



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**File:** 2011-0095  
**Issued at:** Ottawa, November 24, 2011

**NAGANALLORE K. DORAISWAMY**

Complainant

AND

**THE DEPUTY MINISTER OF TRANSPORT, INFRASTRUCTURE AND  
COMMUNITIES**

Respondent

AND

**OTHER PARTIES**

<b>Matter</b>	Motion to dismiss
<b>Decision</b>	Motion is granted and the complaint is dismissed
<b>Decision rendered by</b>	Joanne B. Archibald, Member
<b>Language of Decision</b>	English
<b>Indexed</b>	<i>Doraismamy v. Deputy Minister of Transport, Infrastructure and Communities</i>
<b>Neutral Citation</b>	2011 PSST 0035

# Reasons for Decision

## Introduction

1 The Deputy Minister of Transport, Infrastructure and Communities (the respondent) requests that the Public Service Staffing Tribunal (the Tribunal) dismiss the complaint filed by Naganallore Doraiswamy (the complainant) pursuant to s. 77(1) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12,13 (the PSEA). The basis of the motion is the respondent's assertion that the complainant has no personal interest in the non-advertised appointment that was the subject of his complaint.

2 The complainant responds that he has no interest in being appointed to the position, but is concerned that the appointment was not done correctly.

## Issue

3 The Tribunal must determine whether it has jurisdiction to consider this complaint.

4 Section 77(1) of the PSEA provides that:

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).

## Relevant Evidence and Analysis

5 On February 25, 2011, the complainant filed a complaint with the Tribunal pursuant to s. 77(1) of the PSEA concerning a non-advertised acting appointment to a TI-07 Senior Marine Safety Inspector position. In his original complaint document,

the complainant expressed the opinion “that there are many professionally qualified Canadians nationally available to take up TI-07 positions.” He added that “(p)ersonally, I have nothing to gain.”

**6** On April 4, 2011, the complainant filed allegations and on April 18, 2011, the respondent filed its reply to the allegations. The hearing was then scheduled for December 8-9, 2011.

**7** On November 3, 2011, the respondent presented a motion to the Tribunal asking that the complaint be dismissed on the basis that the complainant had no personal interest in the appointment. Further submissions were received from the parties during a teleconference that was held on November 16, 2011.

**8** During the teleconference, the complainant stated that he was not interested in the position or being appointed to it. He indicated that he had filed the complaint because he felt that the qualifications were not appropriate. Since filing, the complainant has retired from a TI-07 position in the public service.

**9** The respondent submitted that as the complainant had explicitly stated that he did not want to be appointed, he clearly had no personal interest. As such, the Tribunal has no jurisdiction under s. 77 to hear his complaint.

**10** The Public Service Commission was represented during the teleconference, but made no submission in the matter of personal interest and the Tribunal’s jurisdiction over the complaint.

**11** The mandate of the Tribunal extends to those matters which are set out in s. 88(2) of the PSEA, specifically “complaints made under ss. 65(1) and 74, 77 and 83.” The question for the Tribunal to answer is whether this complaint satisfies the requirement of s. 77 for personal interest, that is to say whether the complainant alleges that he was not appointed or proposed for appointment.

**12** The Tribunal has considered this question in a number of its decisions, and it has consistently held that a complainant must meet the requirement for personal interest in order to have the right to file a complaint under s. 77. In *Visca v. Deputy Minister of*

*Justice*, 2006 PSST 0016, at para. 24, the Tribunal considered its jurisdiction over a complaint filed under s. 77 with respect to an internal advertised appointment process and found that “(a) person can only complain ‘that he or she was not appointed’ and cannot complain that other persons were not appointed.”

**13** In *Evans v. Deputy Minister of Indian Affairs and Northern Development*, 2007 PSST 0004, the Tribunal considered a complaint that was filed under s. 77 concerning a non-advertised appointment, and held at para. 12: “The Tribunal finds that a complainant’s right to file a complaint pursuant to section 77 of the *PSEA* is subject to the preliminary condition that the complainant must have a personal interest in the appointment.”

**14** In *Evans*, the Tribunal found that the complaint was brought on behalf of others who might have sought the opportunity, leading the Tribunal to conclude that the complainant had no personal interest in being appointed to the subject position. On this basis, “the complainant had no standing and therefore no right to file a complaint to the Tribunal pursuant to section 77 of the *PSEA*” (*Evans*, at para. 18).

**15** The Tribunal reiterated the requirement of personal interest in *Beyak v. Deputy Minister of Natural Resources Canada*, 2009 PSST 0035 and *Silke v. Deputy Minister of National Defence*, 2010 PSST 0009. The Tribunal has uniformly held that for a complaint to be brought under s. 77 of the *PSEA*, it must be the complainant himself or herself who is claiming that he or she was not appointed or proposed for appointment because of an abuse of authority.

**16** On the uncontested facts before it, the Tribunal finds that the present complaint lacks any indication of personal interest. The complainant has presented no evidence to contradict the respondent’s position and he expressly informed the Tribunal that he has no interest in the position. The complainant is not complaining that he was not appointed. While his complaint document appears to suggest that he would like the acting opportunity to be available to a broader field of candidates, the complaint does not fall within the parameters of s. 77. A claim that other employees could have been interested in the acting appointment does not meet the requirements of s. 77(1) of

the PSEA. A person cannot complain that other persons were not appointed or could have been appointed in an appointment process.

**17** The Tribunal concludes that the complainant has no interest in an acting appointment to the T1-07 Senior Marine Safety Inspector position and that, in fact, he is complaining on behalf of others. On this basis, the Tribunal finds that the complainant has not established that he has the right to file a complaint to the Tribunal under s. 77 of the PSEA.

**18** The Tribunal does not have jurisdiction to consider and dispose of this complaint.

### **Decision**

**19** For these reasons, the motion is granted and the complaint is dismissed.

Joanne B. Archibald  
Member

### **Parties of Record**

<b>Tribunal Files</b>	2011-0095
<b>Style of Cause</b>	<i>Naganallore K. Doraiswamy and the Deputy Minister of Transport, Infrastructure and Communities</i>
<b>Hearing</b>	By teleconference November 16, 2011 Ottawa, Ontario
<b>Date of Reasons</b>	November 24, 2011
<b>APPEARANCES:</b>	
<b>For the complainant</b>	Larry Teslyk
<b>For the respondent</b>	Nathalie Pruneau
<b>For the Public Service Commission</b>	John Unrau