



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**File:** 2011-1207  
**Issued at:** Ottawa, July 22, 2014

**PAUL ABI-MANSOUR**

Complainant

AND

**THE CHIEF EXECUTIVE OFFICER OF PASSPORT CANADA**

Respondent

AND

**OTHER PARTIES**

<b>Matter</b>	Complaint of abuse of authority pursuant to s. 77(1)(a) of the <i>Public Service Employment Act</i>
<b>Decision</b>	Complaint is dismissed
<b>Decision rendered by</b>	Nathalie Daigle, Member
<b>Language of Decision</b>	English
<b>Indexed</b>	<i>Abi-Mansour v. Chief Executive Officer of Passport Canada</i>
<b>Neutral Citation</b>	2014 PSST 12

## **Reasons for Decision**

### **Introduction**

**1** Paul Abi-Mansour, the complainant, applied in an internal advertised appointment process for the EC-03 position of Statistical Analyst, in the Strategic Management Division at Passport Canada. He was eliminated following the preliminary screening on the basis that he did not meet the education requirement for the position.

**2** The complainant alleges that the respondent, the Chief Executive Officer of Passport Canada, abused its authority in several ways. First, he alleges that the respondent improperly assessed his education. Secondly, he asserts that the respondent discriminated against him on the grounds of his national or ethnic origin. Thirdly, he submits that the person who was appointed (the appointee) was unqualified for the position. Finally, he alleges that the respondent showed bias in favour of the appointee.

**3** The respondent denies the allegations. It submits that the complainant was screened out of the process because he did not demonstrate in his application that he possessed the essential education qualification listed in the Job Opportunity Advertisement (JOA). The respondent also asserts that the appointee was fully assessed and found to meet all of the essential qualifications. It denies showing bias in her favour.

**4** The Public Service Commission (PSC) did not appear at the hearing. However, it presented a written submission in which it discussed relevant PSC policies and guidelines. It took no position on the merits of the complaint.

**5** In his written allegations, the complainant raised concerns about possible personal favouritism towards the appointee. However, at the hearing, he clarified that he was no longer making this allegation.

**6** For the reasons that follow, the Tribunal has determined that the evidence does not establish abuse of authority. It shows that the complainant was eliminated from the assessment process because he did not demonstrate in his application that he met the

essential education qualification. Furthermore, the evidence does not support the allegation of discrimination on the basis of national or ethnic origin, nor does it support the allegations of improper assessment of the appointee and bias towards her.

## **Background**

**7** On July 20, 2011, the respondent posted a JOA on *Publiservice* for the EC-03 Statistical Analyst position in the Strategic Management Division at Passport Canada. The complainant was one of 129 applicants who responded to the JOA.

**8** Applications for the EC-03 position were initially screened against the education, experience and asset qualifications. The education qualification that appeared on the JOA and Statement of Merit Criteria (SMC) stated that an acceptable specialization in Economics, Sociology, Mathematics or Statistics had to be shown. It also stated that while a university degree was required, the courses for the specialization did not necessarily have to be part of a degree program. The qualification is reproduced below:

Graduation with a degree from a recognized university with acceptable specialization in Economics, Sociology, Mathematics or Statistics.

NOTE: Candidates must always have a university degree. The courses for the specialization do not necessarily have to be part of a degree program in the required specialization. The specialization may also be obtained through an acceptable combination of education, training and/or experience.

Candidates also had to show that they had at least three of the four experience qualifications and at least one of the two asset qualifications listed in the JOA and SMC.

**9** The JOA contained the following sentence in italics immediately under the Essential Qualifications requirements: *"Applicants must clearly demonstrate on their application that they meet all the following essential criteria and are within the area of selection. Failure to do so may result in the rejection of your application."*

**10** Nicolas Mezher, Manager, Business Analyst & Intelligence for Citizenship and Immigration Canada (CIC), was the respondent's delegated manager for this appointment process. As the chair of the screening committee, he conducted the review of applications with the help of two colleagues, Elaine Hoskins and Peter Bujduveanu, to determine whether each candidate met the education, experience and asset

qualifications for the position. The screening committee determined that 55 candidates met the screening requirements and would be further assessed. The complainant was screened out as he did not meet the educational qualification of the position.

**11** The Notification of Appointment or Proposal of Appointment (NAPA) for the successful candidate in the process was posted on December 6, 2011.

**12** On December 21, 2011, the complainant filed a complaint of abuse of authority with the Public Service Staffing Tribunal (the Tribunal) under s. 77 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12,13 (PSEA).

**13** The complainant provided notice to the Canadian Human Rights Commission (CHRC) in accordance with s. 78 of the PSEA to indicate that he intended to raise an issue involving the interpretation or application of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA). Prior to the hearing, the CHRC advised the Tribunal that it would not be making submissions in this matter.

## **Issues**

**14** The Tribunal must determine whether the respondent abused its authority in this appointment process. To do so, the Tribunal will address the following issues:

- (i) Did the respondent improperly assess the complainant with respect to the education qualification?
- (ii) Did the respondent discriminate against the complainant on the grounds of his national or ethnic origin?
- (iii) Did the respondent appoint an unqualified person to the position?
- (iv) Did the respondent show bias in favour of the appointee?

