



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

# **PUBLIC SERVICE STAFFING TRIBUNAL**

## **PROCEDURAL GUIDE 2<sup>ND</sup> EDITION**

# TABLE OF CONTENTS

(Ctrl + click to follow link)

1.	<b>Introduction - Why a guide?</b>	1
2.	<b>Official languages</b>	2
3.	<b>General information</b>	2
	Hours of business	2
	Delivery of documents to the Tribunal	2
	Calculation of time periods	3
	Address of the Tribunal for delivery of documents	4
	Information available on the Internet	4
4.	<b>Complaints that may be brought to the Tribunal under the <i>Public Service Employment Act</i></b>	4
	Types of complaints	4
	What is abuse of authority?	5
	Who can file a complaint with the Tribunal?	6
	Who are the parties?	7
	Who has a right to be heard?	7
	Can a complainant be represented?	7
5.	<b>Filing a complaint</b>	8
	When must a complaint be filed?	8
	How must a complaint be filed?	8
	Can I send in the Notice of Consideration instead of the Notice of Appointment or Proposed Appointment?	9
	To whom must the complaint be addressed?	10
	Responsibilities of the complainant	10
	Information concerning the filing of the complaint	10
	What happens if the deadline for filing a complaint is missed?	11
	What happens if a person files a complaint outside the time period prescribed in the Regulations?	11
6.	<b>Raising an issue of discrimination under the <i>Canadian Human Rights Act</i></b>	12
	Notice to the Canadian Human Rights Commission	12
7.	<b>Processing of complaints by the Tribunal</b>	14
	Sending an acknowledgement of receipt	14
	Initial review of the complaint and consideration of any preliminary issues	14

	Complaint sent to the respondent.....	14
	Sending copies of the complaint .....	15
	Participation in mediation .....	15
<b>8.</b>	<b>Exchange of information.....</b>	<b>15</b>
	Purpose of the exchange of information.....	15
	Responsibilities of the parties.....	16
	Personal Information .....	16
	Time period to exchange information .....	16
	What happens if the complainant and the respondent do not exchange relevant information within 25 days? .....	17
	Refusal to exchange information .....	17
	Request for a production order.....	17
	Reply of the party who is requested to exchange information.....	18
	Decision of the Tribunal on request for a production order .....	18
	Conditions that may be included in a production order .....	18
	What factors will the Tribunal consider when deciding whether to order a party to produce information? .....	19
<b>9.</b>	<b>Interventions in the Tribunal’s proceedings .....</b>	<b>19</b>
	What is an intervention? .....	19
	Who can request intervenor status?.....	19
	How to apply for intervenor status .....	19
	How to reply to an application for intervenor status.....	20
	What criteria will the Tribunal consider on an application for intervenor status? .....	21
	Decision of the Tribunal on the application for intervenor status.....	21
<b>10.</b>	<b>Allegations of the complainant.....</b>	<b>21</b>
	When must the complainant provide allegations? .....	21
	Responsibilities of the complainant .....	21
	Contents of the allegations .....	22
	Sending copies of the allegations.....	24
	What happens if the allegations are incomplete? .....	24
	What happens if the complainant does not file allegations?.....	25
<b>11.</b>	<b>New and amended allegations.....</b>	<b>25</b>
	Permission given by Tribunal .....	25
	Request to amend or add allegations.....	25
	Responsibilities of the complainant .....	26

	Decision of the Tribunal.....	27
<b>12.</b>	<b>Reply of the respondent to the complainant's allegations .....</b>	<b>27</b>
	Time allowed to file a reply to the complainant's allegations.....	27
	Contents of the reply .....	27
	What happens if the respondent does not file a reply? .....	28
	Opportunity for the other parties to reply and to participate in the hearing....	28
	Contents of the reply .....	28
<b>14.</b>	<b>Withdrawal of complaint .....</b>	<b>29</b>
<b>15.</b>	<b>Notice of hearing .....</b>	<b>30</b>
<b>16.</b>	<b>Motions and requests.....</b>	<b>30</b>
	What is a motion?.....	30
	Who can present a motion or request? .....	31
	When may a motion or request be presented? .....	31
	How to present a motion or a request .....	31
	Where to send the motion or request .....	31
	What happens after a motion or request has been received?.....	32
	Consideration of the motion or request .....	32
<b>17.</b>	<b>Pre-hearing conference and settlement conference.....</b>	<b>32</b>
	Purpose of a pre-hearing conference .....	32
	Holding a pre-hearing conference .....	32
	Questions to be discussed at the pre-hearing conference .....	33
	Purpose of settlement conference.....	33
<b>18.</b>	<b>Tribunal hearings.....</b>	<b>34</b>
	What is a paper hearing? .....	34
	What is an affidavit? .....	34
	Contents of the affidavit.....	34
	When is an affidavit used? .....	35
	Oral hearings .....	35
	Place of hearing .....	35
<b>19.</b>	<b>Conduct of the oral hearing .....</b>	<b>36</b>
	Preliminary matters .....	36
	Evidence.....	36
	What is oral testimony? .....	37
	How to ensure that a witness will be present at the hearing .....	37
	Consideration of the request for a summons.....	37

	Service of the summons .....	37
	What happens if the hearing is postponed? .....	38
	Exclusion of witnesses .....	38
	Complainant's evidence .....	38
	Respondent's evidence .....	39
	Evidence of those who have a right to be heard .....	39
	Submissions of Canadian Human Rights Commission .....	39
	Submissions of Intervenors .....	39
	Final arguments of the complainant and respondent .....	39
	Final arguments of the other parties.....	39
	Complainant's reply argument.....	40
<b>20.</b>	<b>Adjournments and postponements.....</b>	<b>40</b>
<b>21.</b>	<b>Decisions of the Tribunal .....</b>	<b>40</b>
<b>22.</b>	<b>Remedial powers of the Tribunal .....</b>	<b>41</b>
<b>23.</b>	<b>Enforcement of the Tribunal's decisions in Federal Court .....</b>	<b>41</b>
<b>24.</b>	<b>Judicial review - Privative clause .....</b>	<b>42</b>



## PUBLIC SERVICE STAFFING TRIBUNAL PROCEDURAL GUIDE

### 1. Introduction - Why a guide?

The Public Service Staffing Tribunal (the Tribunal) is a new independent administrative tribunal enacted by the [Public Service Employment Act](#) (PSEA) which came into force on December 31<sup>st</sup>, 2005. The Tribunal is responsible for dealing with complaints related to internal appointments, lay-offs, revocation of internal appointments, and appointments made or proposed as a result of the implementation of corrective action.

To assist in meeting its responsibilities the Tribunal has enacted [Regulations](#) which govern the proceedings of the Tribunal. Since it is not possible to include in regulations all the questions that may arise in connection with a complaint process, this guide has been developed to assist parties who will be involved in proceedings before the Tribunal.

The *Public Service Staffing Tribunal Procedural Guide* (the Guide) is for information purposes only and does not contain any statements of law. Users of the Guide must also consult the *Public Service Employment Act* and the *Public Service Staffing Tribunal Regulations* (the *Regulations*). In the event of any discrepancy between the legislation and the information contained in the Guide, the legislation will apply. As well, users should consult the Tribunal's web site for recent decisions which may have a bearing on their case.

The Guide is intended as a working tool that may be revised over time. Users are invited to send their comments to the Tribunal so that the Guide can be adapted and improved on where necessary. Please send your comments to the Tribunal at:

Email Address: [info@psst-tdfp.gc.ca](mailto:info@psst-tdfp.gc.ca)

Mailing Address: Public Service Staffing Tribunal  
240 Sparks Street, 6<sup>th</sup> Floor West  
Ottawa, Ontario K1A 0A5

## 2. Official languages

A complainant may ask that the complaint proceeding, including the hearing, be held in the official language of his or her choice, in accordance with the [Official Languages Act](#). At the time of filing the complaint, the complainant must indicate whether he or she wishes to have the hearing in English or in French.

When necessary, simultaneous interpretation will be available for a hearing. In cases where the complainant requests a hearing in one of the official languages, simultaneous interpretation may still be necessary if, for example, one of the witnesses prefers to use the other official language.

A party requesting simultaneous interpretation will need to inform the Tribunal at least two weeks before the scheduled hearing date. In some locations, it may be difficult to reserve interpretation services without this two-week notice.

The Tribunal is able to serve its clientele in both official languages, and all Tribunal documents are available in both English and French. The Tribunal's decisions and orders are issued, and posted on the Tribunal's website in both official languages. Please refer to [chapter 21 of the Guide](#) for further details concerning the Tribunal's final decisions. Documents may be filed in either official language, regardless of the language chosen for the hearing. Please note that the Tribunal does not translate the documents that have been submitted.

## 3. General information

### ***Hours of business***

The Tribunal's hours of business are from 8:30 a.m. to 5:00 p.m., Eastern Time, Monday to Friday.

### ***Delivery of documents to the Tribunal***

Documents can be delivered to the Tribunal in person, by courier or by regular or registered mail. Documents need to be received by the Tribunal within the time periods prescribed in the [Regulations](#) or as determined by the Tribunal.

Documents may also be sent to the Tribunal by fax or electronic mail. To ensure that documents are received as soon as possible, the Tribunal strongly encourages the filing of documents by electronic mail whenever possible. Where a **notice of complaint** has been sent by fax or electronic mail, the original must be sent immediately to the Tribunal by mail or courier. Documents are to be prepared on 21.6 cm X 27.9 cm (8.5 x 11 inch) paper.

