



Public Service
Staffing Tribunal

Tribunal de la dotation
de la fonction publique

File: 2008-0036
Issued at: Ottawa, November 9, 2010

NORA MARTIN

Complainant

AND

THE DEPUTY MINISTER OF NATIONAL DEFENCE

Respondent

AND

OTHER PARTIES

Matter	Complaint of abuse of authority pursuant to section 77(1)(a) of the <i>Public Service Employment Act</i>
Decision	Complaint is substantiated
Decision rendered by	Merri Beattie, Member
Language of Decision	English
Indexed	<i>Martin v. Deputy Minister of National Defence</i>
Neutral Citation	2010 PSST 0019

Reasons for Decision

Introduction

1 This complaint concerns an internal advertised appointment process to fill two Building Client Support Centres Manager positions at the AS-04 group and level in the Department of National Defence (DND). The complainant, Nora Martin, alleges that she was improperly assessed because her response to an interview question was not fully recorded by the assessment board. She also alleges that other candidates benefitted from being permitted to refer to their study material while reviewing the interview questions, whereas she did not. Finally, the complainant alleges that there was an improper result since an assessment board member disclosed information about the interview questions to one of the appointed candidates prior to her interview.

2 The respondent, the Deputy Minister of National Defence, denies any abuse of authority in this appointment process. It maintains that the complainant was properly assessed and that no candidate was allowed to bring their study material into the pre-interview preparation. The respondent asserts that, although a board member did reveal information related to one interview question, the matter was resolved by steps that were taken prior to any appointments being made.

Background

3 Candidates' assessments in this appointment process included interviews, which were conducted from December 3 to 7, 2007. Multiple assessment panels conducted the interviews, with Erinn Cable, Human Resources Officer, attending all interviews to ensure consistency. Twenty interviews were scheduled over five consecutive days, conducted by panels of three assessors from among the seven assessment board members. Robert Villon, Records and Mail Manager for the Directorate of Strategic Initiatives and Shared Support Services (DSISSS), was a member of the assessment board for this appointment process and a panel member for six interviews. The interview schedule, which was introduced into evidence, confirms that Mr. Villon was not a member of the interview panel for the complainant or Guylaine Deslauriers. It is Mr. Villon's actions that are at issue with respect to this complaint, as well as the subsequent steps taken by Gary Walbourne, Director, DSISSS.

4 On December 4, 2007, one of the candidates, Ms. Deslauriers, was contacted by telephone by Mr. Villon. Mr. Villon provided Ms. Deslauriers with information pertaining to the interview that she attended later that same day. The extent of the information shared by Mr. Villon will be discussed in further detail later in these reasons.

5 The complainant's interview was on December 6, 2007. On December 19, 2007, the complainant was informed in writing that she had failed to meet one or more of the essential qualifications for the positions. During informal discussion, she was told that she had failed the ability to negotiate services and standards with client organizations. A *Notification of Appointment or Proposal of Appointment* was issued on *Publiservice* on January 7, 2008; Ms. Deslauriers and one other person were named for appointment.

6 The complainant filed a complaint of abuse of authority with the Public Service Staffing Tribunal (the Tribunal) on January 16, 2008 pursuant to s. 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the PSEA).

7 The complainant initially filed another allegation pertaining to the use of multiple assessment panels in this appointment process. She did not introduce evidence or submit arguments on this matter at the hearing. It is, therefore, unnecessary for the Tribunal to address that particular allegation.

Issues

8 The Tribunal must determine the following issues:

- (i) Did the respondent abuse its authority by appointing a candidate who had been inappropriately assisted in this appointment process?
- (ii) Did the respondent abuse its authority in assessing the complainant?

Summary of relevant evidence

Complainant's assessment

9 The complainant testified that when she arrived for her interview she was met by Dania Hadi, who is the Assistant to the Director, DSISSS. Ms. Hadi escorted her into a room and gave her the questions to prepare for her interview. According to the complainant, Ms. Hadi told her that, while reviewing the questions, she could refer to any notes that she had brought with her. The complainant had not brought any notes with her because she had not been told that would be permitted.

10 The complainant also called Ms. Hadi as a witness. Ms. Hadi explained that candidates had 15 minutes prior to the interview to review the questions and make notes if they wished. She testified that candidates were not allowed to bring their own material into the interview preparation room and none did.

