

**Date:** 20220725

**Files:** EMP-2017-11062  
and EMP-2017-11075 to 11080

**Citation:** 2022 FPSLREB 60

*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

---

BETWEEN

**SEYDOU DOUMBIA**

Complainant

and

**DEPUTY HEAD**

**(Department of Employment and Social Development)**

Respondent

and

**OTHER PARTIES**

Indexed as

*Doumbia v. Deputy Head (Department of Employment and Social Development)*

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

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

**For the Complainant:** Himself

**For the Respondent:** Marylise Soporan, counsel

**For the Public Service Commission:** Louise Bard, senior analyst

---

Heard by videoconference,  
June 7, 2022.  
[FPSLREB Translation]

---

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

---

**I. Complaints before the Board**

[1] On March 23 and 30, 2017, Seydou Doumbia (“the complainant”) made seven complaints under s. 77(1) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*) alleging that the deputy head of Employment and Social Development Canada (“the respondent”) abused its authority under s. 77(1) of the *PSEA* during the internal selection process numbered 2016-CSD-IA-QUE-12353 (“the selection process”).

[2] Each complaint is about a different appointment, but each appointment was made from the selection process. On May 2, 2017, the Federal Public Sector Labour Relations and Employment Board (“the Board”) decided to combine the seven complaints because they are about a single selection process in which the respondent found that the complainant did not have the skills and abilities required for the position in question.

[3] The purpose of the selection process was to recruit applicants for program officer positions at the PM-02 group and level in the respondent’s Citizen Services and Program Delivery Branch at several locations in Quebec.

[4] The selection process included assessing the following abilities and competencies:

- oral communication;
- written communication;
- thinking skills;
- working with others;
- client focus;
- diagnostic information gathering;
- relationship building; and
- dependability.

[5] At the end of the assessment process, the respondent found that the complainant did not meet the “Diagnostic Information Gathering” qualification. As a result, he did not qualify for the position and could not be appointed.

[6] Therefore, the complaint’s subject is the assessment of the “Diagnostic Information Gathering” competency. The complainant claimed that the respondent abused its authority when it assessed that competency.

[7] On June 18, 2019, the respondent asked that the complaint be dismissed because reportedly, the complainant no longer had a personal interest in the position that the selection process targeted. According to the respondent, he currently holds a position with a much higher classification and salary than that of a program officer at the PM-02 group and level.

## **II. Summary of the parties' evidence**

[8] On the whole, the parties' evidence was not contradictory. Therefore, the evidence will be presented in logical order by combining their evidence. When necessary, points of disagreement will be identified. In addition to testifying, the complainant adduced into evidence a book of documents. I note that he did not refer to tabs 6 to 8 of his book. The respondent called Kali Corovesis as a witness. She was on the selection committee. As of the selection process, she was a program manager in the respondent's Laval office.

[9] The purpose of the selection process was to create a pool of qualified candidates for the program officer position. Based on the documents adduced in evidence, these are the program officer's duties and key activities:

- Provides information, advice, and guidance and promotes and delivers programs.
- Establishes and maintains relationships with clients and stakeholders to promote and deliver the programs and to leverage cooperative solutions.
- Consults and advises on applications, proposals, and action plan development.
- Assesses and recommends applications, proposals, and action plans for program financial support.
- Assesses applications against relevant labour market and other information and renders opinions and judgments.
- Discusses and concludes agreements with employers, sponsors, and individuals.
- Monitors, analyzes, and evaluates agreement activities and applications to assess eligibility, process payments, and make recommendations for continued and future entitlements.
- Participates in working groups at the local or community level to support the implementation of local priorities and strategies.

[10] According to Ms. Corovesis, "Diagnostic Information Gathering" is an important competency for a program officer, which focuses on the applicant's ability to identify information important for accepting or denying client requests. The applicant must be able to quickly obtain the information necessary to clarify a situation or to make a decision.

[11] The selection committee assessed the “Diagnostic Information Gathering” competency in an interview with those applicants who passed the selection process’s earlier stages. The interview was also used to measure other competencies that I will not discuss because the complaint is not about how they were assessed. The interview consisted of a role play in which the applicant was given an information package 30 minutes beforehand, which included detailed information about the role play. The applicant played the program officer’s role, and Ms. Corovesis played the client’s role.

