



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**File:** 2013-0227  
**Issued at:** Ottawa, September 30, 2014

**SYLVAIN BEAUCHAMP**

Complainant

AND

**THE COMMISSIONER OF THE CORRECTIONAL SERVICE OF CANADA**

Respondent

AND

**OTHER PARTIES**

**Matter:** Complaint of abuse of authority pursuant to section 77(1)(a) of the *Public Service Employment Act*

**Decision:** The complaint is dismissed for lack of jurisdiction

**Decision rendered by:** Nathalie Daigle, Member

**Language of Decision:** French

**Indexed:** *Beauchamp v. Commissioner of the Correctional Service of Canada*

**Neutral Citation:** 2014 PSST 16

# Reasons for Decision

## Introduction

1 The Public Service Staffing Tribunal (the Tribunal) is seized with a complaint filed under s. 77(1) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the PSEA) regarding two acting appointments to the Correctional Service of Canada (CSC) of less than four months. The Tribunal must determine whether it has the jurisdiction to consider this complaint. It is established that acting appointments of less than four months are not within the Tribunal's jurisdiction. However, the complainant alleges that the two acting appointments were in fact a single acting appointment for a continuous period of more than four months. The complainant also alleges that the respondent demonstrated favouritism towards the person appointed.

2 The respondent submits that, pursuant to s. 14(1) of the *Public Service Employment Regulations*, SOR/2005-334 (the PSER), both acting appointments made in this case were for periods of less than four months and that they are not within the Tribunal's jurisdiction.

3 The Public Service Commission (the PSC) did not attend the hearing, but it provided written submissions on its applicable policies and guidelines. It took no position on the merits of the complaint.

## Background

4 From October 5, 2012, to January 31, 2013, Luigi P  p   was appointed on an acting basis to the CORCAN Operations Manager (COM) position for the laundry business line, Quebec Region. This was a position at the AS-07 group and level. From March 1 to June 28, 2013, Mr. P  p   was again appointed on an acting basis to the same position (COM).

5 Between these two appointments as COM, that is, from February 1 to 28, 2013, Mr. P  p   was appointed on an acting basis to the Manager position at the Leclerc Institution laundry, at the GS-LAS-08 group and level. The complainant also held this position until October 28, 2013.

**6** Mr. Pépé's substantive position is that of Assistant Manager at the Leclerc Institution laundry. This is a position at the GS-LAS-07 group and level.

**7** On June 18, 2013, the complainant filed a complaint of abuse of authority with the Tribunal under s. 77(1)(a) of the PSEA.

### **Analysis**

**8** Section 77(1)(a) of the PSEA provides that a person in the area of recourse may make a complaint that he or she was not appointed or proposed for appointment by reason of an abuse of authority by the PSC or the deputy head under s. 30(2) of the PSEA, which deals with appointments made on the basis of merit.

**9** However, according to s. 14(1) of the PSER, an acting appointment of less than four months is not within the Tribunal's jurisdiction, as it is excluded from the application of ss. 30 and 77 of the PSEA, provided it does not extend the cumulative period of the acting appointment of a person in a position to four months or more.

**10** The issue that the Tribunal must therefore determine is whether Mr. Pépé's two acting appointments as COM constituted a continuous appointment of four months or more. It is only if the Tribunal answers this question in the affirmative that it will have jurisdiction to determine whether there was an abuse of authority within the meaning of s. 77(1) and whether the respondent demonstrated favouritism towards the appointed person.

**11** According to the complainant, the two acting appointments of less than four months were in fact a single continuous acting appointment of nine months. He submits that, although the respondent created a break between the two appointments, the person appointed did not cease to perform his acting duties. According to the complainant, the respondent abused its authority by failing to post a notice of interest for the appointments in question, by creating a break between the two acting appointments to avoid posting the right to recourse and by posting a notice of interest to staff the position only once the complainant had filed a complaint with the Tribunal.

**12** Sylvie Doucet, instructor at the Leclerc Institution laundry, testified at the hearing. She explained that Mr. P  p   was her supervisor from October 2012 to late June 2013 as acting COM. She stated that she had never been informed that he had ceased to hold the COM position between February 1 and February 28, 2013. Consequently, she was never informed that, in February, he had held the laundry manager position. She insisted on the fact that she never saw him in the laundry manager's office.

