



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**File:** 2013-0108  
**Issued at:** Ottawa, March 5, 2014

**CHRISTINE BIZIMANA**

Complainant

AND

**THE DEPUTY MINISTER OF  
PUBLIC WORKS AND GOVERNMENT SERVICES**

Respondent

AND

**OTHER PARTIES**

**Matter** Complaint of abuse of authority pursuant to section 77(1)(a) of the *Public Service Employment Act*

**Decision** The complaint is dismissed

**Decision rendered by** Lyette Babin-MacKay, Member

**Language of Decision** English

**Indexed** *Bizimana v. Deputy Minister of Public Works and Government Services*

**Neutral Citation** 2014 PSST 3

# Reasons for Decision

## Introduction

**1** Christine Bizimana, the complainant, is an Occupancy Instrument Officer (AS-02) with Public Works and Government Services Canada (PWGSC), Real Property Branch (the Branch), National Capital Area (NCA) Portfolio Management, in Ottawa, Ontario. She was an unsuccessful candidate in an internal advertised appointment process held to staff up to ten Client Accommodation Services Advisor (CASA) positions, at the AS-04 group and level, in the Branch.

**2** The complainant claims that she was not appointed by reason of abuse of authority in the assessment of her qualifications. More specifically, she alleges there were inconsistencies in the marking and that the use of multiple boards did not allow a consistent assessment of the candidates. Finally, she contends that there is a reasonable apprehension that some or all of the screening and assessment board members were biased against her, and that it was predetermined that she would not be found qualified in this process.

**3** The respondent denies any abuse of authority in the appointment process. It maintains that the complainant was properly assessed by impartial board members who concluded, by consensus, that she did not demonstrate that she met all the essential qualifications.

**4** The Public Service Commission (the Commission or PSC) did not attend the hearing, but made written submissions. It did not take a position on the merits of this complaint.

**5** For the reasons that follow, the Public Service Staffing Tribunal (the Tribunal) finds nothing improper in the assessment of the essential qualifications and in the use of multiple panels to conduct the assessment. The complainant has also not demonstrated that board members were not competent to conduct the assessment. Lastly, the complainant did not establish a reasonable apprehension that board members, either individually or collectively, would be biased against her in the appointment process.

## **Background**

**6** The complainant joined the federal public service in 2010. On February 6, 2012, she accepted the indeterminate Occupancy Instrument (OI) Officer position that she continues to occupy. She was one of four OI Officers reporting to an OI Team Leader, a position then occupied on an acting basis by Caroline Lacroix.

**7** On October 30, 2012, the respondent posted a *Job Opportunity Advertisement* (JOA) on *Publiservice* to staff the CASA positions. The complainant was one of 85 applicants.

**8** The essential qualifications listed on the JOA and in the *Statement of Merit Criteria* (SMC) included:

Experience in providing real property advice and services (E-1)

Knowledge of PWGSC and Real Property Branch (K-1)

Ability to understand client real property needs and recommend solutions (A-2)

Judgement (PS-2)

Flexibility (PS-4)

Effective interpersonal relations (PS-6).

**9** The candidate assessment process involved a number of steps: screening of the applications, a written knowledge exam, an interview to assess the abilities and personal suitability qualifications, and a verification of references to assess the personal suitability qualification dependability.

**10** The screening board was comprised of Christine Mercer, Director, NCA Accommodations Management, and Joanne Cyr-Lancaster, then A/Regional Lead (AS-07), NCA Accommodations Management Centre of Expertise. Ms. Cyr-Lancaster was also the manager in charge of this appointment process and prepared the assessment tools. Crystal Amyotte, Human Resources (HR) Advisor, assisted in the process.

**11** On November 15, 2012, the complainant was informed that she had not demonstrated that she met the screening criterion experience in providing real property advice and services (E-1).

**12** During her informal discussion with Ms. Mercer and Ms. Cyr-Lancaster, the complainant expressed her disagreement with the screening decision, called them partial and unfair, and indicated that she would complain to the Tribunal.

