



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

File: 2008-0624
Issued at: Ottawa, January 18, 2010

PETER ZANKL

Complainant

AND

THE CHIEF STATISTICIAN OF CANADA OF STATISTICS CANADA

Respondent

AND

OTHER PARTIES

Matter	Complaint of abuse of authority pursuant to paragraph 77(1)(a) of the <i>Public Service Employment Act</i>
Decision	Complaint is dismissed
Decision rendered by	Lynette Babin-MacKay, Member
Language of Decision	English
Indexed	<i>Zankl v. Chief Statistician of Canada of Statistics Canada et al.</i>
Neutral Citation	2010 PSST 0001

Reasons for Decision

Introduction

1 Peter Zankl, the complainant, alleges that the respondent, the Chief Statistician of Canada of Statistics Canada, abused its authority by establishing essential qualifications but not applying them consistently, thus violating principles of fairness, transparency and natural justice. He also alleges that the respondent abused its authority by screening him out of the appointment process on the basis of what the complainant considers to be an incomplete Statement of Merit Criteria (SMC). He further alleges that the respondent favoured candidates with a development background over those with an infrastructure background. Finally, he submits that the assessment board (the board) members were not properly trained in staffing matters.

2 The respondent denies that there was any abuse of authority in this appointment process. It maintains that the complainant was screened out of this process because he failed to demonstrate that he possessed acceptable experience managing large or complex information technology projects, that is, an acceptable combination of time worked on projects and project scope, with a particular emphasis placed on the size or the complexity of these projects. The respondent also maintains that the board did not favour candidates with a development background and that all board members had extensive experience in staffing matters and had received training on the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*).

Background

3 In March 2008, the respondent held an internal advertised appointment process to establish a pool of various positions at the CS-04 group and level, in the Informatics Branch at Statistics Canada's Headquarters in Ottawa. These are Chief of Portfolio positions in various subject matter areas, and positions in Architecture and in Infrastructure. These positions report to Karen Doherty, Director General, directly or through directors and CS-05s in the field.

4 The complainant was screened out of the appointment process because the board deemed that he did not meet one of the essential experience qualifications, namely experience managing large or complex information technology projects (E-3).

5 On June 13, 2008, the complainant met with board member Dennis Leblanc for an informal discussion. They discussed his screening results and he was given the opportunity to provide additional information in support of his application. On June 18, 2008, he submitted a supplemental letter of clarification which the board reviewed, but this did not change the results.

6 On September 22, 2008, a *Notification of Appointment or Proposal of Appointment* was issued to all candidates. On the same day, the complainant filed a complaint pursuant to paragraph 77(1)(a) of the *PSEA*.

Issues

7 The Tribunal must determine the following issues:

- i) Did the respondent abuse its authority by not specifying a number of years of experience managing large or complex information technology projects?
- ii) Did the respondent abuse its authority when it determined that the complainant did not have the required experience?
- iii) Did the respondent show personal favouritism towards candidates with a development background over candidates with an infrastructure background?
- iv) Were the assessment board members properly trained in staffing matters?

Summary of Relevant Evidence

8 Ms. Doherty has been the Director General, Informatics Branch and Chief Information Officer, at Statistics Canada since August-September 2006. She chaired the appointment process under review. Ms. Doherty confirmed that she received training with respect to the *PSEA* and that she has delegated staffing authority. This was not the first time that she participated in an appointment process.

9 There were eight managers on the board: directors or subject matter experts CS-05s from System Development Division (SDD), from Informatics Technology Support Division (ITSD), from Architecture, and from client areas.

10 Ms. Doherty testified that she was involved in the preparation of the SMC, which she discussed with the other board members to ensure they agreed with the criteria needed. She was also involved in defining the experience qualifications. Because project management at Statistics Canada is very diverse, with projects ranging from very high visibility and high risk ones (for example, the Census) to projects of much smaller scope, the board attempted to craft a definition that would include various types of experiences. The board wanted experience of similar value to be given equal weight.

11 Ms. Doherty explained that the *Demonstration of Screening Criteria - Candidate Self Assessment* document (the *Demonstration of Screening Criteria* document) was intended to allow candidates to self-screen and target their text to the actual description of the experience qualifications sought. This document was quite structured and helped the board review the candidates' experience. It contained information which defined a large or complex information technology project.

