

Federal Court



Cour fédérale

Date: 20131118

Docket: T-868-12

Citation: 2013 FC 1170

Ottawa, Ontario, November 18, 2013

PRESENT: The Honourable Mr. Justice Boivin

Docket: T-868-12

BETWEEN:

PAUL ABI-MANSOUR

Applicant

and

DEPARTMENT OF FOREIGN AFFAIRS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision made on March 28, 2012 by the Public Service Staffing Tribunal (the “PSST”), wherein the applicant’s complaints of abuse of authority pursuant to section 77(1)(a) of the *Public Service Employment Act*, SC 2003, c 22, ss 12, 13 (the “PSEA”) were dismissed. The PSST determined that the respondent did not abuse its authority either by discriminating against the applicant in this appointment process, by failing to apply organizational requirements or by appointing candidates who did not meet the education requirement.

Factual background

[2] A detailed account of the facts is warranted in this case.

[3] Mr. Paul Abi-Mansour (the applicant) applied for an information technology position, the CS-02 position, with the Department of Foreign Affairs and International Trade (the respondent) in Ottawa, Ontario. The closing date of the appointment process was January 15, 2010 (Applicant's Record, tab 3, Exhibit "Tribunal Record" p 4; Respondent's Record, Volume 1, Section D, tab 1 at p 2, Job Opportunity Advertisement (JOA)).

[4] The JOA and the "Statement of Merit Criteria & Conditions of Employment" (SMC) for the CS-02 position specified that the candidates had to satisfy, among other qualifications, the following education requirement (Applicant's Record, tab 3, Exhibit "Tribunal Record", p 4; Respondent's Record, Volume 1, Section D, tab 2 at p 1; JOA) :

Successful completion of two years of an acceptable post-secondary educational program in computer science, information technology, information management or another specialty relevant to the position to be staffed.

[5] The job advertisement also instructed candidates to include a covering letter and to demonstrate, in the cover letter, how they met the education and experience requirements. It added that résumés could be used as a secondary source to validate the education and experience described in the cover letter. It stated that a failure to provide the information in the requested form would result in the rejection of the application (Applicant's Record, tab 3, Exhibit "Tribunal Record", p 5 JOA; Respondent's Record, Volume 1, Section D, tab 2 at p 1):

Candidates must include a covering letter. Candidates must clearly demonstrate **IN THEIR COVER LETTER** how they meet the

education and experience factors listed in the essential qualifications and asset qualifications. Candidates must use these factors as headers and then write one or two paragraphs demonstrating in clear and precise detail how they meet the qualifications required. Resumes may be used as a secondary source to validate the education and experience described in the cover letter. FAILURE TO PROVIDE THIS INFORMATION IN THE REQUESTED FORMAT WILL RESULT IN YOUR APPLICATION BEING REJECTED.

[Emphasis in original.]

[6] The applicant did not mention his education in his cover letter (Applicant's Record, tab 3, Exhibit "Tribunal Record" p 10, Applicant Information – Paul Abi-Mansour; Respondent's Record, Volume 1, Section D, tab 3, p 3; PSSST decision at para 34). In his résumé, he wrote that he had a degree in applied mathematics, without specifying that the degree included a computer science option (Applicant's Record, tab 3, Exhibit "Tribunal Record" p 12, Applicant Information – Paul Abi-Mansour; Respondent's Record, Volume 1, Section D, tab 3, p 3).

[7] On May 4, 2010, the applicant received an email from Ms. Geneviève Bégin Martineau, a Senior Human Resources Advisor for the respondent, informing him that he had been screened out of the appointment process on the basis that he did not meet the education requirement. The email also mentioned that the applicant could contact Ms. Jessica Chénier, a Human Resources Assistant for the respondent, if he wished to informally discuss his elimination from the appointment process (Respondent's Record, Volume 1, Section D, tab 6 at pp 1-3; Email from Geneviève Bégin Martineau, May 4, 2010; Applicant's Record, tab 3, Exhibit "Tribunal Record" at pp 76-77):

After a careful assessment of the information you have provided on your application for the above-mentioned appointment process, the persons responsible for assessment have concluded that you do not meet the following merit criteria identified for screening:

Successful completion of two years of an acceptable post-secondary educational program in computer science, information technology,

information management or another specialty relevant to the position to be staffed.

Consequently, you will not be considered further in this appointment process.

Should you wish to informally discuss your elimination from this appointment process, please contact Jessica Chénier, Human Resources Assistant [...]

[8] After being informed of the decision, the applicant mentioned, in an email sent on May 4, 2010, to Ms. Chénier, that he had a computer science degree. On May 5, 2010, Ms. Chénier replied to that email and asked the applicant to submit copies of his educational credentials (Applicant's Record, tab 3, Exhibit "Tribunal Record" at p 76, Email from Jessica Chénier, May 5, 2010):

Good day M. Abi-Mansour,

Please send us your education credential proof in order to review your application request.

Do not hesitate to contact me should you have any questions.

[9] On May 10, 2010, the applicant submitted the requested credentials by email (Applicant's Record, tab 3, Exhibit "Tribunal Record" at p 76, Email from Paul Abi-Mansour, May 5, 2010).

[10] At the hearing before the PSST, Ms. Chénier testified that she put the applicant's education credentials with his application documents and sent them to Ms. Bégin Martineau, as per her normal procedure. Ms. Bégin Martineau testified that she never received the applicant's education credentials (Applicant's Record, tab 3, Exhibit 1, PSST's decision at paras 37-38).

[11] On September 20 and 21, 2010, Ms. Sue Fata, Manager of Secure Systems Operations for the respondent who was involved in the appointment process, wrote to the applicant to follow-up on

his request for an informal discussion to discuss his elimination from the appointment process, asking him for his availabilities and suggested that the discussion could be done by email (Applicant's Record, tab 3, Exhibit "Tribunal Record at p 83, Emails from Sue Fata, September 20 and 21, 2010; Respondent's Record, Volume 1, Section D, tab 7 at p 2).