**13** On November 27, 2012, the screening board gave every screened-out candidate the opportunity to provide additional information to demonstrate the screening criteria that he or she had not met. Ms. Cyr-Lancaster and Ms. Mercer explained that this was done after they screened back in a candidate on the basis of information that he provided at his informal discussion but that he had not included in his application. Ms. Amyotte had counselled them that a similar opportunity had to be provided to the other candidates. This was done.

**14** The complainant and several other candidates availed themselves of this opportunity. According to Ms. Mercer, the revised covering letter that the complainant submitted contained much more information and she was screened back into the process. Ms. Mercer noted that the complainant was the only candidate from the OI Officer community to successfully be screened back in. In all, 52 candidates were deemed to meet all the screening criteria.

**15** On December 11, 2012, the complainant successfully completed the written test and was interviewed by a panel that included Josette Louli-Matheson and Carol Tait, both Client Accommodation Services (CAS) Managers/Team Leaders, and Karen Knight-Stanley, a CASA (AS-04), who was a last-minute replacement for CAS Manager/Team Leader Anne LeChasseur, who was unexpectedly unavailable on the day of the complainant's interview. Ms. Knight-Stanley did not take part in the assessment of any other candidate. Ms. Louli-Matheson was the lead board member for the complainant's interview.

**16** The complainant was not successful at the interview. On January 18, 2013, she was informed that her candidacy would not be given further consideration because she had not met the following merit criteria:

Ability to understand client real property needs and recommend solutions (A-2);

Flexibility (PS-4); and

Effective interpersonal relations (PS-6).

**17** On March 6, 2013, the respondent issued a *Notification of Appointment or Proposal of Appointment* for the appointment of the five candidates who were found qualified.

**18** On March 14, 2013, the complainant filed a complaint to the Tribunal pursuant to s. 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the PSEA).

### **Preliminary matter**

**19** In her complaint, the complainant indicated that she had also filed a grievance alleging discrimination, harassment and intimidation against the “same people in charge of the competition,” and that she would be filing a complaint to the Canadian Human Rights Commission in relation to that grievance. At the prehearing conference, the complainant confirmed that she is not pursuing an allegation of discrimination on a prohibited ground under the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, in relation to this complaint to the Tribunal.

### **Issues**

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

(i) Did the respondent abuse its authority by using a board composed of multiple panels, and by using board members who were not competent to conduct the assessment?

(ii) Did the respondent abuse its authority by improperly assessing the essential qualifications?

(iii) Did the respondent demonstrate bias against the complainant in the appointment process?

### **Analysis**

**21** Section 77(1) of the PSEA provides that a person in the area of recourse may make a complaint to the Tribunal that he or she was not appointed or proposed for appointment by reason of an abuse of authority by the PSC or the deputy head in the exercise of their respective authority under s. 30(2) of the PSEA.

**22** Abuse of authority is not defined in the PSEA, but s. 2(4) states that, for greater certainty, “a reference in this Act to abuse of authority shall be construed as including bad faith and personal favouritism.”

**23** According to s. 30(2) of the PSEA, an appointment is made on the basis of merit when 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.

**24** A complainant bears the burden of proving abuse of authority, on a balance of probabilities (see *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 0008 and *Glasgow v. Deputy Minister of Public Works and Government Services Canada*, 2008 PSST 0007).

**Issue I: Did the respondent abuse its authority by using a board composed of multiple panels, and by using board members who were not competent to conduct the assessment?**

**25** The complainant asserts that to ensure consistency, all the candidates should have been assessed by the same board members. She also submits that the selection of board members was not done in a fair and consistent manner and that some board members did not have proper knowledge of the subject being assessed. Finally, she contends that board members had not been trained to conduct interviews.

**26** As the Tribunal stated in *Visca v. Deputy Minister of Justice*, 2007 PSST 24 at para. 60, the use of multiple panels comes within the broad discretion given to managers under the PSEA.

**27** Ms. Cyr-Lancaster explained that because of the large number of candidates, the written tests and the interviews were conducted by four separate panels, each normally comprised of three CAS Managers at the AS-06 group and level, but which could include board members at the AS-04 or AS-05 group and level.

**28** Ms. Cyr-Lancaster tasked Ms. Knight-Stanley with scheduling the various panels. Ms. Cyr-Lancaster attempted to be a member of most panels, subject to her availability. However, since the complainant had questioned her impartiality during the November 2012 informal discussion, Ms. Cyr-Lancaster recused herself from the panel that interviewed the complainant.

