



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**FILE: 2006-0201**

**OTTAWA, APRIL 19, 2007**

**LOUIS-SERGE ROBILLARD**

**COMPLAINANT**

**AND**

**THE PRESIDENT OF THE CANADA BORDER SERVICES AGENCY**

**RESPONDENT**

**AND**

**OTHER PARTIES**

**MATTER** Determination of jurisdiction

**DECISION** The complaint is dismissed

**DECISION RENDERED BY** Sonia Gaal, Vice-Chair

**LANGUAGE OF DECISION** French

**INDEXED** *Robillard v. President of the Canada Border Services Agency et al.*

**NEUTRAL CITATION** 2007 PSST 0015

## REASONS FOR DECISION

### INTRODUCTION

[1] The respondent, the President of the Canada Border Services Agency, submits that the Tribunal does not have jurisdiction to deal with this complaint because it involves an external appointment. This appointment was made using the student bridging mechanisms that are among the criteria for external non-advertised processes.

### BACKGROUND

[2] On November 1, 2006, the complainant, Louis-Serge Robillard, filed a complaint with the Public Service Staffing Tribunal (the Tribunal) under section 77 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12 and 13 (the *PSEA*). He submits that the appointment of the appointed person was not fair and equitable. The person appointed was given an indeterminate position as a junior records filing clerk at the CR-03 group and level through the Federal Student Work Experience Program (FSWEP) at the Canada Border Services Agency (process number: 06-BSF-ENA-HQ-COM-CR-3017).

[3] The Tribunal wrote to the parties on January 26 to request their respective positions on the matter of jurisdiction. Those positions are outlined below.

[4] The Tribunal finds that it does not have jurisdiction in this case and dismisses the complaint.

### ISSUE

[5] Does the Tribunal have jurisdiction to deal with a complaint involving an external non-advertised appointment through the FSWEP?

### SUBMISSIONS OF PARTIES

#### A) RESPONDENT'S POSITION

[6] The respondent argues that the appointment was made through an external non-advertised appointment process on October 26, 2006, using the

bridging mechanism for students who have participated in the FSWEF or other recognized programs.

[7] According to the respondent, appointments by means of student bridging mechanisms are among the criteria set out for external non-advertised appointments in the *Canada Border Services Agency's Choice of Appointment Process Policy* (the Policy).

[8] In addition, the Human Resources Action Request indicates in the "Comments" section that it involves student bridging.

[9] There was no notification of the appointment of the appointed person because there was no right of recourse. Recourse to the Tribunal in the case of internal appointments is provided for in section 77 of the *PSEA*.

[10] The respondent further argues that "ENA", which stands for "External Non-Advertised Appointment" in process number 06-BSF-ENA-HQ-COM-CR-3017, is the code used for external non-advertised appointment processes in the public service at large.

[11] Lastly, the job offer made to the appointee indicates that the person will be subject to a probationary period of 12 months. Such probation is mandatory for all those appointed to the public service through an external appointment process.

#### B) COMPLAINANT'S POSITION

[12] The complainant considers his rights were violated. He has no problem with the appointee being appointed to an indeterminate position at the CR-03 group and level. However, the fact that the complainant has held a term position since May 2004 is unacceptable. He is asking that the appointee be appointed to a term position and that the appointee apply for an indeterminate position like all the other employees. The complainant advances these two contradictory arguments.

C) PUBLIC SERVICE COMMISSION'S POSITION

[13] For its part, the Public Service Commission (PSC) is of the opinion that section 77 of the *PSEA* applies exclusively to internal appointment processes. The recourse available in the context of external staffing processes is found in section 66 of the *PSEA* and not in section 77 of the *PSEA*.

[14] The PSC submits that it would not be unreasonable for the Tribunal to find that it does not have jurisdiction to hear this complaint.

ANALYSIS

[15] Does the Tribunal have jurisdiction to deal with a complaint involving an external non-advertised appointment through the FSWEF?

[16] The Tribunal's jurisdiction in the area of complaints concerning internal appointment processes is provided for in subsection 77(1) of the *PSEA*:

**77.** (1) When the Commission has made or proposed an appointment in an ***internal appointment*** process, a person in the area of recourse referred to in subsection (2) may — in the manner and within the period provided by the Tribunal's regulations — make a complaint to the Tribunal that he or she was not appointed or proposed for appointment by reason of

(a) an abuse of authority by the Commission or the deputy head in the exercise of its or his or her authority under subsection 30(2);

(b) an abuse of authority by the Commission in choosing between an advertised and a non-advertised internal appointment process; or

(c) the failure of the Commission to assess the complainant in the official language of his or her choice as required by subsection 37(1).

(emphasis added)

[17] It seems clear from a reading of subsection 77(1) of the *PSEA* that the Tribunal's jurisdiction is limited to the internal appointment process, which is defined in subsection 2(1) of the *PSEA*'s French version<sup>1</sup> as an "appointment of

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<sup>1</sup> The definitions of "internal appointment" and "external appointment" do not appear in the English version of the *PSEA*.

a person already employed in the public service” [Translation]. An external appointment, which is also defined in subsection 2(1) of the *PSEA*’s French version, is an “appointment of a person not employed in the public service” [Translation].

[18] In this case, the respondent chose to conduct an external non-advertised appointment process under its Policy, which applies to both internal and external appointments. The Policy provides that a non-advertised appointment process may be used for a “student bridging mechanism.” The appointee was a participant in the FSWEF and was therefore not employed in the public service. This meets the definition of “external appointment” in subsection 2(1) of the *PSEA*.

[19] With respect to the respondent’s argument regarding a mandatory probationary period for all employees appointed to the public service by means of an external appointment, the Tribunal notes that the job offer made to the appointee in fact refers to a 12-month probationary period. Subsection 61(1) of the *PSEA* provides the following:

**61. (1) A person appointed from outside the public service is on probation for a period**

(a) established by regulations of the Treasury Board in respect of the class of employees of which that person is a member, in the case of an organization named in Schedule I or IV to the *Financial Administration Act*; or

(b) determined by a separate agency in respect of the class of employees of which that person is a member, in the case of an organization that is a separate agency to which the Commission has exclusive authority to make appointments.

(emphasis added)

[20] The probationary period to which the appointee is subject is another clear indication that the person was not employed in the public service within the meaning of subsection 2(1) of the *PSEA*.

[21] Consequently, the Tribunal does not have jurisdiction to deal with this complaint because it involves an external appointment process.

DECISION

[22] For all these reasons, the complaint is dismissed.

Sonia Gaal  
Vice-Chair

PARTIES OF RECORD

Tribunal File:	2006-0201
Style of Cause:	<i>Louis-Serge Robillard and the President of the Canada Border Services Agency et al.</i>
Hearing:	Written request, decided without the appearance of parties
Date of Reasons:	April 19, 2007