SENATE SÉNAT

CANADA

REPORT ON THE SUBJECT-MATTER OF BILL C-4, A SECOND ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON MARCH 21, 2013 AND OTHER MEASURES

Standing Senate Committee on National Finance

THIRD REPORT

Chair
The Honourable Joseph A. Day

Deputy Chair
The Honourable Larry Smith

December 2013

REPORT ON THE SUBJECT-MATTER OF BILL C-4, A SECOND ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON MARCH 21, 2013 AND OTHER MEASURES

Introduction

On 5 November 2013, the Senate authorized the Standing Senate Committee on National Finance (the Committee) to examine the subject-matter of all of Bill C-4, A second Act to implement certain provisions of the budget tabled in Parliament on 21 March 2013 and other measures, introduced in the House of Commons on 22 October 2013, in advance of the said bill coming before the Senate. In addition, to help the Committee with its study, other Senate committees examined certain provisions of Bill C-4.

- The Standing Senate Committee on Banking, Trade and Commerce examined Divisions 2, 3, 9 and 13 of Part 3;
- the Standing Senate Committee on Energy, the Environment and Natural Resources examined Divisions 7 and 14 of Part 3;
- the Standing Senate Committee on Transport and Communications examined Division 8 of Part 3;
- the Standing Senate Committee on Foreign Affairs and International Trade examined Divisions 4 and 16 of Part 3;
- the Standing Senate Committee on Social Affairs, Science and Technology examined Divisions 5, 10 and 11 of Part 3; and,
- the Standing Senate Committee on Legal and Constitutional Affairs examined Division 19 of Part 3.

As part of its study on Bill C-4, which took place from 19 November 2013 to 3 December 2013, the Committee held a total of ten meetings.

Over the course of these meetings on all of the bill's 472 provisions, the Committee heard from 33 witnesses from 4 departments and 2 federal agencies, as well as representatives from 7 organizations outside the federal government. The Committee also received a report from each of the six Senate committees that examined various divisions of Part 3 of the bill, following which the chairs and vice-chairs of those Senate committees were invited to appear before the Committee to explain their conclusions.

The Committee also received briefs from three organizations outside the federal government that did not appear before the Committee. The names of these organizations can be found in Appendix B.

The Committee considered all the testimony that was heard and all the briefs that were submitted. Following is a summary of the bill including the 19 Divisions contained in Part 3, as well as a list of witnesses who appeared before Senate committees in Appendix A.

List of provisions in Bill C-4

Part 1 (sections 2 to 120): Measures relating to the *Income Tax Act* and the *Income Tax Regulations*

Part 2 (sections 121 to 124): Measures relating to the *Excise Tax Act*

Part 3 (sections 125 to 472): Various measures

- Division 1 (sections 125 to 158): Employment Insurance
- Division 2 (sections 159 to 166): Financial Institutions (Conflicts of Interest)
- Division 3 (sections 167 to 173): Financial Institutions (Investments)
- Division 4 (sections 174 and 175): Passports
- Division 5 (sections 176 to 203): Canada Labour Code
- Division 6 (sections 204 to 238): Changes to the Canadian Ministry
- Division 7 (sections 239 to 248): Dominion Coal Blocks
- Division 8 (sections 249 to 269): Reorganization of Certain Crown Corporations (Bridges)
- Division 9 (section 270): *Financial Administration Act*
- Division 10 (sections 271 to 275): *National Research Council Act*
- Division 11 (section 276): *Veterans Review and Appeal Board Act*
- Division 12 (sections 277 and 278): *Canada Pension Plan Investment Board Act*
- Division 13 (sections 279 to 281): *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*
- Division 14 (sections 282 to 287): *Mackenzie Gas Project Impacts Fund Act*
- Division 15 (sections 288 and 289): *Conflict of Interest Act*
- Division 16 (sections 290 to 293): *Immigration and Refugee Protection Act*
- Division 17 (sections 294 to 364): Public Service Labour Relations (Appendix C provides information from Treasury Board of Canada Secretariat on the proposed changes)
- Division 18 (sections 365 to 470): Reorganization of Federal Public Service Labour Relations and Employment Boards (Appendix D provides information from Treasury Board of Canada Secretariat on the proposed changes)
- Division 19 (sections 471 and 472): *Supreme Court Act*

APPENDIX A – WITNESSES WHO APPEARED BEFORE SENATE COMMITTEES

STANDING SENATE COMMITTEE ON NATIONAL FINANCE

Canada Revenue Agency

Ray Cuthbert (20 November 2013)

Canadian Venture Capital Association

Peter van der Velden (26 November 2013)

C.D. Howe Institute

Finn Poschmann (26 November 2013)

Fair Pensions for All

Bill Tufts (28 November 2013)

Finance Canada

Hon. James M. Flaherty (25 November 2013)

Ted Cook (19 and 20 November 2013)

Sean Keenan (19, 20 and 25 November 2013)

Geoff Trueman (19 and 20 November 2013)

Chantal Pelletier (19 November 2013)

Pierre Mercille (19 and 20 November 2013)

François Masse (20 November 2013)

Kevin Wright (20 November 2013)

Toni Gravelle (20 November 2013)

Jeremy Rudin (25 November 2013)

Fondaction CSN

Léopold Beaulieu (26 November 2013)

Geneviève Morin (26 November 2013)

Human Resources and Skills Development Canada

Catherine Allison (20 November 2013)

Brenda Baxter (20 November 2013)

Campion Carruthers (20 November 2013)

Alexis Conrad (20 November 2013)

Michael Duffy (20 November 2013)

Brian Hickey (20 November 2013)

Atiq Rahman (20 November 2013)

Annette Ryan (20 November 2013)

Justice Canada

Dora Benbaruk (21 and 26 November 2013)

Public Service Alliance of Canada

Robyn Benson (28 November 2013)

Edith Bramwell (28 November 2013)

Privy Council Office

David Dendooven (20 November 2013)

Treasury Board of Canada Secretariat

Dennis Duggan (21 and 26 November 2013)

Drew Heavens (21 and 26 November 2013)

Carl Trottier (21 and 26 November 2013)

Union of Canadian Transportation Employees

Christine Collins (28 November 2013)

University of Calgary School of Public Policy

Jack Mintz (26 November 2013)

STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

Canadian Bankers Association

Nathalie Clark (28 November 2013)

Marion Wrobel (28 November 2013)

Finance Canada

Alexandra Dostal (21 November 2013)

Rachel Grasham (21 November 2013)

Will Paterson (21 November 2013)

Jeremy Rudin (21 November 2013)

Eleanor Ryan (21 November 2013)

Kevin Wright (21 November 2013)

James Wu (21 November 2013)

Institute for Governance of Private and Public Organizations

Yvan Allaire (27 November 2013)

Office of the Conflict of Interest and Ethics Commissioner

Mary Dawson (21 November 2013)

Lyne Robinson-Dalpé (21 November 2013)

STANDING SENATE COMMITTEE ON ENERGY, THE ENVIRONMENT AND NATURAL RESSOURCES

Canadian Northern Economic Development Agency

Patrick Borbey (21 November 2013)

Kate Ledgerwood (21 November 2013)

Finance Canada

Leah Anderson (19 November 2013)

Soren Halverson (19 November 2013)

Government of the Northwest Territories

Peter Vician (21 November 2013)

Natural Resources Canada

Tim Gardiner (19 November 2013)

Wildsight

John Bergenske (19 November 2013)

STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

Transport Canada

Aline MacDougall (20 November 2013)

April Nakatsu (20 November 2013)

STANDING SENATE COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Canadian Bar Association

Mario Bellissimo (21 November 2013)

Tamra Thomson (21 November 2013)

Citizenship and Immigration Canada

Teny Dikranian (20 November 2013)

Caitlin Imrie (20 November 2013)

Jean-Pierre Lamarche (20 November 2013)

James McNamee (20 November 2013)

Maia Welbourne (20 November 2013)

Engineers Canada

Kim Allen (21 November 2013)

Human Resources and Skills Development Canada

Campion Carruthers (20 November 2013)

Merit Nova Scotia

Michael Kydd (21 November 2013)

Ministry of Business, Innovation and Employment, Government of New Zealand

Sam Foley (27 November 2013)

Christine Hyndman (27 November 2013)

Fraser Richards (27 November 2013)

As an individual

Christopher Worswick (27 November 2013)

STANDING SENATE COMMITTEE ON SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

Federally Regulated Employers - Transportation and Communication (FETCO)

John Beckett (21 November 2013)

John Farrell (21 November 2013)

Human Resources and Skills Development Canada

Brenda Baxter (27 November 2013)

Kin Choi (27 November 2013)

Koskie-Helms, Barristers and Solicitors

Ted Koskie (27 November 2013)

National Research Council Canada

Patricia Mortimer (20 November 2013)

Office of the Veterans Ombudsman

Guy Parent (20 November 2013)

The Royal Canadian Legion Dominion Command

Gordon Moore (20 November 2013)

Andrea Siew (20 November 2013)

Unifor

Walter Manning (21 November 2013)

Veterans Review and Appeal Board

John D. Larlee (27 November 2013)

Dale Sharkey (27 November 2013)

As an individual

Harold Leduc (20 November 2013)

STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Justice Canada

The Honourable Peter MacKay (27 November 2013)

Jonathan Shanks (27 November 2013)

As an individual

The Honourable Michel Bastarache (21 November 2013)

Paul Daly (21 November 2013)

