



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

PUBLIC SERVICE STAFFING TRIBUNAL

PROCEDURAL GUIDE

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PUBLIC SERVICE STAFFING TRIBUNAL PROCEDURAL GUIDE

1. Introduction - Why a guide?

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

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

The *Public Service Staffing Tribunal Procedural Guide* (the Guide) is for information purposes only and does not contain any statements of law. Users of the Guide must also consult the *Public Service Employment Act* and the *Public Service Staffing Tribunal Regulations* (the legislation). In the event of any discrepancy between the legislation and the information contained in the Guide, the legislation will apply.

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

Email Address: info@psst-tdfp.gc.ca

Mailing Address: Public Service Staffing Tribunal
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 to have the hearing in English or in French.

When necessary, simultaneous interpretation will be available for a hearing. Although a party may not have requested a bilingual hearing, simultaneous interpretation may still be necessary, if, for example, one of the witnesses prefers to testify in the official language other than that chosen for the hearing. A party requesting this service will need to inform the Tribunal at least two weeks before the scheduled hearing date. In some locations, it may be difficult to reserve interpretation services without this two-week notice.

The Tribunal is able to serve its clientele in both official languages, and all the documents that it produces are available in both English and French. The Tribunal's decisions and orders are provided in both official languages, and will be posted on the Tribunal's website. Please refer to [chapter 21 of the Guide](#) for further details concerning the Tribunal's final decisions. The parties may file their documents in the official language of their choice, regardless of the language chosen for the hearing. Please note that the Tribunal does not translate the documents submitted by the parties.

3. General information

Hours of business

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

Delivery of documents to the Tribunal

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

Documents may also be sent to the Tribunal by fax or Email, provided that an original copy is immediately sent to the Tribunal by mail or courier. Documents are to be prepared on 21.6 cm X 27.9 cm (8.5 x 11 inch) paper.

Calculation of time periods

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

Document or notice deemed to have been received

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

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

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

Address of the Tribunal for delivery of documents

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

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

Email:

For filing documents with the Executive Director of the Tribunal:
director.directeur@psst-tdfp.gc.ca

For general information: info@psst-tdfp.gc.ca

Information available on the Internet

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

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

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

Types of complaints

The [Public Service Employment Act](#) (the *PSEA*) provides the Tribunal with the authority to consider, assist with resolving, hear and decide complaints involving:

- *the deputy head's decision to lay-off an employee*—the ground for complaint is that the manager abused his or her authority in selecting the complainant for lay-off [[subs. 65\(1\)](#) of the *PSEA*];
- *the decision of a deputy head or the Public Service Commission to revoke an appointment* [[subs. 15\(3\)](#), [67\(1\)](#) or [67\(2\)](#) of the *PSEA*]—the ground for complaint is that the revocation was unreasonable ([s. 74](#) of the *PSEA*);
- *internal appointments*—the grounds for complaint are abuse of authority and denial of the right to be assessed in the official language of the person's choice [[subs. 77\(1\)](#) of the *PSEA*];
- *failure of corrective action following a complaint against an internal appointment that was substantiated* ([s. 83](#) of the *PSEA*)—the ground for complaint is that the person was not appointed or proposed for appointment by reason of an abuse of authority in the implementation of the corrective action.

The Tribunal may also interpret and apply the [Canadian Human Rights Act](#) when addressing complaints involving internal appointments and lay-offs [[subs. 65\(7\)](#) and [s. 80](#) of the *PSEA*]. A complainant may thus allege that there has been

abuse of authority based on one of the prohibited grounds of discrimination stipulated in the [Canadian Human Rights Act](#). The prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted. Please refer to [chapter 6 of the Guide](#) for information on how to raise an issue of discrimination related to a complaint before the Tribunal.

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

What is abuse of authority?

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

Who can file a complaint with the Tribunal?

The [PSEA](#) sets out who can file a complaint with the Tribunal. As outlined previously, there are four types of complaints that may be brought before the Tribunal. Accordingly, the answer to the question "who can file a complaint" will depend on the type of complaint being raised.

