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*Federal Public Sector  
Labour Relations and  
Employment Board Act and  
Public Service Employment Act*



Before a panel of the  
Federal Public Sector  
Labour Relations and  
Employment Board

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BETWEEN

**GINETTE LESAGE**

Complainant

and

**DEPUTY MINISTER OF TRANSPORT, INFRASTRUCTURE AND COMMUNITIES**

Respondent

and

**OTHER PARTIES**

Indexed as

*Lesage v. Deputy Minister of Transport, Infrastructure and Communities*

In the matter of a complaint of abuse of authority under section 77(1)(a) of the *Public Service Employment Act*

**Before:** Nathalie Daigle, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Complainant:** Herself

**For the Respondent:** Noémie Fillion, counsel

**For the Public Service Commission:** Claude Zaor, senior analyst

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Heard by videoconference,  
March 30, 31, and April 1, 2021.

(FPSLREB Translation)

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**REASONS FOR DECISION****FPSLREB TRANSLATION**

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**I. Introduction**

[1] Ginette Lesage (“the complainant”) applied for a finance and administration officer (AS-03) position with Transport Canada’s (TC) Transportation of Dangerous Goods Directorate. Her candidacy was eliminated at the preselection stage. She alleged that the Deputy Minister of Transport, Infrastructure and Communities (“the respondent”) committed an abuse of authority because she was screened out for reasons other than merit and because the assessment board was well aware of her qualifications.

[2] She also claimed that there was bias against her because she and the person who assessed her had a conflict and because the people who assessed her lacked the necessary assessment skills. At the hearing, she dropped her allegations with respect to the appointee’s assessment, along with her labour-relations-issues allegations (classification, intimidation, harassment, etc.) and the fact that her manager did not inform her that the job poster had been posted.

[3] The respondent denied abusing its authority in the appointment process.

[4] The Public Service Commission did not attend the hearing, but it provided written submissions on its applicable policies and guidelines. It did not take a position on the merits of the complaint.

[5] For the reasons set out later, the complaint is dismissed. The complainant did not demonstrate that on a balance of probabilities, the respondent abused its authority in the appointment process.

**II. Background**

[6] On July 22, 2015, a Notification of Appointment or Proposal of Appointment was issued for the appointee.

[7] On July 27, 2015, the complainant made her complaint of abuse of authority to the Public Service Labour Relations and Employment Board (PSLREB).

[8] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to*

*provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent and changed the name of the PSLREB to the Federal Public Sector Labour Relations and Employment Board (“the Board”).

[9] The hearing for this case was postponed several times, at the complainant’s request.

#### **A. Issues**

[10] I must decide the following issues:

- 1) Was there abuse of authority in the assessment of the complainant and bias against her because she and the person who assessed her had a conflict?
- 2) Was there abuse of authority because the person who assessed the complainant did not have the necessary assessment skills?

#### **III. Summary of the evidence**

[11] The complainant testified at the hearing and called three witnesses: Yvan Meloche, Multimedia Specialist (2003-2014); David Lamarche, Manager; and Rachelle Lalonde, who worked with the complainant for one year in 2010 while she was in a finance officer position.

[12] The respondent called two witnesses: Donna McLean, Chief, Inspector Education and Public Awareness, as of the staffing process; and Julie Comeau, Manager, Resource Management, Transportation of Dangerous Goods Directorate, as of the staffing process.

[13] The complainant stated that she worked for TC’s Transportation of Dangerous Goods Directorate from March 2003 to January 2015. Her title was finance and multimedia administrative support officer (AS-01). She also said that her current title was financial officer (AS-01). In 2010 or 2011, she held a position on an acting basis at the AS-03 group and level. Between 2011 and January 2014, she occasionally held a position on an acting basis as a financial officer at the AS-03 group and level.

[14] She has been on sick leave since February 2015.

[15] The complainant explained that she wanted to be reclassified for the job she had held since 2003. She explained that she was performing duties not listed in her official job description as a multimedia specialist.

[16] The complainant added that she was in charge of financial procedures until 2012, when Ms. Comeau joined the Transportation of Dangerous Goods Directorate. According to the complainant, Ms. Comeau held a position at the PM-05 group and level and was part of two teams. She was tasked with working in the Resource Management (finance and multimedia) team (the complainant's team) and in another team under the deputy minister's leadership.

