



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**File:** 2008-0526  
**Issued at:** Ottawa, August 17, 2010

**RAPHAËL AGBOTON**

Complainant

AND

**THE PRESIDENT OF THE PUBLIC SERVICE COMMISSION**

Respondent

AND

**OTHER PARTIES**

<b>Matter</b>	Complaint of abuse of authority pursuant to section 77(1)(a) of the <i>Public Service Employment Act</i>
<b>Decision</b>	The complaint is dismissed
<b>Decision rendered by</b>	Lynette Babin-MacKay, Member
<b>Language of Decision</b>	French
<b>Indexed</b>	<i>Agboton v. President of the Public Service Commission</i>
<b>Neutral Citation</b>	2010 PSST 0013

# Reasons for Decision

## Introduction

1 The complainant, Raphaël Agboton, alleges abuse of authority in an advertised internal appointment process for a project leader position at the CS-03 group and level at the Public Service Commission (PSC), in that:

- i) his qualifications were inappropriately assessed, which led to his application being screened out;
- ii) the criterion “Experience in using and implementing applications with the System Development Life Cycle (SDLC)” was incorrectly defined and assessed;
- iii) he was treated differently and the appointee was given preferential treatment.

2 The respondent, the President of the PSC, states that the complainant’s application was screened out because he failed to show that he had experience in relation to the SDLC criterion. Moreover, the respondent submits that the definition of merit criteria is at the manager’s discretion. The respondent further submits that the complainant was treated the same as all the other candidates, and that the same merit criteria were evenly applied to all.

## Background

3 In February 2008, the respondent posted a *Job Opportunity Advertisement on Publiservice* for a CS-03 project leader position with the PSC’s Information Technology Services Directorate, Applications Services, in Ottawa.

4 The advertisement listed the following essential experience qualifications:

Experience in the analysis, development, implementation, maintenance and support of complex computer system applications using at least one of the following programming languages: Java (Servlet / Applet / JSP), OpenRoad, C.

**Experience in reviewing, documenting and analyzing client business functions and requirements.**

**Experience in using and implementing applications with the System Development**

**Life Cycle (SDLC).**

Experience with at least one of the following Relational Database Management Systems (RDBMS): Oracle, Ingres.

Experience in planning and performing functional and system testing.

Experience with system documentation (eg. Data Model, Use Case, Test Plan, Status Report, etc...).

(Emphasis added)

**5** The complainant applied for this position on February 27, 2008.

**6** On April 23, 2008, the respondent informed him that his application had been screened out because he had not demonstrated in his application that he possessed the following essential qualifications:

Experience in reviewing, documenting and analyzing client business functions and requirements (E-2);

Experience in using and implementing applications with the System Development Life Cycle (SDLC) (E-3).

**7** The *Notification of Appointment or Proposal of Appointment* for this appointment process was posted on July 23, 2008, and on July 25, 2008 the complainant filed a complaint with the Public Service Staffing Tribunal (the Tribunal) pursuant to section 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12 and 13 (the *PSEA*).

**8** On September 14, 2009, that is, three days before the hearing on his complaint was to begin, the respondent informed the complainant that his application had been reviewed and that he did in fact meet essential qualification E-2. However, the respondent's decision had not changed with regard to essential qualification E-3.

## **Issues**

**9** The Tribunal must determine the following issues:

- (i) Did the respondent abuse its authority in concluding that the complainant did not demonstrate that he met essential qualification E-3?
- (ii) Did the respondent show personal favouritism toward two PSC candidates, including the appointee?
- (iii) Did the respondent act in bad faith and thus abuse its authority?

## **Summary of relevant evidence**

**10** The complainant is an Information Technology (IT) programmer/analyst (CS-02) employed by Statistics Canada since January 2008. From 2000 to 2008 he was employed by the respondent, holding positions at the CS-02 group and level. When hired by the PSC in 2000, he performed IT systems support and maintenance as part of a group managed by Roger Duhamel (CS-04). In May 2001, the complainant began working with other supervisors before joining, in 2004, the group headed by Martin Patenaude (CS-04), a manager in Applications Services. According to the complainant, he worked with Mr. Patenaude for four years, from March 2004 to January 2008, before working a few weeks in Mr. Duhamel's group. He then left the PSC in January 2008. Mr. Patenaude testified that the complainant did not start working with his team until 2006.

**11** The complainant stated that during the time he worked for Mr. Patenaude, he looked after all the support and maintenance for a specific application used by the PSC. Shortly before the project ended, Mr. Patenaude asked him to assess the registration module for the Language Training Centre System (LTCS), one of six modules for this system. From 2007 to 2008, Mr. Patenaude tasked him with all the support and maintenance for the six LTCS modules.

