



STAFFING COMPLAINTS STAFFING RECOURSE

For our members under Treasury Board a staffing complaint should be filed with the Public Service Staffing Tribunal (PSST). The PSST is responsible for receiving, assisting with resolving, hearing and deciding complaints related to internal appointments, layoffs, revocation of internal appointments, and appointments made or proposed as a result of the implementation of corrective action.

Complaints may be filed:

For an **internal appointment process** on the grounds that:

- There was abuse of authority in either applying merit or choosing between an advertised and a non-advertised appointment process.
- There was a denial of the right to be assessed in the official language of the person's choice.

Complaints may be filed by:

- Any unsuccessful candidate in the area of selection in an advertised process; or
- 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 *Public Service Employment Act (PSEA)*, a complaint may be filed by the following on the grounds that there was abuse of authority in implementing the corrective action:
 - The person who filed the original complaint;
 - The person originally proposed for appointment or appointed; or
 - 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 may 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.

The PSST's time limits for hearing complaints is quite tight. 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. The complaint must be sent to the Executive Director of the PSST (the e-mail address is:)

directeur.director@psst-tdfp.gc.ca

While it is not necessary to use the official PSST complaint form, the form can be downloaded by pasting the following page link into the address bar of your Web browser:

<http://www.psst-tdfp.gc.ca/article.asp?id=4205>

We strongly recommend that the complainant visit the PSST website to ensure all necessary documentation is provided.

The PSST also offers mediation services at any stage of a proceeding in order to resolve a complaint. All complaints to the Tribunal are referred automatically to mediation unless one of the parties indicates they do not wish to participate in mediation. This voluntary and confidential process allows the parties in a dispute to examine their interests and concerns, explore a variety of creative options and develop their own solutions with the assistance of a mediator, a neutral and impartial third party.

Abuse of Authority

The PSST established five categories of abuse of authority in the *Tibbs* decision (*Tibbs v. Department of National Defence, 2006 PSST 008*). They are:

1. *When a delegate exercises his/her/its discretion with an improper intention in mind (including acting for an unauthorized purpose, in bad faith, or on irrelevant considerations).*
2. *When a delegate acts on inadequate material (including where there is no evidence, or without considering relevant matters).*
3. *When there is an improper result (including unreasonable, discriminatory, or retroactive administrative actions).*
4. *When the delegate exercises discretion on an erroneous view of the law.*
5. *When a delegate refuses to exercise his/her/its discretion by adopting a policy which fetters the ability to consider individual cases with an open mind.*

Discrimination

In order to establish a case of discrimination, one must show that the denial of a right or the adverse treatment of the individual was based on one of the grounds prohibited under the *Canadian Human Rights Act*.

Staffing Recourse (CFIA)

Under the *Canadian Food Inspection Agency Act*, the President has the authority to appoint the employees of the Agency, and therefore to establish a formal staffing recourse process. The amended Staffing Recourse Policy took effect on June 30, 2010. CFIA employees can access this Policy on Merlin (under Human Resources). If you do not have access to Merlin, contact the National Office and we will provide with a copy of this Policy.

Complaints may be filed:

- By all applicants when an eligibility list is established. There is no further staffing recourse available with respect to appointments or assignments from the eligibility list.
- For staffing processes where a CFIA staffing pool or inventory is established, staffing recourse is available as follows:
 - When the pool is established, staffing recourse is available to all applicants with respect to establishment of the pool and assessment completed to that point.
 - For an inventory process, staffing recourse is available to applicants when the decision is taken regarding their entry into the inventory. Recourse is available with respect to this decision and the assessment completed to that point.
 - When the pool or inventory is used for an appointment other than those excluded under 7.1.1 (c), staffing recourse is available to all applicants in the pool or inventory who are subject to additional assessment. Recourse is available only with respect to the additional assessment and may not question aspects of the staffing process that were previously subject to recourse.

Any person to whom staffing recourse is available, within the area of notification, may pursue recourse on one or more of the following grounds:

- the staffing process or decision did not respect:
 - CFIA statutory obligations with regard to staffing; and/or
 - CFIA staffing policies; and/or
- the application of the staffing values in the staffing process or decision was unreasonable or arbitrary.

Staffing Values

Competency – Staffing ensures that CFIA employees have the qualities, skills and other attributes required to perform their duties effectively.

Non-partisanship – Staffing is free from political influence.

Fairness – Staffing is planned and conducted so as to treat individuals fairly and equitably and to achieve an objective outcome.

Openness – Communications on staffing are straightforward and honest.

Representativeness – In accordance with the requirements of the *Employment Equity Act*, the diversity of the CFIA's workforce reflects that of the available labour market.

Access – Staffing promotes appropriate access to employment opportunities.

Efficiency/Effectiveness – Staffing is planned and conducted having regard to time and cost, and linked to business requirements.

Staffing Recourse Process

Phase 1

Our member must issue a written Request for Decision Review (see form on Merlin) to the delegated manager within the time period established by the delegated manager.

If the parties fail to resolve the issues during Decision Review or if the delegated manager fails to initiate Decision Review within the allowed time period, without sufficient reason, our member may issue a Statement of Complaint (see form on Merlin) to the delegated manager and the Level 4 manager, no later than 5 days following receipt of the Decision Review response or 5 days following the end of the period for Decision Review, as the case may be.

Disclosure of Information

Based on the Statement of Complaint, the Level 4 manager will provide the complainant with access to any additional information relevant to the complaint in accordance with CFIA's Guidelines on Disclosure of Staffing Information. The Level 4 manager may request clarification of the complaint and will also advise the complainant if he/she considers that the Statement of Complaint fails to provide allegations based on allowable grounds. This exchange will be completed within 10 days of the receipt of the Statement of Complaint.

Amended Statement of Complaint

Within 5 days after the exchange of information noted above, the complainant may issue an amended Statement of Complaint, supporting and/or clarifying the original allegations, to the Level 4 manager. The complainant may not submit additional or new allegations unless they are based on significant new information that was not known when the initial Statement of Complaint was issued.

Staffing Recourse Decision

Within 10 days of the completion of Discussion of the Complaint, the Level 4 manager will issue the Staffing Recourse Decision, in writing, to the complainant. Unless the complainant pursues recourse to Phase 2 of the staffing recourse process, the Phase 1 staffing recourse decision will be deemed to be the final staffing recourse decision.

Phase 2 - Independent Third Party Review of the Complaint

The staffing recourse process will advance to Independent Third Party (ITP) Review of the Complaint if:

- within 10 days from the date of receipt of the Level 4 manager's Staffing Recourse Decision, the complainant issues a Request for Independent Third Party Review to the Level 3 manager stating that he/she does not consider the complaint resolved by that staffing recourse decision and requests an Independent Third Party review of some or all of the allegations in the Statement of Complaint; or
- the complainant alleges that the Level 4 manager has failed to cooperate in the staffing recourse process, by refusing to participate in the process or by failing to observe the time limits established by this Policy or agreed upon with the complainant, unless due to circumstances beyond his/her control.

The purpose of the ITP review is to examine the allegations brought forward in the complainant's request for ITP review to determine if, in regard to the

complainant's allegations. It is not intended to direct corrective measures to be taken by the CFIA.

Referral to President

The ITP findings will be deemed to be the final staffing recourse unless the Level 3 manager, make recommendations to the President to review the ITP findings. The President may issue the final staffing recourse decision.

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