



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**File:** 2008-0094  
**Issued at:** Ottawa, December 1, 2009

**THERESA TRAN**

Complainant

AND

**THE COMMISSIONER OF THE ROYAL CANADIAN MOUNTED POLICE**

Respondent

AND

**OTHER PARTIES**

<b>Matter</b>	Complaint of abuse of authority pursuant to paragraph 77(1)(a) of the <i>Public Service Employment Act</i>
<b>Decision</b>	Complaint is dismissed
<b>Decision rendered by</b>	Merri Beattie, Member
<b>Language of Decision</b>	English
<b>Indexed</b>	<i>Tran v. Commissioner of the Royal Canadian Mounted Police et al.</i>
<b>Neutral Citation</b>	2009 PSST 0031

# Reasons for Decision

## Introduction

1 The complainant, Theresa Tran, is a Custom Tailor with the Royal Canadian Mounted Police. She alleges that the hiring manager demonstrated favouritism and bad faith in conducting an internal advertised appointment process. She alleges that, as a result, two unqualified persons were appointed to Supervisor positions, classified at the GS MPS-08 group and level.

2 The respondent, the Commissioner of the Royal Canadian Mounted Police (RCMP), denies any abuse of authority in the appointment process.

## Background

3 An internal advertised appointment process was held to staff a Custom Tailor Supervisor position and a General Tailor Supervisor position in the RCMP, Regina, Saskatchewan. The closing date for applications was December 18, 2007. Applicants were informed that they must clearly demonstrate on their applications that they possessed “[E]xtensive experience (3 years or more) altering RCMP uniforms.”

4 Interviews were conducted on January 2, 2008. On January 3, 2008 a practical test was administered to assess the ability to choose and use appropriate methods and procedures in the alteration and reconstruction of garments (A1). Five candidates, including the complainant and the two appointees, attended the interview and the practical test.

5 On January 17, 2008 a *Notification of Appointment or Proposal of Appointment* was issued on *Publiservice*. Anita Lam was named to the position of Custom Tailor Supervisor, and Karen Runzer to the General Tailor Supervisor position.

6 The complainant filed her complaint of abuse of authority with the Public Service Staffing Tribunal (the Tribunal) on January 29, 2008 under paragraph 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the *PSEA*).

## **Issues**

**7** The Tribunal must determine the following issues:

(i) Did the respondent demonstrate bad faith in this appointment process, resulting in the appointment of two unqualified people?

(ii) Did the respondent demonstrate personal favouritism in the appointment of Karen Runzer?

## **Summary of relevant evidence**

**8** There are two versions of events relating to the allegations of abuse of authority; one presented by the complainant, the other by the respondent. The rest of the evidence is not in dispute and gives context to the events.

**9** Gail Kuhn has worked for the RCMP for 23 years and has been Cadet Services Manager for three years. She is responsible for three units, including the Tailor Shop, and the two Supervisor positions to be staffed report directly to her. Ms. Kuhn was the hiring manager and a member of the assessment board throughout the appointment process. Each of the supervisors, one in general tailoring and one in custom tailoring, is responsible for staff management, training, performance management, and leave administration.

**10** Ms. Kuhn provided a brief explanation of each essential and asset qualification in the *Statement of Merit Criteria* (SMC). She explained that candidates were assessed by an interview, a practical test and references.

**11** Ms. Kuhn testified that she reviewed the file for a previous appointment process for a Supervisor position, and contacted the Manager of the Tailor Shop in Ottawa to obtain questions and expected answers. She also discussed Abilities questions with Human Resources. For the practical test, she consulted the former Supervisor of the Tailor Shop, Theresa Bozza, who provided some feedback and selected the models to be used. Ms. Kuhn confirmed that the practical test held on January 3, 2008 was to assess A1 only.

**12** Ms. Kuhn explained that, although she has knowledge and experience in sewing and can assess the quality of tailoring, she is not a tailor. She asked Ms. Bozza and, at Ms. Bozza's request, Raffaele Lionetti, to conduct the practical test for A1 because of their expertise. Ms. Kuhn and Dyan Sandbeck, Acting Human Resources Advisor, were present during the practical tests.

**13** Before the practical test, she and Ms. Sandbeck met Ms. Bozza and Mr. Lionetti in her office, and told them that their role was to assess the fitting of red serge tunics. She stated that they discussed how the tunics would be assessed. Ms. Kuhn said that tailoring is a craft or skill that not all would approach in the same manner, and candidates would be assessed on the fit and the correct markings for alterations on the tunics.