**12** According to the complainant, all the members of his former team at the PSC took part in this appointment process, but he was the only one whose application was

screened out. Moreover, when he left the PSC, he was working with the appointee at the same group and level.

**13** Mr. Patenaude is the manager responsible for the position in question, and he was responsible for the appointment process. He chaired the assessment board (the board) that Mr. Duhamel sat on as well.

**14** Mr. Patenaude and Mr. Duhamel prepared the list of essential qualifications and the statement of merit criteria for the position, in consultation with two other CS-04 managers in Applications Services. Mr. Patenaude also consulted his own director, as well as Human Resources.

**15** Mr. Patenaude explained that the project leader is tasked with managing applications systems planning by means of the SDLC. The term “SDLC” refers to the various steps in the development cycle of applications. Mr. Patenaude testified that in view of the potential impact that each step in the SDLC has on the other steps, the appointee needed to have experience with and to have worked on all the steps in the SDLC, not just one or two.

**16** Twenty-five people applied for this appointment process. Of these, 14 met the screening criteria, including 7 candidates from outside the PSC. One candidate made it through all the steps in the process and was appointed to the position. That candidate was already a PSC employee.

### *E-3 assessment*

**17** On April 23, 2008, the respondent informed the complainant that his application had been screened out because he had failed to demonstrate in his application that he met essential qualification E-3. The complainant emailed Mr. Patenaude that same day to find out why the board had apparently not taken his service at the PSC into consideration.

**18** Mr. Patenaude emailed him back to say that the board had examined his employment application a number of times, but that the application made no mention of his having “experience in using and implementing applications with the System

Development Life Cycle (SDLC).” Mr. Patenaude told him that the board had to be objective in examining the candidates’ applications. Screening had to be based on what was written in the employment application, and the complainant’s application made no mention of this experience. In his email, Mr. Patenaude added that he had been surprised that the complainant had not mentioned this experience in his application, because he had worked on these elements while a member of his group.

**19** Mr. Patenaude claimed to have made the latter remark in the email out of sympathy for the complainant, since he had been eliminated at the screening stage. He added that while the complainant worked in the module development area at the PSC, he had worked on only a few steps in the SDLC and had not acquired the necessary experience to successfully make it through the appointment process.

**20** In his testimony, Mr. Patenaude explained that the complainant had not made it past the screening stage because his application made no mention of any of the elements of the E-3 assessment criterion that the board had established for the screening process. He explained that the board was looking for key words or expressions in the candidates’ applications: CDS, *System Development Life Cycle*, its abbreviation SDLC, life cycle, step-by-step development, or other expressions like *RUP* or *Waterfall*. In the absence of these key words or expressions, the board sought mention, in a single project, of each of the seven steps in the life cycle, as listed in the Wikipedia document entitled *Systems Development Life Cycle* (available in English only), which was supplied to the complainant during the exchange of information stage:

1. Project planning, feasibility study, initiation
2. Requirements gathering and systems analysis
3. Systems design
4. Build
5. Testing
6. Installation, implementation or deployment
7. Maintenance, business as usual

**21** Mr. Patenaude testified that it was prior to launching the screening process that the board decided how it would determine whether a candidate met essential qualification E-3.

**22** In his testimony, the complainant admitted that his application contains no mention of either SDLC or the expressions sought. However, he explained that he had described the professional experience he had acquired in each department that he worked for in the past, either through the projects or the various tasks he was assigned there.

**23** He confirmed having read the *Job Opportunity Advertisement* in full before applying, and that he knew he had to clearly demonstrate that he met the stated requirements or else he could be eliminated from the process. He also confirmed that he had not contacted Human Resources before applying.

**24** In his testimony, Mr. Patenaude explained what the board meant by “Experience in using and implementing applications with the System Development Life Cycle (SDLC).” What it meant was experience in each of these two aspects, that is, use and implementation. He indicated that SDLC use consists in putting all of its steps into practice when developing applications, and that implementation consists in using the life cycle to roll out a system or application.

**25** Candidates were not accepted if they failed to meet the criteria sought, namely the key words or expressions, or the seven SDLC steps in a single project. It was only at the screening stage that the board assessed essential qualification E-3 in this manner.

**26** Mr. Patenaude confirmed that the *Job Opportunity Advertisement* did not specify how essential qualifications would be assessed during the screening process. He stated that all the candidates were assessed in a uniform manner.

**27** The complainant introduced into evidence two documents that he had prepared for the hearing: *Contribution to the PSC* and *Selection criterion in question – My case* [Translation]. He stated that the former summed up the projects and work that he says he took part in while working at the PSC, while the latter contains a few excerpts from his application that meet the E-3 criterion.