[17] According to the complainant, Ms. Comeau told her at the time that one of her duties was to track budgets, forecasts, expenses, and reports. The complainant explained that she did not understand why Ms. Comeau had to handle those budgetary and financial tasks. According to the complainant, Ms. Comeau asked her many questions after she arrived, in addition to asking her to copy Ms. Comeau on emails that the complainant sent to third parties in her daily financial work.

[18] From September to December 2014, the complainant held a position at the AS-03 group and level on an acting basis, which was not renewed in January 2015.

[19] According to the complainant, in early 2015, her manager, Ms. Comeau, completed her performance evaluation. The complainant stated that she disagreed with the evaluation as it contained negative comments about her work. According to her, a conflict broke out between them.

[20] The complainant stated that she prepared a grievance in which she alleged that Ms. Comeau had harassed her. However, she added that her bargaining agent lost the grievance, which is why at the hearing, Ms. Comeau was unaware of the existence of such a grievance or even that she and the complainant had such a problem.

[21] On February 4, 2015, the complainant left her job as she went on sick leave. She claimed that at the time, Ms. Comeau criticized her for making a mistake in her work. The complainant consulted her doctor and was granted sick leave. Her sick leave has been regularly renewed since then. She was still on sick leave as of the hearing in April 2021.

[22] On April 28, 2015, the staffing process (which is the subject of this complaint) was announced. The complainant applied. Since she was on sick leave at home, she did not have access to the online application system. However, she emailed her application

to the Human Resources branch. She adduced in evidence a copy of her CV and her response to the criteria that she submitted to that branch.

[23] On May 13, 2015, a representative of the respondent's Human Resources branch informed her that she did not meet three of the four essential experience qualifications being sought.

[24] On July 22, 2015, a Notification of Appointment or Proposal of Appointment was issued for the appointee.

[25] On the same day, the complainant attempted to make a complaint about it. However, her complaint was incomplete, and the Board did not accept it.

[26] On July 27, 2015, she made the complaint, which the Board accepted.

[27] At the hearing, the complainant explained that abuse of authority occurred in the staffing process because she should have been appointed to the position. She felt that since she had performed AS-03 duties for years and AS-01 duties since 2003, it was unfair to appoint another person to the position.

[28] She explained that a Human Resources officer informed her that the position that had been staffed by way of the process was not the position at the AS-03 group and level that she had held before on an acting basis but a new position created in June 2015. However, according to the complainant, the experience sought in the posted position's Notification of Appointment resembled the tasks she carried out in the past.

[29] The assessment board was composed of Ms. Comeau and Ms. McLean.

[30] First, the board rejected her application on the grounds that she did not demonstrate that she met three of the four experience criteria being sought. However, due to her complaint, the board changed its mind and concluded that she did not demonstrate that she met one of the four experience criteria being sought, namely, "[translation] Experience providing material and contracting services."

[31] According to the complainant, she met all the experience criteria. It is inconceivable that the assessment board concluded that she did not meet all the experience criteria because she had performed the duties described in the position for

12 years. At the hearing, she wished to demonstrate the tasks she performed in the past, both in her AS-01 position and when she acted in an AS-03 position.

[32] She explained that she was responsible for 16 budget responsibility centres, for coordinating and distributing funds, and for coding and entering data into financial systems.

[33] She also entered several documents into evidence to demonstrate the daily work tasks that she carried out. I have described as follows the documents that she submitted to me and that were adduced into evidence:

- 1) an example of a note she sent to managers to remind them of the procedure to follow at the end of the 2012-2013 fiscal year;
- 2) emails that Ms. Comeau and a manager exchanged in December 2014 about a contract; in them, Ms. Comeau recommended that the manager contact the complainant for certain issues, since she was the expert on the matter;
- 3) emails that Ms. Comeau and managers exchanged in January 2015 with respect to organizing information and training sessions for managers about contracts; in them, Ms. Comeau asked the complainant to help her organize the sessions;
- 4) emails that Ms. Comeau and managers exchanged in October 2014 that indicated that the complainant would send restoration contracts to Finance and make a payment;
- 5) emails that Ms. Comeau and the complainant exchanged in October 2012; in them, Ms. Comeau asked her to prepare a purchase order for a professional service for writing job descriptions; and
- 6) a checklist done in preparation for the end of the 2010-2011 fiscal year.

[34] The complainant explained that the training sessions on contracts noted in point 3 were about the impact of public-procurement legislation. Also explained were the signing authorities for payments that are delegated to public servants. According to her, it demonstrated her familiarity with those subjects.

[35] The complainant also explained that the exchanges about restoration contracts noted in point 4 demonstrated that she was familiar with the general rules applicable to choosing a contracting method.

