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*Federal Public Sector Labour
Relations and Employment
Board Act and Federal Public
Sector Labour Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

IAN WATCHMAN AND DEBRA STEAD

Grievors

and

**TREASURY BOARD
(Department of Veterans Affairs)**

Employer

Indexed as

Watchman v. Treasury Board (Department of Veterans Affairs)

In the matter of individual grievances referred to adjudication

Before: David Olsen, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievors: Nicolas Brunette-D'Souza, labour relations advisor, Association of
Canadian Financial Officers

For the Employer: Karl Chems, counsel

Heard at Charlottetown, Prince Edward Island,
February 2 and 3 and September 13 to 15, 2017.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] The two grievances were heard together as they arose from the same general fact situation. However, each one turns on its own facts and involves disparate questions concerning the interpretation of the relevant collective agreement and the National Joint Council's (NJC) *Work Force Adjustment Directive* ("the directive"). Therefore, each grievance is considered separately.

[2] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the former Public Service Labour Relations Board (PSLRB) as well as the former Public Service Staffing Tribunal (PSST). On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40; *EAP2*) also came into force (SI/2014-84). Pursuant to s. 393 of the *EAP2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) before November 1, 2014, is to be taken up and continued under and in conformity with the *PSLRA* as it is amended by ss. 365 to 470 of the *EAP2*.

[3] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the PSLREB and the titles of the *PSLREBA* and the *PSLRA* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* ("the Act").

[4] On October 24, 2013, Ian Watchman grieved the decision of the Treasury Board ("the employer") to deny his alternation request on the basis that it contravened (1) article 51 of the agreement between the Treasury Board and the bargaining agent, the Association of Canadian Financial Officers ("the collective agreement"); (2) Parts I, IV, and VI of the directive; and (3) any other policy, directive, guideline, law, practice, or document that may apply.

[5] As corrective action, he requested that his alternation request be approved, that he be permitted to benefit from all the rights, benefits, and recourses of the directive, and that he be compensated for all financial losses and any expenses that he has

incurred or will incur.

[6] The employer's reply at the first level of the grievance process, dated March 3, 2014, reads in part as follows:

Part I and IV of the NJC WFA Directive relate to surplus, laid off and affected employees. As you did/ do not fall into any of these categories, this section of the Directive did/does not apply to you.

Part VI of the Directive relates to the requirement of all departments or organizations to participate in the alternation process and would apply to you as an alternate employee. By assessing three opting employees for a potential alternation into your position, the Finance Division did participate in the alternation process.

... Your representative further contended that the National Joint Council (NJC) Work Force Adjustment (WFA) Directive was not applied appropriately, that the Statement of Merit was not indicative of the work being performed and that the opting employees were unfairly assessed.

It is the hiring manager's responsibility to identify the merit criteria (education, experience, knowledge, abilities etc.) required for the position based on current and future needs of the organization and to ensure that the opting employee meets all these requirements upon appointment.

As per Part VI, Section 6.2 of the Directive on Alternation, the opting employee moving into the unaffected position must meet all requirements for appointment to the position. It is the hiring manager who makes the final decision as to what constitutes a "match". Furthermore, alternation is not a "right" of an employee; it is a tool used to manage the workforce. Part IV of the NJC WFA Directive states that departments shall make every reasonable effort to retrain affected, surplus and laid-off employees. The retraining provision does not apply to opting employees nor does it apply to Alternation.

[7] The grievance was referred to the second level of the grievance process and was heard on April 16, 2014. The employer's reply, dated May 1, 2014, incorporated parts of the first-level reply and added the following:

As you indicated at your presentation, a generic work description is currently being used to describe your former position, as well as the positions into which you requested to alternate. However, the positions are not identical. In fact, your former FI-04 position has a higher overall rating than the other two referenced positions, thereby rendering

it unique.

Furthermore, the skills and requirements of a position are identified for any staffing action through a Statement of Merit Criteria. In the case of Finance Officer (FI) positions, effective April 1, 2013, delegated managers are mandated to use Treasury Board's FI competencies when determining the requirements of their positions in order to promote the staffing values of transparency, fairness and access. These competencies were used in the creation of the FI-04 Statement of Merit Criteria.

Finally, as requested, a secondary review of the Statement of Merit Criteria was conducted, and confirmed that the manager acted reasonably in determining both the skills and requirements for the position....

[8] The grievance was referred to the NJC for a hearing. Its Executive Committee met on December 8, 2014, and considered the grievance with respect to the directive. In its decision dated January 6, 2015, the NJC stated as follows:

...

The Executive Committee considered the report of the Work Force Adjustment Committee and noted the impasse. The Executive Committee considered the information and circumstances in this grievance and agreed that, as the grievor was not an affected employee, he was not entitled to the provisions of the Work force Adjustment Directive. As such, the grievance is denied.

...

[9] The grievance was referred to adjudication before the PSLREB on January 26, 2015.

[10] On November 6, 2013, Debra Stead grieved the employer's decision to deny her alternation request on the basis that it contravened (1) among others, article 51 of the collective agreement; (2) among other parts, Parts I, IV, and VI of the directive; and (3) any other policy, directive, guideline, law, practice, or document that may apply.

[11] As corrective action, she requested (a) that her alternation request be approved, (b) that it be executed immediately, (c) that she be provided with salary protection at the FI-04 group and level, (d) that she be permitted to benefit from all the rights, benefits, and recourses of the directive that she has been and would be deprived of, (e) that she be compensated for all financial losses and expenses that she incurred and would incur, and (f) any other corrective action that would make her whole.

[12] The employer's decision at the first level of the grievance process, dated January 13, 2014, and denying the grievance, states in part as follows:

Part I and IV of the NJC WFA Directive relate to surplus, laid off and affected employees. As you were an opting employee, this section of the Directive does not apply to you.

Part VI of the Directive relates to the requirement of all departments or organizations to participate in the alternation process and would apply to you as an opting employee. By assessing you for the potential alternation with Mr. Watchman, the Finance Division did participate in the alternation process.

During the hearing on December 5, 2013, you further contended that the National Joint Council (NJC) Work Force Adjustment (WFA) Directive was not applied appropriately, that the Statement of Merit was not indicative of the work being performed by the present incumbent and that you were unfairly assessed.

It is the hiring manager's responsibility to identify the merit criteria (education, experience, knowledge, abilities etc.) required for the position based on current and future needs of the organization and to ensure that the opting employee meets all these requirements upon appointment.

As per Part VI, Section 6.2 of the Directive on Alternation, the opting employee moving into the unaffected position must meet all requirements for appointment to the position. It is the hiring manager who makes the final decision as to what constitutes a "match". Furthermore, alternation is not a "right" of an employee; it is a tool used to manage the workforce. Part IV of the NJC WFA Directive states that departments shall make every reasonable effort to retain affected, surplus and laid-off employees. The retraining provision does not apply to opting employees nor does it apply to Alternation.

Based on my review of this information, I am satisfied that the manager acted reasonably and applied the Agreement between Treasury Board and The Association of Canadian Financial Officers and the National Joint Council Work Force Adjustment Directive appropriately.

[13] The grievance was referred to and was heard at the second level. The reply denying it is dated February 27, 2014, and states in part as follows:

Part VI of the National Joint Council (NJC) Workforce [sic] Adjustment Directive (WFAD), specifically article 6.2.4 & 6.2.6, state that management decides whether a proposed alternation will result in retaining the skills required to meet

the ongoing needs of a position; and, that the opting employee, moving into the unaffected position, must meet the requirements for appointment to the position.

Both your former FI-04 position as well as the FI-04 you wished to alternate into moved to generic work descriptions effective February 1, 2011 and March 15, 2012 respectively. However, these positions are not identical as they have separate ratings under "Nature of Impact". The skills and requirements of a position are identified for any staffing action through a Statement of Merit. In the case of Finance Officers (FI) positions, effective April 1, 2013, delegated managers are mandated to use Treasury Board's FI competencies when determining the requirements of their positions in order to promote the staffing values of transparency, fairness and access. These competencies were used in the creation of the FI-04 Statement of Merit.

After careful review and analysis of the information presented by you and your union representative, as well as the Statement of Merit and management's assessment of you against it, I am satisfied that the manager acted reasonably in both determining the skills and requirements for the position as well as assessing your candidacy against them.

[14] The grievance was referred to the NJC for a hearing. Its Executive Committee met on December 8, 2014, and considered the grievance with respect to the directive. By letter decision dated January 6, 2015, the NJC stated in part as follows:

The Executive Committee considered the report of the Work Force Adjustment Committee and noted the impasse. The Executive Committee considered the information and circumstances in this grievance and agreed that the grievor had been treated within the intent of the Directive as she had been assessed for a possible alternation into the position but did not meet the essential requirements of the position. As such, the grievance is denied.

[15] The bargaining agent referred the grievance to adjudication on February 10, 2015.

[16] The bargaining agent called four witnesses: Mr. Watchman, Claude Matheson, Alex Robert, and Ms. Stead.

[17] The employer called two witnesses: Wendy McKinnon and Christina Hutchins.

II. Background

[18] These grievances arose in the context of Veterans Affairs Canada's decision to lay off three of its FI-04s in its Finance Division in Charlottetown, P.E.I., in June 2013, *Federal Public Sector Labour Relations and Employment Board Act* and *Federal Public Sector Labour Relations Act*

as part of its deficit reduction plans. Mr. Matheson, Mr. Robert, and Ms. Stead were affected.

[19] The directive provides that an employee affected by a workforce adjustment (WFA) can switch (alternate) positions with another employee unaffected by the adjustment who wishes to leave the public service of his or her own volition.

[20] Before 2013 and over a 10-year period, Mr. Matheson held positions as a director and a manager in financial policy that were classified FI-04. In June 2013, due to a WFA, he was advised that his position was no longer required. He sought an alternation to continue his public service career, as provided in the directive.

[21] Before June 2013, Mr. Robert had been in a manager, financial processes and renewal, position classified FI-04. In June 2013, due to the WFA, he was advised that his position was no longer required. He also sought an alternation.

[22] Ms. Stead was the manager of accounting and monitoring, which was one of the three positions eliminated. In September 2013, she also sought an alternation.

[23] At the time, Mr. Watchman was one of two unaffected FI-04s in the Finance Division. He held the director, financial control and chief financial officer (CFO) attestation, position. He expressed an interest in alternating with any one of his three affected colleagues. He put his name forward as being willing to leave the public service, according to the alternation rules.

[24] To further his alternation application, Mr. Matheson obtained a statement of the qualifications for Mr. Watchman's position. He prepared a résumé that set out how he met those qualifications. He listed as references Ms. McKinnon and André Joannette, the previous director general.

[25] Ms. McKinnon, who was the acting director general, finance, prepared the Statement of Merit Criteria and assessed his application, with input from Mr. Joannette. It was not approved. He was found to have met the education, experience, security, and official language proficiency qualifications. However, the assessment concluded that he did not demonstrate the required functional competencies in financial policy at a director level in a sustained fashion.

[26] Mr. Matheson believed that he had done the bulk of the job and that he had done it well; however, he decided not to pursue the issue or file a grievance because he

did not want to upset Ms. McKinnon. He wanted to pursue another alternation opportunity and needed to stay on good terms with her as he needed her to provide a reference for him. He eventually alternated to another position in Charlottetown at the same salary level.

[27] After receiving official notice in June 2013 that his FI-04 position was being eliminated, Mr. Robert spoke with Mr. Watchman about alternating with him. He applied to exchange positions with Mr. Watchman by emailing Human Resources and Ms. McKinnon. He was provided with the same Statement of Merit that had been provided to Mr. Matheson, which Ms. McKinnon had prepared. She also completed the assessment of his alternation application, with input from Mr. Joannette. He thought he was qualified. However, his application was turned down.

[28] Ms. McKinnon advised him verbally that his alternation request was denied. She advised him that he did not meet the job requirements. The assessment states that he met the education requirements and most of those for experience but that he did not meet the one for recent and significant experience planning, directing, and delivering financial management activities at the corporate level. Although he had managed a finance function for approximately two years, the experience criteria required three years' experience. The assessment also stated that he did not meet the financial policy and financial systems functional competencies.

[29] He contested the assessment by writing to the bargaining agent and to the director general of human resources at Veterans Affairs Canada. A few weeks later, he met with that Director General, who reassured him that the matter could be resolved and that arrangements could be made to find him a different position. He was transferred to a deputy office that required his skills in an AS-07 position. His salary was maintained at the FI-04 group and level.

[30] He did not grieve management's denial of his application to alternate with Mr. Watchman.

[31] As noted, in June 2013, Ms. Stead was advised that her position was surplus. She was given 120 days to decide whether to leave Veterans Affairs Canada ("the department") or to seek another position. She was not certain of what to do. Mr. Matheson did not have enough years of service to retire, and Mr. Robert was considerably younger. In her view, both needed a job more than she did, given her age and years of service. They were going to seek alternation with Mr. Watchman.

[32] She did not originally apply for an alternation, but once their applications were denied, she decided to apply as she did not wish to end her employment. She was provided with the Statement of Merit Criteria that Ms. McKinnon had prepared. She completed the necessary forms and sent her request to Ms. McKinnon.

[33] Ms. McKinnon advised her that Ms. Hutchins, the new acting director general for the Finance Division, would consider her request.

[34] Ms. Hutchins sought input from Ms. Stead's former supervisors, Ms. McKinnon, Mr. Joannette, and Ms. Glenn-MacIsaac.

[35] In early October, Ms. Stead met with Ms. Hutchins. She was advised that she could not alternate. She met the education, experience, behavioural, and financial systems competencies. However, she was assessed as not meeting the financial policy competency. Ms. Hutchins advised her that as of the result of the input she had received, Ms. Stead had never represented the department on a policy issue with central agencies.

[36] On October 15, 2013, Ms. Stead was offered a position involving an alternation to the EC-06 level with remuneration of approximately \$15 000 less per year than she was making as an FI-04.

[37] On November 6, 2013, she grieved the employer's decision to deny her alternation request.

[38] Mr. Watchman had expressed an interest in alternating initially with Mr. Robert and Mr. Matheson. He took several weeks of vacation, and when he returned to work, he received an email advising him that Mr. Robert's and Mr. Matheson's requests to alternate with him had been denied.

[39] Ms. Stead's subsequent alternation application was also denied. The personal impact on Mr. Watchman was that if a co-worker was laid off and that person could alternate with him, he could leave the public service early and could receive compensation. He was also concerned by how his colleagues were being treated. They were screened out of alternating for his position via the financial systems and financial policy competencies. He filed his grievance on October 24, 2013.

[40] As noted, two grievances were referred to adjudication. They are independent of each other.

[41] Mr. Watchman grieved the employer's decision to deny his alternation. Its position was that although he was allowed to grieve, he was not an affected employee within the meaning of the directive. He was allowed only to express an interest to leave the public service, which was his only entitlement or right. The Board has to determine whether he had any rights under the directive that were affected. I propose to deal first with his grievance.

III. Summary of the evidence for Mr. Watchman's grievance

A. For Mr. Watchman

[42] Mr. Watchman retired from the public service at the end of December 2013.

[43] He had been the director of monitoring and quality assurance for approximately one year. He had then been the manager of CFO attestation, for approximately two months, which was a new position created to develop a business process for a new function.

[44] Up to 2009, he had held the chief, internal control, position for approximately 10 years. In 2010, he went to a position in audit evaluation. During that period, his position was abolished. The control part of the position was allocated to the director general of finance. Mr. Matheson became responsible for that function. Mr. Watchman was assigned a financial officer position and other tasks, such as CFO attestation.

[45] In 2012, the then director general, finance, Mr. Joannette, decided to establish centres of excellence. He assigned Mr. Watchman to financial control as well as CFO attestation. Staff were reassigned and now reported to him, including Mr. Matheson, who was responsible for policy, internal control, and quality assurance.

[46] In 2013, the "Deficit Reduction Action Plan" (DRAP) was being implemented at Veterans Affairs Canada. A number of employees reporting to Mr. Watchman were laid off. Their work was transferred to an external accounting firm.

[47] Mr. Watchman was interested in alternating. He had discussions to that effect with Mr. Robert and Mr. Matheson. He took six or seven weeks of vacation. When he returned, he found that he had received an email advising him that Mr. Robert's and Mr. Matheson's requests to alternate with him had been denied. Ms. Stead then sought to alternate with him. Then, her application to alternate with him was denied.

[48] He was asked about the personal impact on him of not being able to alternate.

He stated that he had been coming up on 30 years of service in December 2013. He was considering retiring in the spring of 2014. He was not certain what he would do.

[49] The bargaining agent was in negotiations, the results of which could have affected his pension. If a co-worker was laid off who could have alternated with him, he could have left early and been compensated with a year's salary of \$110 000.

1. Cross-examination

[50] Mr. Watchman confirmed that he grieved the employer's decision to deny his alternation request. He meant that management did not follow the WFA process.

[51] He agreed that he was not an affected employee as his position was not declared surplus. It was suggested to him that only an affected employee could request alternation.

[52] He was referred to the directive and in particular to section 6.2, which deals with alternation. That section provides that an alternation occurs when an opting employee who wishes to remain in the core public administration exchanges positions with an unaffected employee (the alternate) who is willing to leave under the terms of Part VI. It was suggested to Mr. Watchman that he was not the opting employee and that he was not affected.

[53] He was referred to section 6.2.3, which states that only an opting employee, not a surplus employee, may alternate into an indeterminate position, and to section 6.2.4, which provides that an indeterminate employee wishing to leave the core public administration may express an interest in alternating with an opting employee. In addition, management will decide whether a proposed alternation will result in retaining the skills required to meet the ongoing needs of the position and of the core public administration.

[54] It was suggested to him that he had expressed an interest in alternating and that he had not been an opting employee.

[55] He stated that he was willing to leave but that he had not decided to retire. He agreed that his position was not declared surplus. He also agreed that if other employees had not requested to alternate with his position, then he would not have been affected. However, had someone alternated with him, he would have been entitled potentially to \$110 000.

[56] It was suggested to him that the employer did not owe him anything and that his situation depended on those of others. He agreed. He was not happy about the situation because of how his colleagues had been treated.

[57] It was suggested to him that he was fighting on behalf of Ms. Stead because how she had been assessed had affected his potential gain of \$110 000.

[58] He was asked if he agreed that his coworkers had found other positions. He replied that they did find jobs but at reduced salaries. He was advised that Mr. Robert testified that he was happy with his career.

[59] It was suggested to him that he had concluded that Mr. Robert's career had been destroyed. He replied that Mr. Robert could no longer pursue a financial officer career.

[60] He acknowledged that no grievance was filed with respect to the process followed for Mr. Matheson and Mr. Robert; nor did he file a grievance with respect to how the WFA policy had been applied. He was not aware of whether any other employee had filed a grievance challenging the WFA process. He also acknowledged that his grievance did not challenge the WFA process or the decisions about the positions declared surplus and who was laid off.

2. Re-examination

[61] Mr. Watchman was referred to the WFA policy and in particular its section 6.2.4, which provides that an indeterminate employee wishing to leave the core public administration "may express an interest" in alternating with an opting employee.

[62] He was asked what he thought he was entitled to. He replied that those affected were entitled to a fair process. He did not believe it was a fair process because the competency profile used for the alternation did not reflect the duties of the position.