- *For an internal appointment process*, the following persons have a right of complaint on the grounds that there was abuse of authority in either applying merit or choosing between an advertised and a non-advertised appointment process, and/or there was a denial of the right to be assessed in the official language of the person's choice:
 - (a) any unsuccessful candidate in the area of selection in an advertised process; or
 - (b) any person in the area of selection in a non-advertised process.
- *If an appointment or proposed appointment occurs as a result of corrective action taken in response to a successful complaint under [s. 77](#) of the PSEA*, the following persons have a right of complaint on the ground that there was abuse of authority in implementing the corrective action:
 - (a) the person who filed the original complaint;
 - (b) the person originally proposed for appointment or appointed; or
 - (c) any person directly affected by the implementation of the corrective action.

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

Who are the parties to a complaint?

Generally, the parties will be the complainant, the deputy head and the Public Service Commission. Under the [PSEA](#), depending on the nature of the complaint, different persons and organizations are given a right to be heard:

- *in the case of a complaint made under [subs. 65\(1\)](#) of the PSEA relating to a lay-off, the parties are the complainant, the deputy head, the Public Service Commission, and the other employees in the part of the organization where the lay-off occurs;*
- *in the case of a complaint made under [s. 74](#) of the PSEA regarding a revocation of appointment by the deputy head or the Public Service Commission, the parties are the complainant, the deputy head and the Public Service Commission;*
- *in the case of a complaint made under [subs. 77\(1\)](#) of the PSEA relating to an internal appointment or proposed appointment, the parties are the complainant, the deputy head, the Public Service Commission, and the person appointed or proposed for appointment;*
- *in the case of a complaint made under [s. 83](#) of the PSEA relating to an appointment or proposed appointment as a result of the implementation of corrective action following a substantiated complaint against an internal appointment, the parties are the person appointed or proposed for appointment as a result of the corrective action, the person who made the original s. 77 complaint, the person who was originally appointed or proposed for appointment, any other person directly affected by the corrective action, the deputy head, and the Public Service Commission.*

Can a complainant be represented?

Yes. A complainant can be represented at any stage of a complaint brought before the Tribunal. A complainant may be represented by his or her union representative, a lawyer or any other person. If a complainant chooses to be represented, he or she will need to inform the Executive Director in writing of the name and contact information of the person who is the complainant's authorized representative for proceedings before the Tribunal.

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

5. Filing a complaint

When must a complaint be filed?

All complaints must be filed within 15 calendar days following the date on which the employee who is complaining received notice of the appointment, proposed appointment, revocation or lay-off that is the subject of the complaint or, in the case of a public notice, 15 days after the date of the notice [[s. 10 of the Regulations](#)].

How must a complaint be filed?

The complainant may use a complaint form to make his or her complaint. The complaint form is available from the Tribunal's website, or can be obtained by contacting the Tribunal.

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

- (a) the complainant's name, address, telephone number, fax number and, if available, electronic mail address;
- (b) the mailing address or electronic mail address that is to be used for sending documents to the complainant;
- (c) the name, address, telephone number, fax number and electronic mail address of the complainant's authorized representative, if any;
- (d) the number or identifier, if any, of the process to which the complaint relates;
- (e) the date of the notice of the lay-off, revocation, appointment or proposed appointment to which the complaint relates;
- (f) the name of the department or agency, branch or sector involved in the process to which the complaint relates;
- (g) a reference to the [provision](#) of the *PSEA* under which the complaint is made;

- (h) a full factual description of the events, circumstances or actions giving rise to the complaint, if known by the complainant;
- (i) the signature of the complainant or their authorized representative;
- (j) the date of the complaint.

The complainant must provide a postal or electronic address that may be communicated to the other parties.

To whom must the complaint be addressed?

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

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

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

Responsibilities of the complainant

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

A complaint must not be sent directly to a member of the Tribunal.

