



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

Public Service Staffing Tribunal

Looking Ahead

2007–2008 Annual Report



A key legislative purpose found in the preamble of the PSEA is that managers should have considerable discretion when it comes to staffing matters. To ensure the necessary flexibility, Parliament has chosen to move away from the previous staffing regime with its rules-based focus under the former PSEA.



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Chairperson of the Public Service Staffing Tribunal (2008)

Cat. No. SQ1-2008

ISBN 978-0-662-06179-3



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The Honourable James Moore, P.C., M.P.
Minister of Canadian Heritage and Official Languages
Gatineau, Québec
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Dear Minister Moore:

In accordance with section 110 of the *Public Service Employment Act*, I am pleased to submit the third annual report of the Public Service Staffing Tribunal for the period from April 1, 2007 to March 31, 2008, for tabling in Parliament.

Yours respectfully,

Guy Giguère
Chairperson and Chief Executive Officer

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Message from the Chairperson

The second full year of operation was a turning point for the Public Service Staffing Tribunal as the policies, systems and procedures put in place the previous year for receiving and resolving staffing complaints were put to the test.

One of the main challenges faced by the Tribunal during the year was the increase in its workload as the number of complaints rose from 438 in 2006-2007 to 742 in 2007-2008. This was an increase of 69 percent and underscored the importance of a sound case management system to ensure the timely processing of complaints by the Tribunal.

One of the Tribunal's goals is to help the parties resolve complaints through mediation or another informal process. Accordingly, the Tribunal offers several opportunities to the parties to resolve complaints before a hearing takes place. In addition to mediation, parties have 25 days within which to share relevant information. Complainants are required to present their allegations in writing within a specified time frame; similarly, deputy heads must provide a written response within the time allowed. The Tribunal also holds pre-hearing conferences for all complaints scheduled for hearing in order to narrow the issues to be resolved. In many cases, the complaint is resolved during the pre-hearing conference.

The *Public Service Employment Act (PSEA)* gives deputy heads the flexibility they need to recruit people with the right skills at the right time. Deputy heads must, of course, exercise this flexibility judiciously and not abuse their authority when establishing staffing practices and making appointments. As the Tribunal has frequently noted in its decisions, the flexibility afforded deputy heads is not being used to its full advantage as long as certain practices common under the former Act – such as the ranking of candidates – are maintained. Although such practices are not in themselves an abuse of authority, they do demonstrate a certain reluctance to embrace fully the purpose and spirit of the new *PSEA* and should therefore be discouraged.

The flexibility afforded deputy heads is not being used to its full advantage as long as certain practices common under the former Act – such as the ranking of candidates – are maintained.

From the outset, the Tribunal has placed great importance on the need to resolve disputes by informal processes whenever possible. In this respect, the figures are revealing. Of a total of 519 cases closed from April 1, 2007 to March 31, 2008, over 90 percent were resolved without a hearing. The Tribunal's mediation services were extremely effective in 2007-2008: Of the 119 mediation sessions held during the year, 96, or 81 percent, led to the withdrawal of the complaint.

Through its decisions, the Tribunal helps set the tone and establish principles for fairness in the application of staffing policies and practices as well as for the reasonable use of the increased flexibility offered by the *PSEA*. This is an important contribution not only to the independent safeguarding of staffing values in the public service of Canada, but also to the modernization of the federal staffing process.

Mandate

The Tribunal was established as an independent quasi-judicial administrative body under the new *PSEA* in December 2005 as part of a legislative initiative to modernize human resources management in the federal administration. Its mandate is to consider and dispose of complaints.

The complaints involve internal appointments, lay-offs, the implementation of corrective measures ordered by the Tribunal, and revocations of appointments.

Looking Ahead

The Preamble to the *PSEA* states in part that “delegation of staffing authority should... afford public service managers the flexibility necessary to staff, to manage and to lead their personnel to achieve results for Canadians.” The principle of relative merit as a means of determining which person is best qualified for a position is no longer in effect. As a result, candidates do not have to be selected according to a ranking system. The Tribunal’s case law develops with each decision. Certain key principles regarding the new definition of merit may be found in the following cases, among others:

Visca and the Deputy Minister of Justice et al., [2007] PSST 0024

[44] Under the former *PSEA*, the ground for an appeal was that relative merit was not achieved. The process was prescriptive, ranking was mandatory, and any discrepancy in the process could lead to an appeal being allowed. Now, under subsection 30(2) the *PSEA*, considerable discretion is given to choose amongst the applicants who meet the essential qualifications, the person that in the manager’s judgment is the **right fit** for the job. Accordingly, there is no requirement to rank candidates or establish an eligibility list. The Tribunal believes that the former practice of ranking candidates should be discouraged as it does not reflect the spirit of the *PSEA*. However, a manager is not precluded from doing so and, moreover, ranking does not in and of itself constitute an abuse of authority. When ranking is used to select the successful candidates, the Tribunal will review its application to determine whether or not there was an abuse of authority in the selection process.

The principle of relative merit as a means of determining which person is best qualified for a position is no longer in effect. As a result, candidates do not have to be selected according to a ranking system.

Rinn and the Deputy Minister of Transport, Infrastructure and Communities et al., [2007] PSST 0044

[34] The Tribunal explained in *Visca v. Deputy Minister of Justice et al*, [2007] PSST 0024, at paragraph 44, how merit in the *PSEA* has changed from the former *PSEA*:

Under the former *PSEA*, the ground for an appeal was that relative merit was not achieved. The process was prescriptive, ranking was mandatory, and any discrepancy in the process could lead to an appeal being allowed. Now, under subsection 30(2) of the *PSEA*, considerable discretion is given to choose amongst the applicants who meet the essential qualifications, the person who in the manager's judgment is the **right fit** for the job.

