

Public Service Grievance Board

ANNUAL REPORT

2023-2024

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 2023-2024 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 Smeenck, and six members, all serving on a part-time basis. In addition to Chair Smeenck, members Marilyn Nairn, Thomas Kuttner and Andrew Tremayne were joined on the Board this year by Jayashree Sengupta, Barry Fisher and Henri Pallard. All are professional labour relations adjudicators and several also have considerable experience as dispute resolution neutrals in other sectors. We are fortunate to be able to draw on their extensive experience as dispute resolution experts, including with disputes in the broader labour relations community, to serve the Ontario Public Service. Their skills, 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 led by Christine Caillier, the Board's Secretary and Registrar. Ms. Caillier was previously the Board's Deputy Registrar. As Chair, I am very much indebted to Ms. Caillier and her dedicated and capable staff, for the impressive efficiency with which the Board is run. 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 our processes with telephone or video case management meetings, video mediations and video hearings in most cases, that were refined during the pandemic. This ensured continued, time-effective dispute resolution processes with the highest quality for our parties who are located across the province. In person mediations and hearings are available upon request.

The past year showed the benefits of work done in the prior fiscal year to clarify our Rules and processes. In September 2021 the Board issued revised Rules and Practice Notes. 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. Since then, we have continued to refine these tools as appropriate when new needs become apparent. Additionally, we reviewed and improved our application and response forms. It is partly as a result of these efforts, in my view, that the number of applications which

fail to comply with the applicable, strict time limits under Regulation 378/07 and other procedural requirements, has declined considerably. The Board sees fewer technically deficient applications. The Board's adjudicators have also continued to use Case Management Meetings in every case, resulting in faster and more efficient hearings. It has also resulted in 58% of concluded cases being resolved by agreements reached at mediation.

We will continue in the year ahead to look for ways to make the Board's dispute resolution processes more efficient and effective. We look forward to our client community's cooperation in that regard.

Brian Smeenk
Chair, Public Service Grievance Board

Table of Contents

1. PSGB Mandate	5
2. Human Resources	6
3. Order In Council Appointments	7
4. Overview of Activities.....	11
5. PSGB Applications Filed By Fiscal.....	12
6. PSGB Caseload 2023-2024	13
7. Financial Information	14
8. Performance Measures	15

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, Immigration, 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.

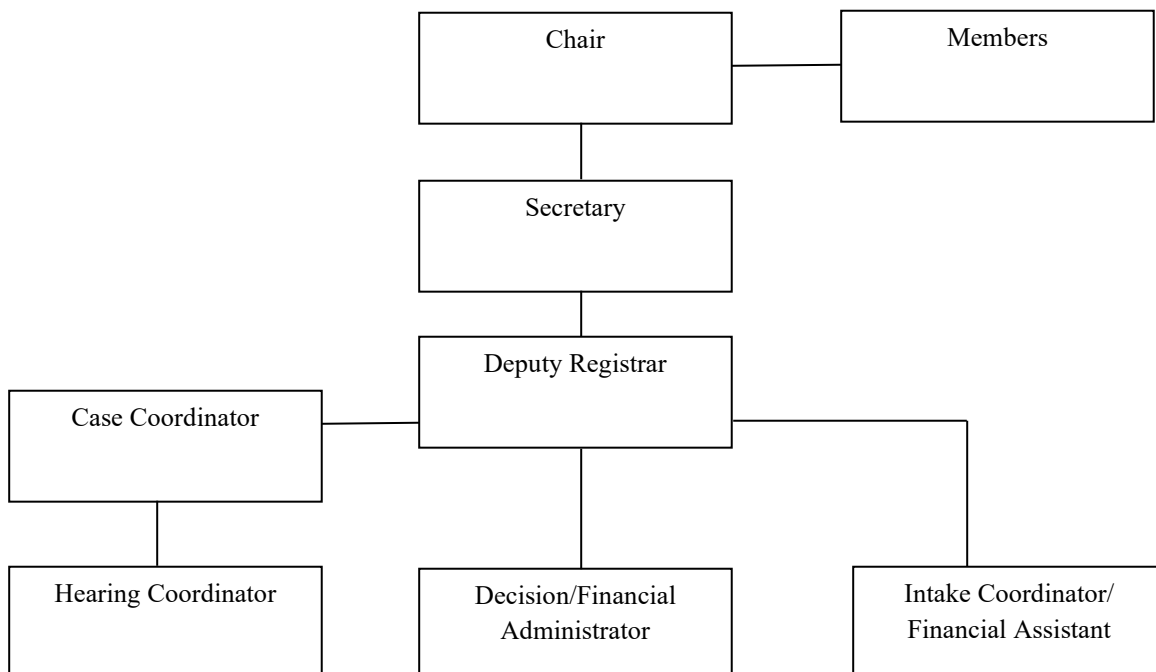
2. Human Resources

The Secretary

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, 2026
Barry Fisher	Member	October 5, 2023	October 6, 2025
Thomas Kuttner	Member	May 21, 2020	May 20, 2025
Marilyn Nairn	Member	January 5, 2015	January 4, 2025
Henri Pallard	Member	October 5, 2023	October 6, 2025
Jayashree Sengupta	Member	May 4, 2023	May 5, 2025
Andrew Tremayne	Member	September 13, 2017	September 28, 2027