[12] During the role play, the client contacted the program officer, who, for the role play’s purposes, was an officer of the Canadian Bingo Agency who reported to the respondent. The program officer had the client’s file in hand. He had to contact the client about her file to explain the principles and terms of recreational bingo, what would happen to her application, his decision as to whether she would be granted a licence, and the amount payable or refundable if applicable. He was also supposed to inform the client when a written confirmation of the decision would be issued. The few pages of information that the applicants received stated among other things that the bingo licence of the organization that the client represented had been suspended for a period of three months in the past. They also indicated that the licence was valid for three years and that the fees were payable annually at a rate of \$23, indexed annually according to changes in the consumer price index.

[13] The applicants’ pass mark was 70% for the “Diagnostic Information Gathering” competency. This score was achieved if the applicant demonstrated some of the expected behaviours and obtained the requested information. According to the marking grid, to receive a pass mark, the applicants were required to discuss the licence suspension issue or the possible existence of another current licence during the telephone interview with the client.

[14] During the complainant’s interview on May 3, 2016, Ms. Corovesis and Marc Cladios, the other member of the selection committee, took notes. At the end of the interview, they compared their notes and reached a consensus that is reflected in Mr. Cladios’s handwritten notes. Ms. Corovesis testified that Mr. Cladios’s notes accurately reflect the complainant’s assessment. Her signature and that of Mr. Cladios appear at the bottom of the notes that were adduced in evidence. The notes are dated May 3, 2016.

[15] According to the notes and Ms. Corovesis's testimony, the complainant obtained a mark of 50%. He reportedly failed to discuss the licence suspension issue and the possible existence of another licence. According to the marking grid and Ms. Corovesis's testimony, it was an essential criterion to obtain a pass mark. In addition, the complainant apparently incorrectly accepted the payment of the three-year licence fee of \$69, while according to the provided instructions, the fee was payable annually and indexed once a year. The selection committee's notes also indicate that the complainant failed to obtain certain other information from the client.

[16] The complainant disagreed with the result. He testified that Mr. Cladios's and Ms. Corovesis's notes do not accurately reflect the information and answers that he provided during the role play. He testified that he is certain that he asked all the questions to obtain the client's information. He said that he was sure of it because it is automatic for him to ask all the questions to properly identify a client. He also testified that he believed that the instructions could be interpreted in more than one way on the issue of the \$23 annual fee for a three-year licence. In his view, it was not necessarily wrong to accept \$69 for a three-year licence. Finally, he did not believe that he could have lost 50% of the points because, according to the selection committee, he apparently failed to ask the client about the licence suspension issue.

[17] On May 31, 2016, the complainant was informed that he was eliminated from the selection process because he failed to meet the "Diagnostic Information Gathering" competency. According to the complaint made on March 23, 2017, during an informal discussion on June 9, 2016, Ms. Corovesis apparently told the complainant that he failed mainly because of the error of accepting the \$69 payment for three years. She testified that he brought nothing new to the informal discussion and that the selection committee decided to maintain its decision to eliminate him from the selection process because he failed to meet the "Diagnostic Information Gathering" competency.

### **III. Summary of the arguments**

#### **A. For the complainant**

[18] The complainant asked that his complaint be allowed. He wants justice with respect to the respondent's decision to eliminate him from the selection process because it cannot prove how it determined the marks awarded to him when the

“Diagnostic Information Gathering” competency was assessed. It abused its authority by demonstrating considerable carelessness.

[19] The selection committee did not consider what the complainant said. It did not exercise its authority properly when it refused to reassess him with an open mind. The respondent’s discretionary power is not absolute. It was obligated to be transparent in its decisions; otherwise, it was an abuse of authority.

[20] The selection committee refused to consider the information that the complainant provided during the informal discussion on June 9, 2016, which would have allowed him to correct the errors it made in his marking. The committee’s notes were incorrect. They did not reflect what he said in the role play. It is possible that the selection committee, for several reasons, omitted details while taking the notes, which are not valid evidence of what was said in the interview.

[21] According to the complainant, interviews during selection processes should be recorded and retained for future reference. Since this selection process had no recordings made, it was his word against that of the selection committee. The process must be improved, to ensure greater transparency.

[22] The complainant asked that all future selection interviews be recorded, to ensure greater transparency and to avoid a situation of one person’s word against another’s.

