



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

**File:** 2008-0782/2009-0623  
**Issued at:** Ottawa, October 17, 2011

**JOSÉE BRUNET**

Complainant

AND

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

Respondent

AND

**OTHER PARTIES**

<b>Matter</b>	Complaint of abuse of authority pursuant to section 77(1) (a) of the <i>Public Service Employment Act</i>
<b>Decision</b>	The complaint is dismissed
<b>Decision rendered by</b>	Lynette Babin-MacKay, Member
<b>Language of Decision</b>	French
<b>Indexed</b>	<i>Brunet v. Commissioner of the Royal Canadian Mounted Police</i>
<b>Neutral Citation</b>	2011 PSST 0030

# Reasons for Decision

## Introduction

1 The complainant, Josée Brunet, is an operational and administrative services assistant with the Royal Canadian Mounted Police (RCMP), in Montréal, Québec. She participated in an advertised internal appointment process for a System Analyst (AS-01) position with the RCMP's Informatics Field Services. The advertisement stipulated that the immediate need was to staff the position on a term basis. The advertisement also indicated that the pool might be used to staff the same position on an indeterminate basis and might also be used to staff similar positions for indeterminate, term or acting appointments. Ms. Brunet's application was rejected because she failed to show, in her written exam, that she met all the essential qualifications.

2 On December 5, 2008, she filed a complaint with the Public Service Staffing Tribunal (the Tribunal) pursuant to s. 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12 and 13 (the PSEA) with regard to Medgine Jean's initial acting appointment from November 24, 2008, to March 31, 2009. The respondent extended this acting appointment on a number of occasions, including from September 30, 2009 to October 30, 2009. On October 9, 2009, the complainant filed a complaint against this new acting appointment on the same ground.

3 On November 9, 2009, the respondent published a *Notification of Appointment or Proposal of Appointment* for Ms. Jean's indeterminate appointment. The complaint period closing date was November 24, 2009. The complainant did not file her complaint with regard to this appointment until May 7, 2010.

4 Pursuant to section 10 of the *Public Service Staffing Tribunal Regulations* (SOR/2006-6), as amended by SOR/2011-116 (the *PSST Regulations*), a complaint must be received by the Tribunal no later than 15 days after the date specified in the notification of appointment or proposal of appointment. Section 5 of the *PSST Regulations* allows the Tribunal to extend this period in the interest of fairness. In its letter decision dated May 21, 2010, the Tribunal dismissed the complaint dated May 7, 2010, because the complainant failed to provide any reason or

exceptional circumstances that would explain her delay in filing her complaint. Therefore, only the complaints relating to the two above-mentioned acting appointments will be considered by the Tribunal.

**5** The complainant alleges that the respondent deliberately failed her by two points on the written exam. Moreover, she argues that Ms. Jean provided incorrect information in her résumé about her experience. Therefore, she alleges that Ms. Jean does not have the essential six months of experience using the Police Reporting and Occurrence System (PROS) or significant knowledge of this system and the related policies, and that it was because of personal favouritism that the respondent determined otherwise. Finally, she argues that the respondent was not transparent and failed to respect the PSEA's objectives and principles.

**6** The respondent, the Commissioner of the RCMP, denies any abuse of authority. It indicates that, in this case, the Tribunal's jurisdiction is limited to determining whether the complainant showed that she was not appointed because of an abuse of authority in the assessment of her knowledge. Moreover, the respondent argues that the complainant failed to show that there was an abuse of authority and personal favouritism.

**7** The Public Service Commission (the PSC) did not attend the entire hearing. However, in its written submissions, the PSC reviews the concepts of abuse of authority and personal favouritism, and discusses the requirements set out in the PSC's *Appointment Policy* and the importance of the appointment values.

## **Issues**

**8** The Tribunal must answer the following questions:

- (i) Did the respondent abuse its authority when it determined that the complainant did not meet the essential qualification of "General knowledge of Police Information Retrieval System (PIRS) and Operational Statistics Reporting System (OSR)"?