[36] She believes that her elimination from the process on the grounds that she did not meet the experience criteria is not only implausible, but impossible.

[37] According to her, instead, she was excluded from the staffing process because she and Ms. Comeau had a conflict. She wrote the following in her allegations:

“[translation] Julie Comeau and I had a conflict because I questioned her appointment

to our group; she was with us, although she was supposed to have been among those cut. This was in addition to having no finance experience.”

[38] The complainant believes that it was illogical to eliminate her from the process for the following reason:

[Translation]

...

*I would like to draw your attention to the fact that I worked directly with my manager, Julie Comeau, and that logically speaking, she could in no way reject on the grounds of my greater experience in “contracting” contracts, acquisition cards, etc. I had nine credit cards, which the administrative assistants held. I had to supervise them with respect to the financial codes procedures and applying signatures, and I had to follow up with them on this, sections 32 and 34, etc. ... Contract, inventory, fiscal year-end, meeting with ... Hospitality charges, planning ....*

...

[39] Her consternation was summarized as follows in her allegations:

[Translation]

...

***How a manager who has worked closely with me every day for years, who sits next to me, and with whom I participate in finance meetings and spend my days giving her information can say that I have no experience, no knowledge, no skills, no personal suitability....***

...

[Emphasis in the original]

[40] The complainant also wished to have several witnesses testify at the hearing. They all stated that she was in charge of finances for their team.

[41] Mr. Meloche explained that he held a multimedia specialist position from 2003 to 2014. During those years, he worked with the complainant in the Resource Management group. He confirmed that she had been in charge of finances. For his part, he was responsible for multimedia production and design for all publishing projects. He gave the complainant some invoices. She paid those of less than \$5000, given her financial officer role. Over the years, he noted that she helped managers manage their budgets. For example, she helped Ms. McLean manage her budget. Ms. McLean



managed one of the five teams in the Transportation of Dangerous Goods Directorate. He explained that sometimes, Ms. McLean asked the complainant about the balance remaining in her budget.

[42] For his part, Mr. Lamarche was one of the managers in the Transportation of Dangerous Goods Directorate. From 2004 to 2014, the complainant helped him manage his budgets. He explained that she helped him with his budgetary operations for the fiscal year with respect to expenditures. She applied the appropriate financial procedures.

[43] For her part, Ms. Lalonde explained that she helped the complainant with her financial tasks for one year, 2010. Ms. Lalonde held an AS-01 position. She recalled that the complainant showed her how to administer travel claims and credit cards. She also showed her how Oracle software worked for budget management.

[44] For her part, at the hearing, Ms. Comeau explained her duties in 2015 as the manager of the Resource Management team. She managed the human and financial resources for the Transportation of Dangerous Goods Directorate under the Corporate Services Directorate, which included administrative and financial services.

[45] She stated that in January 2015, at a meeting with her team, she informed her four subordinates that a staffing process would be initiated shortly to staff an AS-03 finance and administration officer position in the Transportation of Dangerous Goods Directorate in the National Capital Region. She invited her four subordinates to apply.

[46] The respondent then launched the internal appointment process, with the closing date of May 4, 2015.

[47] A total of 14 candidates applied. Among the successful candidates, 3 qualified for the pool for appointment purposes.

[48] The complainant applied for the finance and administration officer (AS-03) position, but her application was screened out at the preselection phase.

[49] As noted earlier, the assessment board for the staffing process was composed of Ms. Comeau and Ms. McLean. Ms. Comeau was the manager responsible for the process, and Ms. McLean supported her in that role.

[50] Ms. Comeau explained that she has known the complainant since 2012. At that time, they were colleagues. Ms. Comeau was later appointed as the team manager. She did not note that she and the complainant had a conflict. Sometimes, they disagreed on a few things in the files.

[51] When Ms. Comeau assessed the complainant's performance before her sick leave, Ms. Comeau noted some errors and omissions in her work, in addition to her accomplishments. The observations were reflected in the assessment, which the complainant did not take well. However, Ms. Comeau still did not note a conflict between them. They appeared to have a normal manager-subordinate relationship. They had known each other for six years, and their relationship was cordial.

[52] Ms. McLean also noted that the assessment board was composed of two people (her and Ms. Comeau) to promote transparency and impartiality in the process. In particular, given the complainant's recent disagreement with her performance evaluation, as completed by Ms. Comeau, the board felt that it would be better for Ms. McLean to assess the complainant's application. According to Ms. McLean, the disagreement between Ms. Comeau and the complainant did not lead to a conflict. The fact that she was the first to assess the complainant's application was only a preventive measure to keep the process transparent and impartial.