**28** The complainant asked Mr. Patenaude whether he found elements in *Contribution to the PSC* of the experience he had acquired while working in his group. Mr. Patenaude recognized that the LTCS project and the Priority Information Management System (PIMS) project straddled a few working groups under his authority. As for the rest of the projects and applications listed in the document, Mr. Patenaude said that he knew about some and not about others.

**29** As for the SDLC steps that the complainant worked on while a member of Mr. Patenaude's group, Mr. Patenaude stated that these consisted of the build, testing and maintenance steps in various projects listed in the document.

**30** Mr. Patenaude reiterated that the complainant had not worked on all the SDLC steps while in his group, and that he had assigned him to perform development and testing tasks.

**31** Mr. Patenaude admitted that at his meetings with the complainant after his complaint was filed, he did not indicate to him what the board was seeking in the applications during screening. He stated that he had not mentioned it to the complainant because the board had not yet reviewed his application.

*Definition of SDLC and number of steps in a life cycle*

**32** The complainant claimed that the respondent had improperly defined and assessed the criterion pertaining to the SDLC. In support of this, he introduced into evidence a number of documents and excerpts of works, and questioned Mr. Patenaude at length about the various SDLC and life cycle descriptions that they contained. The complainant stressed that some of these documents indicated that the number of steps in a SDLC can vary, from four to seven or even more.

**33** The complainant stated that the board had told him, at one of the meetings held (informal discussion or exchange of information), that the SDLC is a systems development methodology. The complainant added that such a definition is incorrect, and that the SDLC is not a methodology but rather a series of systems development phases that can appear different from one methodology to another.

**34** Mr. Patenaude testified that the word “methodology” appeared neither in the *Statement of Merit Criteria and Conditions of Employment* nor in the wording of essential qualification E-3.

**35** The complainant questioned Mr. Patenaude about the board’s assertion that the SDLC is made up of seven steps. He pointed out to him that the *Systems Development Life Cycle* document, which the board had taken from the Wikipedia website and given to him during the exchange of information, indicates that the SDLC can involve four to seven steps.

**36** Mr. Patenaude reiterated that the PSC uses the SDLC in seven steps, as described in that document. He stated that there is no “official” document that describes what the board took into consideration concerning the steps in the SDLC, adding that the PSC follows the internationally recognized SDLC steps and does not use a four-step SDLC model. He went on to say that the members of his PSC group use the SDLC and that they are familiar with the seven standardized systems development steps. He explained that the PSC uses the term SDLC in a general way.

**37** According to Mr. Patenaude, since the SDLC is recognized around the world, it was reasonable for the board to expect that candidates from outside the PSC would know about it as well. According to him, the process was open enough to allow candidates to apply from outside the PSC, even though certain reference documents indicate that the number of SDLC steps can vary from four to seven. For example, he indicated that RUP and Waterfall are groups of steps, standards that use the same steps as the SDLC; the steps in RUP are nearly the same as in the SDLC.

**38** Mr. Patenaude confirmed that the Job Opportunity Advertisement did not indicate that the board sought mention of a seven-step SDLC.

*Other appointment processes or competitions held at the PSC or elsewhere*

**39** To show that the respondent had improperly defined the SDLC criterion, the complainant submitted statements of qualifications and competition notices for processes in which he said he participated at the PSC in 2002, 2003 and 2005 for

various CS-03 positions, in order to show how the SDLC is used there. He also submitted a number of competition notices and job opportunity advertisements from various departments between 2001 and 2008 to show how they used the expression SDLC for CS-03 and CS-04 positions. He questioned Mr. Patenaude about the use of the SDLC in these notices.

**40** Mr. Patenaude indicated that in the PSC notices, the SDLC did not appear under “experience” or was not worded as it is in the current process. As for the processes involving other departments, he pointed out that a candidate who would have met the SDLC criterion in one of those processes would not necessarily have met it in the PSC process. Furthermore, the terms used in those processes are not necessarily the same as those used at the PSC.

**41** The complainant admitted that SDLC does not appear under “experience” in several of those documents.

*Personal favouritism toward the appointee*

**42** The complainant introduced into evidence the employment applications of the PSC candidates, including the one submitted by the appointee. He did not introduce into evidence the employment applications of the candidates from outside the PSC, apart from his own.

**43** The complainant asked Mr. Patenaude why the board had deemed statements of knowledge equivalent to experience in the appointee’s application and that of another candidate from the PSC. In the appointee’s application, the only place where the board marked E-3 at the mention of the SDLC was under the heading Computer Knowledge, not under the heading Experience. The other PSC candidate indicated, under the Technical Abilities heading, “Knowledge of analytical and design techniques for information systems and SDLC (software development life cycle)” [Translation]; this mention is also marked as E-3.