12 Ms. Doherty was also involved in the preparation of a detailed explanation of the screening guidelines, which were included in the *Screening Documentation* document provided to the board for assessment.

13 Regarding the qualification E-3, Ms. Doherty explained that the board was looking for evidence that the candidate had managed at least one complex or large project, and had been accountable for one. The board was also looking for depth in information technology project management. It wanted candidates to indicate what was in their "project management tool-kit" and it was looking for evidence that they had used those tools.

14 In assessing E-3, the board considered the following:

- the size of the teams (minimum three team members per project excluding the candidate);
- the complexity of the management challenge;

- the number of stakeholders;
- the duration of the project (minimum of six months per project);
- the impact the projects had on the organization.

15 Ms. Doherty explained that she did not indicate a required number of years of experience managing large or complex information technology projects on the *Demonstration of Screening Criteria* document because the range of project management experience is very broad and the board wanted to be able to give the candidates credit for such range. She indicated that the experience sought is normally acquired over a period of two to three years, in gradually more complex projects of a minimum of six months of duration. The experience could also have been acquired in one very complex project. In short, a candidate could have managed a lot of projects of lesser complexity, or managed fewer or even only one very complex project.

16 The board wanted to avoid having candidates screen themselves out because they believed they did not meet a stated time requirement. The board preferred looking at the experience stated and the time frame during which it had been acquired, and deciding itself if a candidate met the requirements.

17 In the *Screening Documentation* document, the qualification E-3 was defined by a combination of years of experience and complexity of projects:

- Approximately 3 years experience (tradeoff (*sic*) between the combination of length and number of projects and the complexity of the project management challenges faced and approaches used);
- Responsible for management activities: goals and objectives (charter), project plan, roles and responsibilities, scope management, change management, problem reporting, deliverables, risk management, deadlines, etc.;
- Communication with stakeholders including management (training, status reports, presentations, etc.);
- Multiple projects, at least one successfully completed.

18 Ms. Doherty explained again that three years of experience was not compulsory. Rather, the *Screening Documentation* document indicated that a candidate would attain the level of experience sought through a combination of years of experience and complexity of projects. She stated that the board had not described this combination

but rather reviewed the criteria to see how the candidates demonstrated that they had the required experience.

19 The board wanted screening criteria where years of experience could compensate for projects of lesser complexity. With these criteria, the board could be consistent in its assessment and come to a consensus on duration and complexity of projects. The board members had this discussion because it was very difficult to define experience, the range being so wide among the candidates.

20 Candidates were required to submit an application form, a résumé and the completed *Demonstration of Screening Criteria* document. The board received 180 applications for this appointment process and 22 candidates were found qualified, including candidates from the Infrastructure area.

21 The complainant testified that he has been employed at Statistics Canada since 1996, always with the same group in ITSD. He presently occupies a position of Information Technology Coordinator and Team Leader, at the CS-03 group and level, and has been working at this group and level since the end of 2005.

22 The complainant applied for the CS-04 position soon after it was posted, and submitted the required documents. He testified that he tailored his application and his résumé to the qualifications as described on the *Job Opportunity Advertisement* and on the *Demonstration of Screening Criteria* document. Because he was limited to a demonstration not exceeding 500 words, he only listed his two most recent projects. He stated that if he had known that the board was specifically looking for three years of experience managing large or complex information technology projects, he would have written his résumé and his application quite differently and he would have attempted to describe all the projects he had worked on, within the 500-word limit, to demonstrate that he met the experience sought.

23 The complainant stressed that the *Demonstration of Screening Criteria* document made no mention of years of experience managing large or complex information technology projects and that it had not been his understanding, when he applied, that the board was seeking three years of experience for this qualification.

24 Ms. Doherty explained that an extensive screening exercise was conducted for each of the 180 candidates in the appointment process. Each application was examined at least three times. An initial screening of education and experience was done by Denis Sauvé, a former CS-05 from ITSD. He recorded his findings on the *Screening Documentation* document. Ms. Doherty later reviewed and annotated a number of *Screening Documentation* documents, and the applications were then reviewed by the rest of the board. Particular attention was paid to the applications which Mr. Sauvé had deemed not to meet the essential qualifications, such as the complainant's application.