[35] Merit now relates to individual merit where the person to be appointed must meet the essential qualifications for the work to be performed. There is considerable flexibility in selecting the person to be appointed; however, the fundamental requirement in appointing a person on the basis of merit is that the person must be qualified for the position.

Neil and the Deputy Minister of Environment Canada et al., [2008] PSST 0004

[43] Subsection 30(2) of the *PSEA* sets out the definition of merit, as well as the authority of the deputy head to establish qualifications. This subsection states that an appointment is made on the basis of merit when the person to be appointed meets the essential qualifications, *as established by the deputy head*.

Akhtar and the Deputy Minister of Transport, Infrastructure and Communities et al., [2007] PSST 0026

[43] Now, under subsection 30(2) of the *PSEA*, merit is defined. The only requirement for an appointment to be made on the basis of merit is that the person to be appointed meet the essential qualifications. Considerable discretion is given to choose, between qualified applicants, the person who in the manager's judgment is the **right fit** for the job. Accordingly, there is no requirement to rank candidates or rate answers. The Tribunal is of the view that the former practice of ranking candidates should be discouraged as it does not reflect the spirit of the *PSEA*. However, a manager is not precluded from ranking, and this does not in and of itself constitute an abuse of authority.

Review of 2007-2008

The number of complaints filed with the Tribunal in 2007-2008 grew to 742, an increase of 69 percent over the previous year. In light of the increase, the Tribunal undertook to improve its website and equip it with practical tools. For example, the navigation bar now offers an on-line reference tool containing practical information on all aspects of the complaint process. The interactive *Electronic Guidebook* provides useful information at the click of a button and describes the complaint procedure from beginning to end.

The *Policies and Directives* link on our home page takes you to a new document entitled *Policy to Request an Order for the Provision of Information* and is intended for use by parties submitting such requests. The policy is designed to ensure that the parties voluntarily share as much information as possible and to clearly establish the time frames for the submission of allegations and replies once the Tribunal has rendered a decision on a request for an order for the provision of information.

The Registry

As illustrated in the table below, the number of complaints filed with the Tribunal increased considerably when compared to the previous year. From April 1, 2007 to March 31, 2008, the Registry received a total of 742 complaints, compared with 438 in 2006-2007.

Complaint Statistics – 2007-2008

Complaints received	Number	Percentage
Complaints withdrawn following exchange of information	185	25%
Complaints withdrawn following mediation	106	14%
Complaints withdrawn following pre-hearing conference	45	6%
Complaints withdrawn at other stages of the complaint process	67	9%
Decisions rendered	163	22%
Total files closed	566	76%
Cases deferred to the following year	176	24%
Total complaints received	742	100%

The interactive Electronic Guidebook provides useful information at the click of a button and describes the complaint procedure from beginning to end.

Types of complaint – 2007-2008

Complaints received	Number	Percentage
Internal appointments (s. 77, <i>PSEA</i>)		
Advertised process	503	67%
Non-advertised process	222	30%
Revocations of appointments (s. 74, <i>PSEA</i>)	5	1%
Lay-offs (s. 65, <i>PSEA</i>)	4	1%
Implementation of corrective measures (s. 83, <i>PSEA</i>)	2	0%
Unspecified	6	1%
Total complaints received	742	100%

Case Management System

In the interests of efficiency and the timely processing of complaint files, the Tribunal seeks constantly to improve its case management system. Its efforts in this regard have proven to be effective in that the complaint process – from the date of the acknowledgment of the complaint to the date on which the file is closed – took an average of less than three months, or 86 calendar days. This relatively short period is attributable to the fact that, of the 566 cases closed in 2007-2008 (see the table above), most – 403, or 71 percent – were resolved before the hearing stage.

Mediation Services

The Tribunal's Dispute Resolution Services sector plays a key role in resolving complaints. Under section 97 of the *PSEA*, the PSST offers mediation services at any stage of the complaint process. In 2007-2008, a total of 304 cases across Canada were referred to mediation, of which 228 were dealt with in English, and 76 in French.

Dispute Resolution Services – 2007-2008

Total number of complaints in which the parties consented to mediation	304
NCR	93
Newfoundland and Labrador	4
Nova Scotia	23
Prince Edward Island	2
New Brunswick	11
Quebec	50
Ontario	49
Manitoba	11
Saskatchewan	10
Alberta	32
British Columbia	17
Northwest Territories	0
Yukon	2
Number of complaints in which a party withdrew consent to mediation	53
Number of complaints withdrawn before the scheduled mediation session	49
Number of mediations conducted	119
Number of complaints resolved	96 (81%)
Number of open mediation files as of March 31, 2008	83

The mediation process is the way to go to resolve issues before they turn into real problems.

Interest-based Negotiation and Mediation Training

The interactive training program set up last year continued throughout the year. It consists of a 2½-day course on interest-based negotiation and mediation. It provides the Tribunal's stakeholders, including union representatives, delegated managers or their representatives, staffing officers or human resources specialists, with a better understanding of the Tribunal's approach to mediation and prepares them to take part in a mediation process as a party or as a representative. The course was given 12 times – 10 in English and 2 in French – in the following locations:

NCR	3
Toronto	1
Montreal	1
Abbotsford	1
Regina	1
Calgary	1
Winnipeg	1
Charlottetown	1
Moncton	1
St John's	1

Sample comments from participants in the mediation process

"The process was very effective in helping me to understand the other side's interests."

"The whole issue basically came down to a lack of communication and this session resolved it well."

"Mediation is a good opportunity to hear and better understand the views/concerns/needs of each party."

"We arrived at a fruitful conclusion. The mediation process is the way to go to resolve issues before they turn into real problems."

"This process is valuable in assisting to resolve complaints."

Corporate Services

Communications

In order to provide up-to-date information on and ready access to the Tribunal's complaint process, several new features were added to the PSST Internet site:

- *Electronic Guidebook*

The Guidebook was developed jointly by the Canada School of Public Service (CSPS) and the PSST to provide a visual representation of the complaint process to public servants and bargaining agents. It contains step-by-step information about the PSST's role and responsibilities, how to file a complaint, the complaint process itself and the conduct of an oral hearing.

