



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**File:** 2007-0456  
**Issued at:** **Ottawa**  
**Decision date:** February 17, 2009

**BLAINE FRASER**

Complainant

AND

**THE DEPUTY MINISTER OF NATIONAL DEFENCE**

Respondent

AND

**OTHER PARTIES**

<b>Matter</b>	Complaint of abuse of authority pursuant to paragraph 77(1)(a) of the <i>Public Service Employment Act</i>
<b>Decision</b>	Complaint is dismissed
<b>Decision rendered by</b>	Helen Barkley, Member
<b>Language of Decision</b>	English
<b>Indexed</b>	<i>Fraser v. Deputy Minister of National Defence et al.</i>
<b>Neutral Citation</b>	2009 PSST 0005

# Reasons for Decision

## Introduction

1 Blaine Fraser contends that he was not appointed to the position of Range and Training Area Sustainability Officer (EG-06), Canadian Forces Base (CFB) Shilo, Manitoba, by reason of an abuse of authority by the respondent, the Deputy Minister of the Department of National Defence (DND).

2 The complainant asserts that the respondent abused its authority in two respects: first, by failing to establish, as an education requirement, possession of a degree from a recognized university; and, secondly, by failing to require experience in Geographical Information Systems (GIS) as an essential qualification for the position.

3 The respondent states that management has the discretion to establish the essential qualifications for the position being staffed. In this case a university degree was not required, and experience in GIS was established as an asset qualification.

## Background

4 As a result of the Auditor General's report in 2005, the respondent decided to establish small units to manage sustainability and environmental issues on the ranges and training areas at each CFB in Western Canada. Units were to be established, among others, at CFB Shilo, CFB Chilliwack, and CFB Wainwright.

5 In November 2006, CFB Shilo was notified that it was required to set up a Range and Training Management cell consisting of two civilian personnel - a Range and Training Area Manager and a GIS technician. At CFB Shilo, the title of the first position was changed to Range and Training Area Sustainability Officer (RTASO) prior to the classification of the position. In this decision, the position will be referred to as the RTASO position.

6 On September 20, 2007, the complainant filed a complaint with the Public Service Staffing Tribunal (the Tribunal) under paragraph 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*). At the hearing, the Tribunal clarified that the complainant was not alleging that the respondent exhibited personal

favouritism or positive bias towards the appointee. The complaint is limited to an allegation that the respondent abused its authority in the establishment of merit criteria under subsection 30(2) of the *PSEA*.

## **Issue**

**7** The Tribunal must determine whether the respondent abused its authority in the establishment of the merit criteria for the position.

## **Summary of Relevant Evidence**

**8** Maj. Charles Larocque testified that he was the Chief of Staff at CFB Shilo, and all Branch Heads reported to him. He was aware that, in 2005, a RTASO position was to be established at CFB Shilo. The position was to report to the Base Operations Officer, one of the Branch Heads. On November 15, 2006 Maj. Larocque was informed by memorandum from Col. A.C. Patch that there would be similar units established at CFB Wainwright, and CFB Chilliwack. The units would consist of two civilian personnel – a RTASO, and a GIS technician – together with all the associated IT needed to support the positions. The memo from Col. Patch stated further:

The (RTASO) position should be filled first, with an individual that is capable of producing and managing the Range and Training Area Management Development Plan (RTAMDP) including long range plans for range and training area developments and coordinating the RTAMS programme. This HQ, in consultation with action addressees, will draft a template terms of reference for these positions, from which the ASUs/CFBs can tailor for their unique requirements [ . . . ]

**9** Maj. Larocque identified the template terms of reference for the RTASO position developed by Regional Headquarters. Since each CFB had evolved differently over the years, each was allowed some flexibility in developing the work description for the RTASO position, tailored to its own requirements.

**10** At some point after November 15, 2006, Maj. Larocque was informed by Chuck Roeder that he was interested in applying for the RTASO position. As this position reported to Mr. Roeder as Base Operations Officer, Maj. Larocque directed him to not take any part in the development of the position from that point onward. Maj. Larocque decided that, in the circumstances, the Engineering Services Branch would

develop the job description, have the position classified, and conduct the appointment process. He assigned these responsibilities to Maj. Pelletier, Base Engineer, who in turn delegated them to Rob Riesz, Engineering Officer.