## **Calculation of time periods**

In calculating a time period, Saturdays, Sundays and holidays must be counted. However, if a time period specified in the [Regulations](#) ends on a Saturday, Sunday or a holiday within the meaning of the [Interpretation Act](#), the end of the time period will be brought forward to the day immediately following the weekend or holiday ([s. 7 of the Regulations](#)). Please refer to the [Interpretation Act](#) for a list of holidays.

## **Document or notice deemed to have been received**

The [Regulations](#) indicate several time periods for receipt of documents and notices. There are also several ways of sending a document, which may affect the date of receipt.

The Tribunal will consider a document to have been received in the following circumstances ([s. 3 of the Regulations](#)): (See note below)

- (a) *For a document sent by electronic mail or by fax:* the day on which it is sent. (The page confirming the fax transmission is proof that the document has been sent);
- (b) *For a document sent by courier or delivered by hand:* the day on which the document is delivered;
- (c) *For a document sent by mail, six days after:*
  - the date of the postmark or the date of the postage meter impression authorized by the Canada Post Corporation;
  - if both the postmark and the postage meter impression appear on the envelope, the later of the two.

\*To ensure proof of delivery, it is suggested that complaints be sent by registered mail.

**Note:** These timelines do not apply to the original notice of complaint. Complaints **must be received** by the Tribunal **within 15 days** of the notification of appointment or proposed appointment, lay-off or revocation of the appointment. Complaints received after that time are considered to have been filed out of time and could be dismissed on that basis. See [chapter 5 of the Guide](#) for additional information on filing a complaint.

### ***Address of the Tribunal for delivery of documents***

Public Service Staffing Tribunal  
240 Sparks Street, 6<sup>th</sup> Floor West  
Ottawa, Ontario K1A 0A5

Telephone: 613-949-6516  
Toll free: 1-866-637-4491  
Fax: 613-949-6551

Email address:

- For filing documents with the Executive Director of the Tribunal: [director.directeur@psst-tdfp.gc.ca](mailto:director.directeur@psst-tdfp.gc.ca)
- For general information: [info@psst-tdfp.gc.ca](mailto:info@psst-tdfp.gc.ca)

### ***Information available on the Internet***

The [Regulations](#) and the full text of the [Public Service Employment Act](#) are available on the Tribunal's website at <http://www.psst-tdfp.gc.ca>.

The Tribunal's decisions, notices of hearing and the Public Service Staffing Tribunal Procedural Guide are available in both official languages on the Tribunal's website.

## **4. Complaints that may be brought to the Tribunal under the *Public Service Employment Act***

### ***Types of complaints***

The [Public Service Employment Act](#) (the *PSEA*) provides the Tribunal with the authority to deal with complaints involving:

- *the deputy head's decision to lay-off an employee.* The ground for complaint is that the manager abused his or her authority in selecting the complainant for lay-off [[subs. 65\(1\)](#) of the *PSEA*];
- *the decision of a deputy head or the Public Service Commission to revoke an appointment* [[subs. 15\(3\)](#), [67\(1\)](#) or [67\(2\)](#) of the *PSEA*]. The ground for complaint is that the revocation was unreasonable ([s. 74](#) of the *PSEA*);
- *internal appointments.* The grounds for complaint are abuse of authority and denial of the right to be assessed in the official language of the person's choice [[subs. 77\(1\)](#) of the *PSEA*];

- *failure of corrective action following a complaint against an internal appointment that was substantiated* ([s. 83](#) of the *PSEA*). The ground for complaint is that the person was not appointed or proposed for appointment by reason of an abuse of authority in the implementation of the corrective action.

The Tribunal may also interpret and apply the [Canadian Human Rights Act](#) when addressing complaints involving internal appointments and lay-offs [[subs. 65\(7\)](#) and [s. 80](#) of the *PSEA*]. A complainant may thus allege that there has been abuse of authority based on one of the prohibited grounds of discrimination set out in the [Canadian Human Rights Act](#). The prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted. Please refer to [chapter 6 of the Guide](#) for information on how to raise an issue of discrimination related to a complaint before the Tribunal.

To find more information about the prohibited grounds of discrimination generally, please consult the Canadian Human Rights Commission's website at <http://www.chrc-ccdp.ca>.

### ***What is abuse of authority?***

Parliament has not defined the concept of abuse of authority, other than to stipulate that it includes bad faith and personal favouritism [[subs. 2\(4\)](#) of the *PSEA*]. The concept of abuse of authority will be developed as the Tribunal rules on cases brought before it and establishes its case law. Each complaint will be decided on a case-by-case basis in accordance with the facts.

In [Jeannette Tibbs and the Deputy Minister of National Defence](#), the Tribunal concluded that abuse of authority is more than mere errors or omissions, and that it must involve wrongdoing. In other words, abuse of authority will always include improper conduct, but the degree to which the conduct is improper may determine whether or not it constitutes abuse of authority.

The Tribunal also found that the five categories of abuse identified by David Philip Jones and Anne S. de Villars in *Principles of Administrative Law* (Toronto: Thomson Carswell, 2004) apply to all forms of discretionary administrative decisions. The five categories are:

1. When a delegate exercises his/her/its discretion with an improper intention in mind (including acting for an unauthorized purpose, in bad faith, or on irrelevant considerations).
2. When a delegate acts on inadequate material (including where there is no evidence, or without considering relevant matters).

3. When there is an improper result (including unreasonable, discriminatory, or retroactive administrative actions).
4. When the delegate exercises discretion on an erroneous view of the law.
5. When a delegate refuses to exercise his/her/its discretion by adopting a policy which fetters the ability to consider individual cases with an open mind.

What these five types of abuse all have in common is that Parliament could not have intended to delegate the authority to act in such an outrageous, unreasonable or unacceptable way.

Where they differ, however, is with regard to intent. The first type requires improper intention. In the other types, the delegate may have acted in good faith, but still abused his or her discretionary power.

### ***Who can file a complaint with the Tribunal?***

The [PSEA](#) sets out four types of complaints that may be brought before the Tribunal and specifies who has a right of complaint under each type.

- *For an internal appointment process*, the following parties have a right of complaint on the grounds that there was abuse of authority in either applying merit or choosing between an advertised and a non-advertised appointment process, and/or there was a denial of the right to be assessed in the official language of the person's choice:

(a) any unsuccessful candidate in the area of selection in an advertised process; or

(b) any person in the area of selection in a non-advertised process.

A complainant must be someone who was not appointed or proposed for appointment in the process that is the subject of the complaint. A person cannot file a complaint on behalf of another person or group. However, an authorized representative – e.g. a bargaining agent representative - may file a complaint on behalf of a complainant. Please refer to the information under the heading entitled “*Can the parties be represented?*” for further details.

- *If an appointment or proposed appointment occurs as a result of corrective action taken in response to a successful complaint under [s. 77](#) of the PSEA*, the following parties have a right of complaint on the ground that there was abuse of authority in implementing the corrective action:

(a) the person who filed the original complaint;

(b) the person originally proposed for appointment or appointed; or

(c) any person directly affected by the implementation of the corrective action.

- *If some, but not all, of the employees in a part of an organization are selected for lay-off, any employee informed by the deputy head that he or she will be laid off is entitled to file a complaint on the ground that the deputy head's decision to lay him or her off constitutes abuse of authority.*
- *Any person whose appointment is revoked in an internal appointment process by the Public Service Commission or by the deputy head is entitled to file a complaint on the ground that the decision to revoke was unreasonable.*

### ***Who are the parties?***

In all cases, the complainant, the deputy head and the Public Service Commission (PSC) – or their representatives – are entitled to be heard by the Tribunal and are therefore considered “parties”. The deputy head (or the PSC, where there is no delegation of staffing authority) is referred to as the “respondent” to the complaint.

### ***Who has a right to be heard?***

Under the [PSEA](#), different persons or organizations are given a right to be heard, depending on the type of complaint. **In addition to the complainant, the respondent and the PSC, the other parties are:**

- For cases dealing with internal appointments:
  - the person appointed or proposed for appointment [s. 79. (1)]
- For cases dealing with failure of corrective action:
  - the person appointed or proposed for appointment as a result of the implementation of corrective action (s. 85)
- For cases dealing with lay-offs:
  - every other employee in the part of the organization where the lay-off occurs [s. 65 (3)]
- For cases dealing with revocation of appointment:
  - **no** other person has the right to be heard in the case of a revocation of appointment (s. 75).

### ***Can a complainant be represented?***

Yes, a complainant may be represented at any stage of a complaint brought before the Tribunal by a union representative, lawyer or any other person of their choosing. If a complainant chooses to be represented, he or she must advise the Executive Director in writing of the name and contact information of his/her authorized representative.

Once the Executive Director receives this written authorization, the Tribunal will deal directly with the complainant's representative for all matters related to proceedings before the Tribunal, such as the scheduling of mediations, hearings, etc. The complainant's representative, in turn, will be responsible for informing the complainant of any communications, requests, etc. from the Tribunal.

It is essential that the complainant and his or her representative keep each other fully informed to ensure that requests from the Tribunal are dealt with in a timely manner. A representative may sign and file the notice of complaint on behalf of the complainant as long as he or she produces a written authorization.

