

PSAC Written Submission on Staffing in the Federal Public Service

In preparation for this consultation, the Public Service Alliance of Canada (PSAC) compiled input received at conferences and events as well as input received directly from the membership. The following are PSAC's written submissions that were, in part, presented at the session on staffing with the Treasury Board Secretariat (TBS)/Office of the Chief Human Resources Officer (OCHRO) on January 28, 2021.

Introduction

- The issue of staffing is very important for all PSAC members and especially for our equity group members.
- Every employee is impacted by staffing, both new and seasoned workers, as well as indeterminate, term and precarious workers.
- Staffing issues are consistently raised at conferences held for racially visible members and other equity conferences. There are many stories about members experiencing racism, sexism, and ableism within the staffing process with few effective recourses.
- From the Public Service Employee Surveys (PSES) it is known that many federal public service employees are afraid to file grievances and/or complaints. This is even more so for members who identify in an equity group. There is an understandable fear of retaliation, harassment, discrimination, or limits to members' career aspirations.
- Members are losing motivation, commitment, and morale. Employees who feel this way do not stay in the workplace.
- The impact of racism and discrimination experienced in the staffing process has impacted the mental health of many Black, racialized and Indigenous employees.

Federal public service employees do not have confidence in the staffing process. They do not believe the process is fair or transparent. Rather, many employees believe managers are able to use the system to hire whomever they want.

- As directed by the Prime Minister's recent supplementary mandate letter to the TBS, the recognition that the *Public Service Employment Act (PSEA)* must be more inclusive is welcomed. The PSAC looks forward to actively participating in the review process.
- In addition, we believe that the Privy Clerk's recent "Call to Action on Anti-Racism, Equity and Inclusion in the Federal Public Service" demands major changes to both the staffing process and to the legislation.
- The recent announcement this past Tuesday, confirming that the TBS will look at the framework for recruitment in the FPS is to be commended. Specifically, the PSAC supports amendments to the *PSEA* and a review of the *Employment Equity Act*, as outlined by the Minister of Labour.
- Such an important issue cannot be dealt with within a few weeks and one consultation. **It is thus the PSAC's expectation that there will be further meaningful consultation and collaboration with bargaining agents. This current consultation process with such short deadlines was very inadequate to bring forward the full experience of our members.**
- The 2017 Taskforce on Diversity and Inclusion in the Public Service highlighted some key problems and barriers with staffing processes. The PSAC submits that the findings and recommendations in that report be implemented without further delay.
- Furthermore, we believe that the devolution of staffing authority from central agencies (TBS and the Public Service Commission (PSC)) to departments (stemming from the changes to the *PSEA* and *Public Service Labour Relations Act (PSLRA)* under the *Public Service Modernization Act (PSMA)* in 2003) played a key role in the barriers that currently exist. Specific barriers include systemic racism, ableism, sexism and discrimination in the staffing process.

- The PSAC provided submissions on this issue when a review of the *PSMA* was launched in 2009. These submissions are still relevant today and are attached.

The following three questions were posed:

- 1. Have your members experienced barriers in relation to the educational, professional certification, or other requirements of a position? If so, what was the requirement and how was it an issue?**
- 2. Have your members been negatively impacted by the method used to assess them for a position (e.g. written test, interview, reference check)? If so, what was the method and how was it an issue? What practices have they seen that facilitate good assessments?**
- 3. Have your members encountered other issues in selection processes? Please be as specific as possible. What practices have they seen that facilitate good selection processes? If your members have had issues with a selection process, did they pursue recourse (complaint, investigation, informal discussion)? If not, why? If so, were they satisfied with the result?**

The PSAC's responses to these questions are divided by issue in the paragraphs to follow.

Issue: Non-Advertised appointments/positions

- The key staffing issue for PSAC members is the unacceptably high number of non-advertised processes.
- Sub-delegation and use of discretionary authority by managers are misused and contrary to employment equity/diversity and inclusion goals. They are used in a manner that often excludes equity identified staff and allows hiring managers to appoint their preferred candidates.

