



Federal Public Sector
Labour Relations and
Employment Board

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

Annual Report

April 1, 2019, to March 31, 2020

***Parliamentary Employment
and Staff Relations Act***

Canada 



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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, 2019, to March 31, 2020.

Again this year, we worked to further enhance the efficiency of our processes. With that goal

in mind, we also continued consulting with the parties through our Client Consultation Committee, which comprises representatives from our organization, employers and bargaining agents. Finally, we maintained our 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.

Also in 2019, the Board's mandate was expanded with the coming into force of the *Accessible Canada Act*, which establishes a framework to proactively identify, remove, and prevent accessibility barriers for persons with disabilities. Under that Act, the Board acquires an unprecedented appeal function of the accessibility commissioner's decisions on complaints from the public and some parliamentary employees in matters associated with parliamentary entities.

As everyone is well aware, the COVID-19 pandemic marked the end of this reporting period. Its enduring nature forced the Board to examine alternative means of conducting its operations, to fulfil its mandate. While the Board was able

to adapt to the pandemic and ensure that its activities were maintained, albeit partially, while writing this during these last few weeks of 2019-2020, we expect that its impact will surely last 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 that we continue to meet their needs. I believe that our success this past year would not have been possible without the consistent and outstanding work of all the employees of the Board's secretariat, the 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

The Board's composition

The *Federal Public Sector Labour Relations and Employment Board Act (FPSLREBA)* 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

The Board's overall mandate

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, and is responsible for administering public sector employees' reprisal complaints under the *Canada Labour Code*.

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 relating to the *Accessible Canada Act (ACA)*, which establishes a framework to proactively identify, remove, and prevent accessibility barriers for persons with disabilities (see the "Changes and Challenges" section of this report for more information about the *ACA*).

Specifically, the Board aims to

- resolve labour relations and employment issues impartially and fairly;
- help parties resolve disputes through case management, dispute resolution, and adjudication;
- conduct hearings in accordance with the law and the principles of natural justice;
- educate and inform clients and the public on its role, services, and jurisprudence; and
- 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.

The open court principle

The Board's mandate is such that its 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, save 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 may post 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 court principles and grant requests to maintain the confidentiality of specific evidence and may tailor its decisions to accommodate protecting someone's privacy.

Also in accordance with the open court principle, the Board provides the public and parties access to its case files, but only paper copies (not electronic copies). The files are available at the Board's offices, with appropriate notice. However, information protected by solicitor-client privilege is not available.

The Board's mandate under the *Parliamentary Employment and Staff Relations Act (PESRA)*

Among other legislation, the Board is charged with administering Part I of the *PESRA* and with resolving disputes that arise between parliamentary employees and their employer. The *PESRA* covers 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.

More precisely, Part I of the *PESRA*

- gives parliamentary employees the right to form a union and to engage in collective bargaining to establish terms and conditions of employment;
- gives parliamentary employees the right to file grievances about those conditions and, in certain cases, to refer them to adjudication before a neutral third party;
- gives the Board the authority to hear many different matters, such as applications for certification, complaints of unfair labour practices, designations of persons employed in managerial and confidential capacities, and adjudications of grievances; and
- gives the Board the authority to hear grievances about the interpretation and application of collective agreement provisions, disciplinary action, and all forms of termination of employment except rejections on probation during initial appointments.

The *PESRA* provides for only one means of resolving disputes if bargaining reaches an impasse: interest arbitration. In these situations, the Board acts as an interest arbitration board. Its chairperson appoints a tripartite panel composed of a Board member as the chair and two others representing the parties' interests. Such panels are deemed to act as the Board for the purpose of dealing with the bargaining dispute. 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.

Adjudication under the *PESRA*

Adjudication as a procedure aims to resolve disputes through a legal process in which parties present their evidence and make their arguments, following 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 full.

At a hearing, each party is given the opportunity to submit evidence by way of witnesses and relevant documents and to make submissions to support its 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.

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

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 collective agreement provision or an arbitral award;
- a grievance against a disciplinary action resulting in a suspension or financial penalty or against a termination of employment for a reason other than a rejection on probation, with respect to an initial appointment;
- a grievance about a demotion, a denial of an appointment, or classification (the parties select an adjudicator (who is not a Board member) to hear and determine the grievance); and
- a policy grievance filed under s. 70 of the *PESRA*, which requires that the Board look into allegations that cannot be the subject of a grievance filed by an individual employee (this 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).