## **Analysis**

**15** 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. The complainant has the burden to prove, on a balance of probabilities, that there was an abuse of authority.

**16** Abuse of authority is not defined in the PSEA. However, s. 2(4) offers the following guidance: “For greater certainty, a reference in this Act to abuse of authority shall be construed as including bad faith and personal favouritism.” Abuse of authority also includes improper conduct and omissions. The nature and seriousness of the improper conduct or omission will determine whether or not it constitutes abuse of authority. See *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8 at para. 66.

**Issue I:** Did the respondent improperly assess the complainant with respect to the education qualification?

**17** The specialization requirements for the position were economics, sociology, mathematics or statistics. The complainant submits that he showed in his application that he had an acceptable combination of education, training and/or experience. In his view, he provided enough information to demonstrate that he possesses a specialization in mathematics, statistics and/or sociology.

**18** In his application documentation, the complainant listed some courses he took in the fields of sociology and statistics. He did not list any mathematics courses, but he indicated that half of the courses he took for his degree in Computer Sciences were in mathematics. In his cover letter, he described his education as follows:

Education:

... I have an undergraduate degree in Computer Science, of which half of it was Math. I also finished half of my Master's degree in Computer Science. I also completed my Bachelor of education degree in 2007 at University of Ottawa and I became a Math and Computer Science teacher. The four courses, which are normally required as an acceptable specialization, are as follows:

Probability and statistics (Discipline, Statistics)

Schooling and society (Discipline, Sociology)

Social Justice and globalization (Discipline, Sociology)

Teaching in Catholic schools (Discipline, Sociology)

Practicum: This is a course of the B.ed (sic) degree; I had a teaching assignment at a high school in Ottawa. I was teaching Statistics and probability for Grades 11 and 12 students.

**19** The complainant filed his official university transcript from Université Libanaise as evidence that he has the required courses in mathematics. He testified that when he submitted his application for the position, he was at work and did not have with him a copy of his academic transcript. As he did not remember the exact names of the courses he had taken in the areas of specialization, he "copied and pasted" an excerpt from an application submitted in the past for an EC position of a different level. He acknowledged being aware that the specialization requirement may differ from one EC position to another. However, he did not call the Human Resources Advisor named on the JOA to obtain additional information about the specialization for this process.

**20** Mr. Mezher developed the JOA and SMC for the Statistical Analyst position. He testified that to meet the specialization requirement, a candidate either had to have a university degree in one of the four disciplines or an acceptable combination of education, training and/or experience. The combination of education and experience, for example, required the candidate to have completed a minimum of four acceptable courses in one discipline and to have at least three of the four experience qualifications listed in the JOA. It was not sufficient for a candidate to have four courses across the four disciplines. As Mr. Mezher explained, a course in one particular specialization was considered "acceptable" if it was a core course, not simply an elective or optional course that students choose to take and that may or may not satisfy credit requirements for graduation.

**21** Mr. Mezher testified that the committee considered all of the information in the complainant's application documents and found that he did not meet the qualification. The screening committee concluded that the "Probability and Statistics" course was the only core course he listed. It considered that his three courses in sociology ("Schooling and Society", "Social Justice and Globalization" and "Teaching in Catholic Schools") were optional courses, and not core courses. Notwithstanding the fact that the complainant had written in his application that he had an undergraduate degree in Computer Science "of which half of it was Math", Mr. Mezher testified that the

committee could not consider the mathematics courses taken by the complainant because the committee did not have any information about these courses. It could not confirm whether the complainant had taken core or optional courses nor could it confirm how many courses he had taken.

**22** As a result, the committee concluded that the complainant had failed to show that he had taken at least four core courses in one of the four disciplines. Mr. Mezher further explained that the fifth course listed by the complainant (Practicum) was not a core course in statistics. This was a teaching assignment at a high school where, as Mr. Mezher explained, very basic concepts are taught to students. According to him, this is not the same as a university course.

**23** The complainant explained that he did not list the mathematics courses he took as part of his degree in Computer Sciences because he did not think that he had to. He further explained that if the JOA had indicated that candidates had to list the courses they took in the areas of specialization, he would have listed all of the mathematics courses that he took. He did not know he had to list at least four core courses per discipline and this is why he only listed a few courses in statistics and sociology. Given that he indicated in his application that he had taught Statistics and Probability for Grades 11 and 12 students, he believed the committee would deduce from this that he had specialized in statistics.

**24** After the complainant was eliminated from the appointment process, he sought to have the decision reviewed. He took the following steps. First, he sent an email to a Human Resources Representative stating that a mistake had been made. He asked to be screened back into the process:

I received this letter from you regarding the selection process mentioned above. A big mistake has been committed, I do meet 100% the education criteria, and you can do nothing to prove otherwise. Please correct this mistake and put me back into the competition.