11 The respondent called Duncan Retson, Manager, DSISSS, to testify at the hearing. Mr. Retson had a lead role in this appointment process. He established the merit criteria, screened applications for the essential experience qualifications, participated in developing the *Assessment Guide*, conducted reference checks, held informal discussions and led the process for selection of the candidates who were the right fit for appointment. Mr. Retson testified that candidates were not allowed to use their study material during the 15-minute pre-interview preparation.

12 The complainant introduced the *Assessment Guide* pertaining to her interview into evidence. The *Assessment Guide* contains the qualifications, questions, expected answers or assessment criteria, marks or rating scales, and assessors' notes. The complainant's assessment panel comprised Mr. Retson, Jean-Marc Beliveau, Staff Officer to the Director General, Corporate and Shared Services, and Ms. Cable.

13 Referring to question 10 in the *Assessment Guide*, which assessed the ability to negotiate services and standards with client organizations, the complainant testified that, in response to this question, she provided examples of meetings during which she had negotiated new services with clients at two DND buildings.

14 The complainant testified that, during informal discussion, she told Mr. Retson that the board's notes for question 10 were missing the examples she had provided. Mr. Retson did not recall that she gave those examples in her answer, but agreed to check with Mr. Beliveau and Ms. Cable. The complainant testified that Mr. Retson notified her later the same day that neither he nor the other panel members recalled the complainant mentioning the two clients in the context of question 10.

15 The complainant called Mr. Beliveau as a witness, and Ms. Cable was also called to testify by the respondent. Mr. Beliveau and Ms. Cable testified that they had not met the complainant prior to her interview. Mr. Retson described his relationship with the complainant as a very positive professional one, although she does not report directly to him. The complainant also testified about her relationship with each of the three board members. All the testimony pertaining to this matter was consistent.

16 Mr. Retson, Mr. Beliveau and Ms. Cable each identified their notes of the complainant's response to interview question 10. Mr. Beliveau testified that the complainant had difficulty with question 10; she appeared to be nervous and did not seem to understand the question, which she asked to return to later in the interview. Mr. Retson stated that question 10 was the only tool used to assess the ability to negotiate services and standards with clients. He testified that the complainant was hesitant and asked that question 10 be repeated. He also testified that his notes represent the details the complainant provided in her response, and her mark was based on evaluating her response against the *Assessment Criteria* for the qualification. Mr. Retson stated that a number of expected elements were missing from the complainant's response, which the board assessed as weak according to the established *Rating Scale*. Ms. Cable did not provide testimony on this point.

17 Mr. Retson, Mr. Beliveau and Ms. Cable all described the assessment procedure they followed. Immediately after each interview the panel discussed the candidate's answers. For the assessment of ability qualifications, the panel used the *Assessment Criteria* and relevant *Rating Scale* to collectively determine the marks to be awarded. The panel awarded the complainant a mark of 4 out of a possible 10 points for her answer to question 10.

18 Mr. Retson testified that, after informal discussion with the complainant, he spoke with Mr. Beliveau and Ms. Cable separately. He brought each panel member's notes with him, specifically mentioned the client and building names and asked them if that prompted them to recall further details about the complainant's response to question 10. According to Mr. Retson, Ms. Cable did not recall any further details. Mr. Beliveau recalled the complainant having mentioned one of the buildings in response to another question. They looked through the complainant's assessment and found the reference in notes pertaining to a different question.

19 Mr. Retson explained that the purpose of question 10 was for candidates to demonstrate their ability to negotiate with clients, not to demonstrate their experience. Therefore, according to Mr. Retson, simply describing her experience would not necessarily have addressed what the assessment board was seeking through this question.

Disclosure of assessment information to a candidate and steps taken by the respondent

(i) The December 4, 2007 Telephone Call

20 The complainant testified that, in the office on the morning of December 4, 2007, prior to Ms. Deslauriers' interview, Ms. Deslauriers stated quite loudly that Mr. Villon had just given her information over the telephone about the assessment interview for this process. According to the complainant, Ms. Deslauriers told her to study the role of the Governor General and the concept of the DSISSS, and stated that she did not have time to tell her everything just then. The complainant also testified that Ms. Deslauriers gave her some documents. She tendered two one-page documents into evidence, which she identified as those Ms. Deslauriers gave her on December 4, 2007. One document is from the Governor General's website (GG document) and the other is from the DSISSS website (DSISSS document).

