is to file a complaint with the accessibility commissioner, who will then investigate it. However, for federal public sector and Parliamentary employees, if a contravention can be addressed through the grievance process, they have the right to file a grievance and refer it to the Board. Effectively, a new stand-alone grievance right has been created for those employees; they may refer such grievances to the Board for adjudication. This is their only recourse for a contravention of the regulations.

Similarly, for federal public sector internal staffing matter complaints that involve appointments and layoffs, employees can raise any contraventions of the regulations, and the Board may interpret and apply the *ACA* when determining if the complaints are substantiated.

The Board also acquired an unprecedented appeal function of accessibility commissioner decisions as they relate to complaints from members of the public and some Parliamentary employees in matters associated with Parliamentary entities.

The Board’s expanded authority under the *ACA* will significantly impact and create challenges for the Board, (i.e., it will have to deal with new accessibility issue complaints and grievances). Once the regulations are adopted, it is estimated that the Board will receive about 100 additional cases every year.

As required by the *ACA*, the Board must establish a framework under which parties inform the accessibility commissioner when *ACA* matters have been raised, and under which the commissioner is entitled to make submissions to the Board. A framework and resources must be set up to hear appeals of the accessibility

commissioner's decisions, and orders relating to Parliamentary entities. This includes notifying the speakers of the House of Commons and the Senate of any proceedings, and enabling them to present evidence and make representations before the Board. The speakers must be notified if an *ACA* order is or is not complied with. The Board also expects that more and more, it will need to deal directly with members of the public who will have filed complaints with the accessibility commissioner about parliamentary entities.

A key component of the *ACA* is that it ensures that making a complaint with the wrong entity will not mean being denied recourse for a violation of the regulations. As such, the *ACA* requires the Board to collaborate with other entities that are responsible for enforcing it, including the Canadian Transportation Agency, the Canadian Radio-television and Telecommunications Commission, and the Canadian Human Rights Commission. Together, those entities must create mechanisms to efficiently and expeditiously refer individuals to the appropriate authority to address their accessibility-related complaints, applications, and grievances. The Board has already assigned resources to comply with this requirement and has begun, along with other affected organizations, to develop questionnaires, website wizards, and other tools to direct complainants to the appropriate authority for meaningful recourse. It will also need to provide additional ongoing training to its members and staff about accessibility-related matters.

The Board will also need to deal with the enhanced visibility that accessibility-related matters will attract from news and social media outlets and the public, including dealing with more access-to-information requests. Furthermore, to fulfill its new mission, the Board must consult more extensively with stakeholders.

These additional tasks and functions are undoubtedly challenging but essential for the Board and Canadian society as a whole to meet the objective of ensuring a barrier-free Canada.

COVID-19 pandemic

The Covid-19 pandemic has disrupted Canadian society in profound ways. The federal public sector has been deeply affected as has the Board in exercising its mandate. Following a March 16, 2020 order from the Chairperson of the Board, all in-person hearings and mediation sessions scheduled for the end of the reporting period were postponed, and all regulatory timeframes for complaints, grievances, and Board matters were suspended. On another level, the passage from working together in the same workplace to teleworking created additional challenges, especially when it happened so quickly.

As mentioned previously in this annual report, the pandemic forced the Board to examine alternative ways of conducting its operations to ensure it continued to fulfill its mandate. At the time that this report was published, the MDRS team and the Board acquired the capacity to conduct mediations and adjudication hearings via videoconferencing. As society and the government emerge from the initial pandemic response, it is expected that alternative measures such as videoconferencing will be used more frequently by the Board.

While the Board was able to adapt to the pandemic and ensure its activities continued as much as possible, its impact will surely last well into 2020-2021. When activities resume to a more normal level, all postponed hearings and mediations will be rescheduled, timeframes will be calculated and adjusted, and Board members and employees will continue to adjust to a new working environment, both inside the office and while teleworking. Work has already begun to establish new procedures and guidelines for videoconferencing to guide Board members, employees and parties through this new reality. Enhancing the Board's technological capabilities for case management, hearings, mediations, scheduling, and the general daily work is key to enable the Board to continue to successfully fulfil its mandate during these unique circumstances.