**29** Ms. Cyr-Lancaster testified that all the board members were experienced and familiar with CASA work. Six appointment processes had been held in the previous years so everyone who conducted assessments in this process, including Ms. Knight-Stanley, knew what to do.

**30** Ms. Cyr-Lancaster was questioned as to how the panels could achieve consistency, common sense and good judgement when different board members sat on the four panels. She testified that this is why the rating guide referred to “other acceptable answers.” The board members, all experienced managers, did not expect that the answers would correspond exactly to the expected answer contained in the rating guide.

**31** When there are a large number of candidates, it is not always possible to have all assessments conducted by the same board members. While there is no requirement that the same board members assess every candidate, steps should nevertheless be taken to limit the variables in the assessment and to ensure that consistency is maintained. The Tribunal is satisfied that proper steps were taken by the respondent in this case. The assessments were conducted, for the most part, by experienced CAS Managers/Team Leaders who had been involved in other processes in the past and

who had received instructions for this process. Ms. Cyr-Lancaster, who is also very experienced in the field of Client Accommodation Services, participated in most of the assessments conducted by the four panels. She properly recused herself from the panel that assessed the complainant.

**32** It was incumbent on the complainant to adduce evidence demonstrating that the use of multiple panels did not allow a fair and consistent assessment of the candidates. The complainant has not done so.

**33** The Tribunal concludes that the complainant has not demonstrated that the use of an assessment board composed of multiple panels was an abuse of authority.

**34** The complainant also alleges that all board members had not been trained or briefed for their role, and did not have proper knowledge of the subject being assessed. She makes this last assertion because Ms. Knight-Stanley is not a CAS Manager/Team Leader at the AS-06 group and level. She is a CASA at the AS-04 group and level.

**35** Ms. Cyr-Lancaster testified that board members had to be at the AS-04, AS-05 or AS-06 group and level—all were knowledgeable employees of the Branch and several processes had recently been held in the Branch. The appointment process had also been discussed at team meetings. Ms. Mercer testified that the board members received instruction sheets and documentation from HR concerning the appointment process. The Tribunal is satisfied that board members were sufficiently briefed prior to conducting the assessments.

**36** As to Ms. Knight-Stanley, she only served on the complainant's panel, which included two CAS Managers/Team Leaders, Ms. Louli-Matheson and Ms. Tait. The evidence is that the assessment was done in consensus. The complainant has not demonstrated that the board members who assessed her were not competent to do so.

**37** The Tribunal concludes that the complainant has not proven that the respondent abused its authority by using multiple panels, or that the board members were not competent to conduct the assessments.



**Issue II: Did the respondent abuse its authority by improperly assessing the essential qualifications?**

**38** The complainant contends that there were inconsistencies in the marking of the written test and of the interview, and that some candidates received more generous marks than she did, for responses that were less complete than hers. She also submits that there was no indication of a clear rating system for the answers, and that board members were expected to use their opinion to determine what candidates had covered in their answers and what score was to be awarded.

**39** Finally, she alleges that the board members did not record all her interview responses, did not write them down as she said them, and that they all wrote down identical things, which is an indication of collusion to ensure she would not pass the qualifications A-2, PS-4 and PS-6.

**40** The written test included seven questions used to assess the three knowledge qualifications and an exercise to assess the ability to communicate in writing (A-5). In the interview, one question assessed each of the abilities qualifications A-1 to A-4. The ability to communicate effectively orally (A-6) was assessed throughout the interview.

**41** The pass mark was 60% for each of the knowledge and abilities qualifications, and 50% for each personal suitability qualification.

**42** The scoring scheme and the expected answers were provided in a *Rating Guide*. Except for Questions 1 and 2 of the written test, where the assessment of the answers also depended on the actual number of elements of the answer provided, candidates' answers to each question were rated globally on a scale ranging from 0 to 10 points. A mark of 5 or 6 points denoted a good answer, where "some of the major and minor issues" had been addressed, and "some deficiencies exist[ed] in the areas assessed, but none in an area of major concern".