21 The complainant called Ms. Deslauriers as a witness. Ms. Deslauriers stated that she had known Mr. Villon for about one year and that they had been working together on a project. She described their relationship as professional, not personal.

Ms. Deslauriers testified that, during a telephone conversation on the day of her interview, Mr. Villon asked her if she was nervous and whether she had studied. According to Ms. Deslauriers, she told Mr. Villon that she had studied the DND organization chart in detail, at which point he asked her if she knew about the Governor General. She stated that this was the extent of their conversation about the assessment and that Mr. Villon did not tell her any of the interview questions. Ms. Deslauriers confirmed that she told the complainant about the conversation and gave her a copy of information she had printed from the Internet. She explained that she and the complainant had been sharing study material.

22 Mr. Villon testified that he had known Ms. Deslauriers for approximately four years and that she had reported directly to him on two occasions. He stated that they had an amicable working relationship. Mr. Villon called Ms. Deslauriers and their discussion was initially about the project they had been working on. Mr. Villon acknowledged that he told Ms. Deslauriers that she would have to know the DND organization all the way up to the Governor General. He also confirmed that he had participated in interviews on December 3, 2007 and knew that the answer to interview question 2 was the Governor General. Mr. Villon stated that the only information he gave Ms. Deslauriers was related to the Governor General.

23 Three other witnesses testified to Ms. Deslauriers' statements after the telephone conversation. Two of the three witnesses testified that, after she spoke on the telephone, Ms. Deslauriers mentioned not only the role of the Governor General but also the concept of the DSISSS. None of the witnesses overheard Ms. Deslauriers' telephone conversation with Mr. Villon and, although they all saw Ms. Deslauriers print something and give it to the complainant, none of them saw what had been printed.

24 The complainant stated that she told Ms. Deslauriers that what Mr. Villon had done was wrong. According to the complainant, when she told Ms. Deslauriers that she intended to speak with Mr. Villon, Ms. Deslauriers asked her not to because Mr. Villon would get into trouble. Ms. Deslauriers was not questioned about this aspect of the complainant's evidence during her testimony. The complainant testified that she did contact Mr. Villon before her interview because she thought he might tell her something

as well. She did not mention to Mr. Villon that she knew about his conversation with Ms. Deslauriers.

(ii) The December 24, 2007 Meeting

25 The complainant testified that, after she learned that Ms. Deslauriers would be appointed, she asked to meet with Mr. Walbourne, Mr. Villon, and one other assessment board member. They met on December 24, 2007. During the meeting, the complainant revealed her knowledge of the conversation between Mr. Villon and Ms. Deslauriers on December 4, 2007. According to the complainant, at first, Mr. Villon denied that he had given Ms. Deslauriers information about the interview. When the complainant informed him that she had witnesses to Ms. Deslauriers' statements after the phone call, Mr. Villon acknowledged what he had done and apologized.

26 Mr. Villon testified that he did not recognize that there was a problem with what he had done until it was raised at the December 24, 2007 meeting with the complainant and Mr. Walbourne. During his testimony, he acknowledged that it was unfair to provide information about an assessment test to a candidate.

27 Mr. Walbourne was delegated to make appointments from this process; he sub-delegated the assessment of candidates to subordinate managers. He testified that, during the December 24, 2007 meeting, he learned that, prior to her interview, Mr. Villon had told Ms. Deslauriers that she would need to know the role of the Governor General. Mr. Walbourne testified that he was not made aware that other assessment material had been compromised.

(iii) Post December 24, 2007 Follow-Up

28 Following the December 24, 2007 meeting, Mr. Walbourne met separately with Mr. Villon and Ms. Deslauriers to obtain their versions of what had taken place. Mr. Walbourne concluded that Mr. Villon had not relayed any information other than that which pertained to interview question 2. The answer to question 2 was the Governor General.

29 Mr. Walbourne then contacted Mr. Retson to get his input on the situation. Mr. Retson was a member of both the complainant's and Ms. Deslauriers' assessment panels. Mr. Walbourne also discussed the situation with another assessment board member who was not on either of those two panels. Mr. Walbourne subsequently met with Ms. Cable and discussed the options available to him to address the problem arising from Mr. Villon's disclosure to Ms. Deslauriers of information concerning the interview.

