



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**File: 2012-1262**

**Issued at: Ottawa, October 31, 2014**

**HUGO BÉLAND-FALARDEAU**

Complainant

AND

**THE CHAIRPERSON OF THE IMMIGRATION  
AND REFUGEE BOARD**

Respondent

AND

**OTHER PARTIES**

<b>Matter</b>	Complaint of abuse of authority pursuant to paragraph 77(1)(a) of the <i>Public Service Employment Act</i>
<b>Decision</b>	The complaint is dismissed
<b>Decision rendered by</b>	Nathalie Daigle, Member
<b>Language of decision</b>	French
<b>Indexed</b>	<i>Béland-Falardeau v. Chairperson of the Immigration and Refugee Board</i>
<b>Neutral citation</b>	2014 PSST 18

# Reasons for Decision

## Introduction

1 Hugo Béland-Falardeau, the complainant, applied for a member position at the PM-06 group and level at the Immigration and Refugee Board (IRB). His application was screened out of the process. The complainant claims that the Chairperson of the IRB, the respondent, abused its authority by not properly assessing him and by screening out his application.

2 The respondent denies having abused its authority in the conduct of the appointment process and in the assessment of the complainant's qualifications.

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

4 For the reasons that follow, the Tribunal finds that the complainant did not demonstrate that the respondent abused its authority by screening out the complainant's application on the ground that he did not meet the essential qualification relating to recent work experience in a quasi-judicial or judicial process.

## Background

5 In February 2011, the respondent started an internal and external advertised appointment process to staff various member positions at the PM-06 group and level within the Refugee Protection Division (RPD) in four Canadian cities.

6 The complainant applied for the advertised process.

7 After assessing the complainant's job application, the assessment board concluded that he did not possess one of the essential qualifications required for this position, namely, recent work experience in a quasi-judicial or judicial process. He was eliminated from further consideration.

8 The qualified candidates from the selection processes were added to a pool for appointment, and a number of candidates were appointed to RPD member positions.

**9** On December 20, 2012, the complainant brought a complaint of abuse of authority to the Public Service Staffing Tribunal (PSST) under paragraph 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12 and 13 (PSEA).

**Issue**

Did the respondent abuse his authority by concluding that the complainant did not meet the essential qualification of recent work experience in a quasi-judicial or judicial process?

**Analysis**

**10** Section 77(1) of the PSEA provides that a person in the area of recourse may file a complaint with the Tribunal that he or she was not appointed or proposed for appointment because of an abuse of authority. As indicated in *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 0008, at paragraph 66, "...abuse of authority will always include improper conduct, but the degree to which the conduct is improper may determine whether or not it constitutes abuse of authority." The complainant has the burden to prove, on a balance of probabilities, that there was an abuse of authority.

**11** The complainant argues that his work experience was not assessed properly. He states that he has experience in rendering decisions in a quasi-judicial or judicial process but that his experience was not counted. The job opportunity advertisement contained the following statement under the heading "Essential qualifications":

EXPERIENCE:

FOR PM-06 MEMBER POSITIONS, APPLICANTS MUST MEET ONE (1) OF THE FOLLOWING EXPERIENCE QUALIFICATIONS\*:

- Recent\*\* experience in rendering decisions in a quasi-judicial or judicial process;

OR

- Recent\*\* experience in presenting cases before an administrative tribunal or court of law;

OR

- Recent\*\* experience in conducting research or investigations in a quasi-judicial or judicial or immigration (including refugee) context;

OR

- Recent\*\* experience in providing legal advice or mediation services in a quasi-judicial or judicial context

\* If a candidate meets more than one of the experience qualifications it may be considered an asset. Candidates must demonstrate how they meet each qualification in their application.

\*\* Recent is defined as experience obtained in the last five (5) years.

**12** More specifically, the complainant claims that the respondent committed an abuse of authority by failing to consider his experience as a benefits officer in a PM-02 position at Service Canada as work experience in a quasi-judicial or judicial process. He argues that he demonstrated that he had the required experience in his cover letter. In this letter, he described his work experience as follows:

[Translation]

Recent experience in rendering decisions in a quasi-judicial or judicial process: I have worked for nearly two years as a PM-02 (since August 2009), processing and payment officer, within Service Canada. My duties include making decisions regarding the eligibility of applications, in accordance with the *Employment Insurance Act*. All decisions are made in consideration of the Act and relevant case law.