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. In addition to his role as Chair, he has been a Vice Chair of the Ontario Labour Relations Board since 2021 and also accepts private appointments as a mediator/arbitrator for parties outside of the Ontario Public Service. 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 until 2020. 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. 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

Barry Fisher

Barry B. Fisher LL.B. is a mediator and arbitrator of both employment and labour relations matters. He offers three forms of ADR based on the clients' needs: Mediation, Arbitration and Med/Arb. Barry is from the evaluative school of mediation and brings his over 30 years experience as an employment lawyer and legal author to the dispute. In addition to his knowledge of the legal issues involved in these disputes, he also has a deep understanding of the psychological factors that motivate both employees and employers. By combining these two skills, Barry is able to achieve a settlement rate of over 85% of the disputes that he mediates. Barry is the author of the Wrongful Dismissal Database, Canada's first and leading online database of reasonable notice periods. The Wrongful Dismissal Database is distributed by WDD Legal Inc. and is used widely by employment lawyers, human resources professionals, and judges across Canada.

Thomas Kuttner

Thomas Kuttner, K.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

Marilyn Nairn was called to the Ontario bar in 1982 and 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. Since 1998, she has acted as a private labour arbitrator and mediator. Ms. Nairn is a member of the National Academy of Arbitrators, is a past president of 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 taught at both the college and university levels, has appeared as a speaker on panels and at conferences in the areas of labour law and human rights, and has been appointed Commissioner to various judicial remuneration commissions. She was appointed to the Grievance Settlement Board in 2001 and was appointed as its Alternate Chair in 2018.

Henri Pallard

Henri Pallard is an arbitrator and mediator, providing professional services in both official languages. He has particular expertise in complaint and grievance procedures and alternative dispute resolution in both public and private sectors. He is on the government of Canada's list of approved arbitrators maintained by the Federal Mediation and Conciliation Service and was formerly on the Ontario Minister of Labour's list. He is a member of the Ontario Labour Management Arbitrators' Association and the ADR Institute of Ontario. A graduate of the University of Alberta and McGill University, he was called to the Ontario Bar in 1988. A former university professor, he taught courses in labour and employment law, administrative law and international human rights. He is also the recipient of several prestigious awards for his contributions to his community, most notable, the Award of Merit from the Association des Juristes Francophones de l'Ontario (2022). Henri makes his home in Sudbury, Ontario.

Jayashree Sengupta

Jay Sengupta is a mediator and adjudicator who has been a neutral for over 15 years. She holds appointments with the Law Society Tribunal, the NWT Human Rights Adjudication Panel, the discipline committee of the College of Patent Agents & Trademark Agents and the Canada Industrial Relations Board (external adjudicator). Prior to launching her private mediation practice, Jay served as a full-time Vice-chair with the Human Rights Tribunal of Ontario where she was cross appointed to the Child and Family Services Review Board, the Custody Review Board and the Special Education Tribunal.