Part IV – Key decisions

Summaries of key Board decisions

A.B. v. Canada Revenue Agency, 2019 **FPSLREB 53: Discrimination on the basis of creed**

The grievor spent 10 days of term employment training at the offices of the Canada Revenue Agency. Following a co-worker's report, the employer discovered that the grievor had made several disturbing social media posts on his public Twitter page. They appeared to glorify the Boston Marathon terror bombing, celebrate the deaths of NATO military personnel, and cheer the downing of aircraft. Others referred to ISIS and another group that the federal government had declared a terrorist organization. The employer suspended the grievor's reliability status pending a reassessment, after which his status was revoked. His employment was subsequently terminated.

This decision assessed five individual grievances that arose from the stated events and that alleged racial and religious discrimination. The grievor was born and raised in Afghanistan and self-identifies as a person of Muslim faith.

The Board found that it was without jurisdiction to rule on the suspension grievance as the suspension and revocation of the grievor's reliability status were *bona fide* administrative actions that were based on valid reasons. The Board also determined that the termination of employment due to the loss of reliability status was reasonable and justified in the circumstances. Additionally, the Board concluded that there was insufficient evidence upon which to award the grievance alleging a violation of the no-discrimination clause of the collective agreement. The concerns were deemed reasonable and validly linked to the employer's duty to ensure employee

reliability. The Board further found that any employee making the same posts, regardless of their identity and beliefs, would have been investigated.

The grievances were dismissed. The Board ordered the removal of the grievor's name from the decision and sealed identifying exhibits in response to his request, to protect him from the risk of suffering discrimination from the matters in this case.

Jassar v. Canada Revenue Agency, 2019 **FPSLREB 54: Heysler or Bétournay?**

The grievor filed grievances in response to two suspensions: the revocation of his reliability status, and the resulting termination of his employment. The employer had suspended him for 10 days for connecting a wireless router to its computer network. It then suspended him for 20 days for falsely recording his attendance at work and for claiming leave to which he was not entitled.

As for the first suspension, the Board found that the employer did not establish that the grievor had powered up the router and that there had been only a low risk to the employer's data in the five minutes during which the router was connected. Thus, it found that the disciplinary action was unjustified and excessive.

For the second suspension, the Board found that the grievor had not been away from work without recording his absence. It also found that the employer did not establish that he had been well enough to attend work during the hours for which he had claimed sick leave. The Board found that the grievor took 3.5 hours of medical or dental appointment leave to accompany a family member to appointments. However, there was no evidence that it was not an honest mistake as the grievor had had more than enough hours of the correct leave available to him.

Finally, the employer objected to the Board's jurisdiction to assess the grievor's termination, alleging that it was done for administrative reasons. The Board found that the conditions required to revoke the reliability status were not present at the relevant time, and that the termination of employment was a contrived reliance, a sham, or a camouflage. It also found that the termination was a disguised disciplinary action over which it had jurisdiction. To assess whether the grievor's termination was for cause, the Board reviewed the Federal Court of Appeal's decision in *Canada (Attorney General) v. Heyser*, 2017 FCA 113, and *Canada (Attorney General) v. Bétournay*, 2018 FCA 230. It gave preference to Heyser as it respects the current state of labour adjudication in Canada, the terms and conditions of employment in the grievor's collective agreement, and the purposes stated in the preamble to the *FPSLRA*. The Board found that the termination was not for cause.

The grievances were allowed. The Board ordered the employer to reimburse the grievor both 10 and 20 days' pay with interest. It also ordered that he be reinstated with pay and interest and without loss of benefits.

Murphy v. Deputy Head (Canada Border Services Agency), 2019 FPSLREB 64: **Suspension and revocation of reliability status**

The grievor, a long-time employee of the Canada Border Services Agency ("the Agency"), grieved the suspension and revocation of his reliability status after a routine personnel-security screening for the renewal of his top-secret security clearance. He also grieved his subsequent termination.

Before starting his career at the Agency, the grievor was convicted of drug smuggling in Morocco and was jailed for four months. He did not disclose this conviction in any of his personnel-security-assessment questionnaires over his career. When this adverse information was revealed, a security interview was held, during which the grievor continued to withhold the existence of his criminal conviction, until the interviewer confronted him with it. The grievor then admitted to the conviction and provided a full explanation.