**43** Board members noted the candidates' answers in a space provided in the *Rating Guide*. According to Ms. Louli-Matheson, board members did their best to take verbatim notes and to transcribe the answers as given. Every board member took

individual notes, which were compared, discussed and assessed collectively afterwards. The board members reached consensus on the scores. The completed rating documents were then sent to HR.

a) *The assessment of the written test*

**44** In Question 2, candidates were asked to name and briefly describe three services offered by PWGSC. According to the board members' notes, the complainant and Candidate 2 both named and described three services in their answer.

**45** The complainant asked Ms. Cyr-Lancaster why Candidate 2 received a perfect score of 10/10 for Question 2. Ms. Cyr-Lancaster replied that this candidate's answer was a synopsis of the expected answer. The board did not expect that a candidate's answer would correspond to the expected answer word for word. The complainant also received 10/10 for her answer to this question.

**46** The complainant did not present any other evidence in relation to the written test. During arguments, she asked the Tribunal to conduct its own comparison of the answers. The Tribunal's role is not to reassess candidates' answers. The Tribunal will not conduct its own assessment; it will determine whether the evidence demonstrates, on a balance of probabilities, that there was an abuse of authority in the assessments that were done (see, for example, *Zhao v. Deputy Minister of Citizenship and Immigration Canada*, 2008 PSST 0030 at para. 33).

**47** Based on the evidence presented at the hearing, the Tribunal concludes that the complainant has not demonstrated that the board was inconsistent in its assessment of the written test.

b) *The assessment of the interview*

**48** The complainant obtained pass marks for all interview questions, except Questions 9, 16 and 18.

*Question 9 - Ability to understand client real property needs and recommend solutions.*

**49** In this question, candidates were asked to explain how they would deal with a client who was excited about Workplace 2.0 standards (a new government standard for the setup of office space), and was asking to optimize the workspace it now occupies.

**50** The complainant stated that she was sure that she had covered the expected answer for Question 9 as she had studied this subject when she prepared for this process.

**51** The complainant questioned Ms. Louli-Matheson about the scoring for Question 9. Ms. Louli-Matheson had noted 14 different elements of her answer, Ms. Knight-Stanley had recorded 10 elements, and Ms. Tait had heard 16 elements, yet the score given was only 5/10.

**52** Ms. Louli-Matheson explained that for this question, a candidate was expected to review and analyze the situation presented. The complainant did show that she understood Workplace 2.0; she addressed the length of the lease and of the occupancy at that location, and she talked about clear lines of communication (the second and the eighth elements of the expected answer). However, the complainant did not address most of the other elements and she only “touched on” some others. The complainant did not address budget planning, did not come up with options, and did not define or speak of roles and responsibilities. These were all critical areas of information that must be gathered. This is why the complainant received 5/10 points, which was not a pass mark.

**53** Ms. Louli-Matheson also explained that points were not assigned for each element of the expected answer. Rather, the board members came to a consensus on the score based on the *Rating Guide*.

**54** Ms. Tait reviewed the complainant’s answer and confirmed that critical information was missing. She was sure that the board had captured all the complainant’s answers. In her testimony, Ms. Knight-Stanley also indicated that the complainant did not do anything to identify risks, which is a major part of the job.

*Question 16 – Flexibility*

**55** For flexibility, candidates were required to indicate the steps that they would take to manage a very demanding and overwhelming amount of work with tight timeframes.

**56** The complainant testified that what the board wrote was her response to this question does not reflect what she answered for this question. For example, she had not said “prioritize my work,” as all the board members had noted. Rather, she was sure that she had answered that she would ask if her deadlines could be pushed back.

**57** Ms. Louli-Matheson reviewed the complainant’s answer to Question 16. She explained that the complainant had not indicated that she would develop options and recommendations, provide an outline for options and make recommendations based on sound judgement and understanding of the situation, or discuss timelines, costs and risks, which are all elements of the expected answer in the *Rating Guide*. The complainant minimally addressed the criteria of seeking advice from her director on urgent priorities, and providing or suggesting next steps, recommendations that are realistic, reasonable and affordable. Ms. Louli-Matheson confirmed that, overall, this was a weak answer, and the board gave her 3/10.