[63] Given that, neither Mr. Matheson nor Mr. Robert grieved as the Director of Human Resources had gone out of his way to take care of them; Mr. Watchman stated that he was there on behalf of Ms. Stead.

B. For the bargaining agent

[64] Mr. Watchman was a public servant. The basis of his grievance was that he had the right to express an interest in alternating. If the employer denied the alternations improperly, it barred him from exercising his right to express an interest. The

employer must use its discretion reasonably.

[65] Mr. Watchman stated that Mr. Matheson and Ms. Stead had the skills to perform the duties of his position. The alternation should have occurred. The department saved \$110 000, the one year of salary that Mr. Watchman would have received. His grievance should be allowed.

C. For the employer

[66] Mr. Watchman grieved the decision to deny his alternation request and alleged that it violated article 51 of the collective agreement as well as Parts I, IV, and VI of the directive.

[67] Part VI of the directive deals generally with options for affected employees. Section 6.2 deals with alternation. Section 6.2.2 provides that an alternation occurs when an opting employee who wishes to remain in the core public administration exchanges positions with a non-affected employee (the alternate) willing to leave. Section 6.2.3 provides that only an opting employee may alternate into an indeterminate position.

[68] Section 6.2.4 provides that an indeterminate employee wishing to leave the core public administration may express an interest in alternating with an opting employee. It also provides that management will decide whether a proposed alternation will result in retaining skills required to meet the ongoing needs of the position and of the core public administration.

[69] The opting employee is entitled to alternation if he or she meets the requirements.

[70] The alternate has no say except to express an interest and has no entitlement to alternate. He or she may grieve; however, there is nothing to adjudicate.

[71] Mr. Watchman grieved on behalf of other opting employees, whose alternation applications were denied. He is attempting to achieve indirectly what he cannot do directly. Mr. Matheson and Mr. Robert did not grieve. Mr. Watchman did so on their behalf.

[72] The grievance should be dismissed. Mr. Watchman may have an interest in a general sense; however, he does not have an interest in a legal sense. He was not assessed or evaluated. There is no decision to be made. His grievance does not allege

that he was denied an opportunity to express an interest.

[73] The bargaining agent's argument is a stretch; it argued that he was denied an opportunity to express an interest because the employer prejudged the decision to deny alternations. There is a premise that it was prejudged.

[74] There is an analogy with the staffing process under the provisions of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; PSEA). In *Evans v. Deputy Minister of Indian Affairs and Northern Development*, 2007 PSST 4, the Public Service Staffing Tribunal (the PSST) determined that a complainant's right to file a complaint under the PSEA was subject to the preliminary condition that the complainant must have a personal interest in the appointment at issue. The PSST stated at paragraph 15 as follows:

[15] More importantly, there is absolutely nothing in the complaint which would indicate any expressed personal interest in an appointment to the CR-04 position. On the contrary, the complainant writes in her complaint: "... this CR4 position should have been open to others to try for. (T)here were others who have not got an indeterminate and others who are currently CR3's who may have the liked the chance to try for this job." There is no indication anywhere in the complaint that she wanted, and was denied, an opportunity to be appointed to the CR-04 position.

[75] By analogy, Mr. Watchman has no standing to have his grievance adjudicated. In *Doraiswamy v. Deputy Minister of Transport, Infrastructure and Communities*, 2011 PSST 35, the PSST dismissed the complaint on the basis that the complainant had no personal interest in the non-advertised appointment that was the subject of the complaint. The complainant had no interest in being appointed to the position but was concerned that the appointment had not been correctly carried out.

[76] Similarly, in *Silke v. Deputy Minister of National Defence*, 2010 PSST 9, the PSST dismissed the complaint on the basis that the complainants had not demonstrated a personal interest and so did not have standing in the complaint. The PSST stated at paragraph 68 as follows:

[68] The words "a complaint to the Tribunal that he or she was not appointed or proposed for appointment" clearly stipulate that a complaint must be personal to the complainant. The complaint cannot be filed on another person's behalf and cannot be about how other unsuccessful candidates were treated. Therefore the complainant must have a personal interest in an appointment to the position....

[77] Mr. Watchman had no standing to have his grievance adjudicated, and it should be dismissed.

[78] Mr. Watchman's grievance and allegations occupied a large part of the hearing. When affected employees' alternation applications were not approved, he became frustrated. He stood to lose \$110 000, which motivated his anger about the outcome and played a significant role in Ms. Stead's grievance and bad-faith allegations.

D. Bargaining agent's reply

[79] The PSST's decisions that the employer raised are not relevant. They are about people without any personal interest in the issues. Mr. Watchman had an interest. It is incorrect to say that he had no role. He was entitled to express an interest in alternation.

[80] In this case, the collective agreement is not clear. He was entitled to grieve. The Board has jurisdiction to determine whether he was aggrieved. He did not express an interest for anyone else. He did not write expressly on the grievance form that he was denied an opportunity to express an interest; however, all the parties knew of his interest in the grievance. He grieved the directive, including section 6.2.4, which specifies the right to express an interest.

E. Analysis

[81] Clause 51.01 of the collective agreement provides in part that agreements concluded by the NJC form part of it. The directive applies to represented employees of the core public administration and is deemed part of the collective agreement. The directive was effective December 1, 2010.

[82] Under the title "Grievance Procedure", the directive states in part as follows:

Notwithstanding any other provisions on presenting grievances under the NJC grievance procedure, an affected, surplus or laid off employee, or one who has received a notice of termination, who feels aggrieved by a department's or organization's decision in applying or interpreting this Directive in respect of his or her situation may grieve directly to the departmental liaison officer of the department or organization that made that decision.

[Emphasis added]

[83] Under the title "Definitions", the terms "affected employee", "surplus

employee”, and “laid-off person” are defined as follows:

***Affected employee** ... is an indeterminate employee who has been informed in writing that his or her services may no longer be required because of a work force adjustment situation.*

***Surplus employee** ... is an indeterminate employee who has been formally declared surplus, in writing, by his or her deputy head.*

***Laid-off person** ... is a person who has been laid off pursuant to subsection 64(1) of the Public Service Employment Act (PSEA) and who still retains an appointment priority under subsection 41(4) and section 64 of the PSEA.*

[Emphasis in the original]

[84] The term “alternation” is defined as follows:

***Alternation** ... occurs when an opting employee (not a surplus employee) who wishes to remain in the core public administration exchanges positions with a non-affected employee (the alternate) willing to leave the core public administration with a Transition Support Measure or with an Education Allowance.*

[Emphasis in the original]

[85] The term “opting employee” is defined as follows:

***Opting employee** ... is an indeterminate employee whose services will no longer be required because of a work force adjustment situation and who has not received a guarantee of a reasonable job offer from the deputy head and who has 120 days to consider the options of section 6.3 of this Directive.*

[Emphasis in the original]

[86] Part VI of the directive sets out options for affected employees.

[87] Section 6.2 deals with alternation. It states in part as follows:

6.2.1 All departments or organizations must participate in the alternation process.

6.2.2 An alternation occurs when an opting employee who wishes to remain in the core public administration exchanges positions with a non-affected employee (the alternate) willing to leave the core public administration under the terms of Part VI of this Directive.

6.2.4 An indeterminate employee wishing to leave the core public administration may express an interest in alternating with an opting employee. Management will decide, however, whether a proposed alternation will result in retaining the skills required to meet the ongoing needs of the position and the core public administration.

6.2.6 The opting employee moving into the unaffected position must meet the requirements for appointment to the position; for greater clarity, that appointment is subject to all Public Service Commission requirements for the appointment or deployment of an affected employee from his or her surplus position into a unaffected position; this includes language requirements and the determination of applicable equivalencies for staffing purposes. The alternate moving into the opting position must meet the requirements of the position, except if the alternate will not be performing the duties of the position and the alternate will be struck off strength within five days of the alternation.

[Emphasis added]

[88] In *Public Service Alliance of Canada v. Treasury Board of Canada*, 2013 PSLRB 37 at para. 2 (“PSAC v. TB”), the PSLRB stated as follows:

[2] While greater detail on alternation will be given later in this decision, it would perhaps be helpful at this stage to give a brief general explanation of alternation. The Workforce Adjustment Appendix and the Workforce Adjustment Agreement ... establish certain procedures the employer must follow, in every workforce adjustment situation, to maximize employment opportunities for employees affected and reduce the impact of workforce adjustment on individual employees. One of the possibilities provided in the WFAA is alternation, a process by which an employee who has been identified for possible lay-off (“the opting employee”) agrees to change places with a similarly qualified employee who has not been so identified (“the alternate”). With this switching of positions, the two employees stand in each other’s shoes as regards continuity of employment and as regards measures to cushion the impact of the lay-off. The advantages of alternation to the two employees are obvious: the opting employee continues his or her career in the same way as if he or she had simply been transferred to another position, and the alternate receives a financial incentive for vacating the position....

[Emphasis added]

[89] At paragraph 19, the PSLRB determined that the WFA was an integral part of the pertinent collective agreements and that the dispute should be treated strictly as an issue of collective agreement interpretation.

[90] The fundamental object in construing a collective agreement is to discover the intention of the parties that agreed to it. That intention is to be gathered from the written agreement itself. When searching for the parties' intentions with respect to collective agreement provisions, arbitrators and adjudicators have generally assumed that the language before them should be viewed in its normal or ordinary sense, unless doing so would lead to some absurdity or inconsistency with the rest of the agreement. See *Canadian Labour Arbitration*, Brown and Beatty, chapter 4-2100.

[91] The facts with respect to this issue are not in dispute. Mr. Watchman's position was not declared surplus. He was not an affected employee; nor was he an opting employee. In the express terms of the grievance process, he was not affected, surplus, or laid off; nor had he received a termination notice. I conclude that the NJC Executive Committee's decision of January 6, 2015, was correct; it was that he was not an affected employee and that he was not entitled to benefit from the directive's provisions.

[92] In my view, the argument that he was denied an opportunity to express an interest in alternating because the employer prejudged the decision by creating a Statement of Merit designed to deny alternations does not confer jurisdiction on the Board to adjudicate this grievance, given the plain language in the NJC grievance process. In any event, for the reasons that follow, I have concluded that the employer did not act unreasonably or in bad faith in denying the three affected employees' alternation requests. Accordingly, Mr. Watchman's grievance is dismissed.

IV. Summary of the evidence for Ms. Stead's grievance - for Ms. Stead

A. Ms. Stead

[93] Ms. Stead is a certified general accountant in good standing. She was employed by PricewaterhouseCoopers for four years. She was employed by the Canada Revenue Agency as a business auditor for eight years, after which she joined Veterans Affairs Canada as a financial systems analyst classified FI-02. In 2000, she qualified for an FI-03 position and was placed in a pool for appointment.

[94] Subsequently, there were four FI-03 positions in the organization. Ms. McKinnon held the chief, corporate accounting, position; Mr. Matheson held the chief of policy position; Mr. Watchman held the chief of internal control position; and Ms. Stead held the chief of financial systems position.

[95] Financial systems included the department's accounting system, the legacy system, the salary management system, the procurement system, and a new free balance administrative trust account for veterans.

[96] The four FI-03 positions in the organizational chart reported to a financial planning and control position classified EX-01, which was vacant. In turn, that position reported to a director general of finance position classified EX-02.

[97] The department was required to introduce a new financial system for the entire department across Canada. Ms. Stead was asked to lead the initiative. She did so without involving external consultants. The new system came online on April 1, 2001.

[98] The federal government changed how it recorded financial information. Her responsibilities required that she spend considerable time in Ottawa, Ontario, working with the Treasury Board and the Department of Finance.

[99] She was also responsible for departmental security, and she was its representative on the free balance cluster group. Every department had to participate in a cluster group in which decisions were made to enhance systems.

[100] She was involved in networking, which meant contacting other departments to streamline issues and develop enhancements for the systems for which the cluster group was responsible. She represented the management and ADM groups. During those seven months, she implemented a completely new system, together with new training manuals.

[101] In 2003, her position and those of Ms. McKinnon, Mr. Watchman, and Mr. Matheson were reclassified FI-04. She continued to hold the title of chief, financial systems. Her employment remained relatively stable until 2010.

[102] In or about 2010, she was asked to take over responsibility for financial services. Her title was manager of corporate financial accounting and monitoring, and her position was classified FI-04. She had about 30 to 40 people reporting to her. The position had responsibility for procurement, accounting services, relocation, travel, and program payments. The unit was undergoing a significant reclassification. She carried out that responsibility until Mr. Robert arrived in or about 2012, at which time she resumed her previous position.

[103] Management decided to staff the vacant EX-01 position. Ms. McKinnon applied

and was appointed to it. Mr. Watchman left the division, on assignment.

[104] In or about 2011, the Finance Division retained the services of a retired public servant with human resources expertise to conduct an organizational review and present options to management.

[105] Ms. Stead and Mr. Matheson were advised that as managers, they were qualified for any FI-04 position in the Finance Division. The organization was being downsized and streamlined, and the number of FI-04 positions was being cut from four to two. They ended up with new duties.

[106] The financial systems function was transferred from the Finance Division to Information Technology. A number of staff who had reported to Ms. Stead went with the systems.

[107] Ms. Stead was assigned the duties of the chief of corporate accounting, which had been Ms. McKinnon's responsibility, as well as financial monitoring. Mr. Matheson was assigned everything else, i.e., policy work and internal control. Both received generic job descriptions, to facilitate reassigning their responsibilities.

[108] The DRAP had come into play. Ms. McKinnon was the director general at the time. They were told that if they accepted the positions, their jobs would be safe. Mr. Matheson and Ms. Stead bought in. They were both still classified FI-04.

[109] Ms. Stead performed these duties for approximately a year-and-a-half. She believed that she had performed them without any difficulty. Nothing in her performance appraisals reflected a weakness in any area.

[110] In or about 2012, she was approached about taking on an assignment in another division involving SAP and other federal government systems. She was very interested, as those systems were her passion. Ms. McKinnon advised her that she could not take the assignment.

[111] A number of months went by, and Ms. McKinnon accepted a transition position.

[112] Ms. Stead ended up reporting to Mr. Joannette again. The Director General of the other division, who had wanted Ms. Stead to take the assignment, asked Mr. Joannette if she could take it. He agreed.

[113] Mr. Joannette advised Ms. McKinnon that she would have to lend assistance to

*Federal Public Sector Labour Relations and Employment Board Act and
Federal Public Sector Labour Relations Act*

corporate accounting if required. Ms. Stead stated that Ms. McKinnon was not happy about that.

[114] In the assignment, Ms. Stead's main role was to investigate SAP and the feasibility of implementing it at Veterans Affairs Canada. She worked closely with SAP's office in Ottawa. She invited representatives of that office to come to Charlottetown and talk with senior management. She performed a needs assessment. She met with the Comptroller General of Canada in Ottawa to discuss timelines.

[115] On June 20, 2013, when she arrived at work, people were at her desk. They asked her if she had received a letter from Ms. McKinnon. She went to Ms. McKinnon's office. Ms. McKinnon gave her a letter and advised her that her position had been declared surplus.

[116] She and Ms. McKinnon had worked together for over 30 years.

[117] She was given 120 days to decide whether to leave the department or to seek another position. She was not certain what to do.

[118] Mr. Matheson did not have enough years of service to retire, and Mr. Robert was considerably younger. In her view, both needed a job more than she did, given her age and years of service. They were going to seek alternation with Mr. Watchman.

[119] Ms. Stead did not originally apply to alternate. Once their applications were denied, she decided to apply as she did not want to end her employment. She filled out the forms in early September and sent her request to Ms. McKinnon, who was the acting director general. Ms. Stead emailed her and asked her when she would likely receive an answer.

[120] Ms. McKinnon answered. She advised that Ms. Hutchins would be the acting director general and would consider her request. Ms. Hutchins had just recently joined the department.

[121] She did not hear anything. In late September, she wrote to Ms. Hutchins. Ms. Hutchins replied, advising that she had conducted an initial review of Ms. Stead's submission and that she would meet with her to ensure a consistent approach with the other employees who had applied for alternation. In early October, she was given an appointment with Ms. Hutchins, during which she was advised that she could not alternate.

[122] Ms. Stead was referred to the Statement of Merit that was used to deny her the opportunity to alternate. She met the education, experience, behavioural, and financial systems competencies. However, she was assessed as not meeting the financial policy competency. The bottomline of the assessment was that she had never represented the department on a policy issue with central agencies. The financial policy competency contains the following criteria:

- *Resolves broad, complex issues involving legislation, policies, procedures and/or standards*
- *Demonstrates in-depth understanding of the most complex and less familiar aspects of legislation, and/or policies etc.*
- *Ensures departmental policy instruments reflect effective comptrollership, stewardship, risk management strategies and controls*
- *Acts as departmental liaison with central agencies on matters of policy interpretation and implementation*
- *Develop communication strategy for the implementation of policies, directives and guidelines*
- *Analysing and advising senior management on departmental implications of new or revised central agency policy*

[Sic throughout]

[123] The assessment reads as follows:

Not Met

From three reference checks conducted, two did not observe these competencies in the roles and tasks performed under their supervision. The other interview concluded that the work observed did not require any departmental liaison with central agencies on matters of policy interpretation and implementation. Example - involvement in interdepartmental liaison such as FreeBalance Cluster was seen to be more focussed on financial systems and lacked the breadth and complexity of understanding the most complex and less familiar aspects of legislation, and/or policies. Other areas not specifically observed at the FI04 competency level were the development of communication strategy for implementation of policies, directives and guidelines as well as analyzing and advising senior management on departmental implications of new or revised central agency policy. Work performed on preparation of DFS and PA under Corporate Accounting was recognized but given limited

duration of this role, breadth and depth of resolving complex issues involving legislation, policies, procedures and/or standards was deemed not evident. No evidence of specific experience demonstrated in the cover letter or CV to support the depth and breadth expected for this competency. Position is responsible for implementation of the Policy on Internal Controls based on risk-management, new CFO Attestation requirements under enhanced Expenditure Management Systems with further expansion of requirements expanded in the future.

[124] Ms. McKinnon wrote the Statement of Merit Criteria and provided information to Ms. Hutchins for her assessment. Ms. Stead thought that the process was not transparent and that it was unfair.

[125] Ms. Stead knew the ratings. She did not provide references. Although she had reported to Mr. Joannette, he had never prepared a performance appraisal for her. She had never received any feedback that she did not have the skills for the role. She had never met Ms. Hutchins before her post assessment interview. In the audit job, she had to use that skill set.

[126] She met with someone she had known in Audit and Evaluation and advised that person as to what had transpired. Shortly after that, she was invited to meet with the director general of audit, together with two directors. She provided them with her résumé. She was invited to undergo a written assessment and was offered a position involving an alternation on October 15, 2013. It was at the EC-06 group and level and was at a salary level of approximately \$15 000 less than she made as an FI-04.

[127] She was quite surprised when she was advised that she did not have the skills for Mr. Watchman's position.

[128] The new job is quite different from her previous positions. However, management appears very happy with her work.

[129] Ms. Stead was referred to her résumé and in particular to her duties while she was the manager of corporate financial accounting and monitoring in 2011 and 2012. The duties reflect that she developed processes for monitoring the application of financial policies and practices. Ms. Stead explained that the financial policies were provided under the Treasury Board's direction and included financial systems, accounting policy, and general policy in corporate accounting.

[130] At the end of every month, salary accruals were reported to the Receiver

General. The payroll was almost the same every week. She also monitored human resources. These policies were developed internally.

