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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

**MARIA AZEVEDO**

Complainant

and

**DEPUTY HEAD  
(Correctional Service of Canada)**

Respondent

and

**OTHER PARTIES**

Indexed as

*Azevedo v. Deputy Head (Correctional Service of Canada)*

In the matter of a complaint of abuse of authority - sections 77(1)(a) and (b) of the  
*Public Service Employment Act*

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

**For the Complainant:** Jean-Paul Surette, Union of Safety and Justice Employees

**For the Respondent:** Alyson Sutton, counsel

**For the Public Service Commission:** Louise Bard

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Heard by videoconference,  
January 25 and 26, 2024.

### **I. Complaint before the Board**

[1] On December 15, 2021, the deputy head of the Correctional Service of Canada (CSC or “the respondent”) posted a Notification of Appointment or Proposal of Appointment (“NAPA”) announcing the appointment of the successful candidate in the internal appointment process numbered 2021-PEN-IA-ONT-164871 (“the appointment process”), which was used to staff the position of a regional manager, planning and quality improvement program, classified at the AS-07 group and level in the CSC’s Health Services Sector at its Regional Headquarters in Kingston, Ontario.

[2] On December 30, 2021, Maria Azevedo (“the complainant”) made a complaint under s. 77(1)(a) and (b) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*) with the Federal Public Sector Labour Relations and Employment Board (“the Board”) that the respondent abused its authority in the application of merit and its choice of process. It screened her out of the appointment process because she did not meet two essential qualifications listed on the job opportunity advertisement (“the JOA”). She alleged that there was a lack of transparency in the assessment method and tools that rose to the level of an abuse of authority.

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

[4] The Public Service Commission (PSC) took no position on the merits of the complaint but provided written submissions addressing its policies and guidelines that are relevant to the complaint.

[5] Any reference to “the Board” in this decision includes its previous iterations and the Public Service Staffing Tribunal.

[6] For the reasons that follow, I find that the complainant did not establish an abuse of authority. The complaint is dismissed.

### **II. The allegations**

[7] The complainant made five allegations, stating that the respondent abused its authority in the following ways:

- 1) by being biased against those in lower-classified positions;
- 2) by its choice of process, and it demonstrated bias by knowingly choosing an external one and then stating falsely that human error occurred in that choice;

- 3) by not actually reviewing the complainant's application and instead making assumptions and being biased and untrusting with respect to the application's contents;
- 4) by not clearly outlining the experience required on the JOA. If it required significant breadth or depth or length of experience, it should have been included on the JOA; and
- 5) by changing the definition of the education requirements after the application process closed. This was a bias against those who applied.

[8] The respondent denied all five allegations.

### III. Summary of the evidence

#### A. For the complainant

[9] Her substantive position is classified at the AS-03 group and level. She was a health services assistant from January 2010 to July 2014. During that time, she acted as the quality improvement coordinator from May 2012 to July 2013. When the appointment process was run, she was acting as the regional coordinator, accreditation, health services, classified at the AS-05 group and level.

[10] The closing date on the JOA was May 11, 2021, at 23:59, Pacific time. It was open to "... Persons residing in Canada and Canadian citizens residing abroad." She carefully reviewed the essential criteria and concluded that she met them. The essential education criterion was a "Degree from a recognized university with a relevant major in a field related to the position, or an acceptable combination of education, training and/or experience." Although she did not have a university degree, she knew that she had the degree equivalency by virtue of her education, training, and experience.

[11] These were the three essential experience criteria:

- 1) experience developing and implementing national policies, programs, and services in a penitentiary or a health-related field;
- 2) experience providing strategic and operational advice to senior managers; and
- 3) experience managing budgets and supervising staff.

[12] She provided a detailed cover letter with concrete examples, to support her application. With respect to the third experience criterion, she provided the following information in her cover letter:

...

*Experience (iii) -Experience in managing budgets and supervising staff*

While working as the Office Administrator for Western Parole as well as A/Chief of Admin Services; I was responsible for managing the budgets and supervision of staff within those respective departments.

The duties required of me included planning/ forecasting for potential areas in which we could save money while other recommendations demonstrated the need to allocate/forecast for required expenditures for both office goods and services as well as staffing and human resources.

An example of this is when we had a staff member in the Guelph office go off on long-term leave and we were trying to find a solution to fill the vacancy. The Parole Office Supervisor asked if it would make sense to have a staff member from the Windsor office fill the vacancy and be put on travel status.

After reviewing our staffing situation, I put forward recommendations to the POS (Parole Office Supervisor) and Area Director that we hire an experienced casual to fill this void. There was a casual pool and my rationale behind this was that if we brought the back up from our Windsor office, this would cause a vacancy at that site which is generally a hard area to staff and we would incur travel status expenses on top of it all.

The Area Director supported my recommendation and the District Director approved the initiation of this staffing action. Additionally, the Parole Office Supervisor was satisfied with the results. I was responsible for supervising the staff hired for these positions, so it was important to be involved.