- In situations where positions were not posted, it is often the case that candidates external to the section, branch or department were appointed thus excluding internal employees with more experience and qualifications.
- Furthermore, insufficient notice is frequently provided in situations of unadvertised staffing processes, providing little time and opportunity to appeal within the timeframe.
- The overuse of unadvertised appointments results in low morale and anger among staff. As noted above, employees are afraid of retaliation and reprisals and thus fail to speak out regarding their concerns about staffing processes.
- Examples include:
 - Unadvertised appointments are made to fill acting terms. The term is then extended repeatedly without any additional staffing process.
 - Non-advertised positions are used to place a preferred candidate in a four month less a day acting assignment to give that candidate experience. The same candidate is then appointed into the exact same position in a subsequent non-advertised selection process. Other staff do not have meaningful recourse rights. The acting assignment ends and therefore challenging the acting assignment becomes moot. In other cases, there is so little confidence in the available recourse options that they are not pursued.
 - It is frequently the case that “personal suitability” is the deciding factor in staffing competitions. Thus, a process that should be objective is decided by a subjective determinant. When the qualifications and experience of a candidate meet the criteria, “personal suitability” is claimed. Clearly, it is difficult to challenge such decisions given the subjectivity of the deciding factor. This gives rise to favoritism, nepotism and the hand selecting of candidates and perpetuates the lack of diversity of thinking, values, approaches. People tend to

hire those who think, look and act like themselves – be it consciously or unconsciously.

- A racialized employee was told that “the job is not for you” when inquiring about acting opportunities. There are no repercussions to the employer, even if a complaint is made, because the manager used her/his hiring discretion. The racialized staff was asked to train the new hire from outside of the section.
- It is a frequent experience that, staff with less experience external to the section/branch/department are provided acting experience instead of internal employees. For example, someone with 22 years' experience and knowledge cannot progress in her career while someone who has been in the department for less than a year gets promoted quickly.
- Managers often cite “time constraints” and “immediate operational requirements” as excuses to use unadvertised appointments. The reality is that, in most situations, the need was present for many months and the manager was aware of the need for a long period of time.
- Finally, it is known that unadvertised positions are used to hire family members. Conflict of interests are not declared. Staff do not complain as they fear retribution.

Issue: “Best Fit” criteria

- Another key issue is the requirement of “best fit”. Even when there are representation gaps, managers are still not hiring equity groups because they do not have to, especially for acting positions, due to “best fit” criteria. “Best fit” is a subjective criterion when considering an applicant’s ability to succeed in the workplace.
- The “Best fit” criteria perpetuates the ability of hiring managers to hire people like themselves.

- Negative stereotypes of Indigenous peoples are significant barriers in the career progression of Indigenous workers in the Federal Public Service.
- Often, the composition of selection board members reflects the hiring manager's way of thinking resulting in a board that is not diverse. Furthermore, board members may be chosen because they are unlikely to challenge the hiring manager.
- Unconscious bias/implicit bias plays a role in hiring decisions. Hiring Managers want to hire people who think like them and with whom they feel "comfortable". The use of "best fit" or "personal suitability" are reasons used to exclude Black, racialized, Indigenous candidates including those who meet all the qualifications and who have the necessary experience.
- Examples include:
 - An employee was told to "manage as a Black and let me manage as a Caucasian" by his manager. By attempting to address this comment, the employee was seen as not creating a positive environment for staff. Eventually, he lost job opportunities.
 - An employee, who self-identified as an equity member, was outright informed by a manager that his previous supervisory experience in the private sector had no value when applying for a management job in the Federal Public Service.

Issue: Performance Appraisals (PAs) / Performance Management Agreement (PMAs)

- Another key issue that came up was the use of PAs. Candidates are frequently asked to provide PAs during staffing competitions.
- Due to the subjectivity of PAs, equity staff may have been evaluated with a discriminatory lens by managers (consciously or unconsciously, intentionally or unintentionally).

- Examples include:
 - The top two grades are given to preferred staff intentionally who will then be given a non-advertised position and put under talent management plan. The perception is that the preferred staff needed higher PAs because they would not have otherwise qualified (e.g. someone who had been there only a short period of time).
 - A new staff person who worked for a very short period in the workplace and who did not have experience in all the programs and certification required was given an acting team lead position. During the complaint process, it was discovered that her performance management assessment stated that she worked in all the programs and complemented a second language despite the fact that it was not an official language recognized in the federal public service. However, other staff, with more languages, with many more years of experience and certified for all the programs & services were not considered for the job. The complaint was withdrawn at mediation because of the manager's assurances that there would be other opportunities. The candidate was then provided with an email with a couple of links for courses and a roadmap. No additional coaching or assistance was provided. Eventually the position was granted to the preferred staff on a permanent basis without competition and with late notification.

Issue: Staffing complaint process

- The staffing complaint process is seen as ineffective, non-transparent, and unfair. There are only three grounds to contest a competition. These grounds, which include abuse of authority, are too limiting to successfully prove incidents of racism, sexism, ableism and other forms of discrimination.
- It is near impossible to show abuse of authority for non-advertised positions.