30 Mr. Walbourne explained that, although he considered it, he was reluctant to cancel the process, given the work and resources that had been dedicated to it. There had been approximately 120 to 130 applicants, 20 of whom had been interviewed. Ms. Cable confirmed that she and Mr. Walbourne discussed all options to address the situation: cancelling the process and starting over; redoing the interviews with a new *Assessment Guide*; reassessing the affected qualification; and, removing the one affected question.

31 Mr. Walbourne was satisfied that removing question 2 from consideration would not have any impact on the requirement to assess that essential qualification. He also determined that eliminating question 2 would correct the problem and would be fair to all candidates. Question 2 was one of two questions designed to assess candidates' knowledge of the organization of DND/Canadian Forces and, in particular, National Defence headquarters. He decided to eliminate the question from the *Assessment Guide*.

32 The complainant testified that Mr. Villon also told Ms. Deslauriers to study the concept of the DSISSS, which compromised interview question 3. Question 3 assessed candidates' knowledge of the concept of a shared support services organization.

33 Mr. Villon was asked several times during his testimony if he had provided any information to Ms. Deslauriers about the concept of shared support services organizations. At one point, Mr. Villon's response was "not to my recollection." At another point he denied telling Ms. Deslauriers that she should know the concept of DSISSS or the concept of shared support services organizations, or how to answer

question 3. When asked to look at the DSISSS document during his testimony, Mr. Villon stated that he had not told Ms. Deslauriers anything related to that document.

34 When asked by the complainant at the hearing whether the matter of information related to question 3 had been raised during his inquiry, Mr. Walbourne's response was "not that I remember." The complainant also asked Mr. Walbourne how he had addressed the demonstration of favouritism toward Ms. Deslauriers. Mr. Walbourne stated that if Ms. Deslauriers had benefitted from the information she received from Mr. Villon, the benefit was lost as a result of removing question 2 from consideration. Mr. Walbourne characterized Mr. Villon's actions as misguided, not unethical.

35 The complainant questioned Mr. Retson about interview question 3, which was designed to assess candidates' knowledge of the concept of a shared support services organization. Mr. Retson explained that, to formulate the expected answers to question 3, he used an internet search engine to identify factors common to shared service organizations that conformed to the needs of the DSISSS. He approached it this way to be fair to candidates from outside the organization. According to Mr. Retson, a candidate could have given a partial answer to question 3, if they based their response on the DSISSS document.

Arguments of the parties

Complainant's arguments

36 The complainant submits that the respondent failed to comply with the Public Service Commission's (PSC) policies and did not act in accordance with the values of the PSEA or the *Values and Ethics Code for the Public Service*.

37 The complainant argues that the respondent's actions led to two improper results in this appointment process: first, the complainant was not assessed properly with respect to question 10; and, secondly, the results of the process are unreliable because information about the interview was disclosed to a candidate who was appointed. The complainant relies on the Tribunal's decision in *Tibbs v. Deputy Minister of National*

Defence, 2006 PSST 0008, in support of her position that an improper result is an abuse of authority.

38 The complainant is seeking the revocation of Ms. Deslauriers' appointment.

Respondent's arguments

39 The respondent submits that there is no evidence that any candidate had study material with them while they reviewed the interview questions. The respondent also submits that the complainant has not provided evidence to demonstrate that she was unfairly assessed, or evidence that suggests why the assessment panel would treat her unfairly. The respondent argues that, although the complainant disagrees with the board's assessment of her qualifications, the Tribunal has consistently held that this is not a sufficient reason to intervene in the assessment board's findings.

40 The respondent concedes that it was an error for an assessment board member to provide information to a candidate about the assessment. However, the situation was corrected at the first opportunity. The respondent argues that there is no evidence that Ms. Deslauriers received any information that would have given her an advantage in any question other than question 2. It submits that the removal of question 2 from the process resolved the problem and, in the end, Ms. Deslauriers was properly appointed based on merit.

Public Service Commission's arguments

41 The PSC submits that none of its policies were breached with respect to the complainant's assessment or regarding the issue of whether any candidate was allowed to bring material with them into the pre-interview preparation.

42 The PSC submits that it was inappropriate for an assessment board member to give an advantage to a candidate. It argues, however, that the respondent conducted an investigation into this matter under s. 15(3) of the PSEA, and took appropriate corrective action; it removed question 2. The PSC argues that the Tribunal cannot review how the investigation was conducted or the corrective action that was taken. It submits that the

Tribunal must limit its review to the corrected process, namely the assessment without question 2.