[131] When she was in the chief, financial systems, position, she was responsible for ensuring that financial systems upgrades were implemented properly into the system.

[132] She had to report quarterly with respect to compliance with the policy on travel and hospitality.

[133] The manager, corporate financial accounting, position to which she was deployed in 2011 had been Ms. McKinnon's position before she was appointed to the EX-01 position.

[134] Ms. Stead had a generic FI-04 work description. She stated that Ms. McKinnon had written it. It was the same as that of the positions held by Mr. Watchman and Mr. Matheson. The first paragraph of the key activities of the position reads as follows:

Directing the delivery of one or more major Departmental financial activity, such as financial resource management, financial policy and training, corporate accounting, financial attestations, or internal control, including establishing strategic vision, objectives, plans, presenting and defending these to Departmental executives, managing human and financial resources allocations and establishing and promulgating Departmental policy within the assigned activity portfolio.

[135] The organization chart of April 1, 2012, shows the director general position being occupied by Mr. Joannette; Ms. McKinnon's position as the director, finance transformation, classified EX-01; Ms. Stead's position as the manager, corporate finance accounting and monitoring, FI-04; Mr. Matheson's position as the manager, financial policy and controls, FI-04; Mr. Robert's position as the director, financial services, FI-04; and Mr. Watchman's position as the special advisor, FI-04. They all are shown as reporting directly to Mr. Joannette.

[136] Ms. Stead stated that Mr. Joannette spent most of his time in Ottawa. The rest of the managers had been there for approximately 30 years and depended on each other without day-to-day management.

[137] When the jobs were cut, no "SERLO" process (selection for retention or lay-off) was used because the department did not have to use one. Had one been used, those whose jobs were identified as surplus could have volunteered to leave

the organization.

[138] Ms. Stead referred to her performance appraisals for 2010 to 2013. They were all very complimentary.

[139] Since she was not allowed to alternate and her salary was not “red circled”, Ms. Stead calculates that after four years, she is out some \$65 000 in salary. In addition, she had been planning to retire on a pension calculated on earnings at the FI-04 level.

[140] She found being laid off very difficult psychologically and mentally. It was difficult to tell her family that she had been fired.

1. Cross-examination

[141] Ms. Stead did not dispute the WFA process, which did not mean she thought it was fair. In 2011, when the DRAP came in and the consultant was hired, staff had been told that they would not be affected. She was surprised, but the department had the right to do it. The process was not challenged.

[142] It was proposed to her that she had not been fired but laid off. She stated that they are the same thing. She also confirmed that she did not file a grievance with respect to a termination.

[143] She acknowledged that being subject to the WFA policy meant that alternation had not been her only option. She agreed that the other option was priority status, had she been able to find a job. She agreed that she applied for alternation. The Finance Division offered her no other option.

[144] She stated that Human Resources had promoted an employee to an FI-03 position two weeks before the surplus letters were delivered. She acknowledged that the appointment could have been made to provide salary protection to the employee. She stated that workforce planning had been poor. A long-term contractor had performed work that could have been done by an employee. The contract was supposed to have ended.

[145] She stated that she was not optimistic about finding other employment. She had no appetite to find another job.

[146] It was suggested to her that Ms. McKinnon was not involved in the decision as to

who was laid off. She stated that Ms. McKinnon was the acting director general at the time. As far as she was concerned, Ms. McKinnon was involved in the decision. Ms. McKinnon would have been at the table when the decision was made.

[147] Ms. Stead acknowledged that she had had priority options as she could have been declared surplus. However, she decided to seek an alternation with Mr. Watchman. She was given the opportunity to provide information and the Statement of Merit Criteria for Mr. Watchman's position. In her view, it did not match his job. She was of the view that Ms. McKinnon had made up the Statement of Merit based on the applications she would receive.

[148] Ms. Stead was referred to the Statement of Merit Criteria. She acknowledged that when she applied to alternate with Mr. Watchman, she had referred to the statement to demonstrate that she met the criteria.

[149] She provided an application and a résumé. She was referred to her résumé, which states that her then-current position was as a financial systems officer. She was asked why she was put on this assignment.

[150] She stated that she had been an FI-04 from 2003 to 2011. The Finance Division had undergone a reorganization, after which, in 2011, she became the FI-04 manager, corporate financial accounting and monitoring. She had been given a job description and had been asked to deploy into the position.

[151] In 2012, she was asked to go to SAP on assignment. She was asked whether the position she was in was classified FI-03 but compensated at an FI-04 salary. She replied that it was not, that she had not deployed to the position, and that she was still in her FI-04 position. She did not know the classification of the SAP position. It was suggested to her that it could have been FI-03. She replied that it was not discussed at the time. The branch wanted her.

[152] Ms. Stead was advised that the directive provides that the opting employee must meet the requirements of the position to which the employee seeks to alternate. She agreed that she must have the skills for a position.

[153] She was referred to the document that she had prepared to indicate her competencies and how she met the requirements of the position.

[154] She was referred to the assessment, which states that she did not meet the

financial policy competency. She was asked to indicate in her document the sources for the information she had provided with respect to that competency. Under the title “Financial Policy” in the functional competencies section, her application reads as follows:

As Chief, Financial Systems was responsible for the development of policies, procedures and documentation of financial applications and their ongoing monitoring. Ensured staff at the Departmental Accounting Offices had working knowledge of new/revised practices/procedures for financial systems. In my roles as Manager, Corporate Financial Accounting & Monitoring and as the A/Director, Financial Services Directorate, I was responsible for the development, implementation and monitoring of financial policies and practices.

Prior to the implementation of new central agency financial policy, the financial policy unit would circulate and /or establish a small working group with the Chiefs of the other units in corporate finance.

This work included:

- resolving issues involving legislation, policies, procedures and/or standards*
- obtaining an in-depth understanding of complex policies etc.*
- ensuring departmental policy incorporated effective comptrollership, stewardship, and controls*
- developing communication strategy for the implementation of policies, directives and guidelines*
- analyzing and advising senior management on departmental implications of new or revised central agency policy*

In my role acting as Manager, Corporate Financial Accounting & Monitoring and Chief, Financial Systems, I would liaise with central agencies including being a member of interdepartmental working groups on matters of policy interpretation and implementation.

[155] Ms. Stead referred to her job description for the manager, corporate accounting and monitoring, position. She stated that she had been deployed to it. She took information from the job description and reproduced it in the alternation application.

[156] She was asked whether she had provided examples of how she met this

competency. She replied that she had been assessed against criteria and had been deployed to that job.

[157] It was proposed to her that she had to demonstrate how she met the competency criteria. She replied that she was never interviewed and that Ms. McKinnon had told her in private that she would not allow her to alternate. Ms. Hutchins had never met her.

[158] She acknowledged that there were no examples in the document.

[159] She acknowledged that in October 2013, she applied to alternate into a position in the Audit and Evaluation Division. She was asked whether she had had to provide examples of how she met the position's essential qualifications. She replied that that had come after she was denied the opportunity to alternate into Mr. Watchman's job.

[160] She was asked if she provided any other documents on how she met the qualifications for Mr. Watchman's job. She stated that she was never given the opportunity and that after working with someone for 25 years, that person will know your skills.

[161] She was asked whether she counted on the fact that management knew her. She replied that she had assumed as much.

[162] She stated that Mr. Watchman would not have qualified for his position based on the Statement of Merit prepared for the alternation.

[163] She was asked whether she was aware of the talent management document. An objection was raised to the reference to the document on the basis that it was dated after the events in issue. Ms. Stead did not believe that she had ever seen an earlier version of it.

[164] She was asked whether she had raised issues about the Statement of Merit Criteria with Ms. McKinnon. She stated that Ms. McKinnon never gave her an opportunity to meet with her. She then stated that she could not recall. She was asked whether she had expressed concerns about that statement when she met with Ms. Hutchins. She replied that she had not. She was asked whether the other witnesses disagreed with that statement. She stated that they all discussed the fact that it was not tailored for Mr. Watchman's job.

[165] She was asked whether Ms. Hutchins had assessed her. She replied that Ms. Hutchins had delivered the result to her. She did not think that Ms. Hutchins assessed her because Ms. Hutchins did not know her. Ms. Stead was asked whether she had counted on the assessor knowing her. She replied that she had not done so; she believed that the assessment was based on an interview with Ms. McKinnon. She acknowledged that the assessment was also based on the input of two other supervisors.

[166] She acknowledged that had an outside consultant been retained to carry out the assessment, then that person would not have known the candidates.

[167] Although she did not meet the financial policy competency, she did meet it as it related to experience, i.e., significant experience in developing, implementing, and monitoring financial policies and/or practices. Assessment meets (focus on FIN systems).

[168] Ms. Stead stated that if she was qualified for the manager, corporate finance accounting and monitoring, position, then she was qualified for the financial policy competency in the Statement of Merit.

[169] She was asked where in the manager, corporate financial accounting and monitoring, job description was there was a reference to financial policy. She replied that the Statement of Merit Criteria, under “experience”, states “[e]xperience in the provision of interpretation and analysis of financial authorities, central agency policies, regulations, directives and practices related to government financial management.”

[170] She acknowledged that she met that experience criteria in the assessment prepared by Ms. Hutchins.

[171] She confirmed that although she applied to alternate with Mr. Watchman in September 2013, she had been presented with the possibility to alternate with him considerably earlier than that. She stated that the reason she did not was that she had to decide on her own what she wanted to do.

[172] She confirmed that she had declined to alternate with Mr. Watchman. An email dated July 10, 2013, was sent to her asking if she was interested in alternating. She responded that she thought she would pass on the opportunity.

2. Re-examination

[173] Mr. Stead stated that in 2000, she had applied for the chief of finance position and that she had qualified at-level.

[174] She stated that she had not been asked to provide examples of her competencies. When she later applied for another position, she was told what was required, was interviewed, and was asked questions. She expected that she would receive the same treatment from the division in which she had worked for 25 years.

[175] Her job description dealt with financial policy, and in her view, any logical person would assume that she had experience in policy and systems, yet the assessment states that it was not observed or assessed and therefore was not a met criterion.

[176] She was referred to the work description for the manager, corporate financial accounting and monitoring, position, and was asked where it mentioned functional competencies. She said that it did not. It addresses policy experience. She had never seen functional competencies being used except in the Statement of Merit for Mr. Watchman's position. The job descriptions for Mr. Watchman, Mr. Matheson, and her position dated March 15, 2012, do not mention functional competencies.

[177] She thought that she had the skills for Mr. Watchman's job. She could not tell counsel why she said she thought she would pass on it when she was offered the opportunity to alternate in July 2013.

B. Mr. Watchman

[178] In 2013, the DRAP was implemented. A number of employees reported to Mr. Watchman; all were laid off. Their work was transferred to an external accounting firm.

[179] At a meeting with the Deputy Minister, the staff was advised that the department would accommodate employees who wanted to stay and that it would find work for them. The focus was not on buying out employees. The ADM's Corporate Services and Human Resources were given scripts to follow, which had the same message.

[180] Mr. Joannette, the director general, finance, retired in January 2013. The director general, information technology, took over his position. Donna McDonald became the acting director general, finance, and was in that position when the DRAP

crystallized. Lay-off plans were submitted to the ADM of corporate services.

[181] When letters announcing lay-offs were distributed, Ms. McKinnon was the acting director general, finance. Mr. Watchman reported to her.

[182] At the end of June 2013, at a weekly meeting, he told Ms. McKinnon that Mr. Robert and Mr. Matheson were interested in his position. She purportedly said, "There is no way in hell either one is getting your position. As far as she was concerned neither one could do his job."

[183] Mr. Watchman sent a message to the bargaining agent. Neither Mr. Robert nor Mr. Matheson had applied for his position at that time.

[184] When he returned from holidays, he learned that Mr. Robert's and Mr. Matheson's alternation applications had been denied. Ms. McKinnon was still the acting director general. He stated that she laughed when he met with her to discuss the fact that neither of his coworkers would be able to alternate with him. He stated that he then "lost it". He emailed the Director General, Human Resources, to advise him of this development.

[185] In March 2013, the Office of the Comptroller General had prepared a proficiency profile for FI planning. Criteria had been developed for his position.

[186] Ms. McKinnon prepared a Statement of Merit for the purpose of assessing the alternation requests that in Mr. Watchman's view did not reflect the duties of his position. Ms. McKinnon should have known what his job entailed. It involved accounting operations and financial policy, not financial systems. That function had been transferred out the year before.

[187] The Statement of Merit for his position under the title "functional competencies" lists both financial policy and financial systems. Mr. Watchman stated that he did not perform financial systems duties. With respect to financial policy, he stated that he did not personally meet the skill levels of this behavioural competency. With respect to policy, he would go to the Treasury Board, and if it related to accounting, he went to Ms. Stead, as he had no policy experience. In his opinion, 90% of the job involved accounting operations and 10%, financial policy.

[188] He met with the Director General, Human Resources, to discuss the issue of the denial of alternation requests. The Director General advised him that his hands were

tied and that Mr. Watchman had to take it up with the bargaining agent.

[189] In September 2013, Ms. Hutchins was appointed the new acting director, general finance. Mr. Watchman met with her to advise her that the Statement of Merit for his position did not reflect his job. However, she used the same tool to screen out Ms. Stead's alternation application.

[190] Mr. Watchman's opinion was that the Statement of Merit was developed to screen people out. He stated that he was the least qualified for the position, as he was not an accountant. He was not consulted. He did not know what criteria was being used until he returned from holidays. In his view, none of it made sense, and Mr. Matheson and Mr. Robert were qualified for the position.

[191] The skills for the position were mainly managerial. The functions were too wide to get into the weeds of each one. The position required overseeing, not doing, and liaising with central agencies.

[192] Mr. Robert carried out his policy job right up to October 2013.

[193] As of March 2013, the CFO attestation function was still being developed. The Treasury Board provided direction on how to implement the function, which involved new procedures. Mr. Watchman stated that he did not perform the function as he did not have the skills, so he brought in consultants to assist him.

[194] In his opinion, Ms. McKinnon carried out a vendetta. She was very professional when she dealt with colleagues one-on-one. She had worked with the group since 1999. She did not have a good word to say about her colleagues when she was the director general. They had all worked together for a long time. He considered her competent.

[195] Ms. Hutchins started with the division in September 2013. She had not observed him performing his duties. She was hired into a senior position to oversee a statistics function. The director general of finance position became vacant, and she was appointed on an acting basis. In Mr. Watchman's view, she was overwhelmed.

[196] Mr. Watchman referred to a number of examples that reflected his concerns with the alternation process.

[197] A vacant FI-03 position in corporate accounting was permanently staffed a few weeks before the three FI-04s were given lay-off notices.

[198] Ms. McKinnon and Ms. MacDonald offered his position to Sherry Spence, who was also an FI-04, weeks before the three FI-04s were given their lay-off notices. Ms. Spence's position had not been identified for lay-off. In Mr. Watchman's opinion, she was the least qualified for the job. She was comfortable in what she was doing. The process was not completed.

[199] The Treasury Board's directions required that the Statement of Merit was to state the level of proficiency sought for identified competencies and to include a copy of the FI-04 competency profile. This was not done, and the process was not transparent.

[200] A classification grievance had been filed in 2005 or 2006. The result was that the chief, financial systems; chief, internal control; chief, financial policy; and chief, corporate accounting positions were reclassified from FI-03 to FI-04. They all reported to an EX-01.

[201] When it became vacant, the chief, corporate accounting, position reported to an FI-04. The classification was changed to FI-03. After a subsequent reorganization, in which the position reported to an EX-02, it was reclassified FI-04. In Mr. Watchman's view, the FI-03 position should have been subject to the lay-off, not the FI-04 position, occupied by Ms. Stead.

[202] The bargaining agent sought to introduce Mr. Watchman's opinion evidence with respect to some of Ms. McKinnon's alleged conduct. After hearing the arguments, I ruled that I would not rely on his opinion as it was based on double hearsay.

[203] Mr. Watchman referred to the work description of his position as of the time of the alternation.

[204] Competency profiles were introduced in early 2013. The Office of the Comptroller General of Canada promoted their use in departments. They were used in creating a staffing pool for FI-01s. He worked with Ms. McKinnon in establishing that pool.

[205] He was concerned with how his colleagues were being treated by the way the applicants for his position were being screened out by the financial systems competency. Not once in 30 years had he done anything with financial systems. They had been transferred to Information Technology in 2012. In his view, the competency was added to the assessment only to screen people out, not to retain the required

skill levels.

1. Cross-examination

[206] Mr. Watchman was referred to his email to the Director General, Human Resources, of August 23, 2013, in which he referred to being called into Ms. McKinnon's office and to her allegedly laughing and gloating over destroying two of his co-workers' careers by ensuring that neither would be able to alternate with him.

[207] He was asked if he agreed that his coworkers had found other positions. He replied that they did find jobs but at reduced salaries. He was advised that Mr. Robert testified that he was happy with his career.

[208] It was suggested to him that he had concluded that Mr. Robert's career had been destroyed. He replied that Mr. Robert could no longer pursue a financial officer career.

[209] He acknowledged that no grievance was filed with respect to the process followed for Mr. Matheson and Mr. Robert; nor did he file a grievance with respect to how the WFA policy had been applied. He was not aware of whether any other employee had filed a grievance challenging the WFA process. He also acknowledged that his grievance did not challenge the WFA process or the decisions about which positions were declared surplus and who was laid off.

[210] Mr. Watchman was asked whether he agreed that his position had evolved significantly. He replied that he had had many different positions. None were the same, but all were classified FI-04.

[211] He was asked about the CFO attestation position. He acknowledged it was a duty that had resulted from a Treasury Board policy imposed on all departments effective January 2014, after which it was to be an ongoing requirement of his position.

[212] He acknowledged that Ms. McKinnon did not have an obligation to consult with him when determining the Statement of Merit Criteria.

[213] He acknowledged that he did not say that Ms. McKinnon did not know his job. He stated that he hoped she did as she was in the finance transformation organization role. He was not certain if he could agree that she was aware of the CFO attestation policy. He had worked on it with Mr. Joannette. She would have known about the deliverables, but she had not been involved in the business process.

[214] He was referred to the Office of the Comptroller General of Canada's *Financial Officers' Competency Profile* and in particular to the chart relating to accounting operations. They are defined as designing, developing, and implementing systems, processes, and procedures that systematically record, report, analyze, and track financial transactions related to revenues and expenditures. The chart then describes the functional competencies in accounting operations at the FI-01 group and level through to FI-04.

[215] He was asked whether, in theory, Ms. McKinnon could have required competency at all four levels in the Statement of Merit for his position. He replied that she could not have done that and that it would have been based on the deliverables required.

[216] It was suggested to him that Ms. McKinnon could have used any of the tools to determine competency based on the position she wanted to fill.

[217] He was referred to the Statement of Merit for his position, which included financial policy and financial systems competencies. He stated that financial policy competency was required for his position. He stated that financial systems competency was not part of his job.

[218] He was advised that both Ms. McKinnon and Ms. Hutchins would testify that financial systems were part of the job.

[219] Mr. Watchman stated that the financial systems group had been transferred, that it reported to the Information Technology director, and that if Ms. McKinnon and Ms. Hutchins testified that financial systems were part of the job, they would not be telling the truth.