[12] On October 13, 2010, the applicant sent an email to Ms. Fata telling her that he would file a complaint to the PSST and that he would name her as a personal respondent (Applicant's Record, tab 3, Exhibit "Tribunal Record" at p 83, Email from Paul Abi-Mansour, October 13, 2010, Respondent's Record, Volume 1, Section D, tab 7 at p 1).

[13] The applicant testified at the hearing before the PSST that he spoke on the phone with Ms. Bégin Martineau and that she told him that he was screened out because of his failure to mention his education in his cover letter. He also testified that, on November 5, 2010, Ms. Bégin Martineau left him a voicemail message in which she mentioned that he was not eliminated because of his covering letter, but because he did not meet the education requirement. While Ms. Bégin Martineau has no recollection of either of these phone calls, she testified that their alleged content appeared to be "accurate" (Applicant's Record, tab 3, Exhibit "Tribunal Record" at p 84, PSST decision at para 44). The following transcript was submitted as evidence:

Mon nom c'est Geneviève Bégin Martineau, je vous téléphone concernant votre élimination de processus CS-02 au ministère des affaires étrangères. J'ai parlé au gens sur le comité de sélection et ils m'ont avisé que vous n'avez pas été éliminé au niveau de votre lettre de présentation mais au niveau de l'éducation tel que mentionné dans votre lettre sur votre lettre d'élimination. En fait, ils disent que [vous ne] rencontrez pas le nombre minimal d'éducation qui est de 2 années de programme acceptable des études postsecondaire terminées avec succès en sciences informatiques, technologie de l'information, gestion de l'information ou dans un autre domaine lié

au poste à combler. Donc, si vous voulez discuter de cette élimination là, au niveau de l'éducation, vous pouvez communiquer avec Sergine D'Aoust au ...

[14] The screening-out decision was not reconsidered by the respondent (Applicant's Record, tab 3, Exhibit 1, PSST decision at para 6).

[15] A total of 332 persons, including the applicant, applied for the CS-02 position. The respondent's screening report shows that 104 candidates self-identified as members of "designated groups", within the meaning of the *Employment Equity Act*, SC 1995, c 44 (the "EEA"), and thirty-four (34) individuals self-identified as visible minorities (Respondent's Record, Volume 1, Section 1, PSST decision at para 5; Applicant's Record, tab 3, Exhibit 1).

[16] Following the assessment process, twenty-nine (29) candidates were determined to be qualified. On November 30, 2010, three (3) appointments were made. Nine (9) further appointments were made shortly after (Applicant's Record, tab 3, Exhibit 1, PSST decision at para 7).

[17] The applicant filed a total of nine (9) complaints under section 77 of the *PSEA*: three (3) in 2010 (2010-0730, 2010-0733, 2010-0734), and six (6) in 2011 (2011-0118, 2011-0119, 2011-0239, 2011-0362, 2011-0363, 2011-0986). For the purpose of the proceedings, the complaints were consolidated in accordance with section 8 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6, as amended by SOR/2011-116 (Applicant's Record, tab 3, Exhibit 1, PSST Decision at para 7).

[18] The PSST heard the complaints on January 17 and 18, 2012. On March 28, 2012, the PSST dismissed the applicant's complaints.

Impugned decision

[19] In an eleven (11) page decision, the PSST examined three (3) issues: (i) Did the respondent abuse its authority by discriminating against the applicant in this appointment process? (ii) Did the respondent abuse its authority by failing to apply organizational requirements? (iii) Did the respondent abuse its authority in the application of merit by appointing candidates who did not meet the education requirement?

(i) Did the respondent abuse its authority by discriminating against the applicant in this appointment process?

[20] On the first issue, the PSST determined that the applicant had successfully established a *prima facie* case of discrimination under section 7 of the *Canadian Human Rights Act*, RSC 1985, c H-6 (the "CHRA") (Applicant's Record, tab 3, Exhibit 1, PSST decision at paras 19-27), but that the respondent had provided a reasonable explanation of its appointment process (Respondent's Record, Volume 1, Tab 1, PSST decision at paras 28-53).

[21] The PSST mentioned that section 80 of the *PSEA* allows it to interpret the *CHRA* in order to assess whether a complaint is substantiated under section 77 of the *PSEA*. It then recalled that section 7 of the *CHRA* provides that it is discriminatory to directly or indirectly refuse to employ or continue to employ any individual, or, in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination. Section 3 of the *CHRA* provides

the prohibited grounds of discrimination, which notably include race, and/or national or ethnic origin. The applicant alleged that the respondent screened him out because it recognized his name as Middle Eastern and refused to acknowledge his foreign credentials and that the decision was therefore based on race and/or national or ethnic origin (Applicant's Record, tab 3, Exhibit 1, PSST decision at para 12).

[22] The PSST noted that, in order to establish that the respondent engaged in a discriminatory practice in the course of dealing with the applicant's candidacy, the applicant had to establish a *prima facie* case of discrimination (*Ontario (Human Rights Commission) v Simpsons Sears Ltd*, [1985] 2 SCR 536, [1985] SCJ No 74 [*O'Malley*]). If a *prima facie* case is established, the onus moves to the respondent who has to provide a reasonable explanation for the practice; such an explanation must not be considered at the *prima facie* case step (*Lincoln v Bay Ferries Ltd*, 2004 FCA 204, at para 22, [2004] FCJ No 941 (QL) [*Lincoln*]).

Prima facie case of discrimination

[23] The PSST mentioned that, to establish a *prima facie* case, the applicant only had to establish that discrimination was among the considerations leading to the challenged decision, and not its sole basis (*Holden v Canadian National Railway Company* (1991), 14 CHRR D/12, (FCA) at para 7).

[24] It then stated that the three (3)-step test to determine whether a *prima facie* case of discrimination has been established in the case of a screening process was the following:

- (i) that the complainant possessed the qualification at issue that was established for the particular appointment process;

- (ii) that the complainant was eliminated from consideration on the basis that he did not possess that qualification;
- (iii) that a candidate no better qualified, but lacking the distinguishing feature, which is the basis of the complaint of discrimination, was found to possess that qualification.

This test is an adaptation of the one developed in *Shakes v Rex Pak Ltd*, (1981) 3 CHRR D/1001.