Information concerning the filing of the complaint

The complainant must ensure that the complaint is filed within the prescribed time period of 15 calendar days.

The complaint may be sent by Email, fax, courier or mail, or may be delivered by hand. When a complaint is sent by fax or by Email, a copy must also be mailed to the Executive Director.

Complaints sent by fax or Email will be considered received on the date on which they are sent. Complaints sent by courier or delivered by hand will be considered to be received on the day of their delivery.

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

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

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

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

The Tribunal may, on its own accord, dismiss a complaint if it is not in the interest of fairness to extend the time period for filing the complaint ([s. 5 of the Regulations](#)). As well, the deputy head, the Public Service Commission, or other party, may raise an objection when a complaint is filed outside the prescribed time period. Please refer to [chapter 4 of the Guide](#) for information on the parties to a complaint. An objection must be filed with the Executive Director, and a copy sent to the complainant before the expiry of the period of 25 days allowed for the exchange of information [[subs. 21\(1\) of the Regulations](#)].

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

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

A form is available for the purpose of raising an objection. It may be obtained from the Tribunal's website or by contacting the Tribunal.

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

After reviewing the submissions of the parties, the Tribunal will render a decision on the issue and inform the 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 [[subs. 65\(4\)](#) of the *PSEA*], the complainant may allege that there has been discrimination within the meaning of the [Canadian Human Rights Act](#). Such an allegation may be made at any point in the complaint process. If the complainant has not already done so at the time of filing the complaint, he or she must inform the Tribunal and the Canadian Human Rights Commission as soon as possible that he or she intends to raise such an issue [[subs. 65\(5\)](#) and [s. 78](#) of the *PSEA*].

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

Notice to the Canadian Human Rights Commission

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

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

- (a) a copy of the complaint;
- (b) the complainant's name and the mailing address or electronic mail address that is to be used for sending documents to the complainant;
- (c) the name, address, telephone number, fax number and electronic mail address of the complainant's authorized representative, if any;
- (d) a description of the issue involving the interpretation or the application of the [Canadian Human Rights Act](#) and of the alleged discriminating practice or policy;

- (e) the prohibited ground of discrimination involved;
- (f) the corrective action sought;
- (g) the signature of the complainant or the complainant's authorized representative;
- (h) the date of the notice.

A form is available for the purpose of providing notice to the Canadian Human Rights Commission. It may be obtained from the Tribunal's website or by contacting the Tribunal.

The complainant must send a copy of the notice to the other parties, the Executive Director and to any intervenors. A copy of the complaint does not need to be included with the notice.

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

Notice from the Canadian Human Rights Commission

The Canadian Human Rights Commission must, no later than 15 days after receiving the complainant's notice, notify the Tribunal whether or not it intends to make submissions regarding the issue raised in the notice [subs. [65\(6\)](#) and [79\(2\)](#) of the *PSEA* and [subs. 20\(3\) of the Regulations](#)]. The Executive Director will provide a copy of the Canadian Human Rights Commission's notice to the parties and, if applicable, to any intervenors [[subs. 20\(4\) of the Regulations](#)]. It should be noted that, under the *PSEA*, the Canadian Human Rights Commission is not a party to any complaint made to the Tribunal. However, on receiving the complainant's notice, the Canadian Human Rights Commission may participate by making submissions to the Tribunal.

7. The processing of complaints by the Tribunal

Sending an acknowledgement of receipt

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

Initial review of the complaint and consideration of any preliminary issues

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

The Tribunal may, on its own accord, dismiss a complaint at the initial review for a number of reasons, including: if the complaint does not fall within its jurisdiction; if the complaint is filed out of time; if the complaint is incomplete; or, if the complaint is frivolous or vexatious [[subs. 99\(2\)](#) of the *PSEA*]. Jurisdictional or frivolous/vexatious challenges may be raised by a party to the complaint if they are not addressed by the Tribunal when the complaint is initially reviewed. Please refer to [chapter 4 of the Guide](#) for details of who the parties are for each type of complaint.