**25** The complainant testified that he also spoke to Mr. Mezher by telephone to inform him that he met the education qualification. Mr. Mezher, however, testified that he told the complainant, during this telephone conversation, that he had not provided enough information in his application to demonstrate that he met the required

specialization. The complainant insisted that, by writing in his application that half of his degree in Computer Science was in mathematics, he had shown that he had a specialization in mathematics. Mr. Mezher explained that this was only a general statement and that it was not sufficient to show that he had a specialization in the area. He explained that if a candidate's degree was not in one of the four areas of specialization, the screening committee needed the names of the courses the candidate had taken to assess whether the candidate had the required specialization and met the essential education qualification.

**26** During the conversation, Mr. Mezher explained to the complainant that he was refusing to screen him back into the appointment process, notwithstanding the fact that the complainant was saying that he had the required specialization. In Mr. Mezher's view, he could not further assess the complainant because the screening decision for all candidates had been made based on the content of their covering letters and résumés. He explained that it would have circumvented the screening result to accept additional information from the complainant and not the others. Moreover, Mr. Mezher reminded the complainant that candidates were advised in the JOA that they had to clearly demonstrate on their application that they met all the essential criteria.

**27** The complainant submits that the JOA and SMC were not clear and that candidates had to guess what the requirements for the education qualification were. He introduced in evidence the JOA from another process, which was conducted to fill an EC-05 position. This JOA provided the following clarification: "An acceptable specialization must include at least 8 semester-based courses (or an equivalent of 4 year long courses) in one of the following: economics or sociology or statistics." The complainant submits that the JOA in the present process did not contain such language and was therefore misleading.

**28** The respondent submits that it was the responsibility of the candidates to specify in their applications to what extent they met the specialization requirement. They could do so, as Mr. Mezher explained, by naming the courses they took, by giving the courses' codes and a description of their contents, and by naming the university they attended, and the year they took the courses.



**29** The Tribunal has held in numerous decisions that its role is not to reassess candidates or redo the appointment process. The authority to assess candidates for appointment is granted to the PSC under s. 30(2)(a) of the PSEA and may be delegated to a deputy head in accordance with s. 15(1) of the PSEA. It is not an authority that is given to the Tribunal. Rather, the role of the Tribunal is to determine whether the evidence demonstrates, on a balance of probabilities, that there was an abuse of authority in the assessment that was done. See, for example, *Canada (Attorney General) v. Lahlali*, 2012 FC 601 at paras. 42-46.

**30** The Tribunal has also consistently held that it is a candidate's responsibility to clearly demonstrate in their application that they meet all the essential qualifications. See for example *Edwards v. Deputy Minister of Indian and Northern Affairs Canada*, 2011 PSST 10 and *Walker-McTaggart v. Chief Executive Officer of Passport Canada*, 2011 PSST 39. Candidates have a duty to ensure that their application documents are complete and in conformity with the JOA and SMC requirements. See *Charter v. Deputy Minister of National Defence*, 2007 PSST 48.

**31** While the JOA could have specified that an acceptable specialization had to include at least the equivalent of four core courses in one of the specializations, the Tribunal does not agree with the complainant's argument that because it did not, it was misleading. The Tribunal is satisfied that the language used clearly indicated that a degree or courses in one of the specializations had to be demonstrated. The relevant excerpt is reproduced below:

Essential Qualification...

Graduation with a degree from a recognized university with acceptable specialization in Economics, Sociology, Mathematics or Statistics ...

NOTE: Candidates must always have a university degree. The courses for the specialization do not necessarily have to be part of a degree program in the required specialization...

**32** The members of the assessment board determined that they would assess the specialization based on the number of courses taken by a candidate. This was a decision within their discretion. In the Tribunal's view, the language used by the respondent met the requirements of the PSC *Advertising in the Appointment Process*

*Policy*, which requires departments to give “sufficient information regarding the criteria to be used in the screening of persons ...”. The Tribunal is satisfied that, by stating in the JOA and SMC that a degree or courses in one of the specializations had to be demonstrated, the respondent gave sufficient information regarding the criteria to be used in the screening of candidates. In this case, the failure to express the number of courses required on the JOA does not constitute an abuse of authority.

**33** The complainant argues that the JOA was misleading in a manner similar to that in *Poirier v. Deputy Minister of Veteran's Affairs*, 2011 PSST 3, where the poor wording of the instructions contained in the JOA directly contributed to the complainant's elimination from the appointment process. In the *Poirier* decision, the complainant applied for a position advertised in a JOA that had unclear wording. According to the complainant's interpretation of the instructions contained in the JOA, the candidate was to provide one or two paragraphs for all the qualifications (education, experience and assets). Rather, the respondent expected the candidate to provide one or two paragraphs for each qualification. The complainant was eliminated from the appointment process on the basis that his covering letter did not demonstrate his qualifications as he had only submitted two paragraphs for all qualifications being assessed. The Tribunal agreed with the complainant that the wording of the instructions in the JOA was unclear and could lead to his interpretation that all of the qualifications had to be demonstrated in a maximum of two paragraphs. The Tribunal found that the complainant's interpretation was different but reasonable.

