



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**Files:** 2009-0132, 2009-0133,  
2009-0134, 2009-0135,  
2009-0136, 2009-0137,  
2009-0152, 2009-0153,  
2009-0154

**Issued at:** Ottawa, June 11, 2009

**Christian Laroche *et al.***

Complainants

AND

**The Deputy Minister of Foreign Affairs and International Trade**

Respondent

AND

**OTHER PARTIES**

**Matter:** Refusal to provide a reply to allegations

**Decision:** Order to reply

**Decision Rendered by:** Guy Giguère, Chairperson

**Language of Decision:** French

**Indexed:** *Laroche et al. v. Deputy Minister of Foreign Affairs et al.*

**Neutral Citation:** 2009 PSST 0017

# Reasons for Decision

## Introduction

1 The complainants, Christian Laroche, Jacques Deschênes and Julie Boulanger, filed complaints with the Public Service Staffing Tribunal (the Tribunal) alleging that the respondent, the Deputy Minister of Foreign Affairs, abused its authority in choosing a non-advertised internal appointment process and in the application of merit.

2 These complaints were filed under paragraphs 77(1)(a) and (b) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12 and 13 (the *PSEA*), subsequent to appointments or proposed appointments to Jurilinguist positions, at the SI-06 group and level (process no.: 08-EXT-INA-MSH-412737, 08-EXT-INA-MSH-412744 and 08-EXT-INA-MSH-412746).

3 On April 16, 2009, the complainants filed their allegations with the Tribunal with copies to the other parties. The respondent's reply was due by May 1, 2009.

4 On May 4, 2009, the respondent informed the Tribunal that it would not provide a reply to the complainants' allegations because of current human resources constraints. One of the reasons provided for the refusal to reply is that the respondent's coordinator is on extended leave until mid-June.

5 The respondent also stated that an extension of time to provide its reply was not being sought. It stated that there has been an exchange of information as provided by the Tribunal's procedure and that the parties agreed to pursue mediation. The respondent stated that it would, however, be willing to attend a pre-hearing conference if the issues raised by the complainants were not resolved through mediation.

## Issue

6 The Tribunal must determine the following issue:

(i) Is the respondent required to provide a reply to allegations?

## Legislation

7 Section 79 of the *PSEA* stipulates who is entitled to be heard by the Tribunal in a complaint under section 77:

79. (1) A person making a complaint under section 77, the person appointed or proposed for appointment, the deputy head and the Commission - or their representatives - are entitled to be heard by the Tribunal.

(2) Where the Canadian Human Rights Commission is notified of an issue pursuant to section 78, it may make submissions to the Tribunal with respect to that issue.

8 Sections 22 and 24 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6 (the *PSST Regulations*) indicate that the complainant's allegations must be in writing and that the respondent must reply to the allegations in writing. Further, section 25 of the *PSST Regulations* states that any other party that wishes to participate in the hearing must reply after receiving the respondent's reply:

22. (1) The complainant must provide his or her allegations to each of the other parties, to the Executive Director, to each of the intervenors, if any, and to the Canadian Human Rights Commission, if it is a participant, no later than 10 days after the end of the period for exchanging information.

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

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

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

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

(d) a detailed description of the allegations on which the complainant intends to rely and full particulars of the relevant facts;

(e) the signature of the complainant or the complainant's authorized representative; and

(f) the date of the document.

(3) If the complainant fails to provide allegations, the Tribunal may consider the complaint withdrawn.

24. (1) The deputy head or the Commission, as respondent, must provide a copy of the reply to each of the other parties, to the Executive Director, to each of the intervenors, if any, and to the Canadian Human Rights Commission, if it is a participant, no later than 15 days after receiving the complainant's allegations or amended allegations.

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

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

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

- (c) the Tribunal's file number for the complaint;
- (d) **a full response to any allegations or issues raised in the complaint and full particulars of any additional relevant facts on which the respondent intends to rely;**
- (e) the signature of the respondent or the respondent's authorized representative; and
- (f) the date of the reply.

(Emphasis added)

25. (1) If another party wishes to participate in the hearing, he or she must provide his or her reply to the complainant, to the deputy head or the Commission, to the Executive Director, to each of the intervenors, if any, and to the Canadian Human Rights Commission, if it is a participant, no later than 10 days after receiving the reply of the deputy head or the Commission.

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

- (a) the name, address, telephone number, fax number and electronic mail address of the party;
- (b) the name, address, telephone number, fax number and electronic mail address of the party's authorized representative, if any;
- (c) the Tribunal's file number for the complaint;
- (d) a full response to any allegations or issues raised in the complaint and full particulars of any additional relevant facts on which the party intends to rely;
- (e) the signature of the party or the party's authorized representative; and
- (f) the date of the reply.

## 9 Subsection 1(1) of the *PSST Regulations* defines "party":

1. (1) The following definitions apply in these Regulations.

"party" means anyone who has a right to be heard under subsection 65(3), section 75, subsection 79(1) or section 85 of the Act.

