

Public Service Labour Relations Board

Performance Report

**For the period ending
March 31, 2005**

Minister

Table of Contents

SECTION I: OVERVIEW	1
Chairperson’s Message.....	1
Management Representation Statement.....	2
Summary Information.....	3
SECTION II: ANALYSIS BY STRATEGIC OUTCOME	13
Administration of the Board’s statutory mandate:	13
Implementation of a modern management framework.....	18
Implementation and administration of the <i>Public Service Labour Relations Act (PSLRA)</i>	19
SECTION III: SUPPLEMENTARY INFORMATION	25
Organizational Information	25
Financial Tables.....	26
Financial Table 1: Comparison of Planned to Actual Spending.....	27
Financial Table 2: Voted and Statutory Items	27
Financial Table 3: Net Cost of Department.....	28
Travel Policies.....	29
APPENDIX A: GRIEVANCE ADJUDICATION CASES	31
APPENDIX B: COLLECTIVE BARGAINING CASES	33
APPENDIX C: COMPLIANCE WITH STANDARDS	35
APPENDIX D: SYNOPSIS OF APPLICATIONS FOR JUDICIAL REVIEW OF DECISIONS	37
APPENDIX E: DECISIONS OF INTEREST	39
APPENDIX F: OTHER INFORMATION	51

SECTION I: OVERVIEW

Chairperson's Message

I am pleased to submit the final Departmental Performance Report for the former Public Service Staff Relations Board. Effectively, this organization, which was established in 1967 with the inception of collective bargaining in the Public Service of Canada, ceased to exist on April 1st, 2005, with the coming into force of the *Public Service Labour Relations Act* and the establishment of the new Public Service Labour Relations Board. The new Board will build on the accomplishments of its predecessor.

While guiding the development of this report, I was provided with yet another opportunity to reflect on how much effort was invested by the management and staff of this organization during the last 12 months in not only meeting the various challenges associated with implementing a new and expanded mandate, but also dealing with the high volume of requests for assistance in collective bargaining efforts, grievance mediation and referrals to the Board for adjudication. The Board's performance against the many priorities established in our 2004-05 Report on Plans and Priorities being reported herein and the successful coming into force of the new legislation are testaments to their expertise and devotion.

Furthermore, the participation of key stakeholders in formal consultation sessions and informal discussions with Board representatives was instrumental in the development of new regulations and services that meet legislative requirements, while adapting to operational realities and the needs of parties. We remain committed to our mission of promoting and supporting harmonious employer-employee relations in the Federal Public and Parliamentary Service. The relevancy and importance of our mandate were acknowledged by the decision of the Parliament to expand our role and services.

In this report, we have included summaries of some Board and Court decisions issued in 2004-05 that we believe would be of particular interest to readers. Full-text decisions of the Board and summaries can be found on our Web site at www.pslrb-crtfp.gc.ca.

I trust that this report will provide you with the information you need to assess our performance.

Yvon Tarte
Chairperson
Public Service Labour Relations Board

Management Representation Statement

I submit for tabling in Parliament, the 2004-05 Departmental Performance Report (DPR) for the former Public Service Staff Relations Board.

This document has been prepared based on the reporting principles contained in the Treasury Board of Canada Secretariat's *Guide for the preparation of 2004-05 Departmental Performance Reports*.

- It adheres to the specific reporting requirements;
- It uses an approved Business Line structure;
- It presents consistent, comprehensive, balanced and accurate information;
- It provides a basis of accountability for the results pursued or achieved with the resources and authorities entrusted to it; and
- It reports finances based on approved numbers from the Estimates and the Public Accounts of Canada.

Yvon Tarte
Chairperson
Public Service Labour Relations Board

Summary Information

Mandate:

Established in 1967 under the former *Public Service Staff Relations Act (PSSRA)*, the Public Service Staff Relations Board was an independent, quasi-judicial statutory tribunal responsible for administering the collective bargaining and grievance adjudication systems in the federal Public and Parliamentary Service. Board members administered the legislation by holding grievance adjudication and complaint hearings throughout Canada. The Board also provided mediation and conflict resolution services to help parties resolve differences without resorting to a formal hearing.

Statutes administered by the Board were as follows:

- the *Public Service Staff Relations Act*, which was repealed on April 1st, 2005 with the coming into force of the *Public Service Labour Relations Act*
- the *Parliamentary Employment and Staff Relations Act*
- Certain provisions of Part II of the *Canada Labour Code*

The Board, under an agreement with the Yukon government, administered the collective bargaining and grievance adjudication systems under the *Yukon Education Staff Relations Act* and the *Yukon Public Service Staff Relations Act*. When performing these functions funded by the Yukon government, the Board acted respectively as the Yukon Teachers Staff Relations Board and the Yukon Public Service Staff Relations Board.¹

In addition, the Board provided physical and administrative support services to the National Joint Council, which is an independent consultative body of representatives of employers and employees for the determination of service-wide issues that do not lend themselves to unit-by-unit bargaining. The Board played no direct role in the administration and operations of the National Joint Council.

Benefits to Canadians

The Board benefited Canadians by promoting and supporting a harmonious relationship between public servants and their employers. Effective labour-management relations represent a cornerstone of good human resource management and contribute to minimizing the possibility of labour unrest that could lead to disruption in the delivery of government programs. Collaborative efforts between the parties, through communication and sustained dialogue, improve the ability of the Public Service to serve and protect the public interest.

¹ The *Act to Amend the Education Staff Relations Act and the Public Service Staff Relations Act* came into force on April 1st, 2005, and brings changes to the title of these two Yukon Acts and their respective Board

Proceedings before the Board included grievance adjudication, arbitration, conciliation, applications for certification, revocation of certification, displacement, complaints of unfair labour practices, identification of positions whose duties are of a managerial or confidential nature, designation of positions whose duties are required in the interest of public safety or security of Canada, determination of successor rights, enforcement of obligations of employer and employee organizations, and complaints of disciplinary actions or discrimination that resulted from federal employees having exercised their rights relating to workplace health and safety under Part II of the *Canada Labour Code*.

Mission:

To promote and support harmonious employer-employee relations in the Federal Public and Parliamentary Service, by:

- Conducting hearings in accordance with the law, the principles of natural justice;
- Rendering timely decisions;
- Assisting the parties, where possible, to resolve their differences on their own;
- Ensuring that all processes are impartial and open;
- Consulting with the parties to facilitate and improve the Board's processes;
- Educating and informing clients and the public on the Board's role, services and jurisprudence;
- Promoting a work environment that fosters the development of a knowledgeable and co-operative staff; and,
- Ensuring efficient and effective use of our resources.

Values:

In fulfilling its mission, the Board believes that:

- Every client, whether internal or external, is entitled to a service that is impartial, respectful, efficient, courteous and timely;
- The high integrity of the Board can only be maintained through honest, discreet and impartial services;
- A knowledgeable, open-minded and diversified workforce working as a team is critical to the success of the organization;
- Employees at all levels must serve the public interest by demonstrating loyalty and commitment to the success of the organization; and,
- Employees are to be held accountable for their decisions and actions.

Resources:

Total Financial Resources

Planned	Authorities	Actual
\$6,672,000	\$9,720,648	\$8,956,945

Total Human Resources

Planned	Actual	Difference
60	65	5

Summary of Performance in Relationship to Strategic Outcomes, Priorities and Commitments:

Strategic Outcome: Provide Canadians with an environment that fosters harmonious labour relations in the federal Public and Parliamentary Service, thereby minimizing the possibility of labour unrest that could lead to disruption in the delivery of government programs.

<p>PRIORITY: Administer the former <i>Public Service Staff Relations Act (PSSRA)</i> legislative framework and implement a modern management framework</p> <p>Type: ongoing</p> <p>Planned Spending: \$6,672,000</p> <p>Actual Spending: \$7,679,901</p>	
2004-05 Commitments	Status
Administer the former <i>Public Service Staff Relations Act (PSSRA)</i> legislative regime	<p>Grievance adjudication represents the largest single component of the Board's workload. In 2004-05, the adjudication workload totaled 4,263 cases, including 1,968 new cases received during the fiscal year.</p> <p>The Board issued 189 decisions in 2004-05. While the Board's decisions usually pertain to individual grievances, they nonetheless have the potential to affect the whole Public Service and the operations of</p>

2004-05 Commitments	Status
	<p>the Government of Canada; they aim to encourage systemic changes to improve labour relations between parties and prevent further grievances of similar nature.</p> <p>The last 12 months were particularly busy with respect to collective bargaining in the Public Service. The Board assisted parties in their collective bargaining efforts through its conciliation (16 cases) and arbitration (17 cases) services.</p> <p>The mediation program of the Board allows parties to resolve workplace disputes with the assistance of an impartial third party. In fiscal year 2004-05, the Board conducted a total of 960 mediation sessions related to grievances, complaints and other matters.</p> <p>Results of the most recent client satisfaction survey conducted in November-December 2004 reported positive levels of satisfaction with the Board's proceedings. For example, 71.2% of client respondents stated they were satisfied/very satisfied with the Board's proceedings, including mediation and adjudication services. Full results of the survey can be found on the Board's Web site at www.pslrb-crtfp.gc.ca.</p>
Implement a modern management framework	<p>In 2004-05, the Board requested an independent evaluation of progress made with its modern management agenda since the Modern Comptrollership Capacity Assessment of March 2002, in accordance with the elements and performance indicators of the Management Accountability Framework developed by the Treasury Board. The evaluation recognized the many initiatives put in place by the Board over the last 3 years to</p>

2004-05 Commitments	Status
	<p>implement a modern management framework. It also provided some opportunities for improvement.</p> <p>As reported later in this section, in 2004-05, the Board established a modern management infrastructure for the new Public Service Labour Relations Board.</p> <p>The Board also developed and implemented new administrative policies and procedures to improve the management of its resources. It developed a multi-year risk-based audit plan and proceeded with an independent audit of its internal compensation services due to the planned retirement in 2005 of the Compensation and Human Resources Officer of the Board. In anticipation of the complexities associated with the new legislative framework and in response to the increase in volume of cases referred to the Board for adjudication, an assessment of the effectiveness of the Board's operations was conducted in 2004-05 to identify opportunities for improvement.</p>

<p>PRIORITY: Implement and administer the <i>Public Service Labour Relations Act</i></p> <p>Type: New</p> <p>Planned Spending: no funding had been secured for this priority at the time of tabling of the 2004-05 Report on Plans and Priorities</p> <p>Actual Spending: \$1,277,044</p>	
2004-05 Commitments	Status
Develop and implement new Board regulations	New Board regulations were developed in consultation with key stakeholders, approved in principle by the Board in March 2005, posted on the Board's Web site and were ready to be implemented on the day of the coming into force of the new <i>Public Service Labour Relations Act</i> .