**34** The Tribunal does not find that the wording contained in the present JOA was misleading or had the same kind of impact as in *Poirier*. The complainant in *Poirier* was essentially screened out because he had not submitted his application in the required format. In this case, the complainant was screened out because he did not provide enough substance to demonstrate that he had a specialization in one of the four areas of specialization. In other words, regardless of the form of his application, the complainant did not demonstrate that he possessed the necessary education. The complainant admittedly chose to simply cut and paste information from an application that he had submitted in another appointment process without ensuring that he clearly

“demonstrated” on his application for this appointment process that he had taken courses to meet one of the specializations.

**35** In *Lirette v. Deputy Minister of National Defence*, 2011 PSST 42, at paragraph 26, the Tribunal took a look at the definition of "demonstrate". It noted that “[t]he Canadian Oxford Dictionary, second edition (2004), defines the word ‘demonstrate’ as meaning to ‘describe and explain with the help of examples, experiments, practical use, etc’.”

**36** In the present case, the JOA clearly warned candidates that failure to clearly “demonstrate” on the application that they met all the essential criteria could result in the rejection of their application. See also *Henry v. Deputy Head of Service Canada*, 2008 PSST 10 at para. 54. A review of the complainant's covering letter and résumé shows that he did not provide sufficient information about the courses he had taken in the areas of specialization to clearly demonstrate how he met the education qualification. The Tribunal therefore finds that he failed to meet his responsibility to clearly demonstrate on his application that he met the education qualification.

**37** The telephone discussion that took place between the complainant and Mr. Mezher after the complainant was screened out of the appointment process was brought up by both the complainant and Mr. Mezher on a few occasions during the hearing. The Tribunal is satisfied that this telephone discussion was tantamount to an informal discussion. In *Rozka v. Deputy Minister of Citizenship and Immigration Canada*, 2007 PSST 46 para 76, the Tribunal described what an informal discussion is:

Informal discussion is intended primarily to be a means of communication for a candidate to discuss the reasons for elimination from a process. If it is discovered an error has been made, for example, if the assessment board did not consider some information listed on a candidate's application, this provides the opportunity for the manager to correct that mistake. However, informal discussion is not an opportunity to request that the assessment board reassess a candidate's qualifications.

**38** The complainant submits that Mr. Mezher was under the obligation to consider his university transcript and reassess his qualifications after this discussion. The Tribunal does not agree. It was not unreasonable for Mr. Mezher to refuse to reassess the complainant's qualifications because he had not met his responsibility to give sufficient information on his application to demonstrate that he met the education

qualification. An assessment board has no obligation to follow up with candidates or raise inferences when candidates have been clearly told that they must demonstrate their qualifications in their applications. See *Abi-Mansour v. Deputy Minister of Foreign Affairs and International Trade Canada*, 2012 PSST 8, at para. 50; and *Henry* supra, at paras. 53-56.

**39** The Tribunal notes that the complainant filed his official university transcript from Université Libanaise in evidence to show that he had the required four courses in mathematics. Having reviewed the transcript, the Tribunal agrees that it does show that he has taken a minimum of four core courses in mathematics. However, the issue in the present case is whether the complainant showed in his application that he had the required specialization. As mentioned above, given the clear warning to candidates, and all of the evidence before the Tribunal, it was not unreasonable for the screening committee to conclude that he had failed to demonstrate that he met the education qualification.

**40** The complainant also alleges that the respondent changed the specialization requirement during the appointment process. According to him, at the beginning of the process, the respondent required a minimum of three courses in one of the specialized areas. However, he states that the respondent later changed the requirement to four courses in one of the specialized areas. In particular, he submits that Mr. Mezher informed him during their telephone conversation after he had been screened out of the process that the specialization requirement for this EC-03 position was to have at least three acceptable courses in one discipline. After the appointment process was over, the complainant still understood the requirement to be three courses in one of the specialized areas. He says that it was only later that he learned that the requirement was four courses.

**41** Mr. Mezher maintains that the specialization requirement never changed. According to Mr. Mezher, it was always four courses in one of the specialized areas and he never said otherwise to anyone.

**42** Mr. Mezher and the complainant may differ as to what information was given to him regarding this issue, but this matter has no bearing on the outcome of the complaint. Based on the covering letter and *curriculum vitae* that the complainant submitted, he did not demonstrate that he had taken the equivalent of three main courses in one of the four disciplines. Thus, whether three or four courses were required, the complainant would not have met the education requirement.

**43** The complainant further alleges that it was improper for the respondent to limit itself to a candidate's cover letter and *curriculum vitae* to assess the educational qualification. In his view, candidates should have had to submit their official university transcript with their application.

**44** Section 36 of the PSEA confers exclusive authority for the establishment of assessment methods on the deputy head. The method for assessing the education requirement was set out in the instructions: candidates were advised that education and experience would be assessed using their covering letter. Résumés were to be used as a secondary source to validate the experience described in the covering letter.

**45** The complainant did not refer to any legislative or policy requirement that supports his position that the respondent should ask all applicants to provide a copy of their official university transcript with their application. The Tribunal finds that it was reasonable for the respondent to first sort the 129 applications on the basis of the information contained in the cover letters and *curricula vitae*. This was an expedient and efficient way to process the large number of applications. As stated by Mr. Mezher, proof of education was requested from the appointee prior to being hired. The Tribunal finds that it was reasonable for the respondent to only request university transcripts from the appointee to validate her information.