In terms of budgets, I was responsible for managing the budgets for the entire Area Offices (inclusive of London, Windsor and Guelph Parole offices). My duties involved:

- Production of budget estimates and cash forecast reports and payment of goods and services, petty cash, daily living allowances and parolee loans.
- Coordinating procurement in terms of cost for maintenance and loss of inventory/replacement of office equipment, furniture, building security systems and building maintenance, government fleet vehicles and supplies. Etc.
- Contracting process, including the creation of necessary documents such as security forms, and reviews the utilization of contracted goods and services.
- Setting up Blanket Purchase Agreements and Purchase Orders for all goods and services that were utilized and purchased in the Western Parole offices.

Receiving, deposit and safeguarding monies such as petty cash, pay cheques, parolee loans and government acquisition/credit cards in accordance with TB regulations. Completing GAC Purchasing and Reconciliation, coordinate parking token purchases for our Parolees/ office visitors etc.

Oversees the costs for utilization, maintenance, repair, licensing and general upkeep of the government motor vehicle (GMV) fleet,

*including liaison with ARI for the issuance of credit cards and ensuring all staff are familiar with government directives on Fleet Management. Completes monthly reports on utilization and maintenance and provides additional information to RHQ/NHQ Fleet Management when required.*

...

[Sic throughout]

[13] She received an email dated July 5, 2021, informing her that her candidacy would not be given further consideration because she did not demonstrate that she met two essential qualifications: the education criterion, and the essential experience criterion of managing budgets and supervising staff. She requested an informal meeting to discuss her elimination from the appointment process.

[14] She received a reply on July 6, 2021, from BeLinda Roscoe, informing her that an informal discussion was not required because it was an external advertised appointment process; however, in the interests of fairness and transparency, she was informed as follows:

...

*... it is clear your CV was strong in many areas. One of the key areas you did not meet the required minimum criteria is noted below. The board set the expectation for all candidates to hold a budget for an entire fiscal year demonstrating the impact the budget had on outcomes, use of scarce resources, reaching CSC/health objectives ad outcomes....*

...

[15] She questioned the information that she received and explained that the JOA did not specify that managing budgets and supervising staff had to have been done for one fiscal year. Furthermore, she questioned that if it was an external appointment process, how would candidates external to the CSC have been able to demonstrate examples of "... how they set a budget to reach CSC Health objectives and outcomes ..."? She asked to speak to another assessment board member to understand why it evaluated candidates on information that was not included on the JOA.

[16] On July 17, 2021, she received an email from Ms. Roscoe, informing her that "[w]ithout university education, there was no reason ... to go further with the screening."

[17] She met with Ms. Roscoe and went over the details of her application. The answers she received from Ms. Roscoe were unsatisfactory to her. According to the complainant, she clearly demonstrated how she met both the education and budget criteria that she was eliminated for not meeting.

[18] She found the experience very discouraging, and it affected her faith in the CSC's hiring process. She simply wanted to be assessed fairly.

[19] She also received conflicting information as to the nature of the appointment process. Initially, she was told that it was external, and then it changed to internal. The lack of clarity about the information that she received led her to request an investigation from the PSC. On July 22, 2021, she received an email from the PSC's Oversight and Investigation Sector, informing her that according to the CSC, the intent was for the process to be an internal appointment process.

[20] During her examination-in-chief, she was asked questions about the appointee's acting opportunity in the same position before the appointment process was run. The appointee acted in the position for several months before the appointment process to staff it was run.

[21] The respondent objected on the ground of relevance. The Board explored and clarified the relevance of this line of questioning with the complainant's representative, who categorically stated that he would not argue that the appointee had an unfair advantage in the appointment process because she acted in the position immediately before the appointment process was run. On that basis, the Board ruled that this line of questioning was irrelevant.

[22] The complainant testified that she feared that she would be subject to reprisals and that she would be potentially blocked from furthering her career.

[23] She had a meeting with Ms. Roscoe and Dr. Jeremy Mills, Regional Director, Health Services, the CSC's Ontario Region, who made up the assessment board for the appointment process, to discuss her application. She felt mocked and belittled during that meeting. Dr. Mills belittled her duties and her experience. She was made to feel stupid and incompetent.

[24] She made her complaint on December 30, 2021, when the NAPA was published.

[25] In her testimony, she went over the documents that she received during the exchange of information of the complaint process. When she reviewed them, she came to believe that the assessment board had set up candidates to fail because it did not know what it was looking for; nor did it have a clear definition of the essential qualifications until August 2021, which was months after the application phase of the appointment process was completed.

[26] The complainant pointed out that on February 2, 2021, the Human Resources advisor (“the HR advisor”) assigned to the file wrote to Dr. Mills with respect to the assessment tools to be used. She suggested that the assessment board adopt the tools that the CSC’s Quebec Region had used for its AS-07 process. If it agreed, then the tools would be sent for translation. Once the tools were translated and finalized, then she would activate the JOA.