## **5. Filing a complaint**

### ***When must a complaint be filed?***

All complaints must be filed within 15 calendar days (not working days) of the date on which the notice of the appointment or proposed appointment, revocation or lay-off (that is the subject of the complaint) was received or, in the case of a public notice, 15 days after the date of the notice [[s. 10 of the Regulations](#)].

The 15-day time limit is a strict one: The Tribunal **must receive** a copy of your complaint within the 15-day time limit. Complaints received after the 15 days are considered untimely and may be dismissed for this reason. To ensure that the Tribunal receives the complaint in a timely manner, it is recommended that it be sent by fax or e-mail. See the [MacDonald](#) decision.

Although a complaint may be sent by fax or by e-mail, the *Regulations* require that a hard copy of the complaint with the complainant's original signature be provided to the Tribunal as well.

### ***How must a complaint be filed?***

The complainant may use [Form 1](#) to make his or her complaint. The complaint form is available from the Tribunal's website or can be obtained by contacting the Tribunal.

A complaint must be filed in writing and needs to include the following information ([s. 11 of the Regulations](#)):

- (a) the complainant's name, address, telephone number, fax number and, if available, electronic mail address;
- (b) the mailing address or electronic mail address that is to be used for sending documents to the complainant;
- (c) the name, address, telephone number, fax number and electronic mail address of the complainant's authorized representative, if any;

- (d) the number or identifier, if any, of the process to which the complaint relates;
- (e) the date of the notice of the lay-off, revocation, appointment or proposed appointment to which the complaint relates;
- (f) the name of the department or agency, branch or sector involved in the process to which the complaint relates;
- (g) a reference to the [provision](#) of the *PSEA* under which the complaint is made;
- (h) a full factual description of the events, circumstances or actions giving rise to the complaint, if known by the complainant;
- (i) the signature of the complainant or their authorized representative;
- (j) the date of the complaint.

To avoid delays in the processing of the complaint, please include a copy of the staffing advertisement and the notice of appointment or proposed appointment, lay-off or revocation. In the case of a complaint regarding an appointment or proposed appointment, please indicate whether the appointment is indeterminate or acting.

The complainant must provide a postal or electronic address that may be communicated to the respondent and all other parties. A business address may therefore be preferable.

Complainants should not include with the complaint all the documents or evidence that they intend to rely on at the hearing. Complainants should be aware that **all documentation** accompanying their complaint **will be provided to all parties** to the complaint. Therefore, it is best to exercise caution when providing sensitive or confidential information with your complaint. It may be more appropriate to disclose such information during the exchange of information or the hearing itself.

***Can I send in the Notice of Consideration instead of the Notice of Appointment or Proposed Appointment?***

No. The Notice of Appointment or Proposed Appointment should be provided. **The Notice of Consideration does not entitle anyone to file a complaint since no appointment has been made or proposed.**

Following an appointment process, one or more Notices of Appointment or Proposed Appointment may be issued. Each Notice of Appointment or Proposed

Appointment may contain one or more names and provides a specific complaint period. In other words, any Notice that does not include your name entitles you to file a complaint with the Tribunal **provided, of course, that you meet the other conditions for filing a complaint.**

It is important to include a copy of the Notice of Appointment or Proposed Appointment with your complaint so that the proper parties to the complaint can be identified. If you file a complaint in response to the third Notice of Appointment or Proposed Appointment following a process, the person(s) appointed or proposed for appointment in the first and second notices are not parties to your complaint.

### ***To whom must the complaint be addressed?***

The complaint must be addressed to the Executive Director as follows:

Executive Director  
Public Service Staffing Tribunal  
240 Sparks Street, 6<sup>th</sup> Floor West  
Ottawa, Ontario K1A 0A5

Fax: 613-949-6551  
Email: [director.directeur@psst-tdfp.gc.ca](mailto:director.directeur@psst-tdfp.gc.ca)

### ***Responsibilities of the complainant***

The complainant or the complainant's authorized representative must ensure that the complaint is sent to the Executive Director and contains all the requested information; otherwise, the complaint may be returned to him or her, possibly delaying the process.

### ***Information concerning the filing of the complaint***

It is the responsibility of the complainant to ensure that the complaint is **received** by the Tribunal within the prescribed time period of 15 **calendar** days. See the [Casper](#) and [Tennant](#) decisions.

The complaint may be sent by electronic mail, fax, courier or mail, or may be delivered by hand. Complaints sent by fax or electronic mail will be considered received on the date on which they are sent. Complaints sent by courier or delivered by hand will be considered to be received on the day of their delivery.

Although complaints may be sent by regular mail, complainants are **strongly** encouraged to file their complaint by fax or electronic mail and then send a signed, paper copy by mail to the Executive Director. This ensures prompt

receipt of the complaint document and reduces the potential of missing the deadline for filing.

***What happens if the deadline for filing a complaint is missed?***

The Tribunal may, in exceptional circumstances, extend the time allowed for making a complaint. A person who wishes to file a complaint, but who has missed the 15-day deadline, may ask the Tribunal to extend this time period. The request must be made in writing as soon as possible and sent to the attention of the Executive Director at the above address. In the request, the person must state the reasons why he or she believes the Tribunal should extend the time period for filing the complaint. The Tribunal will then seek submissions on the issue from the respondent and will provide a ruling on the request for an extension as soon as possible.

***What happens if a person files a complaint outside the time period prescribed in the Regulations?***

The Tribunal may, on its own accord, dismiss a complaint if it is not in the interest of fairness to extend the time period for filing the complaint ([s. 5 of the Regulations](#)). As well, the respondent or other parties may raise an objection when a complaint is filed outside the prescribed time period. (Please refer to [chapter 4 of the Guide](#) for information on the parties to a complaint.)

An objection must be filed with the Executive Director, and a copy sent to the complainant before the expiry of the 25-day period allowed for the exchange of information [[subs. 21\(1\) of the Regulations](#)].

An objection must be in writing and include the following information [[subs. 21\(2\) of the Regulations](#)]:

- (a) the name, address, telephone number, fax number and electronic mail address, if any, of the objecting party;
- (b) the name, address, telephone number, fax number and electronic mail address of the objecting party's authorized representative, if any;
- (c) the Tribunal's file number for the complaint;
- (d) the facts on which the objecting party relies in making the objection;
- (e) the signature of the objecting party;
- (f) the date of the request.

[Form 6](#) is available for the purpose of raising an objection and may be obtained from the Tribunal's website or by contacting the Tribunal.

The complainant may provide a written response within five days of receiving a copy of the objection. Any written response must be filed with the Executive Director, and a copy sent to the respondent and the other parties.

After reviewing the submissions, the Tribunal will render a decision on the issue and inform the complainant, the respondent, and the other parties. See decisions in [MacDonald](#), [Casper](#) and [Tennant](#).

## **6. Raising an issue of discrimination under the *Canadian Human Rights Act***

In the case of complaints concerning internal appointments ([s. 77](#) of the *PSEA*) or lay-offs [[subs. 65\(4\)](#) of the *PSEA*], the complainant may allege that there has been discrimination within the meaning of the [Canadian Human Rights Act](#). Such an allegation may be made at any point in the complaint process. If the complainant has not already done so at the time of filing the complaint, he or she must inform the Tribunal and the Canadian Human Rights Commission as soon as possible that he or she intends to raise such an issue [[subs. 65\(5\)](#) and [s. 78](#) of the *PSEA*].

The prohibited grounds of discrimination, as set out in [s. 3 of the Canadian Human Rights Act](#), include: race, national or ethnic origin, colour, religion, age, sex (including pregnancy), sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

### ***Notice to the Canadian Human Rights Commission***

The complainant must, as soon as possible, notify the Canadian Human Rights Commission in writing of his or her intention to invoke the provisions of the [Canadian Human Rights Act](#). The complainant must send a copy of the written notice to the Executive Director, the respondent and the other parties.

The written notice must include the following information [[subs. 20\(1\) of the Regulations](#)]:

- (a) a copy of the complaint;
- (b) the complainant's name and the mailing address or electronic mail address that is to be used for sending documents to the complainant;
- (c) the name, address, telephone number, fax number and electronic mail address of the complainant's authorized representative, if any;

- (d) a description of the issue involving the interpretation or the application of the [Canadian Human Rights Act](#) and of the alleged discriminating practice or policy;
- (e) the prohibited ground of discrimination involved;
- (f) the corrective action sought;
- (g) the signature of the complainant or the complainant's authorized representative;
- (h) the date of the notice.

[Form 5](#) is available for the purpose of providing notice to the Canadian Human Rights Commission and may be obtained from the Tribunal's website or by contacting the Tribunal.

The complainant must send a copy of the notice to the respondent, the other parties in accordance with [chapter 4 of the Guide](#), the Executive Director and to any intervenors. A copy of the complaint does not need to be included with the notice.

The complainant must provide a postal or electronic address that may be disclosed to the respondent, the other parties, the Canadian Human Rights Commission and to intervenors, if any.

### ***Notice from the Canadian Human Rights Commission***

The Canadian Human Rights Commission must, no later than 15 days after receiving the complainant's notice, notify the Tribunal whether or not it intends to make submissions regarding the issue raised in the notice [subs. [65\(6\)](#) and [79\(2\)](#) of the *PSEA* and [subs. 20\(3\) of the Regulations](#)].

The Executive Director will provide a copy of the Canadian Human Rights Commission's notice to the respondent, the other parties and, if applicable, to any intervenors [[subs. 20\(4\) of the Regulations](#)].