[53] Therefore, Ms. McLean first assessed the complainant's CV and responses to the selection criteria. Ms. McLean explained that the candidates had been instructed to provide concrete examples of their experience for each requested experience.

[54] Initially, when Ms. McLean assessed the complainant's application, i.e., the complainant's CV and responses to the selection criteria, she found that in the complainant's application, she did not demonstrate that she met experience requirements 2, 3, and 4. These were the experience requirements:

[Translation]

*EX2: Experience coordinating financial resources services, including preparing financial reports and financial planning.*

*EX3: Experience providing material management and contracting services.*

*EX4: Experience using Excel and the Salary Management System (SMS).*

[55] Ms. McLean completed a marking grid with annotations to that effect. For example, next to the essential EX3 qualification “Experience providing material management and contracting services”, she wrote the following: “[translation] refers to good material management practices rather than her experience delivering material management services.”

[56] After assessing the complainant’s application, Ms. McLean forwarded her assessment to Ms. Comeau, who reviewed each of Ms. McLean’s comments in the marking grid. She reviewed the results for validation purposes. Since she agreed with the assessment, she signed the document.

[57] On May 13, 2015, Human Resources informed the complainant that her application for the process had not been retained as she did not demonstrate three of the four experiences being sought, which were experience requirements 2, 3, and 4.

[58] At that time, the complainant requested an informal discussion with Human Resources. Twice, one was planned. Finally, on May 28, 2015, she expressed no interest in participating in one.

[59] On July 22, 2015, a Notification of Appointment or Proposal of Appointment was issued for the appointee. On July 27, 2015, the complainant made her complaint.

[60] In September 2015, as no informal discussion had taken place, the assessment board considered it appropriate to review its findings. Ms. McLean explained that her opinion was that had an informal discussion been held, the board would have reviewed its findings, and if any errors appeared, it could have corrected the situation. However, since no informal discussion had taken place, the board took the initiative to review its conclusions, to show its openness. It reached a new conclusion; namely, it could find that the complainant demonstrated that she met three of the four experience criteria being sought. However, it could not find that she met the experience requirement of providing material management and contracting services. Her response to the selection criteria included no examples of her experience.

[61] Ms. Comeau also explained that since the parties had had no informal discussion, she and Ms. McLean chose, out of agreement, to review the complainant’s application. By carefully reviewing her responses to the selection criteria and her CV, they felt that they could find that she met experience requirements 2 and 4. However,

after carefully reviewing her response to experience requirement 3 and her CV, they could not find that she met that requirement. Her response included no examples of her experience.

[62] Thus, on September 18, 2015, a Human Resources representative contacted the complainant to inform her that the assessment board had reviewed her job application and had concluded that she did not demonstrate that she met experience requirement EX3, “Experience providing material management and contracting services.”

[63] At the hearing, Ms. McLean and Ms. Comeau did not recall whether pages 7 to 9 of the complainant’s application letter were in the one they assessed and reviewed. However, both were able to clarify that the additional information on those pages did not include concrete examples of the complainant’s experience with respect to essential qualification EX3, “Experience providing material management and contracting services.” The only information that the complainant provided with respect to that experience requirement was an excerpt of a procedure. It included a list of steps to take, without specifying where the information came from. It could be from the Treasury Board Secretariat’s procurement policies.

[64] At the hearing, Ms. Comeau was unaware of a grievance or complaint that the complainant presented against her.

#### **IV. Analysis**

[65] Section 77 of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12 and 13; *PSEA*) states that an unsuccessful candidate in an advertised internal appointment process may make a complaint to the Board that he or she was not appointed or not proposed for appointment because of an abuse of authority.

[66] “Abuse of authority” is not defined in the *PSEA*. However, s. 2(4) provides as follows: “For greater certainty, a reference in this Act to abuse of authority shall be construed as including bad faith and personal favouritism.” As indicated in *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8, abuse of authority may also include improper conduct or significant omissions. In a complaint of abuse of authority, the burden of proof rests with the complainant (see *Tibbs*, at paras. 48 to 55).

**A. Was there abuse of authority in the assessment of the complainant and bias against her because she and the person who assessed her had a conflict?**

[67] The complaint was made under s. 77(1)(a) of the *PSEA*, which refers to s. 30(2). Those provisions read as follows:

*77 (1) When the Commission has made or proposed an appointment in an internal appointment process, a person in the area of recourse referred to in subsection (2) may — in the manner and within the period provided by the Board's regulations — make a complaint to the Board that he or she was not appointed or proposed for appointment by reason of*

*(a) an abuse of authority by the Commission or the deputy head in the exercise of its or his or her authority under subsection 30(2) ....*

...