[25] The PSST found that the applicant satisfied the first part of the test. The applicant provided evidence that he obtained a *Maîtrise ès sciences* in applied mathematics from the Université Libanaise, a Baccalaureate in Education from the University of Ottawa and that he was admitted to a program entitled *Diplôme de deuxième cycle en génie logiciel*. The Université Libanaise being a recognized educational institute for the purpose of the education requirement, the PSST determined that the applicant possessed the education qualification for the CS-02 position (Applicant's Record, tab 3, Exhibit 1, PSST decision at paras 21-24).

[26] The PSST found that the applicant satisfied the second part of the test, as he was screened out on the basis that he did not meet the education qualification for the CS-02 position (Applicant's Record, tab 3, Exhibit 1, PSST decision at para 25).

[27] The PSST found that the applicant also satisfied the third part of the test. The applicant addressed the academic credentials of two (2) appointees, candidates 191 and 279. While candidate 191 self-identified as a member of a visible minority, candidate 279 did not and the PSST assumed that he was not a member of a visible minority group. As he was not better qualified than the applicant and did not possess the distinguishing feature of having a Middle Eastern sounding name,

the PSST concluded that the applicant satisfied the last part of the test (Applicant's Record, tab 3, Exhibit 1, PSST decision at para 26).

The respondent's explanation of its screening process

[28] Having found that the applicant successfully established a *prima facie* case of discrimination, the PSST moved to examine the respondent's explanation and found that it was reasonable (Applicant's Record, tab 3, Exhibit 1, PSST decision at paras 28-53).

[29] The PSST noted that the JOA instructed candidates to include a covering letter, and to demonstrate in that covering letter how they met the education and experience requirements. It added that résumés could be used as a secondary source to validate the education and experience described in the cover letter. It stated that a failure to provide the information in the requested form would result in the rejection of the application (Applicant's Record, tab 3, Exhibit 1, PSST decision at paras 28-29).

[30] The PSST then described the respondent's screening process (Applicant's Record, tab 3, Exhibit 1, PSST decision at paras 30-35,). It cited Mr. Robert Miron, Director of Electronic Messaging for the respondent, who explained how the teams that were screening out the applications operated (Respondent's Record, Volume 1, tab 1, PSST decision at para 33):

... If the team found that the experience or education was missing from the covering letter or if the candidate's description did not meet the requirements for education or experience, the candidate was removed from the process. Mr. Miron stated that 35 candidates were screened out because they failed to mention their education in their covering letters. A further 25 candidates were eliminated because the description of their education did not satisfy the position requirements.

[31] The PSST noted that the applicant did not dispute that the instructions were clear, but he decided not to address his education in his cover letter since that was not his usual practice, and instead mentioned in his résumé that he had a degree in applied mathematics without specifying that he had a computer science option. The applicant believes that the computer science option should have been inferred from his degree (Applicant's Record, tab 3, Exhibit 1, PSST decision at para 34).

[32] Ms. Fata, who was the employee of the respondent who screened out the applicant's candidacy, testified that she did so because of his failure to mention in his cover letter that he met the education requirement. At the trial, she identified a handwritten annotation she made directly on the applicant's application mentioning that he did not address his education in his covering letter (Respondent's Record, Volume 1, Section D, tab 3, Applicant Information – Paul Abi-Mansour; Applicant's Record, tab 3, Exhibit "Tribunal Record" pp 10-11, PSST decision at para 35).

[33] The evidence also shows that Ms. Fata and Ms. Bégin Martineau reviewed the applicant's file together and found out that not only did he fail to mention his education in the cover letter, but he also failed to mention that his degree in applied mathematics had a computer science option (Respondent's Record, Volume 1, Section D, tab 7 at p 1, Email from Sue Fata, October 13, 2010).

[34] The PSST then provided an account of the various email exchanges and telephone conversations the applicant had with various employees of the respondent. Ms. Bégin Martineau testified that she had no recollection of having telephone conversations with the applicant, but that if she had spoken to him, she would have initially told him that "he did not meet the education qualification because his education was not mentioned in his covering letter" (Respondent's Record,

Volume 1, tab 1, PSST decision at para 44; Applicant's Record, tab 3, Exhibit 1). Ms. Bégin Martineau didn't remember leaving the applicant a voicemail message, but testified that the content of the transcript that was shown to her at the hearing seemed "accurate" and that it was likely that she would have told the applicant that his candidacy was not rejected on the basis of his cover letter, but because he did not meet the education requirements (Applicant's Record, tab 3, Exhibit 1, PSST decision at para 44). She testified that she didn't want to leave the impression that the content of the cover letter was irrelevant and wanted to stress that he was eliminated because of his cover letter and the fact that he did not meet the minimum education requirement (Applicant's Record, tab 3, Exhibit 1, PSST decision at paras 43-46).

[35] The PSST noted that, to support its claim that the respondent did not discriminate against the applicant in its hiring process, the respondent provided the following "uncontested" facts:

... At the conclusion of the process, 29 candidates were determined to be qualified, 16 of whom (55%) self-identified as visible minorities. Three of the qualified candidates (10.3% of the qualified candidates) possessed educational credentials from foreign universities located in Egypt, the West Indies and China. In total, 12 appointments had been made from the pool of qualified candidates. Six (50%) of the appointees self-identified as members of visible minorities, three of whom (25% of the appointees) were born outside Canada: in Somalia, Lebanon and the Philippines. According to data in evidence, the availability of visible minorities within DFAIT around the time that appointments were being made was 10.3%, indicating that the results of this appointment process exceeded availability. The complainant expressed little faith in these numbers, but other than his own opinion, he led no evidence to challenge them (Respondent's Record, Volume 1, tab 1, PSST decision at para 47).

[36] The PSST rejected the applicant's argument that the fact that he was asked to submit his education credentials gave rise to a right of having his candidacy reconsidered. His application was rejected because of his failure to comply with the requirements of the JOA and the SMC and "he

could not circumvent the screening result or oblige the respondent to conduct a further assessment of his education” (Respondent’s Record, Volume 1, tab 1, PSST decision at para 51). The PSST added that “[d]eviating from this process by allowing an exception for the complainant would have been unfair to other candidates who were screened out for the same reason and may have given rise to claims of abuse of authority on the basis of unequal treatment” (Respondent’s Record, Volume 1, tab 1, PSST decision at para 52).