**14** Ms. Kuhn explained that the practical test consisted of each candidate fitting one male and one female model for a red serge tunic and marking the required alterations. She testified that, after each candidate completed the test and left, Ms. Bozza and Mr. Lionetti looked over the tunics, discussed how the candidate had done and assigned a mark. Ms. Kuhn made notes of the comments they made about each candidate's performance on individual Rating Guides for A1.

## **Assessment of the appointees**

### **a) Complainant's version**

**15** Ms. Bozza retired on January 1, 2008, after almost five years as Supervisor of the Tailor Shop. She testified via teleconference on behalf of the complainant.

**16** Ms. Bozza stated that her role in the appointment process was to assess and choose the right persons for the positions. She said that the Tailor Shop needed to be looked after following her departure, and good tailors were needed.

**17** Ms. Bozza's testimony was that there were two assessment board members – she and Mr. Lionetti. She stated that Ms. Kuhn guided them and Ms. Sandbeck said nothing during the test for A1. Ms. Bozza confirmed that her role in conducting the practical test for A1 was to assess the candidates' choice of tunic and alterations.

**18** Ms. Bozza testified that, sometime before May, 2008, the complainant's representative, Satinder Baines, informed her of this complaint. She identified a letter dated May 1, 2008 and signed by her on May 15, 2008, which was introduced into evidence. Ms. Bozza testified that she and Mr. Baines discussed the situation and were together when she wrote the letter, but that he did not tell her what to write. Mr. Baines corrected the grammar and spelling, and typed the letter for her signature. She stated that she wrote and signed the letter and gave it only to Mr. Baines. The following are excerpts from that letter:

I was one of the two Selection Board member (sic) in the tailor Supervisor Competition. My responsibility was to mark knowledge and Ability. In ability to choose and use appropriate method and procedures in the alteration and reconstruction of garments part of the competition I had to see if the candidates choose (sic) the right size and marking for alterations. The department did not provide us any criteria or a marking grid.

When I was marking Karen, she did not know the basic (sic) in alterations she was confused and made several mistakes in sizing the jacket. For this reason I have failed her or would not have given Karen a passing mark. But the manager Gail Khun (sic) started to debate with us to give her a few more marks. I was pressured to give her a few more mark (sic) not knowing this would have passed Karen.

(...)

I feel, I as the Selection Board member did not pass Karen as she did very poorly in A1. I still do not agree with giving Karen a few more marks as Gail Khun (sic) requested.

**19** With respect to the statement in her letter that she was responsible for assessing knowledge, Ms. Bozza stated that knowledge and ability are the same; knowledge is required to do the task assigned in the practical test. Ms. Bozza acknowledged that interviews were conducted by Ms. Kuhn, but she was not involved. She stated that it was unacceptable that she was only involved in the practical test.

**20** Ms. Bozza testified that Ms. Kuhn did not really meet with her to discuss the practical test, nor did she see any documents prior to administering the test. She stated that she discussed the test with someone from Human Resources, at which time she asked that Mr. Lionetti assist her. Ms. Bozza testified that she knew the practical test would be marked out of ten, but she was not aware of the pass mark. She stated that five out of ten or 50 percent is not quite good enough to pass in her view.

**21** Ms. Bozza testified that, after each candidate had completed the practical test for A1, she, Mr. Lionetti and Ms. Kuhn discussed the candidate's mark and that some candidates' marks were changed. She stated that Ms. Kuhn interfered with her and Mr. Lionetti's judgement of some candidates.

**22** Ms. Bozza testified that Ms. Runzer was hesitant and unsure of sizes and markings during the practical test, and should have had a mark of three or four. She stated that Ms. Runzer's final mark of five for A1 was not right but that she went along with what Ms. Kuhn said because that was the way she wanted it. Ms. Bozza also said that, if she had been allowed to see the assessment results from the interviews, she probably would have failed Ms. Runzer. She stated that she knows the work of all the candidates and Ms. Runzer was not ready for this position.

**23** Ms. Bozza testified that, during the practical test, Ms. Lam had the same problems as Ms. Runzer but caught on faster. She stated that Ms. Lam did better than Ms. Runzer, and she would not have failed Ms. Lam.

**24** Ms. Bozza testified that she had been asked to provide references for some candidates, including the complainant. Ms. Bozza met with Ms. Kuhn the day after the practical test. She acknowledged that the purpose of the meeting was to provide references; however, she also expected to discuss the marks and learn the outcome of the process. Ms. Bozza explained that, in other appointment processes, the assessment board always met to discuss the results. In this case, she was unable to review the interview and practical test results because Ms. Kuhn did not allow her to see the candidates' Rating Guides, which had been sent to Human Resources.