25 Ms. Doherty stated that the complainant's application was also assessed three times: by Mr. Sauvé, by Lise Duquette, Director of SDD and by herself. Commenting on the complainant's résumé and application, Ms. Doherty stated that it was impressive, clear and concise. It was clear that the complainant had experience in supervision, but she said that supervision and project management are not the same qualification. The projects the complainant described in response to E-3 did not show enough complexity.

26 Ms. Doherty commented specifically on the two projects the complainant described in his *Demonstration of Screening Criteria* document: the *Methodology Branch Data Migration Project* and the *Field 6/7 Laptop Procurement and Procedural Consolidation Project*. She remarked that the first project was seven months long and the second one approximately six months long but not yet completed, for a total of a little more than one year. By then, the complainant had been occupying a CS-03 position for just over two years, but the other projects on which he had worked were not sufficiently large or complex to make up for this shorter period of work. There were also no other compensating factors.

27 Discussing the *Methodology Branch Data Migration Project*, Ms. Doherty explained that the board had concluded that this project did not have enough complexity to qualify as a large project. It was barely of the minimum length and size that the board was looking for, and it was done in parallel with the complainant's other work, so the other projects had to have been smaller. The stakeholders for the project were mostly from the Methodology Branch and the project was fairly repetitious, with a lower level of complexity. The project had the basic steps and a bit of change management; there was

some project management process but it was not well described. The board did not see a lot of management challenge or a lot of complexity in reporting to senior management, and there was no need to report to the Architecture Review Board.

28 As for the *Field 6/7 Laptop Procurement and Procedural Consolidation Project*, it had even less information or complexity. It had no strict delivery timelines and a lot of the work was operational. The board recognized it as a project, but it did not see it as complex or challenging – it included the basics.

29 Ms. Doherty added that the complainant also listed many other projects, mostly from the period when he occupied a CS-02 position; these were not complex projects.

30 She said that the complainant's résumé did not provide different information and the board did not see complex projects. He mentioned the projects above and indicated he had managed other projects, including one for the library, but again they lacked complexity. Ms. Doherty noted that the projects had been progressively larger, but they did not have enough depth or complexity.

31 Ms. Doherty stated that she agreed with Mr. Sauvé's handwritten comments at the end of the *Screening Documentation* document: "Simply lacks experience managing large/complex projects", to which she had added her own handwritten note: "Good application but just not enough experience."

32 Ms. Doherty stated that the board sought clarification about some candidates but did not need to do so for the complainant. His application covered the whole time frame and described two projects he did as a CS-03 and those he did as a CS-02.

33 The complainant highlighted for the Tribunal where and how his résumé and the *Demonstration of Screening Criteria* document outlined the experience sought. He testified that he had detailed his managerial experience on two projects: the *Methodology Branch Data Migration Project* and the *Field 6/7 Laptop Procurement and Procedural Consolidation Project*. He also pointed to the duration of projects (minimum six months per project) mentioned in the *Demonstration of Screening Criteria* document, and stated that he met this qualification.

34 The complainant testified that on May 21, 2008, he was informed that the board had determined that he did not meet the essential qualification E-3.

35 The complainant stated that on June 13, 2008, he met with Mr. LeBlanc for an informal discussion. Together, they reviewed his entire application and his résumé. Mr. LeBlanc told him that he had failed to meet the criterion of three years related to E-3. The complainant talked to Mr. LeBlanc about the fact that the job opportunity advertisement and the other documents made no mention of three years of experience. He said that he asked Mr. LeBlanc where this requirement came from but that he did not receive an answer.

36 On June 18, 2008, the complainant submitted a supplemental letter of clarification for the board's consideration. In this letter, he indicated that no mention had been made of a three-year experience requirement on the *Job Opportunity Advertisement*, the application form or the *Demonstration of Screening Criteria* document and he explained how he met three years of experience.