[37] The PSST concluded that the respondent provided a complete explanation on the circumstances leading to the rejection of the applicant’s candidacy, and, on the basis of section 36 of the *PSEA*, the respondent set an efficient assessment method. The applicant acknowledged that the instructions in the JOA and the SMC were clear, but he nevertheless failed to comply with them (Applicant’s Record, tab 3, Exhibit 1, PSST decision at para 50).

[38] The PSST recalled that an applicant is responsible to demonstrate in his application that he meets all the essential qualifications (*Edwards v Canada (Deputy Minister of Indian and Northern Affairs)*, 2011 PSST 10, 2011 LNCPSST 10 [*Edwards*]; *Walker-McTaggart v Chief Executive Officer of Passport Canada*, 2011 PSST 39 (CanLII) [*Walker-McTaggart*]), and to ensure that his application documents are complete and in conformity with the JOA and SMC requirements (*Charter v Canada (Deputy Minister of National Defence)*, 2007 PSST 48, 2007 LNCPSST 48 [*Charter*]). An assessment board has no obligation to follow-up with candidates or raise inferences when candidates have been told that they must demonstrate their qualifications in their application (*Henry v Canada (Department of Human Resources and Social Development)*, 2008 PSST 10, 2008 LNCPSST 10 [*Henry*]).

[39] Since it was satisfied that the respondent's rejection of the applicant's candidacy based on his failure to respect the JOA instructions was not a pretext, the PSST found that the respondent "provided a more than reasonable explanation to rebut the *prima facie* case" (Respondent's Record, Volume 1, tab 1, PSST decision at para 53).

ii) Did the respondent abuse its authority by failing to apply organizational requirements?

[40] The PSST found that the respondent did not err in choosing not to apply its discretion to consider organizational needs in the hiring process at hand.

[41] The PSST explained that the JOA and the SMC used for this appointment process contained the following passage (Respondent's Record, Volume 1, Section D, tab 2 at p 4, JOA, SMC):

Organizational Needs

Improve the representation of members of employment equity groups.

It also noted that, in a section of the JOA entitled "Other Information (Notes)", the following passage appeared (Respondent's Record, Volume 1, Section D, tab 1 at p 6, JOA):

Achieving a representative workforce has been identified as an organizational need in the merit criteria, and **may be applied** in this appointment process. . . .

(Emphasis in original)

[42] The PSST rejected the applicant's position that, once a candidate was found to meet the essential qualifications, the respondent was obliged to apply employment equity criteria set out in the previous passages (Respondent's Record, Volume 1, tab 1, PSST decision at paras 56, 62; Applicant's Record, tab 3, Exhibit 1).

[43] The PSST summarized the testimonies of three (3) employees of the respondent who were involved in the hiring process. They mentioned that the organizational need factor comes into play when two (2) candidates have almost identical qualifications, a situation that very rarely happens, and that it is a tool that enables a manager to fill any employment equity gap, but that it doesn't have to be used in every case (Respondent's Record, Volume 1, tab 1, PSST decision at paras 57-59; Applicant's Record, tab 3, Exhibit 1).

[44] The PSST recalled that paragraph 30(2)(b) of the *PSEA* confers discretion on a manager to apply additional asset qualifications, operational requirements and organizational needs if he deems it necessary or useful (*Glasgow v Canada (Deputy Minister of Public Works and Government Services)*, 2008 PSST 7 at para 60, 2008 LNCPSST 7 (CanLII) [*Glasgow*]; *Guimond v Canada (Deputy Minister of National Defence)*, 2009 PSST 23 at para 34, 2009 LNCPSST 23 (CanLII) [*Guimond*]) (Applicant's Record, tab 3, Exhibit 1, PSST decision at paras 60-61).

[45] In the case at hand, the PSST found that:

... a manager would refer to the organizational need only if two candidates were deemed to be equally suited for an appointment. Moreover, the JOA and SMC indicated clearly that the organizational need **may** be applied. The clear meaning is that they would not necessarily be used. The Tribunal finds no error in an approach which confirms the discretion of a manager to resort to organizational need when appropriate.

(Emphasis in Original)

(Respondent's Record, Volume 1, tab 1, PSST decision at para 62; Applicant's Record, tab 3, Exhibit 1).

(iii) Did the respondent abuse its authority in the application of merit by appointing candidates who did not meet the education requirement?

[46] The PSST found that the applicant did not establish his allegation that the two (2) candidates he identified – candidate 191 and candidate 279 – failed to meet the education requirement.

[47] The PSST mentioned that a note in the qualification standard indicates that the status of the educational institution – whether it is a “recognized educational institution” or not – determines if the courses taken by a candidate correspond to “two years in a post-secondary program” at the institution. When Mr. Paul Hendriks, Deputy Director of Software Engineering for the respondent, who examined the application of candidate 191, read in his cover letter that he obtained a degree from CDI College, he was satisfied that it was an accredited institution. He made a phone call to CDI College which confirmed that the degree of candidate 191 was the equivalent of a program of two to two and one-half years duration (Applicant’s Record, tab 3, Exhibit 1, PSST decision at para 65). The applicant argued that the respondent assumed that candidate 191 had a degree of duration of two (2) years, contrary to the note in the qualification standard. He submitted that the respondent should have produced more evidence of what was said by its employee to CDI College and that an adverse inference ought to have been drawn (Applicant’s Record, tab 3, Exhibit 1, PSST decision at paras 64-66).

[48] The PSST noted that candidate 279 mentioned in his cover letter that he had a bachelor’s degree in business administration with a concentration in organizational information systems. Mr. Miron, who examined his application, read the candidate’s résumé, researched the program he mentioned and found that it had a major information system component. The applicant argued that

the respondent should have screened out candidate 279's application on the basis that he did not set out clearly his education in his covering letter and that the respondent should have produced a transcript to substantiate its finding (Applicant's Record, tab 3, Exhibit 1, PSST decision at paras 67-68).

