Federal Court of Appeal  Cour d'appel fédérale

Date: 20180523

Docket: A-284-16

Citation: 2018 FCA 97

CORAM: **PELLETIER J.A.**
GAUTHIER J.A.
TRUDEL J.A.

BETWEEN:

GANDHI JEAN PIERRE

Appellant

and

THE PRESIDENT OF IMMIGRATION AND REFUGEE BOARD OF CANADA

Respondent

Heard at Montréal, Quebec, on September 26, 2017.

Judgment delivered at Ottawa, Ontario, on May 23, 2018.

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: GAUTHIER J.A.
TRUDEL J.A.

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REASONS FOR JUDGMENT

PELLETIER J.A.

I. INTRODUCTION:

[1] Mr. Gandhi Jean Pierre (the applicant) seeks judicial review of the Federal Public Sector Labour Relations and Employment Board's (the Board) decision dismissing his complaint of abuse of authority in the assessment of his application for appointment as a member of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (the IRB). The

applicant's application was rejected at the screening stage on the basis of his lack of recent relevant experience.

[2] The applicant raises a number of issues with respect to the IRB's appointment process and the Board's failure to intervene but, as will be seen, his major complaint is that two positions within the immigration system were not properly assessed. Specifically, he complains that officers conducting pre-removal risk assessments (PRRA officers) were rated too highly while the position which he occupied for the greater part of his career, immigration officer, was not rated highly enough. These faulty assessments are material because of their role in the assessment tools provided to screening committees.

[3] The Board heard evidence from the individuals who formulated the screening tools and evaluated the applicant's application. On the basis of that evidence and the Board's limited scope for intervention, it found that the applicant had not demonstrated that the IRB abused its power in its screening process and, in particular, in its assessment of his application.

[4] I have not been persuaded that the Board erred in any material respect. I would therefore dismiss the application for judicial review.

II. THE FACTS

[5] The following facts are taken from the Board's decision, reported as 2016 PSLREB 62 (Reasons).

[6] In February 2011, anticipating important amendments to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), the IRB began a recruitment process to fill nearly 115 new positions as members of the RPD. At the time the recruitment process began, it was anticipated that the appointees would have to be in a position to begin hearing claims for refugee protection in mid-December 2011.

[7] The Job Opportunity Advertisement ("annonce de possibilité d'emploi") set out four kinds of qualifying experience ("qualifications d'expérience"), only two of which are relevant to this application:

> [TRANSLATION]
>
> EXPERIENCE
>
> FOR THE PM-06 POSITIONS, BOARD MEMBERS, CANDIDATES MUST POSSESS ONE (1) OF THE FOLLOWING* :
>
> Recent experience** in decision-making in a quasi-judicial or judicial context;
>
> OR […]
>
> Recent experience** in conducting research or inquiries in a quasi-judicial or judicial context or in immigration (including refugee status);
>
> […]
>
> *If a candidate satisfies more than one of the experience requirements, they can be considered ("un atout"). Candidates must demonstrate how they meet all qualifications in their applications.
>
> ** Recent experience is defined as experience acquired in the last five (5) years.
>
> (Respondent's Record at 55–57)

[8] A team of thirty or so IRB managers were brought together to make up screening committees. In order to assist them in their decision-making process, each received a reference

document (“document de référence”) which explained how to assess applications and how to proceed in case of uncertainty. The material parts of the reference document are reproduced below:

[TRANSLATION]

Qualification	What is acceptable
Recent decision-making experience (“prononcé de décisions”) in the context of a quasi-judicial or judicial process	• At least twelve months experience in the past five years. • Decision-making must constitute an important part of the person’s duties. • Consult the first page where examples of quasi-judicial and administrative tribunals are provided.
Recent experience in conducting research or inquiries in a judicial or quasi-judicial environment or with respect to immigration (including refuges)	• At least twelve months experience in the past five years. • Conducting research or inquiries must constitute an important part of the candidate’s duties • Consult the first page where examples of quasi-judicial and administrative tribunals are provided

(Respondent’s Record at 77–80)