- Due to the discretion of hiring managers, complainants cannot successfully argue that the choice of staffing process itself was an abuse of authority under the staffing complaint process.
- Filing staffing complaints to address favouritism, nepotism and bad-faith tactics have, for the most part, been unsuccessful and as a result of having filed a complaint, the complainant may experience reprisals in the workplace.
- “Abuse of authority” requires the complainant to prove that the sub-delegated authority committed some intentional oversight in their assessment of a candidate. This is very difficult to prove.
- “Less than four months” competitions are difficult to appeal. However, these appointments are often extended repeatedly with no subsequent hiring process. Thus, by the time a complaint is filed and dealt with, the person who was initially appointed obtains the required essential qualifications.
- Frequently, staff choose not to file complaints for acting positions because the process can take longer than the actual appointment.
- During mediation sessions, a member was told that staffing was a managerial choice even after they were able to demonstrate that they had greater experience and qualifications for that position.
- There is a lack of effective remedies. Adjudicators may ask for a reassessment but cannot revoke the appointment. Furthermore, adjudicators cannot award remedies under the Canadian Human Rights Act (CHRA) (e.g. appointing the person into that position).
- Fear of being labelled a troublemaker and the semi-judicial process scare many members away from filing complaints.
- The complaint process is far too lengthy, and the standard of proof is high. Thus, the process drags for months/years with little to no chance of success.

Issue: Assessment process can be arbitrary and discriminatory

- Assessment tools are meant to be transparent and treat all candidates equally, but this can be contrary to diversity and inclusion principles which require that the employer provide a level playing field through equity initiatives. However, the onus is on the applicant to fit into the job description and absolve the selection board from assessing whether barriers have been created (e.g. unconscious bias, lack of cultural awareness, accent bias, etc.).
- There is a lack of consistency in the tools and/or processes used for assessments. Managers can make up their own assessment processes before, during, and after the assessment. There are situations where the tools and processes utilized fail to adequately measure a candidate's qualifications or experiences.
- Examples include:
 - One process for a position was seven hours long with a short break and no lunch while another process for the same level of position was simply an application form.
 - During a written test, a candidate was accidentally provided the answers. When the candidate brought it to the attention of the assessors, the candidate was told that he was holding up the staffing process. The assessors changed the assessment process due to this error but did not advise the candidate of the change. When he complained that candidates had not been informed of the change and therefore the assessment process was flawed, the assessors did not change the process.
 - A candidate had technical problems with the written exam, but the assessor did nothing about it (e.g. restart computer, provide additional support).
 - A test is administered that had nothing to do with the job and that seemed arbitrary (e.g. assessment using shapes and patterns). People who may have been already doing the job were unable to do that test.

- Managers are supposed to hire from pools when they are staffing. However, managers may choose an employee for promotion from outside of an existing pool because of their discretionary authority. Even when they are told of an existing pool, managers often find a reason not to select from that pool (e.g. pools were not being used for short-term opportunities).
 - If a manager does not wish to use employees in a pool, they will fill positions through non-advertised processes.
- Standardized testing is used to assess candidates but when the test is challenged, managers refuse to provide the methodology and test material to the candidates. Therefore, it becomes difficult to challenge it effectively. Candidates feel that some of the tests are discriminatory for candidates with learning disabilities and from the perspective of cultural biases.
- There is a perception that written tests and interviews are subjective to enable managers to hire their preferred candidates regardless of qualifications and experience.
- Examples include:
 - It is not clear to candidates how answers are “weighted”, since not all components are scored the same. Neither the method nor the answers are made clear to the applicant. Scoring can be "customizable" by regional hiring boards to "target" the selection of specific candidates.
 - Testing methods favour internal applicants that are already familiar with the work, the work units, and the hiring manager.
- Written testing is biased against First Nations’ traditional ways of conveying thoughts and information. There is little consideration given to alternative ways of testing that are culturally more appropriate. The cultures, teachings, and traditions of applicants must be considered as factors when assessing the answers provided.
- Candidates with disabilities feel discriminated against due to lack of or delays in accommodation.

- Examples include:
 - Unclear information is sometimes provided by human resources when accommodations have been requested.
 - Assessment processes during COVID-19 were modified with little consideration of the impact on persons with disabilities and accommodation requirements. For example: A test over the internet was used to evaluate applicants. An applicant with a diagnosed learning disability and ADHD felt disadvantaged during the exam. The candidates' disability affected their test performance on cognitive processing questions (i.e. shapes and patterns). In addition, he could not solve the questions in the allotted time even with an accommodation for extra time. Consequently, the candidate did poorly on the test. This same candidate had previously succeeded very well on a similar test without the processing questions.

