

Public Service Grievance Board

ANNUAL REPORT

2020-2021

MESSAGE FROM THE CHAIR

I am pleased to present the Annual Report for the Public Service Grievance Board, which tracks our progress during the fiscal year 2020-2021 in fulfilling our mandate to provide independent third-party dispute resolution for non-unionized public servants. The Board has continued to carry out its mandate with skill, integrity and impartiality, in furtherance of the Board's consistent goal of encouraging harmonious workplace relations within the Ontario Public Service. I can report that the Board achieved this goal through the combined efforts of the Board's very capable members and staff.

The Board is currently composed of its Chair, Brian Smeenk, and four members, all serving on a part-time basis. During this fiscal year, we wished former Chair, Kathleen O'Neil well as she left the Board. Ms. O'Neil served the Board as a Vice-Chair for 10 years and as Chair for 6 years, during which she provided exemplary wisdom and leadership. We are indebted to her. In addition to Chair Smeenk, member Thomas Kuttner also joined the Board in the past year. They join Marilyn Nairn, Allen Ponak and Andrew Tremayne as they continue on the Board. All are professional labour relations adjudicators who draw on their extensive experience in the broader labour relations community to serve the Ontario Public Service. Their skills, broad and deep experience, and professionalism are at the core of the effectiveness of the Board as an independent dispute resolution agency.

The Board's administrative staff continues to be led by Caroline Goodwin, the Board's Secretary. As a new, part-time Chair, I am very much in her debt, and in the debt of her capable staff, for the impressive efficiency with which the Board is run. Their work - scheduling, tracking, communicating with and advising our clientele, internal and external - is essential to fulfilling the Board's responsibility to provide the highest quality dispute resolution services, and to be administratively accountable within the larger structure of government. Through their efforts, the Board has been able to meet its administrative responsibilities in a timely, responsible and cost-effective manner.

This past fiscal year has been tremendously difficult as the Board continued to function despite the challenges presented by the global Covid-19 pandemic. The PSGB made the necessary decisions to adjust to the new world of video hearings which ensured continued dispute resolution processes with the highest quality. The Board's staff, who were forced to work from home, and Board Members, who had to quickly transition their skillset, demonstrated a commitment to the objectives of the Board that was needed in these unprecedented times.

In the past year we began to review the Board's practices, Rules and Practice Notes to look for still greater efficiencies in our dispute resolution processes. We will continue that work in the year ahead and look forward to our client community's cooperation in that regard.

Brian Smeenk

Chair, Public Service Grievance Board

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1. PSGB Mandate

The Public Service Grievance Board (PSGB or the Board) is an independent adjudicative tribunal that exercises the powers and duties conferred upon it by the Public Service of Ontario Act, 2006, and O. Reg. 378/07. The PSGB is classed as an adjudicative agency accountable to the legislature through the Minister of Labour, Training and Skills Development. The overall objective of the Board is to provide dispute resolution services between certain management/excluded crown employees and the government as their employer.

The adjudicative independence and neutrality of the PSGB is preserved by its separation from government agencies other than its co-tribunal, the Grievance Settlement Board (GSB). It is also preserved by the fact that the members of the PSGB are very experienced labour relations mediators/adjudicators who are prominent and well respected in the broader labour relations community, serving on this Board on a part-time basis. When third party intervention is needed, the Board provides mediation, mediation/arbitration or, when required, an expeditious process of adjudication.