- *Fillable on-line forms*

A project to permit complainants to fill out all PSST complaint forms on-line and send them to the Tribunal by e-mail was undertaken and completed in March 2008.

- *E-mail alerts*

The capacity to send an e-mail to subscribers alerting them to the posting of a new decision on the PSST website was developed and is expected to be implemented in April 2008.

- *Slide presentations*

These presentations were intended to provide stakeholder groups across the country with information regarding the number of complaints received by the Tribunal, its mediation services and the jurisprudence established by its decisions.

Outreach

- *Stakeholder consultation group*

The Tribunal hired a consultant to review the structure of its stakeholder consultation group in order to make recommendations as to how to improve the effectiveness of the group's meetings. The report was produced on March 26, 2007. The Tribunal will consider the report's recommendations and make adjustments to the consultation process as it deems necessary.

- *PSST Regulations*

An internal committee was established in April 2007 to review the PSST Regulations and make recommendations for amendments to facilitate the process for the parties involved in a complaint. The committee's working document was submitted to the Tribunal's main stakeholders for comment in September 2007; further changes were made to the Regulations as a result of their comments. A final version was submitted to the Department of Justice in December 2007. The review is expected to be completed by the end of 2008.

Information Management

A plan to develop and implement a modern information management system using the latest developments in information technology was prepared in February 2008. The technical requirements were identified in March 2008. The system is expected to be fully operational by the end of 2008.

Strategic Planning and Performance Measurement

The PSST's executive and management committees met regularly to identify the Tribunal's plans and priorities for the coming year. A strategic planning session held in November 2007 provided the necessary input for the PSST'S 2008-2009 strategic plan and Report on Plans and Priorities.

As part of the Management Resources and Results Structure (MRSS) exercise, the PSST refined its performance indicators and targets in 2007 and subsequently improved its case management system to ensure that the necessary data may be collected for reporting purposes.

Human Resources

By the end of 2007–2008, the PSST had filled nearly all of the positions within the organization. The next step in the development of an adaptable workforce is the implementation of the PSST's learning policy, including learning plans for all employees. Work began during the year on the development of competency profiles for certain target groups and levels in order to assist employees and managers in identifying their learning and developmental needs.

The PSST strives to assist its employees in achieving a satisfactory work-life balance and to build a strong team environment by planning group activities and improving internal communications.

The next step in the development of an adaptable workforce is the implementation of the PSST's learning policy, including learning plans for all employees.

Finance

Funding

The Tribunal does not have permanent funding; efforts to obtain a source of long-term funding have been made each year since the establishment of the Tribunal. In the meantime, the PSST receives its funding through renewable parliamentary appropriations.

Expenditures

2007-2008				
Description	FTE	Salaries	O&M	Total
Adjudication of complaints	13.0	1,538,376	167,581	1,705,957
Mediation	4.5	391,588	274,955	666,543
Corporate Services	11.5	1,164,724	766,717	1,931,441
Total spending	29.0	3,094,688	1,209,253	4,303,941
Unspent*		88,569	726,258	814,827
Total allocation		3,183,257	1,935,511	5,118,768

*Returned to the Consolidated Revenue Fund

The Tribunal does not have permanent funding; efforts to obtain a source of long-term funding have been made each year since the establishment of the Tribunal.

Case Summaries

The following case summaries are a representative sample of the decisions rendered by the Tribunal in 2007-2008.

Final Decisions

Managers' discretion in staffing; clarification of abuse of authority.

Visca and the Deputy Minister of Justice et al. (2007 PSST 0024)

The complainant alleged that he was not appointed to the position of Senior Practitioner, Drug Prosecutions at the Department of Justice (the DOJ) by reason of abuse of authority in the application of the merit criteria for the position.

The complainant was not appointed to a position of senior practitioner as a result of a process whereby the DOJ chose to assess the essential qualifications in order of importance. Qualified candidates were selected from the pool for further consideration if they received a rating of "Honours" or higher for each of the merit criteria. The application of the rating against the first two criteria resulted in the selection of three candidates to be considered for appointment. Since the complainant received only a "Pass" rating for the second criterion (judgment), his candidacy was not retained.

The complainant made four allegations as follows:

- The selection board altered arbitrarily and unfairly the advertised criterion of extensive and recent experience;
- The merit criteria were improperly assessed as only candidates receiving the highest rating for the criterion of experience were further assessed for the other essential qualifications;
- The selection board assessed him incorrectly with respect to the judgment criterion;
- It was unfair on the part of the selection board to use multiple selection panels to conduct interviews.

The respondent submitted the following arguments:

- The assessment of candidates took into account both extensive and recent experience; recent experience did not overshadow extensive experience;
- There were legitimate reasons to rank as first and foremost the criterion of extensive and recent experience. The ranking of the criteria was made in accordance with section 31 of the *PSEA* and reflected the work requirement for the position;
- The complainant was given the opportunity to demonstrate his level of good judgment. Section 36 of the *PSEA* is specifically designed to provide flexibility in the choice of methods of assessment;
- There is no requirement to have a uniform board; the use of multiple panels is a well established practice in the federal public service.

The Public Service Commission (PSC) submitted that the Tribunal should adopt a narrow definition of abuse of authority and that, even if the Tribunal chose to apply a broader definition, some element of improper intent would be required for a finding of abuse. For instance, in cases where there is evidence of serious recklessness or carelessness, the Tribunal could impute bad faith.

