



Chapter Four: Recourse

It's not about you or the appellant: It's about the public interest

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The *Public Service Employment Act (PSEA)* provides employees with recourse and authorizes the Public Service Commission (PSC) to investigate and make inquiries. These statutory rights exist primarily to protect the public interest, to ensure the system works, and to ensure that staffing respects the merit principle, not to protect individual employee rights or needs.

Types of Recourse

The PSEA identifies four types of recourse:

- Appeals;
- Deployment recourse;

- Investigations on issues within PSC jurisdiction; and
- Inquiries into specific issues such as revocation of irregular appointments, political involvement, fraudulent practices, and so on. These inquiries are usually initiated by the PSC, but may also result from an individual complaint.

All of the above are processed by the PSC Recourse Branch. The Recourse Branch is impartial and independent, representing neither the complainant nor the department against whom the complaint is made.

Recourse processes dealt with in this chapter

This chapter deals only with the first three types of recourse and their alternatives. For complete information, visit the Web site for the PSC Recourse Branch:

http://www.psc-cfp.gc.ca/recours/recours_e.htm



Appeals

The PSEA grants the right to appeal for most actual or proposed appointments from within the Public Service, namely:

- all appointments resulting from a closed competition (appealable by any unsuccessful candidate); and
- all non-priority appointments made without competition from within the Public Service (appealable by any employee within the area of selection of the appointment).

Predominant values and management principles in action:
<p>Transparency. Other values and principles apply to differing degrees.</p> <p>Timely post-board interviews are a good practice. Often appeals are filed by employees simply because they do not understand why they were not considered or chosen for the job. A post-board interview often answers an employee's concerns sufficiently to prevent an appeal.</p>

How is an appeal triggered?

By the submission of a written statement of appeal to a PSC office by mail, by hand, or by electronic media within 14 days of a proper notice of right of appeal (20 days if notice given by mail). Your Human Resources Advisor (HRA) will ensure the proper notice of right to appeal is given at the end of your selection process. The appeal file is managed by the Registrar's Office, Recourse Branch.

Appeal process

- a. **Disclosure.** [Public Service Employment Regulations \(PSER\)](#) require, to avoid any last-minute surprise, both parties to exchange, at a pre-hearing disclosure, all information they **shall or may** provide at the hearing, i.e., remittance of information and documents by the department to the appellant and submission of the appellant's written allegations to the department.

The PSER also requires disclosure to be completed within 45 days from the date you were notified of the appeal by the Registrar, unless an extension of this period was exceptionally granted by an appeal board.

- b. **Appeal hearing.** An appeal board usually consists of one person designated by the PSC and is solely responsible for the conduct of the inquiry.

The **inquiry** is conducted by conference call, video conference, document review, and/or a formal hearing. The appellant and/or representative (usually from the union), **you**, the HRA who assisted you, and the successful candidates are given an opportunity to be heard.

- c. A **written decision** is rendered as soon as possible after the inquiry.

The decision either allows or dismisses the appeal.

If allowed, an appointment that has been made must be revoked; if only proposed, an appointment will not be made. **The appeal board cannot order a department to make an appointment.**

The PSC may recommend corrective action to rectify defect(s) in the selection process identified by the appeal board. Refer to [Guide to Corrective Measures following an Allowed Appeal](#).



Early Intervention (EI) (Alternative to a formal appeal or deployment recourse)

The Recourse Branch offers EI in appeals and deployment recourse.

What is EI?

EI is an opportunity for parties to resolve their dispute with help from a **PSC Recourse Officer** trained in alternative dispute resolution (ADR). Both parties must agree to this process and ask the Registrar to arrange a meeting with a Recourse Officer.

EI is a voluntary, non-binding process where a Recourse Officer, as a neutral third party, facilitates communication between parties (the appellant/complainant and **you**) to identify and resolve/clarify the issues of the case. The Recourse Officer is a facilitator/mediator/conciliator to help the parties resolve their concerns, not a decision maker. EI sessions usually last three to four hours and **should not postpone** an appeal or deployment recourse hearing.

How does EI work?

The EI meeting is less formal and less confrontational, a comfortable setting to encourage

parties to openly discuss their concerns. It may save preparation time for the appeal or deployment recourse hearing for department and appellant/complainant representatives. Both sides may improve their working relationships, and successful EI may end with withdrawal of an appeal/complaint or a concession by the department.