**44** Mr. Patenaude replied that the board had used its discretion to accept these mentions as indications of E-3 experience. He indicated that it did not matter to the

board if the SDLC was mentioned somewhere other than under “experience.” The board was seeking mention in the applications of either SDLC or of all the steps in SDLC; here, there was mention of the SDLC.

**45** Mr. Patenaude added that these mentions of the SDLC were not necessarily the only reason that had led the board to conclude that these candidates possessed the experience sought. He explained that at the screening stage, the board did not assess the candidates’ level of experience, and that experience in using and implementing applications with the SDLC had subsequently been assessed a number of times during the written exam and the interview.

**46** The complainant also introduced into evidence emails exchanged with the Chief of Human Resources Operations in August 2008. In these emails, the complainant asked whether knowledge and abilities could be deemed comparable to experience during screening. In reply, he was told that only education and experience had been used for screening.

**47** When the complainant informed Mr. Patenaude of this response from Human Resources, Mr. Patenaude stated that the terms “knowledge” and “experience” have a specific meaning for Human Resources, but that a manager has a degree of leeway when reviewing knowledge and experience, and can consider them in different ways in the employment application. He stated that managers’ discretionary authority during screening could enable them to deem knowledge as being equivalent to experience.

*Different treatment of complainant during screening*

**48** To support his allegation that he was treated differently from the other candidates during screening, the complainant cited the fact that his name appeared on the documents that the respondent gave him during the exchange of information as part of the investigation of his complaint. Those of the other candidates are identified by a number.

**49** Mr. Patenaude explained how the candidates’ anonymity had been protected during screening. He stated that Human Resources had given the board each

candidate's employment application, and that their personal information (the complainant's included) had been concealed and the applications numbered. He and Mr. Duhamel separately reviewed each application to determine who met the essential qualifications, before comparing their results and noting that they had reached the same conclusions.

**50** Subsequently, Human Resources provided the board with the *Screening Report*, which matched the candidates' names to the numbers appearing on their documents. It was not until then that the board learned which candidates had made it through screening, and which had not. Mr. Patenaude transcribed the results of each candidate on the *Screening Report*, and the board then conducted an additional verification of the applications submitted by the candidates who had not made it through the screening process. The results remained the same.

**51** Mr. Patenaude explained that for the exchange of information, the board gave the complainant a *Screening Report* on which the candidates' identity had been concealed, except for his, and numbers had been inserted to differentiate between them. Similarly, during the exchange of information, the candidates' personal information had been concealed (except for the complainant's) on the copies of the employment applications that he was given.

**52** Mr. Patenaude explained that the handwritten comments on the *Screening Report* introduced into evidence were his, and that those comments indicated who had made it through screening. He confirmed that the *Screening Report* shows the board's final decision, that it was completed before the complaint was submitted and that the modified version (names erased, except for the complainant's) was prepared after the complaint, for the exchange of information.

**53** The board did not prepare any reports other than the *Screening Report*. According to Mr. Patenaude, this is customary practice.

## **Arguments of the parties**

### **A) Complainant's arguments**

**54** The complainant submits that he should not have been screened out, because even though his application does not contain the expression SDLC, it does contain all the SDLC elements, such as defining needs, designing, assessing, analysing, writing, developing, implementing, testing, putting into production, updating documentation, supporting users, developing functional files, participating in activities and managing.

**55** The board ignored the professional experience that he had acquired at the PSC and in other organizations. He submits that, contrary to the respondent's assertion, he was involved in all the SDLC steps when he was at the PSC. To demonstrate this, he noted the elements in his application that have to do with the SDLC in the document *Selection criteria in question – My case*. He also submits that the information in his application was not examined fully nor at fair value, since E-3 assessment notes are found only on one and a half of the application's five pages.

**56** He submits that he did maintenance for a major application at the PSC, and that eventually he was fully responsible for this application. He argues that his employment application also shows that he participated in development projects and that he developed applications. He submits that he could not have carried out these functions at the PSC without acquiring a degree of experience in the steps involved in the systems development process, experience over and above what he acquired in other departments and organizations.

**57** To support his assertion that his qualifications were inappropriately assessed, the complainant points out that the PSC deemed him qualified during two similar appointment processes that used the SDLC criterion, but that it did not deem him qualified for this one. He submits that if an essential qualification is used in several processes within the same department, the standards for assessing this qualification should remain the same; otherwise, everything would become arbitrary. The complainant also points out that thanks to the experience he acquired at the PSC, other

departments considered him for appointment processes involving positions at the same group and level and with essential qualifications similar to those in this process.