Carissima Mathen (21 November 2013)

Benoît Pelletier (21 November 2013)

APPENDIX B – BRIEFS FROM ORGANIZATIONS THAT DID NOT APPEAR BEFORE THE COMMITTEE

Association of Justice Counsel – Sandra Guttmann

Canadian Bar Association – Delayne M. Sartison, Mario Bellissimo and Lorna Pawluk

Confédération des syndicats nationaux

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Economic Action Plan 2013, No. 2

Division 17

Essential Services		
Proposed language	Current language	Changes
Clause 294 repeals the definition of "essential service agreement", amends the definition of "essential service" and repeals subsection (2). "essential service" means a service, facility or activity of the Government of Canada that has been determined under subsection 119(1) to be essential.	Section 4 […] "essential services agreement" means an agreement between the employer and the bargaining agent for a bargaining unit that identifies (*a*) the types of positions in the bargaining unit that are necessary for the employer to provide essential services; (*b*) the number of those positions that are necessary for that purpose; and (*c*) the specific positions that are necessary for that purpose. "essential service" means a service, facility or activity of the Government of Canada that is or will be, at any time, necessary for the safety or security of the public or a segment of the public. […]	The concept of an essential service agreement is being repealed from the *Public Service Labour Relations Act* (PSLRA). References to an "agreement" will no longer be necessary. There is no change in the definition to essential services (subsection 119(1)) as they continue to be "essential because it is or will be necessary for the safety or security of the public or a segment of the public." Concepts found in paragraphs 4(2) (a) and (b) have been modified and are now found in the proposed subsection 125(2).

	(2) A position that is necessary for the employer to provide essential services for the purposes of paragraph (*a*) of the definition "essential services agreement" in subsection (1) includes a position the occupant of which is required, at any time, (*a*) to perform the duties of the position that relate to the provision of essential services; or (*b*) to be available during his or her off-duty hours to report to work without delay to perform those duties if required to do so by the employer.	
Clause 305 replaces section 119 to 134 **119.** (1) The employer has the exclusive right to determine whether any service, facility or activity of the Government of Canada is essential because it is or will be necessary for the safety or security of the public or a segment of the public. (2) Nothing in this Act is to be construed as limiting the employer's right under subsection (1). **120.** (1) The employer has the exclusive right to designate the positions in a bargaining unit that include duties that, in whole or in part, are or will be necessary for the employer to provide essential services, and the employer may exercise that right at any time. (2) Nothing in this Act is to be construed as limiting the employer's right under subsection	**119.** This Division applies to the employer and the bargaining agent for a bargaining unit when the process for the resolution of a dispute applicable to the bargaining unit is conciliation. **120.** The employer has the exclusive right to determine the level at which an essential service is to be provided to the public, or a segment of the public, at any time, including the extent to which and the frequency with which the service is to be provided. Nothing in this Division is to be construed as limiting that right. **121.** (1) For the purpose of identifying the number of positions that are necessary for the employer to provide an essential service, the employer and the bargaining agent may agree that some employees in the bargaining unit	These amendments are consistent with the elimination of essential services agreements. The concept of essential service agreement included a negotiation process. Essential service agreements were meant to be ongoing with the possibility of being re-opened. Since their creation in 2005, only a few essential service agreements have been concluded. The provision of recourse in the event of disputes relative to the designation of essential services to the Public Service Labour Relations Board has been removed. These amendments provide the

(1). **121.** (1) The employer must notify in writing a bargaining agent that represents a bargaining unit that the employer either has, or has not, under section 120 designated positions in the bargaining unit. (2) If the notice is to the effect that the employer has designated positions, the notice must identify the designated positions. (3) The notice must be given not later than three months before the first day on which a notice to bargain collectively may be given. However, in the case of an employee organization that is certified as the bargaining agent for a bargaining unit after the day on which this section comes into force, the notice must be given within 60 days after the certification. (4) The employer must notify the Board of the date the notice was given under subsection (1) to the bargaining agent. **122.** (1) If the notice under subsection 121(1) is to the effect that the employer has designated positions, the employer must, after giving the notice, without delay, begin consultations with the bargaining agent about the designated positions that are identified in the notice. Those consultations must end 60 days after the day on which the notice is given. (2) Within the 30 days that follow the end of the 60 days, the employer must notify the bargaining agent of the positions in the bargaining unit that the employer has or will	will be required by the employer to perform their duties that relate to the provision of the essential service in a greater proportion during a strike than they do normally. (2) For the purposes of subsection (1), the number of employees in the bargaining unit that are necessary to provide the essential service is to be determined (*a*) without regard to the availability of other persons to provide the essential service during a strike; and (*b*) on the basis that the employer is not required to change, in order to provide the essential service during a strike, the manner in which the employer operates normally, including the normal hours of work, the extent of the employer's use of overtime and the equipment used in the employer's operations. **122.** (1) If the employer has given to the bargaining agent a notice in writing that the employer considers that employees in the bargaining unit occupy positions that are necessary for the employer to provide essential services, the employer and the bargaining agent must make every reasonable effort to enter into an essential services agreement as soon as possible. (2) The notice may be given at any time but not later than 20 days after the day a notice to bargain collectively is given.	employer with the exclusive right to determine whether a service, facility or activity is essential because it is necessary for the safety or security of the public or a segment of the public in the event of a strike. The proposed amendments also require that the essential services be determined prior to the first day on which notice to bargain collectively may be given so the dispute resolution mechanism can be determined. They provide for a 60-day consultation period with the bargaining agent to be followed by a period of up to thirty (30) days during which the employer must inform the bargaining agent of the positions deemed essential. The employer can, however, exercise the right to deem a position essential at any time.

designate under section 120. **123.** If a position that is designated by the employer under section 120 becomes vacant, the employer may identify a position of the same type as a replacement position. If the employer does so, the employer must provide the bargaining agent with a notice of replacement. **124.** (1) As soon as feasible after designating a position under section 120, the employer must provide the employee who occupies the position with a notice informing the employee that they occupy such a position. (2) A notice given under this section remains valid as long as the employee continues to occupy the position unless the employer notifies the employee that the position occupied by them is no longer necessary for the employer to provide essential services. **125.** (1) Unless the parties otherwise agree, every term and condition of employment applicable to employees in a bargaining unit in respect of which a notice to bargain collectively is given that may be included in a collective agreement and that is in force on the day on which the notice is given remains in force in respect of any employee who occupies a position that is designated under section 120 and must be observed by the employer, the bargaining agent for the bargaining unit and the employee until a collective agreement is entered into. (2) Nothing in this Act is to be construed as	**123.** (1) If the employer and the bargaining agent are unable to enter into an essential services agreement, either of them may apply to the Board to determine any unresolved matter that may be included in an essential services agreement. The application may be made at any time but not later than (*a*) 15 days after the day a request for conciliation is made by either party; or (*b*) 15 days after the day the parties are notified by the Chairperson under subsection 163(2) of his or her intention to recommend the establishment of a public interest commission. (2) The Board may delay dealing with the application until it is satisfied that the employer and the bargaining agent have made every reasonable effort to enter into an essential services agreement. (3) After considering the application, the Board may determine any matter that the employer and the bargaining agent have not agreed on that may be included in an essential services agreement and make an order (*a*) deeming the matter determined by it to be part of an essential services agreement between the employer and the bargaining agent; and (*b*) deeming that the employer and the	Subsection 125(2) specifies that employees occupying positions designated as essential are to perform all the duties of that position and to report to work without delay to perform those duties. Those concepts are found in the current paragraphs 4(2)(a) and (b).

limiting the employer's right to require that an employee who occupies a position that is designated under section 120 perform all of the duties assigned to that position and be available during his or her off-duty hours to report to work without delay to perform those duties if required to do so by the employer.	bargaining agent have entered into an essential services agreement. (4) The order may not require the employer to change the level at which an essential service is to be provided to the public, or a segment of the public, at any time, including the extent to which and the frequency with which the service is to be provided. (5) The Board may, for the purpose of identifying the number of positions that are necessary for the employer to provide an essential service, take into account that some employees in the bargaining unit may be required by the employer to perform those of their duties that relate to the provision of the essential service in a greater proportion during a strike than they do normally. (6) For the purposes of subsection (5), the number of employees in the bargaining unit that are necessary to provide the essential service is to be determined (*a*) without regard to the availability of other persons to provide the essential service during a strike; and (*b*) on the basis that the employer is not required to change, in order to provide the essential service during a strike, the manner in which the employer operates normally, including the normal hours of work, the extent	

	of the employer's use of overtime and the equipment used in the employer's operations. (7) If the application relates to a specific position to be identified in the essential services agreement, the employer's proposal in respect of the position is to prevail, unless the position is determined by the Board not to be of the type necessary for the employer to provide essential services. **124.** The essential services agreement comes into force on the day it is signed by the parties or, in the case of an essential services agreement that the employer and the bargaining agent are deemed to have entered into by an order made under paragraph 123(3)(*b*), the day the order was made. **125.** An essential services agreement continues in force until the parties jointly determine that there are no employees in the bargaining unit who occupy positions that are necessary for the employer to provide essential services. **126.** (1) If a party to an essential services agreement gives a notice in writing to the other party that the party giving the notice seeks to amend the essential services agreement, the parties must make every reasonable effort to amend it as soon as possible. (2) If a collective agreement or arbitral award	

	is in force, the notice may be given at any time except that, if a notice to bargain collectively has been given with a view to renewing or revising the collective agreement, the notice may only be given during the 60 days following the day the notice to bargain collectively was given. **127.** (1) If the employer and the bargaining agent are unable to amend the essential services agreement, either of them may apply to the Board to amend the essential services agreement. The application may be made at any time but not later than (*a*) 15 days after the day a request for conciliation is made by either party; or (*b*) 15 days after the day the parties are notified by the Chairperson under subsection 163(2) of his or her intention to recommend the establishment of a public interest commission. (2) The Board may delay dealing with the application until it is satisfied that the employer and the bargaining agent have made every reasonable effort to amend the essential services agreement. (3) The Board may, by order, amend the essential services agreement if it considers that the amendment is necessary for the employer to provide essential services.	

