Public Service Staffing Tribunal | Tribunal de la dotation de la fonction publique

FILES: 2006-0164, 0166, 0167, 0168, 0170 AND 0173

OTTAWA, DECEMBER 10, 2007

MICHELLE ROZKA ET AL

COMPLAINANTS

AND

THE DEPUTY MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

RESPONDENT

AND

OTHER PARTIES

MATTER	Complaint of abuse of authority pursuant to paragraph 77(1)*(a)* of the *Public Service Employment Act*
DECISION	Complaints are dismissed
DECISION RENDERED BY	Helen Barkley, Member
LANGUAGE OF DECISION	English
INDEXED	*Rozka et al. v. Deputy Minister of Citizenship and Immigration Canada et al.*
NEUTRAL CITATION	2007 PSST 0046

REASONS FOR DECISION

INTRODUCTION

[1] Six employees working with Citizenship and Immigration Canada (CIC) in Vegreville, Alberta are complaining that they were not appointed as Service Delivery Agents (CR-05) by reason of abuse of authority. Their complaints are essentially twofold: first, they should have been appointed to indeterminate positions through a non-advertised appointment process; and, secondly, the knowledge qualification for the position was improperly assessed.

BACKGROUND

[2] Michelle Rozka, Denise Durie, Peggy Bienvenue, Cheryl Harris, Caren Bilyk and Kathy O'Neill, the complainants, filed similar complaints with the Public Service Staffing Tribunal (the Tribunal) pursuant to subsection 77(1) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*). The respondent is the Deputy Minister of CIC.

[3] Pursuant to section 8 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6 (the *PSST Regulations*), all six complaints were consolidated into one proceeding.

[4] All of the complainants work at the CIC Case Processing Centre (CPC) in Vegreville, Alberta. The substantive positions of five of the six are at the CR-03 level, while the sixth complainant occupies a Service Delivery Agent position (CR-05) on a term basis.

[5] A previous competition for the Service Delivery Agent positions had taken place prior to the implementation of the current *PSEA*. An appeal under the former *Public Service Employment Act* (the former Act) was successful and, as corrective action, the respondent, in consultation with the union, decided to conduct a new appointment process under the *PSEA* (process number 06-IMC-IA-CPCVG-1213).

[6] A job opportunity advertisement was posted on *Publiservice* on June 6, 2006. Candidates were assessed and 31 employees met the essential qualifications for the

position. The six complainants did not meet one or more of the essential knowledge qualifications, and were eliminated from consideration for appointment.

[7] The complainants had all been performing the duties of Service Delivery Agent positions for various periods of time prior to the appointment process. The complainants believe that they should have been appointed through non-advertised processes based on their previous performance working in the capacity of Service Delivery Agents.

SUMMARY OF RELEVANT EVIDENCE

[8] Each of the six complainants testified that they were misled as to the nature of the appointment process. They had performed the duties of Service Delivery Agent on an acting basis for varying lengths of time – ranging from several months to four years. All had received positive performance reviews while working in that capacity. In February 2006, they met with Paul Snow, Operations Manager for CIC CPC in Vegreville, to discuss the new appointment process.

[9] The complainants all testified that, during the February 2006 meeting, they were told by Mr. Snow that they had "nothing to worry about," and that "they were not going anywhere" since a large number of Service Delivery Agents were needed. They were informed that there was a backlog in the work at the CPC and that as many staff as possible would be appointed. Caren Bilyk testified that Mr. Snow had posed a question during this meeting: "Why would we put you back in CR-03 positions when you are trained as CR-05s?"

[10] Furthermore, in a meeting held in the summer of 2006, all interested candidates met with Joan Hauser, Human Resources Manager, CIC, Vegreville. According to the testimony of the complainants, she stressed that the candidates' applications needed to demonstrate how they met each of the essential qualifications for the position. She further stated that management did not have to run a process. Candidates could be hired through a review of their qualifications listed in their covering letters and résumés. She assured those employees who were acting as Service Delivery Agents that "anybody who was doing the job would continue to do well."