Recent experience in conducting research or investigations in a quasi-judicial or judicial environment: I work...as a PM-02...processing and payment officer...I am responsible for conducting fact-finding with the parties concerned, doing the necessary research to verify information, and contacting external agencies as needed. All this is done to determine the entitlement of claimants in accordance with the *Employment Insurance Act*. I am then responsible for rendering decisions on these files.

Asset qualifications:

Experience in holding hearings or proceedings in a quasi-judicial or judicial process: In my current position as a PM-02, I have to follow procedures with regard to submitting and processing applications. I also have to decide on procedures followed by employment insurance clients in some cases.

...

**13** In addition, in his resumé, the complainant described his work experience as a benefits officer as follows:

[Translation]

2009–2011 Department of Human Resources/Service Canada (HRSDC)  
(full-time) PM-02, Benefits Officer

RESPONSIBILITIES:

- Process contentious employment insurance (EI) claims.
- Demonstrate tact and empathy toward claimants and employers.

- Fact-finding and records of conversations.
- Drafts records of decisions.
- Analyze files and render decisions in accordance with the *Employment Insurance Act*.
- Communicate and explain decisions; provide advice on attitudes to adopt or other alternatives. Respond to client inquiries.
- Lead team meetings and ensure follow-up for the learning program.

**14** During his testimony, the complainant explained that he has worked as a benefits officer at Service Canada since 2009 in the area of employment insurance. He explained that employment insurance (EI) provides temporary financial assistance to unemployed Canadians who have lost their job through no fault of their own, while they look for work or upgrade their skills. Employment insurance also provides assistance to other workers and includes different types of benefits, such as sickness benefits, compassionate care benefits and fishing benefits.

**15** The complainant indicated that regular benefits are provided to individuals who have lost their job through no fault of their own, for example, a shortage of work or seasonal work. He explained that an automated decision is made in the least complex cases and that benefits are calculated based on the claimant's number of hours worked. In other non-complex cases where, for example, the base calculation of a claim cannot be automated, a benefits officer intervenes; however, as explained by the complainant, these claims are not complex and can only result in one possible outcome, that is, the benefits being issued.

**16** The complainant explained that there are more complex employment insurance cases, however, where there is not a single possible outcome and where the benefits officer must make a decision regarding the payment of benefits. In this type of case, the benefits officer is responsible for obtaining all the required information from the claimant, the employer and, if necessary, individuals who were directly involved in or witness to the events. Once the information is gathered, the officer determines whether benefits will be approved.

**17** The complainant submitted into evidence a document entitled "National Policy on Fact-Finding, Documentation and Retention" dated May 2014 (hereinafter referred to as the national policy) which he uses for his job. He argues that this national policy proves

that some employment insurance benefits officers render decisions in a quasi-judicial process. In these cases, the benefits officers, he says, perform the same tasks as an RPD member at the PM-06 group and level.

**18** In particular, the complainant draws the Tribunal's attention to section 6.2 of the national policy under the heading "The Complexity of Decisions." This section states that decisions made within the employment insurance program fall in a continuum of complexity. The level of complexity determines the amount of fact-finding and the detail of rationale that is required. The various levels of decision are: (1) automated decisions; (2) first-level decisions; and (3) second-level decisions.

**19** According to the complainant, a benefits officer who renders a first-level decision makes a simple, non-complex decision. This is, according to him, an administrative decision which is not part of a quasi-judicial process. In particular, he emphasizes that the benefits officer rendering first-level decisions does not have the authority to deny benefits. As indicated previously, the base calculation of a claim that cannot be automated is an example of a first-level decision.

**20** The heart of the complainant's argument is that a benefits officer who renders a second-level decision is making a decision which requires the officer to apply judgment and discretion. At this level, he argues, the benefits officer has the authority to deny benefits. Thus, he submits, this is a decision that results from a quasi-judicial process.

