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



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

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BETWEEN

**ERIN CHUEY, MICHELLE ADAM AND CHRISTINE GASKIN**

Complainants

and

**COMMISSIONER OF THE CORRECTIONAL SERVICE OF CANADA**

Respondent

and

**OTHER PARTIES**

Indexed as

*Chuey v. Commissioner of the Correctional Service of Canada*

In the matter of complaints of abuse of authority pursuant to s. 77(1)(b) of the *Public Service Employment Act*

**Before:** Joanne Archibald, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Complainants:** Themselves

**For the Respondent:** Kieran Dyer, counsel

**For the Public Service Commission:** Louise Bard

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Heard via videoconference,  
February 23 and 24, 2021.

**REASONS FOR DECISION**

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**I. Introduction**

[1] The complainant, Erin Chuey, alleged that the respondent, the Commissioner of the Correctional Service of Canada (CSC), abused its authority in the choice of a non-advertised appointment process for the appointment of Ryan Slywka (“the appointee”) to the position of Regional Coordinator, Harassment Prevention (DTA/NAMP), classified AS-05, in Saskatoon, Saskatchewan (“the position at issue”). Note that “DTA” refers to the duty to accommodate, and “NAMP” refers to the CSC’s National Attendance Monitoring Program.

[2] Three complaints were made against the appointment. They were consolidated by order of the Federal Public Sector Labour Relations and Employment Board (“the Board”). This is the lead complaint (771-02-39228).

[3] The complainant’s view is that the respondent failed to ask employees for an expression of interest, that the position has an inaccurate name that does not match its duties, that the position has not been classified, and that there was no rationale for choosing a non-advertised appointment process, which in her opinion, breached the staffing values of fairness, access, and transparency.

[4] The respondent stated that the appointee was drawn from a pool of qualified candidates for a similar AS-05 position. The position title accurately described the position and the essential qualifications. The choice of a non-advertised process was within the respondent’s authority. Classification allegations are beyond the Board’s authority.

[5] The Public Service Commission provided a general statement that contained no substantive information addressing the complaints.

[6] For the reasons that follow, the complaints are dismissed.

**II. Background**

[7] On August 22, 2018, approval was requested within the CSC to appoint the appointee to the position at issue. The provided explanation was that the appointee had “... recently qualified in the AS-05 pool for the Regional Harassment Prevention

Coordinator position and as such, has demonstrated that he has the abilities and competencies needed for this regional advisor job within the wellness program suite.”

[8] The referenced appointment process was an internal advertised appointment process for the position of Regional Coordinator, Harassment Prevention, classified AS-05, process number 2017-PEN-IA-NAT-126717 (“the AS-05 appointment process”). The posting for that process included a number of relevant details: (1) it was open to employees of the CSC, the National Parole Board of Canada, and the Office of the Correctional Investigator across Canada; (2) the appointment process could be used to staff similar positions with different official language proficiencies and tenures, including indeterminate appointments; and (3) the locations included Saskatoon.

[9] The appointee applied and was found qualified for the position in the AS-05 appointment process. The complainant did not apply to the AS-05 appointment process.

[10] A “Notification of Consideration” (NOC) was issued on September 11, 2018, for the appointee’s non-advertised appointment to the position at issue in Saskatoon. On September 26, 2018, a “Notification of Appointment or Proposal of Appointment” (NAPA) was issued. It reflected the title of the position at issue.

[11] The CSC’s current organizational chart shows that the appointee occupies the position of Regional Coordinator, Harassment Prevention, in Saskatoon.

### **III. Summary of the evidence**

#### **A. For the complainant**

[12] The complainant has worked in Human Resources with the CSC in Saskatoon for 14 years. She is presently a labour relations advisor (classified PE-03). She testified that the region is unilingual and that she feels that it has few unilingual opportunities for advancement. The position at issue represented a promotional opportunity for her.

[13] The complainant testified that in 2017, the CSC issued a call for expressions of interest in an assignment as a DTA/NAMP advisor classified at the PE-03 group and level. It was not then of interest to her as it was not a promotional opportunity. She did not submit her name.

[14] The complainant stated that she first became aware of the existence of the position at issue when she read the NOC and later the NAPA for the appointee's appointment.

[15] According to the complainant, no position existed with "Regional Coordinator, Harassment Prevention" in its title that also included "DTA/NAMP". She testified that she had reviewed the statement of merit criteria (SOMC) provided by the respondent and had noted that it did not require specific DTA knowledge.