**58** Ms. Tait gave similar reasons for why the complainant’s answer to this question had not been sufficient.

*Question 18 - Effective Interpersonal Skills*

**59** In Question 18, candidates were asked how they would address a situation where another team member accuses them of something they know nothing about. The candidates’ answers were assessed against expected performance indicators.

**60** Ms. Louli-Matheson testified that the complainant’s answer did indicate that she was dealing at a general level of politeness and courtesy in greetings, farewells and introductions. The answer touched on treating others with fairness and equity of approach and with consistency. However, it did not address any of the five other elements of the expected answer. The board considered that this was a “poor” answer. The board gave her 2/10.

*Question 14 – Assessment of Judgement for Candidate Number 1*

**61** The complainant also questioned Ms. Louli-Matheson about the assessment of Candidate 1 and her own assessment for Question 14. The complainant was successful here, with a mark of 5/10, but Candidate 1 obtained 8/10 for what the complainant considers a less complete answer.

**62** Ms. Louli-Matheson described Candidate 1's answer and stated that this candidate had covered all but one of the required elements. She agreed that the complainant's answer did seem very similar to the one provided by Candidate 1. Ms. Louli-Matheson stated that she could not recall her thoughts at the time—this had been done 15 months before and, in preparing for the hearing, she had concentrated on reviewing the questions that the complainant had not passed. The complainant received a pass mark of 5/10 for this question.

*Candidate 3*

**63** Finally, the complainant questioned Ms. Cyr-Lancaster about the assessment of Candidate 3 for Question 9, for which this candidate was awarded 9/10, and for Question 16, for which this candidate received 5/10. Ms. Cyr-Lancaster replied that this candidate had covered a lot of the expected answer in Question 9 and the board decided by consensus that the response warranted 9/10. As for Question 16, this candidate covered some of the elements of the expected answer but not others, and the board believed that the answer deserved a pass mark.

**64** The complainant provided no evidence to challenge Ms. Cyr-Lancaster's testimony concerning the marking of Candidate 3.

*Conclusions regarding the complainant's assessment*

**65** As the Tribunal noted in *Broughton v. Deputy Minister of Public Works and Government Services*, 2007 PSST 0020 at para. 54, the Tribunal's role is to examine the process used by the assessment board and determine if it was tainted by an abuse of authority. In reviewing a complaint that qualifications have not been properly assessed, the Tribunal must not substitute its assessment of candidates' qualifications

for the manager's or the board's assessment (see *Edwards v. Deputy Minister of Indian and Northern Affairs Canada*, 2011 PSST 0010 at para. 34).

**66** The complainant argues that some of her answers to the interview questions were dismissed, disregarded or minimized and that, as a result, she received a failing mark on questions that other candidates passed with less complete answers.

**67** The Tribunal has carefully reviewed the board members' notes of the complainant's interview and finds that they are consistent and are directly related to the *Rating Guide*. The Tribunal is satisfied with the board members' explanations of how they recorded the answers and then reviewed their notes to ensure all the elements of the answers had been captured. It finds nothing improper in the fact that some of the complainant's answers were recorded in point form. Thus, the Tribunal finds that the board members' notes accurately reflect the complainant's answers.

**68** While the complainant may have deserved a higher mark for the judgement qualification, the fact is that she received a pass mark. Even if there were an error with respect to the marking of her answer to Question 14, on the evidence presented, this was the only error that may have occurred in her assessment. The Tribunal finds that if this was an error, it is not a serious enough error to constitute an abuse of authority.

**69** As for the assessment of candidates by different panels, the complainant has failed to demonstrate any problems or inconsistencies in the assessments.

**70** The Tribunal concludes that the complainant's allegations of abuse of authority in the assessment of the essential qualifications are not founded.

**Issue III: Did the respondent demonstrate bias against the complainant in the appointment process?**

**71** The complainant alleges that the board was biased against her and colluded to ensure that she would not be successful. She contends that Ms. Lacroix, Ms. Mercer, Ms. Cyr-Lancaster and Ms. Louli-Matheson all told her that she would be screened out because she did not have the required experience. She believes that her failure in this appointment process was pre-determined. She also contends that Ms. Knight-Stanley

is a friend of Ms. Cyr-Lancaster, and that this raises questions about her impartiality, given the conflict between the complainant and Ms. Cyr-Lancaster. The complainant states that Ms. Mercer and Ms. Lacroix are best friends.