[49] The PSST recalled that the onus was on the applicant to prove his case on the balance of probabilities by providing evidence from testimonies, facts or documents (*Tibbs v Canada (Deputy Minister of National Defence)*, 2006 PSST 8, 2007 LNCPSST 8 (CanLII); *Broughton v Canada (Deputy Minister of Public Works and Government Services)*, 2007 PSST 20 at para 50, 2007 LNCPSST 20 (CanLII)).

[50] The PSST found that the applicant did not provide any evidence that the respondent improperly used its authority to assess education and did not contradict the evidence of the respondent's witnesses concerning the two (2) candidates' qualifications. The fact that the respondent took additional steps to assess the education of those candidates only demonstrates that no assumptions were made and that the verification process was thorough (Applicant's Record, tab 3, Exhibit 1, PSST decision at para 70).

Relevant provisions

[51] The relevant provisions, in the case at bar, are referred to in the annexe.

Issues

[52] The case at hand raises the following issues:

- a) *Did the PSST breach procedural fairness?*
- b) *Was the PSST decision that the respondent did not abuse its authority by discriminating against the applicant reasonable?*
- c) *Was the PSST decision that the respondent did not abuse its authority by failing to apply organizational requirements reasonable?*
- d) *Was the PSST decision that the respondent did not abuse its authority by appointing candidates who did not meet the education requirement reasonable?*

Standard of review

[53] It is trite law that no deference is owed by the Court on questions of procedural fairness (*Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 53, [2006] 3 FCR 392; *Canadian Union of Public Employees (CUPE) v Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 SCR 539 [CUPE]).

[54] With respect to the other three (3) issues, the reasonableness standard applies. In *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [Dunsmuir], the Supreme Court of Canada held that a reviewing court does not have to conduct a standard of review analysis where jurisprudence determined in a satisfactory manner the standard of review applicable to the question before the court (*Dunsmuir*, above at para 62). The three (3) questions concerning abuse of authority can qualify as questions of mixed fact and law. They involve the interpretation of the *PSEA* as well as provisions of the *CHRA* concerning employment discrimination, that the PSST is explicitly allowed to interpret and that they are closely related to its function. The jurisprudence has indicated that such decisions by the PSST are reviewable under the reasonableness standard (*Lavigne v Canada (Deputy Minister of Justice)*, 2009 FC 684 at paras 42, 45, 46, 50, [2009] FCJ No 827 (QL) [Lavigne]); *Alexander v Canada (Attorney General)*, 2011 FC 1278 at para 44, [2011] FCJ No 1560

(QL) [*Alexander*]; *Kilbray v Canada (Attorney General)*, 2009 FC 390 at para 33, [2009] FCJ No 531 (QL) [*Kilbray*]; *Kane v Canada (Attorney General)*, 2011 FCA 19 at para 40, [2011] FCJ No 79 (QL); *Jalal v Canada (Minister of Human Resources and Skills Development)*, 2013 FC 611 at para 31, [2013] FCJ No 640 (QL); *Canada (Attorney General) v Lahlali*, 2012 FC 601 at paras 22-23 [2012] FCJ No 591 (QL) [*Lahlali*]; *Smith v Canada (Attorney General)*, 2011 FC 1401 at para 21, [2011] FCJ No 1709 (QL)).

[55] The Court recalls that the role of reviewing courts, when applying the reasonableness standard, is not to reweigh the evidence that was before the decision-maker. They have to limit their examination to “[...] the existence of justification, transparency and intelligibility within the decision-making process” and should be concerned with determining “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, above at para 47; *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 15-16, [2011] 3 SCR 708 [*Newfoundland Nurses*]).

Arguments

[56] Both the applicant and the respondent submitted a myriad of arguments.

Issue a) Breach of procedural fairness

Applicant’s arguments

[57] The applicant makes various claims throughout his memorandum, suggesting that the respondent or the PSST committed breaches of procedural fairness.

[58] The applicant argues that the PSST ignored his contention that the preamble of the “new” *PSEA* provides managers with flexibility to strive for more diversity in the public service, and the PSST should have analyzed the respondent’s exercise of discretion and choice of assessment method to determine if they respected the values expressed in the preamble (Applicant’s Record, tab 5, Applicant’s Memorandum at para 35).

[59] The applicant also submits that the PSST did not provide him with the opportunity to present his case clearly nor to properly cross-examine the respondent’s witnesses (Applicant’s Record, tab 5, Applicant’s Memorandum at para 82)

Respondent’s arguments

[60] The respondent disagrees that there was a breach of procedural fairness. The respondent submits that the applicant had the full opportunity to present evidence, cross-examine witnesses and make representations at the hearing and that the only restriction on his capacity to cross-examine witnesses took the form of an objection to the questioning of Ms. Fata on her education credentials, which were not relevant (Respondent’s Record, Volume 1, tab 2, Affidavit of Anisa Coofle at paras 15, 17).

Issue b) Discrimination

Applicant’s arguments

[61] The applicant submits that section 36 of the *PSEA*, which provides that the Public Service Commission and its delegates have a discretionary power to use any method they deem appropriate

in the assessment of a candidate's application, doesn't apply to the evaluation of a candidate's education, since a diploma cannot be assessed by an interview or a performance appraisal.

[62] The applicant alleges that the method used by the respondent in assessing the education of candidates was unfair (Applicant's Record, tab 5, Applicant's Memorandum at paras 37, 38).

[63] The applicant submits that, since he doesn't have access to the premises where the respondent's employees who testified at the hearing work, he could not produce contradicting evidence.

[64] The applicant argues that the real criteria on which the respondent based its decision were the diplomas of the candidates, not their cover letter (Applicant's Record, Applicant's Memorandum at para 42) and that the PSST erred in concluding that the "screening by the cover letter" method, as well as the assessment procedure that involved nine (9) employees and that lasted three (3) months, were "efficient", without any evidence of the respondent's lack of resources (Applicant's Record, tab 5, Applicant's Memorandum at para 43). The applicant believes that the PSST erred in refusing to allow a reassessment of his candidacy (Applicant's Record, tab 5, Applicant's Memorandum at para 44).