**13** Ms. Doucet remembers the conversations she had with her co-workers regarding Mr. P  p  's COM appointment throughout this period. As she explained, some of her co-workers would have liked to hold the COM position on an acting basis. However, none of them knew that Mr. P  p   did not hold the COM position in February 2013. She explained that it was not until July 3, 2013, that her team was informed that Mr. P  p   no longer held the COM position. In an email to the complainant, she summarized her understanding of the situation as follows:

One thing is certain, neither [Mr. P  p  ] nor anyone else ever came back to work in the laundry manager's office since my return because the door was always closed, ... because I worked at Laundry 1 every day with my [my co-worker], and [Mr. P  p  ] would come to see us from time to time, not for long and without returning to his "COM" office. So, for me and the others, he was still COM until the meeting with Ms. H  bert ... in early July 2013, and when he left Leclerc in March, he was still...

[translation]

**14** Ms. Doucet stated that, when she had work-related questions, she went to see the laundry's acting assistant manager, who reported to Mr. P  p  .

**15** Ms. Doucet also stated that she filed some grievances between October 2012 and late June 2013 and that she submitted these grievances to Mr. P  p   as COM. She remembers in particular that she filed a grievance in April 2013 and that she submitted it to Mr. P  p  .

**16** Lastly, Ms. Doucet stated that Mr. P  p   worked in the COM office at Leclerc Institution until March 2013, at which time the laundry's production was transferred to Archambault Institution. At the same time, seven laundry workers were transferred to the other facility. She specified that only three laundry workers (the complainant, another person and herself), as well as ten inmates, worked at Leclerc Institution until it

closed in September 2013. She and her two co-workers were in charge of calendering at the laundry. Calendering consists of compressing sheets in a calender to smooth them out.

**17** The respondent submits that Mr. P  p   did not hold the COM position in February 2013 and that his two acting appointments from October 2012 to January 2013 and from March to June 2013 did not constitute a single continuous acting appointment of nine months.

**18** Youseff Mani, CORCAN Regional Director, Quebec Region, was the sub-delegated manager who signed the "acting requests" for Mr. P  p  . He explained that CORCAN is a special operating agency within CSC that provides inmates with training and job opportunities in four activity areas, namely, (1) manufacturing, (2) construction, (3) textiles, and (4) printing and laundry.

**19** Mr. Mani explained that, on April 19, 2012, the government announced that Leclerc Institution would close its doors on September 30, 2013. The laundry operations at Leclerc Institution therefore had to be moved to Archambault Institution. C  line H  bert, Assistant Regional Manager, held the COM position for the laundry business line in April 2012. Mr. Mani explained that she was therefore the one mandated to handle the laundry's move from Leclerc Institution to Archambault Institution. However, due to unforeseen circumstances, Mr. Mani had to assign her more responsibilities and, in June 2012, in addition to her COM position for the laundry business line, she also had to carry out the duties of regional operations manager and acting COM for the Manufacturing 2 business line. Given the enormous amount of work to be done in October 2012, Mr. Mani was forced to recruit Mr. P  p   to replace Ms. H  bert as COM for the laundry business line.

**20** Mr. Mani stated that he turned to Mr. P  p   because he was the only one who could fill the position at the time. October through March is always a busy time for CORCAN. During this time, CORCAN signs numerous contracts with third parties. He therefore needed someone with the experience and technical knowledge required to meet the contracted delivery deadlines. However, it was impossible for him to appoint

the manager at either the Leclerc or Archambault Institution to that position. More specifically, the Archambault Institution manager did not want the COM position and the complainant, manager at the Leclerc Institution, was on sick leave. Moreover, the assistant manager position at Archambault Institution was vacant, and workers filled the position on a rotating basis. Mr. P  p   was therefore the only laundry manager who could fill the position immediately.

**21** Mr. Mani stated that, in February 2013, Ms. H  bert resumed her COM functions for the laundry business line, in addition to performing her other duties. During that month, Mr. P  p   held the GS-LAS-08 Laundry Manager position at Leclerc Institution. As such, Mr. P  p   supervised the laundry and coordinated its activities with the sorting centre, in addition to working on transferring the laundry's production from the Leclerc Institution to the Archambault Institution.

**22** At the hearing, Ms. H  bert confirmed that she resumed her COM functions for the laundry business line in February 2013, in addition to serving as Acting Regional Operations Manager and COM for the Manufacturing 2 business line. However, due to unforeseen events, she also had to take over the textile and printing products lines. She explained that she was overloaded with work and that this is why, on March 1, Mr. P  p   was asked once again to fill the COM position for the laundry business line on an acting basis. He held this position until June 28, 2013.

**23** As the Tribunal previously stated, s. 14(1) of the PSER provides that the appointment of federal public servants to temporary positions of less than four months is allowed, without this involving the application of merit or right to recourse. However, the appointment may not extend the cumulative period of the acting appointment to four months or more.