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

Complaint sent to the deputy head or to the Public Service Commission

The Executive Director will send a copy of the complaint to the deputy head or, when there has been no delegation, to the Public Service Commission, and request the names and addresses of the other parties, including their electronic addresses, if available. The contact information of the other parties is to be provided to the Executive Director within five days following the date of the request ([ss. 12 and 13 of the Regulations](#)). Please refer to [chapter 4 of the Guide](#) for information regarding the parties to a complaint.

A form is available for the purpose of providing the parties' names and addresses. It may be obtained from the Tribunal's website or by contacting the Tribunal.

Sending the complaint to the other parties

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

Participation in mediation

To assist in attempting to resolve the complaint, the [PSEA](#) stipulates that the Tribunal may provide mediation services [[subs. 97\(1\)](#) of the *PSEA*].

The Executive Director must schedule mediation for a complaint, unless the participants inform the Tribunal prior to the end of the period of 25 days allowed for the exchange of information that they will not take part in mediation [[subs. 15\(1\) of the Regulations](#)]. The Tribunal will contact the participants to schedule the mediation. Generally, the participants in mediation will be the complainant and the deputy head's representative.

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

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

8. Exchange of information

Purpose of the exchange of information

The exchange of information is designed to facilitate the early resolution of the complaint by the complainant, the deputy head or the Public Service Commission. This gives them an opportunity to meet and discuss the nature of the complaint and share any relevant information as soon as possible after the complaint has been filed. Timely exchange of information should help resolve complaints.

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 deputy head or the Public Service Commission. Each has a responsibility to fully comply with the requirements contained in the [Regulations](#) for the exchange of information ([ss. 16 and 17 of the Regulations](#)). The exchange of information is a reciprocal obligation—both the complainant and the respondent

(the deputy head or the Public Service Commission) are required to provide each other with any relevant information concerning the complaint.

Time period to exchange information

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

What happens if the complainant and the deputy head or the Public Service Commission do not exchange relevant information within 25 days?

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

Refusal to exchange information

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

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

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

Request for a production order

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

- (a) the name, address, telephone number, fax number and electronic mail address, if any, of the party making the request;
- (b) the Tribunal's file number for the complaint;

- (c) a detailed explanation as to why the Tribunal should order that the information be provided;
- (d) the signature of the party making the request;
- (e) the date of the request.

A form is available for the purpose of seeking a production order. It may be obtained from the Tribunal's website or by contacting the Tribunal.

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

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

Fax: (613) 949-6551

Email: director.directeur@psst-tdfp.gc.ca

Reply of the party who is requested to exchange information

The party who has refused to exchange information is entitled to reply to the request for a production order and to explain to the Tribunal why it refuses to provide the information. The written reply must be delivered to the Tribunal within five days of receipt of a copy of the written request for a production order. The written reply must be sent to the Executive Director at the above address and a copy of the written reply delivered to the other parties to the complaint.

Decision of the Tribunal on request for a production order

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

Conditions that may be included in a production order

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

- prohibit the party who receives the information from photocopying the document;

- order that the document be disclosed to a party's representative, subject to any further conditions the Tribunal considers necessary;
- order the party who receives the information to return the document to the party who provided it, once the time period for submitting an application for judicial review to the Federal Court has expired;
- require the parties to undertake that they will not disclose the contents of the document; or
- place the document in a sealed envelope and stipulate that it may only be opened by authorization of the Tribunal or a reviewing court.

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

9. Interventions in the Tribunal's proceedings

What is an intervention?

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

Who can request intervenor status?

An intervenor is not a party to the complaint. Any person who has a substantial interest in the complaint may submit a request to the Tribunal for intervenor status [[subs. 19\(1\) of the Regulations](#)]. A person who has a right to be heard under the *PSEA* does not have to request intervenor status.

How to apply for intervenor status

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

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

- (d) the Tribunal's file number for the complaint that is the subject of the application;
- (e) the grounds for intervention and the interest of the applicant in the matter;
- (f) the contribution the applicant expects to make if allowed to intervene;
- (g) the signature of the applicant or their authorized representative;
- (h) the date of the application.