**21** The national policy states that a second-level decision always requires a record of decision that includes a written rationale. Furthermore, a second-level decision is based on information or facts gathered using various fact-finding tools. The following excerpt is taken from the national policy:

...once the facts are gathered, the decision requires the interpretation of the EI Act [*Employment Insurance Act*], application of jurisprudence, and use of judgment and discretion, as the facts presented do not lead to a decision that is readily apparent, and often requires the examination of extenuating or mitigating circumstances. The decision relies on a complete and clear understanding of the situation and an analysis of the facts presented in relation to applicable legislation, policies and jurisprudence.

**22** The complainant states that in assessing the candidates, the respondent used a definition of "quasi-judicial process" that is based, in part, on the following criteria:

(1) evidence is taken; (2) arguments are made; and (3) there is a decision-maker who hears and decides the matter. He argues that as a benefits officer rendering second-level decisions, he meets these criteria since he “receives evidence,” “hears arguments” and “decides the matter.”

**23** He summarizes the decision-making steps in his job as follows:

*The benefits officer rendering a second-level decision “receives evidence”*

**24** The complainant explained that, before making a decision, the benefits officer must ask for and obtain all the necessary information from the parties. The complainant states that the communications that the claimant and the employer have with the benefits officer are similar to the testimony given before the Tribunal. He argues that this testimony, as well as the documents that the benefits officer gathers in support of his or her decision, is evidence before the benefits officer. The complainant also notes that the benefits officer assesses the credibility of witnesses, the same as the Tribunal. In addition, he states that the benefits officer has reasonable latitude in proceedings, as is the case for the Tribunal.

**25** On cross-examination, the complainant acknowledged that he does not hold hearings, does not swear in witnesses and does not hear testimony directly but that he instead gathers the facts required for his decision from telephone conversations that he has with the parties. He states that this is, in fact, a much more efficient way of doing things than through testimony before a tribunal.

**26** He also acknowledges that the parties he deals with, that is, the claimant, the employer and other individuals if necessary, are not cross-examined by the opposing party. He states that it is he, in fact, who cross-examines these people, one at a time, by telephone. With regard to the documentation that he puts on file, he acknowledges that this documentation is not shared with the parties and that the parties do not have the opportunity to comment on the relevance of the information he puts on file. He adds, however, that if he believes information is not relevant, he simply shreds it.

*The benefits officer rendering a second-level decision “hears arguments”*

**27** The complainant explained that although the protocol for courts of law does not apply and the parties do not appear before the benefits officer to argue their case, the benefits officer still hears the parties' arguments. In particular, he takes into consideration their contradictory positions as well as the provisions of the *Employment Insurance Act* and relevant case law. The case law, he explains, includes decisions at various levels, including the Supreme Court of Canada.

**28** In summary, the complainant claims that the procedure followed by benefits officers is more flexible and efficient than that followed by the courts, since it is not encumbered by the right to representation, which weighs down the process. He adds that the fact that benefits officers do not conduct hearings is irrelevant since the Social Security Tribunal (SST), which is a quasi-judicial tribunal, also decides certain appeals without holding a hearing. This administrative tribunal is tasked with providing a quasi-judicial appeal process for appeals under the *Employment Insurance Act*.

**29** Lastly, the complainant confirms that each party involved in the file is heard and has a right to respond if there is contradiction in the information, since he calls back individuals himself and re-questions them if there is a discrepancy in the file.

*The benefits officer rendering a second-level decision "decides the matter"*

**30** The complainant states that once the benefits officer considers the evidence, the Act and the case law, he or she makes an impartial decision which may have serious consequences for the claimant. The benefits officer then prepares a record of decision that includes a written rationale for his or her decision. This record, according to him, is equivalent to a judgment.

**31** The complainant also states that once the benefits officer's decision is shared with the claimant, the claimant, if he or she disagrees with the decision concerning the benefits claim, may file an appeal with the SST. The complainant argues that the decision rendered by the benefits officer rendering a second-level decision is in fact the first level of decision for employment insurance. Subsequently, there are a number of appeal levels, the last of which is the Supreme Court of Canada. As such, he notes that the evidence gathered by the benefits officer will be re-considered at every level,



including the Supreme Court, if necessary. According to him, this demonstrates that the benefits officer's second-level decision is indeed a decision rendered in a quasi-judicial process.