[9] In addition, in order to provide consistency at the screening stage, a schedule was added to the reference document. It listed categories of jobs viewed as qualifying or non-qualifying and indicated whether the job duties met the relevant experience requirement. The material portions of this document are reproduced below:

CIC [Citizenship and Immigration Canada]—**the candidate makes**	Rendering this kind of decision does not represent an important part of

decisions in cases in which humanitarian considerations are invoked. (e.g. PM-03	the candidate's duties. **Screening decision:** This **does not** meet the relevant experience requirement, specifically *experience in rendering decisions in a judicial or quasi-judicial context.* OR If the rendering of such decisions is an important part of the candidate's duties, they will be considered as having met the requirement of *experience in rendering decisions in a judicial or quasi-judicial context.*
CBSA [Canada Border Services Agency]—**Border Services Officer or Immigration Officer (e.g. FB-03 or PM-03**	The decisions taken by these candidates are considered to be primarily administrative in nature. As a result, these are not decisions taken in the context of a judicial or quasi-judicial context **Screening decision:** this **does not** meet the relevant experience requirement.
CIC — pre-removal risk assessment officer (e.g. PM-04)	The decisions rendered by this candidate are considered to be judicial or quasi-judicial. Screening decision Consequently, if the experience is significant and relates to one of the four screening criteria, the candidate is considered as having met the requirement.

(Respondent's Record at 81–82 [emphasis in original])

[10] Mr. Pattee, Executive Director of the IRB, testified that these documents were prepared to assist the screening committees but that the committees were not bound by them. The

screening committees were to examine each application carefully to determine if it met the essential job requirements and to complete a screening form on which they recorded their assessment.

[11] Mr. Jean Pierre submitted his application by forwarding his résumé and a detailed cover letter. In his cover letter, he made the following points with respect to his experience in the course of his twelve years of service with CIC:

> Immigration and Refugee Protection Act and Regulations:
>
> - Conducted multiple interviews to determine admissibility to Canada;
> - Assessed the eligibility of claimants for refugee status;
> - Assessed the eligibility of applicants for temporary or permanent residence;
> - Determined applications for temporary resident status at the Canadian embassy in Mexico City;
> - Managing and providing information to clients at the Canadian embassy in Haiti following the earthquake.
>
> Experience in research or inquiries in immigration:
>
> - Research and inquiries using the United States Immigration National System (USNIS), the Canadian Police Information Centre (CPIC), the Canadian "missing children" program and the Intelligence section of the CBSA;
> - Assessment of equivalence of Canadian and foreign criminal offences.
>
> Experience in a quasi-judicial context:
>
> - Experience as a PRRA officer assessing and making decisions in a quasi-judicial context, with respect to eligibility for protected person status. Occasionally, a quasi-judicial hearing may be required pursuant to s. 167 of the *Immigration and Refugee Protection Regulations* [SOR/2002-227] (the Regulations).
>
> (Respondent's Record at 67–68)

[12] In his résumé, the applicant described his experience within the CIC, the relevant portions of which are as follows:

> FUNCTION: Immigration officer, citizenship officer, visa officer and pre-removal risk assessment:
>
> - assess and make decisions on different applications for permanent and temporary residence;
> - Assess admissibility and eligibility of refugee claimants;
> - Prepare reports and directions for inquiry pursuant IRPA;
> - Arrest or recommend the arrest of claimants inadmissible to Canada while complying with the *Charter of Rights and Freedoms* and other laws and treaties;
> - Refer to the IRPA and the *Citizenship Act* as well as procedural guidelines, interpret related legislation and apply the relevant jurisprudence in a just and equitable manner in analyses and decisions;
> - Two assignments (four and six weeks) to Canadian embassies in Mexico (October-November 2009) and Haiti (March-April 2010), making multiple decisions in difficult crisis situations (e.g. earthquake in Haiti);
> - Conduct research and analyze documentary evidence with a view to making recommendations as to work permits.