37 Ms. Doherty testified that when she received the supplemental letter of clarification, she discussed it with the rest of the board in a plenary meeting. She then verified the board's assessment concerning the complexity of the complainant's projects. She also spoke to one of the complainant's references to determine whether he had understood what the board was looking for with regards to complexity. The letter did not provide a lot of additional information on complexity or on how the complainant managed risk. The information was operational in nature or repeated what the board had already assessed.

38 The complainant received an email from Ms. Doherty on July 2, 2008, informing him that the board had reviewed his application file, the explanations he provided during his informal discussion and his letter of clarification. The board determined that his application still did not sufficiently demonstrate the required experience.

39 On October 17, 2008, the complainant met with Ms. Doherty and with two representatives from Human Resources. The discussion focused on how his application had been assessed and on why he was deemed not to meet E-3. He testified that he

disagreed with the assessment of his overall experience, particularly in relation to the three years of experience. The complainant pointed out to Ms. Doherty that this criterion was not written on the *Job Opportunity Advertisement*. He stated that Ms. Doherty made it clear that he lacked overall management experience of large or complex projects. They discussed the overall size of projects, their impact, and discussed the *Methodology Branch Data Migration Project* which he had managed. They did not agree on its complexity and impact. He added that after the October 17, 2008 meeting, he did not have a better understanding of why he had been screened out of the appointment process.

40 The complainant stated that he believes he was screened out because the information technology area is an area which makes extensive use of development projects but his own background and experience are more in Infrastructure, which also works in projects but whose staff is mostly in operations. The complainant explained that, because he is not a developer, he does not have extensive ties to the development community. However, he has managed projects over a number of years, and Ms. Doherty would have known this.

Arguments of the Parties

A) Complainant's Arguments

41 The complainant submits that he has clearly demonstrated to the Tribunal how the information outlined in his résumé and in his self-assessment matched the essential qualifications as posted.

42 He argues that the evidence demonstrates that the respondent failed to be fair and transparent in the assessment of E-3 by not clearly stating on the *Job Opportunity Advertisement*, on the SMC and on the *Demonstration of Screening Criteria* document, that three years of experience were required, and by then using this criterion to screen him out.

43 According to the complainant, one of the issues to be decided is whether “three years of experience” was a screening criterion, since this was not indicated. The

complainant argues that he was told that it was a screening criterion. The complainant argues that he was screened out on the basis of a criterion which was unknown to him, and this amounts to a breach of natural justice. His self-assessment was based on what he had read on the *Job Opportunity Advertisement* and on the *Demonstration of Screening Criteria* document. If the requirement for three years of experience had been made clear at the outset, he would have adapted his résumé and his self-assessment to reflect this. The complainant submits that he should have been told the criteria that would be used as the basis for his assessment, and this was not done.

44 The complainant submits that although the parties may disagree on the actual definition of a large or complex project, he was nevertheless screened out because he did not have approximately three years of experience managing large or complex information technology projects.

45 The complainant argues that the *PSEA* states that abuse of authority includes bad faith and personal favouritism, but in his view abuse of authority is not restricted to these concepts. If Parliament had intended to limit the definition of abuse of authority to bad faith and personal favouritism, it would have expressly set it out. Abuse of authority must receive a broad interpretation.

46 The complainant submits that to omit indicating three years of experience caused him a great deal of prejudice. He refers to *Tibbs v. Deputy Minister of National Defence et al.*, [2006] PSST 0008, at paragraph 73, in support of his contention that the board's actions constituted an important omission that amounts to an abuse of authority, albeit unintentional. He also cites *Bowman et al. v. Deputy Minister of Citizenship and Immigration Canada et al.*, [2008] PSST 0012, at paragraph 153 to 156, to guide the Tribunal in its review of how the screening criteria are established. Finally, he refers to *Lavigne v. Deputy Minister of Justice et al.*, [2009] FC 684, at paragraph 53, with regard to acting with transparency and fairness in an appointment process.

B) Respondent's Arguments

47 Pursuant to section 30 of the *PSEA*, the deputy head must be satisfied that the person appointed meets the essential qualifications of the position. In this case,

Ms. Doherty had the authority to determine whether candidates met the criteria for the position. She exercised her authority and determined that the complainant did not.

48 The respondent contends that it can find no reference to natural justice or procedural fairness in the complainant's original allegations, and that these issues are not properly before the Tribunal.