[11] The complainants were notified in late August 2006 that a written test would be administered. Because they had been assured that they had nothing to worry about, and Ms. Hauser had indicated that they could be assessed through their written applications, the complainants had the impression that the test would be used to rank candidates and determine the order in which candidates would be taken out of the pool and appointed to indeterminate positions. They were never informed that the test would be used as a means to eliminate candidates. Several of the complainants testified that, had they been informed of the purpose of the written exam, they would have prepared more completely for it. However, in two different meetings, two managers had said they had nothing to worry about.

[12] Under cross-examination, all of the complainants acknowledged that they had read the job advertisement, and were aware of the essential qualifications for the position. All six further acknowledged that they were aware of two statements contained in the job advertisement, namely: “a written examination may/will be administered;” and, “candidates must meet the essential qualifications to be appointed to a position.”

[13] Candidates were notified on September 21, 2006 of the 31 persons being considered for appointment.

[14] Five of the six complainants failed to meet the essential qualification of “knowledge of current events relating to Citizenship and Immigration Canada.” Three of the complainants, Peggy Bienvenue, Denise Durie, and Michelle Rozka failed to meet the second knowledge qualification, namely, “knowledge of the objectives of the Immigration and Refugee Protection Act and Regulations.”

[15] Once the results of the appointment process were made known in September 2006, five of the complainants returned to their substantive positions at the CR-03 level. These five complainants testified that, despite being screened out of the process based on a lack of essential qualifications, they were offered acting appointments as Service Delivery Agents in January 2007. Four complainants were still performing Service Delivery Agent duties at the date of hearing. Cheryl Harris, who had been appointed to a CR-05 term position until March 2007, remained in that position,

even though she was notified in September 2006 that she was not qualified. In March 2007, she was appointed on an acting basis as a Service Delivery Agent.

[16] The complainants all requested informal discussion after they had been notified of the results of the appointment process. Kathy O'Neill testified that, during her informal discussion, she was told by the board that she had given an example of a current event that was not on the list provided. She was told that had the event been on the list, she would have received full marks. The board members agreed to discuss accepting her answer, but later advised her that they would not take "corrective action as this would be opening a can of worms."

[17] Kathy O'Neill also testified that she had never applied her own knowledge of current events while performing the duties of a Service Delivery Agent. She stated that the agents had to be told by management what to apply.

[18] Fiona Smythe-Wilson, Team Leader, was called as a witness by the complainants. Ms. Smythe-Wilson testified that she attended a meeting called by Joan Hauser on August 18, 2006 for all the acting CR-05s. Ms. Hauser talked about the need for Service Delivery Agents at the CPC and that management was fast-tracking the process to make sure it was finished by the end of September. She stated that there was now more flexibility in the process and that management could do a paper review and did not necessarily have to do a test. Ms. Hauser also stated that everyone who qualified would get a job offer.

[19] Louise Mardell, former Canada Employment and Immigration Union representative, Donna Harley and Lynn Mongeon, Service Delivery Specialists, testified on behalf of the complainants as to events that occurred after notification that the complainants had been eliminated from further consideration and all assessments had been completed.

[20] Paul Snow gave evidence on behalf of the respondent. He stated that he was the Operations Manager at CPC in Vegreville until March 2007. His role as Operations Manager was to ensure that applications for temporary residents, temporary status and permanent residents were processed in a timely fashion. He initiated an appointment

process in early 2006 for Service Delivery Agents. The process was open to all employees of CIC in Vegreville, Alberta.

[21] The purpose of this process was to establish a large pool of qualified candidates to fill vacancies in order to meet the needs of the organization. Mr. Snow felt that an advertised process was the fairest way to proceed. It had been one year since the previous process, and there were new employees who might wish to be included. It was anticipated that an advertised process would address the backlog of work in the unit. The intent of the process was not to eliminate candidates, but rather to create a large pool to fill vacancies.

[22] Mr. Snow confirmed that he met with employees in February 2006 to address a number of concerns that had been raised by staff. This appointment process was the corrective action taken by management as a result of a previous appeal under the former PSEA. There were concerns that management might change the process since the new *PSEA* had come into force in the interim. Mr. Snow specifically wanted to reassure potential candidates that he was not trying to exclude anyone, and wanted the process to be as inclusive as possible.