	(4) The order may not require the employer to change the level at which an essential service is to be provided to the public, or a segment of the public, at any time, including the extent to which and the frequency with which the service is to be provided. (5) The Board may, for the purpose of identifying the number of positions that are necessary for the employer to provide an essential service, take into account that some employees in the bargaining unit may be required by the employer to perform their duties that relate to the provision of the essential service in a greater proportion during a strike than they do normally. (6) For the purposes of subsection (5), the number of employees in the bargaining unit that are necessary to provide the essential service is to be determined (*a*) without regard to the availability of other persons to provide the essential service during a strike; and (*b*) on the basis that the employer is not required to change, in order to provide the essential service during a strike, the manner in which the employer operates normally, including the normal hours of work, the extent of the employer's use of overtime and the equipment used in the employer's operations.	

	(7) If the application relates to a specific position to be identified in the essential services agreement, the employer's proposal in respect of the position is to prevail, unless the position is determined by the Board not to be of the type necessary for the employer to provide essential services. **128.** An amendment to an essential services agreement comes into force on the day the agreement containing the amendment is signed by the parties or, in the case of an amendment made by order of the Board under subsection 127(3), the day the order was made. **129.** (1) If, at any time while an essential services agreement is in force, a position identified in it becomes vacant, the employer may identify a position of the same type as a replacement position. If the employer does so, the employer must file a notice of replacement with the Board and provide a copy to the bargaining agent. (2) On the filing of the notice, the replacement position is deemed to be a position identified in the essential services agreement and the position it replaced is deemed to be no longer identified. **130.** (1) The employer must provide every employee who occupies a position that has been identified in an essential services agreement as being a position that is necessary	

	for the employer to provide essential services with a notice informing the employee that the employee occupies such a position. (2) A notice given under this section remains valid so long as the employee continues to occupy the position unless the employer notifies the employee that the position occupied by the employee is no longer necessary for the employer to provide essential services. **131.** Despite any provision in this Division, if either the employer or the bargaining agent is of the opinion that a temporary amendment to an essential services agreement, or its suspension, is necessary because of an emergency but the parties are unable to agree to do so, either of them may, at any time, apply to the Board for an order temporarily amending, or suspending, the agreement. **132.** Unless the parties otherwise agree, every term and condition of employment applicable to employees in a bargaining unit in respect of which a notice to bargain collectively is given that may be included in a collective agreement and that is in force on the day the notice is given remains in force in respect of any employee who occupies a position that is identified in an essential services agreement and must be observed by the employer, the bargaining agent for the bargaining unit and the employee until a collective agreement is entered into.	

	133. The Board may, on the application of either party, extend any period referred to in this Division. **134.** Either party to an essential services agreement may file a copy of it with the Board. When filed, it has the same effect as an order of the Board.	

Collective Bargaining		
Proposed language	Current language	Changes
Clause 302 PROCESS FOR DISPUTE RESOLUTION **103.** Subject to section 104, the process for the resolution of disputes between an employer and the bargaining agent for a bargaining unit is conciliation. **104.** (1) The employer and the bargaining agent for a bargaining unit may, by agreement in writing, choose arbitration as the process for the resolution of disputes. If the employer is a separate agency, it may enter into such an agreement only with the approval of the President of the Treasury Board. (2) If, on the day on which notice to bargain collectively may be given, 80% or more of the positions in the bargaining unit have been designated under section 120, the process for	**103.** (1) A bargaining agent for a bargaining unit must notify the Board, in accordance with the regulations, of the process it has chosen — either arbitration or conciliation — to be the process for the resolution of disputes to which it may be a party. (2) The Board must record the process chosen by the bargaining agent for the resolution of disputes. (3) The process recorded by the Board applies to the bargaining unit for the resolution of all disputes from the day on which a notice to bargain collectively in respect of the bargaining unit is given after the process is chosen, and it applies until the process is	This amendment removes the ability to choose a process for dispute resolution and makes conciliation the default process for dispute resolution in the collective bargaining process. This provides the right of the employer and the bargaining agent to agree in writing to choose binding arbitration as the process for dispute resolution. This amendment provides that if on the day notice to bargain collectively is given, 80% or more of the positions in the bargaining unit are determined to be essential; arbitration becomes the

the resolution of disputes between the employer and the bargaining agent is arbitration.	changed in accordance with section 104. **104.** (1) A bargaining agent for a bargaining unit that wishes to change the process for the resolution of a dispute that is applicable to the bargaining unit may apply to the Board, in accordance with the regulations, to record the change. (2) On receiving the application, the Board must record the change of process. (3) A change in the process for the resolution of a dispute becomes effective on the day that a notice to bargain collectively is given after the change is recorded and remains in force until the process is changed in accordance with this section.	dispute resolution mechanism.
Clause 303 **105.** (1) After the Board has certified an employee organization as the bargaining agent for a bargaining unit, the bargaining agent or the employer may, by notice in writing, require the other to commence bargaining collectively with a view to entering into, renewing or revising a collective agreement. (2) Subject to subsection (2.1), the notice to bargain collectively may be given (a) at any time, if no collective agreement or arbitral award is in force and no request for arbitration has been made by either of the parties in accordance with this Part; or (b) if a collective agreement or arbitral award	**105.** (1) After the Board has certified an employee organization as the bargaining agent for a bargaining unit and the process for the resolution of a dispute applicable to that bargaining unit has been recorded by the Board, the bargaining agent or the employer may, by notice in writing, require the other to commence bargaining collectively with a view to entering into, renewing or revising a collective agreement. (2) The notice to bargain collectively may be given (*a*) at any time, if no collective agreement or	These amendments provide that the notice to bargain collectively may be given within 12 months of the expiration date of the collective agreement or arbitral award. The current legislation provides for a 4-month notice to bargain.

is in force, within the 12 months before it ceases to be in force. (2.1) In the case of the bargaining agent for a bargaining unit that has never been bound by a collective agreement or arbitral award to which the employer is a party, the notice to bargain collectively may not be given until the expiry of 60 days after the day on which the employer gives to the bargaining agent the notice required by section 121.	arbitral award is in force and no request for arbitration has been made by either of the parties in accordance with this Part; or (*b*) if a collective agreement or arbitral award is in force, within the four months before it ceases to be in force. (3) A party that has given a notice to bargain collectively to another party must send a copy of the notice to the Board.	Subsection 105 (2.1) ensures that newly accredited bargaining agents for a bargaining unit have completed the essential services process prior to filing its notice to bargaining collectively.

Clause 307 Making of Arbitral Award **148.** (1) In determining whether compensation levels and other terms and conditions represent a prudent use of public funds and are sufficient to allow the employer to meet its operational needs, the arbitration board is to be guided by and to give preponderance to the following factors in the conduct of its proceedings and in making an arbitral award: (a) the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians; and (b) Canada's fiscal circumstances relative to its stated budgetary policies. (2) If relevant to the making of a determination under subsection (1), the arbitration board may take any of the following factors into account:	**148.** In the conduct of its proceedings and in making an arbitral award, the arbitration board must take into account the following factors, in addition to any other factors that it considers relevant: (*a*) the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians; (*b*) the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors, including any geographic, industrial or other variations that the arbitration board considers relevant; (*c*) the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service; (*d*) the need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of	Substantially, the criteria to be considered by an arbitration board (and public interest commission – the amendments are identical) have not changed. However, the proposed amendments give greater weight (preponderance) to the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians; and Canada's fiscal circumstances relative to its stated budgetary policies. The other criteria should be considered by the arbitration board if considered relevant. The criterion found in the current paragraph148(e) has been separate into two different criteria: • the Government of Canada's fiscal circumstances; and • the state of the Canadian economy.