**24** In this case, the Tribunal must determine whether the two acting appointments extended the cumulative period to four months or more. In other words, the Tribunal must determine whether the two acting appointments constituted a continuous acting appointment of nine months. As previously stated, it is only if the Tribunal answers this

question in the affirmative that it will have the jurisdiction to consider this complaint filed under s. 77(1).

**25** The Tribunal finds that the two acting appointments did not constitute a single continuous acting appointment of nine months and that they therefore did not extend the cumulative period of the appointment to four months or more. The evidence shows that Mr. P  p  's two acting appointments as COM were separate appointments and that they did not constitute a single continuous appointment.

**26** More specifically, a form entitled *Request for Acting under 4 Months* confirms that Mr. P  p   was appointed COM from October 1, 2012, to January 31, 2013. The rationale provided for this appointment is the following: "To replace the incumbent who is currently on assignment to another position." [translation] A screen from CSC's Human Resources Management System also indicates that a termination of the acting appointment was recorded on January 31, 2013. This confirms that Mr. P  p   ceased to be employed as COM on January 31, 2013.

**27** According to the testimony of Mr. Mani and Ms. H  bert, Mr. P  p   subsequently held the manager position at the Leclerc Institution laundry at the GS-LAS-08 group and level. The *Request for Acting under 4 Months* for this appointment was not filed into evidence. However, a screen from CSC's Human Resources Management System indicates that a termination of Mr. P  p  's GS-LAS-08 acting appointment was recorded on February 28, 2013. The screen confirms that Mr. P  p   started his GS-LAS-08 assignment on February 1, 2013.

**28** Another *Request for Acting under 4 Months* indicates that Mr. P  p   was subsequently appointed COM from March 1, 2013, to June 28, 2013, at the AS-07 group and level. The rationale provided for this appointment was the following: "The acting appointment of Mr. P  p   to this position is essential to the ensure the smooth running of our textiles business line workshops (FTC, Sorting Centre, Archambault and Leclerc) in order to avoid jeopardizing our operations." [translation] A screen from the Human Resources Management System also indicates that a

termination of the acting appointment was recorded on June 28, 2013. This confirms that Mr. P  p   ceased to be employed as COM on that date.

**29** A final *Request for Acting under 4 Months* indicates that, six months later, Mr. P  p   was appointed COM from December 27, 2013, to January 3, 2014. The following statement appears in the Comments box: "six-day replacement to avoid negative impact on operations" [translation]. At that time, Mr. P  p   replaced the COM incumbent, who had taken a six-day leave.

**30** The Tribunal finds that, although Ms. Doucet believes that Mr. P  p   held the COM position in February 2013, the evidence shows that this was not the case. The Tribunal is satisfied that it was Ms. H  bert who held this position in February 2013 and that, during this time, Mr. P  p   held the GS-LAS-08 laundry manager position.

**31** Ms. H  bert confirmed that she resumed her COM duties for the laundry business line in February 2013. A screen from the Human Resources Management System also shows that Mr. P  p   held the laundry manager position during this time. Mr. Mani confirmed, moreover, that Mr. P  p   was not remunerated as COM in February, but as GS-LAS-08.

**32** It is true that in February 2013 Mr. P  p   continued to organize the move of the Leclerc Institution laundry to Archambault Institution. However, the Tribunal notes that this is understandable, given that he was laundry manager at Leclerc Institution and that the laundry was being relocated. Therefore, in the Tribunal's opinion, this does not constitute evidence that he held the COM position during this time.

**33** Lastly, the screens from CSC's Human Resources Management System confirm that Mr. P  p  's two acting appointments as COM from October 2012 to January 2013 and from March to June 2013 were separate appointments. The complainant did not question the validity of these screens, which support the statements of the respondent's witnesses. The Tribunal therefore concludes that Mr. P  p   did not hold the COM position on a continuous basis between October 2012 and June 2013.



**34** Consequently, the Tribunal does not have the jurisdiction to consider this complaint under s. 77(1). It thus cannot deal with the issue of favouritism.

### **Decision**

**35** The complaint is dismissed for lack of jurisdiction.

Nathalie Daigle  
Member

### **Parties of Record**

<b>Tribunal File:</b>	2013-0227
<b>Style of Cause:</b>	<i>Sylvain Beauchamp and the Commissioner of the Correctional Service of Canada</i>
<b>Hearing:</b>	June 17 and 18, 2014 Montréal, Quebec
<b>Date of Reasons:</b>	September 30, 2014
<b>APPEARANCES</b>	
<b>For the complainant:</b>	Chantal Ouellette
<b>For the respondent:</b>	Kétia Calix
<b>For the Public Service Commission:</b>	Luc Savard (written submissions)