[27] The complainant referred to an email dated April 21, 2021, from Dr. Mills to the HR advisor, which had attached questions and a scoring guide for the appointment process. Dr. Mills stated that he wanted to include the past two performance management assessments and the option of at least two references.

[28] The documents disclosed that the HR advisor sent the draft JOA and the statement of merit criteria to Dr. Mills for his review and asked him to confirm who would be on the assessment board. He confirmed that he and Ms. Roscoe would form it.

[29] The JOA closed on May 11, 2021. On May 17, 2021, the HR advisor for the appointment process emailed the following to the assessment board:

...

*I am preparing the Screening Board Report for the AS-07 process. There were 18 applicants! I took a peak [sic] through and it did seem like several will be screened out based on lack of experience.*

The attached screening form has an asterisk for the screening definitions and states - \*Experience is defined as 6 consecutive months in the past 3 years. If you want to change this or have specific definitions for the experience criteria that you are looking for in the candidates, please clearly write them out for the file. Once I have the experience criteria definitions, I’ll add them to the screening board report and send you the applications for review.

...

[30] On May 18, 2021, Dr. Mills responded as follows:

...

*I spoke with BeLinda about the 'experience' criteria and we both agree that it needs to be more rigorous given the responsibilities of the position. The PPQI position basically oversees the entire regional health budget which is over \$60M dollars and is responsible for keeping us on track and reporting to the NHQ Health comptroller.*

*Because of this high degree of required financial knowledge we believe that the criteria should be a minimum of 12 consecutive months that includes a full fiscal year from April to March. The candidate requires a high degree of experience with everything from budget allocation to budget projections and then budget reconciliation at the end of the fiscal year.*

...

[31] On June 2, 2021, Ms. Roscoe emailed the HR advisor and Dr. Mills as follows:

...

*I am working on the AS07 submissions. The first criteria is degree or related work experience. Is there a firm definition for the "equivalent"? I see in many industries it is 1 year university equivalent to 2 years work experience however if there is a TB standard I would like to use [sic]. Please advise.*

...

[32] The HR advisor responded as follows:

...

*The only definition that is provided automatically on the poster is the **Degree equivalency** which relates to foreign credentials. You can determine what standard you intend to apply for screening purposes. Please write a definition and I will add it to the file as proof of the board's decision.*

...

[Emphasis in the original]

[33] The complainant pointed out that on June 2, 2021, in an email exchange, Ms. Roscoe and Dr. Mills agreed that the essential education criterion would be a university degree. This was well after the application phase of the appointment process had ended.

[34] The complainant also referred to an email dated August 6, 2021, between the HR manager and the assessment board (Ms. Roscoe and Dr. Mills), confirming that the *Federal Public Sector Labour Relations and Employment Board Act* and *Public Service Employment Act*

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three had discussed the essential criteria for education and experience and that they had agreed on the essential criteria, as follows:

...

*Further to or [sic] discussion today this is to confirm that the screening definition for [an] acceptable combination of education training and experience alternative to a university degree was as follows:*

College diploma from community college in a field related to the work to be performed in combination with several years of managing a budget in the federal government from either the budget manager (Section 32/34 perspective) or the financial perspective (Section 33) including being a budget manager or financial officer over a fiscal year end and resource allocation.

This meant actually managing the budget and making and being accountable for the decisions associated with exercising budget authority and including signing authority over a fiscal year end/beginning and not making purchase recommendations as a supervisory capacity.

The intent is to align the additional formal education and experience to be equivalent to a university degree.

...

[35] The complainant explained that there was no way of determining the acceptable combination of education, training, and experience because each manager and assessment board set their own expectations, which must be included on the JOA, so that candidates may determine whether to apply. It was not done in the appointment process. It would also appear that on June 2, 2021, almost a month after the application period closed, the assessment board decided that the essential education qualification would be a university degree.

[36] During her testimony, the complainant reviewed and compared her application with that of the appointee. I need not detail that testimony, given that my role is not to assess the complainant or any other candidate.

[37] Similarly, the complainant reviewed her education, training, and experience in detail during her testimony. I need not detail that testimony, given that my role is not to assess her application.

[38] On cross-examination, she confirmed that she did not provide her performance appraisal and job description with her application; rather, she sent them to Ms. Roscoe after the informal discussion.

[39] She referred to the CSC's *Staffing Management Policy*, which emphasizes the values of fairness, access, transparency, and representativeness in staffing practices. The complainant stated that there was no transparency in the screening definitions, and it appeared that the assessment board developed them months after the screening was completed.

[40] To support her assertion, the complainant referred to an email dated August 6, 2021, from the acting regional manager for staffing operations for the CSC's Ontario Region to Ms. Roscoe and Dr. Mills, asking them to confirm the screening definition for the alternative to the university degree, as follows:

...

College diploma from community college in a field related to the work to be performed in combination with several years of managing a budget in the federal government from either the budget manager (Section 32/34 perspective) or the financial perspective (Section 33) including being a budget manager or financial officer over a fiscal year end and resource allocation.