[13] The applicant's résumé also described his work as a PRRA officer :

- In a quasi-judicial context, evaluate and make decisions based on the criteria for the granting of protected person status while considering sections 96 and 97 of IRPA;
- Undertake research and analysis of country conditions and assess the risks faced by claimants in the event of their return to their country of origin;
- Undertake quasi-judicial hearings as required in order to assess credibility and to complete research and case study, all according to the principles of natural justice;
- Assess and decide claims involving humanitarian considerations, namely risks to bodily harm;

- Understand and apply the legislation and jurisprudence relevant to the decisions to be made.

(Respondent's Record at 69–74)

[14] The applicant's application was assessed by Mr. Morin, General Counsel and Manager, Legal Services of the IRB in Vancouver. Mr. Morin's assessment was that while the applicant met the education requirement, he had only four months of decision-making experience in a quasi-judicial context and he did not meet any of the other experience requirements. Mr. Morin found that the applicant had acquired his decision-making experience in the course of his work as PRRA officer between November 2010 and the assessment date, February 2011. In his view, the applicant's other work experience did not contain any further decision-making experience in a quasi-judicial context. As noted earlier, the requirement was twelve months of such experience in the past five years.

[15] Mr. Morin also considered the applicant's experience in conducting research or inquiries in the immigration. He found that the applicant had acquired four months of research experience during his time as a PRRA officer (Reasons at para. 39).

[16] The screening form completed by Mr. Morin indicated the following, opposite the heading of "decision-making in a quasi-judicial context": "None. PRRA officer since November 2010; not enough 'recent' experience." Mr. Morin also recorded "None" opposite the heading of experience in conducting research and inquiries in a quasi-judicial context or in immigration.

[17] Since the applicant's experience in either decision-making or research and inquiries in a quasi-judicial context did not amount to twelve months' experience in the past five years, his application was screened out of the selection process.

[18] Upon being advised that his application had been screened out, the applicant asked that it be reconsidered. The reply which he received informed him, for the first time, that the "recent experience" requirement had been defined as twelve months in the past five years. He also learned of the reference document and the schedule, copies of which were forwarded to him at his request.

[19] Some time later, the applicant filed his claim for abuse of authority pursuant to section 77 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12–13(the *PSEA*).

III. THE LEGISLATIVE FRAMEWORK

[20] According to the *PSEA*, appointments within the public service are to be made on the basis of merit:

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.

[21] The employer is entitled to establish the qualification for a position :

31 (1) The employer may establish qualification standards, in relation to education, knowledge, experience, occupational certification, language	31 (1) L'employeur peut fixer des normes de qualification, notamment en matière d'instruction, de connaissances, d'expérience,

or other qualifications, that the employer considers necessary or desirable having regard to the nature of the work to be performed and the present and future needs of the public service.	d'attestation professionnelle ou de langue, nécessaires ou souhaitables à son avis du fait de la nature du travail à accomplir et des besoins actuels et futurs de la fonction publique.

[22] The choice of assessment methods is a matter for the Commission :

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).	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).

[23] Where a person has been eliminated in an internal competition such as the one in issue here, that person may request an informal discussion.

47 Where a person is informed by the Commission, at any stage of an internal appointment process, that the person has been eliminated from consideration for appointment, the Commission may, at that person's request, informally discuss its decision with that person.	47 À toute étape du processus de nomination interne, la Commission peut, sur demande, discuter de façon informelle de sa décision avec les personnes qui sont informées que leur candidature n'a pas été retenue.

[24] Where an appointment is made or proposed, an unsuccessful candidate may make a complaint of abuse of authority :

77 (1) When the Commission has made or proposed an appointment in an internal appointment process, a person in the area of recourse referred	77 (1) Lorsque la Commission a fait une proposition de nomination ou une nomination dans le cadre d'un processus de nomination interne, la

to in subsection (2) may—in the manner and within the period provided by the Board's regulations—make a complaint to the Board that he or she was not appointed or proposed for appointment by reason of	personne qui est dans la zone de recours visée au paragraphe (2) peut, selon les modalités et dans le délai fixés par règlement de la Commission des relations de travail et de l'emploi, présenter à celle-ci une plainte selon laquelle elle n'a pas été nommée ou fait l'objet d'une proposition de nomination pour l'une ou l'autre des raisons suivantes :
(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) ;
[…]	[…]

