

Public Service Grievance Board

ANNUAL REPORT

2021-2022

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 2021-2022 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. In addition to Chair Smeenk, members Marilyn Nairn, Allen Ponak, Thomas Kuttner and Andrew Tremayne 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 is now led by Christine Caillier, having assumed the role of the Board's Secretary and Registrar from Caroline Goodwin as of October 1, 2021. Ms. Caillier was previously the Board's Deputy Registrar. As Chair, I am very much in the debt of both Ms. Goodwin and Ms. Caillier, and in the debt of their dedicated and capable staff, for the impressive efficiency with which the Board is run. This has continued seamlessly through the transition of leaders. 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.

During this past fiscal year, the Board continued to function well despite the challenges presented by the global Covid-19 pandemic. The PSGB continued our processes with telephone or video case management meetings, video mediations and video hearings. This ensured continued, time-effective dispute resolution processes with the highest quality.

In the past year the Board issued revised Rules and Practice Notes that came into effect as of September 7, 2021 and were posted on our website. Following that, a completely new set of Frequently Asked Questions with straightforward answers were posted to assist the parties who may want to use the Board's services. These were posted on the Board's website as of December 1, 2021 and were distributed to the Board's frequent users. Additionally, we reviewed and improved our application and response forms. The Board continues 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

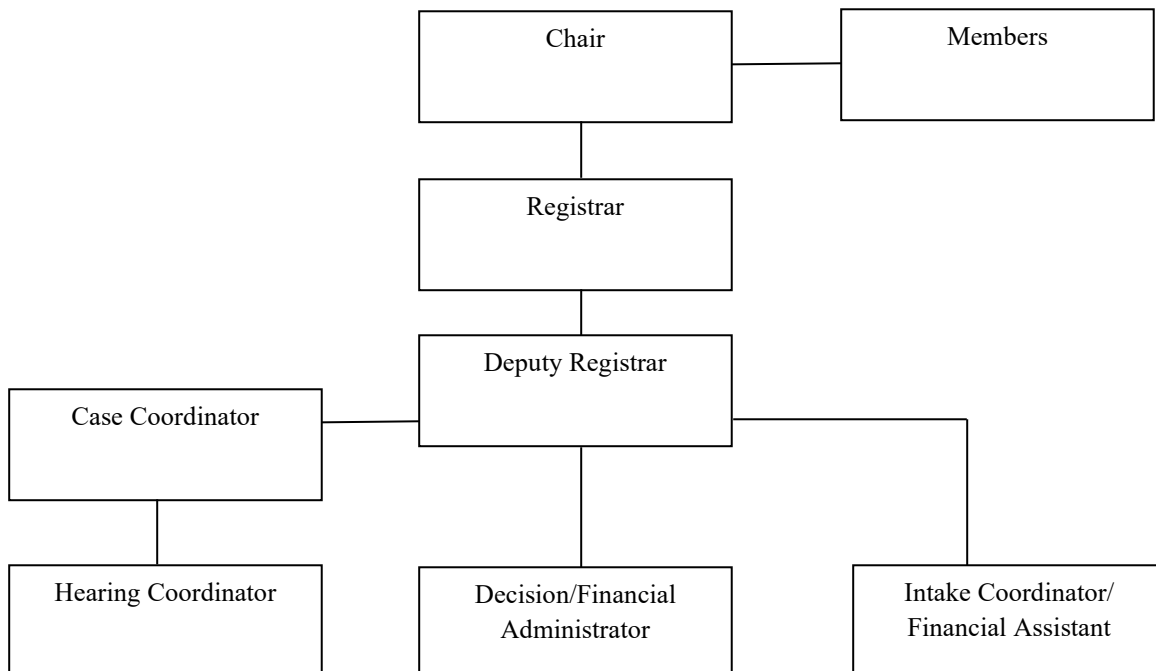
Caroline Goodwin

Caroline Goodwin retired from this position and from the OPS in September 2021, after 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 had served as the Board's Registrar since 2003

Christine Caillier

Christine Caillier assumed the role of Secretary as of October 1, 2021. She has over 20 years of experience with the Board, commencing February 2001 as Decisions/Financial Administrator. In May 2003 she was promoted to the role of Deputy Registrar until assuming the role of Secretary in October 2021.

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, 2025
Marilyn Nairn	Member	January 5, 2015	January 4, 2025
Allen Ponak	Member	March 12, 2020	March 11, 2025
Andrew Tremayne	Member	September 13, 2017	September 12, 2022

Chair

Brian Smeenck

Mr. Smeenck 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. In addition to his role as Chair of the Board, he is a part-time Vice Chair of the Ontario Labour Relations Board