[23] The complainant stated that he still has a personal interest in the position targeted by the selection process. He acknowledged that he now holds a position at a much higher classification and salary than that of a program officer at the PM-02 group and level. However, he believed that his complaint remained valid. If it is allowed, he will then decide whether he wants to be reassessed for the program officer position.

[24] The complainant referred me to the following decisions: *Cameron v. Deputy Head of Service Canada*, 2008 PSST 16; *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8; *Poirier v. Deputy Minister of Veteran’s Affairs*, 2011 PSST 3; *Burke v. Deputy Minister of Department of National Defence*, 2009 PSST 3; *Jolin v. Deputy Head of Service Canada*, 2007 PSST 11; *Ouellet v. President of the Canadian International Development Agency*, 2009 PSST 26; *Jacobsen v. Deputy Minister of Environment*

*Canada*, 2009 PSST 8; *Renaud v. Deputy Minister of National Defence*, 2013 PSST 26; *Rochon v. Deputy Minister of Fisheries and Oceans*, 2011 PSST 7; *Chiasson v. Deputy Minister of Canadian Heritage*, 2008 PSST 27; *Kress v. Deputy Minister of Indian and Northern Affairs Canada*, 2011 PSST 41; *Hughes v. Deputy Minister of Human Resources and Skills Development Canada*, 2011 PSST 16; *Laroche v. Deputy Minister of Foreign Affairs and International Trade*, 2009 PSST 17; *Lavolette v. Commissioner of the Correctional Service of Canada*, 2015 PSLREB 6; *Rozka v. Deputy Minister of Citizenship and Immigration Canada*, 2007 PSST 46; *Bowman v. Deputy Minister of Citizenship and Immigration Canada*, 2008 PSST 12; *Hailu v. Deputy Minister of Health Canada*, 2013 PSST 27; *Bazinet v. Deputy Minister of Employment and Social Development*, 2021 FPSLREB 82; and *Brookfield v. Deputy Minister of Foreign Affairs and International Trade*, 2011 PSST 25.

## **B. For the respondent**

[25] The respondent maintained that the complaint should be dismissed on the grounds that the complainant no longer has a personal interest in the position targeted by the selection process because he now occupies a position with a much higher classification and salary than that of a program officer at the PM-02 group and level. The respondent opposed the complaint because the complainant has no personal interest in it. In addition, he could not demand measures that would apply to other selection processes, as he did.

[26] The complainant was eliminated from the selection process because he failed to meet the “Diagnostic Information Gathering” competency, which was a core competency required for the program officer position. The applicants were notified in advance. Before the role play, they also received documentation to prepare for it.

[27] The respondent adduced in evidence the marking grid that the selection committee used to assess the applicants’ performance in the role play, which included assessing the “Diagnostic Information Gathering” competency. The grid was developed before the interviews. Based on it and the results of the complainant’s interview, the selection committee awarded him a mark of 50% for that competency. That mark was justified by the fact that he failed to address an essential item in the role play, the licence suspension issue, in addition to omitting other things.

[28] The respondent brought up a reminder that the Board's role is not to reassess the complainant but rather to determine whether abuse of authority occurred. However, the evidence that the complainant adduced does not allow reaching such a conclusion.

[29] The respondent referred to me the following decisions: *Tibbs*; *Rozka*; *Portree v. Deputy Head of Service Canada*, 2006 PSST 14; *Visca v. Deputy Minister of Justice*, 2007 PSST 24; *Zhao v. Deputy Minister of Citizenship and Immigration*, 2008 PSST 30; *Lavigne v. Canada (Justice)*, 2009 FC 684; *Brown v. Commissioner of Correctional Service of Canada*, 2011 PSST 15; *Bizimana v. Deputy Minister of Public Works and Government Services*, 2014 PSST 3; *Abi-Mansour v. Canada (Attorney General)*, 2015 FC 882; *Baragar v. Chairperson of the Immigration and Refugee Board*, 2016 PSLREB 50; *Canada (Attorney General) v. Cameron*, 2009 FC 618; *Davidson v. Deputy Minister of Justice*, 2022 FPSLRB 21; *Davidson v. Deputy Minister of Health*, 2020 FPSLRB 56; *Davidson v. Canada (Attorney General)*, 2021 FCA 226; *Doraiswamy v. Deputy Minister of Transport, Infrastructure and Communities*, 2011 PSST 35; *Gulia v. Chief Administrator of the Courts Administration Service*, 2020 FPSLRB 39; *Smith v. Deputy Minister of National Defence*, 2018 FPSLRB 19; and *Wepruk v. Deputy Minister of Health*, 2018 FPSLRB 14.