[220] He was referred to his testimony alleging that his position was offered to Ms. Spence just weeks before the lay-off notices were sent. It was suggested to him that the discussion occurred before decisions had been made about the WFA and the positions to make surplus.

[221] He acknowledged that the employer made no decision to appoint Ms. Spence to the position.

[222] He acknowledged meeting with Ms. Hutchins. He asked her to change the Statement of Merit requirements for his position. He told her that the statement's

requirements did not reflect his position. Had she agreed, she would have had to have used different criteria than the statement that was used for Mr. Matheson and Mr. Robert.

[223] In Mr. Watchman's opinion, Ms. Hutchins should have been in her position longer to be able to assess someone based on the competencies of his position. He was asked whether it would have been a problem had the employer hired an external consultant to determine if someone met the Statement of Merit Criteria. He answered that it would not have been a problem.

2. Re-examination

[224] Mr. Watchman was asked what he thought he was entitled to. He replied that those affected were entitled to a fair process. He did not believe it was fair because the competency profile use for the alternation did not reflect the competencies required for the position.

[225] Given that neither Mr. Matheson nor Mr. Robert grieved as the Director of Human Resources went out of his way to take care of them, he was there on behalf of Ms. Stead.

[226] He confirmed that Ms. McKinnon knew of his position. She had been tasked with setting up the organization for the entire Finance Division.

[227] He confirmed that his position did include the financial policy competency, but it did not include all the competencies listed under that one. He confirmed that the position did include competency in resolving broad, complex issues involving legislation, policies, procedures, and/or standards; in-depth understanding of the most complex and less familiar aspects of legislation, policies, etc.; and ensuring that departmental policy instruments reflect effective controllership, stewardship, and risk management strategies and controls.

[228] The listed competencies also include acting as a departmental liaison with central agencies on policy interpretation and implementation matters. Mr. Watchman stated that he never performed that function but that he could not speak to plans for the future.

[229] The next listed competency, developing a communication strategy for the implementation of policies and directives, was not part of his job.

[230] The last competency listed was that of analyzing and advising senior management on the departmental implications of new or revised central agency policies. He confirmed that that competency would have applied to his position.

C. Mr. Matheson

[231] Mr. Matheson retired from the public service in April 2016. At that point, he held the director, special projects, information and privacy position, which he had held since October 2013. He had obtained it through an alternation. Before October 2013, over a 10-year period, he held positions as a director and a manager in financial policy, classified FI-04. In June 2013, due to two WFAs, three FI-04 positions were no longer required, including his.

[232] Mr. Matheson needed two more years of service to retire and sought to alternate. He applied for Mr. Watchman's position. He stated that he had the skills and experience to perform its duties and that he had performed them for 11 months without a problem.

[233] In the past, he had had responsibility for financial policy as well as internal controls. He had not carried out quality assurance, as it was new to the division.

[234] When he prepared his application, he tried to gather as much information as he could from Mr. Watchman on the duties of his position. Mr. Watchman told him that it was a challenging role and that it involved interesting work.

[235] Mr. Matheson obtained a statement of the qualifications for the position. He prepared a résumé and set out how he met the qualifications.

[236] Ms. McKinnon assessed his application. Although he met with her about some issues, she did not meet with him with respect to his alternation application.

[237] His application was not approved. At an abbreviated meeting, he was told that his alternation would not take place. He believed that he had done the bulk of the job and that he had done it well. He did not pursue it because he did not want to upset Ms. McKinnon. He wanted to pursue another alternation opportunity and needed to stay on good terms with her as he needed her to provide a reference. Mr. Matheson had listed Ms. McKinnon and Mr. Joannette, the previous director general, as his references.

[238] He was referred to the assessment of his qualifications that Ms. McKinnon had prepared. He had not seen the employer's comments before the hearing.

[239] He was found to have met the education, experience, security, and official language proficiency qualifications. However, the assessment concluded that he had not demonstrated the required functional competencies in financial policy at the director level in a sustained fashion.

[240] In particular, it was noted that Mr. Matheson had been unable to quickly and efficiently develop the details of the new travel hospitality and conference directive into work tools.

[241] It was also noted that he did not demonstrate an in-depth understanding of legislation or policies, other than a few specific ones that he had been working with regularly for several years.

[242] And it was noted that when Mr. Matheson had supervised the controls unit in the directorate for which Ms. McKinnon was responsible at the time, he had told her that he was happy to leave the operational decisions to her as he was unfamiliar with the work and functions.

[243] With respect to the financial systems functional competency, it was observed that Mr. Matheson had been in charge of the financial policy and procedures manual for many years. It was very outdated, and even though he had been specifically directed to review and update some easy chapters, either no or few of them had been updated over three-and-a-half years.

[244] Mr. Matheson stated that problems had arisen when the new travel policy was implemented. However, his department was much more advanced than other departments in implementing such a policy. He stated that the problems had been attributable to the policy not being clearly outlined at the Treasury Board level. The implementation problems of other departments should not reflect on his performance.

[245] At the one-on-one meeting with his managers, Ms. McKinnon and Mr. Joannette, they never raised issues with respect to the implementation of the new travel policy. Nor were they raised in his final performance review. He found it surprising that they were raised at the assessment as he had a good working relationship with both managers.

[246] With respect to the observation that he was not able to demonstrate an understanding of legislation and policy, Mr. Matheson stated that his primary background was not in policy. He denied having told Ms. McKinnon that he had been

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happy to leave operational decisions to her when he supervised the controls unit. He stated that he let her explain why she had written it. He stated that he had suspicions but that they were not for the hearing and would not help him.

[247] With respect to the observation that he did not keep the financial policy and procedure manuals up to date, it was quite clear to him, Ms. McKinnon, and Mr. Joannette that it had never been a priority and that it had never been raised with him in feedback. He did not consider it a valid comment. The division was moving to exit the policy distribution business. He did not consider it a fair assessment.

[248] He stated that in summary, the term “hatchet job” came to his mind. It was clear to him that he had the skills and capacity to do the job.

[249] He was asked if he had been on staffing boards. He replied that he had been, numerous times, and that many of them had involved staffing FI-04 positions.

[250] Mr. Matheson said that he had no issues with functional competencies being assessed as required qualifications for the position. He was familiar with these competencies and had seen them assessed by other boards.

[251] He submitted a cover letter, a résumé, and a chart outlining additional information with respect to his alternation request, setting out how he met the criteria of Mr. Watchman’s position.

[252] Mr. Matheson subsequently alternated to another position at the same salary level in Charlottetown.

[253] He felt that he could have performed Mr. Watchman’s job. Any of the FI-04s, including Ms. Stead, could have done it as they had worked together for many years, and their skills were known. He thought that if he did not alternate into Mr. Watchman’s position, either Ms. Stead or Mr. Robert would.

1. Cross-examination

[254] Mr. Matheson acknowledged that a generic job description encompasses more than a specific job description would. He confirmed that there were four or five different FI-04 positions. He also confirmed that although a generic job description was in place, not all the functions it described were performed in each job. He stated that flexibility was desired.

[255] When Mr. Matheson was shown the Statement of Merit Criteria for Mr. Watchman's position, he agreed that he had no issue with the statement of qualifications or with the description of the functional competencies. He acknowledged that it had been his responsibility to demonstrate how he met the statement's requirements. He had submitted a document with his application to the employer to demonstrate how he met the merit criteria.

[256] Under the heading "experience in planning, directing, and delivering financial management activities", he wrote the following:

Met - recent and significant experience. I have been planning, directing and delivering financial policy and training activities at the corporate level since 1998.

I also planned, directed and delivered financial policy, systems and control activities ... at the corporate level for the period March 2011 to August 2012.

[257] Under the heading "financial policy, financial systems", he wrote: "Met. See above-noted work experience, which has provided me with significant and recent experience in these two functional areas".

[258] He was asked whether he had assumed that when completing the form with respect to functional competencies, which were financial policy and financial systems and referred to work experience, the person assessing his application would know his work.

[259] He replied that the document was completed in a short time due to a death in his family. He had assumed that the employer would come back to him for more information, if required. He had also assumed that when it assessed his work experience, the employer would refer not just to the document he had prepared demonstrating how he met the merit criteria but also to his résumé.

[260] He was asked whether, when he performed Mr. Watchman's job for 11 months from May 2000 to June 2001, he had performed all the job duties. He acknowledged that at that time, the attestation group was a separate function. He stated that he performed all the other functions of the director position during that period.

[261] It was suggested to Mr. Matheson that the employer might have a witness to testify to the contrary. He replied that if so, it would be splitting hairs.

[262] He acknowledged that he applied to alternate and that the employer assessed his application. He also acknowledged that he was assessed for an AS-07 position. That application was successful, and he was permitted to alternate into that position. He also acknowledged that the process was relatively similar.

2. Re-examination

[263] Mr. Matheson was referred to the generic job description for the manager, financial policy, systems and control, position. He acknowledged that it was generic and that he did not necessarily perform all the duties it listed. However, it did include financial policy and financial systems competencies. He was asked whether he met all the requirements to perform those responsibilities. He replied that he must have met them; otherwise, he would not have been appointed to the position.

D. Mr. Robert

[264] Mr. Robert has been employed by Veterans Affairs Canada since 1989. He had been the manager, financial processes and renewal, from September 2012 until June 2013. In that position, he had been responsible for a range of administrative matters. He has extensive experience in policy, legislative services, audit and evaluation, and financial and statistical planning.

[265] He was quite involved with the Certified General Accountants Association of Prince Edward Island and was the chairperson of the disciplinary committee, with responsibility for ethics investigations.

[266] Mr. Robert is currently in an AS-07 position, with salary at the FI-04 level. His former position as the manager, financial processes and renewal, was eliminated due to the budget cuts in 2013. He had been entitled to a priority reinstatement. He was offered the AS-07 position with salary protection.

[267] He had been an FI-04 for over three years. In June 2013, he received official notice that his FI-04 position was being eliminated. He applied to alternate positions with Mr. Watchman. He thought he was qualified. However, management refused his application. Consequently, he was entitled to priority reinstatement and salary protection. The situation was resolved to his complete satisfaction.

[268] There were not many FI-04 positions in Charlottetown. He needed to alternate with someone seeking retirement. He spoke with Mr. Watchman, who agreed to alternate. He emailed Human Resources and the Acting Director General of the *Federal Public Sector Labour Relations and Employment Board Act* and *Federal Public Sector Labour Relations Act*

Finance Division.

[269] When his alternation request was turned down, he was extremely surprised, for a number of reasons. Many positions were being cut in the department. Anecdotally, he knew of many people receiving the approval to alternate with other employees throughout Veterans Affairs Canada. He did not hear of anyone being turned down. An employee in Human Resources told him that cuts were being made to enable people to retire.

[270] Ms. McKinnon advised him verbally that his alternation request had been turned down. He asked for a reason. She advised him that he did not meet the job requirements. He stated that he was in a state of shock and that he asked her to put the reasons in writing. She refused. He was puzzled and incredulous that he had been found not qualified.

[271] He called his union representative and an employee in Human Resources to request that the decision to deny his request be put in writing. He did receive a written response. It took a week. He expected that he would be found fully qualified to alternate into Mr. Watchman's position.

[272] He referred to the written assessment prepared by Ms. McKinnon. It states that he met the education and experience requirements, including providing interpretation and analysis of financial authorities, etc., experience formulating and providing advice and guidance on a wide range of financial management issues to senior management, experience managing financial and human resources, and significant experience developing, implementing, and monitoring financial policies and/or practices.

[273] It is noted that he did not meet the requirement for recent and significant experience planning, directing, and delivering financial management activities at the corporate level in the Government of Canada.

[274] The note states that Mr. Robert did not meet that requirement, as although he "[m]anaged a finance function for the period September 2010 to September 2012, this is a 2 year period whereas significant is defined as 3 years. Experience [was] not sufficient to provide the depth and breadth needed for this position."

[275] The note also states that he did not meet the financial policy and financial systems functional competencies. The note stated that "[a]lthough he was assigned responsibility for many of the functions required, he was unable to deliver final

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products in the fashion needed.”

[276] Mr. Robert stated that the comments in the assessment were not accurate. He had never before heard them. They were not based on facts. He did not provide references, although the assessment referred to reference checks. He was not interviewed or approached about providing information.

[277] As noted, Ms. McKinnon wrote the assessment. The summary in it refers to her personal observations. Mr. Robert stated that he had reported to her only for a month or two, when she was the acting director general. He did not know the basis of the assessment. He wrote her a long list of questions asking about the facts on which it had been based. She replied with a more detailed second assessment that reached the same conclusion. Mr. Robert disagreed.

[278] He contested the assessment. He wrote to the bargaining agent and the Director General, Human Resources, whom he knew. A few weeks later, he met with that Director General, who reassured him that the matter could be resolved and that arrangements could be made to find him a different position. Mr. Robert was transferred to a deputy office needing his skills, with assistance from both Human Resources and the bargaining agent.

[279] One of Ms. McKinnon’s comments stated that he had developed a business process for travel and expense expenditures that was cumbersome, unproductive, poorly designed, and ineffective. He commented that the development of that process had been wrongfully attributed to him, that the approval process had been dictated by employees superior to him, and that it had been completely designed before he ever touched it.

[280] Another of Ms. McKinnon’s comments was that he did not have sufficient experience to qualify for Mr. Watchman’s position. He stated that as of 2013, he had had seven years’ experience as an FI-04 or in internal audit.

[281] Ms. McKinnon also observed that he had difficulty consulting other employees. He stated that he did not know what that was based on and that he believed that he demonstrated his abilities in this respect every day. He stated that the current interview process requires a consensus on the remarks to attribute to the candidates.

[282] At this point in the hearing, counsel for the employer objected on the basis that this testimony was highly inappropriate, as Mr. Robert had received those documents

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in 2013 and had had plenty of opportunity to grieve the issues if he did not agree with them. He did not. That was the time to raise these issues. That evidence should not be admissible, especially evidence of what happened three years after the events in question. His overall evidence is essentially irrelevant.

[283] Counsel for the bargaining agent stated that he understood that the Adjudicator's role was to determine whether management properly demonstrated a genuine willingness to apply the alternation process. The purpose of Mr. Robert's evidence was to provide context, even though he never filed a formal grievance. He agreed that the examples from 2016 were irrelevant.

[284] Mr. Robert stated that his performance evaluations from both before and after his alternation request was made had been positive and constructive. The issues Ms. McKinnon raised in the alternation process had never been raised in his formal performance appraisals.

[285] With respect to the process itself, Ms. McKinnon wrote to Mr. Robert on July 10, 2013. She attached an updated Statement of Merit for the director position and advised him that if he would like to pursue the alternation, to provide her with his résumé no later than July 12, 2013. He observed that he had been given only two days to provide it.

[286] He referred to an email in the file dated June 25, 2013, from the Human Resources Representative to Ms. McKinnon that stated that he had met with Mr. Robert on June 24 and that Mr. Robert was interested in alternating. The email continued, "As I am sure you're aware, the next step is meeting with the opting individual, Alex, to determine that he meets the requirements of the position."

[287] Ms. McKinnon did not meet with him. Mr. Robert was expecting some sort of an assessment process. He did not see one.

[288] He thought he was a good choice for alternating with Mr. Watchman. He found it strange that his alternation request was turned down as were those of Ms. Stead and Mr. Matheson. He began to wonder about the probability of being turned down on three attempts.

[289] Counsel for the employer objected to the evidence on the basis that the reasons Mr. Robert felt that he was a good choice were inadmissible, as the grievance was not about him. He never grieved his alternation denial and now asked the Board to assess

his competency, which has already been assessed. The second basis for the objection was that Mr. Robert intended to provide his statistical opinion. He is not an expert witness. The Adjudicator can form his own opinion. Even if the evidence is limited to how he finds it strange, nevertheless, it is still an opinion.

[290] The question was not pursued.

1. Cross-examination

[291] Mr. Robert acknowledged that he was an affected employee and that he had made an alternation request. He identified the Statement of Merit Criteria that he had been provided with for the director, monitoring and quality assurance, position. He was asked if he had had a discussion with Mr. Watchman at the time. He replied that he had known of Mr. Watchman's work and of his job over a period of several years.

[292] He was asked if he had had any issues with respect to the Statement of Merit requirements for the job. He did not remember having any.

[293] He acknowledged that he had been in a manager position at the time and that Mr. Watchman's title was director. He stated that the levels were identical. He agreed that his job and Mr. Watchman's were not the same. He also agreed that the other positions at the FI-04 level were different as each had its own area of responsibility.

[294] He stated that Mr. Joannette had been his supervisor and that he had a good relationship with Mr. Joannette, who had left the workforce by June 2013.

[295] Mr. Robert confirmed that he was the director of audit and evaluation from 2006 to 2010. It was suggested to him that that was not financial management. Mr. Robert disagreed in the sense that internal audit calls upon the same skills and body of knowledge as financial management. It was suggested to him that they were roughly the same skills but not exactly the same. He replied that the skills were sufficiently close to be acceptable for his alternation request.

[296] He confirmed that he was the director of financial services from September 2010 to September 2012. In his résumé, he stated that he had five years' experience in financial management. He acknowledged that he had gained that experience while occupying a number of positions.

[297] He was asked whether he had had any staff in his last position. For a short period, he had one or two employees. Between September 2012 and June 2013, six or

seven employees reported to him for a couple of months. He stated that he had fairly lengthy experience managing human resources. It was suggested to him that the employer would call a witness to testify that he did not have any staff at the material time.

[298] Mr. Robert stated that between September 2012 and July 2013, 100% of his work involved financial management.

[299] It was suggested to him that he was assessed for a position in audit but was found not qualified. Mr. Robert stated that he was not sure because he had received a better offer. He did not pursue the other opportunity.

2. Re-examination

[300] He was asked whether he had been assessed on behavioural competencies. He replied that he did not believe so.

V. Summary of the evidence for Ms. Stead's grievance - for the employer

A. Ms. McKinnon

[301] Ms. McKinnon retired from the public service in January 2014, after serving 35 years at Veterans Affairs Canada. She had been hired as a trainee, and after completing training, she was appointed to an indeterminate financial officer position. After a number of years, she won a competition and was appointed the chief of corporate accounting, classified FI-03. Later on, it was reclassified FI-04. She spent approximately six years in it, during which she was responsible for the internal control function. After that, she was appointed to an EX-01 position in finance. She carried out many different roles in that position.

[302] For approximately three months, June to August 2013, she acted as the director general of finance, during which time she supervised a number of staff in the Finance Division. Other than day-to-day management, she oversaw implementing the WFA policy and notifying the affected employees.

[303] She supervised four or five directors in the division responsible for internal control, accounting, and financial planning. The organization was evolving because of the WFA. It would look very different in a month.

[304] Her involvement in the WFA process was to advise the affected employees. She was responsible for formally notifying the employees who reported to her. She was not

involved in deciding which positions would be declared surplus. Departmental senior management made those decisions in a committee chaired by the Deputy Minister.

[305] She adopted a standard approach to advise employees that they were affected by the WFA process. Each employee was sent an email with prescribed wording, and each was invited to a face-to-face meeting with her.

[306] Human Resources had prepared a script. Every employee received the same message. It was a short explanation of what was happening. Affected employees were advised that their positions were surplus. She gave them a letter from the Assistant Deputy Minister, Human Resources, setting out their rights under the directive.