(*PSEA*, ss. 30-31, 36, 47, 77)

IV. THE DECISION UNDER REVIEW

[25] The Board's decision dealt with three major issues in the course of disposing of the applicant's complaint:

1- Did the employer abuse its authority in designing and using screening tools which contained errors?
2- Did the employer abuse its authority when it decided that the applicant did not meet the work experience qualification?
3- Did the employer abuse its authority when it refused to allow the candidate to proceed to the next step in the selection process following the informal discussions which took place?

[26] The Board identified four components to the applicant's allegations of abuse of authority in the design of the screening tools (the Job Opportunity Advertisement, the reference document and the schedule):

1- The Job Opportunity Advertisement was inadequate because it did not define the number of years' experience required to meet the definition of "recent experience."
2- The Job Opportunity Advertisement was inadequate because it did not define "quasi-judicial or judicial" and "research in immigration."
3- The schedule was inadequate because it stipulated that PRRA officers make quasi-judicial decisions and that immigration officers make administrative decisions.
4- The reference document and the schedule were inadequate because they identified positions or duties which do or do not meet the advertised requirement, which amounts to a fettering of discretion.

(Reasons at para. 48)

A. *Did the employer abuse its authority in designing and using screening tools which contained errors?*

(1) The Job Opportunity Advertisement was inadequate because it did not define the number of years' experience required to meet the definition of "recent experience."

[27] The Board relied upon the Federal Court's decision in *Lavigne v. Canada (Deputy Minister of Justice)*, 2009 FC 684 at paragraph 66, 352 F.T.R. 269 (*Lavigne*), for the proposition that the employer may establish screening criteria and that the fact that these criteria are not published does not vitiate the process: Reasons at para. 49 The Board also found that subsection 30(2) and section 36 of the *PSEA* gave managers a wide margin of discretion in the setting of qualifications and in the choice of assessment methods.

[28] The Board also cited *Lavigne* as authority for the proposition that establishing qualifications and assessing candidates are matters reserved to the employer and that neither the Board nor the Court should substitute their views for the former's. As a result, the Board found that it did not have jurisdiction to decide if the requirement of at least twelve months experience acquired in the past five years was fair: Reasons at para. 57. Mr. Pattee testified that this

requirement was necessary in order to ensure that the successful candidates could do their job immediately upon being appointed. The Board found that Mr. Pattee's explanation was logical and therefore found that the Job Opportunity Advertisement was not inadequate for failing to define "recent experience": Reasons at para. 62.

> (2) The Job Opportunity Advertisement was inadequate because it did not define "quasi-judicial or judicial" and "research in immigration."

[29] The Board also found that it was for the employer to define the expressions "quasi-judicial or judicial" or "research in immigration," which it did by means of the reference document and the schedule: Reasons at para. 59.

[30] The reference document set out a number of examples of quasi-judicial tribunals. As for "research in immigration," the reference document made it clear that conducting such research must be an important part of a candidate's duties. In the Board's view, the reference document and the schedule simply highlighted the nature of the experience sought in the Job Opportunity Advertisement. As a result, the Board concluded that the latter document was not inadequate because it did not define the expressions "quasi-judicial or judicial" or "research in immigration": Reasons at para. 62.

> (3) The schedule was inadequate because it stipulated that PRRA officers make quasi-judicial decisions and that immigration officers make administrative decisions.

[31] The Board then turned its attention to the applicant's allegation that the schedule was inadequate because it specified that PRRA officers made quasi-judicial decisions. The Board

noted that, in his résumé, the applicant had referred to making quasi-judicial decisions in the course of his duties as a PRRA officer: Reasons at para. 64. The applicant explained that he had done so because he had heard that a PRRA officer's duties were considered to be quasi-judicial. Nonetheless, he maintained that there was no difference between a PRRA officer's duties and those of an immigration officer. In his view, if the IRB considered that an immigration officer's duties were administrative, it must also hold that a PRRA officer's duties were also administrative.