**11** Maj. Larocque stated that Randy Walker, a union representative, approached him prior to the appointment process to inform him that Mr. Roeder was making statements that the RTASO position was his. Maj. Larocque dealt with this rumour by directing Mr. Roeder to refrain from making that kind of statement. He did not hear from Mr. Walker again.

**12** On cross-examination, Maj. Larocque testified that he had no concerns whatsoever about the integrity of the appointment process.

**13** Shannon Barnes-Girouard, Human Resources Advisor, testified that she received a staffing request in early July 2007 to fill the RTASO position. The Statement of Merit Criteria (SMC) had been drafted by Mr. Riesz, Acting Base Engineer and Branch Head, and Garnet Shearer, Environmental Officer, Engineering Services. There were multiple drafts, but the SMC was finalized before the appointment process was advertised on July 27, 2007.

**14** Ms. Barnes-Girouard could not remember when the work description had been developed, but stated that it was being worked on from late fall 2006 until very early July 2007. Mr. Riesz was waiting for the funding approval to staff the RTASO position.

**15** Ms. Barnes-Girouard outlined staffing options for Mr. Riesz, and then to Maj. Sean Fortin, when he assumed the duties of Base Operations Officer in July 2007. The RTASO position was fairly technical, and it was not known how many candidates would be eligible to apply. Her advice to the managers had been to enlarge the pool of potential candidates.

**16** The managers thought that the work description would be classified at the GT-06 group and level, but the final classification decision was made on July 10, 2007 and the position was classified at the EG-06 group and level.

**17** The appointee, Chuck Roeder, was called as a witness. He stated that he had been a member of the Canadian Forces (CF). He was Base Operations Officer until September 2007, when he retired from the CF. He immediately assumed the RTASO position. He had been interested in such a position for about six years. As the Chief Range Controller, and then Base Operations Officer, he had been responsible for the range and training area. He had heard about the possibility of establishing RTASO positions at the CF bases in 2005, when he read about this in the CF long-range planning documents.

**18** Mr. Roeder testified that, in mid-November 2006, he became aware of the plans to move forward with filling the RTASO position. Shortly after, he went to see Maj. Larocque and informed him that he might be applying for the position. Maj. Larocque told him to "step away from the process". The Engineering Service Branch was asked to conduct the process.

**19** Mr. Roeder denied making any public statements that the job was his. He stated that there were people in the small town of Shilo who approached him to talk about the position, who asked him if he was involved in the process.

**20** On June 20, 2007 Mr. Roeder sent an email message to Maj. Pelletier, Base Engineer, Mr. Riesz and Mr. Shearer:

Received a call from Maj Quaghebeur 1340 hrs 20 Jun07 confirming that the funds are available and to staff posn's immediately. The funding came to Area not broken out, this is being worked on currently. Regardless we should move fwd with hiring the RTASO followed by GIS tech.

**21** Mr. Roeder stated that his intent in sending this email was to tell people to get on with the appointment process. He sent it in his professional capacity as Base Operations Officer. Once filled, the RTASO would report to the Base Operations Officer.

**22** Mr. Roeder testified that his intention to retire from the CF was not tied to obtaining the RTASO position. In 2005, when he returned from Afghanistan, his family asked him to not go on any more tours of duty. He had 30 years of CF service as of July 2007.

**23** The complainant testified that he was a Planning Officer in the Engineering Services Branch. He submitted his application for the RTASO position on August 13, 2007. He was notified by Human Resources that his interview and examination would be the next day. He asked the Human Resources Advisor if he could have some time to prepare, but they really wanted to complete the process quickly. His assessment was carried out on August 14, 2007. He was found qualified for appointment.

**24** The complainant stated that, after he received notification of Mr. Roeder's appointment, he did some research of EG-06 positions. He found that, of 33 EG-06 positions advertised, only two sought secondary school graduation. All other positions required post-secondary education. The RTASO position at CFB Wainwright required completion of a bachelor degree.