[307] She was asked how the meeting with Ms. Stead had gone. She stated that she went through the messaging. There was not much conversation. She did not remember the specifics. She was provided in a sealed envelope the letter from the assistant deputy minister advising her that her position was no longer required and that she had been identified for lay-off, as well as her options. It was a standard letter.

[308] Three of her employees were affected, Ms. Stead, Mr. Robert, and Mr. Matheson. A large number of employees had been affected in the department, probably more than 100. Over 25 other employees in the Finance Division had been affected who did not report to her.

[309] She was asked to describe the options available to an affected employee. She stated that although she was not an expert, he or she could leave and receive a settlement amount, could return to school, or could find a person in an equivalent position with whom to alternate.

[310] She was asked about her involvement with employees who wished to alternate. She stated that Mr. Robert and Mr. Matheson came forward at the same time. They were interested in alternating with Mr. Watchman. All the positions were classified FI-04.

[311] As she was Mr. Watchman's supervisor, she had the responsibility to determine if the employees requesting to alternate with him met the qualifications for his position.

[312] Ms. McKinnon spoke with Human Resources, which advised her of the need to set up a process to evaluate the alternation requests.

[313] The WFA policy requires that anyone requesting alternation must meet the qualifications of the position at the time of the alternation, to maintain the skill set of the departing employee.

[314] A Human Resources Advisor worked with her. The first task was to develop a Statement of Merit Criteria with which to evaluate potential candidates. They looked at the position and what the incumbent was doing at that time, along with the environment at the department and in the federal government, to determine what was occurring and the impact on the position and the role. Complicating the process was that as of April 1 of that year, the Treasury Board implemented a new process to evaluate positions by using competencies. The previous Statement of Merit for that position did not include competencies. The environment also changed.

[315] She was referred to the job description for Mr. Watchman's position, which was the director, financial attestation, and was dated March 14, 2012, and signed by Mr. Joannette. In 2011, she had been responsible for financial policy and monitoring. The directorate had gone through an organizational change. It had decided to create generic positions, including the two FI-04s. This was the first time the division had implemented generic job descriptions, certainly at that level.

[316] Mr. Joannette had wanted to create a new director of financial attestation position. He decided to use the same generic job description as the other FI-04s. As a result, the three positions had similar job descriptions. The generic job descriptions for the manager, financial policy systems and control, and that of the manager, corporate financial accounting and monitoring, had been prepared in 2011.

[317] A generic job description shows a broad, high-level framework. The technical aspects of the job are laid out in another form, perhaps as a performance agreement. A federal government initiative to create generic job descriptions had been put in place. The work descriptions had been borrowed from another department and adapted for use at Veterans Affairs Canada.

[318] Ms. McKinnon created a Statement of Merit Criteria for Mr. Watchman's position. The title and the scope of responsibility had changed. She did not know whether the job description had been changed.

[319] Managers were provided with lengthy guidelines and instructions on financial officer competency implementation.

[320] Although competency-based management came into effect formally in April 2013, management had received the material six months before then.

[321] She referred to the Treasury Board document entitled, *Manager's Guide to Financial Officer Competency-Based Management*, in particular to sections 3.1, 3.2, and 3.3, which state in part as follows:

Competency-based management is recognized as a best practice in community management. It is gradually being adopted within the Government of Canada and is now current practice within the Canadian professional accounting bodies (CA, CGA, CMA and CPA).

...

3.2 What Are Competencies?

Competencies are measurable and observable skills, abilities or knowledge that enable an employee to perform satisfactorily in a position. They provide a clearly articulated description and common understanding of how an employee is able to successfully complete the work at his or her position level.

...

3.3 Types of competencies

...

There are four FI functional competencies that are aligned with the key work streams of the FM community and with the functional experience outlined in the FI to CFO Career Path. They are:

- *Accounting operations (includes revenue management, internal controls and reporting);*
- *Planning and resource management (includes costing);*
- *Financial policy; and*
- *Financial systems (includes elements of internal control).*

...

[322] This approach was new at the time. Accounting operations had been blurring the financial policy and financial systems competencies. To develop a Statement of Merit, the manager had to consider the competencies important at that time. It was not

to be a static document. It could change.

[323] She referred to section 4.1.1 of the guide, entitled “Statement of Merit Criteria”, which states as follows:

... Competencies are an integral part of the essential criteria identified in the [Statement of Merit Criteria], and they should reflect the most critical competencies for that particular role or job.

...

*... The proficiency level sought for each competency is normally based on the requirements of the position being staffed ... but **at a minimum** is based on the competency proficiency for the FI level being staffed...*

...

[Emphasis in the original]

[324] She referred to section 3.5, which outlines as follows the differences between work descriptions, performance objectives, and competency indicators:

...

*Work descriptions and performance objectives stipulate **what** an employee will be assessed against (e.g., key activities, tasks, objectives); competency indicators provide a manager with **how** an employee performed (e.g., description of skills, demonstration of behavioural proficiency).*

...

[Emphasis in the original]

[325] Ms. McKinnon stated that when staffing a position based on competencies, she tried to project how an employee would do in the position by looking at what they had done in the past and how that would translate to the requirements of the new position. She consulted the management guide, which states the following:

...

*Competencies are those identified in the FI Competency Profile. The proficiency level for each competency is normally based on the requirements of the position being staffed **but at a minimum** is based on the competency proficiency for the FI level being staffed. The SoMC should indicate the level of proficiency sought, and a copy of the FI Competency Profile should be attached. Additional competencies may be added to*

the list if they are deemed critical to the position being staffed.

...

[Emphasis in the original]

[326] She described competency as a characteristic of an individual that underlies behaviour at work and that a third party may measure and observe using pre defined criteria. Competencies allow the employer to gain greater insight as they must be substantiated with concrete work examples.

[327] For education and experience, she used the criteria for staffing the position when Mr. Watchman was appointed to it. She did not use knowledge but used behavioural competencies listed in the guide, namely, “Oral and written communications; values and ethics; strategic thinking: ideas; engagement; management excellence: action; and management excellence: people”.

[328] She added a behavioural competency not listed in the guide, management excellence finance.

[329] She added the financial policy and financial systems functional competencies. She determined that the financial policy requirements for the position were the same as the requirements for staffing the position when Mr. Watchman was appointed to it. She stated that a major portion of the position was implementing policies, including the one on internal control. It was a matter of focus at the time, because the Auditor General was looking into financial policy issues.

[330] The policy on internal control took effect in 2009. The federal government provided for its implementation over a number of years. The Auditor General audited a number of departments, with updates two years apart. In 2013, the Auditor General looked at seven departments, including Veterans Affairs Canada, to assess how they had implemented the policy.

[331] The Deputy Minister had assigned certain responsibilities with respect to implementing this policy to the position held by Mr. Watchman. The position had to review and assess internal controls over financial reporting and to develop an annual statement reflecting progress. Mr. Watchman had prepared a report for the prior year.

[332] At this point, the Auditor General had advised the department in advance that it would mark its progress as unsatisfactory. It responded in the early spring and

summer of 2013.

[333] The Auditor General's report for fall 2013 states that Veterans Affairs Canada made unsatisfactory progress and that it had to complete the work of putting into place the continuing monitoring of internal controls.

[334] Because the report was to be a public document, the Deputy Minister was not happy that it would be unsatisfactory. The commitment was made to rectify the situation by March 31, 2014, which was reflected in the fall report. Partly as a result of this commitment, a much higher priority was given to implementing internal controls to meet that deadline.

[335] The financial policy and financial systems competencies overlapped. The Treasury Board functional competency profile describes the financial policy competency as the "[d]evelopment, implementation and application of policies, procedures and controls that focus on long-term goals and objectives and that are compliant with legislation and central agency direction". Ms. McKinnon stated that this included implementing the policy on internal control.

[336] It also had implications with respect to the financial systems competency, which is described in the Treasury Board's functional competency profile as "[t]he design, development, review, testing and maintenance of business processes, procedures, controls, data and software applications that produce financial and related non-financial information". Ms. McKinnon stated that this involved not only Information Technology but also manual systems.

[337] The department had been criticized about the implementation of its policy on internal control based on testing the system, which fell within the definition of the financial systems competency. This was at the very front of her mind when she developed the Statement of Merit, given the situation at the time.

[338] She was asked why she did not use the financial accounting competency. She stated that an FI-03 had been responsible for it, had been in the position a long time, and had been performing well. It was not critical that an FI-04 be involved. Elements of financial accounting could have been added to the position; however, in her view, it was not critical.

[339] She referred to the guidelines on "Chief Financial Officer Attestation for Cabinet Submissions", which were to take effect on January 1, 2014. The guidelines had been Federal Public Sector Labour Relations and Employment Board Act and Federal Public Sector Labour Relations Act

discussed before coming into effect.

[340] As of March 2012, the title of Mr. Watchman's position was director, financial attestation.

[341] The entire process had started in or about June 2012. It was not unusual for the Treasury Board to provide direction before a policy came into effect. Internal discussions had been held about financial attestation and what would be required to allow the CFO to sign off on financial management aspects of cabinet submissions.

[342] The CFO was the assistant deputy minister of corporate services and Ms. McKinnon's supervisor at the time. It was a current activity.

[343] At the time, Mr. Watchman's position was being assessed with respect to the policy on internal control and to work broadly related to accounting operations. The other high-profile work was that of CFO attestation. If the department made a proposal to central agencies for a new program or a new type of expenditure, the proposal would be accompanied by a document signed by the CFO, with a number of assertions. When initiatives were put forward, Mr. Watchman had to ensure that the financial implications were set out.

[344] Ms. McKinnon was asked how she assessed Mr. Robert's and Mr. Matheson's alternation applications. Each had emailed her indicating his interest in alternating. She sent them both the Statement of Merit Criteria and requested that they provide the information so that she could assess their applications.

[345] She was not comfortable carrying out the assessments on her own and requested that their most recent supervisors provide input. Mr. Joannette had retired in January 2013. She asked him to provide input against the Statement of Merit Criteria.

[346] She was referred to the summary of the assessment of Mr. Matheson that reflected a reference check by the former Director General. She was able to assess that Mr. Matheson met the education and experience competencies.

[347] She contacted Mr. Joannette with respect to financial policy and financial systems competencies, and she met with him. He provided feedback on how Mr. Matheson met or did not meet the competencies. He met the behavioural competencies, but there were issues with respect to the functional competencies.

[348] Mr. Matheson did not meet the financial policy or financial systems competencies. Mr. Joannette provided the example of a new Treasury Board policy on travel and hospitality that had required a great deal of work. Senior management had been looking for a quick turnaround. He felt that Mr. Matheson had had a difficult time, and it took more than two months to implement.

[349] As the implementation of the policy on internal control was critical in light of the comments in the Auditor General's report, the input from Mr. Joannette did not lead her to believe that Mr. Matheson could turn things around quickly.

[350] She also found that the information he provided to her aligned with her perceptions. Earlier, she had supervised Mr. Matheson. He was good at explaining policy, but he had difficulty grasping details. After the reorganization in 2011, it took him some time given the new work to bring himself up to the necessary level of understanding.

[351] With respect to financial systems, Mr. Joannette had asked him to update financial procedures manuals that had not been updated in a number of years. He was not able to get anything done in 3½ years. The job required implementing new procedures.

[352] In Ms. McKinnon's view, Mr. Matheson was not able to step in and perform the competencies of the position within the expected deadlines.

[353] In Ms. McKinnon's assessment, Mr. Robert met the education and behavioural competencies and three of the experience elements, but he did not meet one element of the experience competency. That competency required in part that the applicant have recent and significant experience planning, directing, and delivering financial management activities at the corporate level in the Government of Canada. Significant experience was defined as three or more years, and recent experience as being within the last five years.

[354] He had managed the finance function from September 2010 to September 2012, or two years, but the term "significant [was] defined as three years". His experience was not sufficient to provide the depth and breadth needed for the position.

[355] With respect to the financial policy functional competency, Mr. Joannette told her that Mr. Robert had difficulty building consensus with others. Much of the work required working with other areas of the department on new procedures. The position

required much interaction and consensus building.

[356] With respect to the financial systems competency, there was a concern that he saw issues as very black and white and that he could criticize and review existing or proposed processes but was not solution-oriented.

[357] Ms. McKinnon did not assess Ms. Stead's alternation application as she ceased acting as the director general at the end of August 2013. Ms. Hutchins became the acting director general and was responsible for assessing Ms. Stead.

[358] Ms. Hutchins asked Ms. McKinnon to explain how she had conducted the previous assessments. Ms. McKinnon provided her with the Statement of Merit and competency profile. Ms. Hutchins asked Ms. McKinnon to provide a reference for Ms. Stead as she had supervised her for a time.

[359] Ms. McKinnon went through the criteria as requested and commented on the FI competencies outlined in the FI-03 and FI-04 positions at each level.

[360] She was not able to assess the behavioural competency of management action - finance or the functional competency related to financial policy as she had not had an opportunity to observe these competencies.

[361] With respect to management action - finance, which required organizational responsibility for managing and staffing, Ms. Stead did not have those responsibilities when she reported to Ms. McKinnon.

[362] With respect to financial policy, Ms. Stead was not called upon to perform those duties when she reported to Ms. McKinnon. She reported to her for two years, for part of which she was on assignment.

[363] Ms. McKinnon was referred to a work description for the position of manager, corporate financial accounting and monitoring, dated January 21, 2011, to which Ms. Stead was deployed effective February 21, 2011. Ms. McKinnon stated that this position was created when the department reorganized and created generic job descriptions.

[364] She was referred to the description of experience in that generic job description and the one in the job description used for Mr. Watchman's position. She stated that the descriptions in both were probably the same. She stated that there are no

competencies listed in the generic job description as it still refers to knowledge, abilities, and personal suitability. She stated that this position had responsibility for two primary functions, corporate accounting and monitoring, which involved reviewing individual transactions.

[365] At the time of the alternation, some of these responsibilities were moved to Mr. Watchman's position. These were part of the duties that the FI-03 had been performing for some time.

[366] Ms. McKinnon was asked how transferable were the people in these positions. She replied that it depended on the competencies, the environment, and the priorities and whether the duties were of critical importance. At any given time, it was difficult to know.

[367] She was referred to Mr. Watchman's list of her alleged unethical behaviour, which she saw for the first time when she prepared to give evidence. She became somewhat surprised when she reviewed it. She knew that he was upset about the fact that his alternation had not been approved. She was surprised at the details and did not think they were fair.

[368] With respect to the allegation that an FI-03 position had been permanently staffed just weeks before the lay-off notices were given out, Ms. McKinnon stated that she did not know what position he was referring to.

[369] With respect to the allegation that Ms. McKinnon and Ms. McDonald offered his position to Ms. Spence just weeks before the lay-off notices were sent and that Ms. Spence was the least qualified FI-04 in finance to assume the duties of his position, Ms. McKinnon acknowledged that there had been some discussion about Mr. Watchman and Ms. Spence changing positions. Ms. Spence was unaffected by the lay-offs.

[370] The discussions took place months before the lay-off notices were sent. Thought had been given to cross-training; however, the position was never offered to Ms. Spence.

[371] Nothing indicated that Ms. Spence was the least qualified FI-04 to take the position, despite the suggestion that she was. Someone would have had to carry out an assessment. The position was never offered to her. It had just been a possibility.

[372] Mr. Watchman alleged that the Statement of Merit did not reflect the duties of his position so that the employer could deny alternations and that his position had only two competencies, accounting operations and financial policy, yet the financial systems competency was used to deny the alternations of Mr. Robert and Mr. Matheson. Ms. McKinnon stated that Mr. Watchman considered only his work at that moment and not the requirement to refocus on internal controls. He might not have thought about the next steps, but she had.

[373] Mr. Watchman also alleged that the Statement of Merit had to state the level of proficiency sought for identified competencies, with a copy of the FI competency profile, which was not done so that she could change the minimum standard required, based on information that Mr. Matheson and Mr. Robert provided. Ms. McKinnon stated that the level of proficiency in the competencies had to be FI-04, the highest level. She referred to the *Manager's Guide to Financial Officer Competency-Based Management*, which states that “[t]he proficiency level sought for each competency is normally based on the requirements of the position being staffed... but at a **minimum** is based on the competency proficiency for the FI level being staffed [emphasis in the original].” The position was at the FI-04 group and level.

[374] The department did not engage in a SERLO exercise.

[375] Mr. Watchman alleged that Mr. Matheson performed the duties of Mr. Watchman's position for 13 months before Mr. Watchman assumed the role. Ms. McKinnon stated that Mr. Matheson did carry out a small part of those duties for a time. They were not a critical part of the job, and he had had a stable staff of competent FI-03s who did not require much supervision. At that time, the position had neither CFO attestation nor the policy on internal control as duties.

[376] With respect to the allegation that Ms. McKinnon refused to provide in writing the rationale for denying the alternations, she did not recall refusing to provide it. Mr. Robert requested it. She consulted the Human Resources Advisor, who advised her to provide it. A WFA is very sensitive. She treated all employees the same way.

[377] Mr. Robert had asked for a discussion in English. Her notes were in English. She provided him with the English rationale and had it translated into French.

[378] With respect to the allegation that Ms. Stead, who was at FI-04, was being laid off even though someone classified FI-03 was waiting for the lay-off to be finalized to

file a classification grievance to reclassify the position to FI-04, Ms. McKinnon stated that that did not happen. The FI-03 position's classification had not changed as of the hearing. As far as she was aware, no new FI-04 positions had been created.

[379] Mr. Watchman also alleged that Ms. McKinnon giggled and smirked when she spoke with him after the decision was made to deny Mr. Matheson's and Mr. Robert's alternation requests. Ms. McKinnon stated that Mr. Watchman had been on vacation for a long time, during which she had dealt with the Auditor General's criticism of the department.

[380] All the information on that topic was related to Mr. Watchman's job. The information about what had been done was locked up in his office. She was relieved to see him and was happy that he had returned and could provide her with the information.

[381] Subsequently, she discussed with him Mr. Robert's and Mr. Matheson's alternation applications. He yelled and shouted at her, fairly loudly. She was taken aback. She did not recall the details of who said what to whom.

1. Cross-examination

[382] Ms. McKinnon acknowledged that she had been the acting director general for three months.

[383] Decisions with respect to which positions would be surplus to requirements were made at the senior management table. Ms. McKinnon had not been involved. She had been on annual leave. She was not aware that it would be proposed to declare the three FI-04 positions surplus.

[384] She was asked about her meeting with Mr. Watchman when he returned from vacation at which she stated that she was relieved to see him. She stated that he knew the most about the work arising from the Auditor General's criticism about the implementation of internal controls, which she had been preoccupied with. She had been trying frantically to come up with a policy on internal control.

[385] It was suggested to her that she had never performed the duties of Mr. Watchman's position. She replied that she had not performed the attestation role; however, she had carried out financial control and policy duties.

[386] CFO attestation had started as a separate project, for which she had been

*Federal Public Sector Labour Relations and Employment Board Act and
Federal Public Sector Labour Relations Act*

responsible. Mr. Watchman worked for her on it. It turned into an ongoing project that Mr. Watchman took over.

[387] It was suggested that there had been six directors general through the relevant period. She stated that Mr. Joannette left in January 2013. Ms. MacDonald had been the acting director general from January until May 2013. She had a lot of corporate knowledge. Ms. McKinnon took over from June until the end of August, and Ms. Hutchins then took over on September 17.

