



Public Service Commission
Advisory Council
Conseil consultatif
de la Commission de la fonction publique

Recourse *and* Redress *in the* Public Service

ABOUT THE CHART

Background

In March, 1999, the Public Service Commission (PSC) launched a tripartite advisory council, the Public Service Commission Advisory Council or PSCAC, for the purpose of advising the PSC on current and emerging issues regarding human resource management in the federal public service. The PSC Advisory Council is co-chaired by an Assistant Deputy Minister, or equivalent, representing the departments, and by a senior Bargaining Agent representative. It includes senior representatives from all federal Public Service Bargaining Agents, a number of federal departments and agencies, Treasury Board Secretariat and the Public Service Commission. As part of its 1999 – 2000 operations, the PSCAC requested that working groups be established to create recommendations on three current issues facing the public service, mobility, recourse, and the oversight of merit. These first three Working Groups began meeting in August, 1999.

As part of its research into the current recourse system in the federal public service, the PSCAC Working Group on Recourse, developed the attached chart of *Recourse and Redress in the Public Service* to be used by the group as a reference tool. Feedback on the chart from a broad range of stakeholders involved in the Working Group's consultation process was so positive that the group was asked to prepare it for distribution to interested potential users across the government.

What situations are addressed in the chart?

The chart sets out the different factors that may lead an individual to seek recourse under the regime governed by the Public Service Employment Act (PSEA). The chart describes complaints resulting from different staffing decisions such as appointments made with and without competition, deployments, assignments and secondments, rejection on probation and so on. Also included in the chart are other situations for which an employee may seek recourse within the public service, such as harassment, discrimination, staff relations issues and National Joint Council directives.

How does the chart work?

From left to right:

- 1 Column 1, "Motivating factor", identifies the situation which may result in factors giving rise to a request for recourse.
- 2 Column 2, "Recourse", identifies the nature of the recourse being sought.
- 3 Column 3, "Jurisdiction", identifies the organization which has initial responsibility. For example a complaint about an open competition can lead to an investigation conducted by the Public Service Commission.

ABOUT THE CHART

- 4 Column 4, "Timeframe to exercise recourse", shows the usual timeframe in which the individual can seek recourse. While what is shown is the "usual" time period, in some situations a late appeal may be accepted. In the case of a late appeal, the Appeal Board Chairperson would decide whether or not it would be accepted.
- 5 Column 5, "Timeframe to respond to/deal with issue", indicates the usual amount of time permitted for a response, that is, the period within which an inquiry must be completed.
- 6 Special circumstances are noted in "Comments", Column 6.
- 7 Since the actual redress available varies depending on the complaint, Column 7, "Redress or remedy available", indicates the particular resolution or remedy available for the particular type of complaint being discussed in that section.
- 8 Column 8, "Review", indicates the next level of review in the process if the employee is not satisfied with the outcome.
- 9 The relevant legal references are shown in Column 9, "Authority".

Who should use it?

While the chart is intended as a working tool for any member of the federal public service who wishes to refer to it, it should be noted that it assumes a certain level of knowledge and understanding of human resource management practices and, more particularly, recourse in the "PSEA" public service. It is intended primarily for federal public service managers, bargaining agents and departmental human resources advisors.

How should the chart be used?

The chart of *Recourse and Redress in the Public Service* is not a legal document. Nor does it reflect every recourse mechanism available to employees. Therefore if you are making, advising on, or responding to, a complaint, appeal or grievance you should also consult the related legislation, collective agreement, directive or any other relevant authority.

ABOUT THE CHART

For more information:

The PSCAC has published this chart in an effort to contribute to demystifying recourse in the Public Service. However, if you have questions regarding these or other recourse mechanisms we recommend you consult one of the following:

- your organization's human resources department
- your bargaining agent, if you are a represented employee
- Canadian Human Rights Commission
- National Joint Council
- Office of the Commissioner of Official Languages
- Office of the Privacy Commissioner
- PSC Recourse Branch
- Public Service Staff Relations Board

PSCAC Working Group on Recourse Members 1999-2000:

- R. Sullivan, Chairperson (ND)
- L. Archibald, Secretary (PSCAC)
- J. Baglow (PSAC)
- M. Corber (PSC)
- E. Kehoe (PSC)
- B. Hanson (ND)
- M. Laidlaw / C. Stewart (HRDC)
- J. Mooney / D. McCusker (PSC)
- L. Morin-Girouard (EC)
- M. Papineau / B. Parisien (TBS)
- M. Paquette (PIPSC)
- B. Taylor (IBEW)
- S. Turner (PWGSC)