49 The respondent submits that it is clear that the complainant and Ms. Doherty have opposing views as to whether the complainant had acceptable experience managing large or complex projects. The complainant believes that he met this essential qualification. However, Ms. Doherty testified that he lacked experience managing large or complex projects.

50 The respondent argues that an extensive screening exercise was conducted for each of the 180 candidates in this process. Each application was reviewed at least three times to ensure consensus. The respondent submits that Ms. Doherty's testimony made it clear that the duration of projects (approximately three years) was part of the assessment tool that management used to screen candidates. Ms. Doherty has testified that the board used a combination of the length, the number, the complexity and challenges of projects. She testified that the board was trying to be fair and to avoid situations where candidates would screen themselves out.

51 Although the respondent did not include the duration of projects in the *Job Opportunity Advertisement* or the SMC, it submits that it did not abuse its authority as the essential qualifications were set out in the SMC and were sufficiently detailed (see *Neil v. Deputy Minister of Environment Canada et al.*, [2008] PSST 0004). Moreover, the lack of a reference to duration of projects in the *Job Opportunity Advertisement* had no bearing on the fact that the complainant failed to demonstrate on his application whether he had experience managing large or complex projects (see *Bell v. Deputy Head of Service Canada et al.*, [2008] PSST 0033).

52 The respondent argues that once the complainant became aware that the board was using approximately three years of experience as a criterion, he submitted a supplemental letter of clarification to the board, which he testified contained further

details about the projects he had already listed. The board reviewed the complainant's letter of clarification and verified the additional information. The board was still satisfied that the complainant did not meet the requirements of E-3.

53 The respondent submits in conclusion that it is not the role of the Tribunal to reassess a candidate. The board is best placed to assess candidates in the context of an appointment process and within an organization.

C) Public Service Commission's Arguments

54 The Public Service Commission (PSC) made general submissions on the concept of abuse of authority, and how the Tribunal should apply this concept. In particular, the PSC's view is that an error or an omission can amount to abuse of authority only if there has been serious recklessness or carelessness to the point where bad faith can be presumed.

55 The PSC submits that the *Demonstration of Screening Criteria* document could have been clearer with regard to the experience qualification at issue. It could have been better explained that a combination of experience and duration was a criterion which would be considered when determining whether the experience qualification was met.

56 When the complainant was informed during the informal discussion that he had been screened out because he did not have enough years of experience managing large or complex information technology projects, he perceived this as unfair and not transparent.

57 The PSC submits that non-compliance with a PSC policy does not necessarily constitute an abuse of authority. The PSC *Guidance Series on Assessment – Screening* and the PSC *Assessment Policy* was not fully complied with in this process and the Tribunal must consider whether the breach of the PSC policy was the result of such carelessness or recklessness that bad faith can be presumed. The PSC notes that there has been no suggestion of bad faith made in this process.

D) Respondent's Reply Arguments

58 The respondent submits that a breach of a PSC policy has not been clearly established in this process. The respondent adds that in *Neil*, the Tribunal had considered breaches of PSC Guidelines and found that they did not constitute an abuse of authority.

Relevant Legal Provisions

59 This complaint is made under subsection 77(1) of the *PSEA*:

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

(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);

[...]

60 Subsections 30(2) and 36 of the *PSEA* are also relevant:

30. [...]

(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.

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) [...].

61 Abuse of authority is not defined in the *PSEA* but is referred to in subsection 2(4): “For greater certainty, a reference in this Act to abuse of authority shall be construed as including bad faith and personal favouritism”.

Analysis

Issue I: Did the respondent abuse its authority by not specifying a number of years of experience managing large or complex information technology projects?

62 Subsection 30(2) of the *PSEA* sets out the legislative authority for establishing qualifications. In this case, the Tribunal finds that the respondent did not abuse its authority when it decided to not indicate a specific number of years of experience managing large or complex information technology projects.

63 In *Neil*, the essential qualifications against which candidates were to be assessed were set out in the SMC. In this case, the essential qualification E-3 was set out in both the SMC and also in the *Demonstration of Screening Criteria* document.