**25** Ms. Bozza stated that the result of the appointment process was not what she expected. She testified that, although she felt that there was something wrong with the process, she did nothing about it because, based on her experience, nothing she said or did would change anything.

**26** Mr. Lionetti retired in 2002 after more than 30 years with the RCMP; he had been Master Tailor for the last ten years of his service. Ms. Kuhn asked him to conduct the practical test for A1 with Ms. Bozza. Mr. Lionetti agreed that there have been many

changes in the Tailor Shop since his retirement, including the elimination of the Master Tailor position. He also agreed that there are differences between a Master Tailor and a Supervisor, but he believes that the Supervisor should be the best tailor.

**27** An undated and unsigned letter was introduced into evidence. Mr. Lionetti testified that he recognized the letter, but he did not write it because of his difficulties with English. He stated that Mr. Baines contacted him to ask for a letter and to testify for the complainant. He said that he told Mr. Baines what to write and Mr. Baines wrote the letter. Mr. Lionetti did not give the letter to anyone at the RCMP. The following is an excerpt from the letter:

(...) I was brought in by the RCMP to mark (sic) the practical part of the competition along with Theresa (sic) Bozza.

In the competition the staffing person (sic) did not explain to me how or what is the passing mark. When marking Karen she lacked knowledge and was confused as she changed the jacket 3 times before finding the right size. For this reason I would have failed her and she does not deserve even 50%. I feel if I gave her 5 out of 10 it is marked too high and I have marked her unfairly.

**28** Mr. Lionetti testified at the hearing that he was pretty sure that he had a good understanding of his role in the process. He also testified that he was not told the marking system, or given a written explanation of the marking before the practical test. He stated that he and Ms. Bozza met with Ms. Kuhn in her office before going to the site of the test, but he did not recall any discussion taking place. He said that they were told that they would see each candidate one at a time, but were otherwise given no explanation. Mr. Lionetti explained that each candidate had to measure two models and choose and mark the correct tunic sizes.

**29** Mr. Lionetti testified that, after each candidate left, he, Ms. Bozza, Ms. Kuhn and Ms. Sandbeck discussed the candidate's mark. He stated that all four agreed on the candidates' marks, but that he did not know the pass mark when he agreed. He said that everyone agreed that Ms. Runzer, Ms. Lam and another candidate had not done well. He stated that the board decided to give all three a mark of five to make them feel better, but he would not have passed any of them. Mr. Lionetti said he did not ask about the pass mark because two candidates had already scored higher marks.

**30** Mr. Lionetti stated that Ms. Runzer should have received a mark of two or three. He agreed to give Ms. Runzer five, but he would not have agreed if he had known that it was a passing score.

**31** Mr. Lionetti testified that he was asked by the complainant and one other candidate to provide a reference; however, he was never called for a reference. He stated that he understood that the practical test was only one part of the assessment. He also stated that he thought the process was unfair because he was not involved in the entire process and no references were used.

**32** The complainant has an extensive background as a tailor, and is currently a Custom Tailor with the RCMP, where she has worked for more than 19 years. She testified that she trained Ms. Runzer. The complainant stated that, based on her observations, Ms. Runzer was neither knowledgeable nor experienced in sewing or tailoring. After examining Ms. Runzer's résumé, the complainant acknowledged that she had been unaware of Ms. Runzer's background. Nevertheless, she maintained that Ms. Runzer's work did not reflect the experience required for the Supervisor position.

**b) Respondent's version**

**33** Ms. Kuhn stated that Ms. Bozza had been on sick leave prior to her retirement and was, therefore, not asked to participate in the entire appointment process. She added that, in previous processes, Ms. Bozza had experienced difficulties because of her limited skills in English. She had also prompted and led candidates during interviews.

**34** Ms. Kuhn did not recall discussing a pass mark, but stated that Ms. Bozza and Mr. Lionetti knew that the test was out of ten marks. Ms. Kuhn stated that both assessors saw the assessment document for the practical test. She also stated that Ms. Bozza had conducted a similar practical test in a previous Custom Tailor appointment process.

**35** Ms. Kuhn stated that Ms. Bozza and Mr. Lionetti did not always agree whether a candidate passed or failed the test. Specifically, Ms. Bozza did not think Ms. Runzer



should pass and Mr. Lionetti thought she should. She recalled a lengthy discussion between the two over Ms. Lam's results. Ms. Bozza thought she should pass and Mr. Lionetti disagreed.