[23] On cross-examination, Mr. Snow was asked why he did not appoint those employees already doing the job. He indicated that the Public Service Commission (PSC) had found errors in the previous process and he did not feel it was right for him to appoint people without running a new appointment process. He also wished to qualify as large a group as possible. When asked if he had said that testing may or may not be necessary, he replied that he may have said that. He felt that an advertised process was the only option open to him as there were new potential candidates whom he did not wish to exclude.

[24] When asked on cross-examination if he had made any promises to candidates, Mr. Snow replied that he had promised candidates that if they had been screened into the previous process, they would also be screened into this process. He stated that he did not tell candidates that they did not need to worry, nor had he told them that they would all qualify. In several discussions he had with staff, Mr. Snow told them that their work was valuable.

[25] Mr. Snow was responsible for establishing the essential qualifications for the position. Knowledge of current events is necessary because Service Delivery Agents need to undertake an individual assessment of personal circumstances. With more knowledge, Service Delivery Agents are able to more efficiently process applications.

[26] The second knowledge requirement was essential because Service Delivery Agents make decisions based on the objectives set out in the *Immigration and Refugee Protection Act*. It is much easier to train employees who already have this knowledge.

[27] Mr. Snow was involved in the decision to ask the complainants to take on the duties of Service Delivery Agents on an acting basis in January 2007. The Service Delivery Agent duties assigned to these individuals were limited to temporary resident applications only, and would not require knowledge of current events. They were appointed through a non-advertised appointment process for an anticipated period of four to five months.

[28] Gwynn Alexander testified that her substantive position was that of Team Leader at CIC CPC in Vegreville, supervising a team of 18 CR-05 employees and one PM-03 officer. In 2006, she was asked by her supervisor, Paul Snow, to chair the assessment board for the Service Delivery Agent process. She was primarily responsible for developing the assessment tools. These tools consisted of the following: a written exam to assess the knowledge qualification; written exercises for the ability to communicate in writing, and the ability to analyze and evaluate; and, reference checks for the ability to communicate orally, and the personal suitability factors.

[29] The first knowledge qualification, “knowledge of current events relating to Citizenship and Immigration Canada,” was assessed through a question which asked candidates to identify two events from a list of six events provided by the respondent. Candidates were to provide a brief overview of the event and describe how these events related to or had impacted CIC. Ms. Alexander referred to press releases for each of the six events listed, which had been available on the CIC website. Ms. Alexander also outlined how the selection board had marked the question and used the rating scale. She testified that all six complainants failed to provide sufficient detail in their answers to demonstrate their knowledge of current events relating to CIC.

[30] The second knowledge qualification was “knowledge of the objectives of the Immigration and Refugee Protection Act and Regulations.” The question which assessed this qualification referred to section 3 of the *Immigration and Refugee Protection Act*. It asked candidates to name two objectives in respect of immigration, one objective concerning refugees, and then provide an example of how those objectives were met in CIC. Ms. Alexander also explained the basis for the award of marks to each of the complainants for these two questions.

[31] Ms. Alexander further testified that the essential qualifications were already established when she was asked to chair the assessment board. She had some discussion with Mr. Snow about the possibility of having a “paper board,” but they were advised by human resources that it would not be appropriate. Some of the candidates had performed the duties of the CR-05 position, while other candidates worked in the mail room. The knowledge qualifications could not be assessed for those working in the mail room by a review of their applications.

[32] On cross-examination, Ms. Alexander was asked to identify three different versions of the rating guide. She indicated that the rating guide, which included the rating scale, was the final version and was used for the appointment process. It was completed in July 2006.

[33] When asked how candidates would know they needed to provide detail for question 1, which assessed knowledge of current events relating to CIC, Ms. Alexander stated that candidates were asked to provide a brief overview of the event. The second part of the question, asking them to “describe how these events relate to, or have impacted, this department,” required detailed information. The detail was important so the candidate could demonstrate his or her understanding of the current event and what impact it had on CIC.

[34] Joan Hauser testified that she was the Human Resources Manager at CIC CPC, Vegreville at the time of the appointment process. Her role was to provide advice and guidance to the manager and to the selection board. Ms. Hauser stated that she held a “lunch and learn” session on how to apply in an advertised process on June 1, 2006. She informed employees that it was important that they explain in their applications how

they met both the essential and asset qualifications. She noted that a selection board can “screen out” candidates on asset qualifications.