Reply arguments

Respondent's reply arguments

43 The respondent argues that an investigation conducted under s. 15(3) of the PSEA does not limit the Tribunal's jurisdiction.

Complainant's reply arguments

44 The complainant argues that it is important to determine whether an investigation under s. 15(3) of the PSEA was conducted because, in DND, this authority is not sub-delegated and only the Deputy Minister can conduct such an investigation.

Relevant legislative provisions

45 This complaint was made pursuant to s. 77(1)(a) of the PSEA.

77. (1) When the Commission has made or proposed an appointment in an internal appointment process, a person in the area of recourse referred to in subsection (2) may – in the manner and within the period provided by the Tribunal's regulations – make a complaint to the Tribunal that he or she was not appointed or proposed for appointment by reason of

(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);

[...]

46 Section 30(2) reads, in part, as follows:

30. (2) An appointment is made on the basis of merit when

(a) the Commission is satisfied that the person to be appointed meets the essential qualifications for the work to be performed, as established by the deputy head, including official language proficiency; and

[...]

47 Abuse of authority is not defined in the PSEA. Section 2(4) of the PSEA provides guidance.

2. (4) For greater certainty, a reference in this Act to abuse of authority shall be construed as including bad faith and personal favouritism.

48 Sections 15(1) and 15(3) pertain to delegation of certain authorities from the PSC to deputy heads.

15. (1) The Commission may authorize a deputy head to exercise or perform, in relation to his or her organization, in the manner and subject to any terms and conditions that the Commission directs, any of the powers and functions of the Commission under this Act, other than its powers under sections 17, 20 and 22, its power to investigate appointments under sections 66 to 69 and its powers under Part 7.

(2) ...

(3) Where the Commission authorizes a deputy head to make appointments pursuant to an internal appointment process, the authorization must include the power to revoke those appointments and to take corrective action whenever the deputy head, after investigation, is satisfied that an error, an omission or improper conduct affected the selection of a person for appointment.

49 Sections 47 to 49 of the PSEA are also relevant to this complaint.

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.

48. (1) After the assessment of candidates is completed in an internal appointment process, the Commission shall, in any manner that it determines, inform the following persons of the name of the person being considered for each appointment: (...)

(2) For the purposes of internal appointment processes, the Commission shall fix a period, beginning when the persons are informed under subsection (1), during which appointments or proposals for appointment may not be made.

(3) Following the period referred to in subsection (2), the Commission may appoint a person or propose a person for appointment, whether or not that person is the one previously considered, and the Commission shall so inform the persons who were advised under subsection (1).

49. The Commission's decision to appoint a person or to propose a person for appointment is final and is not subject to appeal or review except in accordance with this Act.

Analysis

50 Prior to addressing the substance of the allegations, there is a preliminary matter that must be addressed. The Tribunal heard arguments from the parties with respect to Mr. Walbourne's actions when he inquired into Mr. Villon's improper conduct, its consequences, and the subsequent steps he took. The PSC characterized Mr. Walbourne's actions as an investigation conducted in accordance with s. 15(3) of the PSEA. Section 15(3) relates to the authority of a deputy head to revoke internal appointments, and take corrective action after investigation.

51 There is no evidence that this matter was referred to the deputy head or that the deputy head was ever considering corrective action or revocation under s. 15(3), which would require an investigation.

52 On the other hand, s. 47 of the PSEA provides delegates with opportunities to consider matters raised by candidates following their elimination from an internal appointment process and make corrections if appropriate. See *Rozka et al. v. Deputy Minister of Citizenship and Immigration Canada*, 2007 PSST 0046, at para. 76.

53 Sections 47, 48 and 49 of the PSEA operate together to provide informal discussion and opportunities to correct problems before a formal *Notification of Appointment or Proposal of Appointment* is issued, at which point the appointment decision is final and may only be reviewed in accordance with specific provisions of the PSEA.

54 In this case, the delegated manager, Mr. Walbourne, was informed of Mr. Villon's improper conduct by the complainant on December 24, 2007. He inquired into the matter and took steps to address it before the *Notification of Appointment or Proposal of Appointment* was issued on January 7, 2008. The Tribunal finds that the delegate was acting in accordance with s. 48 of the PSEA. This was not an investigation conducted in order for the deputy head to consider whether to exercise his authority under s. 15(3) to revoke an appointment or take corrective action.