**46** Finally, the complainant argues that another reason why he was improperly assessed is that Mr. Mezher is not an expert in the fields of economics, mathematics or statistics. He alleges that the manager was not qualified to do the screening and to correct the candidates' exams since his specializations (one degree, two Masters and a PhD) are in the fields of sociology and demography.

**47** The respondent submits that Mr. Mezher has many years of experience as the Manager of Business Analyst & Intelligence for CIC and as the Chief of the Statistical Unit at Revenue Canada and that he is very familiar with the work required for the subject position.

**48** The complainant has not cited any statutory or policy reference to support his allegation that assessment board members must be specialists in each of the areas of specialization covered by a position. As established in *Sampert v. Deputy Minister of National Defence*, 2008 PSST 9 at para. 54, assessment board members should be familiar with the work required of the position to be staffed.

**49** The Tribunal finds, based on the evidence, that the complainant has failed to prove that Mr. Mezher improperly assessed him for the reason that he is not an expert in the fields of economics, mathematics or statistics.

**50** In conclusion, while the complainant has shown that he had the necessary education requirement for this Statistical Analyst position, the Tribunal concludes that he has not proven that the respondent abused its authority in screening him out of the process. The complainant was screened out of the process because he did not demonstrate, in his application, that he met the education qualification for the position.

**Issue II:** Did the respondent discriminate against the complainant on the grounds of his national or ethnic origin?

**51** Section 80 of the PSEA provides that in considering whether a complaint is substantiated under s. 77, the Tribunal may interpret and apply the CHRA.

**52** Section 7 of the CHRA provides that it is a discriminatory practice to directly or indirectly refuse to employ or continue to employ any individual, or, in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination. Section 3 of the CHRA lists the prohibited grounds of discrimination, which include national or ethnic origin.

**53** In order to establish that the respondent engaged in a discriminatory practice, the complainant must first establish a case of discrimination at first view or *prima facie*,

as explained by the Supreme Court of Canada in *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536 (O'Malley).

**54** A *prima facie* case is one that covers the allegations made and which, if the allegations are believed, would be complete and sufficient to justify a finding in the complainant's favour, in the absence of an answer from the respondent. Once a *prima facie* case is made, the onus then shifts to the respondent to disprove the allegations or provide some other reasonable non-discriminatory explanation. The explanation cannot be a mere pretext for discrimination. The Tribunal cannot take into consideration the respondent's answer before determining whether a *prima facie* case of discrimination has been established. See *Lincoln v. Bay Ferries Ltd.*, 2004 FCA 204 at para. 22.

**55** It is not necessary that discriminatory considerations be the sole reason for the actions at issue in order for the complaint to be substantiated. The complainant need only show that discrimination is one of the factors in the respondent's decision. See *Holden v. Canadian National Railway Company* (1990), 14 C.H.R.R. D/12 (F.C.A.) at para. 7. The standard of proof in discrimination cases is the civil standard of the balance of probabilities. See *Public Service Alliance of Canada v. Canada (Department of National Defence)*, 1996 CanLII 4067 (FCA), [1996] 3 FC 789.

**56** The Tribunal must therefore first determine whether the complainant has established a *prima facie* case of discrimination.

*Has the complainant established a prima facie case of discrimination?*

**57** The complainant testified that he believes that his national or ethnic origin was a factor in the respondent's decision to screen him out of the process. He submits that the protected ground of place of origin is broad enough to include any adverse treatment related to his foreign credentials. See *Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta*, 2014 AHRC 1 (CanLII). The complainant obtained a degree in computer science from Université Libanaise in 2001. He later immigrated to Canada from Lebanon and pursued further studies in Canada. He alleges that the respondent rejected his application because his degree in computer science was acquired in his place of origin Lebanon.

**58** The complainant alleges that he was not the only one who was eliminated from the process because he was educated outside Canada. He presented the applications of other candidates who were screened out on the ground that they did not meet the education qualification. These candidates, he submits, had completed their studies outside Canada. He specifically drew the Tribunal's attention to the following five applicants, out of the 129:

- (i) B.E. who was educated in Korea;
- (ii) M.M. who was educated in Malaysia;
- (iii) T.W.S. who was educated in Denmark;
- (iv) D.T. who was educated in Sri Lanka; and
- (v) A.S. who was educated in Morocco.

**59** The complainant also presented three candidates who have, in his view, an education in science similar to his education in computer science. He submits that those candidates, unlike him, were screened in because they completed their education in Canada. In his *curriculum vitae*, the complainant described his degree in computer science as follows:

EDUCATION

B.sc. in applied science, Computer Science, Lebanese University, 2001 (I have equivalence from Laval University) (Honor graduate)

**60** The complainant presented, as well, one candidate, J.F., who has a Bachelor of Education, similar to his Bachelor of Education in secondary education. In his view, this candidate, unlike him, was screened in because he completed all of his education in Canada.

