

**FEDERAL PUBLIC SECTOR
LABOUR RELATIONS AND
EMPLOYMENT BOARD**

**PROCEDURAL GUIDE
FOR STAFFING COMPLAINTS**

January 2021

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FEDERAL PUBLIC SECTOR LABOUR RELATIONS AND EMPLOYMENT BOARD PROCEDURAL GUIDE FOR STAFFING COMPLAINTS

1. Introduction - Why a guide?

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.

In relation to staffing matters, the Board is responsible for dealing with complaints under the [Public Service Employment Act](#) (PSEA) related to internal appointments and lay-offs within the federal public service. The Board can also receive complaints about appointments that were made to comply with an order in a previous Board decision as well as revocations of internal appointments.

To assist in meeting its responsibilities the Board has enacted the [Public Service Staffing Complaints Regulations](#) (the *Regulations*), which govern the Board's proceedings in relation to staffing complaints. 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 involved in staffing complaint proceedings before the Board.

The *Procedural Guide for Staffing Complaints* (the Guide) is for information purposes only and does not contain any statements of law. Users of the Guide must also consult the PSEA and 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 Board'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 Board so that the Guide can be adapted and improved where necessary. Please send your comments to the Board at:

Email Address: director.directeur@fpslreb-crtespf.gc.ca

Mailing Address: Federal Public Sector Labour Relations and Employment Board
240 Sparks Street, 6th 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 that the proceedings and hearing be in English or in French. The Board is able to serve its clientele in both official languages, and all Board documents are available in both English and French. Complainants and other parties may file documents in either official language, regardless of the language chosen for the hearing. Deputy heads, the Public Service Commission and the Canadian Human Rights Commission are, however, required to file documents in the official language chosen for the hearing. Please note that the Board does not translate the documents that have been submitted by the parties.

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 Board at least four weeks before the scheduled hearing date. In some locations, it may be difficult to reserve interpretation services without this four-week notice.

The Board's decisions and orders are issued and posted on the Board's website in both official languages.

Ce Guide de procédure est aussi disponible [en français](#).

3. General information

Hours of business

The Board's hours of business in relation to staffing complaints are from 8:30 a.m. to 4:30 p.m., Eastern Time, Monday to Friday.

Delivery of documents to the Board

Documents need to be received by the Board within the time periods prescribed in the *Regulations* or as determined by the Board.

Documents may be sent to the Board by electronic mail or fax. They can also be delivered to the Board in person, by courier or by regular or registered mail. To ensure that documents are received as soon as possible, the **Board strongly encourages** the filing of documents by **electronic mail** whenever possible.

Where a **notice of complaint** has been sent by electronic mail or fax, the complainant must ensure that a copy bearing the complainant's or his or her authorized representative's signature is sent as soon as possible to the Board either by mail or by sending a scanned copy in the form of a fax or attachment to electronic mail.

The complainant must also **send to the Board a copy of the Notice of Appointment or Proposal for Appointment, Lay-off, or Revocation of Appointment** to which the complaint relates.

Calculation of time periods


In calculating a time period, all calendar days including Saturdays, Sundays and holidays must be counted. However, if the last day of a time period specified in the *Regulations* is 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.

The following is a list of examples of statutory holidays in the federal public service:

New Year's Day - January 1	1 st Monday in August (excluding Quebec)
Easter Friday	Labour Day
Easter Monday	Thanksgiving Day
Victoria Day	Remembrance Day – November 11
St-Jean Baptiste Day – June 24 (Québec)	Christmas Day – December 25
Canada Day – July 1	Boxing Day – December 26


For example, the 10th day to submit the allegations falls on a Sunday. The day to submit the allegations is therefore brought forward to Monday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
10 th day	Actual day to submit allegations					



For example, the 15th day to submit the deputy head's reply to allegations falls on a holiday Monday. The day to submit the reply is therefore brought forward to Tuesday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	15 th day Holiday Monday	Actual day to submit reply to allegations				



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 Board 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 received by the Board;
- (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.*

Address of the Board for delivery of documents

Federal Public Sector Labour Relations and Employment Board
240 Sparks Street, 6th Floor West
Ottawa, Ontario K1A 0A5

Telephone: 613-990-1800
Toll free: 1-866-931-3454
Fax: 613-990-1849

Email address:

- For filing documents with the Board or obtaining other information:
Director.directeur@fpslreb-crtespf.gc.ca

Information available on the Internet

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

The Board's decisions, notices of hearing and this Procedural Guide are available in both official languages on the Board's website.

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

Types of complaints

The [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.

- *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.

The Board may also interpret and apply the *Canadian Human Rights Act* when addressing complaints involving internal appointments and lay-offs [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, physical or mental disability and conviction for which a pardon has been granted or in respect of which a record suspension has been ordered. Please refer to [chapter 6 of the Guide](#) for information on how to raise an issue of discrimination related to a complaint before the Board.

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.gc.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 [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.

- *For an internal appointment process* (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. Please refer to the information in this chapter under the heading entitled “*Can a complainant be represented?*” for further details.

According to s. 14(1) of the [Public Service Employment Regulations](#), 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* (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.
- *If an appointment or proposed appointment occurs as a result of corrective action taken in response to a prior successful complaint under s. 77 of the PSEA* (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 PSST or 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.
- *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.

Who are the parties?

In all cases, the complainant and the deputy head of the organization to which the complaint relates are parties with the right to be heard by the Board. The Public Service Commission, whose mandate includes the authority to appoint persons within the public service, is also a party. This authority is usually delegated to the deputy head, who is referred to as the “respondent” to the complaint.

Who has a right to be heard?

Under the [PSEA](#), several other persons are also given a right to be heard, depending on the type of complaint. **These other parties are:**

- For cases dealing with internal appointments:
 - the person appointed (the appointee) or proposed for appointment [s. 79(1) of the [PSEA](#)]
- 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 of the [PSEA](#))
- For cases dealing with lay-offs:
 - every other employee in the part of the organization where the lay-off occurs [s. 65(3) of the [PSEA](#)]
- For cases dealing with revocation of appointment:
 - **no** person other than the complainant, the respondent, or their representatives, have the right to be heard in the case of a revocation of appointment (s. 75 of the [PSEA](#)).