Issue I: Did the respondent abuse its authority by appointing a candidate who had been inappropriately assisted in this appointment process?

55 There is no dispute that Mr. Villon revealed assessment information to Ms. Deslauriers and that she was later appointed. She had worked under his supervision twice and they had an amicable working relationship. He gave her information about the assessment which gave her an advantage in the appointment process. He testified that he did not realize that he had done anything wrong until the meeting of December 24, 2007. While it is difficult to imagine that he did not understand that what he was doing was wrong prior to this meeting, his conduct was nevertheless an abuse of authority. As a delegate who was responsible for assessing candidates' qualifications in this appointment process, Mr. Villon's conduct was unacceptable and tainted the whole appointment process in regard to the assessment of Ms. Deslauriers.

56 Under s. 2(4) of the PSEA, abuse of authority includes personal favouritism. In *Glasgow v. Deputy Minister of Public Works and Government Services Canada*, 2008 PSST 0007, at para. 41, the Tribunal provided a number of examples that would be considered personal favouritism. Inappropriately assisting a candidate is also an example of personal favouritism. In this case, Mr. Villon gave Ms. Deslauriers an unfair advantage by revealing assessment information prior to her interview. His actions constituted personal favouritism and were, therefore, an abuse of authority.

57 While this finding is sufficient, in and of itself, to find that the respondent abused its authority, the Tribunal will examine the steps taken by Mr. Walbourne once he became aware of the complainant's concerns to determine whether there has been any further abuse of authority in this appointment process. As the Tribunal explained in one of its earliest decisions, *Tibbs* at paras. 70-71, abuse of authority can occur when a delegate acts on inadequate material by, for example, failing to consider relevant matters. As well, abuse of authority can arise when there is an improper result.

58 Turning now to the post December 24, 2007 follow-up, the respondent took measures to address the impact of Mr. Villon's improper conduct. Based on his inquiry,

Mr. Walbourne concluded that only interview question 2 was affected by Mr. Villon's improper conduct. Question 2 reads as follows: "By name or by title, who is the Commander-in-Chief of the Canadian Forces?" Mr. Walbourne determined that the appointment process results could be relied upon if that question was removed from consideration. He eliminated question 2 from candidates' assessments.

59 The complainant does not contest the respondent's decision to eliminate candidates' answers to question 2 from consideration. However, she disagrees with the respondent's submission that this is the only question to have been compromised.

60 At the hearing, the complainant sought to demonstrate that more than interview question 2 was affected. She asserted that, on December 4, 2007, Mr. Villon also told Ms. Deslauriers that she would need to know the concept of the DSISSS, which relates to interview question 3. Question 3 reads as follows:

Knowledge of the concept of a shared support services organization.

Name up to five key characteristics or features of a shared support services organization.

61 The qualification assessed by question 3 is generic in nature, as are the question itself and the expected answers. Nevertheless, the DSISSS, the Directorate of Strategic Initiatives and Shared Support Services, is, in fact, a shared support services organization.

62 When witnesses provide conflicting evidence, an analysis of the credibility of the witnesses may be required. In *Glasgow*, at para. 45, the Tribunal referred to the test for witness credibility that is set out in *Faryna v. Chorny* (1952), 2 D.L.R. 354, at p. 357, [1951] B.C.J. No 152 (QL) (B.C.C.A.). In accordance with the test in *Faryna*, it is for the Tribunal to determine the version of events that a practical and informed person would readily recognize as reasonable in the circumstances.

63 The testimony concerning whether Mr. Villon told Ms. Deslauriers to study the concept of the DSISSS is contradictory. Mr. Villon asserts that the only information he revealed was related to question 2, the role of the Governor General. Given Mr. Villon's actions and the fact that he attempted to deny any inappropriate behaviour when first

confronted, a reasonable person would have reservations about the credibility of his testimony on this point.

64 On December 4, 2007, Ms. Deslauriers was very open about the fact that she had received information about the assessment. Throughout her testimony she consistently stated that the only information she received from Mr. Villon pertained to the role of the Governor General.