**61** The complainant also believes other candidates, namely M.R., M.A. and M.B., who were educated in Canada, were screened into the process even though they had not established in their application that they met the specialization requirement.



**62** The complainant filed in evidence a report entitled *Visible Minorities and the Public Service of Canada* prepared by John Samuel & Associates Inc. in February 1997. He specifically pointed out parts of the report that describe how visible minorities face difficulties when seeking employment. The relevant excerpts are:

4.9 Screening

The vast majority of visible minority participants seemed to think that foreign-earned qualifications and experience were undervalued...

Summary: Chapter 4

Employee Perspectives

...

The main factors cited as barriers to equitable hiring and promotion were: ...

- denigration of foreign credentials; ...

7.2 Recommendations

...

Recruitment

...

- Foreign credentials often pose a problem for visible minority candidates as seen in the focus group discussions. ...

**63** The complainant's evidence is sufficient to establish a *prima facie* case of discrimination. The complainant established that, if believed, he was not screened in the appointment process along with others like him who had foreign credentials. Others, who have equal or lesser academic qualifications, but obtained their credentials in Canada, were screened in. The Tribunal finds that the evidence led by the complainant would be complete and sufficient to justify a verdict in his favour in the absence of an answer from the respondent. However, as discussed below, the respondent has provided a full and reasonable non-discriminatory explanation for why the complainant was screened out of this appointment process.

*Has the respondent provided a reasonable, non-discriminatory explanation for its decision to screen out the complainant from this appointment process?*

**64** On the basis that a *prima facie* case has been made, the onus now shifts to the respondent to provide a reasonable non-discriminatory explanation for its screening decision.

**65** As already mentioned earlier in these reasons, Mr. Mezher explained that for the candidates who did not have a degree in one of the four specialized areas, like the complainant, the specialization could be obtained through an acceptable combination of education, training and/or experience. Candidates were considered to have an acceptable combination of education and experience if they showed in their application documents that they had taken at least four core courses in one of the four disciplines and had at least three of the four experience qualifications required for the position. According to Mr. Mezher, the complainant's application failed to show that he had taken at least four core courses in one of the four disciplines.

**66** Mr. Mezher also provided an explanation of the decision to screen out the first five candidates put forward by the complainant. He demonstrated to the satisfaction of the Tribunal that it is not because they were educated abroad. Mr. Mezher pointed out the following:

- B.E.'s application shows that this candidate has Bachelor's and Master's degrees in International Studies. These are not degrees in one of the four areas of specialization. The candidate's application does not show an acceptable combination of education and experience. It does not show that the candidate has taken at least four core courses in one of the four disciplines and has at least three of the four experience requirements.
- M.M.'s application shows that this candidate has a Bachelor of Computer Science degree. As with the complainant's degree, this is not a degree in one of the four areas of specialization. The candidate's application does not show an acceptable combination of education and experience. Although it shows that the candidate

has taken at least four core courses in mathematics, it does not show that the candidate has at least three of the four experience requirements.

- T.W.S.'s application shows that this candidate has a Bachelor's degree in Public Affairs and Policy Management. This is not a degree in one of the four areas of specialization. The candidate's application does not show an acceptable combination of education and experience. The application does not clearly show that the candidate has taken at least four core courses in one of the four disciplines. The candidate simply states: "I took 4 economics, 2 sociology and 3 statistics classes." According to Mr. Mezher, it is not possible to see whether the four economics courses were core or optional courses. As well, the application does not show that the candidate has at least three of the four experience requirements.
- D.T.'s application shows that this candidate has a Bachelor's degree in Arts with a Minor in Spanish. This is not a degree in one of the four areas of specialization. The candidate's application does not show an acceptable combination of education and experience. The application does not show that the candidate has taken at least four core courses in one of the four disciplines and has at least three of the four experience requirements.
- A.S.'s application shows that this candidate has Bachelor's and Master's degrees in Statistics. These are degrees in one of the four areas of specialization. This candidate was not screened out on education, but on experience as the candidate does not show in his/her application that he/she has at least three of the four experience requirements. This application was mistakenly placed during the exchange of information in a package of applications that were rejected on the ground that the applicants did not meet the education qualification. Mr. Mezher confirmed at the hearing that at the time the applications were reviewed by the screening committee, the committee rejected this application because the candidate did not meet the experience qualification, not because the candidate did not meet the education qualification.

**67** The respondent also addressed the allegation that three candidates, who have an education in science similar to the complainant's education in computer science, were screened in on the education qualification because, unlike the complainant, they completed their education in Canada. Mr. Mezher's explanation can be summarized as follows:

- B.M.'s application shows that this candidate has a Bachelor's degree in Computer Science and Mathematics. Mathematics is a degree in one of the four areas of specialization. To acquire this degree this candidate must have taken at least four core courses in mathematics, which is one of the specialized areas.
- S.B.'s application shows that this candidate has a Bachelor's degree in Science – Mathematics/Science. Mathematics is a degree in one of the four areas of specialization. To acquire this degree this candidate must have taken at least four core courses in mathematics, which is one of the specialized areas.
- K.V.'s application shows that this candidate has a Bachelor's degree in Mathematics and Statistics – Computer Mathematics. Mathematics is a degree in one of the four areas of specialization. To acquire this degree this candidate must have taken at least four core courses in mathematics, which is one of the specialized areas.