**58** The complainant notes that just three days before his complaint was to be heard, the respondent reviewed his application and deemed that it now met essential qualification E-2, but not E-3, and this despite all the opportunities the board had had to inform him of this—informal discussion, exchange of information and exchanges of emails. It also was not until three days prior to the hearing that he was informed about the nature of the E-3 assessment criterion. In short, he believes that this demonstrates the board's bad faith toward him.

**59** As for the requirement to mention the SDLC's seven steps in the same project, the complainant is of the opinion that this is baseless, because even the *Systems Development Life Cycle* document used by the board indicates that the name and number of steps in the SDLC can vary from four to seven.

**60** According to the complainant, the documents and excerpts from works that he filed as evidence establish that the definition of E-3 that the board gave him during the informal discussion is incorrect. The SDLC is not a systems development methodology, as he was told by the board, but a series of systems development steps.

**61** He submits that the PSC candidates were favoured, because the appointee and another PSC candidate stated that they had SDLC knowledge or abilities that the board transformed into statements of experience. These candidates should not have made it past the screening stage. He referred to the statement by Human Resources that only experience and education had been taken into consideration during screening, and that knowledge could not be deemed equivalent to experience.

**62** The complainant further alleges that he was treated differently because he was identified during screening. He does not believe that his personal information was concealed on his application, and he submits that his application was simply dismissed.

**63** In conclusion, if the Tribunal rules in his favour and finds that the appointment process was marred by irregularities, he is asking that corrective action be exemplary.

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

**64** The respondent submits that it was up to the complainant to submit a complete employment application. The complainant may have assumed that his years of experience at the PSC would show that he met essential qualification E-3, but it seems that his application did not reflect all his work at PSC or other organizations. Mr. Patenaude and Mr. Duhamel would have treated the complainant differently from the other candidates had they used their personal knowledge during screening. But even had they used their personal knowledge of the complainant's work, the complainant still would not have met qualification E-3.

**65** The respondent indicates that a manager is not bound by any statement of merit criteria that may have been established, at the PSC or elsewhere, for positions similar to this one. The *PSEA* gives managers the latitude and discretion to establish the essential qualifications and merit criteria for each process.

**66** The respondent submits that the complainant was not treated differently. There is no mention of the SDLC or its seven steps in the same project in his application, or in those of the other two candidates from outside the PSC who were screened out for this reason.

**67** The respondent submits that the evidence shows that the board had decided, prior to screening, which information it would be looking for in the applications. Given the work to be performed and the responsibilities of the position, it was reasonable to require experience with the SDLC. The complainant did not introduce any evidence to the contrary. The SDLC and the seven steps are known around the world.

**68** The respondent submits that the *Systems Development Life Cycle* document given to the complainant contains the SDLC steps and definitions that the manager selected for this process; these steps and this system are regularly applied at the PSC. The manager correctly exercised his discretion in establishing essential qualification E-3.

**69** The respondent submits that despite the complainant's assertion, the wording of essential qualification E-3 does not include the term "methodology," and Mr. Patenaude did not use this term when explaining what the SDLC is. The fact remains, however, that defining the merit criteria is at the manager's discretion.

**70** The manager was not required to inform the candidates of the merit criteria definition when they submitted their application. The respondent notes that the complainant claimed that the statement of merit criteria was confusing, but that he did not contact Human Resources for additional information on essential qualification E-3. The respondent further notes that during cross examination, the complainant confirmed that he had properly understood the SDLC essential qualification and that the term is known in the IT community.

**71** The respondent feels that the complainant is confusing experience and education with the elements that were sought in the applications. The evidence showed that a candidate was screened in even though he had mentioned the key words or the SDLC steps somewhere other than under the experience heading in his application. The screening process did not seek to measure a candidate's level of experience, and the other SDLC-related essential qualifications were assessed after screening. The fact that something was not marked E-1 or E-3 on an application does not mean that the board found that a candidate did not meet this particular essential qualification.

**72** The respondent submits that the anonymity of all the candidates was protected during screening.

**73** In conclusion, the respondent submits that the complainant did not demonstrate, on the preponderance of evidence, that there was abuse of authority in applying the merit criteria, that he was treated differently from the other candidates or that he was assessed unreasonably or inappropriately. The merit criteria were evenly applied to all the candidates.

**74** The respondent asks that the complaint be dismissed.

## Relevant policies and legislation

75 The following sections of the *PSEA* are relevant to the complaint:

2.(4) For greater certainty, a reference in this Act to abuse of authority shall be construed as including bad faith and personal favouritism.

16. In exercising or performing any of the Commission's powers and functions pursuant to section 15, a deputy head is subject to any policies established by the Commission under subsection 29(3).