- (ii) Did the respondent abuse its authority and demonstrate personal favouritism when it determined that the appointee had the required experience for the position?
- (iii) Did the respondent contravene the PSEA and the PSC's *Appointment Policy*?

### **Background and Relevant Evidence**

**9** On June 17, 2008, the respondent published a *Job Opportunity Advertisement* (the advertisement) for the position at issue. Twelve candidates applied for the position, including the complainant and Ms. Jean, the individual who was eventually appointed.

**10** The advertisement indicated that candidates had to clearly demonstrate on their application that they met the following education and experience criteria:

A secondary school diploma or employer-approved alternatives

A minimum of a 6 months experience using Police Reporting Occurrence System (PROS).

Experience in using a computer and softwares, including word processing, spreadsheets, databases and electronic mail programs.

**11** Constable Sylvain Pillenière, the manager responsible for the process, and Carole Perrault, a human resources and staffing advisor, made up the assessment board (the board). Constable Pillenière has been with the RCMP since 1980 and has been with Informatics Field Services, in Montreal, since around 2004. He was very involved in the development and implementation of the PROS user training program when that computer program was created. Ms. Perrault has over 25 years of service with the RCMP and has handled over 50 appointment processes of all kinds over her career. She passed the PSC test on the PSEA.

**12** Constable Pillenière and Ms. Perrault developed the appointment process, established the merit criteria and prepared the assessment tools. It was Constable Pillenière who established the experience requirements, including the minimum of six months of experience using PROS. These six months did not have

to be consecutive and could have been cumulative. The experience could have been gained through conducting searches or entering data in PROS.

## **Analysis**

**13** The complainant filed a complaint alleging abuse of authority pursuant to s. 77(1) (a) of the PSEA. The PSEA does not define “abuse of authority”, but s. 2(4) explains that it includes “bad faith and personal favouritism.”

**14** As the Tribunal has confirmed in many decisions, the onus is on the complainant to prove, on a balance of probabilities, that the appointment process was tainted by an abuse of authority (*Tibbs v. Deputy Minister of National Defence*, 2006 PSST 0008, at paras. 49 and 55).

**15** In its arguments, the respondent submits that, in this case, the Tribunal’s jurisdiction is limited to determining whether the complainant demonstrated that she had not been appointed because of an abuse of authority in the assessment of her knowledge.

**16** Section 77(1)(a) of the PSEA states that a person in the area of recourse of an advertised internal appointment may make a complaint to the Tribunal that he or she was not appointed or proposed for appointment by reason of an abuse of authority. Therefore, the Tribunal has jurisdiction to examine all the evidence related to allegations of abuse of authority or personal favouritism.

**Issue I: Did the respondent abuse its authority when it determined that the complainant did not meet the essential qualification of “General knowledge of the Police Information Retrieval System (PIRS) and the Operational Statistics Reporting System (OSR)”?**

**17** The complainant alleges that the respondent deliberately failed her by two points on a question on the written exam in order to give Ms. Jean the advantage.

**18** The respondent had established the merit criteria of “General knowledge of Police Information Retrieval System (PIRS) and Operational Statistics Reporting

System (OSR)” and decided that this qualification would be assessed in the written exam.

**19** The complainant and Ms. Jean were invited to participate in a written exam held on September 4, 2008. The exam, developed by Constable Pillenière, assessed certain abilities and personal suitability, as well as the following knowledge:

Significant knowledge of the Police Reporting Occurrence System (PROS).

General knowledge of the Police Information Retrieval System (PIRS) and of the Operational Statistics Reporting System (OSR).

**20** The pass mark for each knowledge element was 50%.

**21** Constable Pillenière explained that the PROS knowledge questions were taken from the PROS user certification exams. Candidates who wanted to prepare could contact him, and the complainant did.