2004-05 Commitments	Status
Develop and implement a new operational framework	A new operational framework was developed, along with a strategy to communicate it to clients through practice notes and internal guidelines. Extensive training was provided to the staff of the registry office. Additional positions in the registry office were staffed. The case management system was modified to accommodate new types of files.
Establish a new governance structure for the Board	New roles for Vice-Chairpersons have been identified and will be officially delegated following the coming into effect of the new legislation.
Expand mediation services and dispute resolution training program	The scope of expanded mediation services and dispute resolution training to be offered to clients was determined following consultations with clients.
Establish a compensation research and analysis capability	The Director responsible for establishing the new compensation research and analysis function joined the Board in March 2005.
Prepare for the establishment of Public Interest Commissions	In preparation for the implementation of the new Public Interest Commission (PIC) regime, the Board requested parties to identify and agree on labour experts who could be considered to act as single PICs or Chairpersons of PICs.
Enhance and coordinate outreach, consultations, training and education activities	Many outreach activities took place such as the development of an information kit on services offered by the new Board, presentations to various forums by Board representatives, consultations with clients, the inclusion of a transition corner on the former Board's Web site, the development of a new Web site, and the selection of a branded look for the new Board based on its new logo.

2004-05 Commitments	Status
Expand capabilities of Board members	A training program for Board members, based on requirements of the new legislation, was designed and implemented.
Manage change within the Board	Monthly staff meetings and progress reports posted on the Board's intranet site were used to provide regular feedback to staff on the progress and challenges of transition projects. Employees were invited to participate in internal committees working on specific transition projects.
Establish a management infrastructure	A management infrastructure consisting of a transition plan, a strategic plan, a staffing plan, a Program Activity Architecture, a Results-based Management & Accountability Framework (RMAF), a risk profile, new Terms and Conditions of Employment and a revised Delegation of Financial Authorities Instrument was put in place and its implementation was closely monitored by the Executive Committee.
Obtain adequate accommodation	In addition to proceeding with internal retrofits to accommodate growth, the Board negotiated with Public Works and Government Services Canada and was successful in obtaining additional space.

Context:

The *Public Service Modernization Act (PSMA)*, which received Royal Assent in November 2003, sets the framework for improved labour relations in the public service based on greater labour-management cooperation, while recognizing that the public interest is paramount, by:

- requiring departmental labour-management committees
- requiring departments to develop informal conflict resolution systems in the core public service
- enabling co-development of workplace improvements

- enhancing collective bargaining conciliation through the appointment of a Public Interest Commission
- providing for negotiated essential services agreements
- establishing a new and restructured Public Service Labour Relations Board, with a mandate to provide compensation research and analysis, adjudication and mediation services
- eliminating the automatic managerial or confidential exclusion of employees of the Treasury Board Secretariat and lawyers of the Department of Justice
- establishing a more comprehensive unfair labour practices regime
- creating more comprehensive grievance and adjudication mechanisms
- requiring a secret ballot within 60 days before a strike
- allowing adjudicators to interpret and apply the *Canadian Human Rights Act* if discrimination is an aspect of a grievance that is referred to adjudication, except for grievances related to pay equity.

The *PSMA* establishes a new *Public Service Labour Relations Act (PSLRA)* scheduled to come into effect on April 1st, 2005. In turn, the *PSLRA* establishes a new Public Service Labour Relations Board with a three-pronged mandate consisting of adjudication, mediation and compensation research and analysis services. In anticipation of its new mandate, the Board was busy developing a new legislative and operational framework to support the new labour management regime.

While proceeding with this transition work, the Board also continued to administer the current collective bargaining and grievance adjudication systems. Over the last 24 months, the volume of grievances referred to the Board for adjudication has increased considerably. These grievances, which are the results of disputes arising from the application or interpretation of collective agreements or arbitral awards or from major disciplinary action and termination, make up the largest number of proceedings before the Board and account for approximately 80% of the applications received annually.

The expeditious handling of proceedings referred to the Board in accordance with the rules of natural justice and fairness is fundamental to maintaining the integrity and credibility of the Board and in carrying out its statutory mandate effectively. The Board has set standards for the handling of proceedings referred to it from the initial application to final disposition. Appendix C lists and reports compliance with these standards during 2004-05². The unprecedented increase in volume of grievances over the last two years is creating backlog issues and has directly contributed to a lower performance rate in meeting established standards. The Board is seeking a permanent adjustment to its appropriations to help address the increased volume of cases. It is also developing joint strategies with key stakeholders to reduce the backlog. Finally, the Board continues to review its internal procedures to increase their efficiency. This becomes even more important as the volume of grievances is likely to continue to

² The Board's case management system was used to produce most of the operational statistics provided in this report.

increase under the *PSLRA* regime, which will allow the hearing of grievances that include aspects of discrimination under the *Canadian Human Rights Act*.

It should be noted that although the volume of cases over the last two years has been extraordinary, the Board has been dealing with a steady increase in the number of grievances over the last six years. The caseload is generally influenced by a number of workload drivers, for example, the overall number of grievances submitted by public service employees, the number and status of negotiations of the collective agreements, and issues regarding the definition of bargaining units resulting from changes to the governance structure of the public service.

Over the last two years, many collective agreements reached the renegotiation phase of their cycle. The Board was especially busy in 2004-05 in providing assistance to parties in their collective bargaining efforts through its conciliation and arbitration services. The Board plays a vital role in these negotiations as it helps parties reach agreements, thus avoiding or reducing labour disruptions that affect the delivery of government services to Canadians.

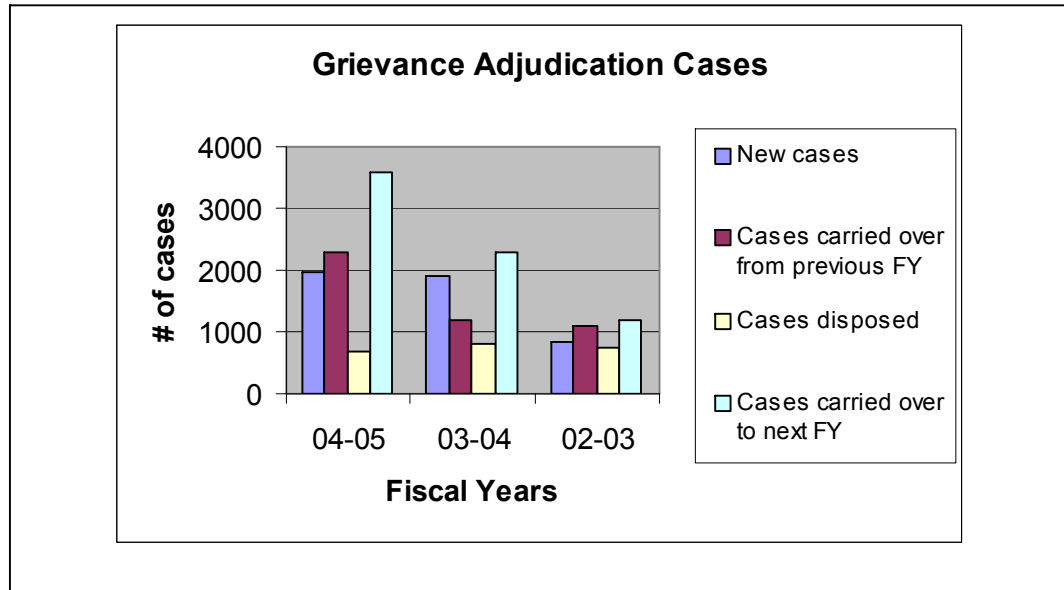
The Board relied on its small, but dedicated, staff and its limited financial resources to deliver on its many priorities, although it eventually accessed incremental resources in December 2004. Other challenges faced by the Board during this particularly busy year included a high turnover of staff in its registry office, the need to delay its staffing activities temporarily due to a cap on salary expenditures, and the requirement to contribute to a number of horizontal initiatives such as the expenditure reviews, the shared services initiative and the Program Activity Architecture. The temporary cap on salary expenditures and delays in the allocation of *PSMA* funding account for the delays in establishing the compensation research and analysis function at the Board.

SECTION II: ANALYSIS BY STRATEGIC OUTCOME

The following table illustrates how the Board's performance contributed to its strategic outcome.

STRATEGIC OUTCOME:			
Provide Canadians with an environment that fosters harmonious labour relations in the federal Public and Parliamentary Service, thereby minimizing the possibility of labour unrest that could lead to disruption in the delivery of government programs.			
Resource Allocation:			
	2004-05		
	Planned Spending	Total Authorities Received	Actual Spending
Total Resources	\$6,672,000	\$9,720,648	\$8,956,945
FTEs	60	67	65
PLANS AND PRIORITIES:			
Administration of the Board's statutory mandate:			
<u>Grievance adjudication:</u>			
As reported earlier, grievance adjudication under the former <i>PSSRA</i> represented the largest single component of the Board's workload. Grievances referred to the Board arise from the application or interpretation of a collective agreement or an arbitral award, or from the imposition of major disciplinary action and termination of employment.			

In 2004-05, the adjudication workload under the former *PSSRA* totalled 4,263 cases, including 1,968 new cases received during the fiscal year. Appendix A provides an overview of grievance adjudication cases received and disposed of over the last 3 fiscal years. As illustrated in Appendix A, the number of new grievance adjudication cases



received in 2004-05 has increased by 3% over that of the previous year, and 133% over the volume of 2002-03. Over the last year, the number of open files has increased by 35% and the number of cases carried over to the next year by 56% (and by 200% over the volume of 2002-03). This situation, along with the challenges faced by the Board in obtaining ongoing incremental funding to address the caseload, is putting considerable stress on already scarce resources and has resulted in a serious backlog in the processing of cases.