Mr. Smeenck 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, a case management meeting or conference call is usually the first step in the Board's dispute resolution process. This allows the parties to identify key issues and optimal procedures at the earliest opportunity. Mediation may then be scheduled on the consent of the parties. 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. These hearings may sometimes be done entirely with written submissions, if appropriate. Otherwise 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 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	TOTAL # PSGB FILES FOR FISCAL 2021-2022	% of change over previous fiscal
APRIL: 2	33% decrease	APRIL: 2	0% decrease	APRIL: 1	50% decrease	APRIL: 2	100% increase
MAY: 3	50% increase	MAY: 10	233% increase	MAY: 22	120% increase	MAY: 10	55% decrease
JUNE: 4	0% decrease	JUNE: 2	50% decrease	JUNE: 15	650% increase	JUNE: 2	87% decrease
JULY: 2	67% decrease	JULY: 5	150% increase	JULY: 6	20% increase	JULY: 0	100% decrease
AUGUST: 6	40% decrease	AUGUST: 5	17% decrease	AUGUST: 3	40% decrease	AUGUST: 4	33% increase
SEPTEMBER: 4	100% increase	SEPTEMBER: 3	25% decrease	SEPTEMBER: 2	33% decrease	SEPTEMBER: 3	50% increase
OCTOBER: 6	25% decrease	OCTOBER: 4	33% decrease	OCTOBER: 5	25% increase	OCTOBER: 1	80% decrease
NOVEMBER: 4	20% decrease	NOVEMBER: 4	0% decrease	NOVEMBER: 2	50% decrease	NOVEMBER: 1	50% decrease
DECEMBER: 5	150% increase	DECEMBER: 11	120% increase	DECEMBER: 5	55% decrease	DECEMBER: 1	80% decrease
JANUARY: 4	69% decrease	JANUARY: 8	100% increase	JANUARY: 1	87% decrease	JANUARY: 6	500% increase
FEBRUARY: 1	86% decrease	FEBRUARY: 1	0% decrease	FEBRUARY: 7	600% Increase	FEBRUARY: 7	0% decrease
MARCH: 5	58% decrease	MARCH: 2	60% decrease	MARCH: 3	50% increase	MARCH: 0	100% decrease
TOTAL: 46	38% Decrease	TOTAL: 57	24% increase	TOTAL: 72	26% increase	TOTAL: 37	48% decrease
Average New Files Per Month: 4		Average New Files Per Month: 5		Average New Files Per Month: 6		Average New Files Per Month: 3	

6. PSGB Caseload 2021-2022

PSGB Caseload	
Active Cases as at March 31, 2021	93
Cases filed in fiscal 2021/2022	37
Cases re-opened/input in Case Management System	0
Total Active Cases	130
Cases Disposed of:	
By Decision	47
Administrative Decisions without Hearing	0
Settled	39
Withdrawn	8
Duplicate File	0
Total Cases Disposed	94
Active Cases at March 31, 2022	36
* Active Inventory as at March 31, 2022	
To Be Scheduled	1
Scheduled Continuation	6
Scheduled	26
Decision Pending	1
Settlement Pending	2
Adjourned Sine Die	0
Total	36

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, Immigration, Training and Skills Development. Expenditures made by the GSB on behalf of the PSGB are recovered from ministries and Crown employers and refunded to the GSB.

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.

Public Service Grievance Board				
	2018-19	2019-20	2020-21	2021-22
Chair Remuneration	66,402.00	66,192.00	63,828.00	66,980.00
Chair Administrative and Travel Costs	0.00	0.00	0.00	0.00
Member Admin./Meetings/Conference Cost/Board Administrative Costs	3,545.32	558.17	2,172.31	4,204.83
Member Travel Costs, Board Conference	361.50	0.00	0.00	0.00
Subtotal of Chair/Member Costs	\$70,308.82	\$66,750.17	\$66,000.31	\$71,184.83
Administration Fees:				
Total Applications filed	46	57	72	37
New Application Filing Fee (\$300 per Application)	\$14,100.00	\$17,700.00	\$21,300.00	\$11,100.00
Hearing Costs:				
All Hearing Related Costs [including Remuneration and Travel Expenses]	155,025.35	117,211.48	79,187.35	183,604.00
Hearing Room Fees at the Board	20,200.00	16,800.00	0.00	0.00
Subtotal of Hearing Costs	\$175,225.35	\$134,011.48	\$79,187.35	\$183,604.00
Member Remunerations	\$141,554.84	\$166,811.46	\$133,307.76	\$249,032.46
Member Remuneration Breakdown				
R. Devins		\$37,824.00	\$3,940.00	\$3,940.00
B. Morgan		\$12,757.45	\$5,516.00	\$3,152.00
M. Nairn		\$13,396.00	\$33,136.76	\$60,146.14
A. Tremayne		\$36,642.01	\$31,136.76	\$83,432.90
A. Ponak			\$3,980.76	\$13,722.07
T. Kuttner			\$2,801.48	\$17,659.35
Chair, K. O'Neil		\$66,192.00	\$51,220.00	\$0.00
Chair, B. Smeenk			\$1,576.00	\$66,980.00
TOTAL COSTS	\$259,634.17	\$218,461.65	\$166,487.66	\$265,888.83

8. Performance Measures

Measure	2021-2022 Commitments	2021-22 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 ⁱ	100% of complaints will be offered dates for scheduling within 30 days of receipt of Application Form.	52% of complaints were offered dates for scheduling within 30 days of receipt of Application Form. COVID, including its impact on response times from TBS regarding new cases, significantly impacted 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	50% 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.	91% 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.

ⁱ Data may exclude cases held in abeyance pending the resolution of a similar leading case, or other scheduling delays on consent of the parties.