[16] The complainant concluded that the position at issue did not exist.

[17] The complainant did not apply to the AS-05 appointment process, a group and level that would have constituted a promotion for her. At that time, she did not know of or anticipate a position such as the position at issue, to which an appointment has been made. Had she known, she would have been interested as it represented an advancement for her in a workplace with limited promotional opportunities.

[18] As the CSC proceeded with a non-advertised appointment, it represented a lost opportunity to act in the position or to be appointed indeterminately.

[19] The complainant stated that she was aware of a Regional Coordinator, Harassment Prevention position in the CSC's Prairie Region. It was vacant but had not been unoccupied for very long. In her view, there was no urgent reason to staff it.

## **B. For the respondent**

[20] Katherine Bellehumeur, formerly the CSC's director of workplace wellness and employee wellbeing, had been in that position for approximately a year at the time of the appointment at issue.

[21] Ms. Bellehumeur testified that during this time, the workload in wellness programs was increasing. The awareness and acceptance of mental health injuries and their impact on the work of CSC staff was growing, and it became necessary to fill vacant positions to address it.

[22] One step taken by Ms. Bellehumeur's predecessor was to initiate the AS-05 appointment process. Assessment tools for that process were finalized in early 2018, and Ms. Bellehumeur participated in assessing the candidates. The appointee was one of two candidates found qualified in that process.

[23] Concerning the appointment in issue, Ms. Bellehumeur testified that she had approval to staff a DTA/NAMP position at the AS-05 group and level. The position was created in 2017 and remained vacant. Organizationally, it was located at the CSC's national headquarters. Ms. Bellehumeur moved it to the Prairie Region for the appointment at issue.

[24] Ms. Bellehumeur was aware that a non-advertised appointment was a staffing strategy available to her. She did not want to delay conducting an advertised appointment process or wait for a planned organizational review, which was still underway as of the hearing.

[25] The essential criteria for the position at issue were the same as those assessed in the AS-05 appointment process, and Ms. Bellehumeur was aware that the results of that process could be used to staff similar positions. She considered it efficient to appoint the appointee to the position at issue, since he had already demonstrated that he met the essential qualifications when he was assessed in the AS-05 process.

[26] During the hearing, exhibited were the "Request for Approval to Staff" document and the consent given by the CSC's Staffing Management Committee (SMC) to appoint the appointee to the position at issue. The CSC's assistant commissioner was the delegated manager for the appointment. He co-chaired the SMC, according to Ms. Bellehumeur.

[27] Ms. Bellehumeur was asked why the appointment at issue became urgent enough to require a non-advertised appointment process in 2018. She explained that she had received funding for the position in April 2017 as a priority staffing issue. Yet, it remained vacant for over a year. She felt that the funding would be at risk if she did not staff the position.

[28] Leading to the appointment at issue, no one performed DTA/NAMP duties in the Prairie Region. Employees from the Ontario, Quebec, and CSC's Pacific Region shared the Prairie Region's work.

[29] Ms. Bellehumeur was also aware that in 2017, there had been a call for expressions of interest for a PE-03 DTA/NAMP advisor position in Saskatoon. It yielded no employees who met the essential criteria for the position.

[30] As for the job title, Regional Coordinator, Harassment Prevention (DTA/NAMP), which appeared on the NOC and NAPA, Ms. Bellehumeur explained that DTA and NAMP were added to signal that the appointee would perform those functions. The formal title of the position in the Prairie Region and other locations remains Regional Coordinator, Harassment Prevention, which reflects the work description in those areas. It is also is the job title in the letter of offer given to Mr. Slywka.

#### IV. Analysis

[31] Section 77(1)(b) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*) provides a right of recourse as follows when the choice of appointment process is at issue:

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

...

*(b) an abuse of authority by the Commission in choosing between an advertised and a non-advertised internal appointment process ....*

[32] The complainant bears the burden of proof in a complaint of abuse of authority. See *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8 at paras. 48 to 55.

[33] Section 33 of the *PSEA* provides that “[i]n making an appointment, the Commission may use an advertised or non-advertised appointment process.”

[34] The *PSEA* assigns no priority between a non-advertised and an advertised appointment process, and there is considerable discretion in making the choice. See *Clout v. Deputy Minister of Public Safety and Emergency Preparedness*, 2008 PSST 22. Urgency may influence the decision to use a non-advertised appointment process, but it is not required as a justification.