[35] On August 18, 2006 she held two meetings, one with employees who were in term CR-05 positions, and one for employees in acting CR-05 positions. The purpose of the meetings was to inform employees that some appointments would be extended, while others would not. There were some questions about the advertised process. She mentioned that the selection board would determine what assessment tools would be used. Ms. Hauser said that the board could use reference checks, written tests or previous employment. She did not state what tools would be used for the CR-05 process; the assessment board had not made a decision on which assessment tools they would use at that time. She mentioned that to be appointed, candidates had to meet all of the essential qualifications.

[36] Ms. Hauser could not say when the final decision was made about which assessment tools to use, but it was after August 18, 2006. She notified candidates on August 29, 2006 that there would be a written examination.

[37] Ms. Hauser discussed the possible assessment methods with the assessment board, including assessing through job performance. In her opinion, this method could only be used in situations where the board knew the candidates well. For this process, there were both known and unknown candidates.

ISSUES

[38] The Tribunal must determine the following issues:

(i) Did the respondent abuse its authority in choosing an advertised appointment process?

(ii) Did the respondent abuse its authority in the application of merit, specifically, the assessment of the knowledge qualifications of the complainants?

ARGUMENTS OF THE PARTIES

A) COMPLAINANTS' ARGUMENTS

[39] The complainants argue that abuse of authority occurred in two ways: first, by the choice of an advertised process; and, secondly, through the application of the merit criteria, specifically, the assessment of the knowledge qualifications.

[40] The complainants all claim to be well qualified for the Service Delivery Agent position. They demonstrated their qualifications through their lengthy acting appointments. All six provided written evidence of better than satisfactory performance in the position.

[41] The complainants allege that the hiring manager and the human resources manager acted in bad faith. These managers implied that those who were performing the duties of Service Delivery Agent on an acting basis could be assessed through their applications, and performance on the job. The pool of candidates consisting of those performing the job on an acting basis was sufficient therefore an advertised appointment process was unnecessary. The public service would be better served by persons already qualified and performing the duties, rather than management starting a completely new process.

[42] According to the complainants, the respondent had not considered its current and future needs. There was always a heavy workload in the service delivery area. It would have been more prudent to conduct a non-advertised process for those doing a satisfactory job acting as Service Delivery Agents. The respondent could have run a simultaneous advertised process to replenish the pool of qualified candidates on an as-needed basis.

[43] With respect to the allegation of abuse of authority in the application of merit, the complainants argue that there was evidence from one complainant, who had been working as a Service Delivery Agent for four years, that knowledge of current events was rarely used, and only when it was dictated by management through directives. Both the hiring manager and the human resources manager testified that the knowledge qualifications were not necessary to perform the duties of the position; they were only

essential at the time the appointment process was conducted. It defied logic that the complainants did not qualify in this appointment process. They had all performed the duties for lengthy periods on an acting basis. Moreover, they were appointed on an acting basis again a mere three months after being told that they were not qualified.

[44] Given all of this, the complainants submit that the appointment process led to an improper result. Improper result is one of the grounds of abuse of authority outlined by the Tribunal in *Tibbs v. Deputy Minister of National Defence et al.,* [2006] PSST 0008.

[45] As well, the complainants submit that there was evidence of lack of fair and transparent staffing practices in this appointment process. The complainants were provided with one rating guide on February 7, 2007. They were then provided with another version in August 2007. Finally, there was another rating guide provided at the hearing, which included the rating scale used by the assessment board. Neither the assessment board chair nor the human resources manager could confirm which version of the rating guide was the correct one, or when it had been completed.

[46] As well, the complainants contended that there was lack of effective dialogue during informal discussion. The complainants were not informed that they could ask to have errors corrected. The assessment board members were unsure how to address concerns raised during informal discussion. Finally, the complainants were told by the human resources manager that management was not going to open “a can of worms.”

[47] The complainants finally submit that Ms. Alexander, the assessment board chair, did not provide an explanation as to why candidates were marked on the details in their answers, when the question asked only for an overview. She was unable to explain how candidates would know they needed to provide such detail. Ms. Alexander could not even explain how the rating scale applied to the question, or what the difference was between an answer that would receive a passing mark and one that would not.