*30 (2) An appointment is made on the basis of merit when*

*(a) the Commission is satisfied that the person to be appointed meets the essential qualifications for the work to be performed, as established by the deputy head, including official language proficiency; and*

*(b) the Commission has regard to*

*(i) any additional qualifications that the deputy head may consider to be an asset for the work to be performed, or for the organization, currently or in the future,*

*(ii) any current or future operational requirements of the organization that may be identified by the deputy head, and*

*(iii) any current or future needs of the organization that may be identified by the deputy head.*

[68] I note that as a panel of the Board, it is not my role to reassess the candidates' qualifications. My role is to determine whether abuse of authority occurred in the appointment process; for example, in the assessment board's assessment (see, for example, *Boutzouvis v. the Director of Public Prosecution Service of Canada*, 2012 PSST 25 at para. 27).

[69] The complainant argued that the respondent abused its authority by eliminating her application from the advertised internal appointment process. It was screened out on the grounds that she did not have a required essential qualification. She had worked for the respondent's organization for over 12 years in positions similar to the one staffed.

[70] According to the complainant, Ms. Comeau, who was her manager and the chair of the assessment board, was well aware that she met all the necessary qualifications. However, in her opinion, Ms. Comeau rigidly and mechanically did not recognize that she had those qualifications.

[71] The complainant brought to my attention *Payne v. Deputy Minister of National Defence*, 2013 PSST 15. She argued that the Public Service Staffing Tribunal (“the Tribunal”) found that an abuse of authority was committed in circumstances similar to those in this case. The respondent eliminated the complainant’s application on the grounds that he failed to provide evidence that he possessed an essential qualification for the certification required for the position. He had worked for the respondent’s organization for over 30 years. During that time, the respondent gave him the training necessary for the occupation and granted him the qualification. However, the respondent never issued him an official certificate. Therefore, in his job application, he did not provide a document stating that he was qualified to accomplish the duties related to the essential qualification.

[72] In *Payne*, the Tribunal found that a member of the assessment board knew full well that the complainant had the appropriate qualification. However, the respondent did not use that information because it had adopted a guideline that the assessment board members should not consider their personal knowledge of the candidates.

[73] In that case, the Tribunal found that the respondent applied that guideline rigidly and mechanically, thus refusing to admit that the complainant possessed the required qualification, which was a relevant fact. Consequently, the Tribunal found that the respondent had fettered the exercise of its discretion and that it had abused its authority.

[74] In addition, the complainant argued that the respondent had a duty to correct its error, even though she did not wish to participate in an informal discussion. She argued that informal discussions ensure flexibility in staffing processes. For example, a person might have been eliminated in error. Therefore, in her view, the respondent had to reconsider her application and rectify the situation. She believes that by rejecting her application, the respondent did not follow the rules.

[75] Finally, according to the complainant, her job application clearly and significantly demonstrated her abilities, skills, and experience.

[76] For its part, the respondent argued that Ms. McLean completed the preselection assessment to ensure that it was neutral and impartial. She was not the complainant's manager; it was Ms. Comeau, who then reviewed the results for validation before they were sent to the candidates.

[77] The respondent argued that all the candidates were assessed using the same assessment tools. As part of the assessment process, they had to demonstrate that they had the essential qualifications for the position. The respondent argued that it was a common assessment method that allowed for assessing education and experience. Under that method, the assessment board assesses the information in the job applications; i.e., the CVs and the responses to the selection criteria.

[78] The respondent argued that the job advertisement specifically informed the candidates that they had to provide concrete examples to demonstrate how they met the criteria. The advertisement read as follows:

[Translation]

...

*7) The candidate must clearly demonstrate how he (she) meets the essential qualifications for education, professional accreditation, and experience listed in the Statement of Merit Criteria, as well as the asset qualifications (if applicable), using concrete and detailed examples in their CVs and responses to the selection questions. Failing to provide sufficient information could result in your application being eliminated at the preselection stage. The organization will communicate only with candidates retained at the preselection stage.*

...