**22** Ms. Perrault and Constable Pillenière assessed the written exam results using the correction guide. However, the complainant failed to obtain the pass mark for general knowledge of the PIRS and OSR. She failed the exam by two points and, consequently, did not qualify. Ms. Perrault and Constable Pillenière reviewed the complainant’s exam a second time to ensure that no errors were made in their correction. The results remained the same. The complainant was therefore informed that she would no longer be considered. The assessment continued and only Ms. Jean was found to be qualified.

**23** At the informal discussion, the board showed the complainant the exam’s questions and answers, explained her results, and reviewed her exam with her. The complainant agreed that she was missing two points to pass the exam. In her testimony, she indicated: “I can accept the fact that I’m short two points” [translation].

**24** The complainant did not provide any document or testimony in support of her allegation and, consequently, failed to show how the respondent abused its authority in its assessment. Therefore, the Tribunal finds that this allegation is not substantiated.

**Issue II: Did the respondent abuse its authority and demonstrate personal favouritism when it determined that the appointee had the required experience for the position?**

**25** The complainant alleges that the respondent abused its authority and demonstrated personal favouritism because it verified Ms. Jean's experience after the written exam, rather than at the screening phase. The complainant also alleges that Ms. Jean did not have the required PROS experience, or significant knowledge of this system and the related policies. She argues that it was because of personal favouritism that Ms. Jean was found to be qualified.

**26** The onus is on the complainant to prove that Ms. Jean was appointed because of personal favouritism, based on factors other than merit (see *Carlson-Needham and Borden v. Deputy Minister of National Defence*, 2007 PSST 0038, at paras. 52 and 54).

**27** At the informal discussion, the complainant informed the board that she had proof that Ms. Jean did not have the required PROS experience. She based her statements on three things:

(a) a comment that Ms. Jean made to her at the written exam;

(b) the results of a check that she performed in PROS;

(c) a comment by Ms. Jean during a staff telephone conference in December 2008.

**28** According to Ms. Perrault, it was after hearing the complainant's allegation regarding Ms. Jean's experience that she called in Ms. Jean and informed her of the allegation. Ms. Jean confirmed to Ms. Perrault that she did indeed have PROS experience. Ms. Perrault asked her to provide a written explanation of her experience and asked Ms. Jean's supervisor, Sergeant André Moisan, to confirm this experience. Ms. Jean provided the written explanation by email on September 23, 2008. Sergeant Moisan verified her experience and confirmed it in an email dated September 23, 2008, which was submitted into evidence. Sergeant Moisan was unable to testify.

**29** Ms. Perrault sent all this information to Constable Pillenière and to Sergeant Patrice Dallaire, manager of Informatics Field Services and delegated manager for the process. The two of them confirmed to Ms. Perrault that Ms. Jean met the essential experience criterion in question. Constable Pillenière corroborated Ms. Perrault's testimony and stated that Ms. Jean's résumé and explanations showed that she had the required experience. He commented on various points in Ms. Jean's résumé and indicated which elements confirmed her experience.

**30** The complainant states that, just before the written exam was to begin, she had a brief exchange with Ms. Jean in which she asked Ms. Jean whether she worked in PROS, whether she accessed the system and whether she opened files in it. She says that Ms. Jean told her that she had been trained in 2005, but that she had "never entered the system" [translation]. According to the complainant, one acquires PROS experience by working in it every day. She stated that accessing the system for consultation and research purposes was not the same thing as "working in the system" [translation].

**31** When questioned about this incident, Ms. Jean stated that the complainant told her that she was already "opening" [translation] incidents for the investigator in her sector. The complainant asked her if she had ever "opened incidents" [translation] in PROS and Ms. Jean told her that she had not. Ms. Jean explained that opening an incident involved opening a window, clicking on a button and entering a file number. In her sector, this was done by the investigators. Opening a file was not the same thing as accessing the system. Without a file number, information cannot be entered or saved in a file.