(a) relationships with compensation and other terms and conditions of employment as between different classification levels within an occupation and as between occupations in the public service; (b) the compensation and other terms and conditions of employment relative to employees in similar occupations in the private and public sectors, including any geographical, industrial or other variations that the arbitration board considers relevant; (c) compensation and other terms and conditions of employment that are reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and (d) the state of the Canadian economy.	the services rendered; and (*e*) the state of the Canadian economy and the Government of Canada's fiscal circumstances.	
Clause 309 **149.** (1) The arbitration board must make an arbitral award as soon as feasible in respect of all the matters in dispute that are referred to it	Making of Arbitral Award **149.** (1) The arbitration board must make an arbitral award as soon as possible in respect of	The proposed amendments will require arbitration board (and public interest commission – the

and set out in the award the reasons for its decision in respect of each of those matters. (1.1) The arbitration board must not make an arbitral award without having taken into account all terms and conditions of employment of, and benefits provided to, the employees in the bargaining unit to which the award relates, including salaries, bonuses, allowances, vacation pay, employer contributions to pension funds or plans and all forms of health plans and dental insurance plans.	all the matters in dispute that are referred to it. (2) The arbitral award must be signed by the chairperson of the arbitration board, or by the single member, as the case may be, and a copy must be sent to the Chairperson.	amendments are identical) to provide written reasons for their decisions and to consider all elements of compensation.
Clause 310 adds section 158.1. **158.1** (1) Within seven days after the day on which an arbitral award is made, the Chairperson may direct the arbitration board to review the arbitral award, or any part of it, if in the Chairperson's opinion, the arbitral award, or any part of it, does not represent a reasonable application of the factors referred to in section 148 based on a full consideration of the written submissions provided to the arbitration board. (2) On application by either party to an arbitral award, made within seven days after the day on which the arbitral award is made, the Chairperson may, within seven days after the day on which the application is made, direct the arbitration board to review the arbitral award, or any part of it, if in the Chairperson's opinion, the arbitral award, or any part of it, does not represent a reasonable application of the factors referred to in section		This is a new section which establishes a process by which the Chairperson of the Public Service Labour Relations Board may direct an arbitration board (and public interest commission – the amendments are identical) to review its decision, if the Chairperson of the Public Service Labour Relations Board is of the view that the decision is inconsistent with the requirements of section 148 (section 175 for public interest commission). Subsection 158.1(2) provides that either party may make an application to the Chairperson of the Public Service Labour Relations Board that a directive be issued in the same way and for the same reasons as noted above.

148 based on a full consideration of the written submissions provided to the arbitration board. (3) Within 30 days after the day on which the Chairperson directs it to review the arbitral award, or any part of it, the arbitration board must either confirm the award or amend it and provide the Chairperson with reasons in writing for doing so. If the arbitral award is amended, the arbitration board must also provide the Chairperson with a copy of the amended arbitral award. (4) The Chairperson must, without delay, inform the parties of the arbitration board's decision and provide them with a copy of that board's reasons in writing. If the arbitral award is amended, the Chairperson must also provide the parties with a copy of the amended arbitral award. (5) For greater certainty, the arbitration board's power to amend the arbitral award is restricted to amending it only in relation to the matters in dispute that were originally referred to it.		
Clause 313 à 315 **165.** (1) If the public interest commission is to consist of a single member, the Chairperson must submit to the Minister the name of a person jointly recommended by the bargaining agent and the employer. If no person is so recommended, the Chairperson may, at his or her discretion, recommend the appointment of	**165.** (1) For the purposes of sections 166 and 167, the Chairperson must, after consultation with the parties, prepare a list of names of persons who could be selected to act as a public interest commission that consists of a single member, or as the chairperson of a public interest commission that consists of three members. 2) The list must set out	This amendment removes the requirement of making a list of names of persons who could be selected for a public interest commission consisting of a single or three members. The provisions pertaining to the nomination by the Minister of the public interest commission have not substantially changed.

a particular person. (2) After receiving the recommendation, the Minister must, without delay, appoint the person recommended.	(*a*) the names of all eligible persons jointly recommended by the parties; and (*b*) if the Chairperson is of the opinion that the parties have not jointly recommended a sufficient number of persons, the names of any other eligible persons whom the Chairperson considers suitable. **166.** (1) If the public interest commission is to consist of a single member, the Chairperson must submit to the Minister the list prepared under subsection 165(1). The Chairperson may, at his or her discretion, also recommend the appointment of a particular person named in the list. (2) After receiving the list, the Minister must, without delay, appoint a person named in the list.	
Clauses 316 to 318 The proposed language pertains to public interest commission and is identical to clauses 307, 309 and 310.	The current language is also identical.	

Clause 319 **182.** (1) Despite any other provision of this Part, the employer and the bargaining agent for a bargaining unit may, at any time in the negotiation of a collective agreement, agree to refer any term or condition of employment of employees in the bargaining unit that may be included in a collective agreement to any eligible person for final and binding determination by whatever process the employer and the bargaining agent agree to. If the employer is a separate agency, it may enter into such an agreement to refer a term or condition for final and binding determination only with the approval of the President of the Treasury Board.	**182.** (1) Despite any other provision of this Part, the employer and a bargaining agent for a bargaining unit may, at any time in the negotiation of a collective agreement, agree to refer any term or condition of employment of employees in the bargaining unit that may be included in a collective agreement to any eligible person for final and binding determination by whatever process the employer and the bargaining agent agree to.	This amendment will require Separate Agencies to seek approval from the President of the Treasury Board before consenting to binding arbitration.

Compensation Analysis and Research Services		
Proposed language	Current language	Changes
Clause 295 **13.** The Board's mandate is to provide adjudication services and mediation services in accordance with this Act.	**13.** The Board's mandate is to provide adjudication services, mediation services and compensation analysis and research services in accordance with this Act.	The Compensation Analysis and Research Services function is eliminated from the Public Service Labour Relations Board mandate.
Clause 296 repeals section 16 of the *PSLRA*.	**16.** (1) The compensation analysis and research services to be provided by the Board include conducting compensation surveys, compiling information relating to compensation, analyzing that information and making it, and the analysis, available to the parties and to the public, and conducting any research relating to compensation that the Chairperson may direct.	
Clause 298 repeals section 53 of the *PSLRA* and its heading.	Advisory Board **53.** (1) The Minister shall establish an advisory board to provide advice to the Chairperson on the compensation analysis and research services provided by the Board. (2) The advisory board is to consist of a chairperson and no more than 11 other members appointed by the Minister. (3) All of the members must have knowledge or experience that will assist the advisory board to accomplish its mandate, including knowledge of or experience in compensation	

	issues or statistics. (4) Appointments to the advisory board are to be made such that there is an equal number of members representative of the employer and of employees.	

Recourse		
Proposed language	**Current language**	**Changes**
Clause 325 Subsections 208(2)(4)(8) and (9) of the *PSLRA* are replaced by the following: (2) An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament. […] (4) Unless the grievance is in respect of a discriminatory practice set out in section 7, 8, 10 or 14 of the *Canadian Human Rights Act*, an employee who is included in a bargaining unit may present an individual grievance only if the employee has the approval of and is represented by the bargaining agent for the bargaining unit. […]	[…] **208.** (2) An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the *Canadian Human Rights Act*. […] (4) An employee may not present an individual grievance relating to the interpretation or application, in respect of the employee, of a provision of a collective agreement or an arbitral award unless the employee has the approval of and is represented by the bargaining agent for the bargaining unit to which the collective agreement or arbitral award applies.	This removes the current limitation "other than the *Canadian Human Rights Act*". It provides that employees in the public service will now use the individual grievance process to address allegations of discrimination. This expands the requirement for bargaining agents to support individual grievances. Any employee who belongs to a bargaining unit may only file a grievance with the approval of and representation by their bargaining agent with the exception of for matters which relate to allegations of discrimination under the *Canadian Human Rights Act* section 7, 8, 10 or 14. This expands the time limit to file human rights grievances. Individual

(8) An individual grievance in respect of a discriminatory practice set out in section 7, 8, 10 or 14 of the *Canadian Human Rights Act* must be presented at the first level in the grievance process within one year after the last of the acts or omissions that gave rise to the grievance, or any longer period that the Board considers appropriate in the circumstances. (9) An individual grievance may be dismissed at any level of the grievance process if the grievance is considered to be trivial, frivolous, vexatious or made in bad faith. If it is dismissed, the employee must be informed in writing of the dismissal and the reasons for it.		grievances relating to allegations of discrimination under the *Canadian Human Rights Act* sections 7, 8, 10 or 14 may be filed up to one year after the last act or omission occurred or such longer period as the Public Service Labour Relations Board considers appropriate. This provides explicit authority to a deputy head or his/her delegate to dismiss a grievance if it is considered to be trivial, frivolous or vexatious or made in bad faith.
Clause 326 adds paragraph 209(1)(c.1) and amends subsection (2) (*c.1*) a discriminatory practice set out in section 7, 8, 10 or 14 of the *Canadian Human Rights Act*; or (2) Unless the grievance is in respect of a discriminatory practice set out in section 7, 8, 10 or 14 of the *Canadian Human Rights Act*, an employee who is included in a bargaining unit may refer an individual grievance to adjudication only if the bargaining agent for the bargaining unit has agreed to represent the employee in the adjudication proceedings.	**209.** (1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to (*a*) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award; (*b*) a disciplinary action resulting in termination, demotion, suspension or financial penalty; (*c*) in the case of an employee in the core public administration, (i) demotion or termination under paragraph 12(1)(*d*) of the *Financial Administration Act* for	This provides that any grievance which alleges discrimination as set out in *Canadian Human Rights Act* sections 7, 8, 10, or 14 can be referred to adjudication. This requires the bargaining agent's support to refer a grievance to adjudication. This corresponds to the amendment to 208(4) above. It requires the bargaining agent's approval and representation in order to refer to adjudication any individual grievance of an employee in a bargaining unit except in the case where a grievance relates to discrimination as set out in *Canadian Human Rights Act* sections 7, 8, 10 or 14. In that case, no such approval is required.

	unsatisfactory performance or under paragraph 12(1)(*e*) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or (ii) deployment under the *Public Service Employment Act* without the employee's consent where consent is required; or (*d*) in the case of an employee of a separate agency designated under subsection (3), demotion or termination for any reason that does not relate to a breach of discipline or misconduct. (2) Before referring an individual grievance related to matters referred to in paragraph (1)(*a*), the employee must obtain the approval of his or her bargaining agent to represent him or her in the adjudication proceedings.	