A form is available for the purpose of requesting intervenor status. It may be obtained from the Tribunal's website or by contacting the Tribunal.

The application must be sent to the:

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

Fax: (613) 949-6551

Email: director.directeur@psst-tdfp.gc.ca

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

How to reply to an application for intervenor status

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

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

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

- (a) whether the applicant is directly affected by the proceeding;
- (b) whether the applicant's position is already represented in the proceeding;

(c) whether the public interest and the interests of justice would be served by allowing the applicant to intervene; and,

(d) whether the input of the applicant would assist the Tribunal in deciding the matter.

Decision of the Tribunal on the application for intervenor status

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

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

10. Allegations of the complainant

When must the complainant provide allegations?

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

Responsibilities of the complainant

The complainant must ensure that his or her allegations are as complete as possible. The deputy head or the Public Service Commission will then be able to fully reply to the allegations, thereby avoiding delays in the complaint process. The complainant must also ensure that the Executive Director, the parties, intervenors, if any, and the Canadian Human Rights Commission, if applicable, receive a copy of the allegations.

Contents of the allegations

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

(a) the name, address, telephone number, fax number and, if available, electronic mail address of the complainant;

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

A detailed chronology of events setting out all of the relevant circumstances concerning the complaint should be prepared by the complainant.

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

A form is available for the purpose of providing allegations. It may be obtained from the Tribunal's website or by contacting the Tribunal.

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

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

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

What happens if the allegations are incomplete?

A statement by a complainant that "the decision not to appoint him or her constituted an abuse of authority" is not sufficient to meet the requirements of [s. 22 of the Regulations](#). The complainant must provide a detailed description of his or her allegations as well as all of the relevant facts leading to the complaint. This will enable the deputy head or the Public Service Commission to provide a detailed written reply to the allegations.

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

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

What happens if the complainant does not file allegations?

The Tribunal may deem the complaint to be withdrawn [[subs. 22\(3\) of the Regulations](#)]. However, before making such a decision, the Tribunal will ask the parties for submissions on the issue of treating the complaint as withdrawn.

11. New and amended allegations

Permission given by Tribunal

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

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

Request to amend or add allegations

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

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

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

Responsibilities of the complainant

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

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

The complainant must provide the Executive Director with proof that the other 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 Email, a copy of the Email confirming that the request was received.

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

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

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

Decision of the Tribunal

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

12. Reply of the deputy head or the Public Service Commission to the complainant's allegations

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

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

Contents of the reply

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

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

A form is available for the purpose of replying to allegations. It may be obtained from the Tribunal's website or by contacting the Tribunal.

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

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

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

What happens if the deputy head or the Public Service Commission does not file a reply?

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

13. Reply of the other parties

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

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

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

Contents of the reply

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

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

The reply must be sent to: the complainant, the deputy head or the Public Service Commission, the Executive Director, the intervenors, if any, and to the Canadian Human Rights Commission, if applicable, no later than ten days after

receiving the reply from the deputy head or the Public Service Commission [[subs. 25\(1\) of the Regulations](#)]. The reply must be addressed to the Executive Director as follows:

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

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

14. Withdrawal of complaint

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

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

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

A form is available for the purpose of withdrawing a complaint. It may be obtained from the Tribunal's website or by contacting the Tribunal.

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

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

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

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

15. Notice of hearing

The Executive Director must send a notice to the parties at least seven days prior to the date of the hearing. The notice must contain the date, time and place of the hearing ([s. 28 of the Regulations](#)). The Executive Director will make every possible effort to inform the parties of the hearing date as soon as possible.

16. Presenting a motion

What is a motion?

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

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

Who can present a motion?

Any party to the complaint may present a motion. It should be noted that Canadian Human Rights Commission and intervenors are not parties.

When may a motion be presented?