[32] Mr. Pattee testified that a PRRA officer could, on occasion, conduct hearings. He also noted that a PRRA officer's authority to hold hearings was statutory (paragraph 113(b)IRPA). Furthermore, he testified that the legal test applied by PRRA officers is the same as that applied by RPD members. Mr. Morin also testified that PRRA officers covered some of the same ground that is covered by RPD members and that their decisions had significant consequences for those concerned as there were issues of protection from persecution, torture, etc. In Mr. Morin's opinion, this was why the schedule specified that PRRA officers made quasi-judicial decisions.

[33] The Board noted the applicant's contention that PRRA officers and immigration officers are both ministerial delegates and that they both exercise powers which the IRPA assigns to the minister. While acknowledging this similarity, the Board found that, nonetheless, the employer had concluded that PRRA officers satisfied the essential qualification for appointment as RPD members because of their statutory mandate to hold hearings, a mandate which immigration officers lacked: Reasons at para. 73.

[34] The Board next dealt with the applicant's argument that the inclusion of PRRA officers in the category of quasi-judicial decision makers -—and the exclusion of immigration officers from this category—was political. He argued their inclusion in the group sought to insulate them from loss of employment due to the reforms to the immigration system. In this connection, the applicant referred to the minutes of a management-union meeting in which management officials indicated that persons who were displaced by the pending amendments to IRPA would be able to apply for new positions with CIC.

[35] The Board rejected this argument on the basis that, even if there was an attempt to protect PRRA officers from a loss of employment, this did not detract from the fact that the evidence showed that they conducted hearings from time to time and that immigration officers did not: Reasons at para. 78.

[36] The applicant also argued that the jurisprudence held that PRRA officers were not quasi-judicial administrative tribunals so that making staffing decisions on the basis that they were was unreasonable. In particular, the applicant pointed to *Thamotharem v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 16, [2006] 3 F.C.R. 168 (*Thamotharem*), and *Singh v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 1022, [2015] 3 F.C.R. 587 (*Singh*), in which the Federal Court stated that a PRRA officer is not a quasi-judicial body. The Board dealt with this argument by pointing out that the evidence showed that PRRA officers had to be able to conduct a hearing when the need arose: Reasons at para. 78. As a result, it found that the employer was entitled to conclude that PRRA officers had the necessary qualifications to assume the duties of an RPD member.

(4) The reference document and the schedule were inadequate because they identified positions or duties which do or do not meet the advertised requirement, which amounts to a fettering of discretion.

[37] The applicant's last argument on this portion of his complaint was that the distinction drawn in the reference document and in the schedule between quasi-judicial position and non-quasi-judicial positions fettered the discretion of the screening committees. The applicant argued that as result of these distinctions, his experience as an immigration officer, which could otherwise have been found to satisfy the experience requirement, was not evaluated on its merits.

[38] In response to this argument, the Board reasoned that since the employer has the right to establish guidelines with respect to essential qualifications, the Board could not find that the evaluation tools were inadequate solely because they list qualifying and non-qualifying positions: Reasons at para. 81. The Board then examined whether Mr. Morin or Mr. Pattee considered that they were bound by the reference document and the schedule. Mr. Pattee testified, as did Mr. Morin, that the selection committees were told that they were not bound by the evaluation tools and that they were to use their judgment is assessing in the relevance of candidates' experience. Mr. Morin testified that he assessed the applicant on the basis of a careful examination of his cover letter and his résumé.

[39] As result, the Board concluded that the reference document and the schedule did not fetter Mr. Morin's discretion in his examination of the applicant's candidacy. It held that there was no evidence that Mr. Morin had not approached the applicant's application with an open mind: Reasons at para. 97.

B. *Did the employer abuse its authority when it decided that the applicant did not meet the work experience qualification?*

[40] Under this heading, the Board focused primarily on the applicant's research experience. The applicant's complaint was that his twelve years of experience as an immigration officer satisfied the requirement of "conducting research or inquiries […] with respect to immigration."

