

Public Service Modernization Act receives first reading

Date : April 1, 2003

Bill C-25, the *Public Service Modernization Act* received first reading in Parliament on February 6, 2003. If adopted, the Bill would enact a new *Public Service Employment Act* (PSEA) and a new *Public Service Labour Relations Act* (PSLRA) to replace the *Public Service Staff Relations Act*, as well as amending the *Canadian Centre for Management Development Act* and the human resources provisions of the *Financial Administration Act*. The government states that the Bill will attain the following objectives:

- Increased flexibility in staffing and managing people with reinforced safeguards to sustain a merit-based, non-partisan public service;
- More constructive, cooperative labour-management relations to support a healthy, productive workplace;
- More coherent training and learning to help employees pursue professional development and meet the corporate needs of the public service; and
- Clarified roles and strengthened accountability for the institutions and individuals responsible for managing the public service.

The government states that it intends to pass the Bill by summer, and proposes to bring the legislation into effect in stages, over the next three to four years. This article will discuss only a few aspects of the proposed legislation.

PUBLIC SERVICE EMPLOYMENT ACT

An important theme in the legislation is increased flexibility in staffing arrangements. To support this goal, the preamble provides that "delegation of staffing authority [of the Public Service Commission] should be to as low a level as possible within the public service, and should afford public service managers the flexibility necessary to staff, to manage and to lead their personnel..."

Merit

The proposed PSEA would maintain the role of the Public Service Commission as an independent appointment agency, accountable to Parliament for protecting the merit-based hiring system in the public service. In this connection, the PSEA would change the meaning of "merit" to provide that an appointment is based on merit when:

- the Commission or its delegate is satisfied that the person appointed meets the essential qualifications of the work to be performed (as these qualifications have been established by the deputy head - meaning, in the case of a government ministry, the deputy minister), including official language proficiency, and

- the Commission has regard to:
 - any additional qualifications considered by the deputy head to be an asset for the work to be performed, or for the organization, currently or in the future;
 - any current or future needs or operational requirements of the organization, as may be identified by the deputy head.

Under this legislation, the concept of *relative* merit, under which individuals are ranked against each other, and can appeal their ranking, will disappear. If it is determined that two or more candidates meet the essential qualifications of the position, the Commission or its delegate can consider the additional qualifications or needs or operational requirements of the organization, referred to above.

Recourse

The PSEA would replace the Commission's Appeal Boards with a new, independent Public Service Staffing Tribunal. Persons aggrieved by an internal appointment may file a complaint with the Tribunal on the following grounds only:

- abuse of authority by the Commission or deputy head in assessing candidates' qualifications or in the setting of qualifications, needs or operational requirements of the organization;
- abuse of authority by the Commission or its delegate in choosing between an advertised and non-advertised appointment process; or
- failure to assess the candidate in the official language of the candidate's choice.

In hearing complaints about appointments, the Tribunal would be empowered to interpret and apply the *Canadian Human Rights Act*, and to award monetary damages for pain and suffering or special compensation for willful or reckless behaviour. Where a discrimination issue is raised, the Tribunal is to provide notice to the Canadian Human Rights Commission, which would then have the right to make submissions on the complaint. Those filing a complaint with the Tribunal would retain the right to complain as well to the Canadian Human Rights Commission.

The Tribunal would not hear complaints alleging fraud in the appointment process or that the appointment was made under political influence. These allegations will be heard internally by the Public Service Commission, as will any complaint involving external appointments.

Automatic conversion, casual employment

Employees appointed for a specified term of employment will be automatically converted to indeterminate status at the end of "the cumulative period of employment specified by the employer in circumstances prescribed by the employer". The conversion to indeterminate status does not constitute an appointment or deployment and would not be subject to recourse to the Tribunal.

Casual workers may be appointed, but the legislation will limit such appointments to 90 working days per calendar year.

Political activity

Political activity will be defined as carrying on activity supporting or opposing a political party, supporting or opposing a candidate in an election, or seeking nomination or running in an election. Employees would be permitted to engage in political activity that "does not impair, or is not perceived as impairing, the employee's ability to perform his or her duties in a politically impartial manner". Cabinet, on the recommendation of the Commission, may make regulations specifying political activities that are deemed to impair employees' ability to perform their duties in a politically impartial manner.

Employees may run in federal or provincial elections only if they request and obtain an unpaid leave of absence from the Commission. Upon election, an employee ceases to be an employee. Employees may run in municipal elections only with the permission of the Commission. The only political activity permitted to deputy heads is voting.

PUBLIC SERVICE LABOUR RELATIONS ACT

Consultation committees

The government states that it intends to foster a climate of trust and cooperation in labour relations in the federal public service. Accordingly, the PSLRA would require deputy heads to establish consultation committees in conjunction with bargaining agents to discuss workplace issues under the auspices of the National Joint Council (a consultative body created by the government in 1944 as a forum for consultation between the government as employer and its employees, as represented by their bargaining agents) or another body chosen by the parties.

Public Service Labour Relations Board

A new Public Service Labour Relations Board would be established, whose mandate would be broader than that of the Public Service Staff Relations Board. The new Board would adjudicate matters arising under the labour relations and occupational health and safety parts of the legislation, and arbitrate grievances. It would also provide mediation services in respect of collective agreement negotiation and implementation, and in respect of grievances. As well, it would conduct research and analysis of compensation issues.

The Board Chair, on his or her own initiative, would have the power to appoint a mediator, fact-finder or facilitator to help the parties negotiate a collective agreement.

In its role of grievance arbitrator, the Board would have the same power given to the Public Service

Staffing Tribunal to interpret and apply federal human rights legislation.

Exclusions

Automatic exclusions from the bargaining unit of certain groups of employees, such as employees of the Treasury Board Secretariat and lawyers with the Department of Justice, would be ended. Under the PSLRA, exclusions would be determined by the Board on application by the employer.

Management rights, scope of bargaining

These are unchanged, and contentious issues such as staffing, classification and pensions, would remain the prerogative of management.

Arbitrated collective agreement

The PSLRA would add "the state of the Canadian economy and the Government of Canada's fiscal circumstances" to the factors which the arbitration board must consider in making an award. This factor would also be added to the list to be considered by conciliation boards, which will now be called "public interest commissions", non-permanent bodies to be appointed by the responsible Minister on the recommendation of the Board's Chairperson.

Strike votes

Strikes could be called only following a secret ballot strike votes held within 60 days preceding the strike. A majority of those voting must be obtained in order for the strike to be declared.

Essential services

The employer would retain the sole right to determine the level at which an essential service is to be provided. The employer and the union must then negotiate an essential services agreement setting out the types and number of positions required to meet the level of services determined by the employer.

In Our View

The Public Service Alliance of Canada, the principal federal public sector union, has expressed disappointment with the Bill, deploring the failure to expand the scope of bargaining, the lack of any protections for whistleblowers and the controls placed on political activity. We will keep readers informed of further developments with Bill C-25.

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