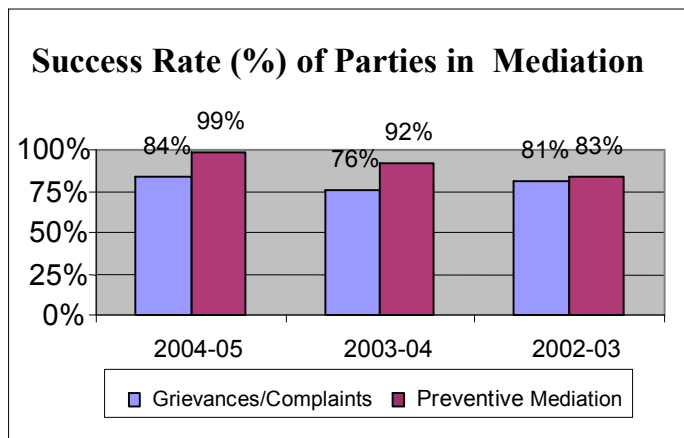
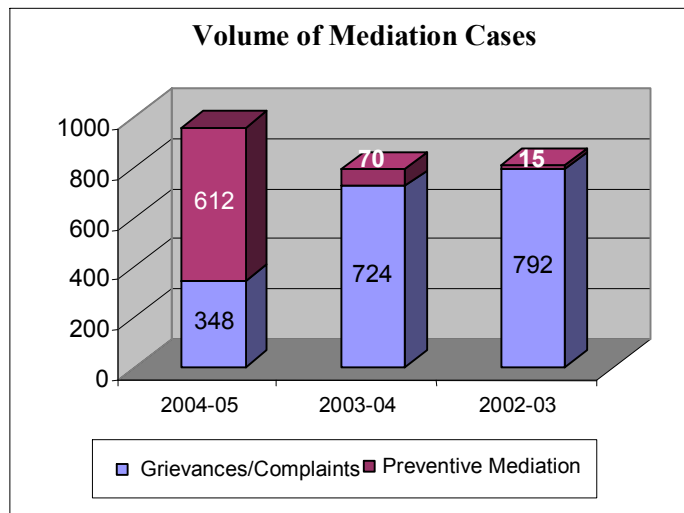
Expedited adjudication is also made available to parties who want to save time and resources by dealing with certain grievances without resorting to a full hearing process. In the expedited process, the parties normally file an agreed statement of facts and no witnesses are heard. The parties have also agreed that decisions rendered in the expedited process are not precedent-setting and will not be subjected to judicial review. Oral decisions are given to the parties at the hearing. A short written decision follows within five days. During the past year, there were 5 expedited adjudication hearings that resulted in the disposition of 30 cases, compared to one (1) such hearing in 2003-04.

Dispute Resolution:

The Board continues to assist parties in their collective bargaining efforts through its conciliation and arbitration services. Since its reintroduction on June 21, 2001, arbitration has been selected by many bargaining agents as the dispute resolution method to be used in the event of an impasse in negotiations. In providing dispute resolution services, the Board helps parties reach agreements, thus avoiding potential labour disruptions that could ultimately affect government services to the Canadian

public. As indicated in Appendix B, which provides an overview of collective bargaining cases processed by the Board during the last 3 fiscal years, 2004-05 has been a particularly busy year for the Board in providing assistance to parties in their collective bargaining efforts, as many collective agreements were due for renegotiation.

In addition, the Board, through its mediation program, allows parties to resolve workplace disputes with the assistance of an impartial third party; this often results in the crafting of creative solutions acceptable to both parties, which are not always available at adjudication. Mediation leads to a decrease in the number of matters actually heard at adjudication, and, more importantly, to improved long-lasting relations between the parties. In fiscal year 2004-05, the Board conducted a total of 960 mediation sessions related to grievances, complaints and other matters. Of this amount, 91% of the mediation interventions were successful in reaching a mutually satisfactory resolution to the problem at issue.



Dispute resolution training is key to improved collaboration between the parties and the quality of labour relations in the public service in a manner consistent with the new *PSLRA* regime. A two-and-a-half day interactive training session is being provided by the Board at the national level on interest-based negotiations and mediation and is

geared specifically to labour relations in the federal public service. The high demand for such training, along with the joint union-management approach used by the Board, makes this training program a unique and critical activity of the Board. Due to the heavy workload in 2004-05 associated with collective bargaining, the Board was able to provide only 8 training sessions. However, with collective bargaining winding down and the arrival of additional resources in the Dispute Resolution Services team, twenty-one (21) training sessions are scheduled for 2005-06.

Other Proceedings:

Other proceedings before the Board include applications for certification, revocation of certification, complaints of unfair labour practices, identification of positions whose duties are of a managerial or confidential nature, designation of positions whose duties are required to be performed in the interest of the safety or the security of the public, determination of successor rights, enforcement of obligations of employer and employee organizations, and complaints of disciplinary actions or discrimination that resulted from federal employees having exercised their rights relating to workplace health and safety under Part II of the *Canada Labour Code*.

Decisions:

Note: As a result of the repeal of the *PSSRA* and therefore of the obligation to table an annual report for 2004-05, the Board has elected instead to include highlights of decisions of interest issued by the Board and adjudicators in 2004-05 in Appendix E of this performance report.

The Board issued 189 decisions in 2004-05 dealing with: grievance adjudication (96); safety and security designation (32); collective bargaining including arbitration & conciliation boards (25); complaints of unfair labour practices (16); requests for review of Board decisions (7); references under s.99 of the former *PSSRA* (4); requests for extension of time to file (3); complaints under the *Canada Labour Code* (2); successor rights applications (2); an application for a decision on units appropriate for collective bargaining (1); and a request for revocation of certification (1).

The Board ensures that its jurisprudence is available to assist individuals, the parties to collective bargaining and the staff relations community at large, through the publication and distribution of its decisions. Up until December 2004, the principal vehicle used for this purpose was a publication issued twice yearly, called *PSSRB Summaries of Decisions*, which contained a digest of decisions issued during a six-month period. To accelerate the availability of summaries, they are now produced and posted on the Board's Web site as soon as they are available in both official languages.

The decisions of the Board are also posted on its Web site at http://www.pslrb-crtfp.gc.ca/decisions/decisionsinfo_e.asp. In addition, the Board makes its decisions available through QuickLaw (QL), an electronic legal database, as well as other publishers such as CanLII, Carswell, Canada Law Book, Qualisult and Lancaster House.

Performance Measurement:

As reported earlier, the Board is committed to an expeditious handling of proceedings referred to it and has set standards for the handling of such proceedings from the initial application to final disposition. Appendix C lists and reports compliance with these standards during 2004-05. The unprecedented increase in volume of grievances over the last two years is creating backlog issues and has directly contributed to a lower performance rate in meeting established standards. The Board is seeking a permanent adjustment to its appropriations to help address the increased volume of cases. It is also developing joint strategies with key stakeholders to reduce the backlog. Finally, the Board continues to review its internal procedures to increase their efficiency.

The Chairperson provides an opportunity for discussion of any issues that may arise with respect to Board processes through meetings, conferences and exchanges with representatives of the employers and bargaining agents. The Board has also made it a practice to solicit client feedback with respect to its services in a formal way through the conduct of client satisfaction surveys on a three-year cycle. The latest client satisfaction survey was conducted in November-December 2004 and results are available on the Board Web site at http://www.pslrb-crtfp.gc.ca/resources/publications_e.asp. Highlights of the results are as follows:

- 71.2% of respondents stated they were satisfied/very satisfied overall with Board proceedings;
- 85.0% of respondents stated they were satisfied/very satisfied with the hearing process;
- 79.5% of respondents stated they were satisfied/very satisfied with the dispute resolution services;
- 63.6% of respondents stated they were satisfied/very satisfied with the registry operations services overall; and,
- 100% of respondents who had used the library services of the Board stated they were satisfied/very satisfied with these services.

Results of the survey also provided opportunities for improvement, such as timeliness of decisions, where 47.4% of respondents stated they were satisfied/very satisfied, and scheduling of hearings and adjournments, where 53.8% of respondents stated they were satisfied/very satisfied.

A major factor in determining the quality of the decisions rendered by the Board is the degree to which they are accepted by the parties and the extent to which they are set aside on judicial review. Appendix D provides a synopsis of the judicial review of Board decisions over the past five fiscal years under the former *PSSRA* and the *PESRA*. As the table shows, approximately 10% of the Board's decisions are referred to the Federal Court on judicial review and, of that number, 20% have been allowed by the court, i.e. 2% of the total number of decisions rendered by the Board over that period.

Implementation of a modern management framework

The Board is committed to establishing a modern management agenda and framework that will support its new legislative mandate and provide a shared vision and understanding of expected results. Its vision for a strong management infrastructure is based on the expectations of the Management Accountability Framework (MAF) of the Treasury Board Secretariat.

A considerable amount of work has already been accomplished by the Board to build on the foundations of the MAF. In March 2002, the Board proceeded with an assessment of its management practices in relation to Modern Comptrollership. The assessment recognized good management practices already in place at the Board and identified improvement opportunities. A Management Retreat was held to determine how to address the improvement opportunities identified, and an action plan was completed in January 2003. In 2004-05, the Board requested an independent evaluation of progress made with its modern management agenda since the Modern Comptrollership Capacity Assessment, in accordance with the elements and performance indicators of the MAF. Results of this assessment, which provided an inventory of internal management practices, policies, frameworks and systems, were shared with the Treasury Board Secretariat as a means to report on progress of the Board's modern management agenda. Opportunities for improvement identified in the document will be assessed by the Board and, if approved, will be integrated in its strategic plan.

The Board has instituted a culture for internal audit and has made it a practice for a number of years to commit ongoing and sufficient financial and human resources to this function. The last year was no different. According to its risk-based multi-year audit plan, an internal audit was conducted in 2004-05 by an outside consultant to assess the effectiveness of the internal pay and compensation activities of the Board. In carrying out this audit, the Board's pay and compensation documentation was reviewed and a selected number of pay and compensation related transactions were reviewed. Board management and staff were surveyed to determine their level of satisfaction with the pay and compensation services provided. The audit concluded that:

- all pay and compensation related transactions reviewed during the conduct of the audit were processed correctly and in a timely manner;
- there was sufficient salary and compensation information being provided to Board senior management to assist them in the decision-making and management processes; and,
- there was a high degree of employee satisfaction with the level of pay and compensation services being provided.

The audit also raised some important issues such as the need for segregation of duties in the preparation, processing and approval of pay and compensation transactions in order to comply with generally accepted management controls and practices, and the

need to document its internal pay and compensation related processes. With the arrival of additional resources in the Human Resources team, the Board was able to deliver expeditiously in meeting these two recommendations.

As part of its strategy to address the heavy workload and resulting backlog of cases, and in anticipation of the complexities associated with the *PSLRA* regime, the Board requested an independent assessment of the effectiveness of its statutory operations as they relate to the processing of cases, from the initial application to final disposition. The assessment looked at policies, procedures, systems, and human resources used in delivering the Board's mandated activities. As expected, the assessment confirmed the heavy workload and backlog associated with the increase in volume of cases, and the resourcing pressures being experienced by the Board to meet this increase. The assessment identified opportunities for improvements in the areas of organizational structures, documentation of procedures, and in training. This assessment will be used to support an adjustment to the Board's reference levels to deliver on its statutory mandate.

Over the last year, a number of administrative policies and directives dealing with issues such as contracts, term employment, and communications were developed and implemented. The Board also revised its Delegation of Financial Authorities Instrument and some of its already-existing financial policies and directives.

As part of its ongoing efforts to provide Canadians with easy access to its information and services, the Board continued to update the content and structure of its Web site, keeping in mind the requirements of the Common Look and Feel requirements of the Government On-Line initiative. Improvements made to the search engine of its Web site were recognized in the most recent client satisfaction survey.