[65] Finally, the applicant asserts that the PSST erred and based part of its decision on misapprehended facts (Applicant's Record, tab 5, Applicant's Memorandum at para 45).

Respondent's arguments

[66] The respondent states that according to *Lavigne*, above at para 62, any finding of an abuse of authority requires “more than error or omission, or even improper conduct”. The threshold to prove abuse of authority is therefore high and requires that the applicant establishes “that the decision to appoint the appointee was made in bad faith, influenced by personal favouritism or otherwise affected by a similar consideration such as discrimination” (Respondent’s Record, Volume II at pp 159-160, Respondent’s Memorandum at paras 55-57).

[67] The respondent submits that, in the case at hand, the documentary (Respondent’s Record, Volume 1, tab 1, PSST decision at paras 28-50) and testimonial evidence (Respondent’s Record, Volume 1, tab 1, PSST decision at para 52) showed that clear instructions were given to assessors to reject all applications that did not include education credentials in the cover letter (Respondent’s Record, Volume 1, Section D, tab 4 at p1, Email from Sergine Daoust, March 17, 2010), that the applicant’s application was rejected because of his failure to respect those instructions and that the applicant was one of thirty-five (35) candidates who were eliminated because of such a failure (Respondent’s Record, Volume II at p 161, Respondent’s Memorandum at para 62). After examining it, the PSST was convinced by that evidence, found the witnesses credible and determined that the respondent had provided a reasonable explanation for its screening process (Respondent’s Record, Volume II at p 163, Respondent’s Memorandum at para 69).

[68] The respondent also submits that the PSST has determined a number of times that it is the responsibility of the complainant to clearly demonstrate that he meets the essential qualifications for the position (*Edwards*, above; *Walker-McTaggart*, above; *Henry*, above at para 34).

[69] The respondent submits that selecting candidates who attained the highest level of education would amount to ranking candidates which would be contrary to the principle of “relative merit” (*Visca v Canada (Deputy Minister of Justice)*, 2007 PSST 24 at para 44, 2007 LNCPSST 24 [Visca]) (Respondent’s Record, Volume II at pp 171-172, Respondent’s Memorandum at para 99).

[70] The respondent argues that submitting his education credentials after being informed that he was screened out did not give the applicant a right to have his application reassessed, because no error was made by the respondent and his application was screened out on the basis that he did not list his education in his cover letter. To allow such a reassessment would be contrary to the *PSEA*’s purpose to foster fair and transparent employment practices (Respondent’s Record, Volume II at p 164-165, Respondent’s Memorandum at paras 72, 74).

Issue c) Failure to apply organizational requirements

Applicant’s arguments

[71] The applicant argues that the PSST should have concluded that the *Employment Equity Act*, SC 1995, c 44 (the “*EEA*”) imposed on the respondent an obligation of eliminating employment barriers for designated groups. The respondent should not have a discretionary power to apply employment equity measures (Applicant’s Record, tab 5, Applicant’s Memorandum at paras 47-61).

Respondent’s arguments

[72] The respondent disagrees and claims that paragraph 30(2)(b) of the *PSEA* confers discretion on the Commission and its delegates to apply asset qualifications and organizational needs, but does

not impose an obligation to do so (*Glasgow*, above at para 60; *Guimond*, above at para 34) (Respondent's Record, Volume II at p 166, Respondent's Memorandum at para 79).

[73] The respondent also submits that it is not the role of the PSST to enforce the *EEA*, but that of the Canadian Human Rights Commission (*Lincoln*, above at para 70; *Brown*, above at paras 69-70) (Respondent's Record, Volume II at p 166, Respondent's Memorandum at para 80). Managers can decide to include employment equity objectives as organizational needs, but they don't have to apply this merit criterion if the circumstances don't warrant it (Respondent's Record, Volume III, tab C-26, Public Service Commission's Guide to Implementing the Policy on Employment Equity in the Appointment Process at p 3). According to the respondent, the PSST correctly found that a manager has the discretion to apply employment equity as an organizational need when appropriate, and that it was reasonable for the respondent to consider employment equity only when two (2) candidates were deemed of equal strength (Respondent's Record, Volume II at p 167-168, Respondent's Memorandum at paras 83-86; PSST decision at paras 57-62).

Issue d) Appointment of candidates who did not meet the education requirement

Applicant's arguments

[74] The applicant alleges that the PSST erred by rejecting his motion to obtain evidence regarding the written tests and interviews of the appointees, which would have been necessary to determine if the appointees met essential qualifications like experience and knowledge (Applicant's Record, tab 5, Applicant's Memorandum at paras 64-69).

[75] He also contends that the respondent failed to meet his burden, which was to explain why it appointed a candidate who did not meet the education criteria. Jack Mah (candidate 191) has a diploma from CDI College. The PSST erred when it accepted the testimony of the respondent's employee, Mr. Paul Hendriks, who recognized CDI College as one of the accredited institutions for the purposes of the appointment process (Applicant's Record, tab 3, Exhibit 6 at p 85). The applicant claims that the testimony of Mr. Hendriks, who knew that CDI College was not an accredited institution, amounts to perjured evidence and submits that the Court should set aside the PSST decision that was rendered on the basis of this evidence (*Agustawestland International Ltd v Canada (Minister of Public Works and Government Services)*, 2005 FC 627, [2005] FCJ No 805 (QL)). Finally, the applicant mentions that the respondent did not produce any evidence to show that the degree of the candidate was the equivalent of a two (2) year program (Applicant's Record, tab 5, Applicant's Memorandum at paras 72-80).

Respondent's arguments

[76] The respondent submits that the applicant's request to obtain information was dismissed by the PSST because it was too broad and that a link between the complaint and the information requested was not established. The request of the applicant was made after the PSST granted his request to amend his allegations so they could include the allegation that appointees Jack Mah and Danny Sirois did not meet the educational criteria for the position, contrary to subsection 30(2) of the *PSEA*. The applicant subsequently made a request to access the premises of the respondent and to check all the documents concerning nine (9) appointees in order to verify if they met the essential qualifications. The PSST denied the request because the applicant's amended allegations were only directed at the satisfaction by two (2) of the appointees of the education merit criteria (Respondent's

Record, Volume I, Section C, tab 2, PSST decision Letter dated January 10, 2012; Respondent's Record, Volume II at pp 173-175, Respondent's Memorandum at paras 104-109).