**72** According to the complainant, flexibility and getting along with people were criteria that she failed at the interview, and she was screened out for reasons of experience. The complainant believes this was done deliberately.

**73** The Tribunal notes at the outset that the complainant was screened back into the appointment process, which means that she was found to have met the experience requirements. The Tribunal notes as well that the complainant failed the essential qualification ability to understand client real property needs and recommend solutions. The Tribunal has already determined that the complainant's allegation of abuse of authority in the assessment of the essential qualifications was unfounded.

**74** As the Tribunal explained in *Denny v. Deputy Minister of National Defence*, 2009 PSST 0029 at para. 123, direct evidence of actual bias is difficult to establish and fairness requires that there be no reasonable apprehension of bias.

**75** The test for reasonable apprehension of bias is well established. See *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369, at 394, and *Newfoundland Telephone Company v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623. The Tribunal has adapted this test to the context of staffing complaints (see, for example, *Gignac v. Deputy Minister of Public Works and Government Services*, 2010 PSST 0010 at paras. 72-74).

**76** Applying this test, the Tribunal must ask whether a reasonably informed bystander looking at this appointment process would think that it is more likely than not that the board members who interviewed the complainant, whether consciously or unconsciously, could not assess her fairly.

*Ms. Lacroix*

**77** The complainant testified that her relationship with Ms. Lacroix was strained and that she felt excluded and left out of team decisions. Ms. Lacroix tried to prevent her from job-shadowing a CASA in advance of this process. Ms. Lacroix also told her that she did not “have what it takes to be a CASA” and that she would be screened out of the process.

**78** According to the complainant, she attempted, to no avail, to address the workplace issues involving Ms. Lacroix with Ms. Cyr-Lancaster and Ms. Mercer. Ms. Mercer told the complainant that the only complaint Ms. Lacroix had made about her was that she was sometimes five minutes late. Ms. Lacroix, however, had never discussed this tardiness issue with her. Ms. Lacroix was not called to testify.

**79** Ms. Mercer testified that the complainant and Ms. Lacroix got along at first, but that their relationship soured when Ms. Lacroix told the complainant that she would not be screened into this process. Ms. Lacroix was also a candidate in this process. Ms. Mercer thought that the conflict between the two had been resolved by the time the process was held.

**80** Although the evidence demonstrates that there was a workplace conflict between the complainant and Ms. Lacroix, and that Ms. Lacroix told the complainant that she would be screened out of the appointment process, Ms. Lacroix was not involved in any way in the assessment of the complainant. She was, in fact, also a candidate. The complainant has presented no evidence that Ms. Lacroix had any influence on Ms. Mercer or on Ms. Cyr-Lancaster to have the complainant screened out of the process, or on the board to have her fail the interview. As such, Ms. Lacroix’s comments to the complainant prior to the commencement of the appointment process, their workplace conflict, and any relationship between Ms. Lacroix and Ms. Mercer are not relevant, in the absence of any evidence that Ms. Lacroix sought to influence the board members who interviewed the complainant.



*Ms. Mercer*

**81** Ms. Mercer firmly denied telling the complainant that she would be screened out and never get this position or become a CASA. She described the complainant as a good performer who has always done very good work. Ms. Mercer encouraged her and other interested employees to apply in the process, and she had authorized the complainant to job-shadow. During her October 2012 performance evaluation, Ms. Mercer told the complainant that she had to be flexible and open to other people's ideas, and that she had to understand the team's responsibilities in the Branch. At the time, the complainant was having difficulties getting along with some people in the Branch and had already complained about Ms. Lacroix and about members of Ms. Louli-Matheson's team. According to Ms. Mercer, these matters were addressed.

**82** After her performance evaluation, Ms. Mercer commented to the complainant about her interest in becoming a CASA. Ms. Mercer told her that she had only been there for a short time, and did not have in-depth knowledge of the CASA work. Ms. Mercer also told her that she needed to be more flexible, to work on her relationships with people, and that she needed more experience, which the complainant, in her testimony, also acknowledged being told by Ms. Mercer.

