



PUBLIC SERVICE EMPLOYMENT ACT (PSEA)

The *Public Service Employment Act* (PSEA) is the statute that deals broadly with staffing appointments, deployments and lay-offs in the Federal Public Service.

As a result of the implementation of the *Public Service Modernization Action* (PSMA), the PSEA will be significantly amended and the 'new' Act is expected to become effective in December 2005. The 'new' Public Service Employment Regulations (PSER) are expected to become effective by April 1, 2006.

As a result of the amendments to the PSEA as set out in the PSMA, there will be fundamental changes with respect to the provisions relating to appointments and promotions within the Federal Public Service.

Among the many significant changes to the current PSEA will be changes to the definition of merit, the alternation of the powers of the Public Service Commission (PSC), and the creation of the Public Service Staffing Tribunal (PSST).

The concept of merit radically changes the basis for appointments in the public service. For example, *Relative merit* is gone – it is no longer necessary that the best person selected for appointment be the best qualified. *Merit* now means that the person must meet the “*essential qualifications*” of the position and have certain other “*assets*” that the department considers important for its current or future needs. The PSEA actually says that it is not inconsistent with merit to only consider one person for a position. The changes to the definition of merit also have an impact on lay-offs since reverse order of merit no longer applies.

The Act no longer favours appointments from within the public service so there will likely be an increase in the use of an open (“external”) appointment process instead of a closed (“internal”) appointment process.

According to Section 11 of the 'new' PSEA, the mandate of the Public Service Commission is to:

- a) appoint or provide for the appointment of persons to or from within the public service;
- b) conduct investigations and audits; and
- c) administer the provisions of the new PSEA relating to political activities of employees and deputy heads.

The preamble of the new statute encourages the Public Service Commission and Deputy Heads to delegate the staffing authority 'to the lowest level of management as possible within the public service'.

While the PSC has retained its power to conduct audits on any matter within its jurisdiction, its audit powers are limited in that it can only make recommendations to the Deputy Heads regarding staffing practices. The PSC no longer has the power to issue binding orders or to take corrective action.

Appeals and Public Service Commission Appeal Boards will no longer exist once the new PSEA becomes effective. Complaints for internal selection processes can only be made, on limited grounds, to a new Public Service Staffing Tribunal (PSST).

The PSST will have the mandate to consider and dispose of complaints made on one of four grounds, i.e.,

- 1) that a proposed lay-off of an employee is an abuse of authority
- 2) that the revocation of an appointment by the Commission or deputy head after an investigation is unreasonable
- 3) that a candidate for an appointment was not appointed by reason of an abuse of authority or because he/she was not assessed in his/her chosen official language
- 4) or that an appointment made to implement a corrective action ordered by the Tribunal is an abuse of authority.

One positive change to the PSEA is that the PSST will now have the power to interpret and apply the *Canadian Human Rights Act* with respect to a complaint.

Once the new PSEA comes into force, employees who choose to file a complaint regarding a deployment will be required to access the grievance process provided under their collective agreement and the *Public Service Labour Relations Act*.

Although the preamble of the new PSEA recognizes the need for fairness, accountability and transparency, it is difficult to see how this can be achieved when managers are given increased flexibility and control over the merit principle, when the grounds for filing staffing complaints have been significantly reduced, and when the power of the PSC are limited to recommendations. In light of the fundamental changes to the PSEA, Union representatives and employees will need to be vigilant and monitor staffing processes very closely.

For detailed information concerning the 'new' *Public Service Employment Act* and appeals and investigations, please view the Public Service Commissions' website at:

http://www.psc-cfp.gc.ca/recourse/recourse_e.thm

http://www.psc-cfp.gc.ca/psea-lefp/index_e.htm

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