[77] The respondent also contends that the PSST was correct when it found that the applicant called no evidence to suggest that the two (2) appointees failed to meet the education requirement or to contradict the witnesses of the respondent (Applicant's Record, tab 3, PSST decision at para 70; Respondent's Record, Volume II at pp 168-169, Respondent's Memorandum at paras 87-88).

Analysis

[78] The Court recalls that the applicant withdrew at hearing before this Court his allegation that the PSST acted in bad faith.

[79] Also, before this Court, the applicant adduced evidence suggesting that the college where appointee Jack Mah studied was not a recognized institution in the context of the appointment process for the CS-02 position (Applicant's Record, tab 3, Exhibit 6). However, this document was not before the PSST and it shall not be considered by the Court in the context of this judicial review.

[80] Based on the evidence on record and the parties' arguments, the Court is of the view that the PSST did not breach its duty of fairness. It did not breach its duty of fairness when it upheld the respondent's objection to the questioning of Ms. Fata, who was the respondent's representative who screened the applicant's candidacy, on her education credentials. The PSST had the authority to decide whether the question was relevant and, looking at the record, the Court does not believe that the PSST erred in determining that Ms. Fata's education credentials were not relevant to decide the

applicant's complaints (Respondent's Record, Volume 1, tab 2, Affidavit of Anisa Coofle at paras 15, 17).

[81] Further, the Court finds no error in the PSST decision to dismiss the applicant's request to access the respondent's premises and obtain the full application records of nine (9) of the appointees. Because the allegation of the applicant only concerned the education of the two (2) appointees, the PSST did not err in dismissing the request because it was too broad (Respondent's Record, Volume I, Section C, tab 2, PSST decision letter dated January 10, 2012).

[82] The PSST committed no reviewable error in determining that the respondent did not abuse its authority by discriminating against the applicant. Section 36 of the *PSEA* provides the respondent with the authority to establish any assessment method to determine if candidates meet the required qualifications. The applicant failed to convince the Court that the PSST erred in finding that the screening method that was chosen by the respondent was not discriminatory, unfair or contrary to the objectives of the *PSEA*. The instructions in the JOA and the SMC were clear and transparent, as all candidates were aware that their résumés were only a secondary source of information and that a failure to mention how the candidates met the qualifications for the CS-02 position in their cover letter would disqualify them from the process (Respondent's Record, Volume 1, Section D, tab 1 at p 2, Job Opportunity Advertisement (JOA)).

[83] It is also worthy of note that the respondent in both his written submissions and at the hearing before the Court admitted that the instructions included in the JOA and in the SMC were clear and that the consequences of not complying with them were clearly set out. The applicant

further acknowledged that he did not read them. He did not mention his education in his cover letter nor did he specify that his degree in applied mathematics included an option in computer science (Respondent's Record, Volume 1, Section D, tab 3 at pp 1-2, Applicant Information – Paul Abi-Mansour). Nonetheless, the applicant argued that the instructions are irrelevant, as they set out an unfair screening process. On the basis of the evidence, the PSST committed no reviewable error in concluding that the respondent failed to provide a reasonable, non-discriminatory explanation of the process.

[84] The applicant was critical of the respondent's process leading to the communication of his disqualification from the appointment process – more particularly the email from Ms. Geneviève Bégin Martineau sent on May 4, 2010 (Respondent's Record, Volume 1, Section D, tab 6 at pp 1-3) and the email from Ms. Chénier sent on May 5, 2010 asking the applicant to submit copies of his educational credentials (Applicant's Record, Tab 3, Exhibit 2, Email from Jessica Chénier, May 5, 2010). However, it remains that, on the basis of the record, the issue raised by the applicant is not a material one. It was open to the PSST to conclude that the applicant was screened out because he failed to comply with the instructions pertaining to the cover letter. The PSST heard the testimony of individuals who were involved in the appointment process and found them credible. It relied on the documentary evidence showing that the assessors had clearly been instructed to screen out all candidates who failed to mention how they met the essential qualifications in their cover letter. It also noted that the assessor who examined the applicant's candidacy wrote on his cover letter that the applicant failed to address his education (Applicant's Record, tab 3, Exhibit 1, PSST decision at paras 36-46).

[85] The PSST did not err in finding that the respondent provided a reasonable explanation of its screening process. The PSST looked at all the evidence that was submitted, heard the witnesses that were brought before it and considered the applicable legal criteria. After finding that the applicant successfully established a *prima facie* case of discrimination, the PSST concluded that the respondent reasonably explained its screening process and that the applicant failed to demonstrate that this explanation was a pretext (Applicant's Record, tab 3, Exhibit 1, PSST decision at para 52).

[86] The PSST's findings, on the evidence adduced, that the applicant failed to demonstrate that the respondent abused its authority by appointing a candidate that allegedly did not meet the education requirement, was also reasonable. The PSST heard the respondent's representatives that assessed the applications that resulted in the two (2) challenged appointments and did not find any reason to conclude that the appointees failed to meet the education requirements (Applicant's Record, tab 3, Exhibit 1, PSST decision at paras 63-70).

[87] The applicant's argument that the respondent was under an obligation to him because of an alleged obligation to apply asset qualifications, organizational needs or employment equity objectives, is also rejected. Subsection 30(2) of the *PSEA* provides public service hiring managers with the power to consider, once an applicant has been found to meet the essential qualifications for a position, other qualifications that might be assets for their organization and current or future needs that may have been identified. The language of the subsection, which provides that these qualifications or needs "may" be considered, makes it clear that the hiring managers have been granted discretion. The evidence before the PSST also demonstrates that 50% of the appointments in the said hiring process are self-identified as visible minorities. These results exceeded the

percentage of visible minorities considered available for the CS-02 position (Respondent's Record, Volume 1, tab1, PSST decision at para 47).