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.

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 complainant's representative, in turn, will be responsible for informing the complainant of any communications, requests, etc. from the Board. The Board will continue to send the complainant copies of all the correspondence it sends in the case.

It is essential that the complainant and his or her representative keep each other fully informed to ensure that requests from the Board 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. All other documents can be filed by the representative without written authorization.

If a complainant is not represented, he or she can proceed on his or her own before the Board.

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.

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

Weekends and holidays **do count** in calculating the total number of days. However, if the period ends on a weekend or holiday, the time period is extended to the next business day. (Please refer to [chapter 3 of the Guide under Calculation of time periods](#) for more information.)

As an example, if a notice of lay-off to an employee is dated April 10, the complaint would have to be filed by April 25, even if April 20 happened to be a holiday, for instance. However, if April 25 is a Sunday, the complaint could be filed on the next business day, which would be Monday, April 26.

To ensure that there is proof of delivery, it is suggested that complaints be sent by registered mail, fax, or electronic mail.

What is included in a complaint?

The complainant may use Form 1 to make his or her complaint. The complaint form is available on the Board's website.

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

- 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.

The contact information provided by the complainant such as the mailing address or electronic mail address must be information that can be disclosed to all parties. A business address may therefore be preferable.

With respect to the signature, the *Regulations* require that the complaint be signed by the complainant or his or her representative. Where the complaint is filed by electronic mail, a signed copy can be sent afterwards by fax or by sending a scanned copy of the signed complaint (Please refer to [Chapter 3](#) of the Guide under the heading *Delivery of Documents to the Board*, for more information).

As indicated in the list above, the complainant must provide with the complaint a copy of the Notice of Appointment or Proposed Appointment, the Notice of Lay-off or the Notice of Revocation. In the case of a complaint regarding an appointment or proposed appointment, the complainant should indicate whether the appointment is indeterminate or if it is an acting appointment of more than four months.

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 (e.g. PRI number, medical information, etc.) with your complaint. It may be more appropriate to disclose such information during the exchange of information between the complainant and the respondent or at the hearing itself. (Please refer to [Chapter 8](#) of the Guide).

Can a Notice of Consideration be sent in 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. Complainants may file a complaint with the Board **if they are in the area of recourse for filing a complaint** (see s. 77(2) of the [PSEA](#)). With respect to advertised internal appointment processes, they are in the area of recourse if they were an unsuccessful candidate. For non-advertised processes, persons in the area of selection as determined by the deputy head are in the area of recourse. A person may not file a complaint regarding his or her own appointment.

One of the reasons why complainants are required to include a copy of the Notice of Appointment or Proposed Appointment with their complaint is so that the proper parties to the complaint can be identified. If, for instance, a complaint is filed in response to the third Notice of Appointment or Proposed Appointment arising from the same process, the person(s) appointed or proposed for appointment in the first and second notices are not parties to the complaint.

To whom must the complaint be addressed?

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

Responsibilities of the complainant

The complainant or the complainant's authorized representative must ensure that the complaint is sent to the Board and contains all the requested information.

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

A person who wishes to file a complaint after the 15-day deadline may ask the Board to extend this time period. The request must be made in writing as soon as possible and sent to the Board at the above address along with the complaint that the person intends to file. In the request, the person should explain why the complaint is filed late and state the reasons why he or she believes the Board should extend the time period for filing the complaint. The Board will then seek submissions on the issue from the parties and will provide a ruling on the request

for an extension as soon as possible. The Board will determine if it is in the interest of fairness to extend the deadline. The Board has previously ruled that extensions are granted only in exceptional circumstances.

The respondent or, in the case of appointment-related complaints, the persons appointed or proposed for appointment, may also raise an objection when a complaint is filed outside the prescribed time.

Form 6 is available for the purpose of raising this type of objection and may be obtained from the Board's website or by contacting the Board. The objection must be filed with the Board, and a copy sent to the complainant before the expiry of the 25-day period allowed for the exchange of information [s. 21(1) of the [Regulations](#)]. Objections filed later will not be considered, except in exceptional circumstances.

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

After reviewing the submissions, the Board will render a decision on the issue and inform the complainant, the respondent, and the other parties.

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 [s. 65(4) of the [PSEA](#)], the complainant may allege that there has been discrimination within the meaning of the [Canadian Human Rights Act](#). The 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 Board and the Canadian Human Rights Commission as soon as possible of the intention to raise the issue [ss. 65(5) and 78 of the [PSEA](#)] (Please refer to the heading *Notice to the Canadian Human Rights Commission* below).

The prohibited grounds of discrimination, as set out in [ss. 3 and 25 of the Canadian Human Rights Act](#), include: race, national or ethnic origin, colour, religion, age, sex (including pregnancy), sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

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 Board, the respondent and the other parties.

The notice must be in writing and must include the following information [s. 20(1) of the [Regulations](#)]:

- (a) a copy of the complaint;
- (b) the complainant's name telephone number and fax number, and a mailing address or electronic mail address that can be disclosed to all parties;
- (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.

The contact information provided by the complainant such as the mailing address or electronic mail address must be information that can be disclosed to all parties. A business address may therefore be preferable.

Complainants should be aware that **all information** in the notice to the Canadian Human Rights Commission **will be provided to all parties** to the complaint. Therefore, it is best to exercise caution when providing sensitive or confidential information (e.g. PRI number, medical information, etc.) in your notice. It may be more appropriate to disclose such information during the exchange of information between the complainant and the respondent (please refer to [Chapter 8 of the Guide](#)) or at the hearing itself.

Form 5 is available for the purpose of providing notice to the Canadian Human Rights Commission and may be obtained from the Board's website or by contacting the Board.