[79] The respondent noted that the complainant provided the following information to demonstrate that she met experience requirement 3, "Experience providing material management and contracting services":

[Translation]

***EX 03 Treasury policy experience (contracting)***

*Service Contract - Goods contract, sole-source contract, Merx, temporary help, etc.*

*The Treasury Board establishes procurement policies for the whole of government. It sets limits on ministers' approval authority and approves contracts and projects above those limits. And monitors the entire government.*

*Contract preparation for either contracts or standing offers.*

*Standing offer: comply with the limit in the standing offer.*

*Some contracts must be displayed on MERX for 40-day bids*

*Sole-source goods contract:*

*For each contract, a form 9200 must be completed, and the necessary information and coordinates must be included for the justification for preparing the contract.*

*Identify the department's needs by including terms and references*

*1-History*

*2-Objective-goal*

*3-Request for proposal*

*4-Project details-contact, period, billing, inspection, insurance*

*Attach assessment criteria (with score)*

*Mandatory criteria (must be met for preselection).*

*Summary of services to be rendered (must be in both languages to be posted on MERX)*

*This is part of the contracts that we use, now with the changes*

*Service contract*

*Complete the application (9200) Information needed*

*Supplier Name*

*Delivery address where services will be rendered*

*Amount*

*Financial code*

*Applicant's name*

*Details of the requested service*

*Once completed, it is sent to the contracts officer, who, after verifying it, requests the appropriate documents.*

*Justification*

*Sole source*

*Terms of reference*

*Signature of the responsible manager (budget check)*

*[Emphasis in the original]*

[80] However, the assessment board found that the complainant submitted no concrete and detailed examples in her response or in her CV to clearly demonstrate how she met this essential qualification.



[81] It pointed out that when at the hearing, it asked the complainant where the information came from in her noted response that she provided to demonstrate her experience, she said that it was from the *Financial Administration Act* and applicable policies. However, those are not concrete and detailed examples of experience but a reproduction of parts of an Act and policies.

[82] Ms. McLean stated that the assessment board might not have received pages 7, 8, and 9 of the version of the complainant's application letter that she adduced in evidence at the hearing. The complainant's file contains a six-page application letter. Nevertheless, Ms. McLean stated that the assessment board maintained its finding that in her application letter (the one of six or the one of nine pages), the complainant did not demonstrate that she met experience requirement 3.

[83] The respondent brought to my attention paragraph 54 of *Henry v. Deputy Head of Service Canada*, 2008 PSST 10, which reads as follows:

*[54] Candidates should not take for granted that assessment boards will follow-up [sic] with them to ensure they have listed all the elements required to meet essential qualifications. There was no such obligation for the assessment board in the circumstances of this complaint. Similarly, if an application is incomplete, a candidate should not assume that an assessment board will use its personal knowledge of a candidate to screen him or her in. An assessment board can screen out an applicant who does not meet the essential qualifications. See Neil v. Deputy Minister of Environment Canada et al., [2008] PSST 0004.*

[84] The respondent also brought to my attention paragraphs 39 to 41 of *Warford v. Commissioner of the Royal Canadian Mounted Police*, 2016 PSLREB 56, which read as follows:

*[39] As the Tribunal held in Edwards v. Deputy Minister of Indian and Northern Affairs Canada, 2011 PSST 10 at paras. 33-48, it is up to candidates to demonstrate on their applications that they meet all the essential criteria, particularly where the job opportunity advertisement specifically requires it. There is no obligation on an assessment board to infer qualifications when candidates have been specifically told that they must demonstrate them clearly in their applications.*

*[40] While I have concerns about the decision of the respondent to disregard the fact that both Ms. Gosse and Ms. Warford were trained E&R trainers in the determination of the criteria related to the E&R program, I do not find this is an abuse of authority.*

[41] *In fact, rather than being an abuse of authority, the assessment board's decision not to rely on its personal knowledge with respect to certain of the candidates resulted in fair treatment for all candidates. Ms. Bonia was not supervised and did not work with Ms. Lunen, who was on the assessment board. It would have been unfair to Ms. Bonia had the other candidates had the benefit of the screening board relying on its personal and subjective knowledge of their work experience.*

[85] The respondent argued that the *PSEA* provides that an appointment is not an entitlement and is based not on seniority but rather on the qualifications required for the position and the organization's needs.

[86] In response to the complainant's allegation that the assessment board excluded her from the process because she and Ms. Comeau had a conflict, the respondent argued that contrary to the complainant's statements, Ms. Comeau was not primarily responsible for the assessment at the preselection stage. She validated the assessment only after Ms. McLean's assessment.