*Ms. Cyr-Lancaster*

**83** The complainant testified that when Ms. Cyr-Lancaster learned that she had applied in this process, she told her that she would be screened out.

**84** The complainant further stated that, during a meeting with Ms. Lacroix and Ms. Cyr-Lancaster, Ms. Cyr-Lancaster said that she had been told many times that Ms. Lacroix had no complaints about her. Ms. Cyr-Lancaster told her that she was starting to think that she (the complainant) was the problem, and that if she kept complaining, she "would regret it." On another occasion, when she questioned the re-assignment of a job-shadowing file she had been working on in Ms. Louli-Matheson's team, Ms. Cyr-Lancaster told her to stop complaining—no one owed her an explanation—if they wanted to take clients away, they could.

**85** The complainant questioned Ms. Cyr-Lancaster, but did not ask about any meetings she may have had with the complainant and Ms. Lacroix before the process. Nor did she question Ms. Cyr-Lancaster about any statements she is alleged to have made to the complainant. Ms. Cyr-Lancaster was not asked whether she had told the complainant, before the screening, that she did not have the necessary experience and that she would be screened out. Ms. Cyr-Lancaster testified that the complainant did not report to her and that she did not know her well before this process.

**86** In her complaint and in her allegations, the complainant declared that someone had told her union representative, Amber Miller, about overhearing Ms. Cyr-Lancaster tell other CAS Managers/Team leaders “I hate [the complainant] with a passion and I will not stop until I make her life miserable.” The complainant did not provide the name of this witness. In closing arguments, the complainant indicated that Ms. Cyr-Lancaster made this comment after this staffing complaint was filed, but asserts that Ms. Cyr-Lancaster’s feelings must have existed beforehand.

**87** Ms. LeChasseur testified that she heard Ms. Cyr-Lancaster say that she would “make [the complainant’s] life difficult.” Ms. LeChasseur believes that this comment was made shortly after Ms. Cyr-Lancaster found out that the complainant had filed either a staffing complaint or a grievance specifically naming Ms. Cyr-Lancaster, but acknowledged that Ms. Cyr-Lancaster did not specifically state that this was the reason for making the comment.

**88** Ms. Cyr-Lancaster testified that she could not recall making such a statement. She acknowledged that she was upset because the complainant called her a racist, a cheater and a liar in a document—she believes it was a grievance—which the complainant left on a photocopier after this appointment process. Ms. Cyr-Lancaster reiterated that she does not remember making any statement about the complainant.

**89** Ms. Mercer testified that she only became aware of a comment about “making her life miserable” in the context of a grievance that the complainant filed after the appointment process. Several months later, Ms. Mercer also had a discussion with Ms. Cyr-Lancaster wherein Ms. Cyr-Lancaster confirmed that such words were spoken. Ms. Mercer testified that she was not present when the comments were made.

**90** The Tribunal finds that Ms. Cyr-Lancaster likely made such a statement and that it was uttered after the appointment process had ended. However, as noted, Ms. Cyr-Lancaster did screen in the complainant and recuse herself from her subsequent assessment. Given the lack of evidence presented by the complainant that would tie such a post-appointment process statement to her assessment, the Tribunal places very little weight on this evidence.

*Ms. Louli-Matheson*

**91** In her testimony, the complainant also stated that there were issues between her and Ms. Louli-Matheson. She described an incident where Ms. Louli-Matheson, who was the CAS Manager/Team Leader of the team in which she was job-shadowing, became upset at her and told her that she was now in Ms. Mercer’s “bad books.” Ms. Louli-Matheson incorrectly believed that the complainant had complained to Ms. Mercer about the reassignment of a job-shadowing file. In addition, when Ms. Louli-Matheson learned that the complainant had been screened out of this process, Ms. Louli-Matheson told her that she was not surprised because she had not been in the Branch long enough.

**92** Ms. Louli-Matheson testified that she has never had an issue working with the complainant and she does not believe that the complainant had an issue with her either. Their working relationship was fine and their conversations were collegial.