29. [...]

(3) The Commission may establish policies respecting the manner of making and revoking appointments and taking corrective action.

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;  
[...]

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).

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);

[...]

76 The PSC's *Appointment Policy – Informal Discussion* states the following:

### **Appointment Policy – Informal Discussion**

#### **Policy Objective**

To ensure transparency and communication throughout the appointment process, which helps foster a healthy workplace.

[...]

### **Policy Requirements**

In addition to being accountable for respecting the policy statement, deputy heads must ensure that:

[...]

persons eliminated from consideration who request an informal discussion have access to sufficient information concerning themselves to understand and discuss the decision;

[...]

## **Analysis**

**Issue I:** Did the respondent abuse its authority in concluding that the complainant did not demonstrate that he met essential qualification E-3?

**77** The complainant submits that the respondent abused its authority by acting unreasonably in establishing the SDLC criterion and in assessing his application while not taking into account relevant elements.

**78** In *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 0008, the Tribunal determined that the five categories of abuse set out in Jones and de Villars (David Philip Jones and Anne S. de Villars, *Principles of Administrative Law*, Toronto: Thomson Carswell, 2004) can be a useful framework in assessing an allegation of abuse of authority made under the *PSEA*. In this case, the second and third categories of abuse of authority would be applicable in analysing these elements of the complaint:

2) When a delegate acts on inadequate material (including where there is no evidence, or without considering relevant matters).

3) When there is an improper result (including unreasonable, discriminatory, or retroactive administrative actions).

*Definition of E-3*

**79** The complainant alleges that the respondent acted unreasonably and thus abused its authority by defining the SDLC criterion in essential qualification E-3 as a systems development methodology rather than as a series of systems development steps. According to the respondent, the wording of essential qualification E-3 does not contain the term “methodology,” and Mr. Patenaude did not use this term to explain the SDLC during his meetings with the complainant.

**80** Section 30(2)(a) of the *PSEA* gives the deputy head the discretionary authority to establish the essential qualifications for the work to be performed. This discretion is not absolute, however, and the Tribunal could consider that there was abuse of authority if the complainant proved that the method used to assess these qualifications is unreasonable or fails to assess the qualifications listed on the statement of merit criteria (see *Jogarajah v. Chief Public Health Officer of the Public Health Agency of Canada*, 2008 PSST 0015).

**81** The board was responsible for establishing and defining the qualifications for the position. The board members are experienced managers occupying CS-04 positions. Mr. Patenaude is well acquainted with the duties of the project leader position and explained the definition of the SDLC and its connection with essential qualification E-3 and with the position’s duties (see *Sampert v. Deputy Minister of National Defence*, 2008 PSST 0009 at para. 54).

**82** Although the complainant filed documents about the SDLC, he provided no reason that would lead the Tribunal to find that the definition of E-3 that Mr. Patenaude gave in his testimony is incorrect or unreasonable. Furthermore, the complainant failed to demonstrate that the definition was not useful for the assessment of the SDLC criterion, or that it constituted an abuse of authority.

**83** The Tribunal finds that the complainant did not prove that the respondent acted unreasonably when it defined the SDLC for this appointment process, and therefore did not prove abuse of authority.

*Assessment of E-3*

**84** The *Job Opportunity Advertisement* for this position did in fact specify that candidates had to clearly demonstrate in their application that they met all the essential criteria, or else their application might be rejected. The assessment board used a common assessment method to assess whether the candidates met all the essential criteria, that is, it asked the candidates to submit an application demonstrating that they met these criteria.

**85** The SDLC was one of these essential criteria, and the complainant recognized that he had not mentioned it in his employment application. In his employment application, the complainant makes no mention of having worked with the System Development Life Cycle or the SDLC, which, after all, represents a critical part of the essential qualifications established by the board. Similarly, he does not indicate any connection between the SDLC and his experience as described in his application.

**86** The complainant could not assume that because the board members knew him, they would conclude that he had worked with the SDLC at the PSC and that he possessed the required experience. In fact, according to Mr. Patenaude, he had not acquired this experience while at the PSC. It was up to the complainant to demonstrate unequivocally that he met all the qualifications sought. He needed to be explicit in his application and could not assume that one or more members of the board knew him or knew about his experience (see *Charter v. Deputy Minister of National Defence*, 2007 PSST 0048 at paras. 38-40).

**87** The Tribunal has established on numerous occasions that candidates must ensure that they demonstrate very clearly in their application that they possess all the essential qualifications required for the position (see *Alexander and Rave v. Deputy Minister of Health Canada*, 2008 PSST 0032 at para. 97; *Pugh v. Deputy Minister of Justice*, 2008 PSST 0023 at para. 69; and *Henry v. Deputy Head of Service Canada*, 2008 PSST 0010 at para. 55).