[87] With respect to the complainant and Ms. Comeau allegedly having a conflict, the respondent argued that in *Jacobson v. Chairperson of the Immigration and Refugee Board*, 2009 PSST 19, the Tribunal concluded at paragraph 54 that "It is not the Tribunal's role to determine whether harassment occurred in the workplace." The Tribunal also stated the following: "The Tribunal must determine whether the evidence establishes that one or more delegates acted in bad faith by failing to exercise their authority under subsection 30(2) of the *PSEA* in an impartial and unbiased manner."

[88] The respondent argued that in *Gignac v. Deputy Minister of Public Works and Government Services*, 2010 PSST 10, the Tribunal stated the following at paragraph 74:

[74] *...Where bias is alleged, the following test can be used to analyse this allegation, while taking into account the circumstances surrounding it: If a relatively informed bystander can reasonably perceive bias on the part of one or more persons responsible for assessment, the Tribunal can conclude that abuse of authority exists.*

[Emphasis in the original]

[89] It added that the complainant has the onus of demonstrating bias or the reasonable apprehension of bias. For example, paragraph 96 of *Bizimana v. Deputy Minister of Public Works and Government Services*, 2014 PSST 3, stated the following:

**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).*

[90] The respondent argued that although the complainant alleged that she and Ms. Comeau had a conflict, she provided no evidence of it. For her part, Ms. Comeau described her relationship with the complainant as a regular manager-subordinate relationship. They had known each other for six years, and Ms. Comeau never noticed a conflict between them. Their relationship was cordial.

[91] The respondent added that *Saunders v. Deputy Minister of National Defence*, 2014 PSST 13, states at paragraph 39 that presenting a grievance or complaint is insufficient in itself to give rise to a reasonable apprehension of bias on the part of a member of the management team.

[92] First, I find that although the complainant considers herself qualified for the position and that she is entitled to it, the *PSEA* is clear on the objective and impartial nature of appointment processes. Appointees must have demonstrated that they meet the requirements of the position and best meet the organization's needs.

[93] In this case, the respondent selected the assessment criteria set out in the job opportunity advertisement and provided specific instructions to the candidates. They were asked to provide concrete and detailed examples in their responses to the selection criteria to clearly demonstrate how they met the essential qualifications related to the desired experience.

[94] However, the complainant did not provide concrete and detailed examples in her response to experience 3 to clearly demonstrate how she met it. In her response, she set out theoretical knowledge about contracting. She did not explain how her experience or past work was relevant, for example by answering questions as to "What", "Who", "Where", "When", "How", and "Why" her experience was relevant.

[95] As the Tribunal found in *Henry*, candidates should not assume that assessment boards will follow up with them to ensure that they identified everything required to meet the essential qualification criteria.

[96] In this case, the respondent ensured that all candidates were assessed on an equal footing. Thus, although the assessment board members who rejected the complainant's application knew of her experience, only the information in her application letter and CV was considered at the preselection stage. That method was not an abuse of authority.

[97] In short, I find that the complainant's application letter was incomplete. The assessment board's decision not to rely on its personal knowledge of the candidate to accept her application at the preselection stage resulted in the fair treatment of all candidates. Its decision not to rely on its personal knowledge of the candidate to accept her application at the reconsideration stage of its decision in September 2015 also resulted in the fair treatment of all candidates. Had the complainant benefitted from the personal and subjective knowledge of the assessment board's members about her work experience, it would have been unfair to the other candidates. In this case, the complainant's application was considered on the same basis as those of all other candidates.

[98] Therefore, I find that the complainant was assessed fairly against the established criteria.

[99] Second, after reviewing the testimonies and the documents that the parties submitted, I find that nothing in the evidence indicates bias by the assessment board. Therefore, I must determine whether the evidence is sufficient to support the complainant's allegation of a reasonable apprehension of bias.

[100] In *Denny v. Deputy Minister of National Defence*, 2009 PSST 29 at para. 124, the Tribunal confirmed the following: "The test for reasonable apprehension of bias is well established. Suspicions, speculations or possibilities of bias are not enough and bias must be real, probable or reasonably obvious."

[101] In *Drozdowski v. Deputy Head (Department of Public Works and Government Services)*, 2016 PSLRB 33 at para. 26, the test to be applied was as follows:

*[26] Given the history of the terminology, I think the test can be reworded as follows: If a reasonably informed bystander could reasonably perceive bias on the part of one or more of the persons responsible for assessment, the Board can conclude that abuse of authority exists.*

[102] If I apply that criteria to the circumstances of this case, I find that a reasonably well-informed observer would not reasonably perceive bias on the part of the assessment board members who assessed the complainant.