The Tribunal found that:

- an error made in the formatting of the rating guide was a simple typographical error and did not constitute an abuse of authority, nor did it have any bearing in the assessment of the merit criteria;
- the use of the expression “various means” on the advertisement was broad enough to encompass the assessment methods chosen in the appointment process;
- there was no abuse of authority in the assessment of the judgment criterion;
- the use of multiple panels does come within the broad discretion given to managers under the *PSEA*;
- the complainant has the burden of proving allegations of abuse of authority. He provided no such evidence.

The complaint was dismissed.

The deputy head is not required to conduct an investigation following a complainant's request regarding an internal appointment.

***Liang and the President of the Canada Border Services Agency et al.
(2007 PSST 0033)***

The complainant alleged abuse of authority by the respondent in the appointment process for the position of Citizenship and Immigration Officer in the Canada Border Services Agency. He argued that the assessment board failed to apply the time limit in a consistent manner, thereby favouring other candidates over him. He also argued that there were inconsistencies in the marking scheme used in assessing candidates. He further submitted that the instructions given him regarding a role-play exercise had misled him and negatively affected his performance. The complainant noted that subsection 15(3) of the *PSEA* allows deputy heads to investigate staffing processes and to revoke an appointment and take corrective action if the deputy head is satisfied that an error, omission or improper conduct affected the selection of a person for appointment.

The respondent did not dispute the fact that there was a problem in applying the time limit on the first day of interviews, but added that the marks of the candidates in question were adjusted accordingly and that no candidate received marks for answers given after the time limit. The respondent further argued that some of the complainant's allegations were based on assumptions and interpretations of the selection committee's notes taken during other candidates' interviews. Under cross-examination, the complainant admitted that he was incorrect in his interpretation of one of the facts.

The PSC did not present arguments in this case, but submitted that the Tribunal should adopt a narrow definition of abuse of authority and that recourse to the Tribunal under subsection 77(1) was not meant to include errors or omissions.

In its analysis, the Tribunal explained that, while section 15 of the *PSEA* provides for the delegation of authority from the PSC to deputy heads in matters related to internal appointments, it is up to the deputy heads to decide whether to conduct an investigation or not. Citing *Portree v. Deputy Head of Service Canada et al. [2006] PSST 0014*, the Tribunal stated that it is not an investigative body nor is it mandated to uncover evidence on behalf of a complainant and that the complainant presented no clear, convincing evidence to support his allegations. The Tribunal found therefore that the complainant failed to prove, on a balance of probabilities, any inconsistencies in the marking scheme which would constitute an abuse of authority.

The complaint was dismissed.

Establishing essential qualifications; classification; merit principle; abuse of authority in the choice of the appointment process.

Rinn and the Deputy Minister of Transport, Infrastructure and Communities et al. (2007 PSST 0044)

The complainant alleged that he was not appointed as Acting Regional Manager, System Safety, Civil Aviation, Prairie and Northern Region at Transport Canada because of an abuse of authority. His complaint was based mainly on the allegation that the appointee did not have recent experience in piloting an aircraft, which was a requirement of the position.

The complainant alleged abuse of authority in four areas:

- application of merit: the complainant submitted that the day-to-day duties of the position required recent experience as a pilot and that the appointee had no piloting experience;
- failure to take into account the essential qualifications of the position for acting purposes: the complainant alleged that the respondent disregarded the classification standard and modified the essential qualifications for the acting position and that the requirement of recent experience in piloting an aircraft should not have been removed as an essential qualification for the position;
- choice of a non-advertised appointment process;
- failure to provide timely notification of the appointment.

The respondent replied that:

- abuse of authority should be limited to bad faith, personal favouritism or similar wrong-doing;
- the appointee met all the essential qualifications for the acting position; the complainant simply disagreed with the classification of the position;
- the Tribunal has no jurisdiction to deal with the alleged classification violation; the employer has exclusive authority to classify positions;
- with regard to the other allegations, the choice of a non-advertised process was not done to purposefully exclude the complainant, and the notifications related to the acting appointment were timely.

The PSC contended in its written submissions that, generally, abuse of authority requires a finding of improper intent. The PSC submitted that the circumstances of a particular case must be examined, rather than the outcome. The PSC further argued that, even if the Tribunal were to find that the appointee did not meet the essential qualifications for the position, this would not necessarily constitute an abuse of authority.

The Tribunal found that:

- the appointment was for a temporary acting position as specified and that the appointee met the merit criteria for the position;
- the complainant had not provided any evidence of concealment. The position of Regional Manager, System Safety had been vacant for several years and three employees – including the appointee on two separate occasions – had occupied the position on an acting basis during that time.
- the late notification was clearly not, in and of itself, sufficient evidence to warrant a finding of concealment.

The complaint was dismissed.

Assessment of experience; establishing essential qualifications.

Neil and the Deputy Minister of Environment Canada et al. (2007 PSST 0004)

The complainant filed complaints against two appointment processes on the grounds that he was not appointed to either a policy analyst position with the Strategic Integration Division or the Sustainability Division of the Department of Environment in Vancouver, BC by reason of an abuse of authority by the respondent. Given that the department decided to conduct one process for these two separate, but similar, positions, the Tribunal chose to consolidate the complaints.

The complainant made the following allegations:

- The managers abused their authority in establishing “significant experience” as part of the essential qualifications, thereby exceeding the level of experience typically established for these types of positions;

- By not notifying candidates of their definition of “significant”, the members of the assessment board failed to conduct a fair and transparent assessment process;
- The assessment board abused its authority in the actual assessment of the complainant’s qualifications.

The respondent submitted that:

- the *PSEA* clearly stipulates that the deputy head has the authority to establish qualifications for positions and gives discretion to managers to choose the necessary assessment tools;
- the testimony of the delegated manager clearly established that significant experience was required for these positions;
- the complainant failed to demonstrate that the length of time involved in screening candidates resulted in the unfair elimination of some candidates, including himself.

Based on the evidence at hearing, the Tribunal found that the establishment of significant experience as an essential requirement for these positions was a proper exercise of the managers’ discretion under the *PSEA* and that the respondent had properly identified what it wanted the assessment board to look for when it screened candidates for these positions on the basis of “significant experience”.

