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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

**JULIE BAZINET**

Complainant

and

**DEPUTY MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT**

Respondent

Indexed as

*Bazinet v. Deputy Minister of Employment and Social Development*

In the matter of a complaint of abuse of authority made under section 77(1)(a) of the  
*Public Service Employment Act*

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

**For the Complainant:** Herself

**For the Respondent:** Marc Séguin, counsel

**For the Public Service Commission:** Alain Jutras

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Heard via videoconference,  
June 3 and 4, 2021.  
(FPSLREB Translation)

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**REASONS FOR DECISION****FPSLREB TRANSLATION**

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**I. Complaint before the Board**

[1] On March 9, 2017, Julie Bazinet (“the complainant”) made a complaint under s. 77(1) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12 and 13; *PSEA*), alleging that the Deputy Minister of Employment and Social Development (“the respondent”) abused its authority within the meaning of s. 77(1)(a) of the *PSEA* in an internal selection process numbered 2015-CSD-IA-QUE-23739.

[2] The selection process aimed to solicit applications for team-lead positions at the PM-03 group and level in the Benefits Delivery Services Branch in Boucherville and Longueuil. From March 14, 2016, to the end of the selection process, the complainant was in such a team lead position on an acting basis. Her substantive position was at the PM-02 group and level in one of the respondent’s Longueuil offices.

[3] Using the results of the selection process, the respondent, among other things, extended the appointment on an acting basis of an employee who was already in the position, which gave rise to the complaint. Other appointments were also made based on the same process.

[4] The selection process included assessing the following essential qualifications:

- bilingual imperative BBB/BBB;
- high-school diploma or equivalent;
- recent and significant experience in client service delivery, particularly, obtaining and communicating information that required explanation or clarification;
- recent and significant experience interpreting or applying policies, procedures, or legislation in the federal public service; and
- competencies: 1) oral communication, 2) written communication, 3) engagement, 4) values and ethics, 5) strategic thinking, 6) management excellence, and 7) client-service excellence.

[5] The complainant met the bilingualism and education requirements. She also met the related experience requirements. At the end of the evaluation process, the respondent concluded that she did not meet the “Values and Ethics” competency. As a result, she failed to qualify for the position.

[6] Therefore, this complaint is about the assessment of the “Values and Ethics” competency. The complainant alleged that the respondent abused its authority when it assessed that competency.

## **II. Summary of the evidence submitted by the parties**

[7] On the whole, the evidence that the parties submitted was not contradictory. Therefore, it will be presented in a logical order by combining the complainant’s and the respondent’s evidence. As necessary, points of disagreement will be specified. The complainant testified in addition to adducing several documents into evidence. The respondent had Jean Cheney and Manon St-Pierre appear as witnesses. For the selection process, Mr. Cheney had been hired as a consultant and was working on several projects for the respondent. He had earlier retired from the Canada Border Services Agency. Ms. St-Pierre worked for the respondent as a team lead in the Benefits Delivery Services Branch. The respondent also adduced several documents into evidence.

[8] The selection process continued for almost all of 2016. It was intended to create a pool of team leads. A team lead’s duty is to coordinate the work of officers at the PM-01 and PM-02 levels in a call centre that provides services to citizens who need Employment Insurance information or who have applied for Employment Insurance benefits.

[9] As part of the selection process, the selection committee had to assess the “Values and Ethics” competency. The committee, made up of Ms. St-Pierre, Stéphane Cloutier, and Magalie Ouellet, decided to assess the competency by using two tools. The first was a situational-judgment test commonly called the “Dolmen Test”. Its results made up 40% of the selection committee’s mark. The second consisted of employment reference checks, which made up 60% of the awarded mark. The overall pass mark for the competency was 60%.

[10] The complainant obtained 63% on the Dolmen Test, and the selection committee awarded her 50% after the employment reference checks. She obtained a final mark of 55.2% in total, which was below the pass mark. She did not question her Dolmen Test result. Instead, she questioned the mark obtained for the reference checks, specifically the negative references initially provided by one of the referees and ultimately by two of them.

[11] In May 2016, the complainant completed a form that the respondent provided in which she had to enter the names and contact information of her supervisors from the past 24 months. According to the information in the form she completed, Michel Riopel had supervised her since March 2016, when she was in a team lead position. Before that, Martin Goyette-Codère had supervised her from October 2014 to March 2016, when she was a benefits officer. Finally, Marc Hedrich had supervised her from February 2014 to October 2014, when she was a benefits officer. The respondent did not challenge the information in the complainant's completed form.

[12] On October 6, 2016, the selection committee notified the complainant that she had passed all the stages of the selection process that had been completed to that point and that the next step was the reference checks in the coming weeks. The committee informed her that it would communicate directly with the referees she had identified. On October 7, 2016, she updated her referees' names by adding Karine Morin, who had become her new supervisor following Mr. Riopel's departure on his retirement.