65 However, the Tribunal notes a lack of consistency between her testimony and Mr. Villon's testimony with respect to simple facts. For example, their testimony regarding how long they had known one another was inconsistent. According to Ms. Deslauriers, they had known each other only for about one year. Mr. Villon testified that he had known Ms. Deslauriers for approximately four years and that she had reported directly to him on two occasions. As well, she did not recall having any subsequent discussions with Mr. Villon about what had happened on December 4, 2007. Mr. Villon stated that he did speak with Ms. Deslauriers about the events of December 4, 2007, after the December 24, 2007 meeting. A reasonable person would further note that Ms. Deslauriers has a strong, direct interest in maintaining her position that she was not given any additional information because her appointment is the subject of a complaint and, as such, could be revoked.

66 The complainant testified that Ms. Deslauriers told her to study the concept of the DSISSS, and printed and gave her the DSISSS document on December 4, 2007. However, the DSISSS document that the complainant tendered at the hearing is not reliable evidence since the earliest date on this document is May 13, 2008.

67 There were, however, three other people in the office on December 4, 2007, who testified before the Tribunal. None of them heard what Mr. Villon said to Ms. Deslauriers on the telephone that day, but each of them heard what Ms. Deslauriers said after the telephone call. One of the three testified that Ms. Deslauriers stated that she had been told what to study. The other two testified that Ms. Deslauriers specifically mentioned both the role of the Governor General and the concept of the DSISSS. There is no

evidence that challenges the impartiality of these three witnesses or the credibility of their testimony.

68 A practical and informed person would readily recognize as reasonable in the circumstances that Mr. Villon shared with Ms. Deslauriers information about the DSISSS on December 4, 2007 prior to her interview and that the information was clearly linked to another essential qualification.

69 Mr. Walbourne's inquiry into this matter was limited to discussions with Mr. Villon and Ms. Deslauriers. After the December 24, 2007 meeting, he did not inquire further with the complainant nor did he approach the witnesses to Ms. Deslauriers statements in the office on December 4, 2007, although the complainant had stated that there had been witnesses. Furthermore, it is telling that the *Notification of Appointment or Proposal of Appointment* was issued on January 7, 2008, only five working days after the December 24, 2007 meeting.

70 Mr. Walbourne did not discover the scope of the damage done to the appointment process. As a result, the Tribunal is not satisfied that the removal of question 2 was sufficient to eliminate the influence that Mr. Villon's improper conduct had on the results of the appointment process.

71 The Tribunal finds that the delegated manager, Mr. Walbourne, abused his authority. In his post December 24, 2007 follow-up, Mr. Walbourne acted on inadequate material in reaching his decision that only question 2 had been compromised. As of December 24, 2007, he was aware that there were witnesses to the December 4, 2007 incident and, yet, he only heard from the complainant, Ms. Deslauriers and Mr. Villon. He failed to consider relevant matters; in particular he failed to make the necessary inquiries of the three employees in the office who overheard what Ms. Deslauriers said after she got off the phone with Mr. Villon on December 4, 2007. Furthermore, in the Tribunal's view, by failing to make these necessary inquiries, Mr. Walbourne acted in a seriously careless manner to the extent that it can be equated with bad faith. See, for example, *Robert and Sabourin v. Deputy Minister of Citizenship and Immigration*, 2008 PSST 0024, and *Burke v. Deputy Minister of National Defence*, 2009 PSST 0003.

72 Ms. Deslauriers was appointed as a result of this appointment process. There was no evidence presented at the hearing that Mr. Villon played any role in the assessment of Ms. Deslauriers, nor any evidence of any inappropriate behaviour on the part of those who did assess her. However, the fact that she was given information and hints about the assessment tools in advance of her interview is tantamount to cheating. This compromised her assessment in the process to such an extent that her appointment cannot have been made on the basis of merit. The Tribunal, therefore, also finds that the appointment of Ms. Deslauriers was an improper result.

73 In summary, the Tribunal finds that the respondent abused its authority in three respects. First, the actions of Mr. Villon constituted personal favouritism. Secondly, Mr. Walbourne was seriously careless and he acted on inadequate material in his post December 24, 2007 follow-up. Finally, by appointing a candidate who had been inappropriately assessed in the appointment process, there was an improper result.

74 The Tribunal concludes, therefore, that the respondent abused its authority by appointing Ms. Deslauriers.

Issue II: Did the respondent abuse its authority in assessing the complainant?

