



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

FILES: 2007-0072,-0073 AND -0401

OTTAWA, MAY 12, 2008

MARIE DIONNE

COMPLAINANT

AND

THE DEPUTY MINISTER OF NATIONAL DEFENCE

RESPONDENT

AND

OTHER PARTIES

MATTER Complaints of abuse of authority pursuant to paragraph 77(1)(a) of the *Public Service Employment Act*

DECISION Complaints are dismissed

DECISION RENDERED BY Helen Barkley, Member

LANGUAGE OF DECISION English

INDEXED *Dionne v. Deputy Minister of National Defence et al.*

NEUTRAL CITATION 2008 PSST 0011

REASONS FOR DECISION

INTRODUCTION

[1] Marie Dionne filed these complaints on the basis that the respondent abused its authority by failing to properly assess her personal suitability when it checked her references. She further alleges that the respondent abused its authority by having untrained and inexperienced members on the assessment board.

[2] The complainant participated in an internal advertised appointment process for Administration Officer (AS-02) positions with the Canadian Defence Academy, Department of National Defence, Kingston, Ontario. The advertisement was for both indeterminate and acting appointments to be staffed from a pool of qualified candidates. Candidates were asked to provide the names of two referees and the complainant provided the names of two previous supervisors, Major Chris Willis and Hank Nason.

[3] In October 2006, Marie Dionne was informed that she was no longer being considered for appointment, as she had not met one of the essential qualifications, effective interpersonal relationships (EIR). During informal discussion, the complainant discovered that the board had not contacted her second referee, Hank Nason, but had relied on a reference given by Ginette Jaques, another former supervisor.

[4] Three appointments were made as a result of appointment process 06-DND-IA-KGSTN-047088. In February and August, 2007 Marie Dionne filed three complaints with the Public Service Staffing Tribunal (the Tribunal) pursuant to paragraph 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*). She contends that the decision of the respondent, the Deputy Minister of National Defence, to not appoint her was an abuse of authority because of the way she was assessed for the EIR qualification.

[5] The Tribunal consolidated these complaints for the purpose of hearing in accordance with section 8 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6 (the *PSST Regulations*).

ISSUE

[6] The Tribunal must determine whether the respondent abused its authority in the application of merit when it conducted the assessment of Marie Dionne's effective interpersonal relationships.

SUMMARY OF RELEVANT EVIDENCE

[7] The complainant has been employed in the federal public service for 23 years. In 2004, she began working as the assistant to Ginette Jaques, Base Coordinator, Official Languages, Department of National Defence, Kingston, Ontario. She performed administrative duties such as invigilating language testing, course loading for civilians and some military members, and helping out her supervisor in day-to-day activities. Ms. Jaques asked her to perform duties which she felt went beyond the scope of her position. The complainant asked for a work description, but was told by Ms. Jaques that one did not exist. Four months later, she was presented with a work description; Ms. Dionne felt that it did not properly describe her actual duties and responsibilities. She was given a choice by Ms. Jaques to "take it or leave it." The complainant testified that she was ordered around by Ms. Jaques, and that she felt intimidated by her and stressed out and, therefore, she asked to be deployed out of the unit.

[8] The complainant testified that Ms. Jaques took her deployment request personally. The complainant felt that Ms. Jaques inappropriately put the following comment on her performance review report: "It is important to mention that in February 05, Ms. Dionne requested a deployment to another position and that she is still pursuing that goal." The complainant spoke to Ms. Jaques' supervisor, Major Beaulieu, and the comment was removed the next day. The complainant also filed a grievance concerning acting pay for performing Ms. Jaques' duties on several occasions.

[9] Janet Lang, chairperson of the assessment board, testified on behalf of the respondent. She stated that she was Registrar, Equivalencies and Accreditation, Canadian Defence Academy. Prior to this appointment process, Ms. Lang had

participated as an assessment board member in five or six appointment processes, and had acted as the chairperson for four or five of these processes. She had received one-half day training on the new *Public Service Employment Act*, as well as informal training from the Civilian Human Resources Officer (CHRO), Doris Meade.