[13] The selection committee had established in advance the indicators that it felt would enable it to measure the "Values and Ethics" competency based on the references. The indicators and the associated questions were as follows:

[Translation]

[Indicator 1] *Demonstrates values and ethics, including the Code, in personal behaviour*

- *Respects his or her work schedule and break times?*
- *Is there anything we should know about his or her attitude in general?*

[Indicator 2] *Integrates values and ethics, including the Code, into staff work practices*

- *Respects protected and sensitive information (breach of confidentiality, etc.)?*
- *Uses the employer's equipment appropriately (only for business purposes - photocopies, printing, etc.)?*

[Indicator 3] *Fosters a climate of transparency, trust, and respect among staff members and in partnerships*

- *Is this a reliable, consistent, professional person who demonstrates openness and professionalism in exchanges with clients, colleagues, superiors, partners, etc. ...?*

[Indicator 4] *Manages work activities and transactions transparently and fairly*

- *Does the person show fairness in his or her daily tasks despite the variety of clients that we deal with?*
- *Is this an independent person who manages the workload effectively, or are reminders and follow-ups frequently required?*
- *Is the person trustworthy?*
- *Does the person's behaviour exemplify integrity and transparency?*

[14] Ms. Ouellet explained that Mr. Cheney joined her and her colleagues on the selection committee to help them with the reference checks. But in fact, Mr. Cheney conducted the reference checks by himself. He stated that while doing that task, he reported to Ms. St-Pierre, who he said was the manager of the selection process. She answered his questions as required. She said that she ensured that his assessments were fair. He explained that he no longer recalled what he had done with his handwritten notes. What he transcribed on the forms to that effect was presented at the hearing.

[15] Based on the information that the complainant provided in May 2016, Mr. Cheney decided to contact Mr. Riopel and Mr. Goyette-Codère for references about her. Mr. Riopel had already retired, and he chose to reply in writing based on questions or themes provided beforehand. Mr. Cheney met with Mr. Goyette-Codère in person on October 25, 2016.

[16] The references that Mr. Cheney obtained from Mr. Goyette-Codère and Mr. Riopel were contradictory in almost every sense. Apart from the second indicator, for which both were positive, they ranged from very positive from Mr. Riopel to particularly negative from Mr. Goyette-Codère.

[17] Faced with such discrepancies between the two referees' references, Mr. Cheney spoke with Ms. St-Pierre, who decided that a reference from a third person was required. Mr. Cheney then approached Ms. Morin, who was the complainant's immediate supervisor when the reference checks were being made. The complainant had told the selection committee about her when she updated her referees' names on October 7, 2016.

[18] Mr. Cheney met with Ms. Morin in person on November 3, 2016. Her comments were relatively negative and tended to be similar to those of Mr. Goyette-Codère. She marked the complainant as “[translation] unsatisfactory” for three of the four indicators. When the three referees’ results were compiled, the complainant obtained a mark of 50%. When that mark was combined with her Dolmen Test result, the selection committee concluded that she did not meet the “Values and Ethics” competency.

[19] The complainant explained that she was very surprised to receive negative references from both Mr. Goyette-Codère and Ms. Morin. She did not recall either one making comments or criticisms that corresponded to what they provided in the references to Mr. Cheney. Moreover, according to the complainant, some of Mr. Goyette-Codère’s comments were for a period when she was not under his supervision.

[20] I have reproduced as follows the text that Mr. Cheney wrote after his reference checks with Mr. Goyette-Codère and Ms. Morin for indicators 1, 3, and 4 of the “Values and Ethics” competency. I omitted the references provided for the second indicator, as they are relatively positive and did not contribute to the complainant’s failure in the assessment of the competency:

[Translation]

[Indicator 1: Mr. Goyette-Codère]

*She is punctual; however, despite warnings, she sometimes left the office without notifying her manager to obtain the manager’s authorization beforehand.*

*She does not share the employer’s vision.*

*Several clashes in terms of respect between her and her colleagues.*

*Her processing time is below the standard and relates to a high degree to providing quality records.*

*Proposes projects and initiatives but is not available to move her ideas forward.*

...

[Indicator 1: Ms. Morin]

*She left work without informing her manager in advance more than once. Her behaviour toward management tarnishes her image and transparency. She was supposed to give her manager a table with her hours worked and her absences. To date, her manager has received nothing from her, despite several reminders*

...

[Indicator 3: Mr. Goyette-Codère]

*The situation is rather difficult.*

*As a leader, she sometimes does not fulfil her mandates within the deadlines. Despite her manager's instructions and several reminders, she was unable to submit projects by the due dates.*

*She is not always consistent, as she has difficulty meeting quantity standards. She challenges the objectives she is unable to achieve, instead of carrying out some soul-searching.*

*Sanctimonious toward clients, her comments are not always appropriate.*

*She is not open to feedback from team leads.*

*Her attitude has an impact and undermines the team's work environment. Emphasizes HER point of view!*

*Openly criticizes the employer's positions.*

...