[388] She was asked whether this was the first time she had assessed an alternation request. She stated that she had been involved in assessing a request from a person who had come from Halifax, Nova Scotia, and who had been declared surplus by another department. She was asked whether she used functional competencies. She believed that it was done before functional competencies had come into effect for FIs.

[389] Functional competencies were not new; they had been used for staffing other positions. Competencies for financial managers were introduced in 1995; however, they were not being used at Veterans Affairs Canada. The Office of the Comptroller General of Canada directed Veterans Affairs Canada to start using them as of April 2013. Before then, they had not been required, only encouraged.

[390] She acknowledged that the Statement of Merit was created after the alternation request had been made. She was asked whether one had been prepared when Mr. Watchman was appointed to his position. She replied that that had been done, but under the old format. Following advice from Human Resources, she developed the Statement of Merit based on functional competencies.

[391] She was referred to an email that Jonathan O'Keefe, from Human Resources, sent her that is dated June 25, 2013. He refers to the next step in the alternation process being to meet with the opting individual. She replied that a meeting took place after the decision was made. She stated that she tried to follow the guide as much as she could.

[392] The *Manager's Guide to Financial Officer Competency-Based Management*, under section 4.1, titled "Staffing and Recruitment", states in part as follows:

The following are some key characteristics of competency-based staffing:

- *Focuses on actual performance rather than what*

someone might do in a similar situation;

- *Relies on observable behaviours;*
- *Draws its requirements from a job competency profile;*
- *Can best be assessed using a targeted behavioural interview; and*
- *Relies on reference checks for validation where the same behavioural interview techniques are used.*

[393] Ms. McKinnon acknowledged that she did not interview either Mr. Robert or Mr. Matheson. She acknowledged that simulated scenarios at an interview could have been a good way to assess potential competencies. However, she stated that the problem with situational interviews is that most people know the correct answers.

[394] It was suggested to her that if she had conducted a full staffing process, involving interviews, she should have been more diligent, given the WFA. She replied that the employees were very eager for a decision, that they had been given a short time in which to exercise their options, and that she chose to use an abbreviated process.

[395] In addition, supervisors were available to provide insight. The assessment was based considerably on observable behaviours over the recent past that translated into an assessment of how the candidate would perform in the new job, based on information from recent supervisors.

[396] The manager's guide suggests that providing resources to candidates before interviews is a best practice, which is highly encouraged. Ms. McKinnon was asked whether she provided such material to Mr. Robert and Mr. Matheson. She replied that all the managers had been provided with the material.

[397] Although the applicants were provided with the Statement of Merit and the competencies, they were not provided with the individual factors upon which they would be assessed within the competencies.

[398] Ms. McKinnon stated that the managers were involved and that they had hired people throughout their careers and were familiar with the process.

[399] She was asked whether she had consulted Mr. Watchman when she prepared the Statement of Merit. She stated that she had not and added that the incumbent of the

position is not normally consulted. The manager is responsible for preparing the Statement of Merit.

[400] She stated that the internal control function was critical at the time. It had two aspects, namely, implementing policy for the system of internal control over financial reporting, and responsibility for reviewing individual transactions, which was related to financial systems.

[401] Ms. McKinnon felt that the review and testing of internal controls under the financial systems competency was more critical to the position; she was not worried about the other aspects.

[402] Ms. McKinnon acknowledged that she was the staffing manager who had assessed Ms. Stead for the manager, corporate financial accounting and monitoring, position in February 2011 based on the Statement of Merit Criteria designed for that position and outlining the key requirements. She also reiterated that it was a generic job description and that it did not necessarily contain specific duties, as generic descriptions outline similar job responsibilities.

[403] When Mr. Joannette created a new position into which Mr. Watchman was deployed, he used a similar generic job description that had been created for the positions occupied by Mr. Matheson and Ms. Stead.

[404] Mr. Robert's position did not have a generic job description as it had existed for some time. When it was created, the department did not use generic job descriptions.

[405] She acknowledged that the policy on internal control was not new. It came out in 2009. It was suggested to her that Mr. Matheson had been responsible for internal controls in 2009. She replied that he had not and that all he had done with respect to internal controls had been to review individual transactions. She believed that Mr. Watchman performed the function in his previous position.

[406] She agreed that Ms. Stead was a good performer in her chief, financial systems, position. Ms. McKinnon stated that she was very adept at taking on new things.

[407] With respect to the allegation that she and another manager offered Mr. Watchman's position to Ms. Spence just weeks before giving the lay-off notices, Ms. McKinnon stated that she had not been the director general. She acknowledged her discussion with the other manager.

[408] Human Resources had advised her that no grievances had been filed about the WFA process.

[409] It was suggested to her that to permit an alternation with Mr. Watchman, she needed a perfect candidate. She replied that management needed someone who could step in and perform the critical responsibilities of the position.

[410] She acknowledged that at the time, there were five FI-04s in Charlottetown, that three of them applied to alternate with Mr. Watchman, that they were deemed not to have the competencies, and that one of them did not have the experience.

[411] She agreed and stated that experience on its own does not necessarily address the skills required for the position but that the Statement of Merit had specified that the applicant had to have three years' experience. She stated that a lot of the focus was on skills retention.

2. Re-examination

[412] Ms. McKinnon confirmed that she was not involved in hiring an FI-03 in the period before the lay-offs.

[413] By referring to a message from the Comptroller General of Canada, she confirmed that the guideline on financial officer competency implementation took effect on April 1, 2013.

[414] Ms. McKinnon was one of the three references in Ms. Stead's alternation application. Ms. McKinnon confirmed that with respect to the "Financial Policy" functional competency, she indicated "[n]ot observed", and that with respect to the "Management Action - Finance" behavioural competency, she was unable to assess Ms. Stead. She stated that she could not assess something that she had not seen.

[415] She stated that Ms. Stead should have met not only the functional criteria but also all the criteria in the competency profile. The competency profile documents had been shared with all staff in the division. Everyone had received them.

[416] Ms. McKinnon was referred to Ms. Stead's alternation application, in particular to the abbreviated information she provided on the functional competencies that followed the information under each one in the profile. Ms. McKinnon stated that all managers would have received a bulletin on completing such a form.

[417] She was referred to Mr. O'Keefe's email about Mr. Robert's interest in alternation. The email stated that the next step was a meeting.

[418] Ms. McKinnon stated that Mr. O'Keefe was Mr. Robert's Human Resources advisor. Each employee declared surplus was provided with one. She was asked whether the Director of Human Resources, who was Ms. McKinnon's Human Resources advisor, advised her to interview the alternation applicants. She answered in the negative. She was also asked whether the manager's guide stated anywhere that an interview had to be conducted. She replied that she did not believe so.

[419] She was asked how as a manager, she would decide whether to conduct an interview. She stated that it depended on whether one was required to determine what the manager needed to know. If a manager was carrying out a full-scale staffing action involving new candidates with different backgrounds, then interviews might be required. These employees at issue worked in the same functional area. Their supervisors had recent knowledge of their performance and were readily available for information. Neither Mr. Robert nor Mr. Matheson complained about not being interviewed.

[420] She was asked if she believed that they would have wanted to provide more information. She replied in the negative. When she discussed the results with Mr. Robert, although he pushed back on some of the information provided by Mr. Joannette, he did not ask to provide further information. Neither did Mr. Matheson.

B. Ms. Hutchins

[421] Ms. Hutchins is employed by Veterans Affairs Canada as the senior director, strategic costing and statistical analysis, in the Finance Division, a position she has held since August 2013.

[422] Her current role and responsibility is that of strategic costing in support of cabinet submissions; that is, Treasury Board and budget proposals involving submissions to cabinet. Her position reports to the director general, finance, and is classified EX-02.

[423] Reporting to her position are an FI-03 strategic costing coordinator position and an EC-07 program costing and forecasting position, as well as a statistical unit.

[424] In 2013, she was the senior director, corporate finance, in the Statistics

Directorate. In addition, she was responsible for corporate accounting and financial planning. She reported to Director General McDonald.

[425] When Ms. McKinnon completed her term as the acting director general, Ms. Hutchins took on that responsibility.

[426] Before coming to Veterans Affairs Canada, Ms. Hutchins had been an EX-01 project lead for back-office transformation at the Treasury Board, an EX-01 director of financial operations at the Correctional Service of Canada for three years, at the special operating agency called the Canadian Forces Welfare Agency for less than one year, and at the Department of National Defence (DND) as a public servant executive trainee. She served in the Canadian Armed Forces for 21 years and retired as a lieutenant colonel. She worked in finance while serving in the forces. She had dealt with WFA issues in the past and in fact had also been declared surplus. She left the Treasury Board Secretariat for Veterans Affairs Canada.

[427] She was asked about her staffing experience. She stated that she joined the military in 1987 and that she was commissioned as an officer. On completing basic training, she immediately took over staffing responsibility. She managed public servants working for the military. She was not responsible for hiring, but she performed appraisals and assigned work.

[428] She was asked about her experience with the FI classification. She stated that since she retired in 2008 from the military, she had extensive experience with the FI community. She participated in the grassroots discussions around functional competencies as a tool for staffing FI positions. The last 10 years of her military career was in Ottawa, and she participated as a logistics officer in finance. She holds an accounting designation and an MBA.

[429] When she assumed the acting director general, finance, role at Veterans Affairs Canada in the fall of 2013, she was asked to assess Ms. Stead's alternation application.

[430] Ms. Hutchins was asked what she knew about the context. She stated that the division was in the midst of a follow-up audit by the Auditor General with respect to internal controls. She had worked with Ms. McKinnon on delivering the new policy. They had learned from a draft Auditor General report that the department would be listed as unsatisfactory with its progress. The deputy head was not pleased. The division was tasked to find evidence indicating that the department was on target.

[431] She was asked what she knew in terms of the employees in the division. She knew that all departments had gone through a WFA process. She did not receive any background about what had led to the decision. She did not know the employees.

[432] When she was appointed as the acting director general, Mr. Watchman reported to her in his director, monitoring and quality assurance, position. He was the principal contact for the progress being made in implementing the policy on internal control.

[433] When she was asked to assess Ms. Stead's application to alternate with Mr. Watchman, she obtained the paper file. As noted, she had been exposed to the duties of his position via the audit. The paper file had a cover letter from Ms. Stead, the Statement of Merit, and a résumé attached to the cover letter.

[434] Ms. Hutchins was asked what she knew about Ms. Stead, who no longer worked in the Finance Division. She had wanted to introduce herself. She was advised that Ms. Stead was on assignment at Information Technology.

[435] She reviewed the paper file. She was familiar with the *Manager's Guide to Financial Officer Competency-Based Management*.

[436] She reviewed the Statement of Merit Criteria in light of her limited involvement with Mr. Watchman on internal controls. She had worked on the policy on internal control while employed at the Correctional Service of Canada. Because she had worked on the competency proposals, she knew of a generic template for the FI-01-to-CFO career path. The behavioural competencies that she had worked on in 2006 developed into the future competency-based criteria for financial officers.

[437] She was referred to the *Financial Officers' Competency Profile*, which she identified as a subset of the manager's guide. She used these documents when she assessed Ms. Stead's application.

[438] Ms. Hutchins reviewed the Statement of Merit Criteria. It matched the generic criteria for an FI-04 position. Under the behavioural competencies section, Ms. McKinnon had added management competence in finance. In her opinion, it seemed appropriate, given that it was a director-level position.

[439] The manager must determine which of the four FI functional competencies are required for the position. Ms. McKinnon chose financial policy and financial systems.

[440] In the *Financial Officers' Competency Profile*, where it describes the financial policy functional competency at the FI-04 group and level, it focuses on controls. The overview of the competency is the “[d]evelopment, implementation and application of policies, procedures and controls that focus on long-term goals and objectives and are compliant with legislation and central agency direction”.

[441] At a minimum, an applicant has to meet the conditions at the FI-04 group and level. Ms. Hutchins believed that the indicators described under the financial policy competency were covered in Mr. Watchman's position. She assessed Ms. Stead's application in light of them.

[442] Ms. Hutchins carried out the same assessment under financial systems functional competency at the FI-04 level. The overview of the competency is “[t]he design, development, review, testing and maintenance of business processes, procedures, controls, data and software applications that produce financial and related non-financial information”.

[443] Ms. Hutchins stated that an employee seeking to alternate has to meet the current and future requirements of the position. She had been working on implementing policies on internal control at the Correctional Service of Canada. She stated that she understood what it entailed. She had a solid understanding of the requirements of the position even though she did not have a complete understanding of Mr. Watchman's position.

[444] Another key responsibility for the position was that of CFO attestation, which was a new policy. It was a new and enhanced requirement, and it was evolving. She had worked with the cabinet submission on this responsibility while at the DND. She stated that she had a good understanding of what the policy could become. At that time, those were the two most important Treasury Board policies, and they were necessary to support the deputy head, who was the department's chief accounting officer.

[445] The CFO attestation involved enhanced internal controls over cabinet submissions; that is, submissions going to Treasury Board ministers.

[446] Ms. Hutchins referred to the guidelines on “Chief Financial Officer Attestation for Cabinet Submissions”. They were to come into effect in January 2014. She had worked on them while at the Treasury Board. In 2013, Veterans Affairs Canada management had contemplated them being introduced. She stated that she looked at

future requirements for Mr. Watchman's position, including the enhanced responsibility for implementing the guidelines, which she emphasized more because it was part of the financial management suite.

[447] Her view was that Ms. McKinnon had accurately developed the Statement of Merit Criteria for Mr. Watchman's position.

[448] In assessing Ms. Stead's application, Ms. Hutchins spoke with Ms. McKinnon with respect to her approach to the alternation requests from Mr. Matheson and Mr. Robert. To be fair, she intended to follow the same approach for Ms. Stead. She used the FI profile as the assessment tool at the proficiency level of FI-04. She reviewed the material that Ms. Stead had submitted.

[449] She sought to obtain three reference checks because she did not know Ms. Stead. She inquired about Ms. Stead's previous supervisors. She identified Ms. Glenn-MacIsaac, Ms. Stead's current supervisor at Information Technology, Ms. McKinnon, and Mr. Joannette, the former director general of finance. She tried to cover three of the last five years of Ms. Stead's service.

[450] She reviewed the documents submitted by Ms. Stead and assessed them against the Statement of Merit Criteria. From her review, she was unable to get a sense of how Ms. Stead had performed her tasks and how proficient she had been in performing them. Normally, this is achieved by the applicant providing concrete examples. She found that lacking in the application. There were references to performance appraisals but nothing about the tasks she had performed.

[451] She shared the reference tool with the three references and asked them if they had observed the competencies and to validate the examples that Ms. Stead had provided. Those examples were more "what" than "how".

[452] She prepared two documents. One was the overall assessment of Ms. Stead's application. It outlined the competencies in one column. In a second column, the overall assessment was set out, as well as the source of the assessment. The second document outlined the competencies in one column and listed the assessment of the three reference checks with respect to each competency in three additional columns, one for each reference.

[453] Ms. Hutchins assessed the education and experience competencies based on Ms. Stead's résumé. She noted that Ms. Stead had a strong focus on financial systems.

Her assessment of the behavioural competencies was based on the interview of each reference. The conclusion was that Ms. Stead met all of them. The financial policy and financial systems functional competencies were also based on her interviews of each reference.

1. Financial policy

[454] Ms. Hutchins stated that she heavily weighted the financial policy competency as the position would have more responsibility for implementing the policy on internal control.

[455] The profile for the FI-03 and FI-04 classifications requires complexity and a level of impact beyond one's work unit; it requires departmental scope focused on departmental liaison with central agencies. The department had to develop an internal framework document to guide the central agencies' expectations. Ms. Stead had a strong background in general controls. She met the competencies with respect to financial systems; however, she lacked depth in developing policy frameworks. It was noted that areas not specifically observed at the FI-04 competency level were evidence of developing communication strategies for implementing policies, directives, and guidelines, as well as evidence of carrying out analyses and advising senior management on the implications on the department of new or revised central-agency policy work.

[456] Based on the examples provided by Ms. Stead, Ms. Hutchins did not see where Ms. Stead had gone beyond the Finance Division. Although Ms. Hutchins acknowledged that she had worked with an interdepartmental group, it had been at a technical level. Ms. Hutchins concluded that Ms. Stead did not have the breadth and depth of strategic performance at the level required for the position.

[457] As noted, she prepared a right-fit assessment that incorporated the three references' views. As stated, Ms. Stead met the educational, the experience, and the behavioural competencies as well as the functional competencies, with respect to financial systems.

[458] Mr. Joannette observed that she did not meet the functional competency of financial policy. He noted a lack of evidence of "[s]trategic, central agency liaison, risk management strategies and controls". Ms. McKinnon noted that it was "[n]ot observed", and Ms. Glenn-MacIsaac noted that it was "[n]ot assessed". The combined assessment was that Ms. Stead did not meet it.

[459] Ms. Hutchins referred to her notes of a telephone discussion with Mr. Joanne tte with respect to his observation that Ms. Stead did not meet this competency. He advised her that Ms. Stead had no experience with central agencies at the departmental level. She had been involved with free balance at the working level. She had been on an assignment with respect to the policy on financial transformation for 9 to 12 months. In his view, she had not developed communication strategies. Her focus had been on financial systems. There had been no observable behaviours with respect to the competencies that were requirements of the position at that time and into the future.

[460] Ms. McKinnon went through each element of the competencies required for financial policy at the FI-04 group and level and concluded that they were not observed at that level.

[461] Ms. Glenn-MacIsaac stated that the financial policy competency was not observed because Ms. Stead worked at the FI-03 group and level in information technology. In this context, “not observed” meant that the competency was not demonstrated at that time.

[462] In her application, Ms. Stead was required to provide situational examples (of problems or issues), describe how she applied the performance indicators in completing the work (what she did, how she did it, and her role), and list the results (the outcome of her action and why it was a good example of how she demonstrated a competency).

[463] In her view, Ms. Stead’s application, in particular in the area of financial policy, lacked a demonstration of how this competency was achieved.

[464] She was asked if she considered the possibility that Ms. Stead did not realize that she had to provide concrete examples. She replied that there had been considerable communication about competency-based management. She stated that if a manager was involved in staffing, he or she had to know that competency-based management was coming. There was a manager’s guide to the issue. A document entitled *Talent Management for the Finance Community* was issued in February 2012 that provided a template on how to provide concrete examples when demonstrating how one met the competencies in a Statement of Merit Criteria.

[465] After she concluded the assessment, a request was made for an informal discussion with Ms. Stead and a representative of Human Resources.

[466] No interview was held. Ms. Hutchins followed the existing process. She did not know whether an interview would have made a difference. It would have meant an opportunity to verbalize concrete examples; however, they should have been set out in the application. She relied upon the references in reaching her conclusions.

2. Cross-examination

[467] Ms. Hutchins agreed that she was tasked with dealing with Ms. Stead's alternation request shortly after she arrived at the department. She stated that she had considerable experience in staffing matters. She was asked whether when she staffed a position, she assessed applicants against the entirety of the work description. She stated that that did not necessarily happen. The Statement of Merit Criteria sets out performance objectives.

[468] She was asked about the FI community moving to generic work descriptions. In her view, they could be used for FI-01 entry-level positions; however, at the FI-04 group and level, unique work descriptions could be required, although a department could use generic work descriptions for all levels.

[469] She was asked if she had looked at the job descriptions. She replied that she had not and that she had looked at the Statement of Merit Criteria. She was asked if she had felt bound to look only at the Statement of Merit Criteria. She replied that she had not but that doing so was logical based on her knowledge of the job.