The Tribunal also found as a fact that the complainant was not clearly informed of how significant experience was to be assessed. The Tribunal stated that, while it is not mandatory to inform candidates in detail of how a particular qualification will be assessed, it is in everyone’s interest to be as clear and transparent as possible in an appointment process. However, failure to inform candidates of a specific definition related to a merit criterion does not, in and of itself, amount to abuse of authority.

With respect to the complainant’s last allegation, the Tribunal found that there was no abuse of authority in the assessment of his experience inasmuch as the respondent provided a rational explanation to support the assessment board’s decision to eliminate the complainant from the process.

The Tribunal dismissed the complaints.

Interim Decisions

Basic criterion for assessing a request for an order for the provision of information

Akhtar and the Deputy Minister of Transport, Infrastructure and Communities et al. (2007 PSST 0026)

The complainant requested the Tribunal to order the respondent to provide him with information that he had requested, but not received. The requested information included, among other items, the assessment results for all successful and unsuccessful candidates from the present appointment process under complaint as well as from a previous appointment process for the same position.

The complainant argued that he was treated differently from the successful candidates in both processes and that the assessment results from both processes would substantiate his claim. The complainant submitted that he needed the questions and answers from both processes to ensure that they were the same and that the same standard was applied in all assessments.

The respondent noted that all information requested by the complainant had been provided to him except the results of other candidates. The respondent maintained that neither the information regarding the first appointment nor the results of the successful candidate in the second process were relevant to the present complaint.

The Tribunal noted that the threshold test in considering a request for an order for provision of information is arguable relevance – that is, there must be some relevance between the information sought and the complaint, and the requesting party bears the onus of demonstrating the nexus, or clear link between the two. In order for the complainant to establish whether the sole assessment board member to participate in both processes was biased against him, the Tribunal found that the information regarding the complainant's results from both processes was relevant to the present complaint and ordered that the information be provided to him.

Similarly, the Tribunal was satisfied that the information related to the successful candidate in the second process, who had been eliminated from consideration in the first process, was arguably relevant to the complainant's allegation that the assessment board had demonstrated personal favouritism towards this candidate. The Tribunal therefore ordered the disclosure of the assessment information pertaining to this candidate from both the first and second appointment processes.

Criteria for granting intervenor status

Wardlaw and the President of the Public Service Human Resources Management Agency of Canada et al. (2007 PSST 0017)

The respondent undertook an internal advertised appointment process to staff twelve regional field coordinator positions in six regions for the PSAC-PSHRMAC Joint Learning Program (the JLP). The complainant participated in this appointment process, but was not selected for one of two positions for the Ontario Region even though she met the essential qualifications.

The Public Service Alliance of Canada (PSAC) requested intervenor status in this case for the following reasons:

- The PSAC is a co-sponsor of the JLP and an integral partner in its design and implementation;
- It would be inappropriate and 'possibly unethical' to represent the complainant in this proceeding;
- The complaint raises issues of discrimination of interest to all of its members;
- Two of its employees, who were members of the assessment board would likely be called as witnesses.

The respondent objected to the application for intervenor status by the PSAC for the following reasons:

- As the certified bargaining agent for the complainant and the appointees, the PSAC was entitled to represent these parties before the Tribunal and to fully participate as their representative;
- In choosing not to represent the complainant, the PSAC withdrew itself as a participant in this proceeding;
- Normally, intervenor status is granted to protect the rights of those who are not parties, but who may be personally adversely affected by the outcome of the proceeding, and the PSAC has no such personal interest.

- The PSAC's argument that the matters raised by this complaint had the potential to affect all its members is immaterial since all hearings and proceedings before the Tribunal raise issues that have a direct or potential bearing on every member of the PSAC, as well as all other employees who occupy positions in organizations subject to the *PSEA*.

The PSC had no objection to the PSAC being granted intervenor status.

In deciding whether to grant intervenor status to the PSAC in the case, the Tribunal applied a two-pronged test. First, under subsection 19(1) of the *PSST Regulations*, an applicant, while not a party, must have a substantial interest in the proceeding. Secondly, the Tribunal must determine whether the applicant's participation would assist the Tribunal in reaching a decision on the complaint.

The Tribunal was satisfied that the PSAC, though not a party, had not only a substantial interest in this proceeding, but also a direct interest, in that staff of the PSAC had served as members of the assessment boards and that the PSAC's position was not already represented in the proceeding and would be of assistance in considering and disposing of the complaint.

For these reasons, the PSAC was granted intervenor status by the Tribunal.

Appendix 1 – Members’ Biographical Notes

Guy Giguère, Chairperson and Chief Executive Officer



A seasoned adjudicator and mediator with over 24 years of experience in the federal public service of Canada, Guy Giguère was appointed Chairperson of the Public Service Staffing Tribunal in March 2005. Mr. Giguère was first a member of the Public Service Staff Relations Board from 1998 to 2000 and became Deputy Chairperson of the Board in 2001. He was reappointed for a five-year period on March 31, 2008. Mr. Giguère began his public service career in 1983 with Employment and Immigration Canada where he provided training and advice on human rights and access to information legislation. He later worked with the Office of the Privacy Commissioner, the Department of Justice and the Privy Council Office. Born in St-Jérôme, Québec, Mr. Giguère obtained a civil law degree (LL.L) from the Université de Montréal and has been a member of the Quebec Bar since 1978. Mr. Giguère is a frequent speaker on mediation and arbitration in the federal public service and trains new members of federal administrative tribunals on the conduct of a hearing. He is also a guest lecturer at the Faculty of Law, University of Ottawa and with the Department of Industrial Relations at the Université du Québec en Outaouais.