Clauses 327, 330 and 332 repeal Sections 210, 217 and 222 of the *PSLRA*.	**210.** (1) When an individual grievance has been referred to adjudication and a party to the grievance raises an issue involving the interpretation or application of the *Canadian Human Rights Act*, that party must, in accordance with the regulations, give notice of the issue to the Canadian Human Rights Commission. **217.** (1) When a group grievance has been referred to adjudication and a party to the grievance raises an issue involving the interpretation or application of the *Canadian Human Rights Act*, that party must, in accordance with the regulations, give notice of the issue to the Canadian Human Rights Commission. (2) The Canadian Human Rights Commission has standing in adjudication proceedings for the purpose of making submissions regarding an issue referred to in subsection (1). **222.** (1) When a policy grievance has been referred to adjudication and a party to the grievance raises an issue involving the interpretation or application of the *Canadian Human Rights Act*, that party must, in accordance with the regulations, give notice of the issue to the Canadian Human Rights Commission. (2) The Canadian Human Rights Commission has standing in adjudication proceedings for the purpose of making submissions regarding an issue referred to in subsection (1).	Notice to the Canadian Human Rights Commission is no longer required.

Clause 328 renumbers Section 211 of the *PSLRA* as subsection 211(1) and adds the following: (2) Subsection (1) does not apply in respect of the referral to adjudication of an individual grievance in respect of a discriminatory practice set out in section 7, 8, 10 or 14 of the Canadian Human Rights Act.	**211.** Nothing in section 209 is to be construed or applied as permitting the referral to adjudication of an individual grievance with respect to (*a*) any termination of employment under the *Public Service Employment Act*; or (*b*) any deployment under the *Public Service Employment Act*, other than the deployment of the employee who presented the grievance.	Subsection 211(2) provides that the prohibition against referring an individual grievance adjudication if it relates to a termination of employment under the *Public Service Employment Act* does not apply if the grievance alleges a discriminatory practice set out in the *Canadian Human Rights Act* sections 7, 8, 10 or 14.
Clause 329 replaces Subsection 215(4) of the *PSLRA* by the following: […] (4) A bargaining agent may not present a group grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament.	[…] (4) A bargaining agent may not present a group grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the *Canadian Human Rights Act*.	This provides that a bargaining agent may not present a group grievance if another administrative procedure is available for under any Act of Parliament.
Clause 331 replaces subsections 220(1) and (2) of the *PSLRA* by the following: **220.** (1) If the employer and a bargaining agent are bound by an arbitral award or have entered into a collective agreement and the employer or the bargaining agent seeks to enforce an obligation that is alleged to arise out of the award or agreement, other than an obligation the enforcement of which may be the subject of a grievance of an employee in the bargaining unit to which the agreement or award applies, either of them may present a	**220.** (1) If the employer and a bargaining agent are bound by an arbitral award or have entered into a collective agreement, either of them may present a policy grievance to the other in respect of the interpretation or application of the collective agreement or arbitral award as it relates to either of them or to the bargaining unit generally. (2) Neither the employer nor a bargaining agent may present a policy grievance in respect of which an administrative procedure for redress is provided under any other Act of	A policy grievance has been redefined to allow the employer and a bargaining agent who are bound by an arbitral award or have entered into a collective agreement to file a policy grievance when either of them seeks to enforce an obligation that is alleged to arise out of the collective agreement or arbitral award, only in cases where the obligation could not be the subject of a grievance of an employee in the bargaining unit to which the agreement or award applies.

policy grievance to the other. (2) Neither the employer nor a bargaining agent may present a policy grievance in respect of which an administrative procedure for redress is provided under any other Act of Parliament.	Parliament, other than the *Canadian Human Rights Act*.	Subsection 220 (2) provides that neither the employer nor the bargaining agent may present a policy grievance if another administrative procedure is available for under any Act of Parliament.
Clause 333 replaces paragraphs 226(1)(*h*), 226(1)(*j*) of the *PSLRA* is replaced by the following: (1)(*h*) give relief in accordance with any of paragraphs 53(2)(*b*) to (*e*) or subsection 53(3) of the *Canadian Human Rights Act*; […] (2)(*j*) summarily dismiss grievances that in the adjudicator's opinion are trivial, frivolous, vexatious or made in bad faith.	[…] (1)(*h*) give relief in accordance with paragraph 53(2)(*e*) or subsection 53(3) of the *Canadian Human Rights Act*; […] (2)(*j*) summarily dismiss grievances that in the opinion of the adjudicator are frivolous or vexatious.	An adjudicator's remedy in the case of a grievance relating to discrimination is expanded to include relief in accordance with any of paragraphs 53(2)(b) to (e) or subsection 53(3)of the *Canadian Human Rights Act.* This will provide the adjudicator with the same powers as the Canadian Human Rights Tribunal. "Trivial" and "bad faith" were added to the reasons an adjudicator may summarily dismiss grievances.

Clause 334 replaces section 232 of the *PSLRA* by the following: **232.** An adjudicator's decision in respect of a policy grievance is limited to one or more of the following: (*a*) declaring the correct interpretation of a collective agreement or an arbitral award; (*b*) declaring that the collective agreement or arbitral award has been contravened; and (*c*) requiring the employer or bargaining agent, as the case may be, to interpret the collective agreement or arbitral award in a specified manner, without giving it retroactive effect.	**232.** If a policy grievance relates to a matter that was or could have been the subject of an individual grievance or a group grievance, an adjudicator's decision in respect of the policy grievance is limited to one or more of the following: (*a*) declaring the correct interpretation, application or administration of a collective agreement or an arbitral award; (*b*) declaring that the collective agreement or arbitral award has been contravened; and (*c*) requiring the employer or bargaining agent, as the case may be, to interpret, apply or administer the collective agreement or arbitral award in a specified manner.	This change limits an adjudicator's remedial power for policy grievances to declaring the correct interpretation of a collective agreement or arbitral award and/or declaring that the collective agreement or arbitral award has been contravened and/or requiring the employer or bargaining agent to interpret the collective agreement or arbitral award in a specified manner without it having retroactive effect.
Clause 335 replaces section 235 of the *PSLRA* by the following: **235.** (1) Subject to subsection (3), if an individual grievance that is related to matters referred to in paragraph 209(1)(*a*) is referred to adjudication by an aggrieved employee, the expenses of the adjudication are to be borne in equal parts by the employer and the	**235.** (1) If an aggrieved employee is not represented in the adjudication by a bargaining agent, the costs of the adjudication are to be borne by the Board. (2) If an aggrieved employee is represented in the adjudication by a bargaining agent, the bargaining agent is liable to pay and must remit to the Board any part of the costs of the	Subsections 235 (1) to (7) provide that for adjudication of grievances relating to individual employees in a bargaining unit, the expenses of the proceedings are to be borne in equal parts by the employer (either Treasury Board or the Deputy Head depending on the nature of the grievance) and the bargaining agent. As well, the expenses

bargaining agent that represents the aggrieved employee in the adjudication proceedings. (2) If an individual grievance that is related to matters referred to in paragraph 209(1)(*b*) or (*c*) is referred to adjudication by an aggrieved employee who is included in a bargaining unit, the expenses of the adjudication are to be borne in equal parts by the bargaining agent and the deputy head responsible for the portion of the public service that employs the aggrieved employee in the adjudication proceedings. (3) If an individual grievance that is related to matters referred to in paragraph 209(1)(*a*) and matters referred to in paragraph 209(1)(*b*) or (*c*) or to matters in both of those paragraphs is referred to adjudication by an aggrieved employee, the expenses of the adjudication are to be borne in equal parts by the bargaining agent and the deputy head responsible for the portion of the public service that employs the aggrieved employee in the adjudication proceedings. (4) If an individual grievance that is related to matters referred to in paragraph 209(1)(*c.1*) is referred to adjudication by an aggrieved employee who is included in a bargaining unit, the expenses of the adjudication are to be borne by the Board. (5) If an individual grievance that is related to matters referred to in paragraph 209(1)(*d*) is referred to adjudication by an aggrieved	adjudication that may be determined by the Executive Director of the Board with the approval of the Board. (3) Any amount that by subsection (2) is payable to the Board by a bargaining agent may be recovered as a debt due to Her Majesty in right of Canada. The bargaining agent is deemed to be a person for the purposes of this subsection.	of adjudication for an employee who is not part of a bargaining unit shall continue to be borne by the Public Service Labour Relations Board. The determination of the expenses will be made by the Chairperson of the Board.

employee who is included in a bargaining unit, the expenses of the adjudication are to be borne in equal parts by the employer and the bargaining agent that represents the aggrieved employee in the adjudication proceedings. (6) If an individual grievance that is related to matters referred to in paragraph 209(1)(*b*), (*c*), (*c.1*) or (*d*) is referred to adjudication by an aggrieved employee who is not included in a bargaining unit, the expenses of the adjudication are to be borne by the Board. (7) Any amount that by this section is payable by a bargaining agent may be recovered as a debt due to Her Majesty in right of Canada. The bargaining agent is deemed to be a person for the purposes of this subsection. (8) For the purpose of this section, the expenses of the adjudication are determined by the Chairperson. **235.1** (1) If a group grievance is referred to adjudication, the expenses of the adjudication are to be borne in equal parts by the employer and the bargaining agent that represents the aggrieved employees in the adjudication proceedings. (2) Any amount that by subsection (1) is payable by a bargaining agent may be recovered as a debt due to Her Majesty in right of Canada. The bargaining agent is deemed to be a person for the purposes of this subsection.		Section 235.1 applies the same principles concerning the sharing of expenses outlined in s*ections 235* with respect to individual grievances to those involving group grievances. Section 235.2 applies the same principles concerning the sharing of costs outlined in s*ections 235* and 235.1 to those involving policy grievances.