**32** At the informal discussion, the complainant submitted to the board the results of the search that she had conducted in Protected B PROS on September 18, 2008, in order to show that Ms. Jean never "entered" [translation] PROS. She stated that her search did not show any incident entries by Ms. Jean before that date. According to the complainant, this proves that Ms. Jean did not make any entries in PROS before the written exam on September 4, 2008.



**33** Michelle St-Laurent testified for the complainant. She has been a system analyst with the RCMP since 2007. She gives training on this information management system, deals with quality control and responds to user questions. She gave examples of the type of information that can be found in each column of a PROS report. When questioned about the complainant's search report from September 18, 2008, Ms. St-Laurent stated that it should have indicated the incidents on which Ms. Jean had worked. According to Ms. St-Laurent, the fact that the report is blank shows that Ms. Jean did not enter any data in PROS on or before September 18, 2008.

**34** Ms. St-Laurent then noted that the report did not specifically indicate that Ms. Jean had not performed any actions in PROS since being given access to the system. She explained that RCMP policy requires that a user link to an incident when the user enters data in PROS. In addition, users are required to identify themselves by using a category such as "other support staff" [translation]. She confirmed that PROS does not generate a line in a report when a user has simply searched for information without linking to a file.

**35** Ms. Jean again stated that she had never "opened any incidents" [translation] in PROS and that a simple consultation in the system would not appear in the report that had been submitted. Ms. Jean acknowledged that users are supposed to show that they accessed the system. She stated that, before October 2009, many users did not do this and she probably did not always do it either.

**36** Constable Pillenière explained that the document submitted by the complainant was not evidence of anything because it was from Protected B PROS and not Restricted PROS. There are two types of PROS: Protected B PROS, which all administrative assistants (AAs) across the country can use, and Restricted PROS, a system that was used exclusively by the RCMP's Integrated National Security Enforcement Team (INSET) until 2008. This restricted sector deals with investigations involving national security. The two PROS use the same database, but only those who have access to Restricted PROS can consult the particular data entered in that system. Constable Pillenière explained that Ms. Jean worked at INSET before being appointed

to the position at issue. This is why the complainant's report indicates no access by Ms. Jean for the period covered by the search.

**37** Constable Pillenière confirmed that, when an AA accesses PROS occurrence files, the AA must sign in and select the classification "other support staff" [translation]. Constable Pillenière noted that it is possible to access PROS without signing in, which, as a result, leaves no record. Unrecorded access can be detected at the programming level, but he did not conduct a computer audit for this allegation. He explained that PROS browsing, as was performed by the complainant to produce the report, is not allowed and only a supervisor has the right to conduct such searches.

**38** At the informal discussion, the complainant also indicated that, during a conference call held by Informatics Field Services, Central Region, on December 3, 2008, someone had heard Ms. Jean admit that she had no experience using PROS. The complainant was not at the meeting. At the hearing, she revealed that Ms. St-Laurent was there and she was the one who had heard Ms. Jean make that statement.

**39** Constable Pillenière, Ms. Jean and other employees also participated in the conference call. Ms. St-Laurent explained that, during the meeting, an employee stated that the AAs did not have all the computer knowledge required to work in PROS. According to Ms. St-Laurent, Ms. Jean intervened at that moment, supporting that comment and adding that she herself had not had the chance to work in PROS after receiving her access authorizations.

**40** Ms. Jean argues that that statement did not make sense and she could not understand why she would say that she had never worked in PROS. When the meeting was held, she was an information manager (IM) and had just arrived in the section. She submits that she had stated at the meeting that: "It seems that many IMs lack the support of their supervisor" [translation]. She was sure that she did not say anything else, except for introducing herself to the whole team. She explained that, before the meeting, she told Ms. St-Laurent that it was the first time that she was taking minutes at a meeting.