It should be noted that, under the *PSEA*, the Canadian Human Rights Commission is not a party to any complaint made to the Tribunal. However, on receiving the complainant's notice of an issue involving the interpretation or application of the *Canadian Human Rights Act*, the Canadian Human Rights Commission may choose to participate in the proceedings by making submissions to the Tribunal with respect to the issue.

## **7. Processing of complaints by the Tribunal**

### ***Sending an acknowledgement of receipt***

The Executive Director will send an acknowledgement of receipt to the complainant and inform the complainant of the next steps in the complaint process and of the applicable time frames ([s. 12 of the Regulations](#)).

### ***Initial review of the complaint and consideration of any preliminary issues***

Where information is missing or incomplete, the Tribunal may contact the complainant to obtain the required information within a specified time period.

The Tribunal may, on its own accord, dismiss a complaint at the initial review for a number of reasons, including:

- The complaint does not fall within its jurisdiction;
- The complaint is filed out of time;
- The complaint is incomplete; or,
- The complaint is frivolous or vexatious [[subs. 99\(2\)](#) of the *PSEA*].

Jurisdictional or frivolous/vexatious challenges may be raised by the respondent or the other parties if they are not addressed by the Tribunal when the complaint is initially reviewed. Please refer to [chapter 4 of the Guide](#) for details of who has a right to be heard for each type of complaint.

Examples of complaints that are beyond the jurisdiction of the Tribunal include instances where the complainant alleges that the appointment was not free from political influence [[subs. 77\(3\)](#) of the *PSEA*], or where an external appointment process is being challenged. These types of cases fall within the exclusive purview of the Public Service Commission (ss. [66](#) and [68](#) of the *PSEA*).

### ***Complaint sent to the respondent***

The Executive Director will send a copy of the complaint to the respondent, and request the names and addresses of the other parties, including their electronic addresses, if available. This information is to be provided to the Executive Director within five days following the date of the request ([ss. 12 and 13 of the Regulations](#)). Please refer to [chapter 4 of the Guide](#) for information regarding who has a right to be heard for each type of complaint.

[Form 2](#) is available for the purpose of providing the names and addresses of the other parties and may be obtained from the Tribunal's website or by contacting the Tribunal.

### ***Sending copies of the complaint***

Upon receiving the names and addresses of the other parties, the Executive Director will send a copy of the complaint to the Public Service Commission and to the other parties and inform them of the next steps in the process and the applicable time frames ([s. 14 of the Regulations](#)).

### ***Participation in mediation***

To assist in resolving the complaint, the [PSEA](#) stipulates that the Tribunal may provide mediation services [[subs. 97\(1\) of the PSEA](#)]. Generally, the parties to mediation are the complainant and the respondent and their respective representatives.

The Tribunal assumes that mediation of a complaint will take place unless the complainant or the respondent informs the Tribunal prior to the end of the period of 25 days allowed for the exchange of information that they do not wish to participate in mediation [[subs. 15\(1\) of the Regulations](#)]. The Tribunal will contact the parties to schedule the mediation.

Even though a complainant or respondent may choose not to participate in mediation initially, they may ask the Tribunal to set a date for mediation at any subsequent stage of the complaint process. The other party must consent to the mediation [[subs. 15\(2\) of the Regulations](#)].

Participation in mediation does not suspend the time frames contained in the [Regulations](#). However, the parties may request the Tribunal to hold the complaint in abeyance during the mediation process. The Tribunal may grant such requests and include any terms that it considers appropriate. The Tribunal may contact the parties to determine when they expect to conclude the mediation process.

## **8. Exchange of information**

### ***Purpose of the exchange of information***

The exchange of information is designed to facilitate the early resolution of the complaint by the complainant and the respondent in that it gives them an opportunity to meet and discuss the nature of the complaint and share any relevant information as soon as possible after the complaint has been filed. The timely exchange of information may help to resolve complaints.

The exchange of information requires more than the transmittal of a list of requested information by one party and copies of the requested documents by the other. Parties involved in the exchange of information should engage in a dialogue. The best way to do this is by a face-to-face meeting or, if not possible, a telephone conversation. The exchange of information is meant to be a “two-

way street”, where those involved in the process – the complainant, the bargaining agent representative, the hiring manager, one or more members of the selection board, and/or the HR specialist – have an opportunity to explain their point of view and respond to any questions about the staffing process. See the [Visca](#) decision for additional guidance.

### ***Responsibilities of the parties***

Exchange of relevant information is essential to ensure that the complaint process is both timely and fair. The parties to the exchange of information are the complainant and the respondent. Each has a responsibility to fully comply with the requirements contained in the [Regulations](#) for the exchange of information ([ss. 16 and 17 of the Regulations](#)). The exchange of information is a reciprocal obligation—the complainant and the respondent are required to provide each other with all relevant information concerning the complaint. See the [Visca](#) decision.

### ***Personal Information***

[Paragraph 8\(2\)\(c\) of the Privacy Act](#) provides that personal information under the control of a government institution may be disclosed when it is for the purpose of complying with a subpoena issued or an order made by a body with jurisdiction to compel the production of information. By virtue of paragraph 99(1)(e) of the *PSEA*, therefore, the Tribunal may compel a department to produce personal information in relation to a complaint.

In addition, parties should be aware that paragraph 8(2)(c) of the *Privacy Act* allows a government institution to disclose personal information when it is for the purpose of complying with the rules of court relating to the production of information. The Tribunal has enacted regulations relating to the production of information. [Subsection 16\(1\) of the Tribunal's Regulations](#) specifically provides that the complainant and the respondent must exchange all relevant information regarding the complaint. Consequently, a government institution does not require an order from the Tribunal to disclose personal information in the context of a complaint. See the [Larose](#) decision.

### ***Time period to exchange information***

Once the Executive Director has acknowledged receipt of a complaint and informed the complainant and respondent of the next steps in the complaint process, they have 25 days to complete the exchange of information [[subs. 16\(1\) of the Regulations](#)] from the date of acknowledgement of receipt of the complaint [[subs. 16\(2\) of the Regulations](#)].

***What happens if the complainant and the respondent do not exchange relevant information within 25 days?***

Where a party fails to comply, the Tribunal may order that the party complete the exchange of information within a specified time limit [[subs. 16\(3\) of the Regulations](#)].

***Refusal to exchange information***

There are circumstances in which a party may refuse to exchange information related to the complaint [[subs. 17\(1\) of the Regulations](#)]. In particular, a party may refuse where the information may:

- (a) threaten national security;
- (b) threaten any person's safety; or,
- (c) affect the validity or continued use of a standardized test or parts of the test or affect the results of such a standardized test by giving an unfair advantage to any individual.

There may be other grounds for refusing to exchange certain information. For example, legal opinions are protected by solicitor-client privilege.

***Request for a production order***

If a party has refused to exchange information that another party believes is relevant, a written request may be made to the Tribunal for an order to produce the information [[subs. 17\(2\) of Regulations](#)]. The written request for a production order must include [[subs. 17\(3\) of the Regulations](#)]:

- (a) the name, address, telephone number, fax number and electronic mail address, if any, of the party making the request;
- (b) the Tribunal's file number for the complaint;
- (c) a detailed explanation as to why the Tribunal should order that the information be provided;
- (d) the signature of the party making the request;
- (e) the date of the request.

[Form 3](#) is available for the purpose of seeking a production order and may be obtained from the Tribunal's website or by contacting the Tribunal.

The party seeking a production order must send a copy of the written request to the other parties and to the:

Executive Director  
Public Service Staffing Tribunal  
240 Sparks Street, 6<sup>th</sup> Floor West  
Ottawa, Ontario K1A 0A5

Fax: 613-949-6551

Email: [director.directeur@psst-tdfp.gc.ca](mailto:director.directeur@psst-tdfp.gc.ca)

### ***Reply of the party who is requested to exchange information***

A party that has refused to provide information requested by the other party is entitled to reply to the request for a production order and to explain to the Tribunal why it has refused to provide the information. The written reply must be delivered to the Tribunal within five days of receipt of a copy of the written request for a production order. The written reply must be sent to the Executive Director at the above address with a copy to the other parties. Please refer to [chapter 16 of the Guide](#) for more detailed information on how to present or to respond to a request or motion.

### ***Decision of the Tribunal on request for a production order***

Following written and, where necessary, oral submissions, the Tribunal may order the exchange of information, subject to any conditions that it deems necessary. Such conditions may apply before, during and after the hearing [[subs 17\(4\), \(5\) and \(6\) of the Regulations](#)].

### ***Conditions that may be included in a production order***

The Tribunal may impose conditions designed to protect the confidentiality of the information. For example, the Tribunal may:

- prohibit the party who receives the information from photocopying the document;
- order that the document be disclosed to a party's representative, subject to any further conditions the Tribunal considers necessary;
- order the party who receives the information to return the document to the party who provided it, once the time period for submitting an application for judicial review to the Federal Court has expired;
- require the parties to undertake that they will not disclose the contents of the document; or

- place the document in a sealed envelope and stipulate that it may only be opened by authorization of the Tribunal or a reviewing court.

Any document or information obtained in these circumstances may be used only for purposes of the complaint ([s. 18 of the Regulations](#)).

***What factors will the Tribunal consider when deciding whether to order a party to produce information?***

In [Oddie and the Deputy Minister of National Defence](#), the Tribunal referred to the definition of the word “relevant” contained in the Canadian Oxford Dictionary (2004): “bearing on or having reference to the matter in hand”. The Tribunal determined that there must be a clear link between the information sought and the substance of the complaint for the information to be considered relevant.