(3) For the purpose of this section, the expenses of the adjudication are determined by the Chairperson. **235.2** (1) If a policy grievance is referred to adjudication, the expenses of the adjudication are to be borne in equal parts by the employer and the bargaining agent to the adjudication proceedings. (2) Any amount that by subsection (1) is payable by a bargaining agent may be recovered as a debt due to Her Majesty in right of Canada. The bargaining agent is deemed to be a person for the purposes of this subsection. (3) For the purpose of this section, the expenses of the adjudication are determined by the Chairperson.		
Clause 340 amends Section 40.1 of the *Canadian Human Rights Act* (*CHRA*) by adding the following after subsection (2): (3) A complaint must not be dealt with by the Commission under section 40 if the complaint is made by an employee, as defined in subsection 206(1) of the *Public Service Labour Relations Act*, against their employer, as defined in subsection 2(1) of that Act and it alleges that the employer has engaged in a discriminatory practice set out in section 7, 8, 10 or 14. (4) A complaint must not be dealt with by the Commission under section 40 if the complaint		Subsection 40.1 (3) removes the authority of the Canadian Human Rights Commission to deal with a complaint submitted by an employee as defined by the *Public Service Labour Relations Act* against the employer that alleges that the employer has engaged in a discriminatory practice pursuant to sections 7, 8, 10 or 14 of the *Canadian Human Rights Act*. Subsection 40.1(4) is added and removes the authority of the Canadian Human Right Commission to deal with a complaint submitted by an employee as defined by the *Public Service*

is made by a person against the Public Service Commission or a deputy head as defined in subsection 2(1) of the *Public Service Employment Act* and it alleges that a discriminatory practice set out in section 7, 8, 10 or 14 has been engaged in in relation to (*a*) an appointment or proposed appointment in an internal appointment process under that Act; (*b*) the revocation of an appointment under that Act; or (*c*) the laying off of employees under that Act.		*Employment Act* against the Public Service Commission or a deputy head that alleges a discriminatory practice pursuant to sections 7, 8, 10 or 14 of the *Canadian Human Rights Act.*
Clause 348 replaces Subsections 64(1) and (2) of the *Public Service Employment Act* (*PSEA*) by the following: **64.** (1) If an employee's services are no longer required by reason of lack of work, the discontinuance of a function or the transfer of work or a function outside those portions of the federal public administration named in Schedule I, IV or V to the *Financial Administration Act*, the deputy head may lay off the employee, in which case the deputy head shall so advise the employee. (2) If the deputy head determines under subsection (1) that some but not all of the	**64.** (1) Where the services of an employee are no longer required by reason of lack of work, the discontinuance of a function or the transfer of work or a function outside those portions of the federal public administration named in Schedule I, IV or V to the *Financial Administration Act*, the deputy head may, in accordance with the regulations of the Commission, lay off the employee, in which case the deputy head shall so advise the employee. (2) Where the deputy head determines under subsection (1) that some but not all of the employees in any part of the deputy head's organization will be laid off, the employees to	These subsections clarify the Deputy Head's power to lay-off in the cases where some, but not all, of the employees in any part of an organization who occupy positions at the same group and level and perform similar duties will be laid off. In these circumstances, the employees to be laid off shall be selected in accordance with the regulations of the Commission.

employees in any part of the deputy head's organization who occupy positions at the same group and level and perform similar duties are to be laid off, the employees to be laid off shall be selected in accordance with the Commission's regulations.	be laid off shall be selected in accordance with the regulations of the Commission.	
Claude 349 replaces Subsection 65(1) of the *PSEA* by the following: **65.** (1) If some but not all of the employees in a part of an organization who occupy positions at the same group and level and perform similar duties are informed by the deputy head that they will be laid off, any employee selected for lay-off may make a complaint to the Tribunal, in the manner and within the time fixed by the Tribunal's regulations, that his or her selection constituted an abuse of authority. […] (5) If the Tribunal determines that the Commission or the deputy head has engaged in a discriminatory practice set out in section 7, 8, 10 or 14 of the *Canadian Human Rights Act*, it may order that the Commission or deputy head, as the case may be, cease the discriminatory practice and take measures to redress the practice or to prevent the same or a similar practice from occurring in the future or it may make any order that may be made under any of paragraphs 53(2)(*b*) to (*e*) or subsection 53(3) of that Act.	**65.** (1) Where some but not all of the employees in a part of an organization are informed by the deputy head that they will be laid off, any employee selected for lay-off may make a complaint to the Tribunal, in the manner and within the time fixed by the Tribunal's regulations, that his or her selection constituted an abuse of authority. […] (5) Where a complaint raises an issue involving the interpretation or application of the *Canadian Human Rights Act*, the complainant shall, in accordance with the regulations of the Tribunal, notify the Canadian Human Rights Commission of the issue. (6) Where the Canadian Human Rights Commission is notified of an issue pursuant to subsection (5), it may make submissions to the Tribunal with respect to that issue. **[...]** (8) Corrective action may include an order for relief in accordance with paragraph 53(2)(*e*) or subsection 53(3) of the *Canadian Human*	The revised subsections clarifies that only employees in a part of an organization who occupy positions at the same group and level and perform similar duties that are informed by the deputy head that they will be laid off have a right to complain to the Public Service Staffing Tribunal. This amendment will provide the adjudicator with the same powers as the Canadian Human Rights Tribunal. Subsection (8) is repealed.

	Rights Act.	
Clause 350 adds the following after section 76 of the *PSEA*: **76.1** (1) If the Tribunal finds a complaint under section 74 to be substantiated and it determines that the Commission or the deputy head has engaged in a discriminatory practice set out in section 7, 8, 10 or 14 of the *Canadian Human Rights Act*, it may (*a*) order that the Commission or deputy head, as the case may be, cease the discriminatory practice and take measures to redress the practice or to prevent the same or a similar practice from occurring in the future; or (*b*) make any order that may be made under any of paragraphs 53(2)(*b*) to (*e*) or subsection 53(3) of that Act. (2) In considering whether a complaint is substantiated, the Tribunal may interpret and apply the *Canadian Human Rights Act*, other than its provisions relating to the right to equal pay for work of equal value.		This amendment provides the Tribunal with the appropriate remedial authority as found in the *Canadian Human Rights Act* for situations where a complaint of discriminatory practice is substantiated.
Clause 351 replaces sections 77 to 79 of the *PSEA* by the following:	**77.** (1) When the Commission has made or proposed an appointment in an internal	These proposed amendments define the grounds on which an employee can

77. (1) When the Commission has made or proposed an appointment in an internal appointment process, a person referred to in subsection (2) may, in the manner and within the period provided by the Tribunal's regulations, make a complaint to the Tribunal that he or she was not appointed or proposed for appointment by reason of (*a*) an abuse of authority by the Commission in the exercise of its authority under subsection 30(2); (*b*) an abuse of authority by the Commission in choosing between an advertised and a non-advertised internal appointment process; or (*c*) the failure of the Commission to assess the complainant in the official language of his or her choice as required by subsection 37(1). (2) The following persons may make a complaint under subsection (1):	appointment process, a person in the area of recourse referred to in subsection (2) may — in the manner and within the period provided by the Tribunal's regulations — make a complaint to the Tribunal that he or she was not appointed or proposed for appointment by reason of (*a*) an abuse of authority by the Commission or the deputy head in the exercise of its or his or her authority under subsection 30(2); (*b*) an abuse of authority by the Commission in choosing between an advertised and a non-advertised internal appointment process; or (*c*) the failure of the Commission to assess the complainant in the official language of his or her choice as required by subsection 37(1). (2) For the purposes of subsection (1), a person is in the area of recourse if the person is (*a*) an unsuccessful candidate in the area of selection determined under section 34, in the case of an advertised internal appointment process; and (*b*) any person in the area of selection determined under section 34, in the case of a non-advertised internal appointment process. (3) The Tribunal may not consider an allegation that fraud occurred in an appointment process or that an appointment	submit a staffing complaint are amended so that: Unsuccessful candidates in a selection process, who meet the qualifications, may make a complaint that he or she was not appointed or proposed for appointment; and, Unsuccessful candidates in an advertised selection process, who do not meet the qualifications, may make a complaint about the determination that they do not meet the qualifications. Subsection 79(2) is repealed.

(*a*) in the case of an advertised internal appointment process, a person who is an unsuccessful candidate in the area of selection determined under section 34 and who has been determined by the Commission to meet the essential qualifications for the work to be performed as established by the deputy head under paragraph 30(2)(*a*); and (*b*) in the case of a non-advertised internal appointment process, a person who is in the area of selection determined under section 34. (3) The Tribunal may not consider an allegation that fraud occurred in an appointment process or that an appointment or proposed appointment was not free from political influence. (4) No complaint may be made under subsection (1) in respect of an appointment under subsection 15(6) (reappointment on revocation by deputy head), section 40	or proposed appointment was not free from political influence. **78.** Where a complaint raises an issue involving the interpretation or application of the *Canadian Human Rights Act*, the complainant shall, in accordance with the regulations of the Tribunal, notify the Canadian Human Rights Commission of the issue. **79.** (1) A person making a complaint under section 77, the person appointed or proposed for appointment, the deputy head and the Commission — or their representatives — are entitled to be heard by the Tribunal. (2) Where the Canadian Human Rights Commission is notified of an issue pursuant to section 78, it may make submissions to the Tribunal with respect to that issue.	