### C. For the Public Service Commission

[30] The Public Service Commission did not appear at the hearing. However, on September 29, 2021, it submitted a 19-page document that recited its interpretation of the applicable law. I read it carefully, and I reviewed the provided jurisprudence. The decisions that the parties submitted are sufficient for me to make an informed decision based on the applicable law.

### IV. Analysis and reasons

[31] The complaint refers to s. 77(1) of the *PSEA*, which reads 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*

*77 (1) Lorsque la Commission a fait une proposition de nomination ou une nomination dans le cadre d'un processus de nomination interne, la personne qui est dans la zone de recours visée au paragraphe*



<p><i>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</i></p>	<p><i>(2) peut, selon les modalités et dans le délai fixés par règlement de la Commission des relations de travail et de l'emploi, présenter à celle-ci une plainte selon laquelle elle n'a pas été nommée ou fait l'objet d'une proposition de nomination pour l'une ou l'autre des raisons suivantes :</i></p>
<p><i>(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);</i></p>	<p><i>a) abus de pouvoir de la part de la Commission ou de l'administrateur général dans l'exercice de leurs attributions respectives au titre du paragraphe 30(2);</i></p>
<p><i>(b) an abuse of authority by the Commission in choosing between an advertised and a non-advertised internal appointment process; or</i></p>	<p><i>b) abus de pouvoir de la part de la Commission du fait qu'elle a choisi un processus de nomination interne annoncé ou non annoncé, selon le cas;</i></p>
<p><i>(c) the failure of the Commission to assess the complainant in the official language of his or her choice as required by subsection 37(1).</i></p>	<p><i>c) omission de la part de la Commission d'évaluer le plaignant dans la langue officielle de son choix, en contravention du paragraphe 37(1).</i></p>

[32] The complainant claimed that the respondent abused its authority when it assessed the “Diagnostic Information Gathering” competency. He also claimed that it should have considered the information he provided at the informal discussion in June 2016, which would have allowed him to correct the errors it made while marking him.

[33] *Tibbs*, issued by the Public Service Staffing Tribunal (PSST), clarified what constitutes abuse of authority under the *PSEA*. At paragraph 70, the PSST stated the following:

*[70] As highlighted in the complainant's submissions, Jones and de Villars, supra, have identified five categories of abuse found in jurisprudence. As the learned authors note at page 171, these same general principles of administrative law apply to all forms of discretionary administrative decisions. The five categories of abuse are:*

1. *When a delegate exercises his/her/its discretion with an improper intention in mind (including acting for an unauthorized purpose, in bad faith, or on irrelevant considerations).*
2. *When a delegate acts on inadequate material (including where there is no evidence, or without considering relevant matters).*
3. *When there is an improper result (including unreasonable, discriminatory, or retroactive administrative actions).*
4. *When the delegate exercises discretion on an erroneous view of the law.*
5. *When a delegate refuses to exercise his/her/its discretion by adopting a policy which fetters the ability to consider individual cases with an open mind.*

[34] As the Federal Court concluded in *Abi-Mansour* and the Board did in *Bazinet*, abuse of authority need not be accompanied by an intention for the Board to conclude that abuse of authority occurred. The complainant had to prove to me on a balance of probabilities not that the respondent intentionally abused its authority but that its actions, decisions, or behaviours constituted an abuse of authority.

[35] That said, my role is not to decide whether the selection committee did its job well but to determine whether it abused its authority when assessing the “Diagnostic Information Gathering” competency.

[36] It chose to assess that competency through a role play during a telephone interview with the applicants. To do so, it gave them detailed instructions in advance. The complainant did not dispute the validity of that assessment tool. Nor did he dispute the selection committee’s marking grid. Rather, he disputed the validity of its handwritten notes, which he felt were incomplete and did not reflect what he said in the telephone interview.