This meant actually managing the budget and making and being accountable for the decisions associated with exercising budget authority and including signing authority over a fiscal year end/beginning and not making purchase recommendations as a supervisory capacity.

The intent is to align the additional formal education and experience to be equivalent to a university degree.

...

[41] On December 15, 2021, the respondent posted the NAPA announcing the successful candidate's appointment. The complainant made this complaint on December 30, 2021.

## **B. For the respondent**

[42] Ms. Roscoe was the executive director, regional treatment centre, of the CSC's Ontario Region. She has over 20 years experience as a manager with the CSC and has conducted several appointment processes, mostly involving hiring regulated professionals like nurses and psychologists.

[43] In the spring of 2021, the CSC launched the appointment process, with the intent to establish a qualified pool for regional manager, planning, and quality improvement program positions classified at the AS-07 group and level in Kingston.

Persons residing in Canada and Canadian citizens residing abroad were invited to submit their candidacies until May 11, 2021.

[44] Dr. Mills was the hiring manager for the appointment process. He and Ms. Roscoe formed the assessment board. The HR advisor was their resource person.

[45] As for the apparent confusion as to whether the appointment process was internal or external, Ms. Roscoe testified that it was meant to be internal and that she believed that the JOA reached the audience that the respondent was looking for; namely, candidates external to the CSC but internal to the federal government.

[46] The complainant applied to the appointment process, along with 17 other candidates. Of the 18 applicants, 1 withdrew, while 4 were screened out on the essential education criterion and 9 were screened out on one or more of the 3 experience criteria.

[47] Ms. Roscoe testified that the complainant was screened out because she did not meet the essential education criterion (“Degree from a recognized university with a relevant major in a field related to the position, or an acceptable combination of education, training and/or experience”) and one of the three essential experiential criteria (“Experience in managing budgets and supervising staff”). Given that result, the complainant could not be considered for appointment, and her candidacy was eliminated from the appointment process.

[48] Ms. Roscoe explained that the assessment board did not touch the files until it was firm on the screening definitions. Initially, the complainant and other candidates were screened out because they did not have a university degree. When it was brought to the assessment board’s attention that the essential education criterion included an alternative to a university degree, which was “... an acceptable combination of education, training and/or experience”, the board went back and rescreened all the candidates who had initially been screened out because of the university degree requirement. She testified that the complainant did not meet the screening definition for the alternative qualification.

[49] The assessment board determined the contents of the JOA in consultation with the HR advisor. The essential qualifications were based on the position’s duties. For the experience criterion of managing budgets and supervising staff, the assessment board determined that the screening definition had to be more rigorous than the

standard "... 6 consecutive months in the past 3 years", because the incumbent of the position would manage a budget of about \$62 million, have oversight of 300 employees, and administer over 60 contracts. Therefore, it decided that the screening definition should be a "... minimum of 12 consecutive months that includes a full fiscal year ...".

[50] Ms. Roscoe described the process that the assessment board adopted. Once the application phase closed, the staffing or human resources personnel collated and summarized the information and provided it to the assessment board. The board members met and discussed how the screening would be done; they set the definitions and criteria before they started the screening. That was done to preserve the integrity of the appointment process.

[51] For screening, the assessment board relied only on the candidates' applications. She reviewed the complainant's application, and Ms. Roscoe initially screened her out because she did not have a university degree.

[52] The HR advisor alerted the assessment board to the fact that the education criterion was two-pronged: a university degree or an acceptable combination of education, training, and/or experience. As a result, the assessment board rescreened all the candidates using the definition that it adopted for that qualification. Ms. Roscoe testified that the complainant still did not meet the education qualification using the accepted definition. Her application did not articulate the experience requirements at the breadth and depth equivalent to a degree.

[53] The assessment board screened the complainant out on the third essential experience qualification, namely, "Experience in managing budgets and supervising staff." For that one, the board set a minimum of managing a budget for 1 full fiscal year. There were over 60 contracts that the incumbent would have to manage as well as overseeing a \$62 million budget. That required more than just transactional items. That criterion required experience with forecasting, closing off a budget, and providing strategic advice to a regional director. The complainant had managed portions of budgets but not at the depth of an AS-07 position. She was not a signing authority; nor was she accountable and responsible for those budgets.

[54] Ms. Roscoe testified that she had several conversations and exchanged emails with the complainant, to clarify her concerns. The complainant remained passionate that she met the experience criterion and that she had performed those duties in her

previous AS-02 position. Due to her insistence that she met the criterion, Ms. Roscoe decided to verify the scope of her AS-02 duties by speaking to two district directors who had worked with her, to assure herself that she was correct in her assessment of the complainant's application.

[55] Ms. Roscoe explained that the successful candidate provided details of budgets that she had managed and set out how she had managed from the beginning to the end of a fiscal year. The complainant did not demonstrate that detail in her application; she simply listed her tasks.