(prior- ities — surplus employees), subsection 41(1) or (4) (other priorities), section 73 (reappointment on revocation by Commission) or section 86 (reappointment following Tribunal order), or under any regulations made under paragraph 22(2)(*a*). (5) If the Tribunal finds the complaint to be substantiated, it may order the Commission to revoke the appointment or not to make the appointment, as the case may be, and to take any corrective action that the Tribunal considers appropriate. **78.** (1) When, in the case of an advertised internal appointment process, the Commission has made or proposed an appointment, a person who is an unsuccessful candidate in the area of selection determined under section 34 and who has been determined by the Commission not to meet the essential qualifications for the work to be performed as established by the deputy head under paragraph 30(2)(*a*) or the qualifications considered by the deputy head under subparagraph 30(2)(*b*)(i) to be an asset for that work may, in the manner and within the		

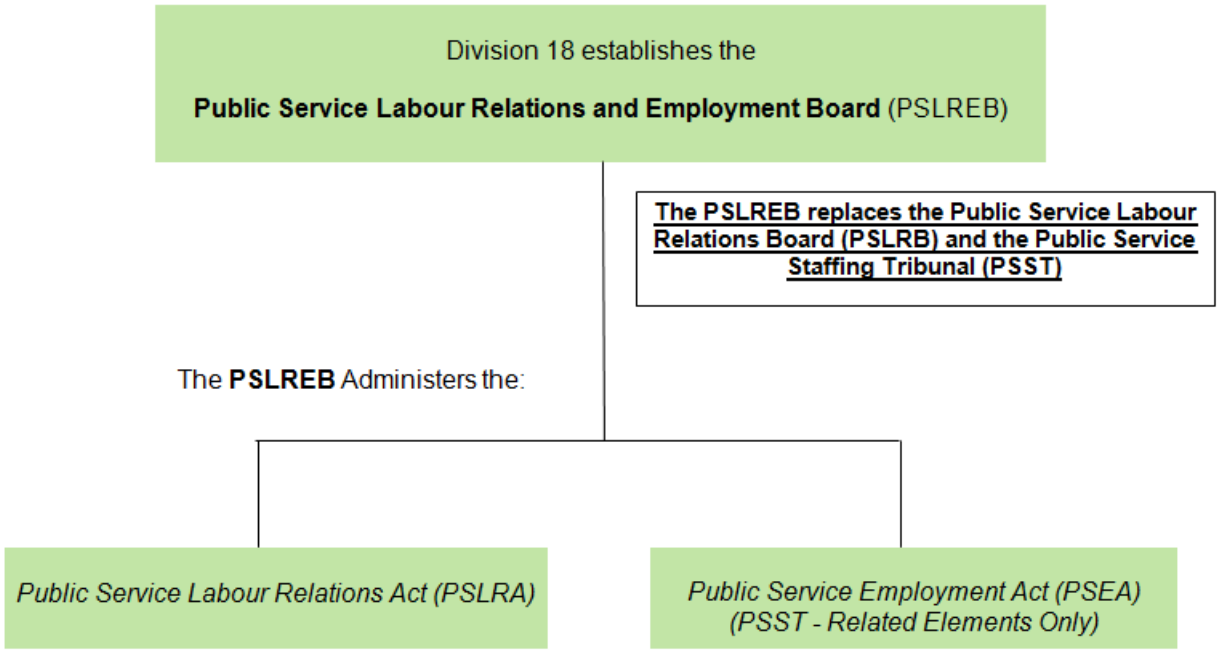
period provided by the regulations, make a complaint to the Tribunal that the Commission (*a*) has abused its authority under subsection 30(2) in making that determination in relation to those qualifications; or (*b*) has failed to assess the complainant in the official language of the complainant's choice as required by subsection 37(1). (2) No complaint may be made under subsection (1) in respect of an appointment under subsection 15(6) (reappointment on revocation by deputy head), section 40 (priorities — surplus employees), subsection 41(1) or (4) (other priorities), section 73 (reappointment on revocation by Commission) or section 86 (reappointment following Tribunal order), or under any regulations made under paragraph 22(2)(*a*). (3) If the Tribunal finds the complaint to be substantiated, it may order the Commission		

to revoke the appointment or not to make the appointment, as the case may be, and to take any corrective action that the Tribunal considers appropriate. **79.** A person making a complaint under section 77 or 78, the person appointed or proposed for appointment, the deputy head and the Commission — or their representatives — are entitled to be heard by the Tribunal.		
Clause 353 replaces Sections 81 and 82 of the *PSEA*: **81.** (1) If the Tribunal finds a complaint under section 77 or 78 to be substantiated, the Tribunal may (*a*) order the Commission or the deputy head to revoke the appointment or not to make the appointment, as the case may be, and to take any corrective action that the Tribunal considers appropriate; and	**81.** (1) If the Tribunal finds a complaint under section 77 to be substantiated, the Tribunal may order the Commission or the deputy head to revoke the appointment or not to make the appointment, as the case may be, and to take any corrective action that the Tribunal considers appropriate. (2) Corrective action taken under subsection (1) may include an order for relief in accordance with paragraph 53(2)(*e*) or subsection 53(3) of the *Canadian Human Rights Act*. **82.** The Tribunal may not order the Commission to make an appointment or to conduct a new appointment process.	This amendment defines the corrective action that may be taken with respect to complaints that are substantiated under sections 77 and 78.

(*b*) if it has determined that the Commission or the deputy head has engaged in a discriminatory practice set out in section 7, 8, 10 or 14 of the *Canadian Human Rights Act*, (i) order that the Commission or deputy head, as the case may be, cease the discriminatory practice and take measures to redress the practice or to prevent the same or a similar practice from occurring in the future; or (ii) make any order that may be made under any of paragraphs 53(2)(*b*) to (*e*) or subsection 53(3) of that Act. (2) The Tribunal may not order the Commission or the deputy head to make an appointment or to conduct a new appointment process if the Commission or the deputy head, as the case may be, has not been determined to have engaged in a discriminatory practice set out in section 7, 8, 10 or 14 of the *Canadian Human Rights Act*.		

Clause 355 adds paragraph 84(c) of the *PSEA* (*c*) if the complaint involved a discriminatory practice set out in section 7, 8, 10 or 14 of the *Canadian Human Rights Act,* make any order against the deputy head or the Commission that the Tribunal considers appropriate in the circumstances.		Section 84 is amended to provide the Public Service Staffing Tribunal the authority, in complaints involved a discriminatory practice as set out in section 7, 8, 10, or 14 of the *Canadian Human Rights Act,* to make any order it considers appropriate in the circumstances.
Clause 357 adds the following after subsection 99(2) of the *PSEA*: (2.1) The Tribunal may summarily dismiss a complaint if the complainant fails to comply with any procedures set out in this Act, or the Tribunal's regulations, in relation to a complaint. (2.2) The Tribunal may summarily dismiss a complaint if the deputy head has taken the corrective action that the Tribunal considers appropriate in relation to the complaint.		The proposed amendment provides the Tribunal the power to summarily dismiss a complaint if the complainant fails to comply with any procedures set out in this Act, or the Tribunal's regulations. It also provides the Tribunal the power to dismiss a complaint if the deputy head has taken corrective action that the Tribunal considers appropriate in relation to the complaint.
Transitional measures: clauses 339, 341 and 360		The transitional measures provide that the application of the current provisions with respect to the recourse section of the Bill will continue to apply in respect of every grievance and complaints filed under *the Public Service Labour Relations Act*, the *Canadian Human Rights Act* and the *Public Service Employment Act* filed before the coming into force.

APPENDIX D – BRIEF RECEIVED FROM TREASURY OF CANADA SECRETARIAT EXPLAINING THE PROPOSED CHANGES IN DIVISION 18 OF PART 3



Comparative Chart - The *PSLREB* Act contains the elements required to establish the administrative tribunal. Most provisions were adopted from the *PSLRA* and the *PSEA*

Highlights of Key Elements	**PSLREBA** ***new***	**PSLRB** ***Under PSLRA*** ***current***	**PSST** ***Under PSEA*** ***current***
Clause 365			
Minister	Any Federal Minister other than a minister of Treasury Board (s. 3)	Any Federal Minister other than a minister of Treasury Board (s. 2.(1))	
Establishment and Composition of Board	1 Full-Time Chairperson 2 Full-Time Vice-Chairpersons (not more than) 10 Full-time members (not more than) Any part-time members (s.4)	1 Chairperson 3 Vice-Chairpersons (up to) Any other members that the GIC may appoint (s. 12)	5-7 permanent members of the PSST 1 full-time member to be the Chairperson 1 full-time member to be the Vice-Chairperson Any temporary members that are appointed by GIC (s.88 & s. 90)