Implementation and administration of the *Public Service Labour Relations Act (PSLRA)*

Immediately following the passage of the *Public Service Modernization Act (PSMA)* in November 2003, the Board developed and began the implementation of a transition plan detailing critical activities, risks, timelines, performance measures and responsibilities associated with the change to a new legislative framework. In Chapter 3 (Modernization of Human Resources Management) of its 2005 Status Report (<http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20050203ce.html>), the Office of the Auditor General noted the progress made by the Board in meeting its new mandate, the planning, project management and control frameworks established by the Board, as well as the consultation mechanisms initiated by the Board with both employer and bargaining agents to ensure that it would be able to meet the requirements of the new *PSLRA*. The report also raised concerns regarding delays encountered by the Board in accessing incremental funding to support implementation and in the creation of an advisory board to provide advice to the Chairperson on compensation research and analysis.

New Board Regulations:

First and foremost, the Board needed to develop and implement the regulatory framework necessary to administer the new legislative framework as soon as the *PLSRA* comes into force. This required a complete revision of the PSSRB Regulations to reflect the following:

- Procedures for applications in relation to managerial or confidential exclusions;
- Confidentiality of membership evidence;
- Procedures regarding new complaints provisions, including complaints related to strike votes;
- Procedures for essential services regime;
- Procedures for group and policy grievances, including form and consent to participate in group grievances; and,
- Manner and time of giving notices, including the notice of human rights issues to the Canadian Human Rights Commission.

A working document was developed and used early in 2004-05 during a consultation process with representatives from the bargaining units and the Treasury Board Secretariat and served as the basis for drafting the new regulations. Draft regulations from Justice Canada were sent to all clients (employers and bargaining agents) in October and posted on the Board's Web site to obtain comments, as an alternative to being pre-published in the Canada Gazette, Part I. The new Public Service Labour Relations Board Regulations were ready to be approved by the new Board on the day of the coming into force of the *PSLRA*.

New Operational Framework:

In light of changes in the legislative framework, the Board proceeded with the design, remapping and documentation of processes dealing with the hearing schedule, the copying and exchange of documents and the procedure for handling complaints, the development of forms to be used by clients in accordance with requirements of the new Regulations and the design and development of practice notes for key stakeholders on issues such as filing complaints, individual grievances, group grievances and policy grievances. The Board organized extensive training sessions for the registry operations staff to explain each process under the new regime and identify operational changes resulting from these processes. These activities aimed to establish a more streamlined process that is understood by key stakeholders and Board employees and that incorporates the Board's added responsibility in regard to the receipt and handling of grievances raising human rights issues.

Modifications were made to the case management system to accommodate new series of cases. Incremental funding, albeit temporary, was accessed in 2004-05 to allow for additional staff to join the registry operations division and respond to increases in volume directly related to the implementation of the new regime. The need to secure permanent funding for these activities remains a challenge for the Board.

New governance structure for the Board:

The *PSLRA* provides for a new structure of the Board consisting of a Chairperson, up to three Vice-Chairpersons and any other members that the Governor in Council may appoint, while the former *PSSRA* called for one Vice-Chairperson and three Deputy Chairpersons. This revised structure is reflective of the three major activities that will be part of the PSLRB mandate, namely adjudication, mediation, and compensation research and analysis. To implement the mandate of the new PSLRB, the Chairperson has decided to delegate responsibilities for one of the three major activities to each vice-chairperson and hence enable more strategic interventions by the PSLRB. The actual delegations will be made following the coming into effect of the new legislation.

Expanded mediation services and dispute resolution training program:

Over the last few years, the Board has placed significant emphasis on innovative approaches to the resolution of workplace conflict, as an alternative to the more formal and traditional rights determination process. This preventive approach of conciliation and mediation has gained wider acceptance as a way to avoid formal confrontations. The *PSMA* recognizes mediation and conflict resolution as an integral element of the new PSLRB mandate and as a cornerstone of a modernized labour relations regime. The scope of expanded mediation services and dispute resolution training to be implemented by the Board was determined following consultations with clients and discussions at the annual strategic planning session. Strategic interventions and preventive mediation were two areas identified as opportunities for increased participation by the Board. Also, the dispute resolution training program could be expanded to include training on human rights issues, collective bargaining, drafting of mediation agreements and the role and responsibilities of those accompanying employees and managers to mediation sessions.

New compensation research and analysis capacity:

The *PSMA* provides for the establishment of a compensation research and analysis capability at the PSLRB. This new function consists of conducting market-based compensation research, compiling and analyzing compensation data, and sharing the information with the parties and the public. The information will be used by parties in the collective bargaining process and will be made available to other public institutions and the private sector. Little progress was made in 2004-05 to move this function from the conceptual to the operational level because of delays in receiving funding for its implementation and delays in creating an advisory board to provide advice to the Chairperson on compensation research and analysis. However, the Board has initiated discussions with representatives of bargaining agents and employers through its participation in the National Joint Council's Joint Compensation Advisory Committee. The Director responsible for establishing and managing the new compensation research and analysis function joined the Board in March 2005, after a staffing process that took over one year to complete, largely due to the need to hold the competition in abeyance temporarily after the announcement of a temporary cap on salary expenditures and due to uncertainty of the level of funding to be allocated to the Board to support *PSMA* initiatives.

New Public Interest Commissions:

The *PSLRA* establishes a new conciliation process where Public Interest Commissions (PICs) will replace conciliation boards and conciliation commissioners. Public Interest Commissions will be non-permanent bodies consisting of one or three persons, appointed by the Minister responsible, whose role will be to assist the parties in resolving disputes and make recommendations for settlement. In preparation for the establishment of PICs, the Board approached parties in 2004-05 to request that they identify and agree on labour experts who could be considered to act as a single PIC or Chairperson of a PIC.

Outreach, Consultations, Training and Education Activities:

As the Board moves forward in its transition to the new legislative framework, it must ensure that parties and the public in general have a clear understanding of the new labour relations regime and of the new PSLRB expanded mandate. In 2004-05, the Board developed and implemented a communications strategy aimed at increasing the visibility and awareness of the PSLRB. An information kit with fact sheets on the services to be offered by the PSLRB was developed and prepared for distribution to a wide audience, as well as for posting on the PSLRB Web site as soon as the new legislation came into force. Considerable efforts were invested in the development of a Web site for the new PSLRB that not only introduced a new branded look for the Board but also adopted a more modern approach to presenting and accessing Board information. Representatives of the Board communicated the new legislative framework through presentations to various labour relations and management forums. As already indicated in this report, the participation of key stakeholders in formal consultation sessions and informal discussions with Board's representatives was instrumental in the development of new Board regulations and services adapted to operational needs of parties.

Training Program for Board Members:

Under the new regime, Board members will be expected to render decisions dealing with human rights issues, thus the need to develop and implement a training program. In 2004-05, the Board identified training opportunities and organized training sessions for Board members, including participation in audio and video conferences and other information sessions, relating to trends in labour law and human rights law.

Change Management:

The *PSLRA* brings considerable change to an organization that has been relatively stable over the last ten years. Employees of the Board are expected to adapt to, among other things, a new legislative framework, new policies and procedures, considerable growth in the number of employees and a possible move to accommodate the expected growth, while at the same time dealing with an extraordinarily high volume of cases under the former *PSSRA* mandate. To facilitate the transition of employees and ensure their engagement and participation throughout the process and beyond, the Board identified mechanisms to share information internally. For example, monthly progress

reports on projects, and their challenges, were prepared and posted on the Board's intranet site. Monthly Board-wide staff meetings were used to communicate information and encourage interactions between staff and management. Employees were encouraged to participate as members of various internal committees and hence contribute directly to the decision-making process. Delays in the availability of information at all levels of the organization presented some challenges in meeting the expectations of staff.

New Management Infrastructure:

The Board established the foundation of a modern management framework to support the mandate of the PSLRB and provide a shared vision and understanding of the expected results. As mentioned earlier, the Board developed, implemented and closely monitored the delivery of its transition plan. The next steps included the development of a strategic plan for the first year of existence of the new PSLRB, a revised Program Activity Architecture to reflect the expanded mandate of the new Board, new Terms and Conditions of Employment that mirrored benefits negotiated in the Public Service during recent collective bargaining efforts, and a staffing plan. The Board also invested a considerable amount of effort in developing a Results-based Management and Accountability Framework (RMAF) for the new Board which includes a risk profile and a performance measurement plan.

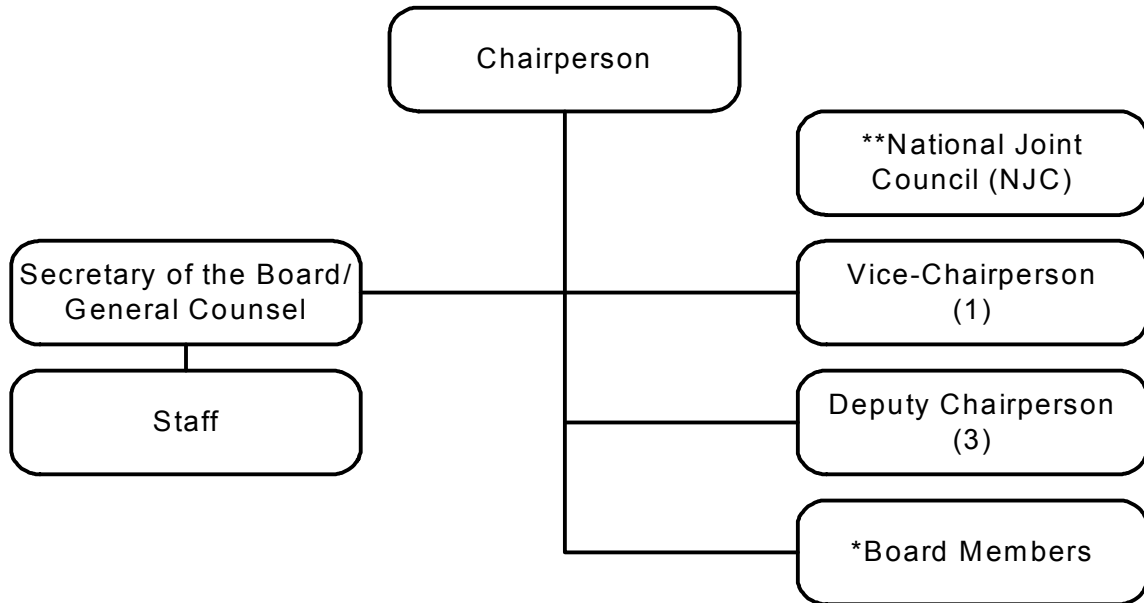
Adequate Accommodation:

With the current shortage of rentable space in Ottawa, finding additional space to accommodate growth can be challenging. Further to negotiations with Public Works and Government Services Canada, the Board was successful in accessing additional space in the building where it is currently located. In addition, the Board proceeded with internal retrofits leading to a more effective use of allocated space.