[10] She was asked to chair the assessment board to establish a pool of qualified individuals for Administration Officer positions at the Academy. The Administration Officer works directly for a Director doing a number of tasks, including: managing the Director's day-to-day schedule; arranging meetings and travel; and, preparing correspondence. To be able to provide effective customer service in this high tempo and high stress environment, EIR was identified as being critical for these positions. The Director would often be away from the office, and the Administration Officer would have to manage the Director's office in his or her absence.

[11] Ms. Lang stated that she had sought advice and assistance from Ms. Meade on a number of occasions during this appointment process; for example, she consulted with Ms. Meade in developing the statement of merit criteria and the assessment tools.

[12] Each Directorate at the Academy nominated a person to sit on the assessment board. Melanie Denis and Craig Mantle, the other members of the board, both held positions in the Administrative Services (AS) category. Ms. Denis testified at the hearing that she had conducted reference checks on two occasions for appointment processes under the former PSEA. In the past, she had developed questions for interviews and reference checks. Mr. Mantle testified that he had been asked by his supervisor to participate in this assessment board, as it would be a good professional development opportunity.

[13] Doris Meade, CHRO, testified that she had been a human resources advisor for 20 years. She met with the assessment board as a whole at the beginning of the process to explain the appointment process under the *PSEA*, including the differences between essential and asset qualifications. She described the informal discussion process and provided the board with sample questions for interviews and reference checks.

[14] The assessment board decided to assess EIR through an interview question and reference checks. The board members believed past performance was an excellent predictor of future performance.

[15] During the interview, the assessment board asked candidates to provide the names of two referees. The complainant provided the names of Maj. Chris Willis and Hank Nason as referees.

[16] The board contacted one referee in all cases; a second referee was contacted if there was information gathered that was less than favourable to the candidate, or if the first referee did not provide enough information.

[17] Called as a witness by the complainant, Maj. Willis testified that he had provided a reference for the complainant through a face-to-face interview with board member Melanie Denis. The first question used to assess EIR asked referees: "How does the individual relate to co-workers, supervisors and, if applicable, members of the public?" Maj. Willis testified that he had informed the board member that there had been issues with both co-workers and a supervisor. When asked to explain, Maj. Willis stated that there had been an exchange of emails between the complainant and her supervisor, who felt that Ms. Dionne's tone had been inappropriate. However, in Maj. Willis' view, the tone of the emails from both the supervisor and the complainant had been similar.

[18] The second question used to assess EIR asked referees: "How does this individual tend to react in a confrontational situation?" At the hearing, Maj. Willis reviewed Ms. Denis' notes of his answer to this question. He confirmed that these notes were a close paraphrase of what was said. His answer was that the complainant was defensive, and likely to explain why the situation occurred.

[19] Melanie Denis explained that she had conducted reference checks on four of the candidates, including Ms. Dionne. When she contacted Maj. Willis, he was a bit reluctant to give out information on how Ms. Dionne related to co-workers and supervisors. Although she had asked him further questions, he only supplied the information she had noted and did not give any examples.

[20] As the reference provided by Maj. Willis for the complainant was not favourable, Ms. Denis testified that she attempted to contact Mr. Nason. She made three attempts, and left voicemail messages for him. Mr. Nason did not respond to Ms. Denis' attempts to reach him. In support, she introduced a copy of her voicemail book from August 10 to October 4, 2007, in which she recorded all messages received. There was no voicemail message from Mr. Nason. Given this, the board contacted the CHRO, who provided the name of a previous supervisor, Ginette Jaques, who was listed on Ms. Dionne's résumé. The assessment board was not aware of any grievance that the complainant had against Ms. Jaques.

[21] Ginette Jaques was called as a witness by the complainant. Ms. Jaques explained that she was very surprised to be asked to provide a reference, as her relationship with Ms. Dionne had been strained. However, she was told that her name had been suggested by the CHRO.