[56] Ms. Roscoe acknowledged that a few errors occurred in the appointment process, such as telling the complainant that it was external; however, none of the errors had any impact on the appointment process.

[57] Ms. Roscoe testified that she never adds the screening definition to a JOA. The key for her is to never start the screening process until the screening definitions are firm.

#### **IV. Summary of the arguments**

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

[58] The complainant relied on the following cases: *Tibbs v. Canada (Department of National Defence)*, 2006 PSST 8; and *Robert v. Deputy Minister of Citizenship and Immigration*, 2008 PSST 24.

[59] The complainant argued that the chronology of the evidence demonstrates that there was abuse of authority within the meaning of the definition in *Tibbs* because the errors made in this case led to an improper result, namely, screening her out at the preliminary stage.

[60] The respondent violated the principles of fairness and transparency. It told the complainant that she was not entitled to an informal discussion because it was an external appointment process. That was done to deny her access to recourse. Furthermore, it provided her with conflicting information about the appointment process.

[61] The respondent told the complainant that it screened her out on the education criterion because she did not have a university degree. It was not until she pointed out that the JOA specified an alternative to a university degree that it decided to redo the

screening. It then determined what the alternative should have been and screened her out again. The JOA referred to the statement of merit criteria, but it was never provided. The respondent failed to adhere to the principles of fairness and transparency.

[62] The assessment board set out its parameters around the breadth and depth of the experience that it was looking for after the JOA was posted and the candidates had submitted their applications. Once the education criterion was changed, the board should have communicated that to the candidates. The candidates were judged on criteria that only the respondent knew.

[63] The respondent applied the merit principle inconsistently. For instance, according to the assessment board's summary report, one candidate seemed to have failed an essential qualification but was screened in and went on to the next assessment stage of the appointment process.

[64] The respondent demonstrated bias against the complainant because it spoke to senior managers in her work area but failed to speak to her direct supervisor, who was in a better position to assess and verify her duties and achievements.

[65] The complainant asked that the appointment be revoked, along with the staffing authority of the assessment board members until they take certain specified training.

## **B. For the respondent**

[66] Counsel for the respondent started her submissions by responding to the complainant's suggestion that contacting senior management in her work area indicated bias or bad faith. She explained that Ms. Roscoe contacted those senior managers to validate her conclusion about the scope and breadth of the complainant's experience. Furthermore, the complainant did not meet the education and managing-budgets criteria.

[67] The respondent referred to the following decisions: *Lavigne v. Canada (Justice)*, 2009 FC 684; *Jolin v. Deputy Head of Service Canada*, 2007 PSST 11; *Tibbs*; *Portree v. Deputy Head of Service Canada*, 2006 PSST 14; and *Visca v. Deputy Minister of Justice*, 2007 PSST 24.

[68] The complainant was screened out because she failed to meet two essential criteria, namely, the education and budget-managing criteria. The respondent

acknowledged that the education criterion could have been better clarified; however, when the complainant pointed out the error, the assessment board rectified it and reassessed all the candidates. She still failed to meet the criterion.

[69] There was no doubt that the complainant had experience managing a budget, but her experience did not rise to the breadth and depth of experience that the respondent required for the position. The position's incumbent would be responsible for a \$62 million budget for the whole of the CSC's Ontario Region, for over 325 employees, and for administering over 60 contracts.

[70] Contrary to the complainant's position, the appointee's application was thorough and detailed. She provided dollar values of the budgets that she had managed and described in detail the contracts that she had managed. She also demonstrated that she had been accountable for and held a budget for at least one fiscal year.

[71] The respondent has the sole discretion to determine the essential qualifications for a position to be staffed. The Board has no jurisdiction to determine the content of the essential criteria that the respondent defines (see *Lavigne*, at paras. 1 to 3 and 70).

[72] The question about whether the appointment process was external or internal is irrelevant because the respondent provided the complainant with an informal discussion and answered all her questions about her elimination from the appointment process.

[73] The complainant failed to meet her burden of proof to establish that abuse of authority occurred; it is not sufficient to merely allege wrongdoing. The allegations must be supported by evidence (see *Tibbs*, at para. 55).

[74] The respondent argued that the complaint must be dismissed.

## **V. Analysis and reasons**

### **A. The statutory and policy frameworks**

[75] The preamble to the *PSEA* requires those to whom appointment authority is delegated to exercise it within a framework that ensures that they are accountable for its proper use to the PSC, which in turn is accountable to Parliament. It further declares the Government of Canada's commitment to an inclusive public service that is

characterized by fair and transparent employment practices, respect for employees, effective dialogue, and recourse aimed at resolving appointment issues.

[76] The PSC's *Appointment Policy* requires that appointment processes be conducted in a fair and transparent manner and in good faith. Those values are adopted and reflected in the respondent's *Staffing Management Policy* that stipulates that merit and non-partisanship must be applied while keeping in mind the staffing values of fairness, access, transparency, and representativeness.