SECTION III: SUPPLEMENTARY INFORMATION

Organizational Information

former Public Service Staff Relations Board
(PSSRB)



- * The number of Board members is determined by the Governor in Council. Members may be appointed on a full-time or part-time basis.
- ** The Board has no direct involvement in the operations of the National Joint Council.

The Board is responsible to Parliament through such Minister of the Crown, other than a member of the Treasury Board, as the Governor in Council may designate. The Minister of Canadian Heritage, the current designated Minister, is responsible under the Act to table the Board's annual report before Parliament each year and to sign such documents as are required pursuant to the *Financial Administration Act*. The Minister is also the line of communication with the Governor in Council for purposes of appointments to the Board.

Financial Tables

This section provides a summary of the Board's financial performance.

The Board projected \$6.672 million in expenditures in its 2004-05 Report on Plans and Priorities. Through the Supplementary Estimates and subsequent adjustments from the Treasury Board Secretariat, the Board received an additional \$3.049 million, for total authorities amounting to \$9.721 million. The most significant items in the Supplementary Estimates include the following:

- \$1.862 million to finance the transition necessitated by the coming into force of the *PSMA*;
- \$1.069 million to address workload pressures related to collective bargaining and adjudication processes;
- \$292,000 from the 2003-04 operating budget carry forward;
- Reduction of \$211,476 for year-end adjustments to authorities (employee benefits plan); and,
- \$37,000 to offset the impact of collective agreements

It should be noted that the Board's total authorities include \$1.107 million for the National Joint Council activities.

The Board did not spend all of the funds allocated to it in the 2004-05 budget mainly due to the delays in the allocation of *PSMA* funding, the temporary cap on salary expenditures which resulted in delays in staffing, and uncertainties surrounding specific activities related to the coming into force of the *Public Service Modernization Act*.

The tables included in this section show a comparison of four amounts: Main Estimates, Planned Spending, Total Authorities, and Actual. "Main Estimates" is the amount included in the Government of Canada's 2004-05 Main Estimates. "Planned Spending" is the amount included in the Board's 2004-05 Report on Plans and Priorities and represents amounts planned at the beginning of the year. "Total Authorities" includes Main, Supplementary, and other Estimate amounts approved by Parliament. "Actual" shows what was actually spent.

The following Financial Tables apply to the former Public Service Staff Relations Board:

1. Comparison of Planned to Actual Spending
2. Voted and Statutory Items
3. Net Cost of Department

Financial Table 1 - Comparison of Planned to Actual Spending (thousands of dollars)

This table offers a comparison of the Main Estimates, Planned Spending, Total Authorities, and Actual Spending for the most recently completed fiscal year. It also provides historical figures for Actual Spending

	2002-2003 Actual	2003-2004 Actual	2004 - 2005			
			Main Estimates	Planned Spending	Total Authorities	Actual
Public Service Staff Relations	6,542.0	7,406.5	6,355.0	6,672.0	9,720.6	8,956.9
Less: Non Respendable Revenue	0.8	2.2	-	-	-	-
Plus: Cost of services received without charge	1801.8	1,868.8	1,858.0	1,858.0	2,110.1	2,110.1
Nest cost of the Board	8,343.0	9,273.1	8,213.0	8,530.0	11,830.7	11,067.0

Full Time Equivalents	53	57	60	60	67	65
------------------------------	-----------	-----------	-----------	-----------	-----------	-----------

Note: Due to rounding, figures may not add up to totals shown.

Financial Table 2 - Voted and Statutory Items (thousands of dollars)

This table explains the way Parliament votes resources to the Board, including voted appropriations and statutory authorities.

Vote or Statutory Item		2004 - 2005			
		Main Estimates	Planned Spending	Total Authorities	Actual
105	Operating expenditures	5,523.0	5,840.0	8,877.7	8,114.4
(S)	Contribution to Employee Benefit Plan	832.0	832.0	842.6	842.6
(S)	Crown Assets Surplus	-	-	0.4	-
	Total for the Board	6,355.0	6,672.0	9,720.6	8,956.9

Note: Due to rounding, figures may not add up to totals shown.

Financial Table 3 - Net Cost of Department (thousands of dollars)

This table shows the net cost for the Board, including services provided without charge by other departments.

	2004–2005
Total Actual Spending	8,956.9
<i>Plus: Services Received without Charge</i>	
Accommodation provided by Public Works and Government Services Canada (PWGSC)	1,551.0
Contributions covering employer's share of employees' insurance premiums and expenditures paid by TBS	386.7
Salary and associated expenditures of legal services provided by Justice Canada	172.3
2004–2005 Net cost for the Board	11,067.0

Note: Due to rounding, figures may not add up to totals shown.

Travel Policies

The former Public Service Staff Relations Board followed the Treasury Board Secretariat (TBS) Travel Directive, Rates and Allowances, and the TBS *Special Travel Authorities*, with restrictions on the amount that can be claimed by Governor-in-Council (GIC) appointees for meals and accommodations.

APPENDIX A: GRIEVANCE ADJUDICATION CASES

	2004-2005	2003-2004	2002-2003
New cases	1,968	1,910	844
Cases carried over from previous years *	2,295	1,181	1,090
Total cases	4,263	3,091	1,934
Cases disposed of during fiscal year	692	796	753
Cases carried over to next FY *	3,571	2,295	1,181
Note:			
* Cases can be carried over for a variety of reasons. They may be cases that were heard and were awaiting decisions at year-end, were scheduled for hearing, or were held in abeyance at the request of the parties pending discussions or other decisions from the Board, other tribunals or courts.			

APPENDIX B: COLLECTIVE BARGAINING CASES

	2004-2005	2003-2004	2002-2003
Conciliation: Section 53 of the former PSSRA			
New cases	11	15	6
Cases carried over from previous year(s)	5	4	4
Total cases	16	19	10
Cases settled at conciliation	1	2	4
Cases not settled at conciliation	12	12	2
Cases carried over to next fiscal year	3	5	4
Conciliation Boards: Section 76 of the former PSSRA			
New cases	7	4	3
Cases carried over from previous year(s)	2	2	3
Total cases	9	6	6
Conciliation reports produced	6	1	4
Cases settled before conciliation board	1	3	0
Cases carried over to next fiscal year	2	2	2
Special Advisor: Section 20(4) of the former PSSRA			
New cases	5	2	2
Cases carried over from previous year(s)	2	1	1
Cases settled	3	1	2
Cases carried over to next fiscal year	4	2	1

APPENDIX B: COLLECTIVE BARGAINING CASES (cont'd)

	2004-2005	2003-2004	2002-2003
Arbitration: Section 64 of the former PSSRA			
New cases	12	6	5
Cases carried over from previous year(s)	5	2	1
Total cases	17	8	6
Cases settled	9	2	1
Cases settled prior to arbitration	0	1	2
Requests for arbitration denied	0	0	1
Cases withdrawn	0	0	0
Cases carried over to next fiscal year	8	5	2

APPENDIX C: COMPLIANCE WITH STANDARDS

ACTIVITY	PERFORMANCE STANDARD	COMPLIANCE RATE
Letters of Acknowledgement	Clients are to be issued a letter of acknowledgement within two working days from date of receipt at the Board.	Of the 1,968 new cases processed by the Board, 0.78% complied with the standard. 2.44% were acknowledged within 5 working days of receipt. It should be noted that some of the remaining cases were group files or incomplete, which require more time to process.
Scheduling of cases not involving termination	Cases are to be scheduled for mediation or formal hearing within five months from date of receipt.	59.22% of cases were scheduled within 5 months of the date of receipt. 78.64% were scheduled within 6 months. 1,698 cases remain to be scheduled. Many of the cases were held pending at the request of the parties or exceeded the timeframe at the request of the parties, due to their lack of resources.
Scheduling of termination cases	Cases involving termination of employment are to be scheduled for mediation or formal hearing within four months from date of receipt.	Of the 60 cases involving termination of employment received at the Board during 2004-05, 71.84% complied with the standard and 82.52% were scheduled within 5 months. The remainder were held in abeyance or postponed at the request of one of the parties.
Notice of Hearing	Clients are to receive Notice of Hearing at least 30 days prior to the hearing date except in emergency cases where Notices are issued immediately upon receipt.	91.05% of the Notices of Hearing were issued in compliance with the standard. 91.41% were issued at least 25 days prior to hearing.
Completion of Decisions on the Merits	Decisions are to be rendered by Board members within two months after the hearing or other process is completed.	Of the 189 decisions issued, 39.13% complied with the standard. 51.55% were issued within 4 months of the hearing. During the period, one board member retired and was not replaced. The number of board decisions issued was higher than in the previous year.
Issuance of Board Decisions	Board decisions are to be sent to the parties within one day after the decision is signed by the Member.	Of the 189 decisions issued by Board members, 99.37% complied with the standard.
Availability of Decisions to the Public	Decisions are to be made available to the public through the Board's Web site on the 3 rd day following their release to the parties.	96% of decisions issued complied with the standard.

APPENDIX D: SYNOPSIS OF APPLICATIONS FOR JUDICIAL REVIEW OF DECISIONS

April 1, 2000, to March 31, 2005

	Decisions rendered ¹	Number of applications	Applications dismissed	Applications allowed	Applications withdrawn ²	Applications pending ³	Appeals of applications pending ⁴
YEAR 1 (April 1, 2000, to March 31, 2001)	127	12	4	4	4	0	0
YEAR 2 (April 1, 2001, to March 31, 2002)	132	13	10	1	2	0	1
YEAR 3 (April 1, 2002, to March 31, 2003)	101	10	4	3	1	2	0
YEAR 4 (April 1, 2003, to March 31, 2004)	108	14	4	2	4	4	0
YEAR 5 (April 1, 2004, to March 31, 2005)	189	19	4	2	2	11	0
TOTAL	657	68	26	12	13	17	1

¹ Decisions rendered do not include cases settled or withdrawn or dealt with under the expedited adjudication process.

² Refers to originating applications and does not include appeals withdrawn.

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

⁴ Results of appeals disposed of have been integrated into statistics in this table.

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

APPENDIX E: DECISIONS OF INTEREST

As a result of the repeal of the *PSSRA* and therefore of the obligation to table an annual report for 2004-05, the Board has elected instead to include herein highlights of decisions of interest issued by the Board and adjudicators in 2004-05.