The Tribunal must be satisfied that providing the information requested will not present any risk to national security or a person’s safety or affect the validity of a test.

The Tribunal will also consider whether the request for information is clear enough to leave no doubt as to what information is being requested. In addition, the Tribunal must be satisfied that disclosure of the information will not cause undue prejudice to any of the parties.

## **9. Interventions in the Tribunal’s proceedings**

***What is an intervention?***

An intervention involves the presentation of submissions, either in writing or orally, by an individual or an organization regarding an issue before the Tribunal.

***Who can request intervenor status?***

An intervenor is not a party to the complaint. (Please refer to [chapter 4](#) of the Guide to find out who are the parties to each type of complaint.) Any person who has a substantial interest in the complaint may submit a request to the Tribunal for intervenor status [[subs. 19\(1\) of the Regulations](#)]. A person who has a right to be heard under the *PSEA* does not have to request intervenor status.

***How to apply for intervenor status***

The application for intervenor status must be in writing and include the following information [[subs. 19\(2\) of the Regulations](#)]:

- (a) the applicant's name, address, telephone number, fax number and, if available, electronic mail address;
- (b) the mailing address or electronic mail address that is to be used for sending documents to the applicant;
- (c) the name, address, telephone number, fax number and electronic mail address of the applicant's authorized representative, if any;
- (d) the Tribunal's file number for the complaint that is the subject of the application;
- (e) the grounds for intervention and the interest of the applicant in the matter;
- (f) the contribution the applicant expects to make if allowed to intervene;
- (g) the signature of the applicant or their authorized representative;
- (h) the date of the application.

[Form 4](#) is available for the purpose of requesting intervenor status and may be obtained from the Tribunal's website or by contacting the Tribunal.

The application must be sent to the:

Executive Director  
Public Service Staffing Tribunal  
240 Sparks Street, 6<sup>th</sup> Floor West  
Ottawa, Ontario K1A 0A5

Fax: 613-949-6551

Email: [director.directeur@psst-tdfp.gc.ca](mailto:director.directeur@psst-tdfp.gc.ca)

The Executive Director will send a copy of the application for intervenor status to all parties, any intervenors, and the Canadian Human Rights Commission, if applicable.

### ***How to reply to an application for intervenor status***

All parties and the Canadian Human Rights Commission, if applicable, have five days, after receiving a copy of the application for intervenor status, to inform the Tribunal in writing whether they object to the application or not and, if so, explain the grounds for the objection [[subs. 19\(3\) of the Regulations](#)]. A copy of the written reply must be sent to the Executive Director at the above address, and to all parties.

***What criteria will the Tribunal consider on an application for intervenor status?***

To determine whether or not it will grant intervenor status, the Tribunal may consider the following factors [[subs. 19\(4\) of the Regulations](#)]:

- (a) whether the applicant is directly affected by the proceeding;
- (b) whether the applicant's position is already represented in the proceeding;
- (c) whether the public interest and the interests of justice would be served by allowing the applicant to intervene; and,
- (d) whether the input of the applicant would assist the Tribunal in deciding the matter.

***Decision of the Tribunal on the application for intervenor status***

Following oral or written submissions, the Tribunal will render a decision and inform the parties and, where applicable, the Canadian Human Rights Commission and other intervenors.

If the Tribunal decides to grant intervenor status, it may issue directions on the role of the intervenor [[subs. 19\(5\) of the Regulations](#)]. For example, the Tribunal may grant the intervenor an opportunity to provide oral arguments, or limit the intervention to written submissions.

## **10. Allegations of the complainant**

***When must the complainant provide allegations?***

The complainant must provide his or her allegations to the Executive Director, the respondent, the other parties, intervenors, if any, and the Canadian Human Rights Commission, if applicable, no later than ten days after the time period for the exchange of information has expired.

***Responsibilities of the complainant***

The complainant must ensure that his or her allegations are as complete as possible. The respondent will then be able to fully reply to the allegations, thereby avoiding delays in the complaint process. The complainant must also ensure that the allegations are provided to the Executive Director, the other parties, intervenors, if any, and the Canadian Human Rights Commission, if applicable, on the **same** day.

## ***Contents of the allegations***

The allegations must be in writing and include the following information [[subs. 22\(2\) of the Regulations](#)]:

- (a) the name, address, telephone number, fax number and, if available, electronic mail address of the complainant;
- (b) the name, address, telephone number, fax number and electronic mail address of the complainant's authorized representative, if any;
- (c) the Tribunal's file number for the complaint;
- (d) a detailed description of the allegations on which the complainant intends to rely and full particulars of the relevant facts;
- (e) the signature of the complainant or the complainant's authorized representative;
- (f) the date of the document.

As a key element of the complaint process, the allegations must contain all the information on which the complainant intends to rely throughout the complaint process, including the hearing. If a complainant fails to provide his/her allegations or chooses to use the information provided in the complaint form as a basis for his/her allegations, there could be serious consequences for doing so: For example, the complainant could be precluded from bringing forth new allegations at the hearing; the respondent or one of the other parties could request the Tribunal to dismiss the complaint for failure to provide allegations or the Tribunal could consider the complaint withdrawn if a complainant fails to provide allegations (see [subs. 22\(3\) of the Regulations](#)).

The following questions may assist a complainant in drafting his or her allegations. By providing answers to these questions, you will be providing a "detailed description" of the allegations as required under [subs. 22\(2\) of the Regulations](#).

### **► What**

What events led to the filing of the complaint?

- The complainant was not appointed?
- Someone else was appointed or proposed for appointment?
- A non-advertised appointment process was chosen?
- The issue involves the interpretation or application of the *Canadian Human Rights Act*?

- The complainant was not assessed in the official language of his/her choice?

### ► **Where**

Where did the events happen? The complainant should provide details concerning:

- Location
- Department or agency
- Section or branch

### ► **Who**

Who is involved in the complaint?

- Anyone involved in the appointment, lay-off, revocation, or failure of corrective action complaint, such as the manager who made the decision, should be named in the allegations.
- Where a complaint raises an issue involving the interpretation or application of the *Canadian Human Rights Act*, the Canadian Human Rights Commission should be mentioned.

### ► **When**

When did the events happen?

- A detailed chronology of events should be included.

### ► **How**

How did the events unfold?

- How did the complainant learn about the events which led to the complaint?
- Was an informal discussion held with the manager?

### ► **Why**

Why is the complaint being filed?

- Under what section of the *Public Service Employment Act*? (Please refer to [chapter 4 of the Guide](#) for the different types of complaint that may be brought under the new *PSEA*)

- What are the grounds of complaint that the complainant is relying on? (Please refer to [chapter 4 of the Guide](#) for a detailed explanation of the various grounds for complaint)
- When a complainant alleges abuse of authority, a statement that there has been an abuse of authority, without any explicit details, is insufficient. The complainant needs to fully explain why he or she believes that the actions taken constitute abuse of authority. (See the [Tibbs](#) decision for an understanding of what may constitute “abuse of authority”.)

#### ► **What remedies**

- What does the complainant want? The complainant should state what remedies and/or corrective action he or she is seeking.

### ***Sending copies of the allegations***

The complainant must provide the Executive Director with proof that the respondent and the other parties have received a copy of the allegations. For example, the complainant could include a transmission confirmation page for documents sent by fax, or a copy of an email confirming receipt of the allegations, if sent by electronic mail.

[Form 7](#) is available for the purpose of providing allegations and may be obtained from the Tribunal’s website or by contacting the Tribunal.

The written allegations must be sent, at the same time, to the respondent, the other parties, intervenors, if any, the Canadian Human Rights Commission, if applicable, and to the:

Executive Director  
Public Service Staffing Tribunal  
240 Sparks Street, 6<sup>th</sup> Floor West  
Ottawa, Ontario K1A 0A5

Fax: 613-949-6551

Email: [director.directeur@psst-tdfp.gc.ca](mailto:director.directeur@psst-tdfp.gc.ca)

### ***What happens if the allegations are incomplete?***

As mentioned above, a statement by a complainant that “the decision not to appoint him or her constituted an abuse of authority” is not sufficient to meet the requirements of [s. 22 of the Regulations](#). The complainant must provide a detailed description of his or her allegations as well as all of the relevant facts leading to the complaint. This will enable the respondent to provide a detailed written reply to the allegations.

The Tribunal is not obligated to hold an oral hearing to reach a decision on a complaint [[subs. 99\(3\) of the PSEA](#)]. The Tribunal may render a decision on a complaint based on the written information on the record. Therefore, complete allegations are essential.

If the Tribunal is advised by the respondent that it is not possible to reply to the allegations as presented, the Tribunal may ask the complainant and the other parties to make submissions on the question and subsequently order the complainant to specify his or her allegations. Failure to comply with an order to specify the allegations may result in the dismissal of a complaint.

### ***What happens if the complainant does not file allegations?***

The Tribunal may deem the complaint to be withdrawn [[subs. 22\(3\) of the Regulations](#)]. However, before making such a decision, the Tribunal may ask the complainant to provide allegations within a specified time frame or it may ask the complainant, the respondent and the other parties for submissions on the issue of treating the complaint as withdrawn.