**41** Constable Pillenière stated that Ms. Jean did not say that she had never worked in PROS. He stated that, rather, Ms. Jean said that she had never taken minutes. He explained that she had been tasked with preparing the meeting minutes and that it was a job that everyone had to do in turn.

**42** Ms. Jean described her PROS experience in detail. She has been a system analyst (AS-01) since November 24, 2008. From March 21, 2005, until her appointment to the position at issue in November 2008, she was an operational AA (CR-O4) at INSET, where she entered data, conducted searches, performed updates, corrected investigators' reports and made modifications in a number of systems, such as PIRS, PROS and CPIC. At INSET, she used Restricted PROS exclusively.

**43** The Tribunal has heard different versions of the comments allegedly made by Ms. Jean at the written exam and at the December 2008 meeting. The Tribunal has reviewed Ms. Jean's testimony regarding the experience that she acquired at INSET. She gave abundant details on her work there. Ms. Jean's supervisor, Sergeant Moisan, also confirmed that Ms. Jean had the required experience. Ms. Jean stated that she worked with the Restricted PROS and this was confirmed by Constable Pillenière.

**44** The evidence shows that it is unlikely that Ms. Jean stated that she had never "entered the system" [translation] or worked in PROS since her training on that system. It seems that the complainant and Ms. St-Laurent gave different interpretations of Ms. Jean's comments, and that the complainant drew her own conclusions about what Ms. Jean did or did not do in PROS.

**45** The complainant also alleged that, at the informal discussion, Constable Pillenière stated that, "in any case, the same person is still going to get the position" [translation]. She stated that this shows personal favouritism on his part. Constable Pillenière was not called to testify on this issue. It would have been useful to hear his version to verify whether he had made this comment and, if necessary, what he had meant by it. Regardless, the Tribunal finds that this particular allegation was not proven.

**46** The Tribunal finds that the complainant failed to show that the respondent demonstrated personal favouritism when it determined that Ms. Jean had the required experience for the position. This experience was confirmed by Sergeant Moisan and accepted by Constable Pillenière and Sergeant Dallaire following statements by the complainant at the informal discussion.

**Issue III: Did the respondent violate the PSEA and the PSC's *Appointment Policy*?**

**47** The complainant alleges that Ms. Perrault assessed the candidates without Constable Pillenière and that the latter's role was limited to providing material for the written exam and signing documents for the process.

**48** The evidence shows that Constable Pillenière and Ms. Perrault developed the appointment process and prepared the assessment tools. Constable Pillenière established the experience criteria and Ms. Perrault screened the candidates on the basis of this criteria by reviewing the candidates' job applications and résumés. She then gave a summary of the results to Constable Pillenière. These two board members then corrected the written exam together. Therefore, the complainant failed to show that Ms. Perrault assessed the candidates on her own.

**49** The complainant also argues that the board demonstrated a lack of transparency and integrity because it relied on Ms. Jean's résumé and did not verify it the same way that it verified hers. She stated that the board demonstrated personal favouritism towards Ms. Jean because it accepted the information that she provided in her résumé while the complainant had to provide additional information within two days. She submits that this showed that she was treated differently than Ms. Jean. According to the complainant, Ms. Jean should have also been asked to provide additional information.

**50** Section 30(2) of the PSEA sets out that it is the responsibility of the deputy head (DH) to establish the essential qualifications for the work to be completed. Section 36 of the PSEA provides that the DH may use any assessment method that it considers appropriate to determine whether a person meets

the qualifications referred to in s. 30(2). In many decisions, the Tribunal has ruled that its role is to determine whether there was an abuse of authority in the appointment process and not to reevaluate the candidates (see *Broughton v. Deputy Minister of Public Works and Government Services Canada*, 2007 PSST 0020).

**51** It was Constable Pillenière, as the manager responsible for the process, who established and defined the essential qualification of PROS experience. Ms. Perrault used this definition to screen candidates. She reviewed the résumés to determine whether the candidates met the essential education and experience qualifications. She then gave a summary of the results to Constable Pillenière.

