



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**Files:** 2011-1051,1063,1117,1056,  
1064,1098,1110,1116,1053,1062,  
1099,1115,1055,1060,1066,1097,  
1111,1065

**Issued at:** Ottawa, November 6, 2012

**CURT SCHMID, JOHN COPEMAN AND STEVEN JONES**

Complainants

AND

**THE COMMISSIONER OF CORRECTIONAL SERVICE OF CANADA**

Respondent

AND

**OTHER PARTIES**

<b>Matter</b>	Complaints of abuse of authority under section 77(1)(a) and (b) of the <i>Public Service Employment Act</i> .
<b>Decision</b>	Complaints are dismissed
<b>Decision rendered by</b>	Joanne B. Archibald, Member
<b>Language of Decision</b>	English
<b>Indexed</b>	<i>Schmid v. the Commissioner of Correctional Service of Canada</i>
<b>Neutral Citation</b>	2012 PSST 0030

# Reasons for Decision

## Introduction

1 Curt Schmid, John Copeman, and Steven Jones (the complainants) brought 18 complaints of abuse of authority against the Commissioner, Correctional Service of Canada (the respondent) alleging abuse of authority in the choice of a non-advertised appointment process and in the application of merit for some of the appointees for positions of CX-04 Correctional Manager at Warkworth Institution. These complaints were brought under ss. 77(1)(a) and (b) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12,13 (the PSEA).

2 In allegations that were submitted prior to the hearing, the complainants take the position that using a non-advertised appointment process without prior notice to employees is an abuse of authority as it shows a lack of access to the position. They also state concerns about certain appointees who were unsuccessful in an earlier advertised appointment process and they express the view that the appointees had an unfair advantage due to earlier acting appointments to the CX-04 position.

3 The respondent denies that an abuse of authority occurred, and indicates that they complied with the PSEA and departmental policy in the choice of a non-advertised appointment process. The appointees were fully assessed and found qualified.

4 The Public Service Commission (PSC) did not appear at the hearing, and presented a written submission in which it discussed relevant PSC policies and guidelines. It took no position on the merits of the complaints.

5 For the reasons that follow, the complaints are dismissed. The complainants did not appear at the hearing of their complaints. No evidence was presented to support the allegations. The Tribunal therefore finds that the allegations have not been proven.

## Background

6 On June 14, 2012, the Notice of Hearing for these complaints was issued to the parties. The hearing was scheduled for October 23-26, 2012, in Kingston, Ontario, to begin at 9:30 a.m.

**7** On October 23, 2012, at 9:30 a.m., the hearing began. The complainants were three of five individuals who initiated complaints against the CX-04 appointments. The complainants were not present or represented, although two other individuals, whose complaints are not the subject of this decision, were present. At the request of those individuals, the hearing was adjourned for reasons relevant to their complaints. When the hearing resumed on October 24, 2012 at 9:30 a.m., again none of the complainants or their representatives were in attendance. The Tribunal notes that among the complainants, only Mr. Schmid had earlier indicated that he had made the decision not to attend the hearing to present a case.

**8** The respondent then presented a motion to the Tribunal to either dismiss the complaints or consider them abandoned. The respondent submitted that, as the complainants did not appear or produce evidence to support their allegations, there was no case to which to respond.

### **Analysis**

**9** The Tribunal is satisfied that proper notice of the hearing was sent to the complainants. A review of the record confirms that the Notice of Hearing, issued on June 14, 2012, was sent by email to all parties, including the complainants and the individuals they identified as their representatives. In addition to providing the date and time for the hearing, the Notice of Hearing indicated that the Tribunal may proceed with the hearing despite the absence of any party. On September 21, 2012, the Notice of Venue was distributed by email to the same list, including the complainants and their representatives. There is no record of returned email from any addressee and the Tribunal finds no suggestion in the record that service of the notices was ineffective. Similarly, there is no indication of any party contacting the Tribunal prior to the hearing to advise of a problem with the scheduled dates.

**10** Section 29 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6 (the Regulations), as amended by SOR/2011-116, states that:

If a party, an intervenor or the Canadian Human Rights Commission, if it is a participant, does not appear at the hearing of a complaint or at any continuance of the hearing and the Tribunal is satisfied that notice of the hearing was sent to that party, intervenor or participant, the Tribunal may proceed with the hearing and dispose of the complaint without further notice.

**11** The Tribunal interpreted s. 29 of the Regulations in *Broughton v. Deputy Minister of Public Works and Government Services*, 2007 PSST 0020:

[24] ... the words “dispose of the complaint without further notice” in section 29 of the *PSST Regulations* indicate that it refers to the portion of the complaint process where the Tribunal will make a decision on the complaint.

[...]

[33] Since the complainant provided allegations, the wording of section 29 of the *PSST Regulations* applies and clearly specifies that the Tribunal may proceed with the hearing without further notice and dispose of the complaint.

**12** Based on the foregoing, the Tribunal will proceed to dispose of these complaints.

**13** In *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 0008, the Tribunal determined that it is the complainant who bears the burden of proof in hearings before the Tribunal (see paras. 49, 50 and 55). For a complainant to meet this burden, he must present sufficient evidence for the Tribunal to determine, on a balance of probabilities, whether a finding of abuse of authority is warranted.

**14** In *Broughton*, the Tribunal found at para. 50 that “(i)t is not sufficient for a complainant to make bold statements in the complaint and allegations claiming abuse of authority without supporting these allegations with evidence from witnesses, facts and/or documents.”

**15** In the present case, the complainants have submitted allegations but they have not tendered evidence to support these allegations. Therefore, the Tribunal finds that the complainants have not met the burden of proving an abuse of authority in the choice of a non-advertised appointment process or an abuse of authority in the application of merit.

## Decision

16 For these reasons, the complaints are dismissed.

Joanne B. Archibald  
Member

## Parties of Record

<b>Tribunal Files</b>	2011-1051,1063,1117,1056,1064,1098,1110,1116,1053,1062,1099,1115,1055,1060,1066,1097,1111,1065
<b>Style of Cause</b>	<i>Curt Schmid, John Copeman and Steven Jones and the Commissioner of Correctional Service of Canada</i>
<b>Hearing</b>	October 23 and 24, 2012 Kingston, Ontario
<b>Date of Reasons</b>	November 6, 2012
<b>APPEARANCES:</b>	
<b>For the complainants</b>	Did not appear and were not represented
<b>For the respondent</b>	Martin Desmeules
<b>For the Public Service Commission</b>	John Unrau (written submission)