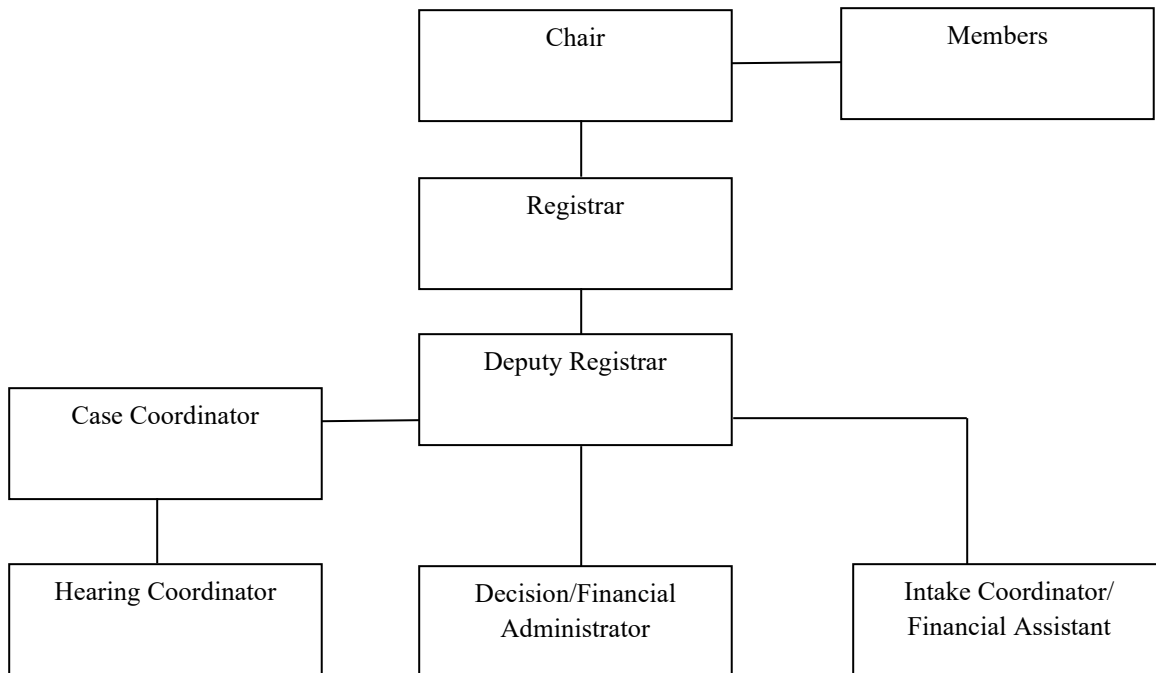
2. Human Resources

The Secretary

Caroline Goodwin

Caroline Goodwin has over 30 years of experience as an administrator in the labour relations field, commencing her OPS career with the Grievance Settlement Board. During her career, she gained broad experience through secondments with the Ministry of Labour, Finance and Administration Branch; Registrar - Human Rights Tribunal of Ontario, and the Pay Equity Hearings Tribunal. She has served as the Board's Registrar since 2003.

PSGB Organization Chart



3. Order In Council Appointments

List of Appointees – Public Service Grievance Board

Name of Appointee	OIC Appointment	Initial Appointment	Expiry Date of Current OIC
Brian Smeenk	Chair	January 21, 2021	January 20, 2023
Thomas Kuttner	Member	May 21, 2020	May 20, 2022
Marilyn Nairn	Member	January 5, 2015	January 4, 2025
Allen Ponak	Member	March 12, 2020	March 11, 2022
Andrew Tremayne	Member	September 13, 2017	September 12, 2022

Chair

Brian Smeenk

Mr. Smeenk has over 40 years of experience in employment and labour law, across the broader public sector (both Ontario and federal) and the private sector. He began his career as a neutral Fact Finder appointed by Ontario's Education Relations Commission to report on several school board-teacher bargaining impasses, before turning to private practice. He is a Past President of the former, tripartite Toronto Area Industrial Relations Association. Brian was inducted as a Fellow of the tripartite College of Labor and Employment Lawyers in 2015. He has been ranked as a leading lawyer in the area of labour relations and employment law in various legal publications, and listed in *Best Lawyers in Canada* since 2010.

Mr. Smeenk is the founder and President of the Merit Award Bursary Program, which provides support to deserving youth in Toronto and Peel, to help them pursue a post-secondary education.

Members

Thomas Kuttner

Thomas Kuttner, Q.C. has been a law professor at the University of New Brunswick (1979-2010) and at the University of Windsor (2010-2020) where he taught Administrative, Constitutional and Labour Law. Throughout his academic career he has been active as a third-party neutral in labour disputes as a conciliator, mediator and arbitrator and has sat as a part-time Vice-Chair on labour boards in New Brunswick, the federal sector, and currently on the Ontario Labour Relations Board. He has appeared several times before the Courts of New Brunswick and the Supreme Court of Canada.

Marilyn Nairn

Originally from Winnipeg, Marilyn Nairn is a graduate of the University of Ottawa Law School and was called to the Ontario bar in 1982. She practiced labour law in Toronto until 1987 when she accepted the position of counsel to the Ontario Labour Relations Board. In 1989 Ms. Nairn was appointed a Vice-Chair of the OLRB, where she served for three terms, following which she expanded her successful practice as labour arbitrator and mediator. Ms. Nairn is a member of the National Academy of Arbitrators and the Ontario Labour-Management Arbitrators' Association and has held various positions on the executive of the Labour Section of the Ontario Bar Association. She has completed an advanced mediation course at Osgoode Hall Law School, has taught at both the college and university levels in the area of labour law, and has appeared as a speaker on various panels and at conferences in the areas of labour law and human rights. She was appointed to the Grievance Settlement Board on October 31, 2001.