Sonia Gaal, Vice-Chairperson



Sonia Gaal was appointed Vice-Chair of the Public Service Staffing Tribunal in August 2005. Ms. Gaal received her civil law degree (LL.L) from the Université de Montréal, completed a Post Graduate Diploma in Labour Law at the University of Alberta and holds an MBA from Athabasca University in Alberta. From 1985 to 1988, Ms. Gaal was a Labour Relations Officer and member of the negotiating team for the City of Edmonton. She later served as a Labour Relations Advisor with the Government of Alberta where she represented the government during arbitration hearings and negotiations. In 1998, Ms. Gaal was appointed to the Alberta Labour Relations Board and, one year later, to the Canada Industrial Relations Board in Ottawa as a full-time member. Ms. Gaal remains an active member of the Law Society of Alberta and the Barreau du Québec.

Helen Barkley, Full-time member



A graduate of Queen's University (B.A. Sociology), Helen Barkley commenced her public service career with the National Parole Service. In 1980, she left the public service to attend law school (LL.B., University of Ottawa, 1983), and has been a member of the Ontario Bar since 1985. On her return to the public service in 1985, she worked in several departments doing legislative review. In 1990, Ms. Barkley was appointed as an Appeal Board Chairperson with the Public Service Commission, where she conducted appeal hearings, investigations and boards of inquiry. Since 1998, she has held senior positions in recourse and policy. As part of the modernization process, she participated in the Public Service Commission Advisory Committee working group on co-development and the Deputy Ministers' working group on staffing recourse. Ms. Barkley was appointed as a full-time member of the Public Service Staffing Tribunal in November 2005.

Merri Beattie, Full-time member



Merri Beattie is an experienced human resources professional, with particular expertise in labour relations and staffing. Ms. Beattie began her public service career with Supply and Services Canada and has held positions in management since 1999. Ms. Beattie served on the Privy Council's Task Force on Modernizing Human Resources Management created in April 2001 to draft a new institutional and legislative framework for human resources management in the public service. Following the adoption of the *Public Service Modernization Act* (PSMA), Ms. Beattie participated in the planning of PSMA implementation across government departments and agencies. In January 2004, Ms. Beattie was named Director of Human Resources Modernization with Public Works and Government Services Canada. In this capacity, she led the design and implementation of the modernization of the department's human resources policy frameworks and systems, including those of the new Act. Ms. Beattie was appointed member of the Public Service Staffing Tribunal in November 2006.

Francine Cabana, Full-time member

Francine Cabana was appointed as a member of the Public Service Staffing Tribunal in November 2005. Ms. Cabana began her career with the Department of Communications in human resources and later became a compensation and benefits specialist with the Canadian International Development Agency. In 1984, she became a union representative with the National Component of the Public Service Alliance of Canada (PSAC) where she argued employee grievances and complaints before various administrative tribunals and developed an expertise in alternative dispute resolution. From 1997 until her appointment to the Tribunal, Ms. Cabana was a PSAC Grievance and Adjudication Officer, representing members before provincial and federal labour relations boards, both during formal hearings and mediation sessions.

Ken Gibson, Temporary member

Ken Gibson became a temporary member of the Public Service Staffing Tribunal in January 2006. Mr. Gibson began his career as a researcher with the Science Council of Canada and later worked at the Professional Institute of the Public Service of Canada as both chief research officer and negotiator. From 1985 to 2000, he held a number of senior human resources management positions at the National Research Council, including Director of Employee Relations. Mr. Gibson spent the next five years working as a human resources consultant with expertise in HR strategy, policy and program development, project management, labour relations and change management. Mr. Gibson holds an Honours Bachelors degree in Commerce with specialization in economics and industrial relations.

Robert Giroux, Temporary member



Robert J. Giroux was appointed temporary member of the Public Service Staffing Tribunal in November 2005. Before retiring as President of the Association of Universities and Colleges of Canada in March 2004, Mr. Giroux held the positions of Secretary of the Treasury Board and Comptroller General of Canada, President of the Public Service Commission of Canada, Deputy Minister of Public Works Canada, and Deputy Minister of National Revenue, Customs and Excise. He is a member of the Order of Canada and has received honorary doctorates from several Canadian universities. Mr. Giroux currently serves on the Board of Directors of the Canadian Education Centre Network, Katimavik, and chairs the Board of Directors of the Canadian Council on Learning. He is also a member of the Canada Foundation on Innovation and the Canada Millennium Scholarship Foundation and a Senior Fellow with the faculty of Social Sciences at the University of Ottawa. Mr. Giroux has a BA in Commerce and an MA in Science from the University of Ottawa.

Daniel Ish, Temporary member



Daniel Ish was appointed as a temporary member of the Public Service Staffing Tribunal in November 2005. A graduate of the College of Law, University of Saskatchewan and Osgoode Hall Law School and established arbitrator and mediator, Mr. Ish has handled more than 300 cases related to labour, commercial and contractual matters since 1979, including numerous Indian Residential School (IRS) claims. Mr. Ish began his career as assistant Professor of Law at McGill University and is currently Professor of Law at the University of Saskatchewan and a senior adjudicator in Canada's IRS Dispute Resolution program. He has also served as a consultant to private and public organizations in the United States, the Caribbean, Taiwan, Nepal, Indonesia, the Philippines, China and Sri Lanka and published more than 60 articles, books and reports.

Gordon Roston, Temporary member

Gordon Roston was appointed temporary member of the Public Service Staffing Tribunal in November 2005. From 1980 to 1995, Mr. Roston served the federal public service in many capacities, including Director General, International Marketing, Tourism Canada; Minister-Counsellor, Canadian Embassy, The Hague, Netherlands; Senior Staff Advisor to the Service to the Public Task Force, Public Service 2000 and Senior Advisor, Innovative and Quality Services, Treasury Board Secretariat. Since his early retirement from the public service, Mr. Roston has pursued a particular interest in Alternate Dispute Resolution and is a graduate and Fellow of the Canadian Institute for Conflict Resolution. As a mediator in the Ontario Civil Court Mandatory Mediation Program, he has acted in a wide variety of disputes ranging from breach of contract to harassment and has taught mediation and negotiation principles and practice. Mr. Roston has served as chairman, board member or advisor on a number of community and cultural organizations.