64 In the *Demonstration of Screening Criteria* document, which the candidates used to describe their education and work experience, candidates were told that the board had defined experience in managing large or complex information technology projects as follows:

In the context of this advertised process, “management” refers to providing leadership, managing the project team, being responsible for the delivery of the expected outcomes and “delivery” refers to having completed at least one project in a satisfactory manner.

In the context of this advertised process, the words “large or complex information technology projects” refer to a combination of: the size of the teams (minimum three team members per project excluding the candidate), the complexity of the management challenge, the number of stakeholders, the duration of the projects (minimum of six months per project) as well as the impact the projects had on the organization. The projects may be sub-projects of a larger business or IT initiative.

65 Following this explanation, candidates were instructed to provide information concerning the activity time frame, in months or years, and the supervisor or manager who should be contacted to verify the example given. Candidates’ submissions were not to exceed 500 words. In its instructions to candidates, the respondent explained that the examples given should reflect a combination of five criteria. The Tribunal finds that the

respondent clearly identified for the candidates the criteria it would use to assess the candidates, duration of projects being one of them. The complainant gave examples with the *Methodology Branch Data Migration Project* and the *Field 6/7 Laptop Procurement and Procedural Consolidation Project* for the period of May 2007 to spring 2008, which covered the five criteria.

66 In order to assess the experience qualification, the board considered the following criteria which were described in the “*Screening Documentation*” document:

- Approximately 3 years experience (tradeoff (*sic*) between the combination of length and number of projects and the complexity of the project management challenges faced and approaches used);
- Responsible for management activities: goals and objectives (charter), project plan, roles and responsibilities, scope management, change management, problem reporting, deliverables, risk management, deadlines, etc.;
- Communication with stakeholders including management (training, status reports, presentations, etc.);
- Multiple projects, at least one successfully completed.

67 Ms. Doherty testified that although management knew it was seeking approximately three years of experience in the management of large or complex information technology projects, it deliberately chose not to indicate a specific duration on the *Job Opportunity Advertisement*, the SMC or the *Demonstration of Screening Criteria* document. Ms. Doherty testified at length that this approach was chosen to avoid having candidates screen themselves out of the process. Rather, as she explained, the board measured and weighted the experience of candidates against a combination of factors. The complainant submits that he was disadvantaged by this approach and that he could not fully demonstrate in his application that he met the experience qualification.

68 In reviewing the evidence and the arguments, the Tribunal notes that the *Job Opportunity Advertisement*, the SMC and the *Demonstration of Screening Criteria* document made no reference to the years of experience sought for E-3. Candidates were not advised of any specific time requirement for this experience, except to provide examples of projects of a minimum of six months.

69 In *Neil*, the Tribunal found that the qualifications were sufficiently detailed to allow candidates to know what they had to demonstrate and that it was not necessary to inform candidates of definitions prior to candidates submitting their applications (see also *Lavigne*). In this case, the Tribunal finds that the evidence shows that the *Demonstration of Screening Criteria* document was clear as to the manager's expectations with respect to the experience candidates had to demonstrate to be screened into the process. Ms. Doherty testified that this did not include a minimum requirement of three years of experience. Rather, the duration of projects (approximately three years experience) was but one of several criteria of the required experience.

70 The SMC and the *Demonstration of Screening Criteria* document did not refer to approximately three years of experience as a criterion. However the evidence establishes that this had no bearing on the complainant's failure to demonstrate his experience managing large or complex projects. The Tribunal finds that the *Demonstration of Screening Criteria* document was sufficiently detailed to allow the complainant to understand the qualifications he had to demonstrate. It also allowed him to describe his experience on large or complex information technology projects and the time frame over which this experience had been acquired, thus providing the board with the information it required to determine whether he had the requisite experience.

71 By not making reference to the duration of projects, the complainant submits that the respondent's omission amounted to a lack of transparency which was detrimental to his application. However, the complainant had the opportunity to provide additional information through a supplemental letter of clarification once he knew that the board assessed the duration of projects not only by reviewing examples of projects of a minimum of six months but also for a duration of approximately three years. Although he was not initially aware of this, the complainant did have the opportunity to submit further examples of his experience. The board reviewed this letter and still found that he did not have the required experience. Ultimately, even if the criteria used were not as clear as the complainant would have hoped them to be, he was not penalized in any way since the board reconsidered his application following his submission of a supplemental letter of clarification. In the Tribunal's view, the lack of a mention of specific years of

experience sought did not prevent the complainant from describing the depth of his experience and the time period over which it had been acquired.