**93** Ms. Louli-Matheson stated further that she did not have a problem with the complainant applying in the process. She denied telling her that she was surprised she had applied or that she would be unsuccessful. When the complainant talked to her about the process, Ms. Louli-Matheson told her this was an excellent opportunity for interested persons to update their résumé, and experience being assessed by a board

for such a position. According to Ms. Louli-Matheson, those who are in a CASA (AS-04) position have usually served in an AS-03 position first. Ms. Louli-Matheson testified that she said this to all those who consulted her about the opportunity.

**94** The complainant acknowledged that at no time during the appointment process did she raise any concerns about Ms. Louli-Matheson being one of the board members assessing her.

*Ms. Knight-Stanley*

**95** Ms. Knight-Stanley testified that Ms. Cyr-Lancaster has been her supervisor for about two years. They are co-workers and she is a friend, as are others in the Branch.

*Conclusions regarding the bias allegation*

**96** The person who is alleging bias or a reasonable apprehension of bias has the burden of demonstrating its existence. Bias or the apprehension of bias must be real, probable or reasonably obvious and mere suspicion, speculation or the possibility of bias is not sufficient (see *Denny*, at para. 124).

**97** The Tribunal finds no evidence of bias or lack of fairness by Ms. Mercer and Ms. Cyr-Lancaster before, during or after the screening. Ms. Mercer and Ms. Cyr-Lancaster both testified that the complainant was originally screened out on the basis of the information in her first covering letter, and that she was screened in as a result of the opportunity to present additional information. The evidence indicates that Ms. Mercer was supportive of the complainant applying in the process and she supported job-shadowing for the complainant. As for Ms. Cyr-Lancaster, although she was admittedly offended at being called unfair and biased at the first informal discussion, the Tribunal has heard no evidence that she attempted to influence the complainant's assessment or tried to prevent the complainant from being screened into the process. Ms. Cyr-Lancaster properly recused herself from the panel that interviewed the complainant.

**98** The complainant has also not provided sufficient evidence to demonstrate that Ms. Louli-Matheson was predisposed to assess her unfairly. Ms. Louli-Matheson testified that she was surprised to hear that the complainant thought that there was a conflict between them. In fact, it appears that it was the complainant who concluded, after a workplace situation where Ms. Louli-Matheson was apparently upset, that there was now a conflict between them. In the circumstances, it is noteworthy that the complainant did not raise any concerns during the appointment process about Ms. Louli-Matheson being a member of the panel that interviewed her.

**99** It was reasonable for Ms. Mercer, Ms. Cyr-Lancaster and Ms. Louli-Matheson to believe that the complainant did not have a lot of experience providing real property advice and services. She had only joined the Branch about nine months before she applied in the process.

**100** Similarly, the evidence indicates that Ms. Mercer had advised the complainant about the areas that she should work on, including her need to be more flexible and open to other people's ideas. The fact that this feedback and advice was provided is not indicative of bias on the part of the manager. This is one of the key responsibilities of managers during the employee performance evaluation process.

**101** The complainant has provided no evidence that she was unsuccessful because of collusion between Ms. Mercer and Ms. Cyr-Lancaster, or any of the members of the panel that interviewed her. The complainant's contention that Ms. Knight-Stanley may have been biased against her because she reports to Ms. Cyr-Lancaster is mere speculation and not supported by any evidence.

**102** The Tribunal finds that the reasonably informed bystander looking at the evidence would not think that is more likely than not that the board members who interviewed the complainant, either individually or collectively, could not, consciously or unconsciously, assess the complainant fairly.

**103** Accordingly, the Tribunal concludes that the complainant has failed to prove that the respondent demonstrated bias against her in the appointment process.

**Decision**

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

Lyette Babin-MacKay  
Member

**Parties of Record**

<b>Tribunal File</b>	2013-0108
<b>Style of Cause</b>	<i>Christine Bizimana and the Deputy Minister of Public Works and Government Services</i>
<b>Hearing</b>	November 26 and 27, 2013, and December 4, 2013 Ottawa, Ontario
<b>Date of Reasons</b>	March 5, 2014
<b>APPEARANCES:</b>	
<b>For the complainant</b>	Amber Miller
<b>For the respondent</b>	Zorica Guzina
<b>For the Public Service Commission</b>	Luc Savard Written submissions - November 20, 2013.