**25** Mr. Riesz, Engineering Officer, testified on behalf of the respondent. He stated that Maj. Pelletier, Base Engineer, had assigned him the duty of putting the RTASO position in place in 2006. He sought advice from Mr. Shearer, Environmental Officer, as well as several officials at Area Headquarters. Mr. Riesz also spoke to officials at other CFB sites. Since Mr. Roeder had identified at the beginning that he was interested in the RTASO position, Mr. Riesz did not consult with him. Two positions were identified – RTASO and GIS Technician. Mr. Riesz relied heavily on the job description from CFB Wainwright for the RTASO position at CFB Shilo. The job description was completed in January 2007 and the funding and classification decisions were both received in July 2007. Mr. Riesz drafted the SMC and passed the process on to the new Base Operations Officer, Maj. Sean Fortin.

**26** On cross-examination, Mr. Riesz stated that he did not remember who pushed for the change in the title of the position – it had originally been called a RTA Management Officer, but was changed to RTA Sustainability Officer prior to April 2007.

**27** Mr. Riesz stated that there were six or seven drafts of the SMC. One of the drafts had as an essential qualification "experience working with Geographical Information Systems and Global Position Systems." Mr. Riesz testified that he had discussions with

both Mr. Shearer and Maj. Fortin whether experience working with GIS should be an essential qualification, or an asset qualification for the position. Since there would be a GIS Technician on site and a GIS Analyst at Headquarters, he, and those he consulted, did not believe experience in GIS was essential for the RTASO position. Experience with GIS was not one of the qualifications for the RTASO position at CFB Wainwright.

**28** Similarly, Mr. Riesz decided that a university degree was not necessary for the position. He decided to keep the essentials to a minimum, and put the extras as asset qualifications.

**29** Mr. Riesz acknowledged that a university degree was required for the CFB Wainwright position, although no particular specialization was required. He also stated that the following two qualifications were essential for the Wainwright position:

Experience as a range safety officer and templating live-fire field firing ranges up to company/squadron level.

Knowledge of joint air-land manoeuvre warfare at the tactical level up to and including mechanized Brigade Group and its impact on a training area, including live-fire training.

**30** Mr. Riesz testified that this would restrict the position to candidates who were CF members. There had only been one applicant at CFB Wainwright. Mr. Riesz stated that those qualifications were too restrictive for the CFB Shilo position, and he did not want to unduly restrict who could apply. He and his colleagues established the qualifications they thought were essential for the CFB Shilo position.

**31** Maj. Sean Fortin testified that he was the Base Operations Officer at CFB Shilo from July 2007 to August 2008. When he arrived, Maj. Fortin was informed that the hiring process for the RTASO position had already started by the Base Engineering Branch. Maj. Fortin was to complete the process. He consulted Ms. Barnes-Girouard as to his options. She provided human resources expertise in drafting the SMC, the advertisement and ensuring the assessment tools evaluated the qualifications.

**32** Maj. Fortin was the assessment board chairperson; Mr. Riesz and Ms. Barnes-Girouard participated in the assessment of candidates with him. In terms of

the education requirement, Maj. Fortin determined that the minimum qualification standard required for the EG category is as follows:

**Engineering and scientific support (EG) qualification standard**

**Education**

The minimum standard is:

a secondary school diploma or employer-approved alternatives (see Section 2, Part 1, Education);

**Employer-approved alternatives to a secondary school diploma**

1. a satisfactory score on the PSC test approved as an alternative to a secondary school diploma; or
2. an acceptable combination of education, training and/or experience.

**33** Maj. Fortin decided that the appropriate education for the RTASO position was secondary school graduation, or an acceptable combination of education, training and/or experience.

**34** Maj. Fortin stated that both Mr. Fraser and Mr. Roeder were qualified for appointment. The board decided to appoint Mr. Roeder because he had greater knowledge of DND weapons, environmental regulations, range control and base operations.

**Arguments of the parties**

**A) Complainant's arguments**

**35** The complainant argues that the respondent abused its authority in the establishment of the merit criteria for this position. Specifically, in his opinion the position requires experience in GIS, which appeared as an essential qualification on one version of the SMC, but was removed before candidates were assessed.

**36** The complainant further submits that the respondent abused its authority by changing the education requirement. Positions at the EG-06 group and level almost always require a university degree or other post-secondary education. A similar position at CFB Wainwright required a bachelor's degree.



## **B) Respondent's arguments**

**37** The respondent submits that there are no strict rules set out in the *PSEA* as to the establishment of qualifications. Subsection 30(2) of the *PSEA* gives the deputy head broad discretion to establish qualifications for the work to be performed.