[88] Ultimately, in the case at bar, it was the applicant's responsibility to clearly demonstrate in his application that he met all the essential qualifications and that he complied with the instructions. The PSST decision falls within the range of the possible outcomes defensible in respect of the facts and the law (*Dunsmuir; Newfoundland Nurses*).

[89] For all of these reasons, the Court's intervention is not warranted and this application for judicial review will be dismissed. The Court, in exercising its discretion, has determined that there will be no costs awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review be dismissed.

No costs.

“Richard Boivin”

Judge

ANNEXE A

Public Service Employment Act

Section 30

PART 2	PARTIE 2
APPOINTMENTS	NOMINATIONS
...	[...]
BASIS OF APPOINTMENT	MODALITES DE NOMINATION
Appointment on basis of merit	Principes
30. (1) Appointments by the Commission to or from within the public service shall be made on the basis of merit and must be free from political influence.	30. (1) Les nominations — internes ou externes — à la fonction publique faites par la Commission sont fondées sur le mérite et sont indépendantes de toute influence politique.
Meaning of merit	Définition du mérite
(2) An appointment is made on the basis of merit when	(2) Une nomination est fondée sur le mérite lorsque les conditions suivantes sont réunies :
(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	a) selon la Commission, la personne à nommer possède les qualifications essentielles — notamment la compétence dans les langues officielles — établies par l'administrateur général pour le travail à accomplir;
(b) the Commission has regard to	b) la Commission prend en compte :
(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,	(i) toute qualification supplémentaire que l'administrateur général considère comme un atout pour le travail à accomplir ou pour l'administration, pour le présent ou l'avenir,
(ii) any current or future operational requirements of the organization that may be identified by the deputy head, and	(ii) toute exigence opérationnelle actuelle ou future de l'administration précisée par l'administrateur général,
(iii) any current or future needs of the	

organization that may be identified by the deputy head.

(iii) tout besoin actuel ou futur de l'administration précisé par l'administrateur général.

...

[...]

PSEA – Section 36

Assessment methods

36. In making an appointment, the Commission may use any assessment method, such as a review of past performance and accomplishments, interviews and examinations, that it considers appropriate to determine whether a person meets the qualifications referred to in paragraph 30(2)(a) and subparagraph 30(2)(b)(i).

Méthode d'évaluation

36. La Commission peut avoir recours à toute méthode d'évaluation – notamment prise en compte des réalisations et du rendement antérieur, examens ou entrevues – qu'elle estime indiquée pour décider si une personne possède les qualifications visées à l'alinéa 30(2)a) et au sous-alinéa 30(2)b)(i).

PSEA – Section 77

PART 5

INVESTIGATIONS AND COMPLAINTS RELATING TO APPOINTMENTS

COMPLAINTS TO TRIBUNAL – INTERNAL APPOINTMENTS

...

Grounds of complaint

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 Tribunal's regulations – make a complaint to the Tribunal that he or she was not appointed or proposed for

PARTIE 5

ENQUÊTES ET PLAINTES RELATIVES AUX NOMINATIONS

PLAINTES RELATIVES AUX NOMINATIONS INTERNES DEVANT LE TRIBUNAL

[...]

Motifs des plaintes

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 (2) peut, selon les modalités et dans le délai fixés par règlement du Tribunal, présenter à celui-ci une plainte

appointment by reason of

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 :

(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);

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);

(b) an abuse of authority by the Commission in choosing between an advertised and a non-advertised internal appointment process; or

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;

(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).

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).

Area of recourse

Zone de recours

(2) For the purposes of subsection (1), a person is in the area of recourse if the person is

(2) Pour l'application du paragraphe (1), une personne est dans la zone de recours si :

(a) an unsuccessful candidate in the area of selection determined under section 34, in the case of an advertised internal appointment process; and

a) dans le cas d'un processus de nomination interne annoncé, elle est un candidat non reçu et est dans la zone de sélection définie en vertu de l'article 34;

(b) any person in the area of selection determined under section 34, in the case of a non-advertised internal appointment process.

b) dans le cas d'un processus de nomination interne non annoncé, elle est dans la zone de sélection définie en vertu de l'article 34.

Excluded grounds

Exclusion

(3) The Tribunal may not consider an allegation that fraud occurred in an appointment process or that an appointment or proposed appointment was not free from political influence.

(3) Le Tribunal ne peut entendre les allégations portant qu'il y a eu fraude dans le processus de nomination ou que la nomination ou la proposition de nomination a résulté de l'exercice d'une influence politique.

PSEA – Section 80

Application of *Canadian Human Rights Act*

80. In considering whether a complaint under section 77 is substantiated, the Tribunal may interpret and apply the *Canadian Human Rights Act*, other than its provisions relating to the right to equal pay for work of equal value.

Application de la *Loi canadienne sur les droits de la personne*

80. Lorsqu'il décide si la plainte est fondée, le Tribunal peut interpréter et appliquer la *Loi canadienne sur les droits de la personne*, sauf les dispositions de celle-ci sur le droit à la parité salariale pour l'exécution de fonctions équivalentes.

Canadian Human Rights Act

Section 3 and 7

PART 1

PROSCRIBED DISCRIMINATION

GENERAL

Prohibited grounds of discrimination

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Idem

(2) Where the ground of discrimination is pregnancy or child-birth, the discrimination shall be deemed to be on the ground of sex.

...

PARTIE 1

MOTIFS DE DISTINCTION ILLICITE

DISPOSITIONS GENERALES

Motifs de distinction illicite

3. (1) Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, l'état de personne graciée ou la déficience.

Idem

(2) Une distinction fondée sur la grossesse ou l'accouchement est réputée être fondée sur le sexe.

[...]

Employment

7. It is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any individual, or

(b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.

Emploi

7. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :

a) de refuser d'employer ou de continuer d'employer un individu;

b) de le défavoriser en cours d'emploi.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-868-12

STYLE OF CAUSE: PAUL ABI-MANSOUR
v DEPARTMENT OF FOREIGN AFFAIRS

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 23, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** BOIVIN, J.

DATED: NOVEMBER 18, 2013

APPEARANCES:

Paul Abi-Mansour

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Christine Langill

FOR THE DEFENDANT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada

FOR THE DEFENDANT