B) RESPONDENT’S ARGUMENTS

[48] The respondent submits that the complainants have the burden of establishing abuse of authority by the respondent when it proceeded with an advertised appointment

process and in the application of merit. The complainants failed to present clear and convincing evidence of any abuse of authority.

[49] The respondent argues that the complainants did not lead any evidence to demonstrate that the choice of an advertised process was an abuse of authority. Section 33 of the *PSEA* gives broad discretion to management to choose between an advertised and non-advertised process. Mr. Snow testified that he believed that an advertised process was appropriate. It had been one year since the previous process, there were new potential candidates who might want to apply, and he wanted to be as inclusive as possible. Mr. Snow testified that his intent was to create a large pool of qualified candidates. The complainants failed to prove that the decision to use an advertised appointment process constituted an abuse of authority.

[50] With respect to the application of the merit criteria, the respondent submits that the complainants were not misled in any way. Ms. Fiona Smythe-Wilson confirmed that it was her understanding that candidates had to meet all qualifications and everyone who was found to be qualified would get a job offer. All six complainants also confirmed that they had read the advertisement and statement of merit criteria and knew that they had to meet all qualifications in order to be placed in the pool. The job advertisement clearly stated that candidates must meet the essential qualifications to be appointed to the position. The job advertisement also stated that a written examination may be administered.

[51] The respondent states that on August 29, 2006 all candidates were officially informed that there would be a written examination. It was unfortunate that the complainants believed they did not have to thoroughly prepare. It was their inability to pass the written examination which led the board to determine that none of them met the essential qualifications.

[52] While there had been some discussion by management that assessment could be done using written information on the candidates, this option was not pursued. Management determined that they would obtain better information through a written examination.

[53] According to the respondent, the chair of the assessment board, Gwynn Alexander, gave credible evidence as to how the questions related to the essential qualifications, and explained why each of the complainants was found not to have met the knowledge qualifications. While there were different versions of the rating guide – an early version, a newer version and a final version – both Ms. Alexander and Ms. Hauser testified that the final version was completed prior to September 6, 2006, the date of the written examination.

[54] In terms of the complainants' concerns about informal discussion, the respondent asserts that section 47 of the *PSEA* does not require a deputy head to reassess candidates during informal discussion. Although this may be a possibility, it is not required. The new information brought forward by the complainants was taken into consideration, but the assessment board decided not to change its decisions. Assessment board members explained to the complainants during their respective informal discussions the reasons for their decisions.

[55] Finally, the respondent submits that Mr. Snow explained why the complainants were offered further acting appointments as Service Delivery Agents. In this capacity, the complainants had only been asked to deal with one line of business, temporary resident applications, which did not require knowledge of current events.

C) PUBLIC SERVICE COMMISSION'S ARGUMENTS

[56] The PSC did not take a position on whether abuse of authority had been proven in this case. Rather, it set out an analytical framework which it suggests the Tribunal use to make a determination of whether there has been an abuse of authority. The PSC submits that, to make a finding of abuse of authority in an appointment process, the Tribunal must make a finding of improper intention on the part of the respondent. Errors or omissions do not constitute an abuse of authority, unless a party has shown "serious carelessness or recklessness" such that bad faith may be presumed.

[57] It is the PSC's position that the complainants were not alleging bad faith or personal favouritism. Therefore, the question which the Tribunal needs to answer in this case is: whether the respondent committed errors or omissions of such serious

carelessness or recklessness that bad faith could be imputed. The determination of whether that test was met in the circumstances of these complaints should be left to the Tribunal.

ANALYSIS

Issue I: Did the respondent abuse its authority in its choice of an advertised appointment process?

[58] The first ground on which the complainants rely is found in paragraph 77(1)(*b*) of the *PSEA*, which reads as follows:

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

[59] Section 33 of the *PSEA* reads as follows: "In making an appointment, the Commission may use an advertised or non-advertised appointment process." Section 33 of the *PSEA* clearly provides the Commission or its delegate with discretion in choosing between an advertised and a non-advertised appointment process.

