

How to Address Staffing Complaints with the Federal Public Sector Labour Relations and Employment Board



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The information provided in the *How to Address Staffing Complaints* is intended to be a reference tool for Stewards and Local Union Representatives to assist members in staffing complaints.

These procedures are also provided on <https://pslreb-crtefp.gc.ca/>.

FEDERAL PUBLIC SECTOR LABOUR RELATIONS AND EMPLOYMENT BOARD - STAFFING COMPLAINTS

The following guidelines will assist members and union representatives in understanding how to file complaints related to staffing actions. They reflect the spirit and intent of the applicable legislated policies, procedures and/or regulations and have been prepared for reference only. For purposes of interpreting and applying the Law, members should consult the official publications produced by the respective legislative authorities.

The Federal Public Sector Labour Relations and Employment Board (the Board) is an independent administrative tribunal established by the Federal Public Sector Labour Relations and Employment Board Act (PSLREBA), which came into force on November 1, 2014. Prior to this date, the Board's functions in relation to federal public service staffing complaints were exercised by the Public Service Staffing Tribunal (PSST), which ceased to exist when the Board was created. From November 1, 2014, until June 19, 2017, the Board was called the Public Service Labour Relations and Employment Board.

GROUNDS TO FILE A PSLREB COMPLAINT

The Public Service Employment Act (PSEA) provides the Board with the authority to deal with complaints involving:

Internal appointments: When the deputy head has made an appointment or proposed an appointment, the grounds for complaint are one or more of the following [s. 77(1) of the PSEA];

- that the respondent abused its authority in the application of merit;
- that the respondent abused its authority in the choice of process between advertised and non-advertised;
- that the complainant was not assessed in the official language of the his or her choice.

Complaints cannot be made regarding an appointment of less than four months unless it extends the cumulative period of acting appointments to four months or more.

Lay-off: The ground for complaint is that the selection of the complainant for lay-off constitutes an abuse of authority [s. 65(1) of the PSEA];

Revocation: The decision of a deputy head or the Public Service Commission to revoke an appointment [ss. 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);

Appointments made or proposed as a result of the implementation of the corrective action: (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 ordered by the PSST or the Board in a previous decision.

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 [s. 2(4) of the PSEA]. The notion of abuse of authority has been elaborated upon through decisions of the PSST, the Board and the courts, which have found that abuse of authority is not limited to bad faith and personal favouritism. It encompasses serious errors and omissions. It is not necessary to establish that a respondent intended to abuse its authority.

WHO CAN FILE A COMPLAINT WITH THE BOARD

The PSEA sets out four types of complaints that may be brought before the Board and specifies who has a right of complaint under each type.

Internal appointment (s. 77 of the PSEA): The following parties have a right of complaint on the grounds that there was abuse of authority:

- a) Any unsuccessful candidate in the area of selection in an advertised appointment process; or
- b) Any person in the area of selection in a non-advertised appointment 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, as long as the complainant produce a written authorization (See *Can a complainant be represented* section below).

Lay-off (s. 65 of the PSEA): 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 selection of that employee to lay off constitutes an abuse of authority.

Revocation (s. 74 of the PSEA): Any person whose appointment is revoked following an internal appointment process is entitled to file a complaint on the ground that the decision to revoke was unreasonable.

Appointments made or proposed as a result of the implementation of the corrective action (s. 83 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 ordered by the Board in the previous decision:

- 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.

Can a complainant be represented?

Yes, a complainant may be represented at any stage of the complaint process before the Board by a lawyer, a union representative, or any other person of his or her choosing.

If a complainant chooses to be represented, he or she must advise the Board in writing of the name and contact information of his/her authorized representative. If a complainant chooses to be represented, **they must advise the Board in writing of the name and contact information of their authorized representative.** Once the Board receives this written authorization, **the Board will deal directly with the complainant's representative for all matters related to proceedings** before the Board, such as correspondence, motions, the scheduling of mediations, hearings, etc.

THE FORMAL FPSLREB COMPLAINT PROCESS

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. **The 15-day time limit is a strict one:** Complaints received after the 15 days are considered untimely and may be dismissed for this reason.

A complaint must be filed in writing and needs to include the following information:

- the name, telephone number and fax number of the complainant, and a mailing address or electronic mail address that can be disclosed to all parties;
- the name, address, telephone number, fax number and electronic mail address of the complainant's authorized representative, if any;
- the number or identifier, if any, of the process to which the complaint relates;
- a copy of the notice of lay-off, revocation, appointment or proposed appointment to which the complaint relates;
- the name of the department or agency, branch or sector involved in the process to which the complaint relates;
- a reference to the provision of the PSEA under which the complaint is made;
- a full factual description of the events, circumstances or actions giving rise to the complaint, to the extent known by the complainant;
- the signature of the complainant or their authorized representative;
- the date of the complaint.

Note: If identifying the representative on the form (section c), please do not specify the name of an individual. Refer only to Government Services Union, PSAC.

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.

A complaint may either be filed in letter format or on the Form 1 from the Board. A copy of the Form 1 can be accessed on the Board website at, https://www.fpslreb-crtespf.gc.ca/forms/intro_e.asp

The complaint must be addressed to the Board as follows:

Federal Public Sector Labour Relations and Employment Board

240 Sparks Street, 6th Floor West

Ottawa, Ontario K1A 0A5

Fax: 613-990-1849

Email: Director.directeur@fpslreb-crtespf.gc.ca

What Role Should I Play in the Process?

1. The Complainant is responsible for filing the staffing complaint by completing the appropriate form found on the Board website:
https://www.fpslreb-crtespf.gc.ca/forms/intro_e.asp
2. Staffing complaints are covered by the Public Service Employment Act. Therefore, unlike the Collective Agreement, an employee can pursue a complaint on their own (at their own expense).
3. As mentioned previously, if a member chooses to have representation, they must inform the Board by naming that person as their representative, in the appropriate section, on the complaint form.
4. If the local chooses to represent a complainant, please be advised that the Board is **not** responsible for informing the local when the complaint is filed. Therefore it is recommended that the local is included when filing the complaint with the Board.

Mediation or Hearing

Mediation is a voluntary and confidential process that promotes open and respectful communication and allows the parties in a dispute to explore their interests and concerns, examine the options and develop their own creative solutions in a timely and cost-effective manner. All complaints will be referred to mediation unless one of the parties indicates that it does not wish to participate in mediation.

There will be situations where mediation is not appropriate. In some cases, a member of the Board may hear the complaint and provide an opportunity for the complainant, manager and other parties to present evidence and arguments. In others, the Board may choose to render a decision based on the written documentation submitted by the parties. In either case, once the Board has considered the complaint, it will render a decision and inform the parties of its decision.

Withdrawing a FPSLREB Complaint

Legal Counsel at the PSAC stresses the importance of not giving specific details or reasons when withdrawing a file from the C appeal process. It is strongly recommended that the notice to the V to withdraw a complaint should indicate the wish to withdraw. **Do not** include any reason(s) or commentary in the notice.

For more information please visit: https://www.fpslreb-crtespf.gc.ca/resources/complaintsfaqs_e.asp