A motion may be presented at any time before the Tribunal renders its decision on the complaint. However, the person who presents the motion must bring it before the Tribunal as soon as possible in order to avoid any unnecessary delays [[subs. 98\(1\) of the PSEA](#)].

How to present a motion

A motion presented before a hearing is made in writing and specifies the nature of the order requested and the grounds on which the motion is based. The party presenting the motion must notify the other parties as soon as possible of the intention to present a motion. The other parties have a right to reply to the motion.

A motion may also be presented orally at the hearing—for example, a motion to request the adjournment of the hearing due to unforeseen circumstances. The party who presents a motion orally must state the reasons for it.

Where to send the motion

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

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

Fax: (613) 949-6551

Email: director.directeur@psst-tdfp.gc.ca

Consideration of the motion

If the motion is filed before the hearing, the other parties should send written replies to the attention of the Executive Director at the above address. The Tribunal will rule on the motion and inform the parties accordingly.

17. Pre-hearing conference and settlement conference

Purpose of pre-hearing conference

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

Holding a pre-hearing conference

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

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

- Determining whether some complaints should be heard at the same time, if appropriate;
- Any other matter that may expedite the proceedings.

Purpose of settlement conference

In some circumstances, the Tribunal may hold a settlement conference in order to assist the parties in assessing the validity of a complaint. The Tribunal may decide to do so on its own initiative, or at the request of one of the parties. The parties may then decide to initiate or continue mediation, conclude a settlement, or proceed with a hearing. A Tribunal member who presides over a settlement conference will not hear the complaint if it proceeds to a hearing.

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

18. Tribunal hearings

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

What is a paper hearing?

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

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

What is an affidavit?

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

Contents of the affidavit

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

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

When is an affidavit used?

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

Oral hearings

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

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

The parties are responsible for contacting the Tribunal to verify how many copies of each document is required at the hearing.

Place of hearing

If the Tribunal decides that an oral hearing is necessary, it will attempt to schedule the hearing in a convenient location. The Tribunal will determine the time, date and location of oral hearings as it deems appropriate [[subs. 94\(1\)](#) of the *PSEA*]. The Tribunal may use the hearing rooms of other Canadian administrative tribunals, or courts to conduct hearings.

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

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

19. Conduct of the oral hearing

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

Preliminary matters

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

Evidence

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

admissibility, the Tribunal may admit the evidence and, subsequently, assess the weight to be given to that evidence.

What is oral testimony?

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

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

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

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

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

Consideration of the request for a summons

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

Service of the summons

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

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

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

What happens if the hearing is postponed?

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

Exclusion of witnesses

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

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

Complainant's evidence

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

The oath is:

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

The solemn declaration is:

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

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

The deputy head or Public Service Commission may cross-examine each of the complainant's witnesses, subject to any restrictions that the Tribunal may impose.

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

Respondent's evidence

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

Other parties' evidence

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

Submissions of Canadian Human Rights Commission

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

Submissions of Intervenors

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

Final arguments of the complainant and respondent

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

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

The Tribunal may ask the parties to produce written arguments in order to expedite the process—for example, in cases where having to schedule other hearing dates for oral arguments 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. The Tribunal

may ask the other parties to produce written arguments in order to expedite the process, for example, in cases where having to schedule other hearing dates for oral arguments would unduly delay the case.

Complainant's reply argument

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

20. Adjournments and postponements

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

The Tribunal may suspend or postpone a hearing at any time ([s. 30 of the Regulations](#)). However, because of the difficulties involved in drawing up the hearing schedule, the Tribunal will only grant adjournments and postponements in cases where serious, valid reasons for doing so are provided.

A party who wishes to obtain a postponement of the hearing must specify the reasons for their request in writing before the scheduled date of the commencement of the hearing.

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

21. Decisions of the Tribunal

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

A copy of the decision will be provided to the parties ([s. 101](#) of the *PSEA*). The decision will also be posted on the Tribunal's website as soon as the decision is available in both official languages.

22. Remedial powers of the Tribunal

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

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

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

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

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

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

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

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

24. Judicial review - Privative clause

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

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