[41] Mr. Morin testified that he had carefully reviewed the applicant's letter and résumé and, on the basis of that review, he concluded that the applicant did not have twelve months of research experience. He found that the applicant's experience as an immigration officer was insufficient since he had not demonstrated that the greater part of his duties involved research on complex immigration questions.

[42] Mr. Morin found that the applicant's experience as a PRRA officer was relevant since such officers must do country research and assess a foreign national's risk of return. However, the applicant had only accumulated four months of experience in the PRRA position at the time his candidacy was assessed, which did not satisfy the recent experience qualification.

[43] Mr. Morin was of the view that the applicant's letter and résumé did not contain enough information to allow him to properly assess the applicant's research experience as an immigration officer. This was the case with respect to his claim of research experience in relation to documentation related to eligibility for work permits to be granted by the CBSA. The lack of details was also an issue with respect to the applicant's experience in the assessment of the

equivalence of Canadian and foreign criminal offences as well as his reference to research conducted on citizenship matters.

[44] As for the applicant's claim of research experience using various databases (CPIC, USNIS), Mr. Morin testified that extracting information from an existing database did not necessarily qualify as a research activity. Furthermore, any research activity must have been a major part of a candidate's duties in order to satisfy the research experience qualification.

[45] The Board recognized that immigration officers conduct specific searches as part of their duties. However, the applicant could not rely on evidence given at the hearing to supplement his application letter and his résumé as the selection committee did not have the benefit of his oral evidence: Reasons at para. 114. The Board held that the screening committees must assess a candidate's qualifications on the basis of the written information provided by the candidate. In the present case, Mr. Morin found that the applicant's material did not allow him to conclude that he had the necessary qualifications. The Board found that it was not entitled to substitute its assessment of the applicant's qualifications for that of the screening committee: Reasons at para. 114. It found that the employer had not abused its authority when it concluded that the applicant did not satisfy the essential work experience qualifications.

C. *Did the employer abuse its authority when it refused to allow the candidate to proceed to the next step in the selection process following the informal discussions which took place?*

[46] When the applicant found out that his application had been screened out, he asked for an informal discussion regarding the reasons for its rejection. The evidence before the Board was to

the effect that some of the other candidates who had requested informal discussions were allowed to continue in the selection process. The applicant alleged that if the employer had been open to the rationale for informal discussions, it would have reassessed his application, taking into account further information setting out the role of immigration officers.

[47] The Board found that, while section 47 of the PSEA contemplates informal discussions, the decision in *Rozka v. Deputy Minister of Citizenship and Immigration Canada*, 2007 PSST 0046, makes it clear that while those discussions permit a candidate and the employer to identify and correct errors in the assessment process, they are not a mechanism by which a candidate's qualifications can be reassessed: Reasons at para. 141. In particular, the employer is not required nor entitled to consider new information brought to its attention in the course of informal discussions: Reasons at para. 145. Selection committees are bound to make screening decisions on the basis of a candidate's application and not on the basis of subsequently provided information.

[48] In the result, the Board concluded that there had been no abuse of authority in the design and use of screening tools. Similarly, there was no abuse of authority in the assessment of the applicant's candidacy.

V. ANALYSIS

[49] In his arguments before the Board, the applicant challenged the assessment of both his decision-making experience and his research experience. Before this Court, the applicant focused solely on the assessment of his decision-making experience. The applicant's argument, briefly

stated, is that neither PRRA officers nor immigration officers engage in a quasi-judicial decision-making process so that the employer's distinction between the two positions is unsupported by the evidence and therefore an abuse of authority.

[50] The applicant also framed his complaint of the appointment process as being an abuse of authority because it was designed to favour PRRA officers whose functions were to be transferred to the RPD pursuant to the contemplated amendments to the IRPA: Applicant's Memorandum of Fact and Law (Memorandum) at paras 15, 17, 26, 70. As a result, the use of "quasi-judicial context" as a selection criterion was designed to favour PRRA officers: Applicant's Memorandum at para. 32. The selection tools provided to pre-screening committees emphasized that PRRA officers made decisions in a quasi-judicial context whereas immigration officers did not. As noted above, the applicant alleges that PRRA officers and immigration officers have substantially the same responsibilities. As a result, the applicant argues that the selection tools were inadequate so that his assessment was not reflective of his merit for the advertised position.