[77] The concept of abuse of authority is defined in s. 2(4) of the *PSEA* as including bad faith and personal favouritism. The Federal Court has held that that definition is not exhaustive, and that Parliament did not intend the concept of abuse of authority to be static (see *Canada (Attorney General) v. Lahlali*, 2012 FC 601 at paras. 21 and 33 to 35).

[78] The alleged acts or inactions must be serious and objectionable to the point that it is inconceivable that Parliament would have envisioned the delegate behaving in that manner (see *Tibbs*, at paras. 71 to 74; and *Rizqy v. Deputy Minister of Employment and Social Development*, 2021 FPSLRB 12 at para. 10).

[79] Under s. 30(1) of the *PSEA*, appointments must be made based on merit and free of political influence. When the proposed appointee meets the essential qualifications that the deputy head established for the work to be performed, as well as any other specified asset qualifications or organizational requirements, the appointment will be found to be based on merit (see s. 30 of the *PSEA*).

[80] I must determine the following issues:

- 1) Did the respondent abuse its authority when it eliminated the complainant from the appointment process for failing to meet two essential criteria?
- 2) Did the errors and omissions in the appointment process rise to the level of an abuse of authority?
- 3) Was there an abuse of authority due to the absence of transparency in communicating the nature of the screening tools?

[81] I will also address the complainant's five allegations.

**B. Eliminating the complainant from the appointment process was not an abuse of authority**

[82] The PSC provides policies and guidelines to help its delegates exercise the statutory authorities. In its written submissions, the PSC states that under s. 16 of the

PSEA, deputy heads and anyone exercising its delegated authority are required to comply with its policies in the exercise of their delegation (see *Robert*).

[83] The expected outcomes under the PSC's *Appointment Policy* include appointment processes that are designed not to discriminate or to create systemic barriers and that are conducted in a fair and transparent manner and in good faith.

[84] Initially, on July 5, 2021, the complainant was informed that she had been eliminated from the appointment process for failing to meet two essential criteria — education, and experience managing a budget and supervising staff. She requested an informal discussion and was told that she was not entitled to one because the appointment process was external, but they offered to meet with her, to discuss her elimination from it.

[85] The respondent informed her that she did not meet the education criterion because she did not have a university degree. She pointed out that the education criterion included an alternative to a university degree, which was "... an acceptable combination of education, training and/or experience."

[86] Once the complainant pointed it out, the respondent defined the content of the alternative criterion and reassessed the affected applicants, including her.

[87] On August 6, 2021, the respondent defined the "... acceptable combination of education, training and/or experience" alternative to a university degree as follows:

...

College diploma from community college in a field related to the work to be performed in combination with several years of managing a budget in the federal government from either the budget manager (section 32/34 perspective) or the financial perspective (section 33) including being a budget manager or financial officer over a fiscal year end and resource allocation.

...

[88] The applicants, including the complainant, who had no university degree had no way of knowing this alternative criterion since it was developed after the application phase of the appointment process had closed. Of the 18 applicants, 4, including the complainant, failed to meet the education criterion.

[89] With respect to the essential experience criterion of managing a budget, the respondent did not define its content until after the application phase of the

appointment process was closed. The applicants were not informed of the budget's cut-off or threshold. The respondent's witness explained that the budget threshold would be evident to any applicant who made the effort to review the job description. The JOA included the name and contact details of the staffing advisor who could have provided that information.

[90] It was unclear whether the very specific threshold used to define the content of the criterion was evident in the work description. Neither side presented the description as evidence, so I am unable to assess whether the applicants had a way of knowing the budget management threshold. Therefore, an AS-02 or CR-05 who managed a budget of \$50 000 would have believed that they had those qualifications. Again, for this essential criterion, the applicants had no way of knowing that the threshold was a fiscal-year cycle of one year. The respondent stated that it never includes the screening definition in the JOA.

[91] In *Lavigne*, at paras. 81 and 82, the Federal Court held as follows:

*[81] ... [the respondent] has considerable discretion to issue the selection criteria without publishing them. The selection criteria were created to help the assessment board identify the applications that met the essential qualifications. The applicant has the burden of presenting the evidence and making convincing arguments, on a balance of probabilities, to succeed. Mr. Lavigne did not submit evidence that shows that the selection criteria were used in a manner indicating that Mr. Bédirian abused his authority within the meaning of the PSEA.*

*[82] Although it is preferable to provide all of the details on positions to be staffed, the advertisements were clear enough in specifying that extensive experience in conducting litigation before the Tax Court of Canada is an essential qualification. The facts support that it was reasonable for the assessment board to find that Mr. Lavigne did not meet that essential qualification.*

[92] The complainant acknowledged that she did not have a university degree, but she argued that the combination of her experience, training, and learning amounted to the equivalent of one, for the purposes of the appointment process.

[93] She did not meet the screening definition for the university degree equivalent that the assessment board established, which included a diploma from a community college in a field related to the work to be performed. The complainant did not have such a diploma.