## **11. New and amended allegations**

### ***Permission given by Tribunal***

Upon request, the Tribunal may allow a complainant to amend an allegation, or to provide a new allegation, as long as the request is based on information that could not have been obtained before the complaint was filed. The complainant must obtain the Tribunal's permission to file new allegations or to amend the existing allegations [[subs. 23\(1\) of the Regulations](#)].

While the request to add new or amended allegations should be made as soon as possible, there may be circumstances in which a request to amend the allegations is made orally at the hearing. In such circumstances, the Tribunal will give the respondent and the other parties an opportunity to make submissions regarding the request and will rule on the request.

### ***Request to amend or add allegations***

The request must be in writing and include the following information [[subs. 23\(2\) of the Regulations](#)]:

- (a) the name, address, telephone number, fax number and, if available, electronic mail address of the complainant;
- (b) the name, address, telephone number, fax number and electronic mail address of the complainant's authorized representative, if any;

- (c) the Tribunal's file number for the complaint;
- (d) a detailed explanation as to why the complainant did not include the allegation with his or her original allegations or as to why the complainant needs to amend his or her allegations, as the case may be;
- (e) the new or amended allegation;
- (f) the signature of the complainant or the complainant's authorized representative;
- (g) the date of the request.

[Form 8](#) is available for the purpose of adding or amending allegations and may be obtained from the Tribunal's website or by contacting the Tribunal.

### ***Responsibilities of the complainant***

To avoid delays, the complainant must make his or her request to amend or add allegations as soon as possible.

The complainant must ensure that the Executive Director, the respondent, the other parties, intervenors, if any, and the Canadian Human Rights Commission, if applicable, receive a copy of the request.

The complainant must also provide the Executive Director with proof that the above-mentioned parties have received a copy of the request. For example, the complainant could include a transmission confirmation page for documents sent by fax, or, if sent by electronic mail, a copy of the email confirming that the request was received.

The request must be sent to the respondent, the other parties, intervenors, if any, the Canadian Human Rights Commission, if applicable, and to the:

Executive Director  
Public Service Staffing Tribunal  
240 Sparks Street, 6<sup>th</sup> Floor West  
Ottawa, Ontario K1A 0A5

Fax: 613-949-6551

Email: [director.directeur@psst-tdfp.gc.ca](mailto:director.directeur@psst-tdfp.gc.ca)

## ***Decision of the Tribunal***

After reviewing the written documentation or hearing the parties, the Tribunal will render a decision and inform those involved of its decision.

### **12. Reply of the respondent to the complainant's allegations**

#### ***Time allowed to file a reply to the complainant's allegations***

The respondent must submit his/her reply to the Executive Director, with a copy to the complainant, the other parties and, where applicable, to the Canadian Human Rights Commission and to intervenors, if any, within 15 days of receiving the complainant's allegations, or amended allegations [[subs. 24\(1\) of the Regulations](#)].

#### ***Contents of the reply***

The reply must be in writing and include the following information [[subs. 24\(2\) of the Regulations](#)]:

- (a) the name, address, telephone number, fax number and electronic mail address of the respondent;
- (b) the name, address, telephone number, fax number and electronic mail address of the respondent's authorized representative, if any;
- (c) the Tribunal's file number for the complaint;
- (d) a full response to any allegations or issues raised in the complaint and full particulars of any additional relevant facts on which the respondent intends to rely;
- (e) the signature of the respondent or the respondent's authorized representative;
- (f) the date of the reply.

[Form 9](#) is available for the purpose of replying to allegations and may be obtained from the Tribunal's website or by contacting the Tribunal.

The reply must be sent to the complainant, the other parties, intervenors, if any, the Canadian Human Rights Commission, if applicable, and to the:

Executive Director  
Public Service Staffing Tribunal  
240 Sparks Street, 6<sup>th</sup> Floor West  
Ottawa, Ontario K1A 0A5

Fax: 613-949-6551

Email: [director.directeur@psst-tdfp.gc.ca](mailto:director.directeur@psst-tdfp.gc.ca)

### ***What happens if the respondent does not file a reply?***

In order to avoid unnecessary delays, the Tribunal will continue complaint proceedings even in cases where the respondent has not replied to the allegations. The Tribunal will schedule a pre-hearing conference to address the issue.

## **13. Reply of the other parties who have a right to be heard**

### ***Opportunity for the other parties to reply and to participate in the hearing***

A person who has a right to be heard may prepare a written reply. If a person, who is not a complainant but has the right to be heard, wishes to participate in the hearing, he or she **must** provide a written reply. The Tribunal may schedule a pre-hearing conference to address any issue(s) related to the person's participation in the hearing.

Please refer to [chapter 4 of the Guide](#) for information regarding the parties.

### ***Contents of the reply***

The reply must be in writing and include the following information [[subs. 25\(2\) of the Regulations](#)]:

- (a) the name, address, telephone number, fax number and, if available, electronic mail address of the party;
- (b) the name, address, telephone number, fax number and electronic mail address of the party's authorized representative, if any;
- (c) the Tribunal's file number for the complaint;
- (d) a full response to any allegations or issues raised in the complaint and full particulars of any additional relevant facts on which the party intends to rely;
- (e) the signature of the party or the party's authorized representative;

(f) the date of the reply.

[Form 9](#) is available for the purpose of replying to allegations and may be obtained from the Tribunal's website or by contacting the Tribunal.

The reply must be sent to the complainant, the respondent, the other parties, the intervenors, if any, and to the Canadian Human Rights Commission, if applicable, no later than ten days after receiving the reply from the respondent, [\[subs. 25\(1\) of the Regulations\]](#). A copy of the reply must also be sent to the:

Executive Director  
Public Service Staffing Tribunal  
240 Sparks Street, 6<sup>th</sup> Floor West  
Ottawa, Ontario K1A 0A5

Fax: 613-949-6551

Email: [director.directeur@psst-tdfp.gc.ca](mailto:director.directeur@psst-tdfp.gc.ca)

#### **14. Withdrawal of complaint**

A complainant may withdraw his or her complaint at any time. In some cases, a complainant may decide to withdraw his or her complaint after mediation or the exchange of information.

The notice must be in writing and include the following information [\[subs. 26\(2\) of the Regulations\]](#):

- (a) the name, address, telephone number, fax number and, if available, electronic mail address of the complainant;
- (b) the name, address, telephone number, fax number and electronic mail address of the complainant's authorized representative, if any;
- (c) the Tribunal's file number for the complaint;
- (d) a statement that the complainant wishes to withdraw the complaint;
- (e) the signature of the complainant or the complainant's authorized representative;
- (f) the date of the withdrawal.

[Form 10](#) is available for the purpose of withdrawing a complaint and may be obtained from the Tribunal's website or by contacting the Tribunal.

To assist the Tribunal in fulfilling its annual reporting requirements to Parliament, it would be helpful if the complainant stated his or her reasons for withdrawal on the notice of withdrawal. For example:

- Further to discussions with the deputy head's representative, I hereby withdraw my complaint;
- As a result of information obtained during the exchange of information, I hereby withdraw my complaint; or
- As a result of a mediated settlement, I hereby withdraw my complaint.

The notice of withdrawal must be sent to the Executive Director [[subs. 26\(1\) of the Regulations](#)] at:

Executive Director  
Public Service Staffing Tribunal  
240 Sparks Street, 6<sup>th</sup> Floor West  
Ottawa, Ontario K1A 0A5  
Fax: 613-949-6551  
Email: [director.directeur@psst-tdfp.gc.ca](mailto:director.directeur@psst-tdfp.gc.ca)

Once the complainant's notice of withdrawal has been received, the Executive Director gives notice to the respondent, the other parties, intervenors, if any, and to the Canadian Human Rights Commission, if applicable, that the complaint has been withdrawn and the complaint file will be closed [[subs. 26\(3\) of the Regulations](#)].

## **15. Notice of hearing**

The Executive Director must send a notice to the complainant, the respondent, the other parties, intervenors, if any, and to the Canadian Human Rights Commission, if applicable, at least seven days prior to the date of the hearing. The notice must contain the date, time and place of the hearing ([s. 28 of the Regulations](#)). The Executive Director will make every possible effort to inform everyone of the hearing date as soon as possible. Please refer to the Tribunal's [Policy for the Scheduling of Hearings, Postponements and Mediations](#) for additional information.

## **16. Motions and requests**

### ***What is a motion?***

A motion is a request made to the Tribunal to render a decision or to make an order relating to one or more matters that may arise prior to, at the commencement of, or, during the course of, a hearing.

The order requested is often procedural in nature, such as a request to extend or shorten time limits. In some cases, the decision or order made following the presentation of a motion may be final – for example, a motion brought to dismiss the complaint on the grounds that it exceeds the jurisdiction of the Tribunal or is frivolous or vexatious [[subs. 99\(2\)](#) of the *PSEA*].

### ***Who can present a motion or request?***

The complainant, the respondent and any other party may present a motion or request. It should be noted that the Canadian Human Rights Commission and intervenors are not parties.

### ***When may a motion or request be presented?***

A motion or request may be presented at any time before the Tribunal renders its decision on the complaint. However, it is preferable to present a motion or request to the Tribunal as soon as possible in order to avoid any unnecessary delays [[subs. 98\(1\)](#) of the *PSEA*].

### ***How to present a motion or a request***

A motion or a request presented before a hearing is made in writing and specifies the nature of the order requested and the grounds on which the motion or request is based. The one presenting the motion or request must provide all parties as soon as possible with a copy of the motion or request. The parties who have received a copy of the motion or request then have a right to reply to it.