**38** The respondent determined that experience with GIS was not an essential qualification for the position, but it was used as an asset qualification. The RTASO position would not be performing GIS-related duties because there would be a GIS technician, who could call upon the GIS Analyst at Headquarters, if need be.

**39** The respondent referred to the Tribunal's decision in *Rinn v. Deputy Minister of Transport, Infrastructure and Communities et al.*, [2007] PSST 0044, at paragraph 40, where the Tribunal held that sections 30 and 31 of the *PSEA* provide parameters within which a deputy head must work. Section 30 gives the deputy head authority to establish qualifications, while section 31 specifies that those qualifications must meet or exceed any qualification standards set by the employer. The assessment board in this case had confirmed that post-secondary education was not a requirement, in accordance with the qualification standard for the EG group.

**40** With respect to the advertisements that the complainant introduced to show education requirements for other EG-06 positions, the respondent referred to *Feeney v. Deputy Minister of National Defence et al.*, [2008] PSST 0017, for the principle that other advertisements do not set a precedent for the future. The deputy head is provided broad discretion in establishing essential qualifications under the *PSEA* which may vary for different positions under certain circumstances and for different locations.

## **C) Public Service Commission's arguments**

**41** The Public Service Commission (PSC) did not appear at the hearing. As it has done in previous complaints, the PSC provided written submissions on the concept of abuse of authority, and how the Tribunal should focus its approach in this area.

## Analysis

**42** Sections 30 and 31 of the *PSEA* are relevant to the issue to be determined in this case. These sections read as follows:

**30.** (1) Appointments by the Commission to or from within the public service shall be made on the basis of merit and must be free from political influence.

(2) An appointment is made on the basis of merit when

(a) the Commission is satisfied that the person to be appointed meets the essential qualifications for the work to be performed, as established by the deputy head, including official language proficiency; and

(b) the Commission has regard to

(i) any additional qualifications that the deputy head may consider to be an asset for the work to be performed, or for the organization, currently or in the future,

(ii) any current or future operational requirements of the organization that may be identified by the deputy head, and

(iii) any current or future needs of the organization that may be identified by the deputy head.

**31.** (1) The employer may establish qualification standards, in relation to education, knowledge, experience, occupational certification, language or other qualifications, that the employer considers necessary or desirable having regard to the nature of the work to be performed and the present and future needs of the public service.

(2) The qualifications referred to in paragraph 30(2)(a) and subparagraph 30(2)(b)(i) must meet or exceed any applicable qualification standards established by the employer under subsection (1).

**43** There are a number of key principles contained in these sections. First, it is the responsibility of the deputy head to establish the essential qualifications *for the work to be performed*. As the Tribunal explained in *Neil v. Deputy Minister of Environment Canada et al.* [2008] PSST 0004, at paragraph 46: “What is required of managers is to *establish the qualifications for the work to be performed*.” The deputy head may also establish qualifications which are considered an asset for the work or the organization, as well as operational requirements, and organizational needs.

**44** In *Visca v. Deputy Minister of Justice et al.*, [2007] PSST 0024, the Tribunal confirmed the discretion of the deputy head in establishing essential qualifications as follows:

[42] Broad discretion is given to managers under subsection 30(2) of the *PSEA* to establish the necessary qualifications for the position they want to staff and to choose the person who not only meets the essential qualifications, but is the right fit. Similar discretion is provided under section 36 of the *PSEA* for those with staffing authority to choose and use assessment methods to determine if the person meets the established qualifications. [...]

**45** Thus, management has broad discretion to determine the qualifications for a position, and whether those qualifications are to be essential or asset qualifications. In this case, new RATSO positions were established in several CFBs in Western Canada. Western Headquarters provided a template for the position description which consisted of a list of 17 responsibilities. Each CFB was instructed to use the template and tailor it for their unique requirements. The CFB Shilo position description was classified on July 10, 2007 at the EG-06 group and level.

**46** Section 31 of the *PSEA* provides that qualifications established by the deputy head must meet or exceed any qualification standards established by the employer. In *Rinn*, at paragraph 41, the Tribunal explained as follows:

[41] Subsection 31(2) refers back to paragraph 30(2)(a) and subparagraph 30(2)(b)(i) and, therefore, must also be included in the criteria for making an appointment on the basis of merit. Thus, the Tribunal has jurisdiction to hear a complaint that the deputy head abused its authority by establishing essential and asset qualifications that do not meet or exceed the applicable qualification standards established by the CPSA for the employer.