Motivating factor (i.e., what gives rise to recourse?)	Recourse	Jurisdiction	Timeframe to exercise recourse	Timeframe to respond to/deal with issue	Comments	Redress or remedy available	Review	Authority (e.g., act, regulation, policy, collective agreement, etc.)
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Appointments made by competition

Appointment from outside the Public Service (open competition)	Investigation	PSC	None specified, although usually accepted if within 1 year of occurrence.	None specified.	Commission may investigate on any matter within its jurisdiction.	Varies, but may include reassessment, appointment, or compensation of person seeking investigation, or revocation of person(s) appointed. Objective is to ensure that merit is upheld.	Federal Court	<i>PSEA</i> , section 7.1 <i>FCA</i> , section 18 & 18.1
Appointment by closed competition	Appeal	PSC, Appeal Board	14 days from date informed of appointment.	Disclosure period is 45 days and hearing is scheduled with 14 days' notice.	Right to appeal given to "unsuccessful" candidates (i.e., those who have not been and are not about to be appointed).	Varies. Commission may take corrective measures it considers necessary to remedy defect. If the appointment made, could include revocation. Objective is to ensure that merit is upheld.	Federal Court	<i>PSEA</i> , section 21 <i>PSER</i> , sections 17-27 <i>FCA</i> , section 18 & 18.1

Appointments made without competition

Individual merit circumstances (e.g., promotion following reclassification of position, apprenticeship & occupational training programs, Law group, incumbent-driven classification plans, CAP)	Appeal	PSC, Appeal Board	14 days from date informed of appointment.	Disclosure period is 45 days and hearing is scheduled with 14 days notice.	Right to appeal given to "unsuccessful" candidates (i.e., those who met the area of selection criteria at the time of the appointment) Examples of grounds include whether standard of competence reasonable, whether employee meets standard, whether circumstance provided for in Regulations.	Varies. Commission may take corrective measures it considers necessary to remedy defect. If the appointment made, could include revocation, but does not include appointment of person bringing appeal.	Federal Court	<i>PSEA</i> , subsections 13(1) and 21(1.1) <i>PSER</i> , sections 17-27 <i>PSC Standards for Selection and Assessment</i> , standard 4
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N.B. Decisions rendered by an Appeal Board, outcomes of Commission investigations, as well as many other rulings are reviewable by the Federal Court and, ultimately, the Supreme Court of Canada. For the purposes of brevity we have indicated only the first level of review (i.e., beyond the appeal, investigation or grievance). Also note that this chart is intended as a working tool. It is not a legal document. Any questions should be referred to the relevant authority.

Motivating factor (i.e., what gives rise to recourse?)	Recourse	Jurisdiction	Timeframe to exercise recourse	Timeframe to respond to/deal with issue	Comments	Redress or remedy available	Review	Authority (e.g., act, regulation, policy, collective agreement, etc.)
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Appointments made without competition (Cont'd)

Relative merit situations (e.g., acting appointments, extension of specified period employment without competition, change in tenure from term to indeterminate, etc.)	Appeal	PSC, Appeal Board	14 days from date informed of appointment.	Disclosure period is 45 days and hearing is scheduled with 14 days notice. Hearings usually fast tracked for term and acting appointments.	Right to appeal given to "unsuccessful" candidates (i.e., those who met the area of selection criteria at the time of the appointment).	Varies. Commission may take corrective measures it considers necessary to remedy defect. If the appointment made, could include revocation. Objective is to ensure that merit is upheld.	Federal Court	<i>PSEA</i> , subsections 13(1) and 21(1.1) <i>PSER</i> , sections 17-27
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Other selection processes

Deployment	Complaint	Deputy head	Not less than 10 working days from date of deployment, but may be longer.	20 days, but may be extended.	Complaint may be brought by person being deployed and employees in the work unit to which deployment is being made. Departmental policies will usually state who has the authority to inquire into and render a decision on deployment complaints.	Varies and may include not making or revoking the deployment.	PSC	Treasury Board Policy on Deployment, Appendix A <i>PSEA</i> , sections 34.3 - 34.5 <i>PSER</i> , sections 28-30
	Complaint	PSC	14 days from date informed of deputy head's decision.	Investigation to be conducted as expeditiously as possible.	May be brought by person who filed complaint at departmental level or person whose deployment is subject of complaint and not satisfied with disposition. If PSC investigator not satisfied with deputy head's response to investigation report, may refer to Commission for action.	Commission may order the deputy to take corrective action it considers appropriate, including revocation, except directing that an employee be deployed.	Federal Court	