[22] Ms. Jaques informed the assessment board that when Ms. Dionne worked for her she did not have co-workers, and did not deal with members of the public. Ms. Jaques was the complainant's supervisor for nine or ten months; she and the complainant did not have a good relationship. She indicated to Ms. Denis that the complainant felt the job was not classified at a high enough level. In answer to the second question posed on the reference check, Ms. Jaques had stated that Ms. Dionne presented a lot of issues in a confrontational manner and tone, as well as always being on the defensive.

[23] Ms. Denis testified that Ms. Jaques was very guarded as to the information she provided. Although she had asked for examples, the only information she received was written in her notes.

[24] Based on the two references, the assessment board awarded Ms. Dionne a rating of three out of ten for EIR. Candidates had to receive a rating in the Very Good range (seven to eight) to pass the EIR essential qualification. The assessment board concluded that she would be ineffective in performing Administration Officer duties and,

therefore, eliminated her from further consideration. Both referees had indicated that she was defensive, and she had issues with both supervisors.

[25] Once the complainant was eliminated from the process, she requested informal discussion with Ms. Lang. They met in November 2006. The complainant could not understand how her references could be negative since no one had ever raised any concerns with her.

[26] It was not until the informal discussion that she learned that Mr. Nason had not given a reference, but instead the assessment board had contacted Ginette Jaques. She informed Ms. Lang that she had a grievance against Ms. Jaques, and she had never given her name as a reference. She had tried to provide extra documentation such as her performance review report to demonstrate that no one had ever expressed concerns about EIR. She asked Ms. Lang to consider obtaining a reference from Mr. Nason, but Ms. Lang stated that it was too late, and that new information could not be considered.

[27] The complainant testified that she contacted Mr. Nason in April 2007 to ask if he had received a telephone call asking for a reference in this appointment process. According to the complainant, he confirmed by email that he had received a phone call from a Melanie on September 11, 2006, and had returned her call and left a voice message. A copy of the email was introduced into evidence.

[28] Mr. Nason testified by teleconference. He stated that he had been contacted by two different assessment boards to provide references for the complainant for two different positions. The first was for a position at the language school, and the second was a voicemail message left by a woman. With respect to the second request, Mr. Nason stated that he had returned the telephone call and had left a message. Later he checked through his 2006 diary, but had no note of it. At the time, he had been working for the Department of National Defence and had two offices and three telephone lines. He was receiving hundreds of calls. He remembered receiving the voicemail which stated that the complainant had used his name as a reference. Other

than that he did not remember any specifics, such as the date, or the name of the woman who had left the voicemail.

[29] Ms. Lang stated that she had recopied the notes taken by Ms. Denis during the reference checks. This was because the assessment board had assessed other aspects of the complainant's personal suitability, and since she did not meet EIR, they felt they should remove other marks. During her testimony, Ms. Denis confirmed that the notes written by Ms. Lang accurately reflected the notes that she had taken for the references.

ARGUMENTS OF THE PARTIES

A) COMPLAINANT'S ARGUMENTS

[30] The complainant submits that the assessment board misconstrued the comments made by her referee, Maj. Willis. In his testimony, Maj. Willis stated that he was not sure if his statements to Ms. Denis were taken down. He stated that although there were issues with co-workers and a supervisor, he did not blame Ms. Dionne for those situations. He never stated that the complainant was a problem. In her October 2006 performance evaluation, which Maj. Willis completed two months after he had given the reference, he stated that Ms. Dionne's interaction with employees was good.

[31] The complainant further submits that the assessment board erred in its decision not to use Mr. Nason as a referee. Mr. Nason had been contacted by the assessment board and had returned that telephone call. The assessment board had an obligation to attempt to contact him again and should have kept an accurate record of when they tried to contact him. In an email Mr. Nason sent to the complainant in April 2007, he stated that a woman named Melanie left him a message and he had returned the call.