72 The PSC expressed some concerns about the experience qualification not being better explained or clarified. The PSC referred to the *Assessment Policy* and to the *Guidance Series on Assessment – Screening*. The latter states the importance of clearly identifying in advertisements any criterion that will be used for screening purposes. The PSC states that the respondent has not fully complied with the *Assessment Policy*.

73 In *Neil*, the Tribunal stated the importance of ensuring clarity and transparency in the material provided to candidates, be it the SMC or other documents used in an appointment process. The Tribunal also stated that it is preferable to provide detail on how a particular qualification is to be assessed. However, in *Neil*, the Tribunal also determined that the failure to inform candidates of a specific definition related to a merit criterion does not, in and of itself, amount to an abuse of authority.

74 In this case, the Tribunal notes that the board's objective was to accept various types of experience which were very broad. The board adopted this approach to be consistent in its assessment and come to a consensus on duration and complexity of projects. The Tribunal finds that there was no lack of transparency detrimental to the complainant's application. The *Demonstration of Screening Criteria* document was clear and transparent in that the duration of projects was one of several criteria listed. It specified that projects had to be a minimum of six months. The evidence does not establish that if the board had provided further details as to the duration of approximately three years working on large or complex projects, this would have had any impact on the complainant's application.

75 Furthermore, the Tribunal finds that the board, by not restricting itself with a rigid temporal criterion, exercised its discretion within the *PSEA's* parameters. The preamble of the *PSEA* states that managers should be afforded the flexibility necessary to staff, to manage and to lead their personnel. In *Tibbs*, at paragraph 62, and in *Visca v. Deputy*

Minister of Justice et al., [2007] PSST 0024, the Tribunal recognized the importance of this flexibility in staffing matters.

76 The circumstances of this case are very different from the ones in *Bowman*. In *Bowman*, the assessment board introduced and applied rigid temporal criteria to an essential qualification that was crafted to be flexible and allow for discretion. The effect of introducing and applying inflexible time requirements was to eliminate the room for discretion that was built into the original qualification. The Tribunal found that the assessment board fettered its discretion by adopting a rigid guideline, and failed to assess the complainant's experience in any meaningful way. In this case, the respondent used the opposite approach and went out of its way to exercise its discretion broadly.

77 The Tribunal finds that the complainant has not proven that the respondent abused its authority by not specifying a number of years of experience managing large or complex information technology projects. Accordingly, the Tribunal finds that the complainant's allegation is not substantiated.

Issue II: Did the respondent abuse its authority when it determined that the complainant did not have the required experience?

78 The complainant contends that he does have experience managing large or complex information technology projects.

79 Section 30(2) of the *PSEA* gives managers broad discretion 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* to choose and use assessment methods to determine if the candidates meet the established qualifications (see *Jolin v. Deputy Head of Service Canada et al.*, [2007] PSST 0011, and *Visca*).

80 In *Lavigne*, the Tribunal determined that there had been no abuse of authority where the manager had defined extensive experience for the position to be staffed as approximately ten years of experience and, on this basis, the assessment board had

decided that complainant's three years of experience had not met the experience qualification.

81 In this case, the board determined that the *Methodology Branch Data Migration Project*, the *Laptop 6/7 Procurement and Procedural Consolidation Project* and other projects described by the complainant were not sufficiently large or complex to meet the experience qualification. The Tribunal's role is to determine whether there was an abuse of authority in the way in which the assessment board assessed the application.

82 In her testimony, Ms. Doherty explained the experience the complainant described in his *Demonstration of Screening Criteria* document and his résumé, and how the board assessed it. The board concluded that the projects on which the complainant had worked, both as a CS-03 and a CS-02 were not large or complex information technology projects.