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Other selection processes (Cont'd)

Assignments and Secondments	Investigation	PSC	None specified, although usually accepted if within 1 year of occurrence.	None specified.	Some assignments may in fact be appointments, e.g. those of long duration, different qualifications, represent promotion, etc. May have to apply tests in <i>Doré</i> and in <i>Brault</i> , Supreme Court of Canada, to determine if appointment exists for which there is a right of appeal.	Varies depending on the findings of the investigation or appeal. Could include termination of assignment, revocation of appointment or corrective measures to remedy the defect.	Federal Court	No policy deals specifically with assignments <i>Gisele Doré v. Her Majesty the Queen et al.</i> (1987), SCC <i>Serge Brault & Pierre Dubois v. Attorney General of Canada</i> (1987), SCC <i>PSEA</i> , sections 13, 21 and 21(1.1)
	OR							
	Appeal	PSC	No clear-cut period, because Appeal Board must first find that assignment is in fact an appointment to which appeal rights apply.	Disclosure period is 45 days and hearings scheduled with 14 days notice.				
	Grievance	Deputy head	Normally 25 days.	As per relevant collective agreement or terms and conditions of employment.	Issues must be distinguishable from those giving rise to recourse to the PSC.	Varies depending on the findings; similar to above; could also include the granting of assignment.		<i>PSEER</i> , sections 17-27 <i>PSSRA</i> Collective agreements

Other staffing issues

Review qualifications set by Deputy head to ensure they afford basis for merit	Investigation	PSC	None specified.	None specified.	May be raised as an issue at any time in selection process, but can be dealt with most effectively if early in the process. Appeal Boards do not have jurisdiction to conduct this review.	Varies, but may include amending the Statement of Qualifications.	Federal Court	<i>PSEA</i> , section 12.1 <i>Asselin v Attorney General for Canada</i> (1999), <i>FCA</i>
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Other staffing issues (Cont'd)

Rejection on probation	Investigation	PSC	None specified (PSC may investigate if complaint described as abuse of authority or harassment).	None specified.	PSC investigates if rejection not made in compliance with the Regulations (e.g., notice, period, etc.).	Varies, depending on the findings of the investigation.	Federal Court	<i>PSEA</i> , section 28 <i>PSER</i> , sections 32-33 Collective agreements <i>PSSRA</i>
	Grievance	Deputy head	Normally 25 days.	As per collective agreement or terms and conditions of employment.	Matters reviewable under the <i>PSSRA</i> . Step in the grievance procedure investigates justification of rejection action.	Varies depending on findings, but include rescinding rejection.	Public Service Staff Relations Board if rejection is, in reality, disguised disciplinary action	<i>PSSRA</i>
Reverse order of merit	Complaint	PSC	14 days if the department gave notice. Usually accepted if within 1 year of occurrence.	Fast-tracked.	PSC may investigate to determine if reverse order of merit carried out in accordance with legislation. Commission may take, or order deputy head to take, corrective measures.	Varies, depending on the findings of the investigation.	Federal Court	<i>PSEA</i> , subsection 29(1) <i>PSER</i> , sections 34-35
Lay-off	Investigation	PSC	None specified, although usually accepted if within 1 year of occurrence.	None specified.	PSC has very limited jurisdiction (except if harassment) because lay-off is a deputy head authority. Commission may take, or order deputy head to take, corrective measures.	Varies, depending on the findings of the investigation. Could include reinstatement or other form of compensation.	Federal Court	<i>PSEA</i> , section 29 <i>PSER</i> , sections 36-37

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Other staffing issues (Cont'd)