**36** Ms. Kuhn stated that she and Ms. Sandbeck asked questions. She testified that they asked Ms. Bozza and Mr. Lionetti how Ms. Runzer and Ms. Lam compared to a third candidate, who had passed the test. She stated that the three tests appeared similar to her and it seemed to her that Ms. Bozza and Mr. Lionetti had identified the same problems with all three candidates' approach; however, they had passed one candidate and were going to fail another. She stated that, upon review, Ms. Bozza and Mr. Lionetti decided to pass Ms. Runzer and Ms. Lam.

**37** Ms. Kuhn testified that, following the discussion, she specifically asked both Ms. Bozza and Mr. Lionetti whether Ms. Runzer and Ms. Lam had passed. They told her that they both passed.

**38** Ms. Kuhn testified that Ms. Bozza and Mr. Lionetti assigned Ms. Runzer a mark of five out of ten. The practical test Rating Guides for Ms. Runzer, Ms. Lam and the third candidate were introduced into evidence. All three received a mark of five out of ten for A1. Ms. Kuhn stated that she had no concerns with that score for all three because there were no real differences among their performances.

**39** Ms. Kuhn testified that she did not hear from Mr. Lionetti after the practical test on January 3, 2008. The day after the practical test Ms. Bozza went to Ms. Kuhn's office to provide references. Ms. Kuhn stated that Ms. Bozza became upset when she told her that references were only required for those who had met all the essential qualifications, at which point she realized that the complainant and two other candidates had failed to qualify.

**40** Ms. Kuhn identified the notes she wrote during the complainant's interview on January 2, 2008. She explained that she and Ms. Sandbeck conducted the interviews and candidates' marks were determined on consensus. The complainant failed to qualify for the ability to identify and analyze problems, to formulate solutions, and make decisions.

**41** Ms. Sandbeck was an assessment board member throughout this appointment process. She testified that she, Ms. Kuhn, Ms. Bozza and Mr. Lionetti met just before the practical test was administered. Ms. Sandbeck stated that, at the time, she was satisfied that Ms. Bozza and Mr. Lionetti understood their role. Ms. Sandbeck's role during the practical test was to observe the candidates and participate in the discussion to ensure she understood the results of Ms. Bozza's and Mr. Lionetti's assessments.

**42** Ms. Sandbeck testified that, at the end of each practical test, Ms. Bozza and Mr. Lionetti went over the tunics and gave their comments, which were recorded on the individual Rating Guides. She testified that they first told her and Ms. Kuhn whether the candidate passed or failed, and then assigned a mark.

**43** Ms. Sandbeck did not recall the details of the discussion about Ms. Runzer's assessment. She stated that Ms. Bozza and Mr. Lionetti were undecided about whether Ms. Runzer and Ms. Lam passed the test, and decided to reconsider them after all candidates had been tested.

**44** Ms. Sandbeck stated that, after the last candidate, the four board members re-discussed Ms. Runzer's and Ms. Lam's assessments, comparing them to the assessment notes of another candidate. Ms. Sandbeck said the other candidate had set a standard for "meets".

**45** Ms. Sandbeck testified that Ms. Bozza and Mr. Lionetti moved away from her and Ms. Kuhn to privately discuss Ms. Runzer and Ms. Lam. When they returned, Ms. Bozza and Mr. Lionetti told them that both had passed.

**46** Ms. Sandbeck stated that, once they had decided that Ms. Runzer and Ms. Lam had passed, Ms. Bozza and Mr. Lionetti awarded them both a mark of five. She also stated that, at the time of the assessment decisions, she was not aware of a disagreement over the final marks. She did not know when the disagreement arose.

**47** Ms. Sandbeck said that the mark of five reflects that the candidate met the requirement, but not more. She stated that she believes that Ms. Bozza and Mr. Lionetti understood that a mark of five was a passing score.

**48** Ms. Sandbeck identified the notes she made during the complainant's interview on January 2, 2008. She testified that she and Ms. Kuhn evaluated each candidate and agreed on the marks assigned. The complainant failed the ability to identify and analyze problems, to formulate solutions and make decisions because her response lacked the complexity that would be appropriate at the supervisor level.

### **Personal favouritism**

**49** The complainant testified that she had observed a very good friendship between Ms. Kuhn and Ms. Runzer. She said that Ms. Kuhn had invited Ms. Runzer to an Avon party at her home. However, she acknowledged that everyone had been invited to the Avon party. The complainant stated that, after a dinner out one evening, there was bad weather and the roads were bad; Ms. Kuhn invited Ms. Runzer to stay overnight at her home. The complainant also testified that she often saw Ms. Runzer in Ms. Kuhn's office having conversations. It appeared to the complainant that Ms. Kuhn and Ms. Runzer were close friends.