Issue: Screening Process

- Screening processes are used to eliminate candidates who then have little recourse. The only recourse provided is an informal discussion. This process does not change the outcome and has little effect. During informal discussions, candidates cannot provide additional information, even if there were barriers faced by equity groups (e.g. cultural, disability).
- Examples include:
 - Members screened out for words dropped during an assessment to meet word counts, and boards not willing to allow additional information as it will disadvantage other candidates.
 - Members screened out for not using "I" statements.

Issue: Self-assessment tools

- Despite the existence of a guidance document on inclusion, it would appear as though the tools provided in the document are rarely

followed or monitored in staffing processes. This document identifies Indigenous people as disadvantaged by self-assessed experience questions. However, job posters use self-assessed experience as the primary tool. Most boards do not allow additional information during informal discussions which could mitigate the barriers for equity groups. (See PSC Public Service Hiring Guide: [canada.ca/en/public-service-commission/services/public-service-hiring-guides/Fair-assessment-diverse-workplace/removing-barriers-part-5.html](https://www.canada.ca/en/public-service-commission/services/public-service-hiring-guides/Fair-assessment-diverse-workplace/removing-barriers-part-5.html)).

- Employees are not allowed to bring additional evidence at informal discussions (such as reference checks and performance appraisals which could validate competencies that can mitigate bias).

Issue: Education barriers

- Degree or qualification requirements are tailored to a preferred candidate or meant to exclude certain candidates.
- There are inconsistent requirements or qualifications needed for different level of jobs. For example, qualifications for a lower-level job may be higher than for some higher-level jobs in the same department.
- Asset qualifications can exceed TBS requirements for positions which create barriers. For example, a position required a B.A. but a candidate was screened out because they did not have a masters' degree.
- Educational requirements change for the same position. This is particularly difficult for older workers who want to progress in their career but came into the federal public service with different educational background that met the requirements at that time.
- No access to meaningful educational leave support for employees who want to upgrade their certifications to meet educational requirements for further career opportunities. Too often, employees are denied leave because the training they seek is not required for their current job and/or “operational requirements” do not allow for the approval of non-job-related training.

Issue: International credentials and experiences are not recognized

- The public service commission must develop a way to evaluate international credentials.
- There is often an assumption that an applicant will not succeed in a particular job because they lack Canadian experience.
- There may be requirements to have prior Canadian work experience to be eligible for a particular job.
- International work experience is weighed less than Canadian work experience; thus, creating a disadvantage to the applicants with foreign work experience.
- Examples include:
 - Employees with educational certifications (high school, college, and university) from overseas often accept lower positions that don't require their education simply to get their feet in the door.
 - Employees apply for positions which require a high school or university degree but are turned down because they do not have "Canadian" equivalencies, even if they have been acting in those positions.
 - To have one's credentials evaluated by a provincial body is a lengthy and cumbersome process.
 - Candidates from lessor developed countries often give up trying to have their credentials accepted as it can be near impossible to validate these international credentials.

Issue: Language barriers

- Employees are not given language training for careers designated with language requirements.
- Managers may require "bilingual or unilingual" solely depending on their preferred candidate's profile. Bilingual qualifications may be required for

positions that really operate solely unilingually either in English or French. This may be a barrier for some equity groups.

Issue: Geography

- Geographical requirements can limit the “area of selection” for competitions. Therefore, staff can be excluded when applying to internal jobs/ pools and positions even though they have the full capacity to work out of a sub-office or telework. This is a significant problem if an office has closed and people are losing their jobs.

Issue: References checks

- Hiring managers add references that were not provided by the candidate.
- Employees who file complaints are not given good references for future opportunities.
- References can be biased/subjective because managers give good references to their preferred candidate.

Issue: Notices

- In the past, notice of interest was sent prior to making an appointment, especially for an acting position. Unfortunately, this practice has changed. Currently, there is no, or little notice provided. For example, a notice of appointment may be posted just before a long weekend, thus providing little time to apply but also little time to appeal.

Conclusion

It is clear, given the examples and situations outlined above, that the staffing process requires a full review and evaluation. Employees of the federal public service, not to mention the general public, expect the TBS to offer a bias and discriminatory free staffing process.

The PSAC welcomes the opportunity to continue discussions and dialogue to ensure that the necessary changes are made. The TBS must represent the diversity of the communities it serves at all levels and in all capacities.