The Board found that the employer's decisions were not disciplinary. It determined that the grievor's attempts to conceal his foreign conviction on drug-related charges and his use of illegal drugs gave his employer legitimate concerns that he represented current, unmanageable, and ongoing risks to its operations. It further found that the grievor's relationships while abroad did not represent legitimate, current, and ongoing risks to the employer's security interests. The Board found that the employer's decisions with respect to the grievor's reliability status were legitimate. Finally, it concluded that the termination was justified as the grievor no longer held the reliability status required for his continued employment.

The grievances were dismissed.

Choinière Lapointe v. Correctional Service of Canada, 2019 FPSLREB 68: **Reprisals against a bargaining agent representative**

The complainant filed an unfair-labour-practice complaint against his manager, alleging that she discriminated against him with respect to employment conditions, among other things by reducing his work schedule because he was a bargaining agent representative, and then by threatening to make a harassment complaint against him because he carried out shop-steward duties.

The Board found that s. 191(3) of the *FPSLRA* reversed the burden of proof and that the respondent had the burden of establishing that the complaint was unfounded. The Board found that the respondent did not discharge its burden of establishing that the complainant's work schedule reduction was not motivated by his shop-steward status.

The Board allowed the complaint and ordered the respondent to pay the complainant the compensation he would have been entitled to if not for the work schedule reduction. The Board also ordered it to pay him \$5000 in damages for psychological harm.

Professional Institute of the Public Service of Canada v. Treasury Board, 2019 FPSLREB 112: Registration fees

The bargaining agent filed two policy grievances against the interpretation of article 21 of the relevant collective agreement. First, it argued that medical advisors in the Medical Expertise Division at Employment and Social Development Canada (ESDC) were entitled to reimbursement for their continuing professional development (CPD) tracking fees under article 21. Second, it contended that they were entitled to reimbursement for professional liability insurance fees as per article 21.

For the first grievance, the Board found that tracking fees are necessary for physicians to report their CPD activities and thus maintain their licences, which they must do to continue to perform their duties for the employer. The Board concluded that CPD tracking fees were reimbursable under article 21 as the fees are necessary to acquire or maintain the professional registration required to continue performing their duties.

As for the second grievance, the Board found that professional liability insurance is a requirement to hold a medical licence in Quebec and thus work for the employer in that province. The Board found that article 21 must be interpreted to include all fees related to the continued performance of medical advisors' duties. However, as those duties are exclusively administrative, the Board found the employer liable to reimburse Quebec ESDC medical advisors only for the part of their professional liability insurance fees that are related to performing the duties of their positions. Thus, any additional insurance for their other medical practices outside ESDC are the medical advisors' responsibility.

Both grievances were allowed.

Association des membres de la Police Montée du Québec v. Treasury Board, 2019 FPSLREB 70: Application of certification

This decision was rendered in the context of two certification applications. The applicant Association des membres de la Police Montée du Québec (AMPMQ) applied for certification to represent employees who are RCMP members in Division "C" (Quebec) appointed to rank. The applicant National Police

Federation (NPF) applied for certification to represent all employees who are RCMP members and reservists.

In a previous decision, the Board declared that pursuant to s. 238.14 of the *FPSLRA*, for the purposes of this certification, the bargaining unit had to be a single, national bargaining unit for employees who are RCMP members appointed to a rank and those who are reservists (see *National Police Federation v. Treasury Board of Canada*, 2017 FPSLREB 34). In that decision, the Board declared that only the NPF's application complied with the legislation and that a vote was required to determine whether it had the bargaining unit's support. Although the vote took place, the results were suspended pending the resolution of the AMPMQ's challenge as to the constitutionality of that provision of the *FPSLRA*.

In this decision, the Board considered the AMPMQ's motion that the provision at issue be declared of no force and effect as it was inconsistent with the right to associate.

Based on the analysis provided by the Supreme Court of Canada in *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 (*MPAO*), and *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, the Board sought to determine whether the provision infringes upon s. 2(d) of the *Canadian Charter of Rights and Freedoms* ("the *Charter*") in that it constitutes a substantial interference with a meaningful collective bargaining process. As the Supreme Court of Canada has described degree of choice as an essential component of meaningful collective bargaining, the Board sought to determine if it was preserved by the *FPSLRA*. It found that the *FPSLRA* preserves the hallmarks of choice, and that they are sufficient as long as employees are able to provide effective input into the selection of goals. As such, the Board determined that there was no substantial interference with the RCMP members' right to a meaningful collective bargaining process; thus, the provision does not limit the guarantee of freedom of association.