## Analysis

**10** One of the fundamental rules of natural justice requires that the parties to a complaint receive sufficient notice that a decision is forthcoming and that they be given the opportunity to be heard before the decision is made. This rule is known as *audi alteram partem*, which means "hear the other side." This rule guarantees procedural fairness for the parties and applies to proceedings before the Tribunal (see: *Neufeld v. Deputy Head of Service Canada et al.*, [2007] PSST 0022; *Anwar v. Deputy Minister of Fisheries and Oceans et al.*, [2007] PSST 0021; and, *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] S.C.J. No. 39 (Q.L.); [1999] 2 S.C.R. 819).

**11** Procedural fairness requires that a party have sufficient information about the complaint to provide a reply. The Supreme Court of Canada ruled as follows in

*Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 S.C.R. 385, at 402; [1992] S.C.J. No. 13 (Q.L.), at paragraph 31: “[...] Generally speaking, fairness requires that a party must have an adequate opportunity of knowing the case that must be met, of answering it and putting forward the party’s own position.”

**12** “Party” is defined in subsection 1(1) of the *PSST Regulations* as anyone who has the right to be heard by the Tribunal under the *PSEA*. Section 79 of the *PSEA* identifies the parties that have that right in respect of a complaint regarding an internal appointment under section 77. Those parties are the complainant, the deputy head as respondent, the Public Service Commission, and the person appointed or proposed for appointment.

**13** Section 22 of the *PSST Regulations* requires complainants to provide “a detailed description of the allegations on which the complainant intends to rely and full particulars of the relevant facts.” A detailed description of the allegations is important to inform the respondent of the nature of the complaint and the evidence which it will have to refute. The allegations are also used to inform the other parties, who are entitled to be heard by the Tribunal, of the nature of the complaint and the evidence.

**14** Similarly, procedural fairness requires that the respondent fully reply to the allegations. This ensures that complainants are informed of the respondent’s reply to their allegations and the nature of evidence the respondent plans to produce in order to refute the allegations. Once the other parties have the allegations and the respondent’s reply, they can determine whether they wish to participate in the hearing of the complaint.

**15** Section 24 of the *PSST Regulations* requires that the respondent provide a full reply to any allegations and issues raised in the complaint, as well as full particulars of any additional relevant facts on which the respondent intends to rely, no later than 15 days **after** receiving the allegations.

**16** Further, section 25 of the *PSST Regulations* stipulates that if another party wishes to participate in the hearing, he or she must provide his or her reply no later than

ten days after receiving the reply from the respondent. Other parties entitled to be heard by the Tribunal cannot reply unless the respondent has replied to the allegations.

**17** Accordingly, it is not for the respondent to determine whether it will provide a reply to the allegations. A reply from the respondent is required.

**18** The Tribunal finds that the respondent demonstrates carelessness in its failure to comply with the procedures set out in the *PSST Regulations*. There may be human resources constraints, and one person may be on extended leave, but that does not mean that the department can stop replying to complaints. The Tribunal is not satisfied that the Department of Foreign Affairs and International Trade has demonstrated such a lack of resources that another person cannot be assigned to this file. The respondent has a duty to comply with the timelines prescribed by the *PSST Regulations* and to comply with the principles of procedural fairness by replying to the allegations.

**19** The *PSST Regulations* state that, to facilitate resolution, the exchange of information must be completed within 25 days after the complaint is made. As well, mediation is scheduled unless one of the parties indicates that it is unwilling to participate. The *PSST Regulations* do not provide that timelines are suspended because the parties have agreed to mediation. The respondent and the complainants were notified specifically of this by the Tribunal on April 15, 2009, when the registry officer asked them to inform the Tribunal whether they wanted to participate in mediation. On April 16, 2009, the complainants filed their allegations with the Tribunal with copies to the other parties. The respondent was expected to reply within the prescribed time limit.

**20** Many complaints are settled during the exchange of information, when the parties meet and share information relevant to the complaint (see: *Visca v. Deputy Minister of Justice et al.*, [2006] PSST 0016; and, *Akhtar v. Deputy Minister of Transport, Infrastructure and Communities et al.*, [2007] PSST 0026). As well, many complaints are resolved after the complainant's allegations and the respondent's reply are filed. The parties are more likely to settle the complaint if they are aware of all of the complainant's allegations and the respondent's reply and explanations. Although the

complaints consisted of only a few paragraphs, the complainants provided seven pages of detailed allegations. A detailed reply would provide the respondent with an opportunity to inform the complainants of its position and explanations if necessary.

21 The *PSST Regulations* set out a clear and specific process which the parties must follow so that the complaint can be resolved in a fair and expeditious manner.

### **Decision**

22 The Tribunal finds that the respondent must provide a full reply to the complainants' allegations as required by procedural fairness and the *PSST Regulations*. This did not happen within the prescribed time limit. The Tribunal grants on its own motion, the respondent additional time to comply. The respondent must reply to the allegations by June 18, 2009. Other parties who wish to participate in the hearing will have ten days to reply following receipt of the respondent's reply.

### **Order**

23 The Tribunal orders the respondent to reply to the allegations by June 18, 2009.

Guy Giguère  
Chairperson

### **Parties of Record**

<b>Tribunal File</b>	2009-0132, 2009-0133, 2009-0134, 2009-0135, 2009-0136, 2009-0137, 2009-0152, 2009-0153, 2009-0154,
<b>Style of Cause</b>	<i>Christian Laroche et al.v. Deputy Minister of Foreign Affairs et al.</i>
<b>Date of Reasons</b>	June 11, 2009