**32** The complainant states that after he learned that he had been eliminated from the appointment process, he did not request an informal discussion but instead requested information concerning the assessment process. The respondent therefore sent him a definition of "quasi-judicial process" to explain the methodology applied by the assessment board. It was an excerpt from the summary of a decision by the Supreme Court of Canada in *2747-3174 Québec Inc. v. Québec (Régie des permis d'alcool)*, [1996] 3 S.C.R. 919. The excerpt reads as follows:

The word "tribunal" used in that section is defined in s. 56(1) of the Charter as including "any person or agency exercising quasi-judicial functions." Section 56(1) applies to every agency that exercises quasi-judicial functions, even incidentally. Whether or not s. 23 is applicable therefore depends on the characterization of the functions of the agency that are in question. If they are quasi-judicial, the agency is a "tribunal" and must in exercising them comply with the requirements of impartiality and independence. In this case, s. 23 is applicable to the Régie because a decision to cancel a permit on account of disturbance of public tranquility is the result of a quasi-judicial process. The permit holder's rights are clearly affected by the cancellation. While the issuance of a permit may in certain respects be regarded as a privilege, its cancellation has a significant impact on the livelihood of the permit holder, who loses the right to operate his or her business. It is also significant that the process leading to the cancellation of a permit on account of disturbance of public tranquility is similar to that in a court. The Régie may make its decision only after a hearing in the course of which witnesses may be heard, exhibits filed and submission made.

[Emphasis in original]

**33** The complainant argues, based on this excerpt, that benefits officers exercise quasi-judicial functions since the rights of the claimant are affected by the benefit officer's decision on whether or not to grant benefits. Moreover, he explains, the decision impacts the claimant's livelihood and may have serious consequences for that person. He gives the example of a claimant who is denied 40 weeks of benefits at \$500 per week. The amount of money in this example would total \$20,000.

**34** The complainant acknowledged during the hearing that there is a distinction between an administrative decision and a decision rendered in a quasi-judicial process. He describes an administrative decision as the decision of a benefits officer making a first-level decision or, for example, the decision of a public servant who decides to issue

a licence plate in exchange for the licence payment. He argues that a benefits officer rendering a second-level decision is not making an administrative decision since he or she has to decide on whether or not to grant benefits. According to him, this officer is therefore rendering a quasi-judicial decision.

**35** In support of his argument that a benefits officer rendering a second-level decision has to “decide on” the claimant’s entitlement to benefits, the complainant refers the Tribunal to the definition of “decision-maker” in the national policy. This definition is as follows: “For the purpose of this policy this term refers to any authorized employee who makes a decision on a claim for benefits.”

**36** During the hearing, the complainant drew the Tribunal’s attention to other sections of the national policy which, in his opinion, support his position. These sections state, for example, that the decision must be well-documented (section 4.1), that decisions must be made based on a complete set of facts, free of any bias (section 4.2), that some decisions of the Canada Employment Insurance Commission are made under a discretionary authority which belongs solely to the Commission, and that the SST cannot cancel or modify decisions that were made by the Commission, using its discretionary authority, unless the Commission has failed to demonstrate that it exercised its discretionary authority in a judicious manner (section 6.4).

**37** Lastly, the complainant submitted into evidence the May 15, 2012, edition of a magazine with the cover title “Le français, langue commune” [French, a common language]. In an article from this magazine written by Pierre Dubuc, Mr. Dubuc talks about the employment insurance reform and states that proceedings are overly judicialized [“judiciarisation extrême des procédures”]. The complainant argues that this statement indicates that employment insurance decisions are increasingly judicial and, as such, rendered in a quasi-judicial process.

**38** For all these reasons, the complainant is requesting that the Tribunal reassess his application and conclude that he meets the essential qualification relating to recent experience in rendering decisions in a quasi-judicial or judicial process.