**52** The advertisement informed candidates that they had to clearly demonstrate on their application that they met all the essential criteria. Ms. Perrault explained that Ms. Jean's résumé was sufficiently complete. It clearly indicated that, since March 2005, she had been conducting searches and entering data in organizational databases, which she had listed and which included PROS. In addition, Ms. Perrault explained why the complainant's résumé lacked details and why she asked her to provide supporting examples.

**53** The preamble to the PSEA indicates that the public service is "characterized by . . . transparent employment practices . . .". The PSC's *Appointment Policy* explains that "the PSC guiding values . . . will guide managerial decision-making in the appointment process." Transparency is a guiding value.

**54** The evidence shows that the complainant's résumé was not clear and was missing information about the type of work that she performed with PROS. The board asked her to provide specific examples of her experience within two days. This short time frame was set so that the appointment process was not delayed. Ms. Perrault was satisfied that Ms. Jean's résumé showed that she had the required experience. Therefore, it was not necessary to investigate her experience further.

**55** It was after being informed of the complainant's allegations at the informal discussion that the board decided to verify whether Ms. Jean had the required experience. The evidence shows that Ms. Jean provided the information requested

about her experience, and this information was corroborated by her supervisor, Sergeant Moisan; by Constable Pillenière; and by Sergeant Dallaire, the delegated manager. All of them confirmed that Ms. Jean had the required experience.

**56** The complainant failed to show how the board had lacked transparency or integrity in proceeding as it had. The Tribunal finds that Ms. Perrault exercised her discretion, as a member of the assessment board, when she asked the complainant for more information in support of her application. The board was not obligated to do so, but this request for additional information was beneficial for the complainant because she was able to meet this experience criterion and, as a result, advance to the written exam. In addition, it was reasonable that the complainant had to provide this information within two days to avoid unduly delaying the process.

**57** Finally, the complainant alleges that, contrary to PSEA objectives and principles, Constable Pillenière has little or no staffing knowledge.

**58** The PSEA does not list any requirements with regard to the composition of an assessment board. The evidence shows that Constable Pillenière has vast PROS knowledge and experience and that Ms. Perrault is very familiar with the PSEA. The complainant failed to show that the board was unable to carry out its duties.

**59** The complainant wanted to question the respondent's witnesses about a PSC report titled *Audit of the Royal Canadian Mounted Police – appointments under the Public Service Employment Act*. The respondent and the PSC objected to all questions about this report, arguing that it was not relevant.

**60** After a review at the hearing, the Tribunal found that this report covers a period that precedes the appointment process at issue and that its authors could not be questioned about its content. The Tribunal therefore found that this report was not relevant in this case.

**61** The Tribunal finds that the complainant failed to show that the respondent violated the PSEA and the PSC's *Appointment Policy*.

## Decision

**62** In light of the above, the Tribunal finds that the complainant has failed to demonstrate that the respondent abused its authority in determining that the complainant was not qualified for the position. The Tribunal also finds that she has failed to prove that the respondent demonstrated personal favouritism in determining that Ms. Jean had the required experience, or that the respondent violated the PSEA and the PSC's *Appointment Policy*.

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

Lurette Babin-MacKay  
Member

## Parties of Record

<b>Tribunal File</b>	2008-0782 and 2009-0623
<b>Style of Cause</b>	<i>Josée Brunet and the Commissioner of the Royal Canadian Mounted Police</i>
<b>Hearing</b>	May 26, 27 and 28, 2010, and November 3, 4 and 5, 2010 Montreal, Quebec Final written arguments received on January 20, 2011
<b>Date of Reasons</b>	October 17, 2011
<b>Appearances</b>	
<b>For the complainant</b>	Jean-Yves Lebel
<b>For the respondent</b>	Martin Charron
<b>For the Public Service Commission</b>	Lili Ste-Marie