Part II – The Board’s activities under the *PESRA*

Caseload overview

Opened and closed cases

Between April 1, 2019, and March 31, 2020, 5 grievances were referred to the Board. Of those, 3 related to the interpretation or application of a collective agreement, 1 related to allegations of disciplinary action resulting in a termination, and 1 related to a classification issue.

Four (4) complaints were also made with the Board. Of those, 2 pertained to the employer’s failure to implement the provisions of the collective agreement within the allotted time frame, 1 related to an unfair labour practice, and 1 related to the employer’s modification of the terms and conditions of employment after notice to bargain was served. The Board also

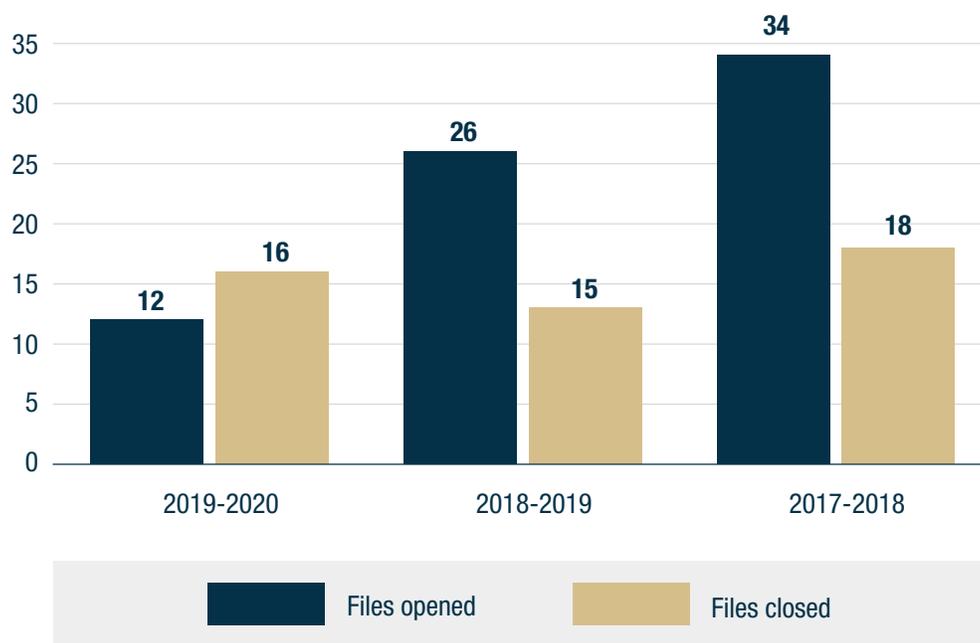
received 1 application related to a determination of membership, as well as 2 other applications requesting, respectively, an arbitration to resolve a dispute between the employer and the bargaining unit, and an injunction against the employer stemming from the application of a collective agreement provision.

During the year in review, most of the matters filed before the Board (7) were related to the Parliamentary Protective Service, while 4 others related to the House of Commons, and 1 to the Library of Parliament.

During the same period, 16 matters under the *PESRA* were closed. Of those, 6 resulted in a decision being issued, 3 were closed after a Board directive was issued, 5 were settled by the parties, and 2 were withdrawn.

FIGURE 1

Files opened and closed, *PESRA*, 2017-2018, 2018-2019, and 2019-2020



Overall active caseload

In addition to the 12 files received in 2019-2020, 72 files were carried forward from the previous year, including 52 individual grievances, 9 complaints, 7 applications, and 4 policy grievances.

Sixty-eight (68) cases will be carried forward into the next fiscal year, including 46 individual grievances, 11 complaints, 7 applications, and 4 policy grievances. Fifty-two (52) of those matters involve the Parliamentary Protective Service, 8 involve the Senate, 5 involve the House of Commons, and 3 involve the Library of Parliament.

FIGURE 2

Cases carried forward, received, and closed under the *PESRA* from April 1, 2017, to March 31, 2020

Fiscal Year	Carried forward from previous years	Total New	Closed	Carried forward to next year
2017-2018	50	34	18	66
2018-2019	66	26	15	77
2019-2020	77	12	16	73

Mediation

Through its Mediation and Dispute Resolution Services (MDRS), the Board offers mediation assistance to parties in matters brought before it. Before adjudication, parties are given the opportunity to resolve their grievances or complaints with the assistance of an independent and impartial mediator. Any settlement reached is confidential and does not create a precedent.

In 2019-2020, the MDRS successfully mediated one grievance related to pay administration.

Collective bargaining

The Board carried forward three requests for arbitration from the previous year, for which arbitral awards were issued in 2019-2020. Additionally, two new requests were received. An arbitral award was issued for one of those. As for the other, while the case was heard, the issuance of the related arbitral award was carried forward to 2020-2021.