[32] The complainant also argues that the decision of the assessment board to obtain and rely on a reference from Ginette Jaques constituted an abuse of authority. The CHRO, Ms. Meade, had erred in providing the name of Ginette Jaques to the assessment board as a possible referee for the complainant. The board did not have

the consent of the candidate to use Ms. Jaques as a reference. Moreover, the Public Service Commission (the PSC) document entitled "Checking References: a window into the past" states: "Even in cases where consent may not be required, it is suggested that consent be obtained as a matter of courtesy to the candidate."

[33] Ms. Jaques should have informed the assessment board that she was not a good referee for the complainant. Instead, she did provide a reference knowing full well that the information would be damaging to Ms. Dionne's candidacy. Ms. Denis should have known from the reference given that there was a problem. An experienced and well-trained assessment board member would have known that Ms. Jaques could not provide an appropriate reference for the complainant.

[34] Ms. Denis failed to ask Ms. Jaques or Maj. Willis any follow-up questions to elicit specific examples to support the statements and opinions that they expressed. The answers given by Ms. Jaques did not refer to the complainant's performance in the job.

[35] In support of her position, the complainant's representative referred further to the document, "Checking References: a window into the past". In this document, under the subject "Gather the Information," two specific guidelines are stipulated: first, "don't let opinions substitute for fact and examples ... take note of opinions but go on to pursue the specific observations, facts and incidents on which the opinions are based;" secondly, "write down as much as you can." In this case, Ms. Denis did not get specific examples, nor did she write down much information.

[36] The complainant further alleges that Ms. Lang failed to follow the PSC policy on informal discussion; she did not accept any statement or information presented by Ms. Dionne during the discussion.

[37] Finally, the complainant submits that the respondent abused its authority by establishing an inexperienced board to conduct the assessment. The assessment board was clearly inexperienced and untrained. Both Ms. Denis and Mr. Mantle were given a developmental opportunity to be part of an assessment board; neither had prior experience as members of an assessment board. While Ms. Meade indicated she had

trained the board, Ms. Denis stated that the assessment board did not receive any training. When Ms. Denis was given negative answers by referees during the reference checks, she did not seek clarification, or ask for examples. The complainant submits that this lack of follow-up reflects the actions of an inexperienced board member. Furthermore, the board destroyed its notes after they were transcribed. The board wrote consensus notes from the interviews, and then destroyed their original notes. In addition, they destroyed the notes that Ms. Denis had taken during the reference checks.

[38] In support of her submissions, the complainant's representative referred to 16 appeal board decisions rendered under the former PSEA.

B) RESPONDENT'S ARGUMENTS

[39] The respondent noted that Maj. Willis' name had been provided by the complainant as a referee. Maj. Willis met with Ms. Denis to give his reference and he indicated that the complainant had issues with her supervisor and co-workers. He also stated that she was defensive. Ms. Denis had tried to get more information from Maj. Willis, but he was not forthcoming. There was no evidence to show that the information given by Maj. Willis was modified in any way by the assessment board.

[40] Ms. Denis testified that she had tried to reach Mr. Nason on three occasions, but was unable to speak to him directly. She introduced her telephone log which showed that no call was received from him. Mr. Nason testified that he was working out of two offices, and that he was receiving 30 telephone calls and 100 emails each day at that time. Mr. Nason did receive a telephone call asking for a reference. The respondent submits that the most probable situation was that Mr. Nason was contacted, but did not return the call. Given these circumstances, the assessment board asked the CHRO for advice on how to proceed, and was given the name of Ms. Jaques.

[41] The complainant has not proven that the respondent abused its authority by using Ms. Jaques as a referee. There was no ill-will on the part of the board; they had no idea that there was animosity between Ms. Jaques and the complainant. Once they

had completed that reference, they had enough information to assess the complainant, which they did.

[42] The assessment board did not need the consent of the complainant to use Ms. Jaques as a referee. The PSC guidelines are clear; an assessment board does not need the candidate's consent. Ms. Dionne did not inform the board not to contact Ms. Jaques, nor that she had an outstanding grievance against Ms. Jaques. According to the respondent, Ms. Jaques essentially corroborated the information that Maj. Willis had provided to the board.