DECISIONS RENDERED BY THE BOARD

Remittance of Union Dues:

In *Professional Association of Foreign Service Officers v. Treasury Board*, 2004 PSSRB 124, the Board was called upon to determine to which bargaining agent were union dues to be remitted in circumstances of secondments of employees from another bargaining unit. The employer staffed FS positions by means of secondment agreements. It remitted union dues to the bargaining agent for those employees acting in FS positions, i.e. whose substantive positions' maximum rate of pay was lower than that of the FS positions to which they were seconded. However, it did not remit union dues to the bargaining agent for those employees seconded to FS positions where their substantive positions had a higher maximum rate of pay. The bargaining agent argued that it was entitled to union dues from all employees seconded to FS positions, as they all performed FS duties. The employer responded that those employees whose substantive positions had a higher maximum rate of pay continued to be represented by the bargaining agent representing their substantive positions' professional group. The Board found that the secondments were not appointments. It further found that the collective agreement did not subject the bargaining agent's union dues' entitlement to a seconded employee's substantive position's rate of pay. The Board also found that the bargaining agent was entitled to union dues from employees seconded to FS positions, except in the case of non-career rotational FS officers in FS positions outside of Canada. The Board ordered the parties to meet and determine the amount of union dues owed to the bargaining agent. The Board retained jurisdiction in the event that the parties needed its further intervention in the matter. The reference was allowed, in part.

Complaint under the Canada Labour Code:

In *King and Waugh v. Canada Customs and Revenue Agency*, 2005 PSSRB 3, the Board was seized of a complaint under section 147 of the *Canada Labour Code* (CLC). The complainant King received a document which listed incidents described as life-threatening encounters reported by customs officers over a period of 25 years. The employer ordered all recipients of the document to destroy it. The employer stated it was concerned that the document contained information in violation of the *Customs Act*. The complainant Waugh had received a document entitled "Canadian Customs Officers Critical Incident Summary Report" and tabled it at a meeting of the Occupational Health and Safety Committee (OSH Committee). The employer indicated that it did not appear to contain information in violation of the *Customs Act*, but as it was similar to the other

document, the employer ordered it to be destroyed. King requested that a vetted copy of the original document be provided and the employer refused. King attended an OSH Committee meeting and distributed a document entitled "Critical Incident Summary Report". As it was similar in content, the employer ordered the document to be destroyed. The complainants had asked how the document violated the *Customs Act* but did not receive an answer. The complainants did not destroy the document and received suspensions. After the final suspension, they destroyed the document. At the hearing, the employer testified it had a concern that the document would be used to further the customs inspectors' agenda to obtain firearms and have wage parity with the police. The Board held that the issues in the document pertained to health and safety issues. The complainants were entitled to raise these issues at the OSH Committee. The order to destroy the document interfered with the right of the complainants to represent employees at OSH Committee meetings. This constituted a violation of section 8 of the *Public Service Staff Relations Act*. The complainants were acting as health and safety representatives in accordance with Part II of the *CLC*. Their suspension constituted a violation of section 147 of the *CLC*. The Board ordered full restitution for the suspensions. The complaints were allowed.

Bar to Adjudication:

In *Melnichouk v. Canadian Food Inspection Agency*, 2004 PSSRB 181, the Board was called upon to rule on whether the existence of another redress procedure barred the complainant from filing a grievance under the *Public Service Staff Relations Act (PSSRA)*. The complainant competed unsuccessfully in a staffing process established by the Canadian Food Inspection Agency (CFIA). He filed a statement of complaint pursuant to the CFIA's Staffing Recourse Policy. The complaint was not accepted. He filed a grievance relating to the failure of the employer to accept his complaint. The employer refused to reply to his grievance, stating there existed another administrative procedure for redress. The central issue to determine was whether CFIA's staffing recourse policy constituted an administrative procedure for redress provided under an Act of Parliament, within the meaning of s.91 of the *PSSRA*. The Board found that while the *CFIA Act* provided for the authority to appoint, there was no express statutory authority to establish a staffing recourse mechanism, as with the *Canada Customs and Revenue Agency Act*. In light of the central importance of the right to grieve and the purpose of the *PSSRA*, such an explicit reference would be required. Accordingly, the Board held that the CFIA's staffing recourse policy did not constitute an administrative procedure for redress provided under an Act of Parliament, within the meaning of s.91 of the *PSSRA*. The Board ordered the employer to hear the grievance. The complaint was allowed.

Collective Bargaining:

In *Union of Canadian Correctional Officers-Syndicat des agents correctionnels du Canada - CSN v. Treasury Board (Solicitor General Canada-Correctional Services)*, 2004 PSSRB 71, the parties were engaged in negotiations. The complaint concerned two issues. First, the bargaining agent complained that the employer communicated

directly with certain employees regarding negotiations in order to embarrass the bargaining agent and interfere with the bargaining agent's ability to represent its members. It also complained that the employer used threats, reprisals and abused its rights towards employees, more particularly employees who were also members of the institutional emergency response teams. At the bargaining table, the bargaining agent made it clear that improvements to the pension plan were an issue of importance. The employer maintained that improvements to the pension plan could not be negotiated at the bargaining table. Through persistence, a member of the bargaining unit obtained an opinion from Treasury Board that the pension plan was not an issue that could be bargained at the table. He disseminated this opinion to many other members of the bargaining unit. The bargaining agent complained that the employer threatened to discipline employees who were sympathetic to the union and who used the employer's e-mail, but ignored employees' use of the e-mail system where these were opposed to the union. Each penal institution maintains an emergency response team to deal with recalcitrant inmates, fires and training on the use of firearms and other defensive weapons. Each team is comprised of volunteers. During negotiations, and in response to a request from the bargaining agent, 90% of the members of these teams resigned. The employer advised employees in the bargaining unit that in the event that the teams were required, the employer would order a former member of the team to respond and that in the face of repeated refusals to comply, employees would be susceptible to discipline and even discharge. The Board found that with regard to the e-mail correspondence with the employee in the bargaining unit, management had no intention of interfering in the affairs of the bargaining agent. The employee in question was a contributor to the pension plan and therefore a "client" of the pension plan and it was a normal reaction to respond directly to a query without necessarily wanting to interfere in the union. Further, once the employer became aware of the situation, it took steps to ensure that the same thing did not occur again during negotiations. There was no evidence before the Board to indicate that the employer treated employees who were favourable to the union differently from employees who were not favourable with respect to their use of the employer's computer system. With respect to the use of former members of the emergency response teams in cases of recalcitrant inmates and fires, the Board held that the employer acted properly, as recourse to such employees was justified on the basis of urgency and internal safety. However, these criteria did not apply to the situation of the employer forcing former firearms instructors to lead training courses and the employer should have looked at alternatives such as regional or outside instructors. The employer was entitled to ask employees to participate in training courses but not to threaten employees with discipline unless they ignored their union's request. To do so constituted interference in the union. The complaint was allowed in part.

In another matter involving the Correctional Service of Canada, *Union of Canadian Correctional Officers - Syndicat des Agents Correctionnels du Canada - CSN v. Treasury Board*, 2004 PSSRB 38, the bargaining agent alleged that the employer had contravened section 52 of the *PSSRA* when it altered the hours of work of employees at four correctional facilities in the Atlantic region as a result of the fact that it ceased compensating employees for their ½ hour lunch break. The change took place after the bargaining agent had filed notice to bargain. The evidence demonstrated that for at least the last 18 years, employees at these institutions had enjoyed a paid lunch break. The

question to be answered was whether the change in the employees' working schedule was a change in a term or condition of employment as contemplated by section 52 of the *PSSRA*. The Board held that if the employer had the right to change shift schedules before notice to bargain was given, that right remained in force after notice to bargain was given. It held that the applicant had not discharged its onus of proof. The Board also held that estoppel did not apply in this case, as raising it at that point violated the principles espoused by the Federal Court of Appeal in *Burchill (infra)* and as no detrimental reliance had been shown by the bargaining agent. The application was dismissed.

Successor Rights:

In *Rostrust Investments Inc. v. Canadian Union of Public Employees, Local 4266-05, Public Service Alliance of Canada and Treasury Board (Public Works and Government Services Canada)*, 2005 PSSRB 1, the applicant was the owner of an office complex and also provided management and maintenance services to the public servants working in the building until the tenant, PWGSC, advised that it would be taking over these services. For the purpose of providing these services to the building's tenants, the applicant had employed various employees, including a group of unionized employees who were represented for the purposes of collective bargaining by CUPE. These employees had been certified under the *Ontario Labour Relations Act (OLRA)*. These employees were invited by PWGSC to apply for continued employment with PWGSC. As a result, many of the employees were hired by PWGSC pursuant to the *Public Service Employment Act (PSEA)* to perform either the same or similar duties. CUPE filed a grievance against Rostrust Investments Inc. pursuant to the collective agreement, claiming notice, severance and termination pay. A hearing was scheduled before an arbitrator appointed under the *OLRA*. The hearing was adjourned pending the determination of this application. The adjudicator found that the "contracting-in" of maintenance services does not constitute a transfer of jurisdiction under the *PSSRA*. The employees in question were not employees of Treasury Board until such time as they were appointed pursuant to the *PSEA*. The Board is without jurisdiction to replace the applicant with PWGSC as the employer under the CUPE collective agreement, the Ontario Labour Relations Board certificate and the grievance as they are all governed by the *OLRA*. The Board had no jurisdiction to decide whether or not the maintenance operations were a "federal undertaking" as this jurisdiction belongs to the Canada Industrial Relations Board. The Board was also unable to use its general powers under section 21 of the *PSSRA* to address the issues raised in the application, as the Supreme Court of Canada has decided that similar provisions in other pieces of legislation do not confer autonomous powers on the Board to remedy situations for which there are specific powers prescribed elsewhere. There was a lack of evidentiary foundation regarding the allegation that the application was made in bad faith and for an improper purpose. The employees in question had been treated as employees of Rostrust Investments Inc. and had been governed by a collective agreement negotiated by CUPE since 1993. It was inappropriate for the employer to wait for such an extended period before raising the issue that goes to the very heart of the relationship between union and management. The applicant was also without standing to make an application under section 41 of the *PSSRA*. In addition, the applicant was without standing to make an

application under section 49 of the *PSSRA* as there had been no merger, amalgamation or transfer of jurisdiction. The *PSSRA* regime contains no provision for successor rights when a formerly provincial activity becomes governed by the *PSSRA*. There is no agreement or arrangement between the trade unions; therefore, the Board is without jurisdiction under section 49. The application was dismissed.