**50** Ms. Kuhn testified that Ms. Runzer has never been in her home. She stated that when she held Avon or other such parties, she circulated a booklet and invitation throughout the Tailor Shop. Ms. Kuhn stated that after a group dinner out, she invited Ms. Runzer and another employee to stay at her home because there was a winter storm, and both employees live quite a distance away. Ms. Runzer lives 45 miles from Regina in Moose Jaw. Ms. Kuhn explained that Ms. Runzer's husband was killed in a snowstorm, and she did not want her to have to drive home. Ms. Runzer declined her offer.

**51** Ms. Kuhn testified that Ms. Runzer had been meeting regularly with her in her office. She explained that Ms. Runzer had filed a harassment complaint, and was seeking her advice on the process and procedure in her capacity as Cadet Services Manager.

## **Arguments of the parties**

### **a) Complainant's arguments**

**52** The complainant submits that Ms. Lam and Ms. Runzer both failed to qualify for appointment to a Supervisor position. She submits that Ms. Runzer should have been eliminated at the screening stage because she does not have the required experience, and that both Ms. Runzer and Ms. Lam failed the practical test for A1. She submits that Ms. Bozza and Mr. Lionetti were not given the assessment criteria and alleges that Ms. Kuhn pressured Ms. Bozza and Mr. Lionetti to give Ms. Lam and Ms. Runzer higher marks than they deserved, without telling them that it would mean that they would pass A1. She also submits that Ms. Kuhn was told that Ms. Runzer had failed the practical test and she proceeded to appoint her anyway.

**53** The complainant submits that Ms. Kuhn acted in bad faith. She submits that the appointment of Ms. Runzer was also based on personal favouritism.

### **b) Respondent's arguments**

**54** The respondent submits that, in the circumstances, Ms. Bozza and Mr. Lionetti were given information that was sufficient for them to understand and conduct the practical test. The preponderance of evidence demonstrates that Ms. Runzer and Ms. Lam were qualified for appointment.

**55** The respondent submits that the complainant's allegation of personal favouritism is not supported by any convincing evidence.

**56** The respondent submits that the reason the complainant was not appointed or proposed for appointment was because she failed to meet one of the essential qualifications for the positions.

### **c) Public Service Commission's arguments**

**57** The Public Service Commission (PSC) submits that those responsible for assessment must be competent, and must know the assessment criteria and the pass mark. Otherwise, a respondent may not be in compliance with the PSC's *Assessment*

*Policy.* The PSC argues that failure to comply with its policy is not an abuse of authority unless improper intent can be established or serious carelessness or recklessness amounting to bad faith is found.

## **Analysis**

**Issue I:** Did the respondent demonstrate bad faith in this appointment process, resulting in the appointment of two unqualified people?

**58** The Tribunal has emphasized that bad faith is one of the most serious forms of abuse of authority which the public service as a whole should diligently strive to prevent. The Tribunal has confirmed in a number of decisions that bad faith includes serious carelessness or recklessness. See, for example: *Cameron and Maheux v. Deputy Head of Service Canada et al.*, [2008] PSST 0016; *Robert and Sabourin v. Deputy Minister of Citizenship and Immigration Canada*, [2008] PSST 0024; and, *Beyak v. Deputy Minister of Natural Resources Canada et al.*, [2009] PSST 0007.

**59** According to the SMC, three or more years of experience altering RCMP uniforms was an essential qualification for these positions. The complainant did not produce any factual evidence that Ms. Lam does not meet this qualification. She based her allegation that Ms. Runzer lacked the necessary experience on her observations. Ms. Runzer's résumé, which was submitted into evidence, shows that she worked as a General Tailor, producing and altering uniforms for the RCMP, from June 2003 until May 2007. From May 2007 until her application to this appointment process in December 2007, she produced and altered RCMP tunics as a Custom Tailor. The evidence shows that Ms. Runzer met the experience requirement as it was stated in the SMC. The Tribunal finds as a fact that Ms. Runzer possessed the experience sought in the SMC.

**60** Ms. Bozza and Mr. Lionetti were asked to assess only one essential qualification in this appointment process – the ability to choose and use appropriate methods and procedures in the alteration and reconstruction of garments. They were asked to conduct this assessment because of their expertise in tailoring.

**61** The Tribunal addressed the composition of assessment boards 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.

**62** There is no dispute that neither Ms. Kuhn nor Ms. Sandbeck had the expertise to assess A1. However, there is no evidence that the other essential qualifications listed in the SMC required expertise in tailoring. Similarly, there is there no evidence that Ms. Kuhn or Ms. Sandbeck lacked the competence to assess the other essential qualifications.