**88** The Tribunal finds that the complainant did not demonstrate that the respondent acted unreasonably in not considering the relevant elements when assessing his application.

*Number of steps in the SDLC*

**89** The complainant alleges that the SDLC can comprise a varying number of steps according to the documents consulted. He submits that it is not reasonable to require seven SDLC steps to be listed in the application, because these are not necessarily known outside the PSC.

**90** The Tribunal considers that documents taken from Wikipedia should be used with a degree of caution, because their scientific value has not necessarily been established. However, the Tribunal notes that the Wikipedia document used contains footnotes, that the assessment board deemed the document's description of the SDLC steps to be correct, and that the complainant did not cast doubt on them.

**91** The Wikipedia *System Development Life Cycle* document used by the board to support the use of a seven-step SDLC at the PSC does indicate, however, that the number of steps may vary. Mr. Patenaude stated that the PSC does not use a four-step SDLC. He indicated that the *RUP* and *Waterfall* standards contain some of the SDLC steps and are nearly the same.

**92** The Tribunal considers that, under the circumstances, a group of SDLC steps could have been acceptable in assessing the applications. But the complainant admitted that his employment application makes no mention of the term SDLC, or of the expressions the board was looking for. Moreover, four of the seven non-PSC candidates demonstrated to the respondent that they had the E-3 experience sought.

**93** The Tribunal finds that the complainant did not prove that the respondent acted unreasonably in determining that the complainant did not list under his experience the various SDLC steps.

*Previous competitions and appointment processes*

**94** The complainant submits that the PSC and other organizations deemed him qualified in similar selection processes in the past, and he believes that it is unreasonable for him to now be told that he does not have the required experience.

**95** The Tribunal notes that the SDLC was not included as required experience in the other processes, which the complainant conceded. The complainant did not demonstrate that he met the SDLC criterion for the process in question. The fact that the complainant may have been considered qualified for other positions requiring SDLC experience does not mean that he meets the criterion for the process in question.

**96** The Tribunal finds that the complainant did not demonstrate that the respondent acted unreasonably and failed to take into account relevant factors in concluding that he did not have the required SDLC experience.

**Issue II:** Did the respondent show personal favouritism toward two PSC candidates, including the appointee?

**97** The complainant submits that the respondent gave preferential treatment to two PSC candidates, including the appointee. He submits that these individuals did not demonstrate that they had the required experience, because they did not indicate the key words in the Experience section of their applications.

**98** In *Glasgow v. Deputy Minister of Public Works and Government Services Canada*, 2008 PSST 0007 at para. 39, the Tribunal decided that as specified in section 2(4) of the *PSEA*, it is personal favouritism, not other types of favouritism that constitutes abuse of authority. The Tribunal must therefore determine whether the respondent showed personal favouritism toward these candidates by determining that they had demonstrated the required SDLC experience.

**99** Fourteen candidates from the PSC and other organizations were screened in and demonstrated that they met essential qualification E-3.

**100** The board considered that a candidate demonstrated the experience sought regardless of where in the application they mentioned the elements of the assessment criteria.

**101** As indicated in the preamble to the *PSEA*, Parliament gives public service managers the flexibility necessary to staff. Section 30(2)(a) of the *PSEA* gives the board considerable discretion in assessing the qualifications established for a position.

**102** In this case, the appointee provided the key words sought in the Computer Knowledge section of the application. It was in the Technical Abilities section that another PSC candidate provided the key words. Although these statements do not seem to clearly indicate whether these candidates have the experience sought, Mr. Patenaude stated that the board accepted them, and that it also assessed the SDLC during the written exam and the interview.

**103** Only the appointee successfully completed the entire appointment process, and the complainant did not prove that this person failed to meet all the essential qualifications.

**104** The Tribunal finds that the complainant did not demonstrate that the respondent showed personal favouritism toward the appointee.

**Issue III:** Did the respondent act in bad faith and thus abuse its authority?

**105** Section 2(4) of the *PSEA* explicitly states, lest there be any doubt, that abuse of authority includes bad faith. Traditionally, bad faith implies the existence of improper or dishonest intent. It includes bias and cases where an irrational procedure leads to an outcome that is incompatible with the exercise of public authority functions. Today, the meaning that the courts ascribe to bad faith is broader and does not require proof of improper intent in cases of serious carelessness or recklessness. Also, bad faith can be established by circumstantial evidence (see *Finney v. Barreau du Québec*, 2004 SCC 36 at paras. 37 and 39; *Cameron and Maheux v. Deputy Head of Service Canada*, 2008 PSST 0016; *Chiasson v. Deputy Minister of Canadian Heritage*, 2008 PSST 0027; and *Burke v. Deputy Minister of National Defence*, 2009 PSST 0003.)