**39** During the hearing, the Tribunal explained that its role is not to reassess candidates (see paragraph 30(2)(a) and subsection 15(1) of the PSEA). Rather, its role is to determine whether the evidence shows, on a balance of probabilities, that there was an abuse of authority in the assessment made by the respondent. See, for example, *Canada (Attorney General) v. Lahlali*, 2012 FC 601, paras. 42 to 46.

**40** The Tribunal has confirmed in numerous decisions that it is the candidates' responsibility to clearly demonstrate on their job applications that they meet all the essential qualifications. See, for example, *Purchase v. President of the Atlantic Canada Opportunities Agency*, 2011 PSST 0014.

**41** The assessment board was tasked with assessing the information submitted by the complainant in his cover letter and his resumé in order to determine whether it met one of the work experience qualifications set out in the job opportunity advertisement. The assessment board concluded that the experience described was not sufficient to meet the required experience since it did not demonstrate that the complainant carries out his work in a quasi-judicial or judicial process. According to the board, the information submitted by the complainant in his job application instead demonstrates that the nature of the work he does is administrative, not quasi-judicial.

**42** Ross Pattee, Deputy Chairperson, RPD, IRB, and Susan Bibeau, Deputy Chairperson, Immigration Division, IRB, both explained how and why the board arrived at the conclusion that the nature of the work done by complainant is administrative rather than quasi-judicial or judicial.

**43** Mr. Pattee was the delegated manager for this staffing process. The RPD is the division of the IRB that hears claims for refugee protection made in Canada and decides whether to allow them. Amendments to the *Immigration and Refugee Protection Act* (IRPA) came into force on December 15, 2012. These changes have had a significant impact on the RPD and how it processes claims for refugee protection. Before the coming into force of this Act, Mr. Pattee was responsible for setting up the new RPD and hiring a large number of members and coordinating members. The job opportunity advertisement prepared for the internal advertised appointment process

indicated that there were 105 member positions and nine coordinating member positions to be filled. Mr. Pattee explained that he received 1,122 job applications through the internal advertised appointment process. He also received numerous job applications through the external advertised appointment process. In total, he explained, he received nearly 2,000 job applications.

**44** The job opportunity advertisement describes certain functions of an RPD member. Among other things, the member is an independent and impartial decision-maker who must decide whether refugee protection claims will be allowed or rejected based on the provisions of the IRPA and the Regulations. The expectation is that 80% of decisions will be rendered from the bench. The job opportunity advertisement also states that members must decide pre-removal risk assessment applications.

**45** Mr. Pattee explained that, given that members would have to carry out these functions, it was essential that the job opportunity advertisement require candidates to demonstrate that they had work experience in a quasi-judicial or judicial context. This is why Mr. Pattee made sure that the job opportunity announcement specified that candidates had to meet one of the four work experience qualifications in a quasi-judicial or judicial context or within an administrative tribunal or court of law. In particular, the new RPD had to start hearing cases within 30 days following the coming into force of the provisions of the IRPA. Mr. Pattee therefore looked for candidates who would be able to carry out these functions as soon as they took up the position.

**46** Mr. Pattee also ensured that the statement of merit criteria (SMC) stated that members had to have skills such as the ability to control a hearing, make decisions and apply analytic judgment. Mr. Pattee added that the candidates also had to be able to swear in witnesses, hear from witnesses, respect the principles of procedural fairness, hear arguments, and make the majority of decisions from the bench.

**47** Mr. Pattee explained that he recruited 30 managers from the IRB to form screening boards that reviewed the 2,000 applications received based on the screening criteria set out in the job opportunity advertisements. The members of the boards were

given specific training prior to screening candidates. To assist them in their decision-making, they were given a reference document explaining how to assess applications and what to do if they were unsure.