Highlights of **Key Elements**	**PSLREBA** ***new***	**PSLRB** ***Under PSLRA*** ***current***	**PSST** ***Under PSEA*** ***current***
Appointment of Members	Qualifications - Canadian citizen or permanent resident - Not hold any other office - Not be a member or hold office under a certified employee organization - Not carry out inconsistent activities	Qualifications - Canadian citizen or permanent resident - Not hold any other office - Not be a member or hold office under a certified employee organization - Not carry out inconsistent activities - Knowledge of or experience in labour relations	Eligibility - Canadian citizen or permanent resident - have knowledge of or experience in employment matters in the public sector
	Every member, other than the Chairperson or Vice-Chair person must be appointed from among eligible persons whose names are on a list prepared by the Chairperson after consultation with the employer and bargaining agents.	Every member, other than the Chairperson or Vice-Chair person must be appointed from among eligible persons whose names are on a list prepared by the Chairperson after consultation with the employer and bargaining agents.	
	Members will be appointed in equal numbers between those recommended by the bargaining agent and employer (to the extent possible)	Members will be appointed in equal numbers between those recommended by the bargaining agent and employer (to the extent possible)	
	Members do not represent either the employer or employees and must act impartially.	Members do not represent either the employer or employees and must act impartially.	
	5 years maximum term for full-time members and 3 years maximum term for part-time members	5 years maximum term	5 years maximum term
	(ss. 5 - 9)	(ss. 19 - 22)	(ss.88 - 89)

Highlights of **Key Elements**	**PSLREBA** ***new***	**PSLRB** ***Under PSLRA*** ***current***	**PSST** ***Under PSEA*** ***current***
Remuneration	As fixed by GIC (s.10 (a) &(b))	As fixed by GIC (s. 23 (a) & (b))	As fixed by GIC (s. 92 (1))
Application of other acts	*Public Service Superannuation Act* (full-time members) *Government Employees Compensation Act &* section 9 of *Aeronautics Act* (all members) (s. 11 & s. 12)	*Public Service Superannuation Act* (full time members) *Government Employees Compensation Act* section 9 of *Aeronautics Act* (all members) (s. 24 & 25)	*Public Service Superannuation Act* (full time members) *Government Employees Compensation Act* section 9 of *Aeronautics Act* (all members) (s. 92 (3) & (4))
Head office and Meetings	National Capital Region (s. 13)	National Capital Region (s. 26)	National Capital Region (s. 93)

Highlights of **Key Elements**	**PSLREBA** ***new***	**PSLRB** ***Under PSLRA*** ***current***	**PSST** ***Under PSEA*** ***current***
Boards Powers and Functions	Powers conferred on it by this Act or any other Act of Parliament Power to: (a) Summon witnesses (b) Order pre-hearing procedures (c) Order pre-hearing conferences to be conducted using any means of telecommunication (d) Administer oaths and affirmations (e) Accept evidence (f) Compel production (ss. 20 - 24)	Administer this Act Power to: (a) Summon witnesses (b) Order pre-hearing procedures (c) Order pre-hearing conferences to be conducted using any means of telecommunication (d) Administer oaths and affirmations (e) Accept evidence (h) Compel production Power to: (these powers remain in the *PSLRA)* (f) examine evidence respecting membership and organizations seeking certification (g) examine documents related to organizations seeking certification (i) require employer to post notices (j) enter premises to inspect and view (k) enter premises to conduct representation votes (l) Authorize any person to conduct (d to k) (ss. 36 – 38)	Power to: (a) Summon witnesses (b) Order pre-hearing conferences to be conducted using any means of telecommunication (c) Administer oaths and affirmations (d) Accept evidence (e) Compel production (f) enter any premises … inspect and view…require any person to answer all proper questions relating to the complaint. (This power remains in the *PSEA*) (s. 99.(1))
Chairperson	The Chairperson is the chief executive officer of the Board (s.25)	The Chairperson is the chief executive officer of the Board (s.44)	The Chairperson of the Tribunal is the chief executive officer (s. 94.(1))

Highlights of **Key Elements**	**PSLREBA** ***new***	**PSLRB** ***Under PSLRA*** ***current***	**PSST** ***Under PSEA*** ***current***
Human Resources	The Chairperson may exercise powers under the FAA related to Human Resources Management, including the determination of terms and conditions of employment. The Chairperson may employ persons, fix their period of employment, establish their probationary periods, reject them on probation and lay them off. (Employees of the Board are not subject to the *PSEA*) (s. 28 & s. 29)	The Chairperson may exercise powers under the FAA related to Human Resources Management, including the determination of terms and conditions of employment. Employees are to be appointed pursuant to the *PSEA* (ss. 47-49)	The Chairperson may employ persons, fix their period of employment, establish their probationary periods, reject them on probation and lay them off. (Employees of the Tribunal are not subject to the PSEA) (s. 95.(1))
Protection	Members, mediators, experts not compellable as a witness Notes, drafts not to be disclosed without consent No criminal or civil proceedings lie against a member, employee, mediator, expert (ss. 31-33)	Members, mediators, experts not compellable as a witness Notes, drafts not to be disclosed without consent No criminal or civil proceedings lie against a member, employee, mediator, expert (ss. 243-245)	Members, mediators, experts not compellable as a witness Notes, drafts not to be disclosed without consent No criminal or civil proceedings lie against a member, employee, mediator, expert (ss. 104-106)

Highlights of **Key Elements**	**PSLREBA** ***new***	**PSLRB** ***Under PSLRA*** ***current***	**PSST** ***Under PSEA*** ***current***
Review and Enforcement of orders and decisions	Every order or decision is final and may not be reviewed in any court The Board has standing to appear to make submissions on the standard of review No review by *certiorari* etc. An order becomes an order of the Federal Court when a certified copy is filed in that court. (ss. 34 – 35)	Every order or decision is final and may not be reviewed in any court The Board has standing to appear to make submissions on the standard of review No review by certiorari etc. An order becomes an order of the Federal Court when a certified copy is filed in that court. (ss. 51 & 52 & 233 & 234)	Every order or decision is final and may not be reviewed in any court No review by certiorari etc. An order becomes an order of the Federal Court when filed in that court. (ss. 101-103)
Regulations	May make regulations respecting (a) the practice and procedure for hearings (b) the use of telecommunications (c) the hearing or determination of any matter (d) the establishment of an expeditious procedure (e) forms to be used (f) time for evidence and information to be presented to board (g) the time for documents and notices (h) other matters in relation to exercise of Board's powers. (s. 36)	Power to make regulations concerning certification of bargaining agents and related matters (these powers <u>remain</u> in the *PSLRA*) (s. 38) Power to make regulations respecting the processes for dealing with grievances (these powers <u>remain</u> in the *PSLRA*) (s.237 & s. 238)	May make regulations respecting (a) <u>The manner and time to submit a complaint</u> (b) The procedure for hearings (c) The time for documents and notices (d) <u>Notice to CHRC</u> (e) <u>Disclosure of information</u> (Underlined <u>remain</u> in the *PSEA* except so far as Division 17 has amended these provisions) (s. 109)

Highlights of Key Elements	PSLREBA *new*	PSLRB *Under PSLRA* *current*	PSST *Under PSEA* *current*
Panels	All matters (Labour Relations and Grievance Adjudication) are to be heard by a panel of 1 member (some exceptions apply) Panels has all the Board's powers A decision of the panel is a decision of the Board (Therefore the Federal Court of Appeal will be the reviewing court for all Board decisions) (ss. 37-40)	Labour Relations (Part 1) proceedings to be heard by a panel of not less than three embers, at least one of whom is the Chairperson or a Vice-Chairperson, or, if the Chairperson considers it appropriate in the circumstances, by a panel consisting of a single member. (ss. 31) There is no reference to panels with respect to grievance adjudication in Part 2. (ss. 223 & 224)	A complaint shall be determined by a single member of the Tribunal (s. 98. (1))
Witness Fees	A witness is entitled to receive fees and allowances equal to those to which the person would be entitled if summoned to attend before the Federal Court (s. 41)	A witness is entitled to receive fees and allowances equal to those to which the person would be entitled if summoned to attend before the Federal Court (s. 248)	A witness is entitled to receive fees and allowances equal to those to which the person would be entitled if summoned to attend before the Federal Court (s.108)
Annual Report	The Board must prepare an annual report and submit to the Minister. The Minister must cause the report to be table in each House of Parliament. (s. 42)	The Board must prepare an annual report and submit to the Minister. The Minister must cause the report to be table in each House of Parliament. (s. 251)	The Board must prepare an annual report and submit to the Minister. The Minister must cause the report to be table in each House of Parliament. (s. 110)

Highlights of Key Elements	PSLREBA *new*	PSLRB *Under PSLRA* *current*	PSST *Under PSEA* *current*
Clause 366			
Definitions		In subsection 2(1) the definition of "adjudicator" is replaced: "adjudicator" means a person or board of adjudication to whom a grievance is referred	
Clause 382			
Privative clause	Privative clause applicable to Board decisions also applies to adjudicators decisions		
Clause 392 and Clause 416			
Transitional provisions		Members cease to hold office on the day on which ss 366(1) comes into force	Members cease to hold office on the day on which ss 366(1) comes into force
Clause 371 and 419			
Transitional Provisions		Nothing effects the status of any person employed by the former board	Nothing effects the status of any person employed by the former tribunal
Clause 438			

Highlights of **Key Elements**	**PSLREBA** ***new***	**PSLRB** ***Under PSLRA*** ***current***	**PSST** ***Under PSEA*** ***current***
Transitional provision	Every proceeding commenced under the Act before the day on which this division comes into force is to be taken up and continued under and in conformity with that Act, as it is amended by this division.		
Clause 455			
Status	**Schedule V (Separate Agencies) of the *Financial Administration Act (FAA)***	**Schedule V (*FAA*)**	**Schedule IV (*FAA*)**