*Different treatment of complainant during screening*

**106** The complainant essentially alleges that the respondent acted in bad faith in treating his application differently than that of the other candidates during screening. He alleges that his name was deliberately left on his employment application when it was examined by the board.

**107** The respondent described the measures taken to ensure the candidates' anonymity during this stage. During screening, all of the candidates' personal information, including the complainant's, was concealed on the applications given to the board. However, during the exchange of information, only the other candidates' personal information was concealed, because there was no need to conceal the complainant's on the documents he received. The Tribunal finds the respondent's explanation reasonable and considers that the complainant was not treated differently from the other candidates. The Tribunal finds that the complainant did not demonstrate that the respondent acted in bad faith when processing his application.

*Communication of E-3 assessment criterion*

**108** The complainant finds it suspicious that the board concluded, just days before the hearing, that he did in fact meet essential qualification E-2, but not E-3. He believes that in opting to inform him of the elements comprising the E-3 assessment criterion only a few days before the hearing, the respondent demonstrated bad faith toward him.

**109** The respondent reviewed the complainant's application a few days before the hearing and explained that the complainant still did not meet essential qualification E-3 because he had not indicated, according to the established assessment criterion, the key words sought or the seven SDLC steps in the same project.

**110** The Tribunal has already observed that it is not unprecedented for a respondent to review elements of a file before or during a hearing and to make certain admissions (see, for example, *Glasgow* at para. 67). In this case, the review led the respondent to conclude that the complainant met E-2. But the complainant did not meet essential

qualification E-3. This correction did not change the outcome of this appointment process.

**111** Mr. Patenaude stated that the assessment criterion was not communicated to the complainant earlier because the board had yet to review his application, which it did after the filing of the complaint in preparation for the hearing.

**112** Having reviewed the sequence of events and the evidence, the Tribunal notes that over 16 months went by between the time the complainant learned that he had been screened out (April 23, 2008) and the time he learned the details of the assessment criterion (September 14, 2009). This timeframe clearly made the complainant distrustful of the board's intentions toward him.

**113** The objective of the PSC's *Appointment Policy – Informal Discussion* is to, among other things, “ensure transparency and communication throughout the appointment process, which helps foster a healthy workplace.” The informal discussion is an opportunity for a candidate to discuss the reasons for elimination from a process (see *Rozka v. Deputy Minister of Citizenship and Immigration Canada*, 2007 PSST 0046 at para. 76).

**114** The details of the E-3 assessment criterion at the screening stage could have been provided to the complainant during the informal discussion. The evidence did not demonstrate how and whether the respondent used the *System Development Life Cycle* document to show the complainant what it was looking for in the applications during screening.

**115** The explanation given by Mr. Patenaude for this delay does not satisfy the Tribunal. It was not necessary for the respondent to conduct a review of the complainant's application prior to the hearing before it could be in the position to provide the complainant with a detailed explanation of the E-3 assessment criterion. In this case, the Tribunal finds that the board erred and did not comply with the PSC's *Appointment Policy – Informal Discussion* by informing the complainant so late of the details of the E-3 essential qualification assessment.

**116** This delay is far from fostering transparency and communication. But the board informed the complainant of the reasons why he was eliminated in its email of April 23, 2008, and had provided him with the Wikipedia *System Development Life Cycle* document during the exchange of information. The Tribunal finds, therefore, that this delay constitutes an error but not an abuse of authority. The evidence does not demonstrate that the respondent acted in bad faith. The respondent's delay does not constitute serious carelessness or recklessness tantamount to bad faith. This error did not have an impact on the final outcome of this appointment process (see *Trachy v. Deputy Minister of Transport, Infrastructure and Communities*, 2008 PSST 0002 at para. 48.)

**117** For all these reasons, the Tribunal finds that the complainant did not prove that the respondent acted in bad faith.

## **Decision**

**118** For all of these reasons, the complaint is dismissed.

Lurette Babin-MacKay  
Member

## Parties of Record

<b>Tribunal File</b>	2008-0526
<b>Style of Cause</b>	<i>Raphaël Agboton and the President of the Public Service Commission</i>
<b>Hearing</b>	September 17 and 18, 2009, and December 14, 15 and 16, 2009 Ottawa, Ontario
<b>Date of Reasons</b>	August 17, 2010
<b>APPEARANCES:</b>	
<b>For the complainant</b>	Raphaël Agboton
<b>For the respondent</b>	Marie-Josée Montreuil