Even had the Board found interference with freedom of association, it held that it would have been justified under s. 1 of the *Charter*. Given the RCMP members' required mobility and the importance of standardized work conditions across the country, the legislative requirement for a single bargaining unit had a substan-

tial and pressing objective, any impairment was minimal, and the legislative measure taken was proportional to the objective.

The motion for a declaration that s. 238.14 of the *FPSLRA* is inoperative as being inconsistent with the Canadian Constitution was dismissed. The AMPMQ's certification application was also dismissed. The Board further lifted the stay of certification and ordered tallied the vote held in the NPF's certification application.

National Police Federation v. Treasury Board, 2019 FPSLREB 74: Application of certification

This decision followed the outcome of the previous decision highlighted in this section of the annual report (see *Association des membres de la Police Montée du Québec v. Treasury Board*, 2019 FPSLREB 70). As the Board determined that the appropriate bargaining unit was a single, national bargaining unit consisting of all employees who are RCMP members (excluding officers and civilian members), and all employees who are reservists, and confirmed that the contested provision of the *FPSLRA* did not interfere with the guarantee of freedom of association of the RCMP members stationed in Quebec, the Board lifted the stay of certification and ordered tallied the vote held in the National Police Federation's (NPF) certification application.

The Board was satisfied that a majority of the employees in the bargaining unit who were eligible to vote and who cast a ballot voted to have the NPF represent them as their bargaining agent. Therefore, it certified the NPF as the bargaining agent for the bargaining unit.

Dussah v. Deputy Head (Office of the Chief Human Resources Officer), 2020 FPSLREB 18: Consideration of the test of reviewing a termination for unsatisfactory performance

The grievor filed a grievance after her employment was terminated for unsatisfactory performance. Beginning in December 2011, she held a management position that was classified at the EC-07 group and level. Her employment was terminated in December 2013. She alleged that the employer acted in bad faith and that its decision was unreasonable, given shortcomings in the performance evaluation procedure.

The Board applied the following criteria to determine whether it was reasonable for the employer to deem the grievor's performance unsatisfactory:

- 1) Did the employer set reasonable work objectives for the grievor and clearly communicate them to her in advance?
- 2) Did the employer set reasonable performance indicators for her and clearly communicate them to her in advance?
- 3) Did the employer give her reasonable time to meet the work objectives and performance indicators that it set for her?
- 4) Did the employer provide her with all the support she needed to meet the work objectives and performance indicators that it had set within the time that she was given?

The Board determined that the employer did not provide the grievor with all the support she needed to meet the work objectives and performance indicators it had set for her within the time that she had been given. Thus, the Board found that it had been unreasonable for the employer to deem her performance unsatisfactory during the period in which she was subject to a performance management plan.

The grievance was allowed, and the Board ordered that the grievor be reinstated to her position or to an equivalent one, and that her pay be reimbursed with annual interest at the prescribed Bank of Canada rates from the effective date of her termination.

Judicial review

Popov v. Canada (Attorney General), 2019 FCA 177: Extension of a deadline to refer a grievance to adjudication

The Federal Court of Appeal (FCA) dismissed an application for judicial review of the Board's decision in *Popov v. Canadian Space Agency*, 2018 FPSLREB 49, denying the applicant's request to refer his grievance to the Board for adjudication 13 months after the prescribed deadline.

The applicant filed a grievance with the employer when he was terminated from his employment. The employer dismissed the grievance and advised the applicant that he had 40 days to refer his grievance to the Board for adjudication. The applicant did so only 13 months later and applied to the Board for an extension of time.

The Board denied his request. It reviewed the applicant's evidence and explanations for the delay in light of the five criteria set out in *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1 at para. 75, namely, (1) whether there exists clear, cogent, and compelling reasons for the delay; (2) the length of the delay; (3) the due diligence of the grievor; (4) balancing the injustice to the employee against the prejudice to the employer in granting an extension; and (5) the chances of success of the grievance.

The FCA found that the Board did not commit any error in dismissing his extension request. It noted that the Board's jurisprudence establishes that requests to extend timelines under s. 61(b) of the *Federal Public Sector Labour Relations Regulations* are allowed only sparingly. In this case, the Board assessed each of the *Schenkman* criteria and found that the interests of fairness did not militate in favour of the applicant, a finding with which the FCA essentially agreed.