[94] I agree with the Federal Court's statement in *Lavigne* that it is preferable to provide all the details of the position to be staffed upfront, in the JOA. Doing so is consistent with the values of fairness and transparency. How can an applicant know the content of "... an acceptable combination of education, training and/or experience" if that criterion is not clearly defined on the JOA?

[95] The respondent stated that the screening definition is never provided on a JOA. Its position seems to be supported by the Federal Court's statement in *Lavigne* that the respondent has considerable discretion to issue selection criteria **without publishing** them.

[96] I question whether the content of "... an acceptable combination of education, training and/or experience" as an alternative to a university degree is truly a screening definition or a statement of an essential qualification. If it is an essential qualification, then common sense dictates that its content should be spelled out on the JOA.

[97] The question that I must determine in this context is whether the respondent abused its authority when it defined the content of the alternative to a university degree after the JOA had closed. The complainant did not provide any evidence to support her allegation. Rather, the evidence demonstrated that she did not meet the requirements that the respondent established.

[98] Therefore, I must conclude that there was no abuse of authority.

[99] However, I must emphasize that the practice of not publishing the content of the education alternative in the JOA flies in the face of the value of transparency. To me, there seems to be no reason for it, as defining the requirements for the position would not provide any advantage to prospective candidates. On the contrary, it would promote the values of fairness and transparency and add credibility to an appointment process.

[100] With respect to the experience criterion of managing budgets and supervising staff, the respondent screened the complainant out because she failed to demonstrate that she had managed and maintained a budget over one fiscal year.

[101] The complainant did not provide any evidence to suggest that the screening definition was adopted in bad faith. Given the nature of the work to be performed, it was reasonable for the assessment board to require more robust experience and to require a minimum experience of one full budget cycle over one full fiscal year.

[102] Given the Federal Court's decision in *Lavigne*, I do not find that there was an abuse of authority by not publishing the screening definition for the experience criterion.

[103] I must reiterate my earlier comments that not publishing the content of what the assessment board is looking for does not respect the values of transparency and fairness.

**C. The errors and omissions in the appointment process did not rise to the level of an abuse of authority**

[104] Since the seminal case of *Tibbs*, in which the Board held that much more is required than mere errors and omissions to constitute an abuse of authority (see *Tibbs*, at para. 65), the Board has consistently held that mere errors and omissions do not rise to the level of an abuse of authority, within the meaning of the *PSEA*.

[105] The respondent acknowledged that there were two main errors, namely, the confusion about whether the appointment process was external or internal, and the failure to initially screen candidates on the alternative education criterion.

[106] According to the CSC's *Staffing Management Policy*, "If, during the course of the informal discussion, it comes to light that errors or omissions occurred, they should be corrected by the assessment board immediately ...".

[107] In this case, when the assessment board learned that it had failed to screen for the alternative to the university-degree requirement, it immediately rectified that problem by defining the content of the alternative and rescreening all the candidates who had been impacted by the omission, including the complainant.

[108] In *Earle v. The Deputy Minister of Transport, Infrastructure and Communities*, 2012 PSST 36, the respondent in that case screened the complainant out because it believed that his application had been submitted late. Upon discovering that it had been submitted on time, the respondent rescreened him into the appointment process. The Board held that the respondent acted diligently when it realized that an error had occurred and that it took appropriate action to reintegrate him into the appointment process. The Board concluded that the sequence of events represented a minor administrative error that did not rise to the level of abuse of authority (see *Earle*, at para. 20).

[109] I find that the errors and omissions in this case did not rise to the level of an abuse of authority.

**D. The absence of transparency in communicating the screening definitions did not amount to an abuse of authority**

[110] The complainant argued that the absence of transparency in communicating the screening definitions to the candidates amounted to an abuse of authority.

[111] The alternative to the university-degree requirement and the experience managing a budget criterion were not defined in the JOA. The respondent explained that the screening definitions are never included in a JOA. It did not point to any policy or guideline that requires it to include such information in a JOA.

[112] Section 16 of the *PSEA* requires deputy heads and anyone exercising the PSC's delegated authority to comply with the PSC's policies. The PSC's *Appointment Policy* specifies that the JOA must contain the established merit criteria and a point of contact to whom accommodation requests may be directed. That is the yardstick that I must use to assess the complainant's argument on this issue. I must assess whether the respondent complied with the PSC's policy on a JOA's contents.

[113] The JOA outlined the established merit criteria for the position and a point of contact. That satisfied the PSC's *Appointment Policy*.

[114] That is not quite the end of my inquiry. I must determine whether the assessment tools that were used to screen the candidates formed part of the merit criteria such that they also had to comply with the PSC's *Appointment Policy*.

[115] Section 30(2) of the *PSEA* specifies that an appointment is based on merit when the appointee meets the "... essential qualifications for the work to be performed, as established by the deputy head ..." or the merit criteria for the position.