[43] In support of its position, the respondent refers to the Tribunal's decision in *Oddie v. Deputy Minister of National Defence*, [2007] PSST 0030, in which the Tribunal held that the role of the Tribunal is to examine the process used by the deputy head to ensure that there is no abuse of authority; its role is not to redo the appointment process.

[44] With respect to the complainant's contention that the assessment board should have corrected its errors during informal discussion, the respondent submits that the outcome of informal discussion is not a ground for complaint under section 77 of the *PSEA*. Ms. Lang met with the complainant and provided her with an opportunity to discuss her concerns. Ms. Dionne did not accept the explanation given, and requested that the board look at additional information. The board declined; it believed that its assessment had been appropriate.

[45] Turning to the competency and training of the assessment board, there are no specific training requirements for board membership. An assessment board must act in good faith and without personal favouritism, and must ensure that those appointed meet the essential qualifications for the position. The board members had access to and used the CHRO for guidance, and they established a framework for assessment which they applied consistently. They made a decision that they would assess candidates and then write consensus notes, after which they destroyed their individual notes. This was not done in bad faith. Ms. Lang had recopied the notes of the reference checks, as the board had scored other qualifications for the complainant, and they felt it would be

inappropriate to make those available once Ms. Dionne was eliminated from further consideration.

PUBLIC SERVICE COMMISSION'S ARGUMENTS

[46] The PSC did not appear at the hearing. As it has done in previous complaints, the PSC provided general written submissions on the concept of abuse of authority and how the Tribunal should focus its approach in this area.

[47] With respect to using a referee not provided by the complainant, the PSC also refers to the PSC document: "Checking References: a window into the past." According to the PSC, this document states that if the reference check is used to assess a qualification other than reliability/security "consent is not required when the referee is from within a federal institution."

[48] The PSC further submits that this PSC document does not prohibit contacting a referee who has conflict with the candidate; the document does, however, state that the board must not "give undue weight to isolated incidents, but look for a pattern of the evidence."

ANALYSIS

[49] The complainant contends that the respondent abused its authority in the assessment of her effective interpersonal relationships by: (a) misconstruing the comments made by Maj. Willis; (b) not contacting Mr. Nason; (c) obtaining a reference from Ginette Jaques; and, (d) establishing an inexperienced board to conduct the assessment.

[50] Reference checks are a commonly used assessment tool, which provide information about a candidate's past performance and accomplishments in order to assess their suitability for the position which is to be staffed. The PSC document "Checking references: a window into the past" indicates that the information obtained must be "relevant to the qualification(s) being assessed and present a balanced appreciation of the candidates qualification(s)." While candidates can offer as referees

those supervisors or co-workers who they believe will provide positive information, the purpose of conducting a reference check is to obtain accurate and relevant information about a candidate, whether positive or negative.

[51] Ms. Denis first conducted a reference check with Maj. Willis. The information noted by Ms. Denis stated that Ms. Dionne had issues with co-workers and a supervisor. The notes further indicated that in a confrontational situation she was defensive and likely to explain why the situation occurred. Ms. Denis testified that she had asked Maj. Willis for further information or examples, but he was reluctant to provide any additional information. Maj. Willis testified that the notes Ms. Denis recorded were similar to what he had said. With reference to question 2, Maj. Willis said he did not know if he had used the exact words recorded, but that the notes accurately reflected the answer that he had provided to question 2. There was no evidence presented at the hearing to refute this. Therefore the Tribunal finds that there is no basis for the complainant's claim that the assessment board misconstrued his comments.

[52] Since the board determined that these comments were negative, they sought a reference from Mr. Nason, the second name the complainant provided to the assessment board. Ms. Denis testified that she tried to contact him on three occasions, was unable to reach him, and left a voicemail message for him. She did not receive a telephone call back from him. Her telephone log book for the period in question did not show a message from Mr. Nason.

[53] Mr. Nason testified that he received a voicemail message concerning a reference for Ms. Dionne and he returned the call, although he could not provide specific details. He also indicated how busy he was, working in two offices with three telephone numbers and large numbers of emails during that time.