A motion or request may also be presented orally at the hearing – for example, a motion to request the adjournment of the hearing due to unforeseen circumstances.

### ***Where to send the motion or request***

The motion or request must be sent to all parties, intervenors, if any, the Canadian Human Rights Commission, if applicable, and to the:

Executive Director  
Public Service Staffing Tribunal  
240 Sparks Street, 6th Floor West  
Ottawa, Ontario K1A 0A5

Fax: 613-949-6551

Email: [director.directeur@psst-tdfp.gc.ca](mailto:director.directeur@psst-tdfp.gc.ca)

### ***What happens after a motion or request has been received?***

If the motion or request is filed before the hearing, parties who have a right to reply should, within five days of receipt of the motion or request, provide a written reply and send it to all parties, intervenors, if any, the Canadian Human Rights Commission, if applicable, and to the Executive Director at the address provided above.

### ***Consideration of the motion or request***

After the five-day period for filing replies has elapsed, the Tribunal will consider the submissions it has received and rule on the motion or request. It will then inform everyone accordingly. It should be noted that the Tribunal *will not* prompt parties for replies. If a party does not provide its reply with the five-day period or has not asked for an extension of the time for the filing of a reply, the Tribunal will render its decision on the basis of the information it has received.

## **17. Pre-hearing conference and settlement conference**

### ***Purpose of a pre-hearing conference***

As the name suggests, the purpose of a pre-hearing conference is to prepare the complainant, the respondent, the other parties and the Tribunal for the hearing of the complaint. The Tribunal may decide to hold a pre-hearing conference on its own initiative, at the request of the complainant, the respondent or other parties. Such a conference allows the Tribunal to deal with procedural issues and technical questions before the hearing, serves to avoid delays and may also assist with the resolution of some issues prior to the hearing.

### ***Holding a pre-hearing conference***

When the Tribunal considers that it may be useful to hold a pre-hearing conference, all parties will be informed of the date, time and place of the conference. Generally, however, only the complainant, the respondent and the Public Service Commission are expected to participate in any scheduled pre-hearing conference. The meeting is usually conducted by teleconference or videoconference [[subs. 99\(1\)\(b\)](#) of the *PSEA*]. The pre-hearing conference will be chaired by a member of the Tribunal.

The Tribunal prefers holding pre-hearing conferences in the presence of the representatives of the complainant, respondent and Public Service Commission only, but will allow “clients” to attend as observers. Dates for pre-hearing conferences will be based on the availability of the representatives only. A pre-hearing conference will not be postponed or cancelled due to the unavailability of the representatives’ “clients.”

### ***Questions to be discussed at the pre-hearing conference***

There are a number of matters that may be considered at pre-hearing conferences. Examples include:

- Jurisdictional matters. While the other parties may agree that the Tribunal can hear a complaint, a complaint cannot proceed if the Tribunal determines that it does not have jurisdiction to hear the complaint;
- Facts not in dispute. If the complainant and the respondent agree on certain facts, or on all the facts to be presented to the Tribunal, it may not be necessary to call certain witnesses to prove these facts. The Tribunal may then ask the complainant and the respondent to prepare an agreed statement of facts. This agreement will bind them and be placed on the file;
- Participation of large number of parties at hearing. The Tribunal may wish to determine, in consultation with the parties how the hearing will be conducted;
- Any procedural issues or other preliminary matters that need to be addressed prior to the hearing;
- The setting of dates, times and location for the hearing;
- The order in which the complainant, the respondent and the other parties will present their evidence and submissions, the number of witnesses that each will call, the order of witnesses, the anticipated time required by each to present their case, etc.;
- Procedures concerning the use of expert witnesses during hearings, including the time limits for providing, in advance, a summary of any expert testimony or report;
- The need for simultaneous interpretation;
- Determining whether some complaints should be heard at the same time, if appropriate;
- Any other matter that may expedite the proceedings.

### ***Purpose of settlement conference***

In some circumstances, the Tribunal may hold a settlement conference in order to assist the complainant and the respondent in assessing the validity of a

complaint. The Tribunal may decide to do so on its own initiative, or at the request of one of the parties. The complainant and the respondent may then decide to initiate or continue mediation, conclude a settlement, or proceed with a hearing. A Tribunal member who presides over a settlement conference will not hear the complaint if it proceeds to a hearing.

If the complainant and the respondent reach a settlement during the pre-hearing conference, or settlement conference, the terms and conditions of the settlement will be set out in a document signed by them.

## **18. Tribunal hearings**

A single Tribunal member presides over hearings [[subs. 98\(1\)](#) of the *PSEA*], and may provide mediation services at any stage of a hearing ([s. 97](#) of the *PSEA*). The Tribunal member may determine complaints on the basis of written submissions, oral presentations, or both. There may be cases where oral presentations are made on one specific issue only and the rest in writing. In other cases, the Tribunal may allow witnesses to testify, but choose to receive arguments in writing.

### ***What is a paper hearing?***

The Tribunal is not obligated to hold an oral hearing to reach a decision on a complaint [[subs. 99\(3\)](#) of the *PSEA*]. The Tribunal may decide a complaint based on the written information on the record. Where the Tribunal intends to conduct a paper hearing, the Tribunal will so inform the complainant, the respondent, the other parties, the Canadian Human Rights Commission, if applicable, and intervenors, if any.

The complaint will be assigned to a member of the Tribunal who may request additional written submissions and supporting documentation, such as affidavits, where applicable. The time limit for providing additional written material will be determined by the Tribunal member. Following receipt of all relevant information, the Tribunal member will review all of the documents on the record and render a decision on the complaint.

### ***What is an affidavit?***

An affidavit is a written and sworn, or solemnly affirmed, statement of facts. An affidavit must be signed before a person authorized by law to administer oaths, e.g., a notary public or lawyer.

### ***Contents of the affidavit***

An affidavit must be in writing and contain the following information:

- (a) the file number and name of the proceeding to which it relates;
- (b) the name and address of the person who is swearing/affirming the affidavit;
- (c) the title or the position of the person who is swearing/affirming the affidavit;
- (d) a declaration by the person swearing/affirming the affidavit that he or she has personal knowledge of the matters referred to in the affidavit;
- (e) a concise statement of facts. Each of the facts must be described very clearly, in separate numbered paragraphs; and,
- (f) the signature of the person, the date, the location and signature of the commissioner for taking affidavits.

### ***When is an affidavit used?***

The Tribunal may accept an affidavit in exceptional circumstances and in the context of a paper hearing.

### ***Oral hearings***

Usually, an oral hearing is held when the complaint involves questions of credibility, the Tribunal wishes to hear directly from witnesses, and/or complex factual or legal issues have been raised by the complaint. Ordinarily, an oral hearing takes place when there are contradictory versions of the facts.

Oral hearings are open to the public. In very exceptional circumstances, the Tribunal may decide that all or part of a hearing should be closed to the public.

The complainant, respondent and other parties, if participating, are responsible for contacting the Tribunal to verify how many copies of each document are required at the hearing. It is extremely important that those participating in a Tribunal hearing bring with them a sufficient number of copies of documents they intend to file as exhibits. As well, parties wishing to submit jurisprudence should ensure that they bring a sufficient number of copies and highlight the relevant parts they wish to bring to the Tribunal's attention.

### ***Place of hearing***

If the Tribunal decides that an oral hearing is necessary, it will attempt to schedule the hearing in a convenient location. The Tribunal will determine the time, date and location of oral hearings as it deems appropriate [[subs. 94\(1\)](#) of

the *PSEA*]. The Tribunal may use the hearing rooms of other Canadian administrative tribunals, or courts to conduct hearings.

Oral hearings will usually be held in the community where the complainant works or lives, or in a nearby urban centre. The witnesses' place of residence will also be a factor in determining the location for the hearing. It is the responsibility of the complainant, his or her representative and any witnesses he or she wishes to have testify at the hearing to assume their own travel costs. The Tribunal will not reimburse the travel costs of appointed or proposed candidates who choose to attend, and/or participate in, the hearing.

With the agreement of the parties, the Tribunal may also order that a hearing, or any part of a hearing, be conducted using any means of telecommunication, such as teleconferencing or videoconferencing, which allows all participants in the hearing to communicate adequately with one another. [[subs. 99\(1\)\(b\)](#) of the *PSEA*]

## **19. Conduct of the oral hearing**

The Tribunal member assigned to the case will preside over the hearing and is master of the proceedings.

### ***Preliminary matters***

At the commencement of the hearing, the complainant, the respondent and their representatives, if any, are invited to introduce themselves for the record and raise any preliminary matters that need to be addressed. Other parties and their representatives, if any, will also be invited to introduce themselves and raise any preliminary matters. After ensuring that a notice of hearing was issued, the Tribunal may proceed despite the absence of any party, the Canadian Human Rights Commission, if applicable, or intervenor, if any ([s. 29 of the \*Regulations\*](#)).

### ***Evidence***

The best evidence is that provided by witnesses appearing before the Tribunal. Evidence may be presented orally under oath or by solemn affirmation. The Tribunal will determine the admissibility of evidence. The Tribunal may accept evidence that might not be admissible in a court of law, such as hearsay evidence [[par. 99\(1\)\(d\)](#) of the *PSEA*]. The overriding consideration for the Tribunal in terms of admissibility is whether the evidence is relevant to the complaint. Where there is disagreement concerning admissibility, the Tribunal may admit the evidence and, subsequently, assess the weight to be given to that evidence.