**63** By inviting Ms. Bozza and Mr. Lionetti to assess A1, Ms. Kuhn established two assessment panels. In *Visca v. Deputy Minister of Justice et al.*, [2007] PSST 0024, the complainant challenged the use of multiple assessment panels instead of a single uniform panel. The Tribunal held, at paragraphs 60 and 61, that the use of multiple panels is within the broad discretion given to delegated managers under section 36 of the *PSEA*.

**64** In *Visca*, although different panels assessed the same qualifications, the Tribunal was satisfied that the measures taken by the respondent ensured consistent assessment among the various panels. In this case, there is no issue of consistency since Ms. Bozza and Mr. Lionetti assessed all candidates with respect to one essential qualification.

**65** The complainant has not provided any cogent evidence to show that the assessment board, as constituted, was improper. The expertise of Ms. Bozza and Mr. Lionetti was required to assess one specialized essential qualification. There is no

evidence to establish that their involvement in the appointment process was required beyond that role.

**66** The Tribunal finds that Mr. Lionetti and Ms. Bozza were not given written assessment criteria prior to the practical test. While it may have been prudent to have done so, the omission was not critical in the circumstances of this practical assessment test. The Tribunal is satisfied that both assessors knew what the test was intended to assess.

**67** Ms. Bozza and Mr. Lionetti both readily explained their role, which was to assess the candidates' choice of correct tunic size and the alterations needed. The Rating Guide for A1 lists two criteria for this qualification – “chooses correct methods” and “able to demonstrate methods and procedures accurately.” No evidence was presented concerning the test or the criteria to indicate that additional specific instruction was required for assessors as skilled in tailoring as Ms. Bozza and Mr. Lionetti. Moreover, according to Ms. Kuhn's uncontested evidence, Ms. Bozza had conducted the same kind of practical test in a previous appointment process.

**68** The evidence does not support a finding that Ms. Kuhn improperly constituted the assessment board, or that the assessors were not adequately prepared to conduct the practical test for A1.

**69** There is conflicting evidence as to whether the assessors knew that the pass mark was five out of ten. As the Tribunal explained in *Glasgow v. Deputy Minister of Public Works and Government Services Canada et al.*, [2008] PSST 0007, at paragraph 46, when faced with two versions of the facts, the Tribunal must determine which version is in harmony with the preponderance of the probabilities that a practical and informed person would readily recognize as reasonable in the circumstances.

**70** Ms. Bozza and Mr. Lionetti (the assessors) both testified that they did not know that five out of ten was the pass mark when they conducted the practical test for A1. Ms. Kuhn testified that both assessors knew the test was out of ten marks. Ms. Bozza confirmed in her testimony that she knew the test was out of ten marks. Both assessors testified that there were discussions about the marks assigned to candidates.

**71** Neither Ms. Kuhn nor Ms. Sandbeck recalled a specific discussion of the pass mark, but both were satisfied that the assessors understood that five was a passing score. Ms. Sandbeck said that, for each candidate, the assessors discussed and decided on pass or fail first and then decided on a mark. Both Ms. Kuhn and Ms. Sandbeck testified that, with respect to Ms. Lam and Ms. Runzer, Ms. Bozza and Mr. Lionetti told them that they had passed the test and then told them their marks.

**72** Five candidates took the practical test for A1 on January 3, 2008. The complainant was the second candidate tested. The last three candidates to take the test were Ms. Runzer, Ms. Lam and another candidate (the third candidate).

**73** In Ms. Bozza's May 2008 letter, she states that Ms. Runzer should have failed the practical test for A1. There is no mention in the letter of Ms. Lam or the third candidate. Ms. Bozza testified that she would not have failed Ms. Lam, but Ms. Runzer should have failed. She did not say anything about the third candidate.

**74** The letter prepared for Mr. Lionetti sometime before this hearing also states that Ms. Runzer should have failed the practical test for A1. Again, there is no mention of Ms. Lam or the third candidate in the letter. Mr. Lionetti testified that Ms. Runzer, Ms. Lam and the third candidate all should have failed the practical test.

**75** While the results of all candidates were discussed by Ms. Bozza, Mr. Lionetti, Ms. Kuhn and Ms. Sandbeck, there is no evidence that the third candidate's results were ever in question on the day of the test.

**76** All the evidence shows that Ms. Lam, Ms. Runzer and the third candidate did not perform well in the practical test. However, the only evidence that Ms. Lam and the third candidate failed is Mr. Lionetti's statement at the hearing, more than ten months after the test was held, that he would not have passed any of them. His testimony on this point is inconsistent with the evidence of Ms. Bozza and the respondent's witnesses.