In *Public Service Alliance of Canada v. Canadian Food Inspection Agency*, 2004 PSSRB 155, the transfer of certain portions of a separate employer to the core public service raised significant legal issues. The bargaining agent alleged that the Canadian Food Inspection Agency (CFIA), a separate employer under the *PSSRA*, was under an obligation to consult the bargaining agent before some of its employees were transferred to a newly created Canadian Border Services Agency, listed in Part I of Schedule I to the *PSSRA*. The transfer of the program activities was effected by an order of the Governor in Council passed under the *Public Service Rearrangement and Transfer of Duties Act (PSRTDA)*. The bargaining agent argued that the provisions of the Employment Transition Policy (ETP), which is part of the collective agreement, applied to the situation and imposed on the employer the obligation to consult the bargaining agent before implementing the transfer. The ETP provides that an employment transition occurs "when the President decides that the services of one or more indeterminate employees will no longer be required beyond a specific date because of a lack of work or the discontinuance of a function within the Agency". The Board held that the situation at hand did not trigger the application of the ETP since there was no "decision" by the President that services are no longer required. The transfer was effected by an order passed by the Governor in Council, on the recommendation of the Prime Minister of Canada. The Board also found that the regulations made under paragraph 36(1)(b) of the *PSEA*, which enable the application of the "block transfer" provisions in that *Act* to the employees affected by the transfer, was not *ultra vires*. The reference was dismissed.

Certification Vote:

In *Professional Institute of the Public Service of Canada v. Canadian Nuclear Safety Commission*, 2004 PSSRB 43, the Board was called upon to review its earlier decision to order a representation vote further to an application for certification by the Professional Institute of the Public Service of Canada to represent employees of the employer. In its earlier decision (2004 PSSRB 19), the Board had determined an appropriate bargaining unit and ordered that a representation vote be conducted pursuant to an application for certification submitted by the Professional Institute of the Public Service of Canada (the Institute). The Institute applied for a review of this decision for the purpose of filing six additional membership cards that had not been tendered at the time of its original request for certification. The Board accepted the six additional cards submitted. They were not needed to support the original bargaining unit configuration that the Institute had proposed, which did not include the sector where the signers of the additional cards worked. Since the Board, in decision 2004 PSSRB 19, had determined on a bargaining unit different from that proposed by the employee organization, these cards did not become relevant until that time. They had, moreover, all been signed prior to the deadline. The addition of these cards meant that the Institute had established that a majority of the employees in the bargaining unit wished to be represented by it; the

Board set aside the original decision, rescinded the order for a representation vote and certified the Institute as the bargaining agent. The application was allowed.

DECISIONS RENDERED BY BOARD MEMBERS AS ADJUDICATORS

Sick Leave:

In *S. Dubois v. Treasury Board (Canadian International Development Agency)*, 2004 PSSRB 91, the grievor was, on her return from a posting in Benin, diagnosed with adjustment disorder with depressed mood. Her doctors placed her on work stoppage for a nine and one-half month period. During this period, clinical tests established that she was a carrier of Koch's bacillus (tuberculosis) and she was prescribed isoniazide preventive treatment. The grievor had side effects from the isoniazide and this treatment was eventually discontinued. The employer asked Health Canada, as provided for in the Foreign Service Directives (FSDs), which were deemed to be part of the collective agreement, to evaluate whether the cause of the employee's work stoppage was caused by an illness that would not occur or was not endemic to Canada. The FSDs stipulated that, in such circumstances, absences are not chargeable to the employee's leave credits. Although Health Canada did acknowledge that the grievor had been exposed to Koch's bacillus through a person infected abroad, such exposure being unlikely in Canada, it was evaluated that the work stoppage was not covered by the FSDs. At the grievor's request, the evaluation was reviewed. Health Canada confirmed its evaluation. The grievor filed a grievance requesting reinstatement by the employer of the annual and sick leave credits debited from her accumulated leave credits following Health Canada's evaluation. The grievor alleged that health problems during her posting in Benin left her in a weakened condition and had caused her work stoppage. The employer answered that the grievance adjudicator had to restrict himself to examining how the employer had applied Health Canada's decision. It argued that to review the assessment by Health Canada would have the effect of amending the collective agreement. The adjudicator found that he had jurisdiction to review Health Canada's interpretation of the FSDs because to limit the examination to the employer's application of that interpretation would be equivalent to distorting the right to grievance redress. The adjudicator concluded that the work stoppage caused by the adjustment disorder with depressive mood from which the grievor suffered was not covered by the FSDs. However, he found that the secondary effects of the isoniazide had prolonged the work stoppage by seven weeks and that for this period, the grievor was entitled to the benefits under the FSDs. The grievance was allowed in part.

Family-Related Leave

In *M. Dufour et al. v. Treasury Board (Department of Human Resources Development)*, 2004 PSSRB 123, the grievors requested leave without pay for the care of immediate family during the summer months of 2002. A new provision in the collective agreement made such leave subject to ensuring "continued service delivery". The employer sought clarification of that expression and was advised that it had the same meaning as "subject to operational requirements". The employer denied the grievors' requests to offer

precedence to those for annual leave and offered the grievors leave without pay in the spring or fall of 2002. However, the employer authorized the grievors to take annual leave during the period for which they had requested leave without pay. The grievors argued the employer could have granted them leave without pay while ensuring continued service delivery. They added that the employer was not justified in giving precedence to requests for annual leave. The employer responded that ensuring continued service delivery is a standard higher than that of meeting basic operational requirements and that determining how to manage its operations was its prerogative. The employer added that it had to ensure that other workers got annual leave during the summer of 2002. The adjudicator found ensuring "continued service delivery" not to have the same meaning as "subject to operational requirements", but to mean that service delivery should not be interrupted. She further found that the employer could have granted the leave without pay requested by the grievors without interrupting service delivery. As the grievors had taken annual leave, with pay, during the same period, the adjudicator ordered the employer to re-credit their leave banks should they elect to remit the monies that they have received while they were on annual leave. The grievances were allowed, in part.

In *Sahota v. Canada Customs and Revenue Agency*, 2004 PSSRB 166, the grievor worked a compressed work week schedule, averaging 37.5 hours per week. The length of his normal shift was nine hours. The collective agreement provided that leave with pay for family-related responsibilities shall not exceed five days in a fiscal year. The collective agreement did not define the word "day". Appended to the collective agreement was a memorandum of agreement providing that, for employees working compressed work weeks, provisions of the collective agreement referring to a day shall be converted to hours, on the basis that one day equals 7.5 hours. The grievor alleged that his annual leave entitlement was five shifts of nine hours. The employer was of the view that the grievor was entitled to no more than 37.5 hours' leave per year. The adjudicator found that the grievor's entitlement to leave with pay for family-related responsibilities shall not exceed 37.5 hours in a fiscal year. The grievance was denied.

Termination of Employment or Demotion:

In *Burton v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2004 PSSRB 74, the issue of the adjudicator's remedial powers came to the fore. The grievor, a correctional supervisor and acting warden, was terminated following a criminal conviction of assault and for failure to adhere to the standards of professional conduct. A mini-riot occurred at the institution. The inmates were kept in an exercise yard while clean-up occurred. Each inmate was to be escorted back to his cell by 3 guards (3-on-1 protocol). Two inmates remained in the yard. Derogatory comments regarding the 2 inmates were written across a computer screen visible to the 2 inmates in the yard. The grievor cancelled the 3-on-1 protocol for the two remaining inmates. While removing the 2 inmates, the grievor, another correctional officer and the inmates were injured. The adjudicator found that the grievor incited inmates by permitting derogatory comments on the computer screen. The grievor violated the use of force directive in removing inmates without 3-on-1 protocol and without videotaping them. The grievor's conviction arose from off-duty conduct. There was no evidence that the conduct

damaged the employer's reputation, no evidence that employees no longer wished to work with the grievor, no evidence the grievor could not manage his work duties effectively. The adjudicator found that the bond of trust was not irrevocably broken. The grievor demonstrated he had been a valued employee. The termination was deemed too severe. The adjudicator found that demotion was an appropriate penalty. The adjudicator rejected the argument that to order a demotion would be contrary to the *PSEA*. The adjudicator found that demotion was not an appointment for the purposes of the *PSEA*. The grievor could perform duties of a lower level position, but his current supervisory position would not be appropriate. A demotion was ordered. The grievance was allowed in part.

In *Dhaliwal v. Treasury Board (Solicitor General Canada-Correctional Service)*, 2004 PSSRB 109, the grievor was a Correctional Officer who was rejected on probation. The grievor was advised that he was unreliable and not personally suitable as a result of an inordinate use of leave. A month after the grievor began his training program, his mother died in his arms and his father blamed him for her death and became suicidal. The grievor briefly interrupted his training course following his mother's death but resumed the course and finished second and was elected valedictorian by his classmates. Seven months after he began his probationary period, the grievor's wife and nephew were involved in a serious car accident. The wife's rehabilitation took close to a year and the grievor was required to drive her to numerous physiotherapy and medical appointments. As a result of the grievor's personal situation, he exhausted his family-related leave and sick leave credits and requested 23.5 hours of leave without pay. Although the grievor's supervisor met with him twice regarding his leave usage and the fact that he had exhausted his leave credits and needed to use leave without pay, the grievor was never advised that he was not meeting the requirements of his position or what was expected of him. The warden was never advised of the grievor's personal problems yet was the person who made the decision to reject the grievor on probation. The employer had met the burden of proof in demonstrating that it had cause to reject the grievor on probation. The burden then shifted to the grievor to demonstrate bad faith. The employer's decision was not based on all of the facts. The employer failed to abide by its own policies which require fairness and good faith. The employer's lack of diligence amounted to bad faith. The grievor was reinstated. The grievance was allowed.

Other Matters of Interest:

In *Sherman v. Canada Customs and Revenue Agency*, 2004 PSSRB 125, the question of "issue estoppel" arose when the grievor alleged failure to accommodate her disability. Pursuant to the *Customs and Revenue Agency Act*, there was a decision by an Independent Third Party Reviewer who overturned the termination and ordered reinstatement. The grievor pursued grievances alleging improper termination of injury-on-duty leave and suspension or improper placement on vacation or sick leave. The grievor sought to prevent the employer from re-litigating issues covered by ITPR decision in the hearing on the grievances. In accordance with the *Customs and Revenue Agency Act*, the employer established an Independent Third Party Review process whereby employees who were dissatisfied with staffing and termination decisions that

could not be reviewed by the Public Service Staff Relations Board could initiate the review process (ITPR). The grievor was absent from work due to illness for a lengthy period of time and was ultimately terminated by the employer. The grievor initiated the ITPR process and the hearing took place over 19 days. The hearing included pre-hearing submissions, oral testimony and documentary evidence, the administration of oaths to witnesses, representation of both sides by counsel, cross-examination, participation by expert witnesses, written arguments totaling more than 200 pages and, finally, a detailed decision. The reviewer held that the employer's decision to terminate the grievor because her disability could not be accommodated was not sustainable and he ordered that she be reinstated and that the proper accommodation be provided. The grievor also filed grievances arising out of the situation, alleging that the employer improperly terminated her injury-on-duty leave and that the employer's order for her not to report to work in June of 1998 was in fact a suspension without pay or an improper placement on sick leave or vacation leave. The adjudicator held that there was no dispute that the ITPR decision was final and that the parties to the ITPR were the same before her. She also decided that there was no dispute that the previous decision was judicial; as the ITPR reviewer possessed the legislative authority to make an adjudicative decision, the ITPR had to be carried out in a judicial way and respect the rules of natural justice. The parties did not, however, agree that the ITPR considered the same question that was now before the adjudicator. The adjudicator held that issue estoppel could only be applied where the question decided was fundamental to the decision arrived at in the earlier proceeding. The adjudicator reviewed some of the facts that the grievor had to establish in order to satisfy the ITPR reviewer that her non-disciplinary termination could not stand in order to determine which were fundamental to his decision. However, she declined to delineate which of the findings of fact fell on one side of the line or the other, stating that while some were obvious, counsel could resolve most of the rest. She found that the nine points that the ITPR determined were questions that she would also have to determine as part of her decision-making in respect of the grievances before her and therefore that she and the reviewer were required to determine the same issues. The adjudicator therefore held that issue estoppel applied to the proceedings before her. The adjudicator declined to exercise her discretion not to apply issue estoppel. In examining the seven factors set out by the Supreme Court of Canada in *Danyluk (infra)*, and in balancing all of the relevant criteria, and having particular regard to the factor of potential injustice, she was satisfied that the principle of issue estoppel should be applied and the employer should be prevented from re-litigating the nine points determined by the ITPR reviewer.