[51] The applicant alleges that the Board failed in its duty by ignoring the evidence which supported his view of the case and, in doing so, rendered a decision which was unreasonable because it was not supported by the evidence.

[52] As was noted in *Access Information Agency c. Canada (Procureur général)*, 2018 CAF 17 at paras 24–25, where a litigant focuses on a multitude of errors in every step of a tribunal's decision-making process, that litigant is inviting the court to redo the administrative

tribunal's work. That is not this Court's function. Our role is to examine the legality of the tribunal's decision in light of its reasons and the presence of evidence in the record capable of supporting its conclusions.

[53] This Court's examination of the Board's decision is constrained by the standard of review. The Board is a specialized tribunal acting in an area which is central to its mandate and its expertise. As was previously held by this Court, the Board is entitled to deference in the interpretation of its home statute: see *Kane v. Canada (Attorney General)*, 2011 FCA 19 at paras 36–38, 328 D.L.R. (4th) 193, rev'd on other grounds [2012] 3 S.C.R. 398. See also McLean v. British Columbia (Securities Commisson), 2013 SCC 67, [2013] 3 S.C.R. 895. An administrative tribunal is also entitled to deference with respect to its findings of fact and inferences of fact: *Tervita Corp. v. Canada (Commissioner of Competition)*, 2015 SCC 3 at para. 40, [2015] 1 S.C.R. 161; *Housen v. Nikolaisen*, 2002 SCC 33 at para. 25, [2002] 2 S.C.R. 235. In *Housen*, the discussion with respect to the standard of review of inferences of fact arose in the context of a decision of a judge after a trial, but the same considerations apply equally to the review of an administrative tribunal's role as a finder of fact and a maker of inferences of fact.

[54] With that in mind, what did the Board conclude with respect to the allegation that the selection process was designed to favour PRRA officers?

[55] The Board considered the evidence in support of the applicant's allegation, specifically minutes of an employer-union meeting where an official of the IRB undertook to ensure that employees displaced by amendments to the IRP would be given opportunities to remain with

CIC and to compete for appointments to the IRB: Reasons at para. 77. However, the Board did not draw the conclusion urged upon it by the applicant on the basis of the employer-union meeting: Reasons at para. 78. Rather, the Board accepted the IRB's assertion that the selection process was designed to produce candidates who would be in a position to hold hearings as soon as they were appointed: Reasons at para. 57. The Board also accepted that it was for the employer to define the kind of experience that would prepare candidates to hold hearings as soon as they were appointed: Reasons at para. 74. Finally, the Board found that, while PRRA officers might not hold many hearings, the IRPA does require them to hold hearings in which a certain procedural formality is required (see section 168 of the Regulations). As a result, the employer was justified in concluding that they would be able to hold hearings upon appointment: Reasons at para. 84.

[56] The Board had before it evidence which supported its conclusion on the legitimacy of the qualifications required by the employer insofar as decision-making experience was concerned. The Board did not base its conclusion on the quasi-judicial characterization of the PRRA officers' duties but on the fact that they are required by law to hold hearings and can therefore be considered competent to do so. The Board's conclusions are supported by the evidence which it accepted.

[57] The Board also considered evidence and arguments tendered by the applicant which undermined the employer's position as to the quasi-judicial nature of a PRRA officer's duties. It noted the jurisprudence which holds that PRRA officers are not quasi-judicial decision makers, specifically *Thamotharem* and *Singh*: Reasons at para. 81. It was also aware of the fact that the

ability of PRRA officers to hold hearings was constrained by section 113 of the IRPA and section 167 of the Regulations: Reasons at para. 67. In addition, the Board had before it evidence that both PRRA officers and immigration officers are the Minister's delegates which suggests that PRRA officers did not have any greater degree of independence than immigration officers: Reasons at paras 69, 72–73.