**68** The respondent addressed, as well, the complainant's allegation that one candidate, who has a Bachelor of Education degree, similar to the complainant's Bachelor of Education in secondary education, was screened in because he/she completed his/her education in Canada. Mr. Mezher explained that this candidate was screened in because the candidate also has a Bachelor of Arts degree with a Minor in Economics. The candidate's application confirms that the candidate has this Minor. Mr. Mezher was satisfied that by having a Minor in Economics, the candidate must have taken at least four core courses in economics, which is one of the specialized areas.

**69** The respondent also rebutted the allegation that candidates M.R., M.A. and M.B., all educated in Canada, were screened into the process even though their applications do not show that they met the education qualification. Mr. Mezher showed

how these candidates established in their application that they met the specialization requirement. M.R.'s application shows, for example, that this candidate completed two years of a B.A. Program in Sociology, which is one of the specialized areas. The other two candidates' applications also show that these candidates have appropriate degrees. Mr. Mezher explained that to acquire these degrees the candidates must have taken at least four core courses in one of the specialized areas.

**70** The Tribunal finds that the respondent has provided a complete and reasonable non-discriminatory explanation for the elimination of the complainant from the appointment process. Furthermore, the complainant did not demonstrate that the respondent's explanation was a pretext for an otherwise discriminatory practice.

**71** The Tribunal therefore concludes that the complainant has failed to prove that the respondent discriminated against him based on his national or ethnic origin.

**Issue III:** Did the respondent appoint an unqualified person to the position?

**72** The complainant alleges that the appointee was not qualified for the EC-03 position. More specifically, he contends that the appointee's answers to the written exam were not properly assessed.

**73** The complainant submits that the appointee should not have received a passing mark for qualification 1 (Knowledge of Statistics and Statistical Analysis), which was assessed by questions 1 to 10 of the written examination. In particular, he submits that a review of the exam shows that some of the appointee's responses received two scores instead of one. For example, next to her answer to Question 5 (Q5), a first score of 2.5 is indicated and it can be seen that a second score of 1.5 was added. Also, next to her answer to question 10 (Q10), a first score of 0 is indicated and it can be seen that a second score of 1 was added. A total of 25 points was necessary to obtain a passing mark for qualification 1. Yet, the complainant submits, the appointee would only have obtained a score of 22.5 without the additional points that were awarded. With the additional points, her score was 25.

**74** Mr. Mezher was assisted by Ms. Hoskins and Mr. Bujduveanu for the correction of the candidates' exams. Mr. Mezher explained that he corrected all the exams twice. Once he finished his correction of the exams, Ms. Hoskins and Mr. Bujduveanu reviewed his marking to ensure that they agreed with the ratings.

**75** Mr. Mezher explained that in correcting the exams twice, he proceeded in the same way that he corrects the exams of his students at the University of Ottawa where he has been teaching part-time in the field of statistics since 1989. He first corrected all the candidates' answers to Q1. Then, he corrected all the candidates' answers to Q2, and so on. After having obtained a global view of all the responses for the different questions, he did a second correction, one to two days later, and adjusted the marks to ensure the correction was uniform and the scores were fair. This approach also ensured, he explained, that acceptable answers not included in the marking grid be considered and awarded points, if adequate.

**76** For example, for Q5, Mr. Mezher first gave a score of 2.5 to the appointee for her answer, but added 1.5 more points, two days later, after having read all the candidates' answers to this question. Mr. Mezher testified that he reviewed all exams twice, not just the appointee's exam. In the case of the appointee, he explained that he had missed a part of her answer and adjusted her mark accordingly.

**77** There is no evidence that this practice was unreasonable or improper by, for example, treating the appointee differently than other candidates in the marking of the exams. In the circumstances, the Tribunal finds that the complainant has failed to prove that the appointee's answers to the written exam were improperly assessed for this reason.

**78** The complainant submits, as well, that the appointee's answers to Q5 and Q10 were incorrect and did not match the answers in the marking grid. According to him, these were mathematical questions for which the appointee should have obtained either a perfect score for a correct answer or no points for an incorrect answer.

**79** With regard to the appointee's answers to questions 13, 14 and 16 (Q13, Q14 and Q16), the complainant submits that these were general knowledge questions and

that her answers did not correspond to the answers in the marking grid. According to him, the appointee should not have obtained the pass mark for these questions.

**80** The Tribunal reiterates that it cannot reassess candidates. Its role is to determine whether there has been an abuse of authority. After examining the marking of the appointee's answers that the complainant brought to its attention (Q5, Q10, Q13, Q14 and Q16), the Tribunal finds that there was no abuse of authority in that assessment.

**81** With respect to Q5, for example, the complainant contends that the appointee should have failed this question. Q5 read as follows: "If we would like to know whether passport holders born in Canada, in the United States of America, in Europe, and in other countries have the same age, what kind of test we (sic) can use?" The expected answer, as shown in the marking grid, was: "ANOVA Analysis of variance." Mr. Mezher explained that the appointee's answer was equivalent to this expected answer and this is why he gave her a mark of 4 out of 5. In her answer, she described an equation that can be used to find the answer.