[35] Ms. Bellehumeur explained the considerations that led her to make the appointment at issue, including a growing workload, the work distribution, and the possibility that funding for the position would be withdrawn were it not filled.

Together, those were reasonable operational considerations that supported choosing a non-advertised appointment process.

[36] The staffing values of fairness and access do not require the respondent to conduct a further appointment process when, as in this case, it has demonstrated an operational need and has a fully qualified candidate available.

[37] I find it material to the choice of a non-advertised process that a 2017 call for expressions of interest from employees classified PE-03, WP-04, AS-05, and CX-02 for an assignment to a DTA/NAMP position in Saskatoon yielded interest, but, according to the respondent, no qualified candidates. The complainant did not put her name forward at that time for what would have been an assignment at her current group and level. Neither can I overlook that she did not apply when the AS-05 appointment process arose. It represented a promotional opportunity and by its terms, it could be used to staff similar positions.

[38] The complainant stated that she did not foresee that this indeterminate AS-05 appointment opportunity would later arise. While she may be disappointed, I am unable to say that she did not have access to be considered by applying to the AS-05 appointment process. Further, the employer was not obliged to seek other interested candidates. It was entitled to consider only one, as it did. [See *PSEA*, s. 30(4).]

[39] As for the written rationale in this case used to justify the non-advertised appointment process, I view it as brief but sufficient. It addressed merit by referring to the appointee's qualification in the recent AS-05 appointment process.

[40] As a matter of observation, it seems clear that the respondent did not need to resort to a non advertised appointment process. It had an existing pool of qualified candidates from the AS-05 process. It included the appointee. All the qualifications listed in the NOC were assessed in the advertised AS-05 appointment process. By its terms, that process could be used for similar positions. It included Saskatoon as a geographic location, and it had been open to the complainant to apply. However, as noted, the choice of appointment process rested with the respondent and it elected to use a non-advertised process.

[41] I was referred to the case of *Robert v. Deputy Minister of Citizenship and Immigration*, 2008 PSST 24. It involved successive extensions to the appointment on an

acting basis of a person who did not meet the language profile as well as the absence of a SOMC, a timely assessment, or a written rationale for the choice of a non-advertised appointment process. It is not applicable to the facts of the present case.

[42] To address the complainant's concern for transparency, I refer to the decision in *Morris v. Commissioner of Correctional Service of Canada*, 2009 PSST 9 at para. 89, where it notes that the requirement to give notice to persons in the area of recourse and to provide an opportunity to examine the appointment process through recourse contribute to ensuring the transparency of a non-advertised appointment process.

[43] The respondent explained that "DTA/NAMP" was parenthetically added to the position title on the NOC and NAPA for transparency, to reflect duties that would be assigned to the incumbent after the appointment. It was not intended to be part of the position title.

[44] I am satisfied by the evidence that the reference to DTA/NAMP was added to the NOC and NAPA for transparency and to clearly express the work assignment that the appointee would undertake. It is irregular to add descriptive terms to a position title in a NOC and NAPA, as was done in this, but I do not view it as seriously careless or reckless. It does not constitute bad faith or abuse of authority. See *Hunter v. Deputy Minister of Industry*, 2019 FPSLREB 83 at para. 55; and *Kosowan v. Deputy Minister of Health Canada*, 2009 PSST 24 at para. 67.

[45] Reviewing the letter of offer, the appointment was indeed made to the position of Regional Coordinator, Harassment Prevention, AS-05, the position for which the appointee had earlier applied and been found qualified. The letter of offer is clear in naming the position, which does not include the reference to DTA/NAMP.

[46] According to the evidence, the appointee was the only remaining qualified candidate from the AS-05 process. Given the terms of the letter of offer and the existence of the qualified pool, as I noted above, it was equally open to the respondent to choose to appoint directly from that pool without resorting to a non-advertised appointment.

[47] During the hearing, the complainant expressed concerns about classification and organizational structure. These are not within the Board's purview to consider. See



*Rinn v. Deputy Minister of Transport, Infrastructure and Communities*, 2007 PSST 44 at paras. 42 and 43.

[48] To conclude, the choice of appointment process is discretionary, and I find no abuse of authority in the use of a non-advertised appointment process in this case.

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

*(The Order appears on the next page)*

**V. Order**

[50] The complaints are dismissed.

May 27, 2021.

**Joanne Archibald,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**