Part III – Changes and challenges

The Accessible Canada Act

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 even some members of the public who face barriers as persons living with disabilities.

On July 11, 2019, the *Accessible Canada Act (ACA)* came into force (S.C. 2019, c. 10). 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 that of the accessibility commissioner, which will spearhead compliance 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 community of persons with disabilities.

Anyone who suffers physical or psychological harm, property damage, or economic loss, or is otherwise adversely affected when a provision of the regulations (once they are created) is contravened, has recourse under the *ACA*. For most Canadians, the recourse is filing 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 about it 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, in the context of internal staffing matters in the federal public service involving appointments and layoffs, in their complaints, employees are able to raise any contraventions of the regulations, and the Board is entitled to 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 expanded authority under the *ACA* will significantly impact and create important challenges for the Board. It will have to deal with an increased caseload as new complaints and grievances will come before it, raising accessibility issues. Once the regulations are adopted, it is estimated that the Board will receive about 100 additional cases every year.

The Board must establish a framework under which parties inform the accessibility commissioner when *ACA* matters have been raised, as the *ACA* requires, and under which the commissioner is entitled to make submissions to the Board. Furthermore, a framework and resources must be set up to hear appeals of the commissioner's decisions and orders relating to parliamentary entities. This includes notifying the speakers of the House of Commons and Senate of any proceedings and enabling them to present evidence and make representations before the Board. The speakers must be notified if an order issued under

the *ACA* is not complied with. The Board also expects that more and more, it will need to deal directly with members of the public who file 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. To that end, the *ACA* requires the Board to collaborate with other entities responsible for enforcing it, including the Canadian Transportation Agency, the Canadian Radio-television and Telecommunications Commission, and the Canadian Human Rights Commission. Together, they 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, along with other affected organizations, has begun developing 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 issues.

The Board will also need to deal with the enhanced visibility that accessibility-related matters will attract from news and social media outlets, as well as the public at large, including dealing with more access-to-information requests. Furthermore, to properly fulfil its new mission, the Board must consult extensively with stakeholders, above and beyond what it does today.

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.

The COVID-19 pandemic

The COVID-19 pandemic has disrupted Canadian society in profound ways. The federal public service has been deeply affected, as has the Board in

exercising its mandate. Following an order from its chairperson, on March, 16, 2020, all in-person hearings and mediation sessions scheduled for the end of this reporting period were postponed, and all regulatory time frames for complaints, grievances, and Board matters were suspended. On another level, the transition of the Board's staff from working in the same office space to teleworking created additional challenges, especially on such a short timeframe.

As mentioned earlier, the lasting nature of the pandemic has forced the Board to examine alternative means of conducting its operations to fulfil its mandate. By the time this report is published, the MDRS and the Board will have acquired the capacity to conduct mediations and adjudication hearings by videoconference. As society and government begin to emerge from the initial confinement response, it is expected that alternative measures such as videoconferencing will be put to greater use in the administration of the Board's activities.

While the Board was able to adapt to the pandemic and ensure that its activities were maintained and to overcome most of the related challenges, it seems that the pandemic's impact will surely last well into 2020-2021. As our activities resume, all postponed hearings and mediations will have to be rescheduled, time frames will have to be calculated and adjusted, and Board members and employees alike will have to adjust to the new work environment inside the office and to teleworking.

Work has already begun on establishing new videoconferencing procedures and guidelines to help Board members, employees, and parties through this new reality. Enhancing our technological capabilities, with respect to case management, hearings and mediations, scheduling, and our general daily activities will be key to successfully fulfilling the Board's mandate under these unique circumstances.

TABLE 1¹
 Bargaining units and bargaining agents under the
Parliamentary Employment and Staff Relations Act as of March 31, 2020

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	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
Total	14	1657

¹ The numbers shown are as of March 31, 2019.

TABLE 2

Bargaining units and public service employees by bargaining agent as of March 31, 2020

Certified bargaining agent	Number of bargaining units	Number of public service employees in non-excluded positions
Canadian Association of Professional Employees	2	153
House of Commons Security Services Employees Association ²	1	260
Professional Institute of the Public Service of Canada	2	111
Public Service Alliance of Canada ³	6	668
Senate Protective Service Employees Association ⁴	1	150
UNIFOR, Local 87-M	1	100
Total**	13	1442

*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 those both represented and not represented by a bargaining agent.

² The numbers shown are as of March 31, 2018.

³ The numbers shown are as of March 31, 2018.

⁴ The numbers shown are as of March 31, 2018.