Allen Ponak

Allen Ponak has been arbitrating and mediating since 1984. His practice is national in scope and he is a listed arbitrator in national and regional collective agreements including manufacturing, public service, and professional sports. Until 2006, Allen was a professor of industrial relations and the author of numerous books and articles on labour and employment. He has an undergraduate degree from McGill University, a Master's from Michigan State University, and a Ph.D. from the University of Wisconsin. In 2015-16 Allen was president of the National Academy of Arbitrators and in 2015 was the recipient of the Bora Laskin Award for his contributions to labour policy and law.

Andrew Tremayne

Andrew has been a full-time arbitrator and mediator since 2014. Before that, he practiced labour and employment law in Ottawa for over 20 years. Andrew is on the Ontario Minister of Labour's list of approved grievance arbitrators (the "section 49 list") and the Federal Minister of Labour's list of eligible grievance and unjust dismissal adjudicators, and he regularly mediates and investigates workplace complaints and disputes of all kinds. He is also the Integrity Commissioner for the Township of Edwardsburgh/Cardinal and the Town of Prescott on an as needed basis. Andrew received his J.D. from U of T Law School in 1991, and he is a member of the Law Society of Upper Canada, the Canadian Bar Association, the Council of Canadian Administrative Tribunals, and the Alternative Dispute Resolution Institute of Ontario.

4. Overview of Activities

PSGB Mission Statement

To provide appropriate dispute resolution services to management/excluded employees and their employers in a fair, impartial and expeditious manner and promote harmonious labour relations in the Ontario Public Service.

Overview of Programs and Activities

By statute, the PSGB is comprised of a minimum of a part-time Chair and two part-time Members. Members of the PSGB bring to it extensive experience as both labour mediators and arbitrators.

The administrative functions of the PSGB are performed by a full-time administrative staff under the direction of the Board's Secretary. For those who use the PSGB's dispute resolution services, the first point of contact is with its administrative staff.

Once a complaint has been filed with the PSGB, mediation is usually the first step in the Board's dispute resolution process. A confidential mediation session provides the opportunity for complainants and their employer to resolve complaints in an expeditious and informal manner. A large proportion of complaints are now successfully resolved through the PSGB's mediation process conducted by one of the Board's members (Chair or Member).

If a complaint cannot be resolved through mediation, it is then scheduled for a full adjudicative hearing. At these hearings, evidence and arguments are presented in a more formal manner. A member of the PSGB (Chair or Member) will preside over the hearing, deal with procedural and evidentiary issues, listen to the evidence and argument, and then prepare a written decision. In more complicated cases the hearing could take longer than one day.

Whether mediation or adjudication is used, it is always the primary concern of the PSGB that complaints be resolved in a fair, impartial, and expeditious manner.

5. PSGB Applications Filed By Fiscal

TOTAL # PSGB FILES FOR FISCAL 2017-2018	% of change over previous fiscal	TOTAL # PSGB FILES FOR FISCAL 2018-2019	% of change over previous fiscal	TOTAL # PSGB FILES FOR FISCAL 2019-2020	% of change over previous fiscal	TOTAL # PSGB FILES FOR FISCAL 2020-2021	% of change over previous fiscal
APRIL: 3	67% decrease	APRIL: 2	33% decrease	APRIL: 2	0% decrease	APRIL: 1	50% decrease
MAY: 2	50% decrease	MAY: 3	50% increase	MAY: 10	233% increase	MAY: 22	120% increase
JUNE: 4	81% decrease	JUNE: 4	0% decrease	JUNE: 2	50% decrease	JUNE: 15	650% increase
JULY: 6	100% increase	JULY: 2	67% decrease	JULY: 5	150% increase	JULY: 6	20% increase
AUGUST: 10	150% increase	AUGUST: 6	40% decrease	AUGUST: 5	17% decrease	AUGUST: 3	40% decrease
SEPTEMBER: 2	33% decrease	SEPTEMBER: 4	100% increase	SEPTEMBER: 3	25% decrease	SEPTEMBER: 2	33% decrease
OCTOBER: 8	700% increase	OCTOBER: 6	25% decrease	OCTOBER: 4	33% decrease	OCTOBER: 5	25% increase
NOVEMBER: 5	400% increase	NOVEMBER: 4	20% decrease	NOVEMBER: 4	0% decrease	NOVEMBER: 2	50% decrease
DECEMBER: 2	100% increase	DECEMBER: 5	150% increase	DECEMBER: 11	120% increase	DECEMBER: 5	55% decrease
JANUARY: 13	160% increase	JANUARY: 4	69% decrease	JANUARY: 8	100% increase	JANUARY: 1	87% decrease
FEBRUARY: 7	133% increase	FEBRUARY: 1	86% decrease	FEBRUARY: 1	0% decrease	FEBRUARY: 7	600% Increase
MARCH: 12	200% increase	MARCH: 5	58% decrease	MARCH: 2	60% decrease	MARCH: 3	50% increase
TOTAL: 74	25% increase	TOTAL: 46	38% Decrease	TOTAL: 57	24% increase	TOTAL: 72	26% increase
Average New Files Per Month: 6		Average New Files Per Month: 4		Average New Files Per Month: 5		Average New Files Per Month: 6	