**48** Mr. Pattee also explained that to ensure the greatest consistency possible in screening decisions, an annex was added to this reference document. This annex lists positions and federal agencies and indicates whether the duties performed within these agencies are part of a quasi-judicial or judicial process. In particular, it specifically indicates that the experience acquired in the position of employment insurance officer does not meet the requirements for relevant experience. Below is the relevant excerpt from this annex:

HRSDC [now Employment and Social Development Canada] – Employment Insurance Officers (i.e. PM-01 or PM-02)	Decisions these individual make are considered administrative in nature. Therefore, decisions are not made in a quasi-judicial or judicial process.  <b>Screening decision:</b> This specific experience <b>does not</b> meet
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**49** Mr. Pattee explained that this annex and the reference document were developed based on criteria established by the Supreme Court in *2747-3174 Québec Inc.* which indicate that a process is “quasi-judicial” if it includes the following four components: (1) evidence is taken (2) arguments are made; (3) there is a decision-maker who hears and decides the matter; and (4) the decision-maker complies with the requirements of impartiality and independence. Mr. Pattee explained that the reference document also contained a list of twelve quasi-judicial or administrative tribunals (federal and provincial), including, among others, the Canada Industrial Relations Board, the Canadian Human Rights Tribunal and provincial workers’ compensation boards.

**50** Mr. Pattee stated that the 30 managers met in special rooms and assessed all the candidates in a single day, on April 29, 2011. The complainant did not pass the screening process because his job application did not demonstrate that he had work experience in a quasi-judicial or judicial process.

**51** Mr. Pattee is not the person who assessed the complainant's application, but he stated that it is his opinion that the information provided by the complainant in his job application demonstrated that he renders decisions that are administrative rather than quasi-judicial in nature. According to the complainant's job application, explained Mr. Pattee, he does not conduct hearings, is not part of a tribunal and does not have independence from government.

**52** Ms. Bibeau is the person who assessed the complainant's application and who found that he did not meet the experience qualification. The form completed by Ms. Bibeau was submitted into evidence. This form indicates that the complainant met the education qualification, but not the experience qualification. A handwritten note by Ms. Bibeau reads [translation] "adm. decisions not quasi-judicial."

**53** Ms. Bibeau explained that she screened out the complainant's application based on the information that he provided in his cover letter and his resumé. She also took into consideration the reference document and annex she had available to her. In particular, she reviewed the content of his job application (cover letter and resumé) to determine the experience he had acquired in the past. Taking into consideration each of the duties he performed, she concluded that it was not enough to meet the qualification for work experience in a quasi-judicial or judicial process.

**54** According to the complainant, the respondent committed an abuse of authority by failing to consider his experience as a benefits officer in a PM-02 position at Service Canada as work experience in a quasi-judicial or judicial process. In addition, he strongly disagrees with the conclusion that he renders decisions of an administrative nature.

**55** The respondent argues that it did not commit an abuse of authority since the information contained in the complainant's job application did not support that he takes evidence, hears arguments and decides matters in the same way as a person or agency exercising quasi-judicial functions. Moreover, his job application did not demonstrate that he has, in exercising his duties, a measure of independence from

government. The respondent made the following general submissions in support of its position in response to the complainant's cross-examination.

**56** First, in a quasi-judicial or judicial process, the rules of natural justice require the parties to be informed of documents in the possession of the opposing party which could hurt their case. In addition, rules of evidence apply, and generally the party that filed the application presents its evidence first by calling witnesses and submitting relevant documents. It is then the other party's turn to present its evidence, also through witnesses and documents. Afterward, the applicant may add to the evidence that he or she already presented in order to respond to new evidence from the other party. However, according to the complainant's job application, he does not apply these rules of natural justice or rules of evidence in his files. His job application indicates that he gathers information directly from the parties before rendering his decisions on entitlement to employment insurance benefits. His job application therefore did not demonstrate that he receives "evidence" in a quasi-judicial or judicial context.

**57** Second, in a quasi-judicial or judicial process, the parties have the opportunity to make their arguments, after having presented all their evidence, in order to demonstrate how their position is valid. Each argument must be supported by evidence, that is, what the witnesses said at the hearing, the documents submitted to the Tribunal or the adjudicator, and the parts of the law and prior decisions which also support the case. In his job application, the complainant states that he makes reports of the conversations he has with the parties and that he verifies the information and contacts external agencies as necessary. His job application does not, however, demonstrate that the parties with whom he deals present arguments similar to the arguments presented before a person or agency exercising quasi-judicial functions. His job application does not therefore demonstrate that he hears "arguments" in a quasi-judicial or judicial context.

