



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

FILE: 2007-0099

OTTAWA, MAY 30, 2007

DERRICK GLENDE

COMPLAINANT

AND

**THE DEPUTY HEAD OF SERVICE CANADA AS PART OF THE DEPARTMENT OF
HUMAN RESOURCES AND SOCIAL DEVELOPMENT CANADA**

RESPONDENT

AND

OTHER PARTIES

MATTER Determination of jurisdiction

DECISION Complaint is dismissed

DECISION RENDERED BY Francine Cabana, Member

LANGUAGE OF DECISION English

INDEXED *Glende v. Deputy Head of Service Canada et al.*

NEUTRAL CITATION 2007 PSST 0023

REASONS FOR DECISION

INTRODUCTION

[1] On April 13, 2007 the respondent brought forward a motion to dismiss the complaint filed on March 5, 2007 on the ground that the complainant does not enjoy a right to recourse under paragraph 77 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*).

BACKGROUND

[2] In July 2005, the respondent undertook five selection processes to fill various Service Delivery Coordinator positions, (PM-03) located in Barrie, Brantford, Kitchener, Orillia and Owen Sound, all of which are in Ontario. The closing date of the selection process was July 29, 2005. The appointment process of relevance to the Tribunal in this complaint is 2005-CSD-CC-ONT-BAR-02, specifically for Barrie, Ontario.

[3] On October 21, 2005, eligibility lists were established and published for each location in the area of selection. A right of appeal was granted to unsuccessful candidates with a deadline date of November 10, 2005.

[4] Only one indeterminate appointment was made from the eligibility list published on October 21, 2005 which was valid until June 30, 2006. The right to recourse is a right of appeal which falls under the former *PSEA*. There were no appeals filed against the appointment of Marion Rook, the appointee. Ms. Rook was offered the position via letter of offer on April 20, 2006.

ISSUES

[5] The Tribunal must decide the following:

(i) Was the selection process conducted under the *PSEA* or the previous legislative framework, namely, *the Public Service Employment Act*, R.S.C. 1985, c. P-33, (the former *PSEA*)?

(ii) In the event the selection process was conducted under the *PSEA*, does the complainant enjoy a right of recourse?

(iii) Do the provisions of section 21 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6, (the *PSST Regulations*), apply to the respondent's motion do dismiss?

SUBMISSIONS OF THE PARTIES

A) RESPONDENT'S SUBMISSIONS

[6] The respondent argues that no appointment has been made or proposed under the new *PSEA* as the process originated in July 2005 under the former *PSEA*. The respondent submits that since the process originated in July 2005, the complainant does not enjoy a right to recourse. Consequently, the complaint should be dismissed.

B) COMPLAINANT'S SUBMISSIONS

[7] The complainant provided no arguments on the issue of whether the selection process was conducted under the new *PSEA* or the former *PSEA*.

[8] The complainant submits that the time period for raising a timeliness objection to the right to recourse expired on April 10, 2007 pursuant to section 21 of the *PSST Regulations*.

ANALYSIS

Issue I: Was the selection process conducted under the *PSEA* or the former *PSEA*?

[9] As discussed in *Wylie v. President of the Canada Border Services Agency et al.*, [2006] PSST 0007, section 70 of Part 5 of the *Public Service Modernization Act*, S.C. 2003, c. 22 (the *PSMA*), provides for a transition from the former *PSEA* to the *PSEA* without disruption to the appointment processes

already started at the time of the coming into force of the new legislation.
Section 70 reads as follows:

70. The coming into force of subsection 29(1) of the new Act does not affect any competition or other selection process being conducted under the amended Act.

[10] Subsection 29(1) of the *PSEA* reads as follows:

29. (1) Except as provided in this Act, the Commission has the exclusive authority to make appointments, to or from the public service, of persons for whose appointment there is no authority in or under any other Act of Parliament

[11] The issue of whether the appointment is made in accordance with the former *PSEA* turns on whether the selection process was being conducted at the time of the coming into force of the new *PSEA* on December 31, 2005.

[12] The selection process in question started in July 2005. Furthermore, a right of appeal was granted to unsuccessful candidates in October 2005. Consequently, the respondent started the selection process prior to December 31, 2005, that is prior to the coming into force of the new law.

[13] The Tribunal has already addressed this issue in *Schellenberg and Nyst v. Deputy Minister of National Defence et al.*, [2006] PSST 0005. The Tribunal concluded that if a selection process started prior to December 31, 2005, it was to be subject to the former *PSEA*. Thus, the Tribunal found that it did not have jurisdiction to hear the complaints.

[14] In the present case, the Tribunal finds it does not have jurisdiction to hear the complaint because the selection process was conducted under the former *PSEA*.

Issue II: In the event the selection process was conducted under the *PSEA*, does the complainant enjoy a right of recourse?

[15] Since the selection process was conducted under the former *PSEA*, there is no need for the Tribunal to address this issue.

Issue III: Do the provisions of section 21 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6, (the *PSST Regulations*) apply to the respondent's motion to dismiss?

[16] The complainant raises the time period for objecting to his right to recourse expired on April 10, 2007 pursuant to section 21 of the *PSST Regulations*. Thus, according to the complainant, the respondent may no longer raise an objection on his complaint.

[17] Section 21 of the *PSST Regulations* provides for a process to address the issue of timeliness where a party objects that the complaint was not made within the time limits provided for in section 10 of the *PSST Regulations*. Section 21 of the *PSST Regulations* reads as follows:

21. (1) If the deputy head or the Commission or a person appointed or proposed for appointment wishes to object that the complaint was not made within the period required by section 10, they must do so before the end of the period for exchanging information.

(2) The objection must be in writing and must include

(a) the name, address, telephone number, fax number and electronic mail address of the objecting party;

(b) the name, address, telephone number, fax number and electronic mail address of the objecting party's authorized representative, if any;

(c) the Tribunal's file number for the complaint;

(d) the facts on which the objecting party relies in making the objection;

(e) the signature of the objecting party; and

(f) the date of the request.

[18] The purpose of section 21 of the *PSST Regulations* is to provide for a time period for raising a timeliness objection. The objection is aimed at a complaint that is premature or late.

[19] In the present case, the motion to dismiss does not deal with the timeliness of the complaint. The respondent has not raised an issue on the complaint being premature or late. The respondent's motion deals with the unavailability of a right to recourse under section 77 of the *PSEA* since there has

been no appointment under the *PSEA*. The Tribunal has already determined that the selection process was conducted under the former *PSEA*, not under the *PSEA*. The Tribunal is bound by the provisions of the *PSMA* directing the Tribunal on its jurisdiction. Consequently, the issue of timeliness, as referred to in section 21 of the *PSST Regulations*, is not relevant to the issue before the Tribunal.

[20] The Tribunal finds the provisions of section 21 of the *PSST Regulations* not applicable to the respondent's motion to dismiss in this case.

DECISION

[21] For all these reasons, the respondent's motion to dismiss is granted. Consequently, the complaint is dismissed.

Francine Cabana
Member

PARTIES OF RECORD

Tribunal File:	2007-0099
Style of Cause:	<i>Derrick Glende and the Deputy Head of Service Canada, as part of Human Resources and Social Development Canada et al.</i>
Hearing:	Written request, decided without the appearance of the parties
Date of Reasons:	May 30, 2007