[116] Section 36(1) of the *PSEA* states that in making an appointment, the PSC may "... use any assessment method ... that it considers appropriate to determine whether a person meets ..." the essential qualifications for the work to be performed.

[117] The "essential qualifications" and the "assessment methods" are separate. Only the former must be included in the JOA.

[118] As the Federal Court stated in *Lavigne*, the assessment board is not required to publish its selection criteria.

[119] Therefore, I conclude that there was no abuse of authority.

## **E. The complainant's abuse-of-authority allegations**

### **1. Bias against those in lower-classified positions**

[120] The complainant alleged that the respondent abused its authority by being biased against candidates in lower-classified positions. She did not fully articulate this allegation during her evidence; nor did she present any cogent evidence to support it.

[121] There was no prerequisite threshold for applying to the position. The assessment board report demonstrated that of the 18 candidates, 2 were classified CR-04, 1 OP-01, 1 AS-03, and 1 CX-02.

[122] The respondent clearly explained its reason for establishing the essential qualifications for the AS-07 position. The complainant had the burden of presenting cogent evidence to support this allegation. She failed to.

[123] I dismiss this allegation.

### **2. The choice of process**

[124] This allegation is related to the confusion with the nature of the appointment process; i.e., whether it was external or internal. The PSC investigated and concluded that the appointment process was intended to be internal.

[125] The gist of the complainant's position under this allegation is that the respondent stated that the appointment process was external, with the intent of denying her access to an informal discussion. Although it told her that she was not entitled to an informal discussion, nevertheless, it provided her with that recourse and discussed her application with her several times.

[126] As previously noted, this error or omission did not rise to the level of an abuse of authority.

[127] I dismiss this allegation.

### 3. The failure to review the complainant's application

[128] The complainant failed to provide any cogent evidence to support her allegation that the respondent failed to review her application.

[129] Ms. Roscoe's testimony that she thoroughly reviewed the complainant's application several times was not shaken on cross-examination.

[130] I have no evidence to conclude that the respondent failed to review the complainant's application.

[131] I dismiss this allegation.

### 4. The failure to clearly outline the required experience on the JOA

[132] The complainant argued that the JOA should have included the screening definition with respect to the breadth and depth of the experience criteria. This allegation is essentially one of a lack of transparency.

[133] This allegation is like in *Lavigne*, in which the selection criteria, which are equivalent to the respondent's screening definitions in this case, were not published on the JOA. In *Lavigne*, the JOA stated as an essential qualification, "Extensive and recent experience in conducting complex and varied civil litigation before the Tax Court of Canada." The selection criteria that the assessment board in that case used to screen the candidates explained as follows:

...

*... "Extensive and recent experience" means approximately 10 years of experience in conducting cases of average complexity involving the various provision of the Income Tax Act and the Employment Insurance Act, including at least two years of experience acquired during the last two years.... [Lavigne, at paragraph 14]*

...

[134] The Court concluded that while it is preferable, it is not mandatory to inform candidates of the selection criteria before they apply. It held as follows at paras. 81 and 82:

*[81] ... [the respondent] has considerable discretion to issue the selection criteria without publishing them. The selection criteria were created to help the assessment board identify the applications that met the essential qualifications. The applicant has the burden*

*of presenting evidence and making convincing arguments, on a balance of probabilities, to succeed. Mr. Lavigne did not submit evidence that shows that the selection criteria were used in a manner indicating that Mr. Bédirian abused his authority within the meaning of the PSEA.*

*[82] Although it is preferable to provide all of the details on positions to be staffed, the advertisements were clear enough in specifying that extensive experience in conducting litigation before the Tax Court of Canada is an essential qualification. The facts support that it was reasonable for the assessment board to find that Mr. Lavigne did not meet that essential qualification.*

[135] I arrive at the same conclusion as in *Lavigne* and dismiss this allegation.

#### **5. The changed definition of the educational requirements after the application process closed**

[136] The education requirements on the JOA were never changed. The screening definition omitted the second prong of them. The respondent acknowledged this error and moved quickly to rectify it.

[137] The complainant did not provide any evidence to support this allegation.

[138] Therefore, I dismiss this allegation.

### **VI. Conclusion**

[139] The complainant failed to establish that the respondent abused its authority in the appointment process. The respondent eliminated the complainant from the appointment process because she did not meet two of the essential criteria for the position. First, she did not meet the screening definition for the university degree equivalent which included a college diploma in a field related to the work to be performed in combination with several years of managing a budget in the federal government. The complainant did not have a college diploma. Second, the complainant did not demonstrate that she met the respondent's threshold for the experience criterion of managing a budget. She demonstrated that she had experience managing a budget, but her experience did not rise to the breadth and depth that the respondent required for the position.

[140] Regarding the complainant's other allegations, she failed to establish that any errors and omissions rose to the level of an abuse of authority. I have closely examined each of her other allegations and have determined that they are all unfounded.

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

*(The Order appears on the next page)*

**VII. Order**

[142] The complaint is dismissed.

May 1, 2025.

**Caroline Engmann,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**