The FCA rejected the applicant's argument that it was improper for the Board to decline to consider the fifth *Schenkman* criterion, on the applicant's chances of success. As is noted in the Board's jurisprudence, the fifth criterion is not often considered unless it is clear that the grievance has little to no chance of success. The Board had insufficient evidence before it about the circumstances of the termination to allow it to decide the applicant's chances of success. Accordingly, in the circumstances, the Board properly declined to consider the applicant's chances of success.

The FCA agreed with the Board's conclusion that the inconvenience that an extension would have imposed on the Canadian Space Agency outweighed the applicant's reasons for his tardiness, and found that the Board had properly stated that "... the employer is entitled to turn the page when it believes a matter has been settled once and for all," which is especially true after a lengthy period of 13 months has passed.

Canada (Attorney General) v. Duval, 2019 **FCA 290: Duty to accommodate**

This decision was rendered on an application for judicial review of the Board's decision in *Duval v. Treasury Board (Correctional Service of Canada)*, 2018 FPSLRB 52, in which the Board found that the Correctional Service of Canada (CSC) had failed to accommodate the respondent by reason of the process it followed in returning him to work after an absence due to a work-related injury. The Board awarded the respondent the salary and benefits he would have earned had he been reinstated as of the date on which he was medically able to return to work, in addition to \$5000 for pain and suffering under s. 53(2)(e) of the *Canadian Human Rights Act*.

The FCA determined that the accommodation case law did not justify reinstating the respondent's full salary and benefits merely because he was fit to work. Thus, the Court found that the Board's award was unreasonable in this respect.

The Court further found that the mere procedure adopted by the employer to reinstate the respondent, which consisted of asking him to apply for a deployment, did not constitute in itself a failure to accommodate him. The Court remitted that issue to the Board for a new determination of whether the specific circumstances of the case established that the CSC had failed to accommodate the respondent to the point of undue hardship.

The Court reaffirmed that in the case of a grievance alleging an employer's continuous failure to provide reasonable accommodation, the Board's authority to award damages is limited to the period during which the grievance could have been filed. Consequently, the Court found unreasonable the Board's award of damages for a longer period.

The FCA allowed the judicial review application and remitted the grievance back to the Board for redetermination, with an eye to the requirements of cooperation in workplace accommodation and of a reasonable but not perfect accommodation. (For the Board's redetermination, see *Duval v. Treasury Board (Correctional Service of Canada)*, 2020 FPSLRB 53.)

Appendix 1 – Total caseload for the FPSLREB, 2017-2018 to 2019-2020

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			
2017-2018	6765	1072	74	209	1355	1466	6654
2018-2019	6654	1283	82	265	1630	1203	7081
2019-2020	7081	538	75	239	852	1826	6107

Public Service Employment Act

Fiscal Year	Carried forward from previous years	New Complaints	Complaints Closed	Carried forward to next year
2017-2018	401	623	549	475
2018-2019	475	584	474	585
2019-2020	585	484	485	584

Appendix 2 – Matters per parts of the *Federal Public Sector Labour Relations Act*, 2019-2020

<i>Federal Public Sector Labour Relations Act</i>	Number of matters
PART I – LABOUR RELATIONS	
Review of orders and decisions (subsection 43(1))	10
Determination of membership (section 58)	2
Successor Rights and Obligations	1
Complaints	52
Duty to observe the terms and conditions during application for certification (section 56)	1
Complaints (sections 106 and 107)	3
Unfair Labour Practices (sections 185, 186, 188 and 189)	21
Unfair Labour Practices – Unfair representation (section 187)	22
Other	5
Managerial or Confidential Positions	221
Application for Managerial or Confidential Positions (section 71)	211
Application for revocation of order (section 77)	10
PART II – GRIEVANCES	
Individual grievances (section 209)	525
Policy grievances (section 221)	13
PART III – OCCUPATIONAL HEALTH AND SAFETY	
Reprisals under section 133 of the <i>Canada Labour Code</i> (section 240)	23
<i>Federal Public Sector Labour Relations Regulations</i>	
PART II – GRIEVANCES	
Extension of time (section 61)	5
Total	852

Appendix 3 – Matters per parts of the *Public Service Employment Act*, 2019-2020

<i>Public Service Employment Act</i>	Number of matters
PART 4 – EMPLOYMENT	
Complaint to Board re lay-off (subsection 65 (1))	8
PART 5 – INVESTIGATIONS AND COMPLAINTS RELATING TO APPOINTMENTS	
Revocation of Appointment (section 74)	5
Internal Appointments Grounds of complaint (subsection 77 (1))	463
Failure of corrective action (section 83)	4
Other	4
Total	484