[60] In *Robbins v. the Deputy Head of Service Canada et al*., [2006] PSST 0017, at paragraph 36, the Tribunal held that a complainant must establish on a balance of probabilities that the decision itself to choose a non-advertised appointment process was an abuse of authority. The same reasoning applies for the choice of an advertised appointment process.

[61] In this case, the complainants contend that they were misled by the respondent into believing that they would be found qualified based on their experience performing the duties of Service Delivery Agents on an acting or term basis. The Tribunal has no reason to doubt the sincerity of the complainants' belief. In fact, Mr. Snow confirmed in his testimony that he had promised candidates that, if they had been screened into the

previous process, they would also be screened into this process. While this evidence may be germane to the second issue to be addressed in this decision, it does not demonstrate that the decision to choose an advertised process constitutes an abuse of authority.

[62] Both parties led evidence that the appointment process was established as a result of an allowed appeal under the former PSEA. Some of the complainants had been found qualified in that previous appointment process, but could not be appointed due to the allowed appeal.

[63] Mr. Snow testified that his decision to choose an advertised appointment process had been based on the need to appoint a large number of Service Delivery Agents. In addition to those employees who had been candidates in the previous process, there were new potential candidates in the area of selection. He wanted to give those individuals an opportunity as well. The Tribunal finds that the rationale provided by Mr. Snow for the choice of an advertised appointment process is consistent with fair, transparent employment practices.

[64] All of the complainants applied in the advertised process; all of the complainants were assessed. Each of the complainants had an opportunity to be appointed to the position of Service Delivery Agent provided they could demonstrate that they met the essential qualifications of the position. Therefore, it cannot be said that they were not appointed by reason of the decision to choose an advertised appointment process. The complainants have failed to prove that the choice of an advertised process was an abuse of authority. On the contrary, the evidence establishes a clear rationale for the choice of process.

Issue II: Did the respondent abuse its authority in the application of merit, specifically, the assessment of the knowledge qualifications of the complainants?

[65] The complainants' contention in this area has four aspects: first, the respondent misled the complainants by implying that the assessment of their qualifications would be carried out through a review of their covering letters and résumés; secondly, there were assurances that all those acting in Service Delivery Agent positions would not be

eliminated from the process; thirdly, there was really no requirement for knowledge of current events; and, finally, the complainants were improperly assessed in the written examination.

[66] Section 36 of the *PSEA* reads as follows:

> **36.** In making an appointment, the Commission may use any assessment method, such as a review of past performance and accomplishments, interviews and examinations, that it considers appropriate to determine whether a person meets the qualifications referred to in paragraph 30(2)(*a*) and subparagraph 30(2)(*b*)(i).

[67] As the Tribunal stated in *Visca v. Deputy Minister of Justice et al.,* [2007] PSST 0024, at paragraph 51: "Managers have broad discretion under section 36 of the *PSEA* to select and use assessment methods to determine whether a candidate meets the established qualifications for a position."

[68] The evidence has established that the manager did initially consider assessing candidates through a "paper board." Mr. Snow testified that he wished to do a quick process as there was an urgent need to have Service Delivery Agents in place. As well, Ms. Hauser testified that she informed staff that under the *PSEA* candidates should demonstrate in their applications and résumés how they met each of the merit criteria. She also mentioned that managers could assess candidates based on their covering letter and résumé. While Ms. Hauser was speaking about the new staffing regime in general, it is clear on the evidence that the complainants inferred from this information that they were going to be assessed by the documentation they submitted with their applications.

[69] Mr. Snow, in conjunction with the assessment board, decided to assess the knowledge qualifications for the Service Delivery Agent position through a written examination. This decision was within his discretion under section 36 of the *PSEA*. While the complainants expected that their qualifications would be assessed in a different way, through their work performance, they have not demonstrated that Mr. Snow's decision to use a written examination constitutes an abuse of authority. There was a reasonable explanation for this decision – that candidates were not all in acting positions and therefore their knowledge would have to be tested. The complainants alleged that the hiring manager and the human resources manager acted

in bad faith; however there is no evidence that the managers had any intention to mislead candidates. Nor did the managers show serious carelessness or recklessness by their statements, such that bad faith may be imputed.