### ***What is oral testimony?***

The complainant, respondent and other parties may call individuals to testify regarding the issues related to a particular complaint. These individuals may testify concerning the facts of which they have personal knowledge, and, in certain instances, may give their opinion on questions related to their experience or expertise.

### ***How to ensure that a witness will be present at the hearing***

The Tribunal has the power to summon witnesses to a hearing [[par. 99\(1\)\(a\)](#) of the *PSEA*] and compel any person to produce any documents that may be relevant to the complaint [[par. 99\(1\)\(d\)](#) of the *PSEA*].

Anyone who wishes to ensure the attendance of a witness must send the Tribunal a request for a summons. The request must be in writing and include the following information:

- (a) the Tribunal's file number;
- (b) the name and address of the person who must appear;
- (c) the date, the time and the place where this person is required to appear, if known; and,
- (d) a detailed description of the documents or other material that this person must produce at the hearing, if any.

### ***Consideration of the request for a summons***

The Tribunal will consider the request for a summons. Where appropriate, the Tribunal will prepare the summons and deliver it to the party who requested it. This may be done by fax. Where the Tribunal has concerns about the potential relevance of the proposed witness to be summoned, the Tribunal may seek clarification or ask for a pre-hearing conference to address the issue.

### ***Service of the summons***

The party who requested the summons is responsible for ensuring that the witness is served with the summons as soon as possible. In any event, the summons must be served at least seven days before the appearance of the witness.

The summons may be served by any of the following means: registered mail; by hand; process server; or, by fax, provided that the witness agrees with the latter.

Whatever means is used, the party serving the summons must have written proof that the witness received the summons.

### ***What happens if the hearing is postponed?***

When a hearing is postponed, the party who served the summons is responsible for notifying the witness as soon as possible in order to avoid unnecessary travel. The party must also notify the witness of the date on which the hearing will resume, at least five days before he or she is due to appear.

### ***Exclusion of witnesses***

At the request of the complainant or the respondent or other party, the Tribunal may exclude any witness who has not yet testified from the hearing room. The purpose of excluding witnesses is to prevent them from being influenced by the testimony of other witnesses.

Witnesses excluded from the hearing room must not discuss their evidence with anyone else present at the hearing. The Tribunal will instruct witnesses accordingly. When a witness has finished testifying, he or she may remain in the hearing room until the conclusion of the proceeding.

### ***Complainant's evidence***

The complainant bears the burden of proof in complaints before the Tribunal (see the [Tibbs](#) decision). As such, the complainant will usually be called upon to provide an opening statement, if he or she so wishes, and then present his or her testimony and any additional evidence. The Tribunal member will ask all witnesses to swear an oath, or to make a solemn declaration [[par. 99\(1\)\(c\)](#) of the PSEA]:

The oath is:

“Do you swear on the Bible that the testimony you are about to give shall be the truth, the whole truth and nothing but the truth, so help you God?”

The solemn declaration is:

“Do you solemnly declare that the testimony you are about to give before this Tribunal shall be the truth, the whole truth and nothing but the truth?”

The witnesses can then be examined by the complainant or his or her representative. This is known as the examination-in-chief.

The respondent may cross-examine each of the complainant's witnesses, subject to any restrictions that the Tribunal may impose.

The complainant or his or her representative may then re-examine the witnesses who have been cross-examined if the re-examination concerns questions that could not have been anticipated during the examination-in-chief.

### ***Respondent's evidence***

When the complainant has finished presenting his or her evidence, the respondent will present its evidence. The complainant or his or her representative may cross-examine each of the respondent's witnesses. The respondent may then re-examine the witnesses who have been cross-examined.

### ***Evidence of those who have a right to be heard***

If there are other parties at the hearing, their role concerning the presentation of evidence will be determined by the Tribunal at the pre-hearing conference or at the commencement of the hearing.

### ***Submissions of Canadian Human Rights Commission***

When the presentation of the evidence is completed, the Canadian Human Rights Commission may then present its submissions on the terms granted by the Tribunal.

### ***Submissions of Intervenors***

The intervenors, if any, will present their submissions in accordance with the directions issued by the Tribunal [[subs. 19\(5\) of the Regulations](#)].

### ***Final arguments of the complainant and respondent***

When witnesses have been heard and the submissions of the Canadian Human Rights Commission, if applicable, and intervenors, if any, have been made, the complainant and respondent or their representatives will present their final arguments to the Tribunal.

The Tribunal will also hear the arguments of the parties regarding the appropriate corrective action, and may take these submissions into account in its decision.

The Tribunal may ask the parties to produce written arguments in order to expedite the process instead of, for example, scheduling new hearing dates for the presentation of oral arguments, thereby unduly delaying the case.

### ***Final arguments of the other parties***

The role of the other parties concerning final arguments will be determined at the pre-hearing conference or at the commencement of the hearing. The Tribunal may ask the other parties to produce written arguments in order to expedite the

process instead of, for example, scheduling new hearing dates for the presentation of oral arguments, thereby unduly delaying the case.

### ***Complainant's reply argument***

The complainant will be provided with an opportunity to present final reply argument. Where the Tribunal has requested that the respondent or the other parties provide their arguments in writing, the complainant may provide a written reply argument.

## **20. Adjournments and postponements**

If a hearing is not concluded within the anticipated time frame or cannot proceed for other reasons, the Tribunal may set other dates. Any conditions for the resumption of the hearing as well as arrangements for the continuation will be coordinated by the Tribunal. Such a situation may occur, for example, if a witness cannot appear due to illness or if an emergency arises.

The Tribunal may suspend or postpone a hearing at any time ([s. 30 of the Regulations](#)). However, because of the difficulties involved in drawing up the hearing schedule, the Tribunal will only grant adjournments and postponements in cases where compelling reasons beyond the control of the parties exist. For additional information, please refer to the Tribunal's [Policy for Scheduling Hearings, Postponements and Mediations](#).

A party wishing to obtain a postponement of the hearing must specify the reasons for their request in writing before the scheduled date of the commencement of the hearing in accordance with the above-mentioned postponement policy.

The Tribunal may inquire as to the position of the parties before granting or refusing the requested postponement. Parties may agree to postpone. Nevertheless, it is the responsibility of the Tribunal to decide if the hearing will be postponed or not. In some cases, a request for a postponement could be refused.

## **21. Decisions of the Tribunal**

The Tribunal will render its decisions in writing, providing its reasons in a clear, concise and logical manner, together with any accompanying orders arising from its reasons for decision.

A copy of the decision will be provided to the complainant and the respondent and to the parties who have exercised their right to be heard ([s. 101](#) of the

*PSEA*). The decision will also be posted on the Tribunal's website as soon as the decision is available in both official languages.

## **22. Remedial powers of the Tribunal**

For a complaint concerning lay-off made under [subs. 65\(1\)](#) of the *PSEA*, the Tribunal may set aside the decision of the deputy head to lay-off the complainant and order corrective action in accordance with [subs. 65\(4\)](#) of the *PSEA*.

For a complaint concerning an internal appointment made under [s. 77](#) of the *PSEA*, the Tribunal may order corrective action in accordance with [subs. 81\(1\)](#) of the *PSEA*, such as ordering the respondent to revoke the appointment, to not make the appointment, or to take any other action that the Tribunal deems appropriate.

For a complaint concerning a lay-off or internal appointment, the Tribunal may also interpret and apply the [Canadian Human Rights Act](#) [[subs. 65\(7\) and \(8\)](#) and [s. 80](#) of the *PSEA*] other than its provisions relating to the right to equal pay for work of equal value. The Tribunal may order corrective action under [par. 53\(2\)\(e\) and subs. 53\(3\) of the Canadian Human Rights Act](#) in addition to any other corrective action that it deems appropriate [[subs. 65\(8\)](#) and [81\(2\)](#) of the *PSEA*]. The *Canadian Human Rights Act* provides for damages up to a maximum of \$20,000 for pain and suffering and a maximum of \$20,000 if the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.

For a complaint concerning a revocation of appointment made under [s. 74](#) of the *PSEA*, the Tribunal may order that the revocation be set aside ([s. 76](#) of the *PSEA*).

For a complaint concerning the appointment or proposed appointment as a result of the implementation of corrective action made under [s. 83](#) of the *PSEA*, the Tribunal may order the revocation of the appointment, or not to make the appointment, as the case may be, and give directions that the Tribunal considers appropriate with respect to the implementation of the corrective action ([s. 84](#) of the *PSEA*).

The Tribunal may not order the Public Service Commission to make an appointment or to conduct a new appointment process ([s. 82](#) of the *PSEA*).

## **23. Enforcement of the Tribunal's decisions in Federal Court**

The Public Service Commission or any person to whom an order of the Tribunal applies may file a certified true copy of the Tribunal order in the Federal Court. On filing the order, it becomes an order of the Federal Court and may be enforced as such [[subs. 103\(1\) and \(2\)](#) of the *PSEA*].

## **24. Judicial review - Privative clause**

The decisions of the Tribunal are final. The decisions may not be appealed, but may be subject to judicial review on very limited grounds ([s. 102](#) of the *PSEA*).

Applications for judicial review must be filed in accordance with the [Federal Courts Act](#) and the [Federal Court Rules](#). The party making the application is responsible for complying with all Federal Court procedures and time frames.