The notice to the Canadian Human Rights Commission should not be confused with the complaint or the allegations. Complainants must ensure that any facts they allege in support of their case are included in their complaint and the

allegations that they file afterwards. If any facts are only mentioned in the notice to the Canadian Human Rights Commission and not in the complaint or the allegations, the complainant may be precluded from raising those matters at the hearing.

If the complainant fails to inform the Canadian Human Rights Commission that he or she intends to raise a discrimination issue, he or she may be prevented from pursuing the discrimination allegation at the hearing.

Response 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 Board whether or not it intends to make submissions regarding the issue raised in the notice [ss. 65(6) and 79(2) of the [PSEA](#) and s. 20(3) of the [Regulations](#)].

The Board will provide a copy of the Canadian Human Rights Commission's reply to the complainant, the respondent, the other parties and, if applicable, to the intervenors, if any [s. 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 Board. 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 Board with respect to the issue.

7. Processing of complaints by the Board

Sending an acknowledgement of receipt

The Board will send a letter acknowledging that the complaint has been received and informing the complainant of the next steps in the complaint process and of the applicable time frames.

From the moment the acknowledgement of receipt has been sent to the parties, they are required to send copies of all their correspondence with the Board to all the parties in the case as well.

Initial review of the complaint by the Board

Where information is missing or incomplete, the Board may contact the complainant to obtain the required information.

The Board 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 substantially incomplete (e.g., the complaint is filed anonymously or failed to include the complainant's contact information);
- The complaint is trivial, frivolous, vexatious was made in bad faith [s. 21 of the [FPSLREBA](#)].

The respondent or the other parties may also raise these matters as objections if they are not addressed by the Board when the complaint is initially reviewed.

Examples of complaints that are beyond the jurisdiction of the Board include deployments, instances where the complainant alleges that the appointment was not free from political influence [s. 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 Board will send a copy of the complaint and all supporting documents to the respondent, and request the names and addresses of the other parties, including their electronic addresses. This information is to be provided to the Board within 10 days following the date of the request (ss. 12 and 13 of the [Regulations](#)). If any of the other parties is on leave or no longer employed with the respondent, their alternate contact information should be provided if available, subject to obtaining the other party's consent to the disclosure of the contact information.

Form 2 is available for the purpose of providing the names and addresses of the other parties and may be obtained by contacting the Board.

Sending copies of the complaint

Upon receiving the names and addresses of the other parties, the Board will send a copy of the complaint and all supporting documents 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 Board provides mediation services [s. 97(1) of the [PSEA](#)]. The use of mediation services is voluntary. Generally, the parties to mediation are the complainant and the respondent and their

respective representatives. This process is confidential, with the goal of reaching a resolution and withdrawal of the complaint. The mediation is conducted by a trained mediator employed by the Board. Board members do not serve as mediators.

The Board assumes that mediation of a complaint will take place unless the complainant or the respondent informs the Board 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 [s. 15(1) of the [Regulations](#)]. The Board 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 Board, with the agreement of the other party, to set a date for mediation at any subsequent stage of the complaint process [s. 15(2) of the [Regulations](#)].

Participation in mediation does not suspend the time frames contained in the *Regulations*. The parties may, however, request that time limits be suspended to facilitate mediation. The parties must agree on mediation dates and then inform the Board of those dates in the request.

Requests for postponement of the hearing to allow for mediation are not automatically granted, even when all parties consent to the postponement. The Board will consider the reasons for the request and the dates proposed by the parties. (Please refer to the Board's [Policy for Scheduling of Hearings and Requests for Postponements](#)).

8. Exchange of information

Purpose of the exchange of information

The complainant and respondent are required, as soon as possible after a complaint is filed, to exchange all relevant information regarding the complaint [s. 16 of the [Regulations](#)]. The exchange of information is designed to facilitate the early resolution of the complaint by the complainant and the respondent by giving 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 sending a list of requested information to another party. The 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 union representative, the hiring manager, one or more members of the selection board, and/or the HR specialist – have an

opportunity to explain their points of view and respond to any questions about the staffing process.

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 (s. 16 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. **The exchange is made solely between the parties and they must not provide any of this information or documentation to the Board.**

Personal Information

Respondents may be reluctant to exchange information that contains personal information about individuals other than the complainant. However, s. 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 a court relating to the production of information, the definition of which encompasses the provision of the *Regulations* requiring complainants and respondents to exchange all relevant information (s. 16 of the [Regulations](#)). The respondent should not, however, disclose any personal addresses or PRI numbers of public servants. In any event, a government institution will be required to disclose personal information if the Board orders that it be produced (s. 8(2)(c) of the [Privacy Act](#)).

Time period to exchange information

Once the Board 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 [s. 16(1) of the [Regulations](#)] from the date of acknowledgement of receipt of the complaint [s. 16(2) of the [Regulations](#)].

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

If the complainant and the respondent do not complete the exchange of all relevant information, they may request the Board to extend the period for a specified time [s. 16(3) of the [Regulations](#)]. Such requests should be made as early as possible prior to the expiry of the exchange of information period and

must be sent to all parties. Any extension of the exchange of information period will prolong subsequent timelines as well.

Refusal to exchange information

There are circumstances in which a party may refuse to exchange information related to the complaint [s. 17(4) 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 arguably relevant, a **written request** may be made by the complainant, respondent or the Public Service Commission, to the Board, after the exchange of information period has expired, requesting an order to produce the information [s. 17(4) of the [Regulations](#)]. The written request for a production order must include [s. 17(2) of the [Regulations](#)]:

- (a) the name, address, telephone number, fax number and electronic mail address of the party making the request;
- (b) the Board's file number for the complaint to which the request relates;
- (c) a list specifying the documents or information requested;
- (d) a detailed explanation as to why each requested item is relevant to the complaint; and;**
- (e) the date of the request.

It is important that the party requesting the information explain the link between the information requested and the complaint in order to show that it is arguably relevant.

Form 3 is available for the purpose of seeking a production order and may be obtained from the Board's website or by contacting the Board.