83 According to the respondent, although the *Methodology Branch Data Migration Project* was seven months long, it did not have enough complexity to qualify it as a large project. It was barely of the minimum length and size that the board was looking for, and it was done in parallel with the complainant's other work. The stakeholders for the project were mostly from the Methodology Branch and the project was fairly repetitious. The board did not find a lot of management challenge or a lot of complexity in reporting to senior management. There was no need to report to the Architecture Review Board.

84 As to the *Field 6/7 Laptop Procurement and Procedural Consolidation Project*, the respondent pointed to the fact that it was approximately six months long but not yet completed, and had even less complexity. It had no strict delivery timelines and a lot of the work was operational. The board recognized it as a project, but it did not see it as complex or challenging.

85 In the supplemental letter of clarification, the complainant provided additional information in support of his experience in information technology projects. The board reviewed this information, conducted additional verifications, and ultimately concluded that the complainant's experience was not of the depth and breadth it was seeking. These other projects on which the complainant had worked from 2002 to 2005 were not

sufficiently large or complex and were mostly from the period when he occupied a CS-02 position.

86 The evidence shows that the board concluded that the projects the complainant had described did not meet the essential experience qualification as defined, basically because he did not have the required combination of criteria.

87 The Tribunal also notes that an extensive screening exercise was conducted in which the application of each of the 180 candidates was examined at least three times. Particular attention was given to applications that were screened out such as the complainant's.

88 As the Tribunal's jurisprudence has established, the onus lies on the complainant to prove, on a balance of probabilities, that there was abuse of authority in the appointment process. The complainant did not provide evidence which establishes that the board abused its authority in assessing his application. The evidence supports the board's decision to screen out the complainant. The Tribunal finds that the respondent did not abuse its authority when it determined that the complainant did not meet the experience qualification.

Issue III: Did the respondent show personal favouritism towards candidates with a development background over candidates with an infrastructure background?

89 In his written allegations, the complainant submitted that the respondent abused its authority by favouring candidates who have a development background over candidates with an infrastructure background. He alleged that candidates with a development background therefore had an unfair advantage and he seems to believe that this presented the possibility of favouritism. He testified that he believes he was screened out because Information Technology is an area which makes extensive use of development projects, whereas his own background and experience are more in Infrastructure.

90 The evidence shows that among the 22 candidates found qualified, some candidates were from Infrastructure. Furthermore, as the Tribunal has established, the

word **personal** precedes the word **favouritism** in subsection 2(4) of the *PSEA*, emphasizing Parliament's intention that both words be read together and that it is **personal favouritism**, not other types of favouritism, which constitutes abuse of authority. Evidence that any candidate within an area of expertise would likely meet an essential qualification is not evidence of personal favouritism. There is no evidence before the Tribunal that the assessment board established the essential qualification in order to personally favour a candidate nor has it been alleged (see *Glasgow v. Deputy Minister of Public Works and Government Services Canada et al.*, [2008] PSST 0007 and *Jacobsen v. Deputy Minister of Environment Canada et al.*, [2009] PSST 0008).

91 The Tribunal finds that this allegation is unsubstantiated.

Issue IV: Were the assessment board members properly trained in staffing matters?

92 In his written allegations, the complainant submitted that the respondent failed to ensure that personnel responsible and engaged in staffing matters are properly trained. The respondent replied that the board was comprised of senior level information technology managers who had all received training on the *PSEA* and possessed extensive assessment board member experience within Statistics Canada and elsewhere within the CS community in the federal public service. Furthermore, the board members were knowledgeable and familiar with the work to be performed.

93 At the hearing, the complainant did not submit evidence or present arguments on this allegation.

94 Ms Doherty, Chair of the assessment board, testified that she has been trained on the new *PSEA* and has been involved in previous appointment processes.

95 In the absence of any evidence or argument to support this allegation, the Tribunal finds that this allegation is not substantiated.

Decision

96 For the above reasons, the complaint is dismissed.

Lyette Babin-MacKay
Member

Parties of Record

Tribunal File	2008-0624
Style of Cause	<i>Peter Zankl and the Chief Statistician of Canada of Statistics Canada et al.</i>
Hearing	September 9 and 10, 2009 Ottawa ON
Date of Reasons	January 18, 2010
APPEARANCES:	
For the complainant	Pierre Ouellet
For the respondent	Lesa Brown
For the Public Service Commission	John Unrau