Lay-off (cont'd)	Grievance (application of WFAD)	Deputy head	Normally 25 days.	Varies as per collective agreement.	Only represented employees may file a NJC grievance. Non-represented employees would file a staff relations grievance instead.	Varies depending on nature of decision.	PSSRB Federal Court	Work Force Adjustment Directive Collective agreements
		NJC (other than PSAC)						
Appointment of person not qualified or outside of delegated authority	Investigation	PSC	None specified.	None specified.	Commission may revoke appointment and/or delegation authority. Commission must include changes to delegation authority in annual report to Parliament.	Varies, but may include revocation of appointment, rescinding delegation, letter to deputy head, etc.	Federal Court	PSEA, subsections 6(1), (2), (3) and (4)
Other issues under the PSEA (e.g., non - extension of term, choice of assessment tools, any other matters within PSC's jurisdiction)	Investigation	PSC	None specified, although usually accepted if within 1 year of occurrence.	None specified.	Commission may investigate on any matter within its jurisdiction. Commission may take, or order deputy head to take, corrective measures.	Varies, depending on the nature of the complaint and the findings of the investigation.	Federal Court	PSEA, sections 7.1 and 7.5
	Grievance	Deputy head	Normally 25 days.	As per collective agreement or terms and conditions of employment.	Grievance decision is final and binding.		None	PSSRA

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Harassment

Personal Harassment	Complaint	Deputy head	Normally, not more than 1 year from last occurrence.	None specified.	Policy currently under review.	Varies depending on the nature of the complaint and the findings of the investigation.	Federal Court	Treasury Board Policy on Harassment in the Workplace
	Grievance	Deputy head	25 days from last occurrence.	As per collective agreement.	N/A	Varies depending on findings.	PSSRB	
Discrimination - based on a prohibited ground. (Race, national or ethnic origin, colour, religion, age, sex, marital status, family status, pardoned conviction, disability, sexual orientation)	Complaint	Deputy head	Normally, not more than 1 year from last occurrence.	None specified.	N/A	Varies depending on findings.	Complaint to CHRC	Canadian Human Rights Act Clauses related to abuse of authority in collective agreements
	Complaint	CHRC	Normally, not more than 1 year from last occurrence.	None specified.	N/A	Varies depending on findings.	Federal Court	
	Grievance	Deputy head	25 days.	As per collective agreement.	CHRC must rule on deferment before grievance can proceed.	Varies depending on findings.	PSSRB	

Staff Relations - other situations

Staff relations (any other situations)	Grievance	Deputy head - steps in the grievance process	Normally 25 day.	As per collective agreement or terms and conditions of employment.	As per collective agreement or terms and conditions of employment.	As per collective agreement or terms and conditions of employment.	PSSRB if discipline involves financial loss, or if involves application of collective agreement	PSSRA
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Staff Relations - other situations (Cont'd)

Termination of employment or demotion for cause including discipline	Grievance	Deputy head	Normally 25 days.	As per collective agreement.	N/A	Reinstatement and/or some compensation.	PSSRB	<i>PSSRA</i> <i>FAA</i>
Application of National Joint Council directives (e.g. Work Force Adjustment, Travel and Relocation, Safety & Health, Medical Insurance, etc.)	Grievance	Deputy head & NJC (steps in the grievance process) except Workforce Adjustment Agreement for PSAC (grievance process as per collective agreement)	Normally 25 days.	As per NJC By-laws. As per collective agreement or terms and conditions of employment.	Special grievance procedure involving union & management at NJC level OR as per collective agreement for Workforce Adjustment Agreement issues for PSAC.	Granting of corrective action requested.	PSSRB in case of impasse at NJC	<i>PSSRA</i> <i>NJC</i> Constitution & By-laws
Classification	Grievance	Deputy head – special one step grievance procedure	Normally 25 days.	Within 60 days.	One step grievance procedure usually involving 3 person review board of impartial classification officers.	Adjustment to classification group & level or point rating.	No external review	<i>PSSRA</i> <i>FAA</i>

Other human resource issues

There are a number of other issues that may give Public Service employees a reason to seek recourse including, for example, conflict of interest situations, official languages complaints, security review, safety and health concerns, access to information and privacy issues, medical insurance issues, etc. Each issue has a relevant recourse, with specific redress or remedies available.

Legend

CHRC - Canadian Human Rights Commission	PSAC - Public Service Alliance of Canada	PSSRA - Public Service Staff Relations Act
FAA - Financial Administration Act	PSC - Public Service Commission	PSSRB - Public Service Staff Relations Board
FCA - Federal Court Act	PSEA - Public Service Employment Act	TBS - Treasury Board Secretariat
NJC - National Joint Council	PSE - Public Service Employment Regulations	WFAD - Workforce Adjustment Directive

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