In *Hodgson et al. v. Treasury Board (Transport Canada)*, 2005 PSSRB 30, the extent of the employer's management rights were at issue. Following the events of September 11, 2001, the employer implemented shift work for Regional Security Inspectors (RSIs) employed at international airports. The RSIs are responsible for safety and security at airports, as well as railways and harbours. The RSIs were previously considered day workers. The employer first contacted the bargaining agent at the national level at the beginning of October, and the first consultation meeting took place on October 26, 2001. Discussions continued between the parties but no agreement was reached. During discussions in October, the bargaining agent raised the issue of pending grievances and the employer sent a letter to the bargaining agent agreeing to suspend the time limits for

filing a grievance until completion of the consultation process. A joint memorandum announcing the agreement to suspend the time limits was prepared but never finalized. The grievances in issue were filed in March and April of 2002. The employer argued that the grievances should only be retroactive to 25 days prior to the filing of the grievances and should not be given full retroactive effect. The Board held that the agreement was clear and that the grievances should have full retroactive effect. The bargaining agent filed a section 99 reference, alleging that the employer had breached clause 25.04 of the collective agreement in failing to come to an agreement with it on the change in hours of work. The "test grievances" that were also the subject of this decision contested the change in the hours of work and the consequent failure of the employer to pay overtime for hours worked outside the normal day work hours. The grievors were hired on the understanding that they would work as day workers and argued that this was a term and condition of employment. The employer responded that clause 25.04 did not apply to the transition from day work to shift work and argued that clause 25.02 was the applicable clause and required only discussion between the parties, which discussion had taken place. The Board concluded that neither clause 25.02 nor clause 25.04 applied. The Board found that clause 25.04 did not govern a change of hours of work that has the effect of changing a day worker into a shift worker. Clause 25.02 did not apply, as it only applied to a change in the "schedule of working hours", which is the distribution of hours within a fixed period and does not cover the transformation of day workers into shift workers. Prior Board decisions and a decision of the Federal Court led to the conclusion that the employer can transform day workers into shift workers without the agreement of the bargaining agent. Management rights prevail, as the collective agreement does not restrict the right of the employer to determine the hours of work and change a day worker to a shift worker. The grievances were denied and the reference dismissed.

The question of whether an employee was in a conflict of interest arose in rather extraordinary circumstances. In *Assh v. Treasury Board (Department of Veterans Affairs)*, 2004 PSSRB 111, the grievor, a Pensions Advocate with the Department of Veterans Affairs, challenged the employer's direction that he decline a bequest of \$5000 left to him in the will of a former client, whom he had assisted in his capacity as a pensions advocate several years before. The employer considered the acceptance of such a bequest to be "beyond the bounds of propriety" and in contravention of the Conflict of Interest and Post-Employment Code for the Public Service. The employer objected to the adjudicator's jurisdiction on the basis that a direction to refuse a bequest did not constitute "disciplinary action resulting in a financial penalty". The adjudicator dismissed the objection and favoured a broad interpretation of paragraph 92(1)(b) of the *PSSRA*. In her view, such a broad interpretation furthers the objective of the *PSSRA* and honours the labour relations principle of "obey now, grieve later". The adjudicator found that the direction has a "disciplinary connotation", because it is based on a standard involving voluntary conduct and the appropriateness of behaviour. The direction also resulted in a "financial penalty" because the grievor was required to forfeit a sum of money to which he would otherwise be legally entitled. On the merits, the adjudicator found that the grievor had no previous knowledge of the bequest, that it could not influence the grievor in his judgement and performance of duties and that the Testatrix and her estate would not have any future dealings with the government related

to this question. The services to the Testatrix were provided in 1996 and the grievor was unaware of his being named as a beneficiary in the will in 2001. The adjudicator concluded that accepting the bequest in those circumstances did not "compromise the integrity of the Government" and did not bring suspicion on the grievor's objectivity and impartiality. There was therefore no real, potential or apparent conflict of interest in the circumstances of this case. The grievance was upheld. However, the Federal Court set aside the decision on the question of jurisdiction, finding that no disciplinary action within the meaning of section 92 of the *Act* had yet been taken by the employer (*Canada (Attorney General) v. Assh* 2005 FC 734).

FEDERAL COURT DECISIONS OF INTEREST

In *Ryan v. Attorney General of Canada*, 2005 FC 65, the applicant was active in his local and had been designated by the local to handle a file concerning the work environment in a particular section of the workplace. In this role, he attended a scheduled meeting between employees and management on this issue. Prior to the start of the meeting, a manager inquired as to why the applicant was present and the ensuing exchange between the two men became tense and embarrassed those present. The applicant filed a grievance under his collective agreement alleging, amongst other things, harassment and intimidation. The employer objected to the jurisdiction of the adjudicator to hear the grievance, arguing that the applicant should have proceeded by way of a complaint under section 23 of the *PSSRA*, arguing that section 23 provided another administrative procedure for redress. The grievance was dismissed at adjudication. The adjudicator accepted the evidence but found that not all uncomfortable human interaction was considered harassment or intimidation. The lapse of judgement on the part of the management representative was not a breach of the collective agreement. The adjudicator dismissed the employer's objection and held that a purposive analysis of section 91 in the general context of the legal framework set out in the *PSSRA* led him to conclude that an adjudicator did have jurisdiction over a grievance alleging discrimination on the basis of union membership or activity. The applicant filed for judicial review and argued that the adjudicator had erred in dismissing his grievance. The application for judicial review was dismissed. The Court held that the applicant had another avenue of redress under the *PSSRA* and this avenue should have been used. The adjudicator was incorrect and should not have proceeded with the hearing. Despite this, the Court found that management's conduct did not amount to harassment or intimidation. The behaviour had to be looked at subjectively and objectively. This case involved an isolated incident and the adjudicator's finding was reasonable based on the facts and the decision was not patently unreasonable.

Gannon v. Canada (Treasury Board), 2004 FCA 417, was an appeal from a decision of the Federal Court dismissing an application for judicial review of an adjudicator's decision. The appellant was employed with the public service. He was suspended from his employment without pay pending an investigation into allegations of abuse of authority. His employment was subsequently terminated. The appellant had grieved his dismissal and his grievance was referred to adjudication. The adjudicator found that his employer had just cause for disciplinary action, but not for termination. The adjudicator

awarded the appellant six months' compensation in lieu of reinstatement. On judicial review, the Court found that the adjudicator's decision was not patently unreasonable. This decision was appealed. The appellant argued that the decision should have been reviewed on a *reasonableness simpliciter* standard. Further, he argued that because the adjudicator found no cause for termination, he could not lawfully be terminated and should have been reinstated. The appeal was allowed. The Court held that the decision of the adjudicator was clearly irrational, even on the patently unreasonable standard. The Court noted that the jurisdiction of the adjudicator under the *PSSRA* was not the same as that under the *Canada Labour Code* and that the adjudicator did not have the right to impose a monetary payment in lieu of reinstatement. The remedy which the adjudicator had ordered was inconsistent with the findings. The Court ordered that the matter be remitted to a new adjudicator with the direction that the termination be rescinded and that a lesser penalty be imposed based on the conduct identified by the original adjudicator as cause for discipline.

APPENDIX F: OTHER INFORMATION

A. STATUTES AND REGULATIONS ADMINISTERED BY THE FORMER PUBLIC SERVICE STAFF RELATIONS BOARD

- *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35
- *P.S.S.R.B. Regulations and Rules of Procedure*, 1993, SOR/93-348
- *Parliamentary Employment and Staff Relations Act*, R.S.C. 1985 (2d Supp.), c. 33
- *P.E.S.R.A. Regulations and Rules of Procedure*, SOR/86-1140
- Certain provisions of Part II of the *Canada Labour Code*, R.S.C. 1985, c. L-2
- *Education Staff Relations Act*, (Yukon), R.S.Y. 2002, c. 62
- *Yukon Teachers Staff Relations Board Regulations and Rules of Procedure*, O.I.C. 1992/95
- *Public Service Staff Relations Act*, (Yukon), R.S.Y. 2002, c. 185
- *YPSSRB Regulations and Rules of Procedure*, C.O. 1970/26

B. STATUTORY AND DEPARTMENTAL REPORTS OF THE FORMER PUBLIC SERVICE STAFF RELATIONS BOARD

- Public Service Staff Relations Board Annual Report
- Public Service Staff Relations Board Performance Report
- Public Service Staff Relations Board Report on Plans and Priorities
- *Parliamentary Employment and Staff Relations Act* Annual Report
- Yukon Public Service Staff Relations Board Annual Report
- Yukon Teachers Staff Relations Board Annual Report
- *Access to Information Act* Annual Report
- *Privacy Act* Annual Report
- Annual Management Report on Official Languages
- PSSRB Summaries of Decisions (until December 2004)

C. CONTACTS FOR FURTHER INFORMATION

Public Service Labour Relations Board
C.D. Howe Building
240 Sparks Street
West Tower, 6th Floor
P.O. Box 1525, Station B
Ottawa, Canada
K1P 5V2

Tel: 990-1800

General:	Fax: 990-1849
Registry Operations and Policy:	Fax: 990-3927
Dispute Resolution Services:	Fax: 990-6685
Web site:	www.pslrb-crtfp.gc.ca

E-mail Address:

Internet: Mail.courrier@pslrbcrtfp.gc.ca