Appendix 4 – Complaints filed under the *Public Service Employment Act*, by department, 2019-2020

Department	Number of complaints received	Percentage
Canada Border Services Agency	50	10%
Canada Revenue Agency	3	1%
Canada School of Public Service	3	1%
Canadian Environmental Assessment Agency	1	0.2%
Canadian Human Rights Commission	1	0.2%
Canadian Radio-television and Telecommunications Commission	1	0.2%
Canadian Space Agency	2	0.4%
Correctional Service of Canada	59	12%
Courts Administration Service	2	0.4%
Department of Agriculture and Agri-Food	1	0.2%
Department of Canadian Heritage	2	0.4%
Department of Citizenship and Immigration	29	6%
Department of Employment and Social Development	45	9%
Department of Finance	1	0.2%
Department of Fisheries and Oceans	18	4%
Department of Foreign Affairs, Trade and Development	26	5%
Department of Health	6	1%
Department of Indian Affairs and Northern Development	6	1%
Department of Indigenous Services Canada	4	1%
Department of Industry	6	1%
Department of Justice	7	1%

Department	Number of complaints received	Percentage
Department of National Defence	62	13%
Department of Natural Resources	9	2%
Department of Public Safety and Emergency Preparedness	2	0.4%
Department of Public Works and Government Services	21	4%
Department of the Environment	16	3%
Department of Transport	4	1%
Department of Veterans Affairs	7	1%
Economic Development Agency of Canada for the Regions of Quebec	1	0.2%
Immigration and Refugee Board	12	2%
National Energy Board	3	1%
Office of the Chief Electoral Officer	3	1%
Office of the Director of Public Prosecutions	2	0.4%
Public Health Agency of Canada	3	1%
Public Service Commission	2	0.4%
Royal Canadian Mounted Police	25	5%
Shared Services Canada	34	7%
Statistics Canada	3	1%
Treasury Board	2	0.4%
Total	484	100%

Appendix 5 – Synopsis of applications for judicial review of decisions rendered by the FPSLREB

Fiscal Year	Decisions rendered ³	Number of applications	Applications discontinued	Applications dismissed	Applications allowed	Applications pending ⁴
2017-2018	104	19	3	12	2	2
2018-2019	95	21	4	0	0	17
2019-2020	103	13	0	0	0	13

³ Decisions rendered do not include cases dealt with under the expedited adjudication process and managerial exclusion orders issued by the FPSLREB.

⁴ 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.

Appendix 6 – Number of bargaining units and public service employees by employer and bargaining agent April 1, 2019 to March 31, 2020⁵

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	4980
Association of Justice Counsel	1	2888
Canadian Association of Professional Employees	2	17 298
Canadian Federal Pilots Association	1	389
Canadian Merchant Service Guild	1	1214
Canadian Military Colleges Faculty Association	1	188
Canadian Union of Public Employees	1	1069
Federal Government Dockyard Chargehands Association	1	53
Federal Government Dockyard Trades and Labour Council East	1	608
Federal Government Dockyard Trades and Labour Council West	1	645
International Brotherhood of Electrical Workers, Local 2228	1	1071
National Police Federation	1	18 832
Professional Association of Foreign Service Officers	1	1558
Professional Institute of the Public Service of Canada	6	38 863
Public Service Alliance of Canada	5	115 188
Union of Canadian Correctional Officers – Syndicat des agents correctionnels du Canada – CSN	1	7190
UNIFOR	3	276
Total for the Treasury Board of Canada	29	212 310

⁵ The figures were provided by the employers.