[470] She spoke with Ms. McKinnon about the process.

[471] She was asked whether she knew that Ms. Stead had not received information about the process. She stated that she had been surprised, as every affected employee had a Human Resources advisor to provide him or her with the available tools on the alternation process. This occurred before she arrived at the department.

[472] Ms. Hutchins did not provide any information to Ms. Stead with respect to how she would assess her alternation application.

[473] Ms. Hutchins confirmed that she was disappointed with the lack of concrete examples in Ms. Stead's application. She was asked whether she was aware of any requests made by Ms. Stead. She replied that she was not. She stated that the employee guide states that the onus is on the applicant to demonstrate how he or she meets the requirements of the position to which he or she seeks to alternate.

[474] She was asked whether in a WFA, management has a role to play in keeping people in the public service and whether any reference in the employer's guide to financial officer competency-based management applies to a WFA or an alternation. She stated that some websites have tools for dealing with staffing and alternation.

[475] She was asked if it was possible that someone affected by a WFA might not know that by applying for an alternation, the criteria would be based on competency. She stated that given the Statement of Merit Criteria, applicants had to demonstrate how they met the criteria.

[476] She confirmed that Ms. Stead was not interviewed.

[477] She had no idea whether Ms. Stead knew about the competency-based approach to staffing. She had had no interaction with Ms. Stead before meeting with her, after the assessment.

[478] She confirmed that she had provided the Statement of Merit Criteria to the three references. She was asked whether she had provided the Statement of Merit Criteria to Ms. Stead. She replied that Ms. Stead had access to all the documents.

[479] Ms. Hutchins was asked if she considered the competency of accounting operations to determine if that competency applied to the position. She stated that she looked at all the competencies.

[480] She was asked if she had ever shared her vision of the way forward. She replied that it was not shared with anyone and that it was not her vision of the way forward; it was in the policy on internal control.

[481] She was asked whether the staffing approach has changed and whether the department is still using competency-based qualifications for the FI community. She stated that she still uses them. She acknowledged that exceptions may arise but that she could not speak for anyone else.

[482] She was asked whether in her present position, the director, financial analysis and planning, position reported to her. She acknowledged that it did.

[483] The employer objected to the relevance of the events that occurred in 2016, stating that the guidelines on financial officer competency took effect on April 1, 2013. This is what Ms. McKinnon followed at that time. That is relevant. What happened in

2016 with respect to a different position is irrelevant.

[484] Ms. Hutchins stated that for staffing the director, financial planning analysis and reporting, position, the functional competency profile was still being used to screen candidates.

[485] Behavioural competencies were used. To be considered, candidates had to have the following:

...

... recent and significant experience in the Financial Management (FI) group with a combination of two or more of the following areas:

- *Attestation*
- *Corporate Accounting*
- *Forecasting/Costing*
- *TBS's Expenditure Management System*
- *Financial Planning and Budgeting including financial resource management*
- *Financial Policy*
- *Financial Systems*
- *Internal Control*
- *Financial Operations*

...

[486] Ms. Hutchins explained that management had the discretion to add other functional competencies if they were critical to the position being staffed. This was a poster to create a pool of FI-04s for both acting and indeterminate appointments.

[487] The FI competency model has four functional competencies. Management had broken them down into sub-competencies for the purpose of the pool so that it would be able to choose candidates with specific qualifications for positions.

3. Re-examination

[488] She was asked whether the duties of the director, financial planning and

reporting, position were the same as those of Mr. Watchman's position. She replied that a new Statement of Merit would have been prepared when it came to staffing that position from the pool.

VI. Summary of the arguments

A. For Ms. Stead

[489] Losing one's job is a terrible thing when one has done nothing wrong other than being in the wrong position on the wrong day. Had the alternation process been correctly carried out, Ms. Stead, a good and skilled employee with 35 years of experience in the highest classification in the bargaining unit, would have been permitted to alternate with Mr. Watchman.

[490] Her performance evaluations had always been good. In 2012, when the department needed someone to implement a new system, her supervisors sang her praises. The purpose of an alternation program is to retain talent like Ms. Stead's. The system failed. Management did not properly meet its obligations under the directive.

[491] In section 6.2 of the directive, the employer commits to position unaffected employees to facilitate retaining affected employees and their skills. It reads in part as follows:

6.2.1 All departments or organizations must participate in the alternation process.

6.2.2 An alternation occurs when an opting employee who wishes to remain in the core public administration exchanges positions with a non-affected employee (the alternate) willing to leave the core public administration under the terms of Part VI of this Directive.

6.2.4 An indeterminate employee wishing to leave the core public administration may express an interest in alternating with an opting employee. Management will decide, however, whether a proposed alternation will result in retaining the skills required to meet the ongoing needs of the position and the core public administration.

[492] The obligation must be read in conjunction with the responsibility that the employer undertook when it signed the directive.

[493] Section 1.1.1 provides as follows:

Since indeterminate employees who are affected by work

force adjustment situations are not themselves responsible for such situations, it is the responsibility of departments or organizations to ensure that affected and surplus employees are treated equitably and given every reasonable opportunity to continue their careers as public service employees.

[494] Section 1.1.5 provides as follows:

Departments or organizations shall establish systems to facilitate redeployment or retraining of the department's/organization's affected employees, surplus employees, and laid-off persons.

[495] The objective is to maximize employment opportunities through alternate employment opportunities.

[496] In *PSAC v. TB*, a policy grievance challenging how the Treasury Board had been applying the WFA appendix with respect to alternation, the PSLRB defined the circumstances in which alternation could be refused, stating as follows at paragraph 33:

[33] ... the WFAA requires that systems be established to facilitate opting employees switching positions with alternates ... departments must also be ready to receive and respond to alternation requests within the 120-day window. On a more general level, participation cannot be token or perfunctory: there must be a genuine willingness to assist employees seeking to alternate and to consider proposed alternations....

[497] The employer cannot deny an alternation request for reasons other than that the proposed alternation is not likely to result in retaining the skills required to meet the ongoing needs of the position and of the core public administration.

[498] In *Chênevert v. Treasury Board (Department of Agriculture and Agri-Food)*, 2015 PSLREB 52, the PSLREB stated at paragraph 146, "... although the employer has decision-making authority under the WFAA, its authority cannot be exercised in an unreasonable, arbitrary or discriminatory manner, or in bad faith. The two parties agreed on that point." In that case, the PSLREB also stated the following at paragraph 159:

[159] It seems to me that the employer's role in such a process should not be as a passive observer. Given that the employer knows what it is looking for, it should play an active role at the interview stage to verify whether a candidate has the necessary elements for an alternation. The issues are significant for an opting employee, and the

employer simply cannot adopt the approach that the employee must demonstrate that he or she deserves to continue his or her public service employment. Both parties should be involved.

[499] In that case, the Adjudicator determined that the employer had acted unreasonably by maintaining a passive approach and by insisting that it was the grievor's sole responsibility to demonstrate his ability to meet the requirements of the position.

[500] At paragraph 164, the Adjudicator stated that by insisting that an applicant be the perfect candidate before granting an alternation, the employer, by its admission, creates an unreasonable requirement.

[501] These responsibilities are not just part of the directive; they are incorporated into the collective agreement.

[502] The Adjudicator in that case allowed the grievance and remitted the issue of remedy back to the parties to resolve.

[503] In Ms. Stead's case, even if the Board does not find the employer's decision unreasonable, arbitrary, or discriminatory or that it was made in bad faith, it can still grant the grievance on the basis of a flawed process.

B. Application to the facts

[504] Both Ms. Stead and Mr. Matheson testified that because the FI-04s had generic job descriptions, each had the qualifications to perform in all FI-04 positions. Mr. Joannette, the director general at the time, had advised as much to them.

[505] Ms. Stead reached out to management. She was provided with the Statement of Merit. She did not receive detailed instructions on the steps she should take to process her alternation request.

[506] Ms. McKinnon testified that she was responsible for developing the process used to assess Ms. Stead's application. She provided the material to Ms. Hutchins. Neither Ms. McKinnon nor Ms. Hutchins provided written instructions to Ms. Stead. She was left in the dark. Had she been given instructions, she would have had the opportunity to provide examples. The employer's failure to provide clear directions breached the collective agreement. By that failure, the process was not transparent. The employer did not provide Ms. Stead with a reasonable opportunity to maintain her

employment. It took a passive approach. Ms. McKinnon and Ms. Hutchins said that Ms. Stead should have known the process, even though it was new.

[507] The directive supported by the manager's guide places an onus on the employer to provide candidates with tools. In this case, it was assumed that Ms. Stead had to guess how the employer would assess her competencies. It was a new process. Ms. McKinnon might have used the process once before. Ms. Stead testified that she expected to be called to an interview. Neither she nor Messrs. Robert and Matheson were interviewed.

[508] Interviews are referred to in the manager's guide. It is a clear characteristic of the process. It would have been a great opportunity for Ms. Stead to demonstrate her skills. By withdrawing the interview, the employer took away her opportunity to remain in the public service.

[509] Most inappropriately, Ms. Hutchins never met Ms. Stead. Had an interview been held, it would have been a perfect opportunity for them to meet.

[510] The employer added functional competencies to the Statement of Merit to impede alternations into Mr. Watchman's position. Ms. McKinnon could not confirm whether they were used in two other FI alternations that occurred at the same time. She thought that one might have used them. She testified that a staffing process for an FI-03 position in May 2013 did not use them as they were not necessary for creating a pool from which FI-03 positions would be staffed. Ms. Hutchins contradicted this testimony as she stated that when an employee is appointed to a position from a pool, a new Statement of Merit Criteria is prepared.

[511] Adding functional competencies to the Statement of Merit for Mr. Watchman's position was contrary to the requirement to give Ms. Stead a reasonable chance to remain in the public service.

[512] Alternatively, if functional competencies had to be added to the Statement of Merit, the tool was flawed as the statement was developed without the input of the incumbent, Mr. Watchman. The situation was unique. The office of the director general was like a revolving door as six people acted in that role over a few months.

[513] While Ms. Hutchins had a vision for the position, she did not know everything about Mr. Watchman's duties. She was asked to assess Ms. Stead's application on the second day of her appointment as the acting director general. Mr. Watchman testified

that approximately 60% of his duties fell under accounting operations. Based on the Statement of Merit, he would not have qualified for his position.

[514] The employer must approach the alternation process with openness and transparency. Ms. McKinnon stated beforehand that she would deny attempts to alternate. Mr. Watchman described her as gloating and giggling. She could not remember that discussion. He did not have a kind word to say about Ms. McKinnon.

[515] Mr. Matheson testified that he had performed the substantive duties of Mr. Watchman's position.

[516] Although Ms. Hutchins stated that she was not bound by the process and that she decided not to carry out an interview, nevertheless, she was bound by the process.

[517] By refusing the alternation requests of Mr. Robert, Mr. Matheson, and Ms. Stead, 75% of the FI-04s were unqualified to perform the duties of Mr. Watchman's position, even though they shared identical job descriptions.

[518] Ms. Stead possibly did not have Mr. Watchman's wealth of experience; however, it is more than likely that she could have performed the duties of his position. As the Adjudicator in *Chênevert* stated, insisting that an applicant be the perfect candidate before granting an alternation creates an unreasonable requirement.

[519] Although Ms. Stead did not work in general policy matters every day, her exposure to the area had been identified. Had Ms. Hutchins interviewed Ms. Stead, she would have learned more about her involvement in policy, which was acknowledged. She had the skills to interpret policy. Ms. Hutchins acknowledged that over her career, Ms. Stead had taken on new responsibilities and that she had proven that she could adapt quickly. After 30 years of experience, she had done so. The section she was responsible for was running smoothly.

[520] The three employees' alternation applications involving Mr. Watchman were denied. Two of them did not grieve. They chose not to for personal reasons. Mr. Matheson and Ms. Stead took demotions out of the Finance Division. There were no barriers to entry for these positions.

[521] Ms. Stead suffered salary and pension implications from the demotion.

[522] The bargaining agent asked that the grievances be allowed, that Ms. Stead's

alternation request be granted with any benefits and entitlements, and that she be compensated for any salary losses, including with respect to her pension.

C. For the employer

[523] The employer agreed with the bargaining agent's preliminary remarks that losing one's job is a devastating experience, especially when the employee is not at fault. The position was lost due to the WFA. This hearing was not about the WFA process. Considerable confusion about the directive seems to exist.

[524] The directive's objective is recited under Part 1, "Roles and Responsibilities", and in particular section 1.1.1, "Departments or Organizations", which reads as follows:

Since indeterminate employees who are affected by work force adjustment situations are not themselves responsible for such situations, it is the responsibility of departments or organizations to ensure that affected and surplus employees are treated equitably and given every reasonable opportunity to continue their careers as public service employees.

[525] The objective is not to guarantee employees continuity of their careers through alternation.

[526] Section 1.1.5 of the directive reads as follows:

Departments or organizations shall establish systems to facilitate redeployment or retraining of the department's/organization's affected employees, surplus employees, and laid-off persons.

[527] Alternation is one of the tools used to help affected employees continue their public service careers. The objective is not to guarantee employees a specific alternation. It did not guarantee that Ms. Stead would obtain Mr. Watchman's position.

[528] The bargaining agent alleged that the system failed Ms. Stead when in fact it succeeded. She secured employment, as did Mr. Robert and Mr. Matheson. The objective is not to guarantee employees the same salary or an equivalent position in the same branch or division. Ultimately, the system succeeded for all of them.

[529] The employer agreed that the legal test was whether its discretionary authority was exercised reasonably and whether its conduct amounted to bad faith.

[530] Considering the legal test, the Adjudicator's role is not to reassess Ms. Stead's

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Federal Public Sector Labour Relations Act*

application to alternate and go into the details of whether she met the requirements. That is the employer's prerogative. The Adjudicator's role is to consider the evidence as a whole, to determine if anything indicates bad faith.

[531] The onus is on a grievor to prove bad faith. It is a high threshold. It is insufficient to make bold assertions. Not all errors and omissions in a process amount to bad faith. Processes can be imperfect. Mistakes do not necessarily imply bad faith.

[532] The essence of the bargaining agent's argument is that the Statement of Merit Criteria contained two functional competency criteria, financial policy and financial systems, which had been inserted for the specific purpose of eliminating opting employees. This is the main allegation of Ms. Stead and Mr. Watchman. The employer agreed that if it were true, it would constitute bad faith.

[533] The evidence is undisputed that those two functional competencies were added for specific reasons. Ample evidence demonstrated that they had not been added arbitrarily. The corollary is that the grievors provided no reasons that those two functional competencies should not have been added.

[534] Ms. McKinnon testified that on April 1, 2013, new Treasury Board guidelines about the FI competency profile came into effect, the controller general guidelines.

[535] As of April 1, 2013, there was a new way of assessing competencies, as set out in the document entitled *Financial Officer Competency Profile*. This is the first indication that Ms. McKinnon did not add functional competencies arbitrarily. She was required to add them to the competency profile; she did as she had been told.

[536] Ms. McKinnon's role was to determine the competencies relevant to Mr. Watchman's position. There was not only a new way of assessing his position, which had evolved, but there was also a new policy on internal control. That policy took effect on April 1, 2009, and was to be phased in over a three-year period.

[537] That responsibility was key to Mr. Watchman's position. The Auditor General audited that policy's implementation. At that time, Ms. McKinnon was aware that Veterans Affairs Canada had not made satisfactory progress implementing it. Mr. Watchman's position had to be able to meet a looming deadline of March 31, 2014. It had to be done the right way.

[538] Ms. McKinnon analyzed Mr. Watchman's position. Carrying out the key elements

and priorities of the position required someone with financial policy competency.

[539] She also determined that one of the key competencies was financial systems, in the form of the requirement to review business process testing. The new duties required a good understanding of legislation and Treasury Board financial policies.

[540] There is a third reason, which is the CFO attestation function. Ms. McKinnon and Ms. Hutchins both testified that there was a new requirement for the incumbent of the position to sign off on proposals going to the Treasury Board that required a great deal of technical expertise.

[541] One might ask whether she had the right to look at the new responsibilities that the incumbent of the position would undertake.

[542] Section 6.2.4 of the directive provides that management must decide "... whether a proposed alternation will result in retaining the skills required to meet the ongoing needs of the position and the core public administration [emphasis added]."

[543] Mr. Watchman's position was never static. It evolved.

[544] In *PSAC v. PIPSC*, with respect to the quality of the required departmental participation in the alternation process, the PSLRB stated as follows at paragraph 33: "On a more general level, participation cannot be token or perfunctory: there must be a genuine willingness to assist employees seeking to alternate and to consider proposed alternations, but this has to be within the framework of the WFAA [emphasis added]." The PSLRB stated as follows at paragraph 35:

[35] Under section 6.2.4 management decides "... whether a proposed alternation is likely to result in retention of the skills required to meet the ongoing needs of the position and the Core Public Administration." The obvious implication of this provision is that, if the proposed alternation is not likely to result in the retention of the requisite skills, management can block the intended alternation. The provision permits, first and foremost, a consideration of the suitability of the opting employee for the position into which he or she is proposing to move. However, it also gives management broad latitude to consider the "... ongoing needs of the position and the Core Public Administration."

[545] Management has broad latitude to consider whether a proposed alternation meets the ongoing needs of the position and the core public administration, which Ms. McKinnon did.

[546] No evidence was adduced to contradict why the functional policies were added to the Statement of Merit Criteria.

[547] With respect to the assessment process, Ms. McKinnon assessed Mr. Robert's and Mr. Matheson's alternation applications. The Statement of Merit Criteria was sent to both of them, and they had to show how they met it. She did not rely simply on the applications. She was not passive by looking only at what the applications stated. She was proactive by seeking references from their supervisors.

[548] The *Manager's Guide to Financial Officer Competency-Based Management* suggests how to assess candidates. An interview is suggested, but it does not say that one is mandatory.

[549] In this case, it would have been redundant since the applicants had to demonstrate how they met the criteria. Ultimately, the manager decides the tools to use to assess candidates.

[550] If the Board determines that it would have been preferable to have held interviews, would it amount to bad faith? Did the applicants for alternations suffer prejudice? No one complained that he or she was not interviewed.

[551] Mr. Robert and Mr. Matheson had no issue with the Statement of Merit Criteria. Both produced documents setting out how they met them.

[552] This is different from the situation in *Chênevert*. In that case, although the grievor was interviewed, no steps were taken to consult references. The fact that Mr. Robert and Mr. Matheson disagreed with the assessment done by Ms. McKinnon and Mr. Joannette does not amount to bad faith. Mr. Joannette provided input into both assessments, not just Ms. McKinnon.

1. Ms. Stead

[553] Ms. Hutchins appraised Ms. Stead's application. Although she was new in her position, she had over 30 years of experience in finance. That fact should be considered a positive element of neutrality. She did not know Ms. Stead. She received a package of documents, including Ms. Stead's résumé. She reviewed the résumé and the application documents. She reviewed the Statement of Merit Criteria, which she had to take into account. She was satisfied that that statement corresponded to the ongoing requirements of Mr. Watchman's position.

[554] The two functional competencies were completely in accord with the new responsibilities for internal control and CFO attestation.

[555] She was aware of the fact of deadlines looming with respect to the Auditor General and that the department was not making sufficient progress implementing internal controls.