[70] The evidence is not clear as to when the assessment board decided to hold a written examination. Ms. Hauser testified that it was sometime between August 18, the date of her meeting, and August 29, 2006 that candidates were informed there would be a written examination on September 6, 2006.

[71] Given the context of this appointment process – it was corrective action from an allowed appeal, the new *PSEA* had just come into force and there was a great deal of uncertainty about how this would change the assessment process. Concerns had been expressed as early as February 2006. Given all of this, the Tribunal finds that the respondent was remiss in failing to inform the candidates as to the specific assessment tools to be used much earlier than August 29, 2006. Clearly, this appointment process needed to be as transparent as possible. Mr. Snow gave evidence that he promised candidates in February 2006 that everyone who had been "screened in" the last time, would be screened in this time. The complainants were, in fact, screened in by meeting the education and experience qualifications and went on to be assessed. Unfortunately, the complainants interpreted Mr. Snow's statement, along with inferences that those acting would do well in the process, to mean that they would qualify for appointment.

[72] Yet, the complainants were informed that a written test would be administered, and used as one of the assessment tools. Since this was contrary to the complainants' assumptions as to how they would be assessed, they would have been wise to make further inquiries as to the purpose of the written examination. None of the complainants made any further inquiries.

[73] Mr. Snow testified how each of the knowledge qualifications was essential to the Service Delivery Agent position. The questions posed to candidates were very closely linked to the qualifications. The assessment board chair, Ms. Alexander, explained in her testimony the basis on which the board concluded that each of the complainants did not meet the minimum established for one or both of the knowledge qualifications.

[74] As explained in *Portree v. Deputy Minister of Human Resources and Social Development et al.,* [2006] PSST 0014, at paragraph 52:

> (…) [T]he Tribunal's role is not to reassess a complainant's mark on a given answer or review responses given during an interview simply because a complainant does not agree with the decision regarding an interview question. Thus, in the circumstances presented here, the Tribunal will not interfere as there is no evidence that there was a serious error, omission or improper conduct in the manner in which the interview was conducted.

The Tribunal is satisfied that there was no serious error, omission or improper conduct in the manner in which the written examination was developed or assessed. The Tribunal finds that the respondent did not abuse its authority in the application of merit.

[75] The complainants raised two other concerns during the course of the hearing which deserve comment. The first concern involved informal discussion. The respondent had not informed the complainants that it could place them back in the process if an error had been made. The complainants argued with the assessment board that some of their answers should be reassessed. In the end, the respondent did not make any changes to its assessment.

[76] Informal discussion is intended primarily to be a means of communication for a candidate to discuss the reasons for elimination from a process. If it is discovered an error has been made, for example, if the assessment board did not consider some information listed on a candidate's application, this provides the opportunity for the manager to correct that mistake. However, Informal discussion is not an opportunity to request that the assessment board reassess a candidate's qualifications.

[77] Finally, the complainants' representative referred to three versions of the rating guide which were given to the complainants during the complaint process. The respondent was remiss in failing to provide the final version of the rating guide to the complainants during the exchange of information. It compounded the problem by replacing an early draft (version 1), given during the exchange of information, by sending another version to the complainants in August 2007 (version 2). However the August 2007 rating guide did not include the rating scale, which formed part of the final rating guide (version 3). This certainly did not give the impression of a transparent appointment process. The Tribunal is satisfied, based on the testimony of

Ms. Alexander, that the final version was used for this appointment process. Nevertheless, the Tribunal notes that the respondent should have provided the final version of the rating guide to the complainants during the parties' exchange of information. This is a defect in the exchange of information process, and arguably a breach of the Tribunal regulations, but is not a ground upon which to show abuse of authority in the appointment process.

DECISION

[78] For all these reasons, the complaints are dismissed.

Helen Barkley
Member

PARTIES OF RECORD

Tribunal Files:	2006-0164, 0166, 0167, 0168, 0170 and 0173
Style of Cause:	*Michelle Rozka et al and the Deputy Minister of Citizenship and Immigration Canada et al.*
Hearing:	October 10-12, 2007 Edmonton, Alberta
Date of Reasons:	December 10, 2007
APPEARANCES:	
Jodi Casper	For the complainants
Adrian Bieniasiewicz	For the respondent
John Unrau	For the Public Service Commission
N/A	For the other party