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

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

The party seeking a production order must demonstrate that a copy of the request was sent to the parties. When filing by electronic mail, this is usually shown by listing the parties as recipients on the email message to which the request is attached.

Reply of the party who is requested to provide the information

A party that is requested to provide the information is entitled to reply to the request for a production order and to explain to the Board why it refuses to provide the information or indicate if it will provide some or all of the information requested. The written reply must be delivered to the Board within five calendar days of receipt of a copy of the written request for a production order. The written reply must be sent to the Board at the above address with a copy to the other parties. Please refer to [chapter 17 of the Guide](#) for more detailed information on how to present or respond to a request or motion.

The Board will decide on the request after the other party has replied or following the expiry of the five calendar day period, if the other party has not replied.

Suspension of time

When a party has made a request for an order for the provision of information, timelines are suspended until the Board renders a decision on the request [s. 17(4) of [Regulations](#)].

Decision of the Board on a request for an order to provide information

After considering the request and submissions of the parties, the Board may order that some or all of the requested information be provided, subject to any conditions that it deems necessary [[s. 17\(4\), \(5\) and \(6\) of the Regulations](#)].

Section 17(4) of the [Regulations](#) states that the Board **must** order the production of the information requested **if** it deems that it may be relevant and where its disclosure will not:

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

Conditions that may be included in a production order

The Board may impose conditions designed to protect the confidentiality of the information or to prevent the above mentioned risks set out in s. 17(4) of the [Regulations](#). For example, the Board may:

- prohibit the party who receives the information from photocopying the document;
- order that names, personal addresses or public servants' PRI numbers, for example, be blacked out;
- order that the document be disclosed to a party's representative, subject to any further conditions the Board considers necessary;
- order the party who receives the information to return the document to the party who provided it at the end of the proceedings or after the case is closed;
- 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 Board or a court sitting in judicial review of a Board decision.

Any document or information obtained during the Exchange of Information or following a request for a production order may be used only for purposes of the complaint (s. 18 of the [Regulations](#)).

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

The party requesting the information must show that it is "arguably relevant", meaning that there must be some relevance and clear link to the complaint. The

Board will not order the provision of the information where the party only raises a suspicion that some documents may be relevant, without more, as such a vague request amounts to a “fishing expedition” (see *Akhtar v. Deputy Minister of Transport, Infrastructure, and Communities*, 2007 PSST 26).

As mentioned earlier in this chapter, the Board must be satisfied that providing the information requested will not threaten national security or a person’s safety or affect the validity of a standardized test.

The Board 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 Board must be satisfied that disclosure of the information will not cause undue prejudice to any of the parties.

9. Interventions in the Board’s proceedings

What is an intervention?

An intervention involves the presentation of submissions, either in writing or orally, by an individual or an organization not already part of the complaint process regarding an issue before the Board.

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 request permission from the Board to be an intervenor [s. 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 [s. 19(2) of the [Regulations](#)]:

- the applicant’s name, address, telephone number and fax number, and a mailing address or electronic mail address that is to be used for sending documents to the applicant;
- the name, address, telephone number, fax number and electronic mail address of the applicant’s authorized representative, if any;

- the Board's file number for the complaint that is the subject of the application;
- the grounds for intervention and the interest of the applicant in the matter;
- the contribution the applicant expects to make if allowed to intervene;
- the signature of the applicant or their authorized representative;
- the date of the application.

Form 4 is available for the purpose of requesting intervenor status and may be obtained from the Board's website or by contacting the Board.

The application must be sent to the:

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

The Board 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 Board in writing whether they object to the application or not and, if so, explain the grounds for the objection [s. 19(3) of the [Regulations](#)]. A copy of the written reply must be sent to the Board at the above address, and to all parties.

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

To determine whether or not it will grant intervenor status, the Board may consider the following factors [s. 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 Board in deciding the matter.

Decision of the Board on the application for intervenor status

If the Board decides to grant intervenor status, it may issue directions on the role of the intervenor [s. 19(5) of the [Regulations](#)]. For example, the Board 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 his or her allegations?

The complainant must provide his or her written allegations to the Board, the respondent, the other parties, intervenors, if any, and the Canadian Human Rights Commission, if applicable, no later than 10 days after the time period for the exchange of information has expired.

If the complainant is satisfied that the information in his or her complaint is complete enough to serve as allegations, he or she must advise the Board of this no later than 10 days after the time period of the exchange of information has expired.

Responsibilities of the complainant

The complainant must ensure that his or her allegations are as complete as possible. This will enable the respondent 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 Board, the other parties, intervenors, if any, and the Canadian Human Rights Commission, if applicable, on the **same** day. The allegations will not be considered to have been received until the complainant has demonstrated to the Board that copies have been provided to all parties.

Contents of the allegations

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

- the complainant's name, telephone number and fax number 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 Board's file number for the complaint;
- a detailed description of all the relevant facts and allegations on which the complainant intends to rely throughout the complaint process, including the hearing, and
- the date of the document.

If a complainant fails to provide his or her allegations or does not indicate that he or she chooses to use the information provided in the complaint form as a basis for his or her allegations, the Board may dismiss the complaint [see s. 22(3) of the [Regulations](#)].

The following questions may assist a complainant in drafting the "detailed description" portion of the allegations, as required under s. 22(2) of the *Regulations*.

► **What**

What events led to the filing of the complaint?

- Was the complainant not appointed?
- Was someone else appointed or proposed for appointment?
- Was a non-advertised appointment process chosen?
- Does the issue involve the interpretation or application of the [Canadian Human Rights Act](#)?
- Was the complainant not assessed in the official language of his/her choice?
- Was the complainant properly assessed before being selected for lay-off?
- Was a process for the selection of employees for retention of lay-off (SERLO) not properly conducted?
- Was the complainant's appointment revoked?

► **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.

► **When**

When did the events happen?

- A detailed description of the events in the order in which they occurred should be included.

► **How**

How did the events unfold?