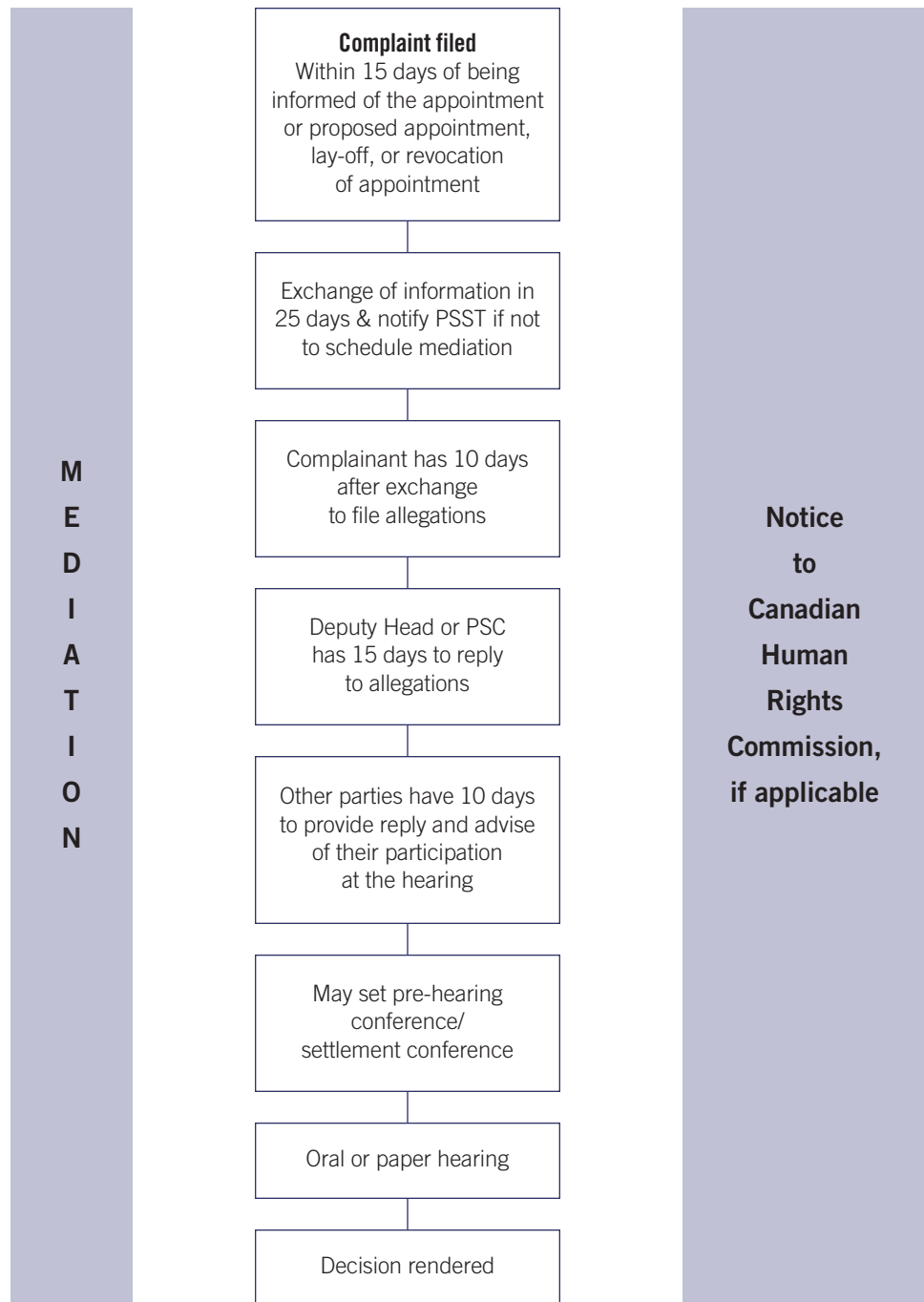
Appendix 2 – Statutory Responsibilities

The *Public Service Employment Act* requires or permits the Tribunal to undertake the following activities:

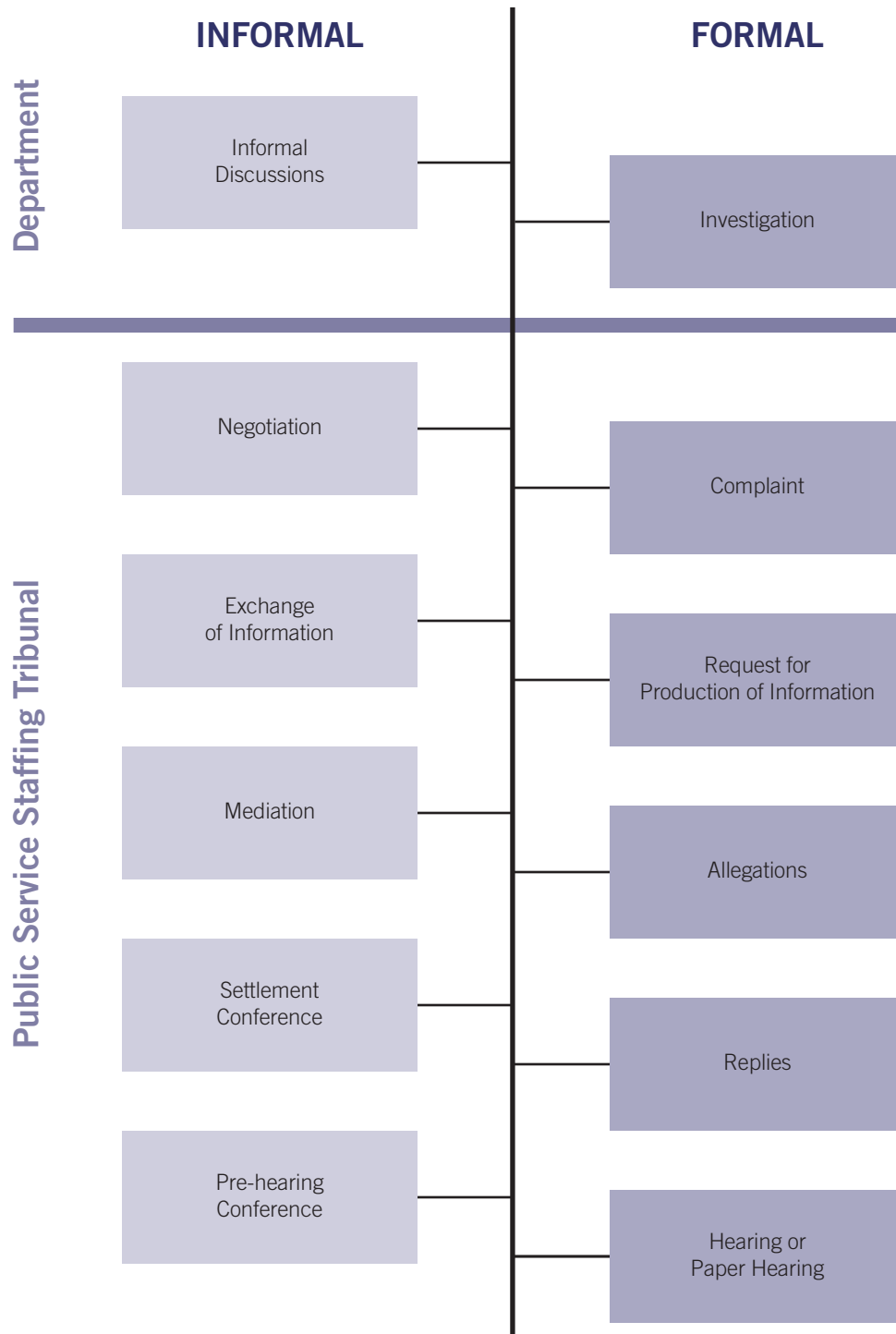
1. consider and dispose of complaints presented to the Tribunal [subs. 88(2)];
2. in the case of a founded complaint involving a lay-off of an employee, set aside the decision of a deputy head to lay off the employee and order the deputy head to take any corrective action that it considers appropriate, other than the lay-off of another employee [subs. 65(4)];
3. in considering whether a complaint against a lay-off is substantiated, interpret and apply the *Canadian Human Rights Act*, other than its provisions relating to the right to equal pay for work of equal value [subs. 65(7)];
4. in the case of a founded complaint involving a revocation of an appointment, order the Public Service Commission or the deputy head to set aside the revocation [s. 76];
5. in the case of a founded complaint involving an internal appointment, order the Public Service Commission or the deputy head to revoke the appointment or not to make the appointment and to take any corrective action that it considers appropriate [subs. 81(1)];
6. in considering whether a complaint against an internal appointment is substantiated, interpret and apply the *Canadian Human Rights Act*, other than its provisions relating to equal pay for work of equal value [s. 80];
7. in the case of a complaint involving a corrective action ordered by the Tribunal, order the Public Service Commission or the deputy head to revoke the appointment made as a result of the implementation of the corrective action, or not to make the appointment, and give the Commission or the deputy head any directions that it considers appropriate with respect to the implementation of the corrective action [s. 84];
8. provide mediation services at any stage of a proceeding in order to resolve a complaint [subs. 97(1)];
9. summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath in the same manner and to the same extent as a superior court of record [par. 99(1)(a)];
10. order that a hearing be conducted using any means of telecommunication that permits all persons participating to communicate adequately with each other [par. 99(1)(b)];

11. administer oaths and solemn affirmations [par. 99(1)(c)];
12. accept any evidence, whether admissible in a court of law or not [par. 99(1)(d)];
13. compel, at any stage of a proceeding, any person to produce any documents and things that may be relevant [par. 99(1)(e)];
14. subject to any limitations that the Governor in Council may establish in the interests of defence or security, enter any premises of an employer where work is being or has been done by employees, inspect and view any work, material, machinery, appliances or articles in the premises and require any person in the premises to answer all proper questions relating to a complaint [par. 99(1)(f)];
15. summarily dismiss any complaint that, in its opinion, is frivolous or vexatious [subs. 99(2)];
16. decide a complaint without holding an oral hearing [subs. 99(3)];
17. render a decision on a complaint and provide a copy of it, including any written reasons, and any accompanying order to the Public Service Commission and to each person who exercised the right to be heard on the complaint [s.101];
18. make regulations respecting complaint time limits and procedures, procedures for the hearing of complaints, time limits and procedures for notices and other documents, notice of an issue to the Canadian Human Rights Commission and the disclosure of information [s.109];
19. prepare and submit an annual report to Parliament through the Minister of Canadian Heritage regarding activities during the fiscal year [subs. 110 (1)];
20. use any services and facilities of departments, boards and agencies of the Government of Canada that are appropriate for the operation of the Tribunal [subs. 93(2)].

Appendix 3 – The Complaint Process



Appendix 4 – Staffing Complaint Resolution System



Appendix 5 – How to Contact the Tribunal

General information

Website: **www.psst-tdfp.gc.ca**
Telephone: 613-949-6516
1-866-637-4491
Facsimile: 613-949-6551
TTY: 1-866-389-6901
E-mail: **Info@psst-tdfp.gc.ca**

Mailing Address

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

Director, Operations, Registry and Policies

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Manager, HR Program, Services and Strategies

Julie Brunet
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