**77** Having passed Ms. Lam and the third candidate, Ms. Bozza and Mr. Lionetti assigned each of them a mark of five. The Tribunal finds, based on the preponderance of probabilities that a practical and informed person would readily recognize as



reasonable in the particular circumstances, that the assessors knew the test was out of ten marks and that five was a passing mark.

**78** A comparison of the A1 Rating Guides for Ms. Runzer, Ms. Lam and the third candidate shows that the three are very similar. All three Rating Guides note similar problems. The respondent's uncontested evidence is that the notes on the individual A1 Rating Guides reflect the comments provided by the assessors.

**79** Ms. Kuhn and Ms. Sandbeck described a discussion of Ms. Lam's and Ms. Runzer's practical tests, which included a comparison with the third candidate's results. Ms. Bozza testified that some candidate's marks were changed after she, Mr. Lionetti and Ms. Kuhn had a discussion. Based on that evidence, together with the three A1 Rating Guides, the Tribunal finds that Ms. Runzer and Ms. Lam were each awarded a mark that reflects that their results in the practical test were similar to that of the third candidate.

**80** The testimony of the complainant's witnesses is not in harmony with a preponderance of the evidence. The Tribunal finds that, on January 3, 2008, Ms. Bozza and Mr. Lionetti determined that Ms. Runzer, Ms. Lam and the third candidate passed the practical test for A1 with a mark of five.

**81** The complainant explicitly stated for the first time in an elaboration of her allegations, that Ms. Kuhn was told one of the appointees had failed the practical test. The elaboration was submitted on May 1, 2008. The *Notification of Appointment or Proposal of Appointment* had been issued on January 17, 2008. On the day of the practical test, Ms. Kuhn was told that Ms. Runzer passed. Ms. Bozza and Ms. Kuhn met the following day, January 4, 2008. Ms. Bozza testified about the purpose of the meeting and that she was not shown the interview results; she did not state that she informed Ms. Kuhn at that time that Ms. Runzer should have failed the practical test. Ms. Kuhn testified that she did not hear again from Ms. Bozza or Mr. Lionetti until the hearing. Ms. Bozza confirmed that she did nothing further until she was informed about this complaint; she then wrote a letter. There is no evidence that, prior to appointing her, Ms. Kuhn was told that Ms. Runzer failed the practical test as Ms. Bozza's and

Mr. Lionetti's letters were prepared for this complaint at the request of the complainant's representative, well after the administration and marking of the practical test and the decision to appoint Ms. Runzer. The Tribunal concludes that Ms. Kuhn was not told prior to appointing her that Ms. Runzer had failed the practical test.

**82** The complainant alleges that Ms. Kuhn pressured the assessors to pass Ms. Runzer.

**83** Mr. Lionetti has never claimed that he was pressured to pass any candidate. Ms. Bozza's testimony that Ms. Kuhn interfered with the assessors' judgement and pressured her to give Ms. Runzer a higher mark is consistent with statements she made in her letter of May 2008.

**84** Ms. Kuhn and Ms. Sandbeck both testified that the assessors initially disagreed as to whether Ms. Runzer and Ms. Lam had passed the test. Both described a second discussion of Ms. Runzer's and Ms. Lam's practical tests, during which they questioned the assessors and made comparisons with the third candidate's test. Since Ms. Bozza and Mr. Lionetti had agreed that the third candidate had passed, her test was used as a benchmark for pass.

**85** There is no dispute that Ms. Kuhn and Ms. Sandbeck probed and questioned the assessors about Ms. Runzer's and Ms. Lam's results. The evidence supports a finding that Ms. Runzer's and Ms. Lam's practical tests were also compared with that of the third candidate. Although Ms. Bozza felt pressured, the complainant has not established that Ms. Kuhn acted with improper intent or serious carelessness or recklessness that would support a finding of bad faith. The Tribunal finds that Ms. Kuhn's intervention served to achieve consistency in the assessment of the candidates' practical tests.

**86** The results of the practical test for A1 clearly show that Ms. Runzer and Ms. Lam did not demonstrate that they are the best tailors among the candidates. Based on their testimony, Ms. Bozza and Mr. Lionetti both believe that the best tailors should be appointed to the Supervisor positions. However, it is well established in the decisions of the Tribunal that deputy heads and their delegates have considerable discretion under

subsection 30(2) of the *PSEA* to establish the necessary qualifications for a position. See for example *Visca v. Deputy Minister of Justice et al.*, [2007] PSST 0024.