[556] The bargaining agent argued that Ms. Hutchins was bound by the process instituted by Ms. McKinnon and followed for Mr. Robert and Mr. Matheson. Ms. Hutchins stated that had she disagreed with that process, she would have changed it. She also stated that there was no need to conduct an interview in that context.

[557] Ms. Hutchins referred to Ms. Stead's application to determine how she met the criteria. She also sought feedback from three of Ms. Stead's supervisors. She was not passive. When the supervisors advised her that they had not observed Ms. Stead performing a particular activity, it meant that she did not perform that particular competency. Given the fact that the three supervisors had supervised her for three of the five years, it means that for at least that time, she did not meet the competencies.

[558] With respect to providing instructions on how to prepare an application setting out how an applicant meets the competency criteria, it is difficult to understand how Ms. Stead would not have been aware of what was necessary. She was at the highest FI classification level. She had been involved in staffing and hiring. She had applied to staffing processes.

[559] On reviewing her application and her entries under the financial policy functional competency together with the "Financial Officer Competency Profile" of the Treasury Board of Canada Secretariat and the Office of the Comptroller General of Canada, it becomes apparent that she quoted from and posted the criteria from this material. It can be concluded that she had this document when she prepared her application.

[560] The competency profile states the following under the heading, "Why are competencies important?":

From an incumbent's perspective, competencies allow for a better understanding and verbalization of accomplishments and experience (better marketing of themselves); allow the incumbent to substantiate his/her work experience with concrete work examples; allowing for more pertinent

feedback from managers/mentors on areas of professional development; and help to align work experience and career goals and objectives.

[561] As she quoted and posted from that document, which refers to incumbents providing concrete work examples, it is difficult to accept that she was not aware of the requirement.

[562] Ms. Hutchins considered her application and observed that she did not demonstrate the financial policy competency. She sought to corroborate her observation with the three references, who did so.

[563] She did not demonstrate that competency because she had no concrete examples to provide, not because she was unaware of the requirement to provide them.

[564] On a more general level, the employer's participation cannot be token or perfunctory; it must be within the directive's framework.

[565] Ms. Hutchins did not seek the perfect candidate but the candidate who satisfied the function's competencies.

[566] Section 6.6 of the directive provides that the opting employee must meet all requirements for a public service appointment. There is no leeway to do it "on the fly".

[567] In *Chênevert*, the Adjudicator concluded that the employer had had a closed mind with respect to the grievor's application.

[568] Ms. McKinnon denied every allegation that Mr. Watchman made about her that she giggled and smirked about denying Mr. Robert's and Mr. Matheson's alternation applications. The Board must determine if this issue is determinative and relevant.

[569] The manager in *Chênevert* was more concerned about her team's opportunity for promotion than allowing an alternation. Those factors do not exist in this case.

[570] The two grievors proceeded on a false premise; namely, because they had the same generic work descriptions, they could perform each other's jobs.

[571] Even if when the work descriptions were prepared, Mr. Joannette had stated that the jobs were interchangeable, it is clear that Mr. Watchman's job had evolved.

[572] The employee has the burden of establishing bad faith. If the Board determines that the process could have been carried out better, it would not amount to bad faith. The financial policy and financial systems functional competencies were part of the ongoing requirements of Mr. Watchman's position.

D. Bargaining agent's reply

[573] The test is not limited to bad faith. In *Chênevert*, the test was described as "unreasonable, arbitrary or discriminatory manner, or in bad faith."

[574] One of the elements of the passive approach in this case is that Ms. Hutchins had to advise Ms. Stead of the examples. Ms. Stead did not provide any examples for the financial systems competency, yet she was found to be competent in that area as it was met through the information provided by the references.

[575] It is agreed that Ms. Stead had knowledge of the competencies; however, the process was not explained to her.

[576] In *Chênevert*, the Adjudicator determined that unlike a reviewing court, an adjudicator's role is to render an appropriate decision based on the evidence and arguments presented before him or her at a hearing *de novo*. The Board has jurisdiction to determine that there should have been an interview.

[577] Mr. Watchman stated that 60% of his job involved corporate accounting. He also stated that he had never dealt with financial systems and that he did not meet the competencies set out in the Statement of Merit.

[578] The employer argued that there are different ways to assess competency-based staffing. The *Manager's Guide to Financial Officer Competency-Based Management* does not state that there are different ways but states what must be done, including carrying out an interview.

[579] Are interviews mandatory? That guide does not say. Ms. McKinnon stated that she followed the guide. She should have followed the guidelines.

[580] In a WFA, the employer has a larger onus. Failing to use best practices is unreasonable. Had a full staffing approach been followed, an interview would have been carried out.

[581] The staffing manager should have confirmed some information from an

interview with the references. The interview should not have been skipped. The employer suggested that an interview would have been redundant. However, it would have given Ms. Stead an opportunity to provide examples.

[582] Human Resources informed Ms. McKinnon that the next step was to meet with the opting employees. No meetings were ever held.

[583] Mr. Watchman did not give evidence that his position had evolved. An up-to-date statement of duties is required. In the absence of a new job description, the old one should have applied.

[584] It would have been reasonable for the employer to allow any of the three employees' requests to alternate with Mr. Watchman. They were not perfect candidates, but they were reasonable.

VII. Analysis

[585] As discussed, the directive's provisions are incorporated into the collective agreement.

[586] The directive's objective is set out in section 1.1, as follows:

Since indeterminate employees who are affected by work force adjustment situations are not themselves responsible for such situations, it is the responsibility of departments or organizations to ensure that affected and surplus employees are treated equitably and given every reasonable opportunity to continue their careers as public service employees.

[587] Section 1.1.5 states as follows:

Departments or organizations shall establish systems to facilitate redeployment or retraining of the department's/organization's affected employees, surplus employees, and laid-off persons.

[588] In *PSAC v. TB*, at para. 2, the PSLRB stated as follows:

[2] The Workforce Adjustment Appendix and the Workforce Adjustment Agreement ... establish certain procedures the employer must follow, in every workforce adjustment situation, to maximize employment opportunities for employees affected and reduce the impact of workforce adjustment on individual employees. One of the possibilities provided for in the WFAA is alternation, a process by which an employee who has been identified for possible lay-off ("the

opting employee”) agrees to change places with the similarly qualified employee who has not been so identified (“the alternate”).

[589] Section 6.2 of the directive deals with alternation. It reads in part as follows:

6.2.2 An alternation occurs when an opting employee who wishes to remain in the core public administration exchanges positions with a non-affected employee (the alternate) willing to leave the core public administration under the terms of Part VI of this Directive. 6.2.4 An indeterminate employee wishing to leave the core public administration may express an interest in alternating with an opting employee. Management will decide, however, whether a proposed alternation will result in retaining the skills required to meet the ongoing needs of the position and the core public administration.

6.2.6 The opting employee moving into the unaffected position must meet the requirements for appointment to the position; for greater clarity, that appointment is subject to all Public Service Commission requirements for the appointment or deployment of an affected employee from his or her surplus position into an unaffected position; this includes language requirements and the determination of applicable equivalencies for staffing purposes. The alternate moving into the opting position must meet the requirements of the position, except if the alternate will not be performing the duties of the position and the alternate will be struck off strength within five days of the alternation.

[590] The parties do not disagree with the principles to be applied to the facts from the jurisprudence, which are that a department’s participation cannot be token or perfunctory; there must be a genuine willingness to help employees seeking to alternate and to consider a proposed alternation. The employer’s role in such a process should not be as a passive observer. Nor can it insist that an applicant be the perfect candidate before granting an alternation as that would be an unreasonable requirement.

[591] Furthermore, the parties do not disagree with the principle that the employer’s decision cannot be unreasonable, arbitrary, or discriminatory or made in bad faith.

[592] The bargaining agent’s main argument is that the two functional competency criteria, financial policy and financial systems, were added to the Statement of Merit for the specific purpose of eliminating opting employees. The employer agreed that if that were true, it would constitute bad faith.

[593] In addition, the bargaining agent asserted that the Statement of Merit used to assess Ms. Stead's application should have been based on Mr. Watchman's 2012 generic job description as it had not been updated and should not have included functional competency criteria.

[594] Neither Mr. Matheson nor Mr. Robert filed a grievance with respect to the process followed in their cases.

[595] Mr. Matheson stated that he had no issues with functional competencies being assessed. He was familiar with these competencies and had seen them assessed by other assessment boards. When he was shown the Statement of Merit Criteria for Mr. Watchman's position, he agreed that he did not have any issue with the statement of qualifications or with the description of the functional competencies. He acknowledged that it was his responsibility to demonstrate how he met the requirements for the position.

[596] Mr. Robert was asked if he had any issues with respect to the Statement of Merit requirements for the job. He did not recall having any issues with or concerns about it.

[597] Ms. Stead stated that in her view, when she was given the Statement of Merit Criteria for Mr. Watchman's position, it did not match his job. Her opinion was that Ms. McKinnon had made it up based on the applications she would receive. She was asked whether she had raised issues about the statement with Ms. McKinnon. She could not recall. She was asked whether she had expressed concerns about the statement when she met with Ms. Hutchins. She replied that she had not.

[598] Mr. Watchman was of the view that the Statement of Merit prepared by Ms. McKinnon did not reflect the duties of his position, which involved accounting operations and financial policy and not financial systems. With respect to financial policy, he stated that he did not personally meet the skill level of this behavioural competency and that he would consult the Treasury Board as he had no policy experience.

[599] The CFO attestation function was still being developed in March 2013. The Treasury Board provided direction on how to implement it, which involved new procedures. Mr. Watchman stated that he did not perform the function as he did not have the skills and that he had brought in consultants to help him. He acknowledged that there was to be an ongoing requirement for that function, effective January 2014.

[600] Mr. Watchman's opinion was that the Statement of Merit was developed to screen people out and that Ms. McKinnon carried out a vendetta. He met with Ms. Hutchins to advise her that the statement for his position did not reflect his job. However, she used the same tool to screen out Ms. Stead's alternation application.

[601] Ms. McKinnon testified that she was not involved in the decision about whose positions would be declared surplus. However, as the acting director general, she was responsible for formally notifying the employees who reported to her.

[602] As she was Mr. Watchman's supervisor, she was responsible for determining whether the employees requesting to alternate with him met the qualifications for his position. She and a Human Resources Advisor prepared a Statement of Merit to evaluate potential candidates. They looked at the position and the incumbent's duties, the department and federal government environments, and the position's impact and role. The older Statement of Merit for Mr. Watchman's position did not include competencies. The department had been directed to use competency criteria for staffing FI-classified positions as of April 1, 2013.

[603] For education and experience, she used the criteria for staffing the position when Mr. Watchman was appointed to it. She used behavioural competencies listed in the management guide, which were oral and written communications, values and ethics, strategic thinking, engagement, and management excellence with respect to both action and people. She added a behavioural competency not listed in the guide, management excellence with respect to finance.

[604] She added the financial policy and financial systems functional competencies. The policy requirements for the position were the same as the requirements for staffing the position when Mr. Watchman was appointed to it. A major portion of the position involved implementing policies, and at that point implementing the policy on internal control, because of the Auditor General's unfavourable report on the department's progress implementing the policy.

[605] This also had implications with respect to competency on financial systems. Part of the basis of the criticism related to testing the systems, which fell within the definition of financial systems competency. In addition, other high-profile work at the time was the CFO attestation, which was to come into effect on January 1, 2014, and involved enhanced internal controls over cabinet submissions.

[606] Ms. Hutchins assessed Ms. Stead's suitability to alternate with Mr. Watchman. Ms. Hutchins has considerable experience with WFA issues and with staffing in the FI classification. She had participated in the grassroots discussions of functional competencies as a tool for staffing FI positions. She had worked on the internal controls policy while employed at the Correctional Service of Canada. In addition, she had worked with the cabinet submission on the CFO attestation responsibility while employed at the DND and had worked on the guidelines while at the Treasury Board.

[607] Her view was that Ms. McKinnon had accurately developed the criteria for the Statement of Merit for persons seeking to alternate into Mr. Watchman's position.

[608] The documentary evidence is clear that the department was directed to use competency criteria when staffing FI positions, effective April 1, 2013. I am not persuaded that when she prepared the Statement of Merit Criteria, Ms. McKinnon could have ignored that direction and resorted to the criteria used in 2012 to prepare the Statement of Merit for Mr. Watchman's position as it existed at that time.

[609] As noted, section 6.2.4 of the directive provides that management must decide whether a proposed alternation will result in retaining the skills required to meet the ongoing needs of the position and of the core public administration.

[610] Neither Mr. Matheson nor Mr. Robert took issue with the functional competencies being incorporated into the Statement of Merit. Although Ms. Stead had her own views about why the competencies were added, she did not take issue with them being added. Mr. Watchman acknowledged that financial policy was part of the duties of his position, which would also have included being responsible for CFO attestation in January 2014.

[611] Given the evolution of Mr. Watchman's position, the new policy on internal control, and the need to meet a looming deadline of March 31, 2014, the requirement to review the testing of business processes that was part of the financial systems competency, as well as the CFO attestation function that would require a great deal of technical expertise, I conclude that the bargaining agent did not meet its onus of establishing that it is more likely than not that Ms. McKinnon unreasonably, arbitrarily, or in bad faith added those two competency functions to the Statement of Merit Criteria.

[612] The bargaining agent argued in the alternative that even if the Board does not

find the employer's decision unreasonable, arbitrary, or discriminatory or made in bad faith, it could still grant the grievance on the basis of the flawed process.

[613] Ms. Stead testified that initially, she did not apply to alternate; however, once Mr. Matheson's and Mr. Robert's applications were denied, she decided to apply. She filled out the forms in early September and sent her request to Ms. McKinnon, who advised her that Ms. Hutchins would be the acting director general and would consider her request.

[614] She knew the ratings and how they would be used and assessed. She did not provide references. She was given the opportunity to provide information. She was provided the Statement of Merit Criteria for Mr. Watchman's position. She referred to it to demonstrate that she met the criteria. She provided an application and a résumé.

[615] The documentary evidence is clear that in her application, she quoted from and posted extracts from the *Financial Officers' Competency Profile*. It refers to incumbents providing concrete work examples of their competencies.

[616] In cross-examination, it was proposed to her that she had to demonstrate how she met the competency criteria. She replied that she was never interviewed. She acknowledged that her documents contained no examples.

[617] She was asked if she provided any other documents on how she met the qualifications for the position. She stated that she was never given the opportunity and that when you work with a person for 25 years, that person knows your skills. She was asked whether she had counted on the fact that management knew her. She assumed that she had.

[618] She was asked whether Ms. Hutchins had assessed her. She replied that Ms. Hutchins had delivered the result to her. She did not think that Ms. Hutchins assessed her because Ms. Hutchins did not know her.

[619] She was asked whether she had counted on the assessor knowing her. She stated that she had not done so and that she believed that the assessment had been based on an interview with Ms. McKinnon. She acknowledged that it was also based on input from two other supervisors. She acknowledged that had an outside consultant been retained to carry out the assessments, then he or she would not have known the candidates.

[620] In 2013, Ms. Hutchins was the senior director, corporate finance. When Ms. McKinnon completed her term as the acting director general, she took over that responsibility in the fall of 2013. Mr. Watchman reported to her. He was the principal contact on the progress being made in implementing the policy on internal control. When Ms. Hutchins was asked to assess Ms. Stead's alternation application, she obtained the file, which included a covering letter from Ms. Stead, the Statement of Merit, and a résumé.

[621] Ms. Hutchins used the *Financial Officers' Competency Profile*, which is a subset of the manager's guide, to assess Ms. Stead's application. She reviewed the Statement of Merit Criteria. It matched the generic criteria for an FI-04 position. She assessed Ms. Stead's application in light of the financial policy and financial systems functional competencies at the FI-04 level.

[622] She stated that an employee seeking to alternate has to meet the current and future requirements of the position. Given her background and experience, she had a solid understanding of those requirements.

[623] She spoke with Ms. McKinnon with respect to how she had approached the alternation requests from Mr. Matheson and Mr. Robert. To be fair, she intended to follow the same approach for Ms. Stead.

[624] Because she did not know Ms. Stead, she identified three of her previous supervisors to consult as references, who were Ms. Glenn-MacIsaac, Ms. McKinnon, and Mr. Joannette.

[625] In her review of the documents provided by Ms. Stead, she was not able to get a sense of how Ms. Stead had performed her tasks as there were no concrete examples.

[626] Ms. Hutchins prepared a right-fit assessment that incorporated the views of the three references. Ms. Stead met the educational competency, the experience competency, and the behavioural competencies, as well as the functional competencies with respect to financial systems.

[627] It was concluded that Ms. Stead did not meet the financial policy functional competency. Mr. Joannette observed that she did not meet it. He noted a lack of evidence of "[s]trategic, central agency liaison, risk management strategies and controls". Ms. McKinnon noted that it was "[n]ot observed", and Ms. Glenn-MacIsaac noted that it was "[n]ot assessed". The combined assessment was that Ms. Stead did

not meet it.

[628] Ms. Hutchins was asked if she considered the possibility that Ms. Stead did not realize that she had to provide concrete examples. She replied that there had been considerable communication about competency-based management and that if a manager was involved in staffing, he or she had to know that competency-based management was coming. A manager's guide was circulated on the issue in 2012 that provided the template on how to provide concrete examples. In cross-examination, Ms. Hutchins was asked whether she knew that Ms. Stead did not receive information about the process. She replied that she had been surprised as every affected employee had a Human Resources advisor to provide him or her with the available tools for the alternation process.

[629] There was no interview; Ms. Hutchins followed the existing process. She relied upon the references when reaching her conclusions.

[630] The bargaining agent argued that the employer took a passive approach with respect to its consideration of Ms. Stead's application, arguing firstly that neither Ms. McKinnon nor Ms. Hutchins provided any instructions to Ms. Stead about how to complete the application. In my view, the bargaining agent did not meet its onus of demonstrating that it is more likely than not that Ms. Stead was unaware of competency-based staffing, given her experience as a senior manager and the fact that she quoted from the manager's guide in her alternation application.

[631] Unlike the situation in *Chênevert*, because Ms. Hutchins did not know Ms. Stead, she reached out to three of Ms. Stead's supervisors, who were able to provide input for three of the last five years of Ms. Stead's employment. That was not consistent with the employer taking a passive approach.

[632] In terms of the result of the assessment, Ms. Stead was found to meet all the criteria and competencies in the Statement of Merit, except for financial policy. Her three references all agreed that she did not meet it. Given the bargaining agent's singling out of Ms. McKinnon for its allegations that the process was designed to frustrate employees seeking to alternate with Mr. Watchman, I find it of interest that primarily, the input of Mr. Joannette, the previous director general, resulted in all three alternation applications being rejected, yet his role in the process was not seriously challenged.

[633] With respect to the fact that no interview was held, I agree with the bargaining agent that it would have been preferable had the employer interviewed Ms. Stead. However, the manager's guide does not state that interviewing is mandatory; nor is that guide incorporated into the directive or the collective agreement.

[634] Ms. Stead counted on the fact that management knew her. In the circumstances, I am not persuaded that failing to interview her constituted either an unreasonable, arbitrary or discriminatory exercise of decision-making authority, or bad faith.

[635] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

IX. Order

[636] The grievances are dismissed.

March 5, 2019.

**David Olsen,
a panel of the Federal Public Sector
Labour Relations and Employment Board**