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

► **Why**

Why is the complaint being filed?

- Under what section of the *PSEA* is the complaint being filed? (Please refer to [chapter 4 of the Guide](#) for the different types of complaint that may be brought under the *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.
- If a discriminatory practice under the [Canadian Human Rights Act](#), is being alleged, the allegations should specify on which prohibited ground of discrimination the claim is based (race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status,

family status, physical or mental disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered – see ss. 3 and 25 of the Act). The allegations should also specify how the complainant comes under the ground of discrimination in question by, for instance, identifying the complainant’s race, religion, disability, etc. to which the alleged discriminatory practice relates.

► **Remedies**

The complainant could also set out in the allegations the remedies that he or she is seeking. (Please refer to [Chapter 12 of the Guide](#)).

Sending copies of the allegations

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

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

The complainant must provide the Board with proof that the respondent and the other parties have received a copy of the allegations. For example, the complainant could include a copy of an email message indicating that the allegations were sent to those parties, or provide a transmission confirmation page for documents sent by fax.

Form 7 is available for the purpose of providing allegations and may be obtained from the Board’s website or by contacting the Board.

What happens if the allegations are incomplete?

As mentioned above, a basic 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 Board is not required to hold an oral hearing to decide a complaint [s. 22 of the [FPSLREBA](#)]. The Board may base its decision on the written information on the record. Therefore, complete allegations are essential.

What happens if the complainant does not file allegations?

The Board may dismiss the complaint if the complainant does not file allegations [s. 22(3) of the [Regulations](#)]. However, before making such a decision, the Board may give the complainant notice to file the allegations by a final deadline.

What happens if the allegations are not specific enough?

If the respondent finds that it is not possible to reply to the allegations as presented, it may request that the Board order the complainant to be more specific. If the complainant fails to comply with an order to provide more detailed allegations, the complaint may be dismissed.

11. New and amended allegations

Permission given by the Board

The complainant must obtain the Board's permission to file new allegations or to amend the existing allegations. The Board must allow the amendment of the allegations in cases where the request is based on information that could not reasonably have been obtained prior to the filing of the allegations, or it is otherwise in the interest of fairness to allow the amendment or the new allegation [s. 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 Board will give the respondent and the other parties an opportunity to make submissions regarding the request before ruling.

Request to amend or add allegations

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

- 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 Board's file number for the complaint;
- 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;
- the new or amended allegation;
- the date of the request.

Form 8 is available for the purpose of adding or amending allegations and may be obtained from the Board's website or by contacting the Board.

Responsibilities of the complainant

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

The complainant must ensure that the Board, 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 Board 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.

After considering the parties' submissions on the request, the Board makes its ruling and informs the parties of its decision.

12. Remedy/Corrective Measures

The complainant should indicate on the complaint form, in the allegations or in a separate document what remedy he or she is seeking.

In relation to appointment related complaints, the Board **cannot order that a complainant be appointed or that a new appointment process be conducted** [s. 82 of the [PSEA](#)]. However, the Board has the power, amongst other things, to order the revocation of an appointment, make a declaration of abuse of authority, order the complainant to be assessed or make any recommendation that it sees fit given the circumstances of the case.

In complaints regarding lay-offs, the Board may order the respondent to set aside the decision to lay-off the employee, or take any corrective action that it considers appropriate, other than the lay-off of any employee (s. 65(4))

In both appointment and lay-off related complaints, where there is a finding of a discriminatory practice under the *Canadian Human Rights Act*, the Board may also order the payment of damages for pain and suffering (maximum \$20,000) as well as special compensation if the discriminatory practice was engaged in wilfully or recklessly (maximum \$20,000) [ss. 65(7) and 81(2) of the [PSEA](#); ss. 53(2)(e) and 53(3) of the [Canadian Human Rights Act](#)].

If the complaint relates to a revocation of an appointment, the Board may set aside the revocation.

13. Respondent's reply to the complainant's allegations

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

The respondent must submit its written reply to the Board, the complainant, the other parties and, where applicable, the Canadian Human Rights Commission and the intervenors, if any, within 15 days of receiving the complainant's allegations, or amended allegations, if any [s. 24(1) of the [Regulations](#)].

Contents of the reply

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

- the name, address, telephone number, fax number and electronic mail address of the respondent;
- the name, address, telephone number, fax number and electronic mail address of the respondent's authorized representative, if any;
- the Board's file number for the complaint;

- 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; and
- the date of the reply.

Form 9 is available for the purpose of replying to allegations and may be obtained from the Board's website or by contacting the Board.

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

Federal Public Sector Labour Relations and Employment Board
240 Sparks Street, 6th Floor West
Ottawa, Ontario K1A 0A5

Fax: 613-949-6551

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

14. 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

If any of the other parties, including the Public Service Commission, wishes to participate in the hearing (i.e., to be able to lead evidence, examine and cross-examine witnesses, present final arguments, etc.), they must provide their reply to the allegations no later than 10 days after receiving the respondent's reply to the allegations [s. 25 of the [Regulations](#)]. A party that does not provide a reply may still attend the hearing as a member of the public.

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 [s. 25(2) of the [Regulations](#)]:

- the name, address, telephone number, fax number and, if available, electronic mail address of the party;
- the name, address, telephone number, fax number and electronic mail address of the party's authorized representative, if any;

- the Board's file number for the complaint;
- 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; and
- the date of the reply.

Form 9 is available for the purpose of replying to allegations and may be obtained from the Board's website or by contacting the Board.

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 10 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:

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

15. Withdrawal of complaint

A complainant may withdraw his or her complaint at any time. A notice of withdrawal must be filed with the Board, clearly indicating that the complainant is withdrawing the complaint.

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

- (a) the complainant's name, telephone number and fax number, and a mailing or electronic mail address that can be disclosed to all parties;
- (b) the name, address, telephone number, fax number and electronic mail address of the complainant's authorized representative, if any;
- (c) the Board'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.