[58] The Board's reasons acknowledged the applicant's allegations with respect to the accuracy of the statement that PRRA officers made "quasi-judicial" decisions. The fact that it did not specifically engage with all of those arguments does not detract from the reasonableness of its essential conclusion that the employer was entitled to proceed on the basis that PRRA officers' experience made them suitable candidates for the advertised position.

[59] It is worth noting that, in his application, the applicant put forward his experience as a quasi-judicial decision maker as a PRRA officer. To that extent, the applicant was not misled by the Job Opportunity Advertisement. In fact, Mr. Morin gave the applicant credit for that experience. The applicant's problem arose from the fact that he only had four months' experience in that position when the reference document required twelve months experience in a quasi-judicial decision-making position.

[60] This led the applicant to argue that in his capacity as an immigration officer, he was also called upon to make decisions which were of a kind with decisions made by PRRA officers. He put before the Board an extract from his position description which states that an immigration

officer has the authority to issue instructions or orders, to require applicants to attend for examination and to decide if an applicant was to be admitted to Canada or turned away.

[61] The applicant argues the employer's witnesses' justification for the distinction between PRRA officers and immigration officers attributed characteristics to hearings held by PRRA which were not supported by the evidence: see Applicant's Memorandum at para. 62.

[62] In the end, the Board did not rely upon the distinctions drawn by the employer but rather based its conclusion upon the PRRA officer's position description which stated that a PRRA officer was required to decide if it was necessary to hold a hearing to deal with issues of credibility or other complex questions which must be resolved in order dispose of an applicant's claim. This is consistent with section 167 of the Regulations which stipulate when a hearing is required. This provision can be compared to sections 15 and16 of the IRPA dealing with examinations in the context of Part 1 of that Act, which deals with immigration to Canada.

[63] The applicant also argued that the reference document and the schedule fettered the discretion of the pre-screening committees in that they amounted to an *a priori* exclusion of certain occupational classifications.

[64] As noted earlier, the evidence was that the preselection tools were designed to provide consistency in the application of the selection criteria. Mr. Pattee and Mr. Morin testified that the preselection tools were intended as a guide and that the pre-selection committees were expected to use their judgment in examining each application on its merits to see if it demonstrated that an

applicant possessed the essential qualification for the position. Mr. Morin, who examined the applicant's application, testified that he brought his judgment to bear in assessing the applicant's application.

[65] The Board accepted this evidence. The applicant has not shown any reason why it should not have done so.

[66] Reasonableness denotes justification, transparency and intelligibility: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190 (*Dunsmuir*). To that extent, reasonableness is assessed by reference to a tribunal's reasons so that a review court should pay "respectful attention to the reasons offered or which could be offered in support of a decision": *Dunsmuir* at para. 48. As the Supreme Court stated in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 at paragraph 16:

> Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn., [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the Dunsmuir criteria are met.

[67] When the Board's reasons are read with "respectful attention," I am able to understand why the Board came to the conclusions it did. The Board's decision is within the range of

acceptable outcomes when it is read in light of the latitude given to employers by the Act and the Board's findings on issues of fact and credibility.

[68] As a result, I would dismiss the application with costs to the respondent.

"J.D. Denis Pelletier"
J.A.

"I agree
Johanne Gauthier J.A."

"I agree
Johanne Trudel J.A

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-284-16
Appeal from a decision of Nathalie Daigle, commissioner of the Federal Public Sector Labour Relations and Employment Board, dated July 15, 2016, file number: 2012-1196	
STYLE OF CAUSE:	GANDHI JEAN PIERRE v. THE PRESIDENT OF IMMIGRATION AND REFUGEE BOARD OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	SEPTEMBER 26, 2017
REASONS FOR JUDGMENT BY:	PELLETIER J.A.
CONCURRED IN BY:	GAUTHIER J.A. TRUDEL J.A.
DATED:	MAY 23, 2018

APPEARANCES:

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