[37] Remember that it was up to the complainant to prove that abuse of authority occurred. However, he did not provide me with any overwhelming evidence that the selection committee’s handwritten notes were incomplete; it was quite the contrary. Rather, the respondent presented overwhelming evidence that the selection committee’s handwritten notes justified his failure to meet the “Diagnostic Information Gathering” competency.

[38] I do not doubt the evidence that the respondent adduced and the accuracy of the selection committee's handwritten notes. According to Ms. Corovesis's testimony, the selection committee members took notes during the complainant's telephone interview, which she testified accurately reflected his assessment. I believe her. Her signature and that of Mr. Cladios appear at the bottom of the notes. The notes are dated May 3, 2016, the same day as the interview. According to Ms. Corovesis's testimony, the complainant obtained the 50% mark because he would have failed to discuss the licence suspension issue or the possible existence of another licence, which was essential to obtain a pass mark. Therefore, the other items of the expected answers seem to me less important.

[39] For his part, the complainant testified that the selection committee's handwritten notes did not properly reflect the responses he provided in the role play. He testified that he was certain that he asked all the questions to obtain the client's information. He said that he was sure of it because it is automatic for him to ask all the questions to properly identify a client. He believes that it is not possible that he lost 50% of the mark because he failed to ask the client questions about the licence suspension issue.

[40] It is quite possible that the complainant was completely honest in his approach and that he believed what he said. However, apart from his testimony, nothing else in his evidence challenged the respondent's evidence and the accuracy of the selection committee's handwritten notes.

[41] On one hand, the selection committee's handwritten notes, taken on the same day as the interview, demonstrate that the complainant did not address the licence issues in the interview. On the other hand, he testified that the committee's notes are incomplete and that they do not reflect what he said in the interview.

[42] The selection committee's version seems credible to me. How could it have written in the interview notes and revised on the same day that the complainant failed to address the licence issue? That question was critical to the applicants' success in the "Diagnostic Information Gathering" competency. Such a scenario seems very unlikely to me, and nothing in the complainant's evidence allows me to agree with his submitted proposition.

[43] According to the complainant, the selection committee did not properly exercise its discretionary power by refusing to consider the information brought up at the informal discussion on June 9, 2016. On that point, Ms. Corovesis testified that the selection committee upheld its decision because the complainant did not bring up anything new in the informal discussion. He did not demonstrate to me that the respondent abused its authority by refusing to reassess him and by maintaining its decision.

[44] Therefore, based on the preceding, I dismiss the complaints. The complainant did not demonstrate that the respondent abused its authority.

[45] According to the complainant, the contradiction between the parties' opposing versions could have been resolved by recording the interviews, which was not done. He asked that the Board order that future selection interviews be recorded. Even were I to allow his complaint, I would not accept that request because I do not have jurisdiction to make an order that deals with other selection processes. On that point, the Federal Court wrote the following in *Cameron*, at para. 18:

*[18] The combined reading of sections 77, 81 and 82 of the Act indicates that any corrective action ordered by the Tribunal must address only the appointment process that is the subject of the complaints before it. The corrective action must aim at remedying the default identified by the Tribunal in hearing the complaint before it, and cannot address other past or future appointment processes not before the Tribunal further to a complaint made according to the Act.*

[46] The respondent asked that the complaint be dismissed because the complainant no longer has a personal interest in the position targeted by the selection process. According to that request, he reportedly now occupies a position at a much higher classification and salary than that of a program officer at the PM-02 group and level. He acknowledged that he currently holds a position at a higher classification and salary than a program officer at the PM-02 group and level. However, he believed that his complaint was still valid. If it is allowed, he will then decide whether he wants to be reassessed for the program officer position.

[47] I highly doubt the complainant's current interest in a PM-02 group-and-level position. In contrast, I believe that he would be interested in being reassessed, to

demonstrate that he is qualified for the position. In any case, I do not have to decide that issue because I have already dismissed the complaint on the merits.

[48] Finally, I see no need to comment on the rest of the abundant jurisprudence that the parties submitted. I reviewed those decisions, and while they are relevant in part, they do not add to the decisions used and cited to support my decision.

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

*(The Order appears on the next page)*

**V. Order**

[50] The complaints are dismissed.

June 25, 2022.

FPSLREB Translation

**Renaud Paquet,  
a panel of the Federal Public  
Sector Labour Relations and Employment Board**