If the complainant has filed more than one complaint, and they are being dealt with together (i.e., consolidated), the complainant should specify if all of the complaints are being withdrawn.

Form 10 is available for the purpose of withdrawing a complaint and may be obtained from the Board's website or by contacting the Board.

To assist the Board 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 Board [s. 26(1) of the [Regulations](#)] at:

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

Once the complainant's notice of withdrawal has been received, the Board 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 [s. 26(3) of the [Regulations](#)].

16. Notice of hearing

The Board 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 state the date and time of the hearing and the city in which it will take place [s. 28 of the *Regulations*]. A notice of venue is also sent separately specifying the address of the location where the hearing will be held. The Board usually schedules a hearing once the replies to the allegations have been filed. If a party cannot be present on the date of the hearing indicated in the notice of hearing, he or she must file a request for postponement of the hearing. Please refer to the Board's *Policy for Scheduling of Hearings and Requests for Postponements* for additional information.

17. Motions and requests

What is a motion?

A motion is a request made to the Board to make a decision or order relating to one or more matters that may arise before, at the start of, or during the 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 bring an end to the complaint - for example, a motion brought to dismiss the complaint on the grounds that it exceeds the Board's jurisdiction or that it is trivial, frivolous, vexatious or made in bad faith [s. 21 of the [FPSLREBA](#)]. If these types of motions are granted, the complaint will be dismissed and the Board will no longer deal with the matter.

Who can present a motion or request?

The complainant, the respondent and any other party may present a motion or request.

When may a motion or request be presented?

A motion or request may be presented at any time before the Board renders its decision on the complaint. However, it is preferable to present a motion or request to the Board as soon as possible in order to avoid any unnecessary delays. A motion requesting an order for the production of information may only be made after the end of the period for the exchange of information. (Please refer to [Chapter 8 of the Guide](#)).

How to present a motion or a request

A motion or a request presented in the course of the complaint process prior to the 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 as soon as possible provide a copy to all parties, who in turn have a right to reply.

A motion or request may also be presented orally at the hearing – for example, a motion requesting 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 the parties, the intervenors, if any, and to the Board at:

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 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 calendar days of receipt of the motion or request**, provide a written reply and send it to all parties, intervenors, if any, and to the Board at the address provided above. The Board may shorten or extend the five day reply period in certain cases. For instance, if a party requests an extension of four days to file a document past its scheduled filing date, the Board may order that the party reply to the motion within less than five days.

Consideration of the motion or request

After the five-day period for filing replies has elapsed, the Board 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 Board **will not** prompt parties for replies. If a party does not provide its reply within the five-day period or has not asked for an extension of the time for the filing of a reply, the Board will render its decision on the basis of the information it has received.

18. 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 Board for the hearing of the complaint. Pre-hearing conferences are mandatory. They allow the Board to deal with procedural issues and technical questions before the hearing, serve to avoid delays and may also assist with the resolution of some issues prior to the hearing.

Holding a pre-hearing conference

All parties are 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 [s. 20(c) of the [FPSLREBA](#)]. The pre-hearing conference is chaired by a member of the Board.

The Board 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.

If a party is unable to attend the pre-hearing conference, it must notify the Board and all the parties as soon as possible.

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 Board can hear a complaint, a complaint cannot proceed if the Board 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 Board, it may not be necessary to call certain witnesses to prove these facts. The Board 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 Board 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;
- When documents are to be exchanged prior to the hearing;
- How many copies of each document (evidence and jurisprudence) will be required at 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.;

- The witnesses that each party intends to call and what, in general terms, they will be testifying about. Parties should be prepared in advance to provide this information, which may require that they consult with their proposed witnesses before the pre-hearing conference to discuss these questions;
- 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 any party or other person appearing at the hearing requires some form of accommodation;
- Determining whether some complaints should be heard at the same time, if appropriate;
- Discussing the remedies sought by the complainant;
- Any other matter that may expedite the proceedings.

Purpose of settlement conference

A settlement conference allows the parties to discuss the strengths and weaknesses of their case with the assistance of a Board member. It differs from mediation in that it is an evaluative process and is chaired by a Board member. Once a date is set, the complainant and his or her representative and the respondent's delegated representatives receive, in advance, a Notice of Settlement Conference indicating the date and place of the settlement conference as well as copies of documents related to the process.

A Board 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 conference, the terms and conditions of the settlement will be set out in a document signed by them.

19. Board hearings

A single Board member presides over hearings [s. 37(1) of the [FPSLREBA](#)], although the case may be assigned to a three member panel if the complexity of the matter requires it [s. 37(2) of the [FPSLREBA](#)]. ,

Board members may provide mediation services at any stage of a hearing [s. 97 of the [PSEA](#)]. They 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 Board may allow witnesses to testify, but choose to receive arguments in writing.

What is a paper hearing?

The Board is not required to hold an oral hearing to reach a decision on a complaint [s. 22 of the [FPSLREBA](#)]. The Board may decide a complaint based on the written information on the record. Where the Board intends to conduct a paper hearing, the Board 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 Board who may request additional written submissions and supporting documentation, such as affidavits, where applicable. (Please refer to [Chapter 20 of the Guide](#) under the heading *What is an affidavit?*). The time limit for providing additional written material will be determined by the Board member. Following receipt of all relevant information, the Board member will review all of the documents on the record and render a decision on the complaint.

Oral hearings

Usually, an oral hearing is held when the complaint involves questions of credibility, if there are contradictory versions of the facts, if the Board wishes to hear directly from witnesses, or if complex factual or legal issues have been raised by the complaint. The hearing is usually scheduled for two consecutive days.