**58** Third, in a quasi-judicial or judicial process, there is a decision-maker who hears and decides the matter after receiving the evidence and hearing the arguments. For employment insurance, the SST is the agency tasked with providing a quasi-judicial appeal process for appeals filed under the *Employment Insurance Act* by individuals

who have been denied employment insurance benefits. This is the first level of appeal for decisions rendered by benefits officers. The complainant's job application states that he makes decisions on applications for entitlement to benefits, in accordance with the *Employment Insurance Act* and relevant case law. His job application also states that he drafts records of decisions, communicates his decisions to his clients, and responds to their inquiries. His job application does not demonstrate, however, that he decides on entitlement to benefits in a quasi-judicial or judicial context. This is why the respondent determined that his job application did not demonstrate that he "decides" matters in a quasi-judicial or judicial process.

**59** Lastly, the rules of natural justice require a person or agency exercising quasi-judicial functions to have a measure of independence, which varies of course depending on the type of agency, but is based on the characteristics of judicial independence. In this instance, the complainant's job application does not in any way indicate that he worked in a context where he had such "independence." His job application therefore did not demonstrate that he worked in a quasi-judicial or judicial context that includes this component of "independence."

#### *Tribunal's findings*

**60** The complainant does not dispute the definition of "quasi-judicial" adopted by the respondent or the assessment criteria used to assess his experience; however, he submits that he was not properly assessed according to these criteria because he renders decisions that he describes as quasi-judicial and not administrative.

**61** The field of administrative law is constantly evolving, and changes have taken place over the years in this area. In particular, the difference between quasi-judicial and administrative decisions has been reduced somewhat since the case law recognized the duty to act fairly, even in administrative decisions.

**62** Mr. Pattee and the assessment boards, in this instance, considered a process to be quasi-judicial or judicial if it includes the following four components: (1) evidence is taken; (2) arguments are made; (3) there is a decision-maker who hears and decides the matter; and (4) the decision-maker complies with the requirements of impartiality



and independence. The Tribunal finds that it was reasonable for the respondent to use these criteria as the basis for the assessment tools, in this case the reference document and annex, which were used to determine whether candidates had the required work experience. The criteria used to decide whether a process is “quasi-judicial” also coincided with the job requirements of an RPD member.

**63** The Tribunal notes that, in his testimony, the complainant provided a comprehensive and accurate picture of his job as an employment insurance benefits officer. It was his responsibility, however, to clearly demonstrate in his job application that he met all the essential qualifications set out in the job opportunity advertisement. Ms. Bibeau, as a matter of fact, assessed him based on the information contained in his job application. She took into consideration each of the duties he described in his job application, as well as the assessment tools, and concluded that these duties came closer, in the broad spectrum that ranges from administrative functions to quasi-judicial or judicial functions, to administrative functions. This is why she concluded that the complainant renders administrative rather than quasi-judicial decisions.

**64** The Tribunal finds that there is no evidence that the assessment tools used by Ms. Bibeau were inadequate or that she applied these tools incorrectly.

**65** Based on the above, the Tribunal concludes that although the complainant performs very important work as a benefits officer rendering second-level decisions and that his credibility is not in question, he did not demonstrate that the respondent abused his authority by screening out his application on the ground that he does not meet the essential qualification of recent work experience in a quasi-judicial or judicial process.

## **Decision**

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

Nathalie Daigle  
Member

**Parties of record**

<b>Tribunal file</b>	2012-1262
<b>Style of cause</b>	<i>Hugo Béland-Falardeau and the Chairperson of the Immigration and Refugee Board</i>
<b>Hearing</b>	July 3 and 4, 2014, Montreal, QC
<b>Dated</b>	October 31, 2014
<b>APPEARANCES:</b>	
<b>For the complainant</b>	Hugo Béland-Falardeau
<b>For the respondent</b>	Magdalena Persoiu
<b>For the Public Service Commission</b>	Louise Bard (written submissions)