[103] My reasoning is as follows. The complainant believes that the assessment board members eliminated her candidacy because she and Ms. Comeau had a work conflict, and apparently, Ms. Comeau had a negative opinion of her because of it. She also added that she filed a grievance against Ms. Comeau. However, it was lost. For her part, Ms. Comeau was unaware of the existence of a complaint or grievance presented against her.

[104] In *Saunders*, the Tribunal rejected the argument that the mere fact that the complainant presented grievances and complaints against “management” meant that her references were biased because they were members of management. Similarly, the mere fact that the complainant attempted to file a grievance against Ms. Comeau is not evidence that Ms. Comeau, and Ms. McLean, rejected her application on that basis. On one hand, Ms. Comeau was unaware that she had been temporarily subject to a complaint or grievance, and she did not perceive that she and the complainant had a conflict. On the other hand, Ms. McLean was also not in conflict with the complainant, and she was never subjected to a complaint or grievance presented by the complainant.

[105] In my view, a reasonably well-informed observer could not reasonably perceive bias on the part of Ms. Comeau or Ms. McLean for those reasons. The evidence also demonstrated that the method of assessing the complainant’s responses to the selection criteria was objective and that the process was fair.

[106] Overall, the evidence indicated that the complainant’s application was screened out because she did not provide concrete examples of her work experience in the field of providing material and contracting services. The fact that in the past, Ms. Comeau assessed the complainant’s work performance and noted aspects of her work to improve is not evidence of bias on the part of the manager; rather, they are key responsibilities of managers in the process of assessing employee performance.

[107] Therefore, I find that it was not established that abuse of authority occurred in the complainant's assessment or that there was bias against her because she and the person who assessed her had a conflict.

**B. Was there abuse of authority because the person who assessed the complainant did not have the necessary assessment skills?**

[108] The complainant wrote the following in one of the attachments to her binder of documents:

[Translation]

*... Donna McLean completed the assessment. She knew nothing about finances. I worked with her for 10 years doing her budget and met with her every month. She wanted nothing to do with the budget as long as I transferred money to train her team and those who came from outside, or for travel, or for contracts ... how could she complete the assessment of skills she does not have and say that it was not someone she knew with the required experience or quality or the like? ....*

[109] At the hearing, the complainant also suggested that an assessment board's members must have performed the tasks or duties of the position to be staffed, to know those duties well.

[110] Ms. McLean explained that in 2015, she was responsible for training inspectors, and that she managed a team of three in the Transportation of Dangerous Goods Directorate. She explained that as a designated manager since 2004, she has received staffing training, and that she is familiar with public-service staffing rules. In addition, she testified that she was sufficiently aware of the work associated with the finance and administration officer (AS-03) position in that directorate to assess candidates in that respect. She carries out management functions in the directorate and understands its business activities.

[111] As for Ms. Comeau, she was the collective staffing manager at TC from 2009 to 2012. In that role, she was responsible for staffing entry-level positions. Between 1000 and 1500 candidates were recruited through the processes. At that time, she corrected numerous exams, conducted many interviews, and checked references. During the staffing process at issue, she was the manager of the Resource Management team and knew well the work associated with the finance and administration officer (AS-03) position. She knew her team's business activities because of her management duties.

[112] The complainant referred to no regulations or policies to support her allegation that an assessment board's members must have performed the duties or functions of the position to be staffed, to be familiar with its duties.

[113] The respondent argued that the assessment board members knew well the work associated with the position to be staffed. As established in *Sampert v. Deputy Minister of National Defence*, 2008 PSST 9 at para. 54, the assessment board's members should be well familiar with the duties of the position to be staffed.

[114] I considered the parties' evidence and arguments. The complainant simply stated that Ms. McLean did not have the skills to assess her. However, I note that it is not necessary for a person to have performed the duties or functions of the position to be staffed to have the necessary skills. What matters is that the person knows those duties and responsibilities well.

[115] In this case, the complainant did not provide me with any convincing evidence that the assessment board, as constituted, was unfamiliar with the duties and responsibilities of the position to be staffed or that it acted improperly. However, she had the onus of proving that an abuse of authority occurred.

[116] Therefore, I find that the complainant failed to prove on a balance of probabilities that Ms. McLean or Ms. Comeau did not have the necessary qualifications to take seats on the assessment board. Thus, the allegation of abuse of authority cannot be considered founded.

[117] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*

**V. Order**

[118] The complaint is dismissed.

August 17, 2021.

FPSLREB Translation

**Nathalie Daigle,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**