Deployment Recourse

The PSEA grants employees in the work unit of a deployment the right to lodge a complaint with their deputy head **only** if the deployment:

- was not authorized by, or made in accordance with, the PSEA, or
- constituted an abuse of authority.

If the complainant, or the deployed employee in question, is dissatisfied with the deputy head's decision, he/she may refer the complaint to the PSC for investigation.

Investigating a deployment complaint with the PSC

- a. **Triggering deployment recourse.** Deployment recourse requires a written request for an investigation to be submitted to a PSC office within 14 days of the notice of the deputy head's decision (20 days if the notice is given by mail).



Any party may ask the Registrar for early intervention (EI) at any time as an option to the formal process (See previous section).

- b. **Hearing.** The person designated to investigate the deployment complaint is solely responsible for the conduct of the hearing. The complainant, deployed employee, and the deputy head (and/or their representatives) have an opportunity to be heard. **You**, as the manager who made the deployment, will usually be expected to attend.
- c. **Investigator's report.** Investigators report their findings and recommendations to the complainant, the person deployed, and the deputy head (or their representatives) in writing, usually within 14 days after the investigation. If no corrective action is recommended, the deployment is confirmed and all parties notified, but if evidence of irregularity is found, the investigator recommends corrective action to the department and specifies a deadline.



Investigation and Conciliation

Acting for the PSC, the Recourse Branch **may investigate** any issue within PSC jurisdiction concerning the application of the PSEA and PSER where recourse has not been otherwise provided by Parliament, i.e., mainly staffing actions that are not appealable.

The Recourse Branch may accept complaints on:

- open competitions;
- closed competitions that do not result in an actual or proposed appointment;
- administration of eligibility lists or priorities;
- surplus status of individuals;
- reverse order of merit for layoffs; and
- any other issue within PSC jurisdiction.

Who can trigger an investigation?

The Registrar, Recourse Branch, accepts complaints in writing from public servants or members of the public who have reasonable grounds to believe they have been treated unfairly and inequitably in a staffing action that has not applied the merit principle.

If the Recourse Branch agrees to deal with a complaint, it will notify the deputy head of the department and offer mediation services as an alternative to the formal investigation. You will be notified through your HRA and asked to help deal with the complaint.

Investigation process

- Department's views.** The investigator designated to probe a complaint first sends a copy of the statement of complaint to the departmental representative for response (usually the head of personnel). You, as the manager involved, will be asked to participate.
- Inquiry.** The investigator usually gathers the facts and parties' contentions concerning the issues of the complaint through a fact-finding meeting attended by both parties. You will most likely be asked to attend to give the department's version of events.
- Early resolution.** The complaint may be resolved at any time during the investigation.
- Investigator's report.** After gathering the facts, the investigator analyses them and concludes whether or not the complaint is founded in a final report sent to the complainant and the department. **If the complaint is not founded, the case is closed.**

Conciliation

If the complaint is founded, a Recourse Officer (Conciliator) will be assigned to find a solution. You will be asked by your department to help. If no solution is found, the PSC may take or order a deputy head to take any corrective action it deems appropriate.

Your responsibilities as manager

When you first learn a complaint has been filed with the Recourse Branch, it is always wise to try to resolve the problem. If an investigation is launched, co-operate with the investigator and

provide timely, complete, and accurate information.



Mediation (Alternative to a formal investigation)

The Recourse Branch offers mediation in investigation cases.

What is mediation?

In some circumstances, with the voluntary agreement of both the complainant and the department, a Recourse Officer (Mediator) from the branch may help the complainant and you resolve the issue at the outset in a way satisfactory to both parties. Such resolution satisfies the interests of both parties as much as possible without an admission of fault by anyone. Mediation discussions are usually kept confidential by all parties. Mediation normally occurs at the outset, as soon as possible after the complaint has been submitted to the Recourse Branch, but can be requested by either party at any stage during the investigation.

How does mediation work?

The mediator encourages each party to consider the other's interests and helps reach agreement by helping them identify the issues, explore and collaborate on possible points of agreement, and recognize the likely consequences of not settling the dispute through mediation.

The parties alone decide whether to settle and on what terms. The mediator never imposes a decision.



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