**47** The qualification standard for the Engineering and Scientific Support (EG) Group sets a secondary school diploma or employer-approved alternatives as the minimum education requirement. The employer-approved alternatives are either a satisfactory score on a PSC test approved as an alternative to a secondary school diploma, or an acceptable combination of education training and/or experience.

**48** The Tribunal finds that the respondent did not contravene subsection 31(2) of the *PSEA* when it established a secondary school diploma, or an acceptable combination of education, training and/or experience for the RTASO position.

**49** The complainant referred to a number of advertisements for positions at the EG-06 group and level in the public service, most of which do require post-secondary education. He also introduced the SMC for the RTASO position at CFB Wainwright which had the following education requirement – “completion of a Bachelor Degree or a combination of education, training and/or experience.” However, no evidence was presented to demonstrate that managers are required to use similar or identical qualifications for positions at the same level. What is required of managers is to establish the qualifications *for the work to be performed*.

**50** In *Neil*, the Tribunal stated at paragraph 46:

[46] The complainant argued that similar positions at the ES-05 level should have similar qualifications. He also gave his opinion that this would support the trend towards standardization of positions. However, no evidence was presented to demonstrate that managers are required to use similar qualifications for positions at the same level, nor was evidence adduced to show there is a trend towards standardization of positions. What is required of managers is to *establish the qualifications for the work to be performed*. In this case, the Tribunal has no reason to intervene in the manager's discretion in this area.

**51** Both Mr. Riesz and Maj. Fortin testified that a university degree was not necessary to perform the RTASO duties. They wished to broaden the pool of possible candidates and, thus, used the minimum education qualification for the EG group. The Tribunal has no reason to intervene in the manager's discretion in this case. The complainant has not provided evidence to support a finding that the respondent was required to establish a higher education qualification than it did. The Tribunal finds, based on the evidence, that the education requirement for the RTASO position at CFB Shilo meets the applicable qualification standard.

**52** The complainant also alleges that "experience working with GIS" should have been an essential qualification for the position. It was included as such in a draft SMC for the position. The Tribunal finds, based on the evidence, that management had decided that, at CFB Shilo, the RTASO would not perform GIS duties as there would be a GIS technician on-site, who could call upon a GIS Analyst at Headquarters for technical advice. The complainant has failed to prove that the respondent abused its authority in establishing experience working with GIS as an asset qualification rather than an essential qualification.

**53** The Tribunal finds that the complainant has failed to provide sufficient evidence to support his allegation that the qualifications established for the RATSO position at CFB Shilo were not proper qualifications for the work to be performed. Accordingly, there is no reason for the Tribunal to conclude that the managers abused their authority in the establishment of the merit criteria for the position in question.

**54** As a final note, while the complainant did not allege personal favouritism or any improper influence on the part of the successful candidate, it is important to address a

matter that may have been cause for concern. The circumstances of this particular case are unusual in that one of the candidates in the appointment process was, just prior to the appointment process, the Base Operations Officer, the position to which the RTASO reports. This candidate was subsequently appointed to the RTASO position.

**55** Mr. Roeder declared his interest in the position as soon as it was known that there would be a RTASO position. The tasks of establishing the position and conducting the appointment process were transferred to another Branch and Mr. Roeder was not consulted about duties or merit criteria. Mr. Roeder did receive some communication from regional headquarters about funding, but he passed this on to the responsible Branch Head. Based on the evidence presented at the hearing, the Tribunal finds that Mr. Roeder's actions did not influence the outcome of the appointment process.

### **Decision**

**56** For all these reasons, the complaint is dismissed.

Helen Barkley  
Member

### **Parties of Record**

<b>Tribunal File</b>	2007-0456
<b>Style of Cause</b>	<i>Blaine Fraser and the Deputy Minister of National Defence et al.</i>
<b>Hearing</b>	September 3-4, 2008 Winnipeg, MB
<b>Date of Reasons</b>	February 17, 2009
<b>APPEARANCES:</b>	
<b>For the complainant</b>	Louis Bisson
<b>For the respondent</b>	Lesa Brown and Amita Chandra