**87** In this case the delegated manager did not place a premium on tailoring skills. Thirteen essential qualifications were established, only three of which are directly related to tailoring. Experience altering RCMP uniforms was assessed on a meets/does not meet basis. The ability to instruct others on issues related to tailoring of RCMP garments and A1 were allotted ten marks each, for a total of 20 marks out of a total of 103 marks. The remaining 83 possible marks were allocated to other essential qualifications which Ms. Kuhn described as necessary for supervisory positions. These include, among others, the following ability qualifications: plan, organize and control work and resources; identify and analyze problems; communicate effectively; and, personal suitability qualifications: flexibility; service orientation; and, teamwork.

**88** No argument or evidence was presented with respect to the establishment of the essential qualifications in this appointment process.

**89** Finally, the Tribunal notes that there is no evidence that Ms. Kuhn was required to share the interview results with Ms. Bozza or conduct references for candidates that had not met all the essential qualifications.

**90** The Tribunal finds that the complainant has not established, on a balance of probabilities, that the respondent's delegate acted in bad faith or that unqualified people were appointed.

**Issue II:** Did the respondent demonstrate personal favouritism in the appointment of Karen Runzer?

**91** The complainant has not provided the Tribunal with a reason why Ms. Kuhn would inappropriately influence the assessment of Ms. Lam. She alleges that Ms. Kuhn's actions with respect to Ms. Runzer were based on personal favouritism.

**92** In *Glasgow*, the Tribunal addressed the concept of personal favouritism, and the evidence required to support an allegation of personal favouritism:

[41] ... Undue personal interests, such as a personal relationship between the person selecting and the appointee should never be the reason for appointing a person. Similarly, the selection of a person as a personal favour, or to gain personal favour with someone else, would be another example of personal favouritism.

[...]

[44] Evidence of personal favouritism can be direct, such as facts establishing clearly the close personal relationship between the person selecting and the appointee. However, it will often be a question of circumstantial evidence where some action, comments or events prior to, and during the appointment process will have to be reviewed. Depending on its source and its particular relation to the issues in a complaint, circumstantial evidence can be as convincing as direct evidence. [...]

**93** The evidence put forward by the complainant in support of her allegation of personal favouritism is both direct and circumstantial. The complainant testified as to her knowledge of Ms. Kuhn having invited Ms. Runzer to her home on two occasions. She acknowledged that, on one of those occasions, everyone from the Tailor Shop was invited. She also testified that Ms. Kuhn and Ms. Runzer talked together frequently at work. She stated that she had observed a very good friendship between the two.

**94** Ms. Kuhn testified that, in addition to the general invitation to everyone in the Tailor Shop, she once invited Ms. Runzer and another employee to spend a night at her home to avoid long drives in a winter storm. She also testified that Ms. Runzer declined both invitations, and has never been in her home. Ms. Kuhn explained that she had met frequently with Ms. Runzer because of a harassment situation in the workplace. None of Ms. Kuhn's testimony concerning her relationship with Ms. Runzer was challenged on cross-examination.

**95** According to the complainant, further evidence of personal favouritism is that Ms. Kuhn manipulated the appointment process in the following manner: she accepted Ms. Runzer's inadequate experience; she failed to properly inform Ms. Bozza and Mr. Lionetti about the assessment criteria and the pass mark for A1; she pressured Ms. Bozza and Mr. Lionetti to pass Ms. Runzer on the test for A1; and, she excluded Ms. Bozza and Mr. Lionetti from participating in or having access to the results of the entire assessment process.

**96** The allegations of manipulation raised by the complainant, if founded, may have led to a finding of bad faith. However, the Tribunal has already determined, on the balance of probabilities, that bad faith has not been established.

**97** The Tribunal finds that the evidence does not establish that Ms. Kuhn demonstrated personal favouritism in the appointment of Ms. Runzer. Accordingly, the allegation of abuse of authority based on personal favouritism cannot be substantiated.

**Decision**

**98** For all these reasons, the complaint is dismissed.

Merri Beattie  
Member

**Parties of Record**

<b>Tribunal File</b>	2008-0094
<b>Style of Cause</b>	<i>Theresa Tran and the Commissioner of the Royal Canadian Mounted Police et al.</i>
<b>Hearing</b>	November 25-26, 2008 Regina, SK
<b>Date of Reasons</b>	December 1, 2009
<b>APPEARANCES:</b>	
<b>For the complainant</b>	Satinder Bains
<b>For the respondent</b>	Lesa Brown
<b>For the Public Service Commission</b>	John Unrau