Other employers

Separate employers	Number of bargaining units	Number of public service employees
Canada Energy Regulator (CER)		
Professional Institute of the Public Service of Canada	1	424
Total	1	424
Canada Revenue Agency (CRA)		
Professional Institute of the Public Service of Canada	1	12 883
Public Service Alliance of Canada	1	31 065
Total	2	43 948
Canadian Food Inspection Agency (CFIA)		
Professional Institute of the Public Service of Canada	3	2019
Public Service Alliance of Canada	1	4060
Total	4	6079
Canadian Nuclear Safety Commission (CNSC)		
Professional Institute of the Public Service of Canada	1	882
Total	1	882
Canadian Security Intelligence Service (CSIS)		
Public Service Alliance of Canada	1	97
Total	1	97
Communications Security Establishment (CSE)		
Public Service Alliance of Canada	1	2639
Total	1	2639
National Capital Commission (NCC)		
Public Service Alliance of Canada	1	391
Total	1	391
National Film Board (NFB)		
Canadian Union of Public Employees, Local 2656	2	88
Canadian Union of Public Employees, Local 4835	1	95
Professional Institute of the Public Service of Canada	2	168
Total	5	351

Separate employers	Number of bargaining units	Number of public service employees
National Research Council of Canada (NRCC)		
Professional Institute of the Public Service of Canada	4	1770
Research Council Employees' Association (RCEA)	6	1790
Total	10	3560
Office of the Auditor General Canada (OAG)		
Public Service Alliance of Canada	1	181
Total	1	181
Office of the Superintendent of Financial Institutions (OSFI)		
Professional Institute of the Public Service of Canada	1	643
Public Service Alliance of Canada	1	19
Total	2	662
Parks Canada Agency (PCA)		
Public Service Alliance of Canada	1	5917
Total	1	5917
Social Sciences and Humanities Research Council of Canada		
Public Service Alliance of Canada	2	257
Total	2	257
Staff of the Non-Public Funds, Canadian Forces (SNPF-CF)		
Public Service Alliance of Canada	10	670
United Food and Commercial Workers Union	12	602
Total	22	1272
Statistical Survey Operations (SSO)		
Public Service Alliance of Canada	2	1733
Total	2	1733
Total for separate employers	56	68 393
Total for the Treasury Board of Canada	29	212 310
Total for all employers	85	280 703

Appendix 7 – Number of bargaining units and public service employees by bargaining agent April 1, 2019 to March 31, 2020⁶

Certified bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Association of Canadian Financial Officers (ACFO)	1	5300
Association of Justice Counsel (AJC)	1	2785
Canadian Association of Professional Employees (CAPE)	2	18 175
Canadian Federal Pilots Association (CFPA)	1	358
Canadian Merchant Service Guild (CMSG)	1	1100
Canadian Military Colleges Faculty Association (CMCFA)	1	*181
Canadian Union of Public Employees	1	1050
Canadian Union of Public Employees, Local 2656 (CUPE)	2	*80
Canadian Union of Public Employees, Local 4835 (CUPE) (Syndicat général du cinéma et de la télévision (SGCT))	1	*100
Federal Government Dockyard Chargehands Association (FGDCA)	1	**50
Federal Government Dockyard Trades and Labour Council East (FGDTLC-E)	1	650
Federal Government Dockyard Trades and Labour Council West (FGDTLC-W)	1	800
International Brotherhood of Electrical Workers, Local 2228 (IBEW)	1	1050
National Police Federation (NPF)	1	N/A

⁶ The figures were provided by the bargaining agents.

* The number shown is as of March 31, 2019.

** 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
Professional Association of Foreign Service Officers (PAFSO)	1	2000
Professional Institute of the Public Service of Canada (PIPSC)	19	59 152
Public Service Alliance of Canada (PSAC)	27	152 151
Research Council Employees' Association (RCEA)	6	1918
Unifor, Local 87-M	1	3
Unifor, Local 2182	1	**300
Unifor, Local 5454 (Canadian Air Traffic Control Association (CATCA))	1	9
Union of Canadian Correctional Officers – Syndicat des agents correctionnels du Canada – CSN (UCCO-SACC-CSN)	1	7023
United Food and Commercial Workers Union, Local No. 175 (UFCWU-175)	4	233
United Food and Commercial Workers, Local 401 (UFCW-401)	1	125
United Food and Commercial Workers Union, Local No. 832 (UFCWU-832)	1	62
United Food and Commercial Workers Union, Local No. 864 (UFCWU-864)	3	169
United Food and Commercial Workers, Local 1400 (UFCW-1400)	1	400
United Food and Commercial Workers Union, Local 1518 (UFCWU-1518)	2	71
Total	85	224 694

Note: The total in Table 2 does not equal the total indicated in Table 1 (from the Treasury Board and separate employers) because the employees included in Table 1 who were not represented by a bargaining agent are tabulated in their calculations.

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