75 The complainant's testimony is that she was told by Ms. Hadi that she could use her notes when reviewing the interview questions. Ms. Deslauriers was not questioned on this matter and no other candidates testified.

76 Ms. Hadi's testimony is that candidates were not allowed to take any material or notes into the pre-interview preparation, but they could make notes while reviewing the questions. Mr. Retson also testified that candidates were not permitted to bring material into the pre-interview preparation.

77 The complainant has the burden of proof, on the balance of probabilities, in complaints of abuse of authority under the PSEA. (See *Tibbs* at paras. 50, 53 and 55).

78 Ms. Hadi's testimony is consistent with that of Mr. Retson. In the circumstances, the Tribunal finds that, on a balance of probabilities, the complainant has not

established that Ms. Hadi told her or other candidates that they could bring their study notes and consult them while they were reviewing the interview questions.

79 The complainant also takes issue with the mark awarded to her in response to question 10 of the interview. Question 10 reads as follows:

Ability to negotiate services and standards with multiple client organizations

Q10. Within the DND environment, there are conflicting interests and at times, different client demands, different levels of service on the same product, or demands for services outside the purview of DSISSS. As a Manager, much of your time will be spent in negotiations with multiple client organizations. How would you negotiate to please the customer and retain their business, while staying within your mandate?

80 The complainant testified that two examples she provided of meetings with specific clients about services for specific buildings are missing from the panel members' notes pertaining to question 10 in her *Assessment Guide*.

81 The purpose of question 10 is clearly identified in the *Assessment Guide*, namely to assess the ability to negotiate. Six *Assessment Criteria* were established:

- Proves his or her point of view
- Maintains a positive attitude in relations with others
- Recognizes the “real” stakeholders and decision makers, and ensures that all parties understand the consequences of negotiated terms
- Asks appropriate questions and discloses information carefully in order to obtain the required information
- Anticipates the direct and indirect consequences of every action
- Strives to find “win-win” solutions or acceptable compromises when appropriate

82 The complainant's description of what is missing from the panel's notes in this case is not sufficient to support a finding that it was a response that was relevant to the *Assessment Criteria*. Based on her testimony, the complainant's response demonstrated that she had experience in negotiating but the question was not designed

to assess whether candidates had conducted negotiations. Candidates were expected to demonstrate how they would conduct negotiations. The panel was looking for responses that addressed the *Assessment Criteria*, which described how the respondent wants Building Client Support Centres Managers to approach negotiations with clients. The complainant did not elaborate on the substance of her response or explain how she believes it addressed the *Assessment Criteria* for the essential ability qualification.

83 The Tribunal concludes that the complainant has failed to demonstrate that she was improperly assessed.

84 There were a number of people who were complicit in this matter. Any one of several employees could have acted to expose this obvious abuse before it tainted the appointment process and the reputation of the organization. It is inexcusable that someone in Mr. Villon's position acted as he did. It is equally inexcusable that Ms. Deslauriers did not report this improper conduct. The Tribunal does not accept her claim that she did nothing wrong. Although she did not seek information about the assessment from Mr. Villon, she maintained her silence in order to benefit from his action. The complainant also benefitted from advance knowledge of the assessment; her assessment is no less tainted than that of Ms. Deslauriers. She too remained silent, only raising the impropriety when the appointment process results were not in her favour. In addition, the others who overheard what occurred on December 4, 2007 failed to report this improper conduct to the appropriate authorities.

85 Furthermore, Mr. Walbourne, Mr. Retson and Ms. Cable all knew, albeit after the fact, that Mr. Villon had revealed assessment information to a successful candidate. It appears that none of them understood the degree to which that behaviour violates the values in the PSEA.

Decision

86 For all these reasons, the complaint is substantiated.

Order

87 The Tribunal orders that the deputy head revoke the appointment of Guylaine Deslauriers within 60 days of the date of this order.

Merri Beattie
Member

Parties of Record

Tribunal File	2008-0036
Style of Cause	<i>Nora Martin and the Deputy Minister of National Defence</i>
Hearing	February 3 – 6, 2009 Ottawa, Ontario
Date of Reasons	November 9, 2010
APPEARANCES:	
For the complainant	Louis Bisson
For the respondent	Martin Desmeules
For the Public Service Commission	Marie-Josée Montreuil