6. PSGB Caseload 2020-2021

<i>PSGB Caseload</i>	
Active Cases as at March 31, 2020	72
Cases filed in fiscal 2020/2021	72
Cases re-opened/input in Case Management System	0
Total Active Cases	144
Cases Disposed of:	
By Decision	17
Administrative Decisions without Hearing	2
Settled	11
Withdrawn	21
Duplicate File	0
Total Cases Disposed	51
Active Cases at March 31, 2021	93
* Active Inventory as at March 31, 2021	
To Be Scheduled	9
Scheduled Continuation	21
Scheduled	33
Decision Pending	4
Settlement Pending	2
Adjourned Sine Die	24
Total	93

7. Financial Information

The Public Service Grievance Board receives its funds through an allocation from the Grievance Settlement Board, which is funded as a budget item of the Ministry of Labour, Training and Skills Development. Expenditures made on behalf of the PSGB are recovered from the Employer and refunded to the Grievance Settlement Board.

The PSGB charges the Employer a \$300 filing fee for each complaint filed at the Board along with the Chair's per diem, administrative, travel costs and hearing rooms booked at the board.

Note: The attributable costs reflect those costs incurred by the Employer that are directly related to the hearing of a particular case such as member per diems, out of town hearing rooms and member travel costs. Filing fees may not reflect applications filed after fiscal cut off date

xPublic Service Grievance Board				
	2017-18	2018-19	2019-20	2020-21
Chair Remuneration	\$63,744.80	\$66,402.00	\$66,192.00	\$63,828.00
Chair Administrative and Travel Costs	\$0.00	\$0.00	\$0.00	\$0.00
Member Admin./Meetings/Conference Cost /Board Administrative Costs	\$1,343.27	\$3,545.32	\$558.17	\$2,172.31
Member Travel Costs Board Conference	\$684.08	\$361.50	\$0.00	\$0.00
Subtotal of Chair/Member Costs	\$65,772.15	\$70,308.82	\$66,750.17	\$66,000.31
Administration Fees:				
Total Applications filed	73	46	57	72
New Application Filing Fee (\$300 per Application)	\$21,900.00	\$14,100.00	\$17,100.00	\$21,300.00
Hearing Costs:				
All Hearing Related Costs [including Remuneration and Travel Expenses]	\$86,736.18	\$155,025.35	\$117,211.48	\$79,187.35
Hearing Rooms Fees at the Board	\$14,600.00	\$20,200.00	\$16,800.00	\$0.00
Subtotal of Hearing Costs	\$101,336.18	\$175,225.35	\$134,011.48	\$79,187.35
Member Remuneration	\$75,770.00	\$141,554.84	\$166,811.46	\$133,307.76
Member Remuneration Breakdown				
R. Devins			\$37,824.00	\$3,940.00
B. Morgan			\$12,757.45	\$5,516.00
M. Nairn			\$13,396.00	\$33,136.76
A. Tremayne			\$36,642.01	\$31,136.76
A. Ponak				\$3,980.76
T. Kuttner				\$2,801.48
Chair, K. O'Neil			\$66,192.00	\$51,220.00
Chair, B. Smeenk				\$1,576.00
TOTAL COSTS	\$189,008.33	\$259,634.17	\$218,461.65	\$166,487.66

8. Performance Measures

Measure	2020-2021 Commitments	2020-21 Achievements
Elapsed time to acknowledge receipt of complaint	100% of complaints received to be acknowledged within 30 days.	100% of complaints received were acknowledged within 30 days.
Elapsed time from receipt of Application Form to offering dates	100% of complaints will be offered dates for scheduling within 30 days of receipt of Application Form.	25% of complaints were offered dates for scheduling within 30 days of receipt of Application Form. COVID had a significant impact on the ability to meet this performance measure.
Percent of complaints disposed of by settlement, withdrawal or administrative decision	50% of complaints disposed of by settlement, withdrawal or administrative decision	63% of complaints disposed of by administrative decision, withdrawal or settlement.
Timeliness of decisions released by the PSGB	80% of decisions to be released within 90 days of completion of hearing and/or receipt of submissions.	86% of decisions were released within 90 days of completion of hearing and/or receipt of submissions.
Percent of judicial reviews upheld	100% of decisions upheld on judicial review (i.e. application for judicial review dismissed)	No matters judicially reviewed.