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

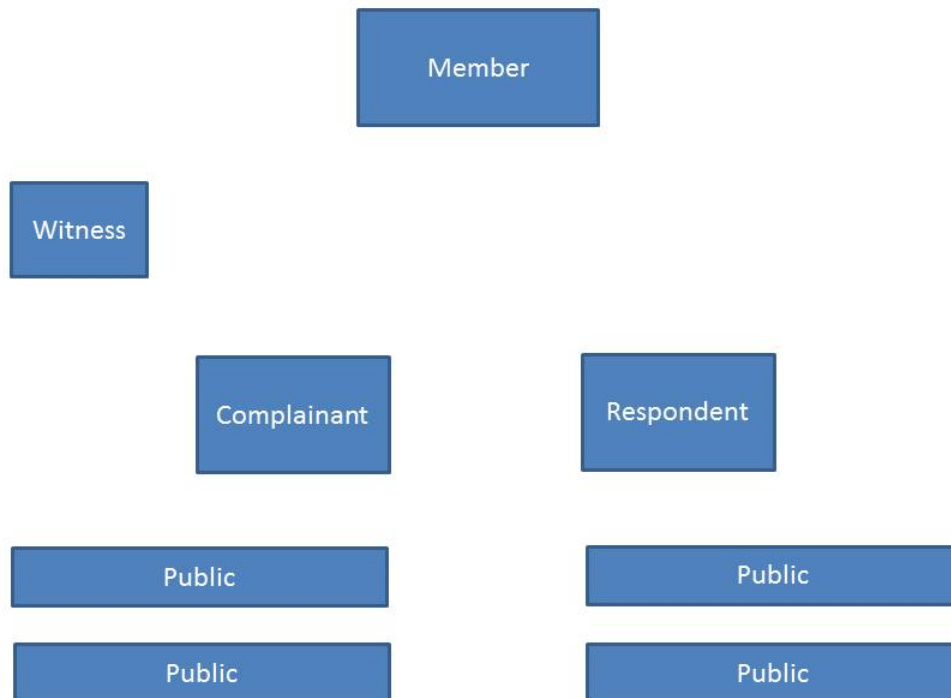
The complainant, respondent and other parties, if participating, are responsible for contacting the Board to verify how many copies of each document are required for the hearing. They should not only prepare copies for each other but also for the Board member hearing the case, the Public Service Commission, the

Canadian Human Rights Commission, if participating, intervenors, if any and translators if simultaneous translation is required. It is extremely important that those participating in a Board 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 Board's attention.

Place of hearing

If the Board decides that an oral hearing is necessary, it will attempt to schedule the hearing at a convenient location. The Board will determine the time, date and location of oral hearings as it deems appropriate [s. 25 (c) of the [FPSLREBA](#)]. The Board may use the hearing rooms of other Canadian administrative tribunals, or courts to conduct hearings, as well as meeting rooms in hotel and conference facilities when necessary.

The hearing room is usually arranged as shown below:



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. The Board will not reimburse the travel costs of any of the parties or witnesses who attend the hearing.

With the agreement of the parties, the Board 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. [s. 20(c) of the [FPSLREBA](#)]

20. Conduct of the oral hearing

The Board 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.

Absence of a party at the hearing

After ensuring that a notice of hearing was issued, the Board may proceed with the hearing and dispose of the complaint without further notice despite the absence of any party, the Canadian Human Rights Commission, if applicable, or intervenor, if any (s. 29 of the [Regulations](#)).

Accordingly, if the complainant is not present at the hearing, for instance, the Board may continue without him or her and render a decision based on the evidence provided by the parties who were present at the hearing.

Evidence

Evidence consists of all the information about the case that a party wants the Board to know so that it can make its decision. The best evidence is that provided by documents and witnesses appearing before the Board and any documents to which they may refer during their testimony. Evidence may be presented orally under oath or by solemn affirmation.

The Board will determine the admissibility of evidence. The Board may accept evidence that might not otherwise be admissible in a court of law, such as

hearsay evidence (i.e., evidence reporting the words of another person who is not testifying) [s. 20(e) of the [FPSLREBA](#)]. The overriding consideration for the Board in terms of admissibility is whether the evidence is relevant to the complaint. Where there is disagreement concerning admissibility, the Board may admit the evidence and subsequently, in its decision on the complaint, assess the weight to be given to that evidence.

What is an affidavit?

An affidavit is a voluntarily written declaration or statement of facts by a witness. The witness making the affidavit (“the affiant”) confirms its content by taking an oath or making a solemn affirmation in the presence of someone with the authority to administer oaths and affirmations (e.g., a lawyer or a commissioner for taking oaths and affirmations). The affiant attests that the information contained in the affidavit is true. This attestation has the same legal effect as providing oral testimony under oath or solemn affirmation at a hearing.

Contents of the affidavit

An affidavit should contain the following information:

- (a) the file number and name of the proceeding to which it relates;
- (b) the affiant’s name and address (preferably the work address);
- (c) the affiant’s title or position;
- (d) the affiant’s declaration that the contents of the affidavit are true to the best of his or her knowledge or belief;
- (e) a concise statement of facts relevant to the case. Each of the facts must be described very clearly, in separate numbered paragraphs; and,
- (f) the affiant’s signature, the date and the location indicating when and where the affidavit was signed, and the signature of the person commissioning that affiant’s oath or solemn affirmation.

When is an affidavit used?

The *FPSLREBA* gives the Board the power to accept affidavit evidence (s. 20(a)). The Board at its discretion can direct that certain witnesses provide their evidence through an affidavit where circumstances warrant it. Since Board hearings in staffing matters are usually scheduled for two days, the purpose of using affidavit evidence is to better manage the hearing time.

In cases being heard orally, the witness who provided affidavit evidence will still ordinarily be required to attend the hearing, either in person or by telecommunications means such as telephone or videoconferencing, so that he or she may be cross-examined on the information provided in the affidavit, unless the Board orders otherwise. After cross-examination, the party calling that particular witness will then have the opportunity to re-examine him or her.

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. They cannot give opinions about the complaint or its allegations. The exception to this is expert witnesses. A party may want to call an expert witness, who has special experience, education, training or skills that qualifies them to give an informed opinion about some matter that is relevant to the case, to testify.

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

The Board has the power to summon witnesses to a hearing [s. 20(a) of the [FPSLREBA](#)] and compel any person to produce any documents and things that may be relevant to the complaint [s. 20(f) of the [FPSLREBA](#)].