[54] The Tribunal accepts the evidence of Ms. Denis that she attempted to contact Mr. Nason at least three times. The Tribunal finds that the assessment board made reasonable attempts to contact this referee.

[55] Turning to the propriety of seeking a reference from Ms. Jaques, the complainant has not demonstrated that the assessment board erred. While it may be preferable to have a candidate's consent, there is no legal requirement to do so, and the PSC guidelines on conducting references do not require consent where the referee is from a federal institution. What is important is that the referee is familiar with the work of the candidate, and can provide sufficient information to allow the board to conduct an adequate assessment of a candidate's qualifications.

[56] In this case, Ms. Jaques had supervised the complainant in a two-person office for nine or ten months and, therefore, was very familiar with her performance. While Ms. Jaques acknowledged that the relationship was strained, this does not mean that she could not provide valuable information to the assessment board. In fact, the PSC document provided by the complainant suggests the following: "Also, check references that were not given by the candidate. This is one way of avoiding talking only to "friendly" references."

[57] The Tribunal further finds that the assessment board was unaware of the outstanding grievance the complainant had with Ms. Jaques. Even if Ms. Jaques had informed the assessment board of the outstanding grievance related to acting pay, this would not have precluded the board from utilizing Ms. Jaques as a referee.

[58] The Tribunal finds that there is no evidence of abuse of authority in the assessment board's decision to obtain a reference from Ginette Jaques. On the contrary, the Tribunal finds that the assessment board acted appropriately in contacting the CHRO, and acting on the CHRO's suggestion to contact a former supervisor, Ms. Jaques. In the circumstances, the assessment board was under no obligation to obtain the complainant's prior consent to use Ms. Jaques as a referee.

[59] Turning to the issue of the competency of the assessment board, the Tribunal addressed this issue in *Sampert et al. v. Deputy Minister of National Defence et al.* [2008] PSST 0009:

[53] There is no provision in the *PSEA* which requires a deputy head to establish an assessment board or that it have a certain composition (for example, to have a human resources officer on the board). Whether an assessment board is improperly constituted is a question of fact which depends on the specific complaint and the evidence presented at the hearing.

[54] Those who conduct the assessment should be familiar with the work required in the position to be staffed and, in the case of an advertised appointment process, should not have any preconceived notions as to who should be appointed. In some cases, managers will choose to conduct the assessment completely on their own. In other cases, a manager might invite an individual from another department or another area within the department, who has a particular expertise, to participate as a board member.

[60] In this case, the assessment board was chosen from among three directorates at the Academy. Ms. Lang had extensive experience acting as chairperson under the former *PSEA*, and had received training on the new *PSEA*. Ms. Denis had participated as a board member under the former *PSEA*, and had received training on the new *PSEA* as an employee. Craig Mantle was asked to participate on the board by his supervisor as a professional development opportunity. All board members occupied positions in the Administrative Services category. Mr. Mantle was not responsible for conducting the reference checks for the complainant; Ms. Denis was tasked with this responsibility.

[61] The assessment board was advised by Ms. Meade, who testified that she had 20 years experience as a human resources advisor. She also testified that she had advised the board throughout the process and had reviewed all documentation related to the appointment process. Ms. Lang's testimony corroborated this evidence. The Tribunal finds that Ms. Meade was actively involved in providing advice to the assessment board.

[62] The Tribunal finds that the assessment board was advised by an experienced human resources advisor and had sufficient experience and training to properly assess the complainant. Even if the complainant had proven that the assessment board was inexperienced, there is no evidence of an improper assessment of the complainant which would support a substantiated complaint of abuse of authority.

[63] Finally, the complainant raised concerns about informal discussion. She alleges that Ms. Lang failed to follow the PSC policy on informal discussion, in that Ms. Lang

failed to consider any statements or discuss information that was pertinent to Ms. Dionne's assessment.