**82** Mr. Mezher also explained why the appointee's answer to Q10 deserved one point out of five. Although the marking grid did not contain the answer she provided, the committee exercised its discretion to accept part of her answer, because it considered it adequate.

**83** Mr. Mezher explained, as well, why the appointee's answers to Q13, Q14 and Q16, which assessed analytical thinking, initiative and teamwork, deserved the points she obtained. For Q16, which assessed teamwork, for example, candidates were asked to describe a recent team they were part of and the actions taken to contribute to its success. In her answer, the appointee described with whom she worked recently as part of a team, her role (like keeping an open discussion weekly), and she listed key points for successfully working in a team. Those behaviours corresponded to some of the criteria set out in the rating guide, such as sharing information. Mr. Mezher gave her 4 out of 5 for her answer. According to Mr. Mezher, what was important was whether the behaviours described in the appointee's answer provided the committee with

enough information to assess the candidate's ability to work as part of a team. In his view, the committee had sufficient information to assess her ability to be able to do this.

**84** The Tribunal is satisfied that Mr. Mezher gave a reasonable explanation for the marks awarded to the appointee's answer for Q5, Q10, Q13, Q14 and Q16. The decision whether to accept answers not found in the marking grid falls within the broad discretion accorded to managers under s. 36 of the PSEA.

**85** The Tribunal therefore concludes that the complainant has failed to prove that the appointee's answers were not properly assessed and that the appointee was unqualified for the position.

**Issue IV:** Did the respondent show bias in favour of the appointee?

**86** To establish bias, it is not necessary that actual bias is found. A reasonable apprehension of bias may constitute abuse of authority. See *Denny v. Deputy Minister of National Defence*, 2009 PSST 29 at para. 125, referring to *Committee for Justice and Liberty v. Canada (National Energy Board)*, 1976 CanLII 2 (SCC), [1978] 1 S.C.R. 369 at p. 394.

**87** The Tribunal determined in *Gignac v. Deputy Minister of Public Works and Government Services*, 2010 PSST 10, that persons assigned to assess candidates in an appointment process have the duty to conduct an unbiased assessment that does not give rise to a reasonable apprehension of bias. The Tribunal adapted the test set out in *Committee for Justice and Liberty* to fit the context of bias in an appointment process, as follows: If a reasonably well informed person would reasonably apprehend bias on the part of one or several of the persons responsible for the assessment, the Tribunal may conclude that there was an abuse of authority.

**88** The complainant believes that Mr. Mezher was biased in favour of the appointee because both he and the appointee were educated in France. Furthermore, the complainant believes that Mr. Mezher adjusted the appointee's marks to enable her to pass the exam and appointed her notwithstanding the fact that she only met one of the two asset qualifications described in the JOA and SMC. In the complainant's view, the



appointee should not have been screened into the process, should not have obtained a passing mark for her exam, and should not have been appointed to the position. According to the complainant, Mr. Mezher failed to consider whether, in so doing, the appointment process would be seen by others to lack fairness.

**89** Mr. Mezher testified that the appointee originally comes from Algeria. He confirmed that he did not know her before the appointment process started. According to her application, the appointee graduated with a Master's degree in Statistics from Carleton University and a Master's degree in Applied Mathematics from Institut national des sciences appliquées in Toulouse, France, in 1998. Mr. Mezher testified that while he also studied in France at the end of the 1970s and at the beginning of the 1980s, it was not during the same period as the appointee nor in the same city. He studied in Paris and it was almost two decades before her.

**90** Mr. Mezher also explained that he corrected all exam questions twice for consistency, not just the appointee's exam. He further explained that to be screened into the appointment process, candidates had to show that they met the education and experience qualifications, and that they met at least one of the two asset qualifications. He explained that the appointee showed in her application that she met the education and experience qualifications and that she had experience using SAS software, which was one of the two assets qualifications.

**91** No evidence of actual bias was presented in this case. The Tribunal examined the evidence before it to determine whether it supports a finding of reasonable apprehension of bias. The Tribunal finds that a reasonably well informed person would not conclude that the respondent was biased in favour of the appointee based on these facts.

**92** The Tribunal therefore concludes that the complainant has failed to prove that Mr. Mezher showed either actual bias or a reasonable apprehension of bias in favour of the appointee in this appointment process.

## Decision

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

Nathalie Daigle  
Member

## Parties of Record

<b>Tribunal File</b>	2011-1207
<b>Style of Cause</b>	<i>Paul Abi-Mansour and Chief Executive Officer of Passport Canada</i>
<b>Hearing</b>	April 7, 8 and 24, 2014 Ottawa, Ontario
<b>Date of Reasons</b>	July 22, 2014
<b>APPEARANCES:</b>	
<b>For the complainant</b>	Paul Abi-Mansour
<b>For the respondent</b>	Joshua Alcock
<b>For the Public Service Commission</b>	Louise Bard (written submissions)