Anyone who wishes to ensure the attendance of a witness must send the Board a request for a summons, also known as a subpoena. The request must be in writing and include the following information:

- (a) the Board'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 things that this person must produce at the hearing, if any.

Consideration of the request for a summons

The Board will consider the request for a summons. Where appropriate, the Board will prepare the summons and deliver it to the party who requested it. This may be done by electronic mail, courier or fax. Where the Board has concerns about the potential relevance of the proposed witness to be summoned, the Board 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. A summons should not, however, be requested before the pre-hearing conference has been held. In any event, the summons should be served at least seven days before the appearance of the witness in order to provide him or her sufficient notice.

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 to be served by fax. Whatever means is used, the party serving the summons must have **written proof** that the witness received the summons.

As stated in s. 41 of the [FPSLREBA](#), a person who is summoned by a member of the Board to attend as a witness at any Board proceeding is entitled to receive fees and allowances for attending, equal to those to which the person would be entitled if summoned to attend before the Federal Court. The fees are set out in Tariff A of the [Federal Courts Rules](#), SOR/98-106. The Board will not direct the manner in which these fees and allowances are paid. This is a matter to be dealt with between the witness and the person requesting his or her attendance as a witness at the hearing.

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 seven days before he or she is due to appear. The summons previously issued is still valid, and it is therefore not necessary to request a new summons from the Board.

Exclusion of witnesses

At the request of the complainant, the respondent or other party, the Board may exclude from the hearing room any witness who has not yet testified. 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 Board 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 Board. 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 Board member will ask all witnesses, before they give their testimony, to make a solemn affirmation that their testimony will be the truth. Those who wish to swear an oath instead must bring any religious text or sacred object they may require(s. 20(d) of the [FPSLREBA](#)).

The witnesses can then be questioned by the complainant or his or her representative. This is known as the examination-in-chief. During this portion of the questioning, the complainant or his or her representative must ask open-ended questions, which generally start with who, what, where, when and why (i.e. What was your role in the assessment of the interview questions?). The purpose is for the witness to tell the story.

The respondent may in turn question (or “cross-examine”) each of the complainant’s witnesses, subject to any restrictions that the Board may impose. In this portion of the questioning, the respondent can ask leading questions, meaning that they may contain the answer in the question and the witness is likely to reply with a “yes” or a “no” (e.g., “Is it not true that you failed to mention your relevant experience in your cover letter?”).

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

Any documents a party wants to rely on to assist the Board in understanding the case should also be presented as evidence. If there are no objections to the genuineness of the document, the presiding Board member will accept the document as an exhibit and assign it an exhibit number. If there are disputes about particular documents, the document may have to be “introduced” or identified by a witness who created, sent or received the document. Questions may be asked to witnesses about the documents once they have been accepted as exhibits.

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 Board at the pre-hearing conference or at the commencement of the hearing.

Submissions of the Canadian Human Rights Commission

When the presentation of the evidence is completed, the Canadian Human Rights Commission may then present its submissions in accordance with the directions issued by the Board.

Submissions of Intervenors

The intervenors, if any, will present their submissions in accordance with the directions issued by the Board [s. 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 Board, also known as the closing arguments. At this stage of the hearing, evidence is no longer permitted to be introduced. Final arguments allow the parties to summarize their case, referring to the evidence that was led,

and highlighting the strengths of their case and the weaknesses of the other party's case. The parties may also refer to the applicable laws and regulations, other decisions of the Board and the courts (jurisprudence).

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

If the remaining time is limited, the Board may schedule a teleconference or ask the parties to produce written arguments in order to expedite the process rather than scheduling new hearing dates to present oral arguments, which would unduly delay 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. If the remaining hearing time is limited, the Board may ask the other parties to produce written arguments or schedule a teleconference to receive their submissions.

Complainant's reply argument

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

Jurisprudence

The Board and its predecessor, the PSST, have rendered many decisions relating to different staffing issues. All these decisions are available in both official languages on the Board's website under "Decisions". They can be searched by year or found in the subject index.

21. Adjournments and postponements

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

The Board 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 Board 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 Board's *Policy for Scheduling of Hearings and Requests for Postponements*.

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

The Board 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 Board to decide if the hearing will be postponed or not. In some cases, a request for a postponement could be refused.

22. Decisions of the Board

The Board renders 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 is provided to the complainant, the respondent, the Public Service Commission and the parties who have exercised their right to be heard (s. 103.1 of the [PSEA](#)). The decision is also posted on the Board's website as soon as it is available in both official languages.

23. Remedial powers of the Board

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

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

For complaints concerning lay-offs or internal appointments, the Board may also interpret and apply the [Canadian Human Rights Act](#) [s. 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 Board may order corrective action under [ss. 53\(2\)\(e\) and 53\(3\) of the Canadian Human Rights Act](#) in addition to any other corrective action that it deems appropriate [ss. 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 Board 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 Board may order the revocation of the appointment, or that the appointment not be made, as the case may be, and give directions that the Board considers appropriate with respect to the implementation of the corrective action (s. 84 of the [PSEA](#)).

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

24. Enforcement of the Board's decisions in Federal Court

The Board must file in the Federal Court a certified copy of its order on the written request from a party to whom the order applies or from the Public Service Commission. The Board will not do so, however, if in its view, there is no indication, or likelihood, that the order will not be complied with or there is some other reason why filing it with the Federal Court would serve no purpose [s. 103(1) of the [PSEA](#)]. On filing the order, it becomes an order of the Federal Court and may be enforced as such [s. 103(3) of the [PSEA](#)]. The Board does not have the power to investigate nor to follow-up on its decisions.

25. Judicial review - Privative clause

The decisions of the Board are final (s. 34 of the [FPSLREBA](#)). The decisions may not be appealed, but may be subject to judicial review by the Federal Court of Appeal on limited grounds (s. 28(1)(i) of the [Federal Courts Act](#)).

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