Andrew Tremayne

Andrew Tremayne 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 2020-2021	% of change over previous fiscal	TOTAL # PSGB FILES FOR FISCAL 2021-2022	% of change over previous fiscal	TOTAL # PSGB FILES FOR FISCAL 2022-2023	% of change over previous fiscal	TOTAL # PSGB FILES FOR FISCAL 2023-2024	% of change over previous fiscal
APRIL: 1	50% decrease	APRIL: 2	100% increase	APRIL: 2	0% decrease	APRIL: 6	200% increase
MAY: 22	120% increase	MAY: 10	55% decrease	MAY: 7	30% decrease	MAY: 6	14.29% decrease
JUNE: 15	650% increase	JUNE: 2	87% decrease	JUNE: 0	100% decrease	JUNE: 8	N/A
JULY: 6	20% increase	JULY: 0	100% decrease	JULY: 2	N/A	JULY: 0	100% decrease
AUGUST: 3	40% decrease	AUGUST: 4	33% increase	AUGUST: 2	50% decrease	AUGUST: 4	100% increase
SEPTEMBER: 2	33% decrease	SEPTEMBER: 3	50% increase	SEPTEMBER: 0	100% decrease	SEPTEMBER: 9	N/A
OCTOBER: 5	25% increase	OCTOBER: 1	80% decrease	OCTOBER: 2	100% increase	OCTOBER: 3	50% increase
NOVEMBER: 2	50% decrease	NOVEMBER: 1	50% decrease	NOVEMBER: 0	100% decrease	NOVEMBER: 2	N/A
DECEMBER: 5	55% decrease	DECEMBER: 1	80% decrease	DECEMBER: 3	200% increase	DECEMBER: 3	0% decrease
JANUARY: 1	87% decrease	JANUARY: 6	500% increase	JANUARY: 4	33% decrease	JANUARY: 5	25% increase
FEBRUARY: 7	600% Increase	FEBRUARY: 7	0% decrease	FEBRUARY: 3	57% decrease	FEBRUARY: 5	66.67% increase
MARCH: 3	50% increase	MARCH: 0	100% decrease	MARCH: 2	N/A	MARCH: 9	350% increase
TOTAL: 72	26% increase	TOTAL: 37	48% decrease	TOTAL: 27	27% decrease	TOTAL: 60	122.22% increase
Average New Files Per Month: 6		Average New Files Per Month: 3		Average New Files Per Month: 2		Average New Files Per Month: 5	

6. PSGB Caseload 2023-2024

<i>PSGB Caseload</i>		
Active Cases as at March 31, 2023		22
Cases filed in fiscal 2023/2024		60
Cases re-opened/input in Case Management System		0
Total Active Cases		82
Cases Disposed of:		
By Decision		17
Administrative Decisions without Hearing		0
Settled		15
Withdrawn		8
Duplicate File		0
Total Cases Disposed		40
Active Cases at March 31, 2024		42
* Active Inventory as at March 31, 2024		
To Be Scheduled	3	
Scheduled Continuation	17	
Scheduled	18	
Decision Pending	0	
Settlement Pending	0	
Adjourned Sine Die	4	
Total	42	

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

	2020-21	2021-22	2022-23	2023-24
Chair Remuneration	63,828.00	66,980.00	66,980.00	66,980.00
Chair Administrative and Travel Costs	0.00	0.00	0.00	0.00
Member Admin./Meetings/Conference Cost/Board Administrative Costs	2,172.31	4,204.83	4,653.51	3,152.00
Member Travel Costs, Board Conference	0.00	0.00	0.00	0.00
Subtotal of Chair/Member Costs	\$ 66,000.31	\$ 71,184.83	\$ 71,633.51	\$ 70,132.00
Administration Fees:				
Total Applications filed	72	37	27	60
New Application Filing Fee (\$300 per Application)	\$ 21,300.00	\$ 11,100.00	\$ 8,100.00	\$ 17,400.00
Hearing Costs:				
Hearing Related Costs [including Remuneration and Travel Expenses]	79,187.35	183,604.00	48,826.00	63,828.00
Hearing Room Fees at the Board	0.00	0.00	0.00	0.00
Subtotal of Hearing Costs	\$79,187.35	\$183,604.00	\$48,826.00	\$63,828.00
TOTAL COSTS	\$166,487.66	\$265,888.83	\$128,559.51	\$151,360.00

Member Remuneration Breakdown				
R. Devins	\$3,940.00	\$3,940.00	\$788.00	\$394.00
B. Morgan	\$5,516.00	\$3,152.00	\$0.00	\$0.00
M. Nairn	\$33,136.76	\$60,146.14	\$14,578.00	\$8,274.00
A. Tremayne	\$31,136.76	\$83,432.90	\$11,032.00	\$33,490.00
A. Ponak	\$3,980.76	\$13,722.07	\$3,940.00	\$0.00
T. Kuttner	\$2,801.48	\$17,659.35	\$13,002.00	\$12,214.00
J. Sengupta	n/a	n/a	n/a	\$6,698.00
B. Fisher	n/a	n/a	n/a	\$1,182.00
H. Pallard	n/a	n/a	n/a	\$1,970.00
Chair, K. O'Neil	\$51,220.00	\$0.00	\$0.00	\$0.00
Chair, B. Smeenk	\$1,576.00	\$66,980.00	\$66,980.00	\$66,980.00
TOTAL OIC Per Diem Members	\$133,307.76	\$249,032.46	\$110,320.00	\$131,202.00

8. Performance Measures

Measure	2023-2024 Commitments	2023-24 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.	97% of complaints were offered dates for scheduling within 30 days of receipt of Application Form.
Percent of complaints disposed of by settlement, withdrawal or administrative decision	50% of complaints disposed of by settlement, withdrawal or administrative decision	58% 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.	88% 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.