[64] Informal discussion is part of the appointment process and is a very important opportunity for effective dialogue between a candidate who has been eliminated from an appointment process and the person who made that decision. The Tribunal addressed the purpose of informal discussion in *Rozka et al. v. Deputy Minister of Citizenship and Immigration Canada et al.* [2007] PSST 0046:

[76] Informal discussion is intended primarily to be a means of communication for a candidate to discuss the reasons for elimination from a process. If it is discovered an error has been made, for example, if the assessment board did not consider some information listed on a candidate's application, this provides the opportunity for the manager to correct that mistake. However, Informal discussion is not an opportunity to request that the assessment board reassess a candidate's qualifications.

[65] In this case, the complainant met with Ms. Lang for an informal discussion during November, 2006. Ms. Lang testified that she presented the board's rationale for eliminating her and allowed her a chance to discuss her feelings. Ms. Dionne believed the board was in error in using Ms. Jaques as a referee. However, the board was satisfied that no error had been made in the assessment, and it had enough information to assess the complainant without conducting a further reference check. Having found that the board did not err in using Ms. Jaques as a referee, the Tribunal cannot conclude that there is any abuse of authority.

[66] As a final matter, although the Tribunal does not find that the assessment board's handling of its notes constitutes an abuse of authority, it wishes to emphasize that there are two aspects which cause concern. First, Ms. Denis should have taken more comprehensive notes of the reference checks. While the Tribunal found that Ms. Denis had made efforts to probe Maj. Willis for examples, more comprehensive notes would have provided further supporting evidence. Having comprehensive notes to review with unsuccessful candidates during informal discussion may well help alleviate concerns such as those expressed by Ms. Dionne in this case. In a recent decision of the Tribunal, *Hammond-Hickey et al. v. Deputy Head of Service Canada et al.*, [2008] PSST 0008, the Tribunal stated:

[17] The assessment board's notes on the complainants' summary marking sheets were brief to the point of being of little value. A more complete record of the assessment discussion and decisions would certainly have been more helpful for the consideration of this complaint. Not only is this good practice, in this staffing system of broad latitude for discretion, it is very important that decisions can be explained comprehensively, sometimes several weeks or months after the fact.

[67] The second aspect of the handling of notes relates to the assessment board's decision to recopy portions of notes, and destroy the notes of the individual assessment board members. Ms. Lang testified that the assessment board decided to produce consensus notes from the interviews, and then destroyed the individual notes taken by each assessment board member. While notes of the discussion leading to consensus need to be retained, it is also preferable to keep **all** notes used to assess candidates. This is a better practice, and avoids suspicions arising from the destruction of notes.

[68] Similarly, it is preferable not to recopy notes. In this case, Ms. Lang had recopied the notes taken by Ms. Denis during the reference checks. Based on the testimony of Ms. Denis, which was corroborated by the testimony of Maj. Willis, the Tribunal is satisfied that Ms. Lang accurately transcribed the pertinent portions of Ms. Denis' notes. Ms. Lang testified that the board had rated other personal suitability qualifications, and did not think it was fair to show those ratings. Hence, the recopied notes only pertained to the assessment of Ms. Dionne on the EIR qualification. While the assessment of other qualifications was not an issue before this Tribunal, the circumstances surrounding the reference checks for Ms. Dionne were highly relevant to the complaints; in fact, they were the crux of the complaints. While the Tribunal was able to reach its decision based on the evidence presented at hearing, Ms. Denis' original reference check notes should have been retained. In addition to oral testimony, an original document that can be introduced through the author of the document constitutes the best form of documentary evidence before an administrative tribunal.

DECISION

[69] For the above reasons, these complaints are dismissed.

Helen Barkley
Member

PARTIES OF RECORD

Tribunal Files:	2007-0072, 2007-0073 and 2007-0401
Style of Cause:	<i>Marie Dionne and Deputy Minister of National Defence et al.</i>
Hearing:	December 4 -5, 2007 Kingston, Ontario
Date of Reasons:	May 12, 2008
APPEARANCES	
Roger Dodier	For the complainant
Sean F. Kelly	For the respondent
John Unrau	For the Public Service Commission