[Indicator 3: Ms. Morin]

*She is not always reliable and professional in her relations with her manager. She was absent without informing her manager several times. She failed to honour a commitment with her manager. Although she reached an agreement with her and was supposed to give her a consolidated table with her work hours and her absences on leave, she did not, despite reminders.*

...

[Indicator 4: Mr. Goyette-Codère]

*In general, she serves her clients fairly and with quality. Her decisions are based on the law and case law. However, she does not necessarily adapt to her audience when she deals with less-educated clients.*

*Several reminders are often required to ensure that she performs her tasks. At times, she has left the office without notifying her manager to obtain the manager's authorization in advance.*

*Her work as an officer is trustworthy. However, as a leader, she **often needs reminders. She is not open, and collaborating with her is very difficult. Her manager is considering an improvement plan.***

*As an officer, she follows the law and procedures. Otherwise, as a leader, she does not promote initiative. She is a change resister!*

...

[Indicator 4: Ms. Morin]

*Her manager has not observed her work with clients.*

*She needs close supervision. Deadlines are not always met. In addition, the situation related to her time off and her failure to*

*provide a table of her absences illustrates her lack of transparency.*

*This also highlights a deficiency in terms of trust and integrity.*

...

[Emphasis in the original]

[21] The complainant adduced into evidence her performance agreement with Mr. Goyette-Codère for the period ending in March 2016. He signed it on March 21, 2016. She stated that it was her performance evaluation report for the year that was ending. I have reproduced as follows the comments that Mr. Goyette-Codère prepared. Some topics have nothing to do with the theme of the reference provided to Mr. Cheney, but others are related:

[Translation]

...

*Julie follows the reference tools procedures well and adapts well to procedural changes. She knows when to consult to obtain information or to clarify an issue. During the winter, officers from the team collected different subjects/disputes at Level 3 for which their interpretations seemed to diverge among the BEAs advising them. When the document was produced, Julie took the time to reread and analyze it, to verify the information in the SM, and to add her comments, to improve it. The improved document was sent to the BEA and allowed the BEA team to discuss the disputes to ensure a common interpretation. She locks her screen when leaving her workstation and does not leave confidential documents laying around her workstation or printers. She knows and applies the Values and Ethics Code for the Public Sector in terms of protecting information.*

...

*Julie has been in a Level 3 position since October 2012. As of March 1, her APT for the current fiscal year is 2313 seconds. In the first half of the year, the APT was 2467 seconds, and in the second half of the year, it was 2230 seconds. Therefore, her APT improved significantly compared to the 2014-2015 results (2879 seconds). The decrease in her APT did not come at the expense of the quality of her work. Since her return to work in September, she has answered calls in both official languages. She starts and ends her days on time. Her coding percentage is above the required target of 95%. She limits her offline transactions to those necessary, according to procedure, and ensures that transactions are completed while the client is still there.*

...



*Julie has not been the subject of a listening report during the second cycle of the fiscal year. However, she was the subject of a first-cycle report, which showed that she met the quality expectations. It emerged that her fact-findings with citizens are performed well, that she takes the appropriate measures, and that her tone of voice is appropriate. These are important components of good client service. However, she must ensure that she gives full explanations and that she remains neutral during conversations. She applied the NQAP's recommendations and uses feedback to improve. She carries out her own research before contacting the support line. She always acts with the goal of creating a high-performance organization focused on service excellence. She makes every effort to settle the client file before ending the call.*

...

*... She has professional relationships with her colleagues. She participates actively in a healthy work environment by taking part in the occupational health and safety committee. She manages her leave in a sound manner.*

...

*... She has made efforts to lower her APT and to come closer to the target of 2075 seconds. She has shown adaptability to change by again taking calls in English.*

...

*DEMONSTRATING INTEGRITY AND RESPECT Julie respects the Values and Ethics Code and performs her duties impartially. She faithfully carries out government decisions. She shows respect for and interest in each client without regard to language or origin. She is transparent with her clients, while following procedures. She quickly raises issues that could affect employee health and safety.*

*THINKING THINGS THROUGH Julie conducts a full and relevant fact-finding so that she understands a situation overall before making a decision or answering a client. She effectively organizes her thoughts before answering a client. She uses the tools at her disposal to guide her decision making. She leaves a record of her thinking and the components of her decision making in client files.*

*WORKING EFFECTIVELY WITH OTHERS Julie shows good listening skills with clients and colleagues and is prepared to take the call from the start of the conversation. She is active and participates in meetings by asking questions and proposing ideas. She honours her commitments to her clients by ensuring that she processes the file at the first point of contact. She works independently and uses the right tools as needed.*

*SHOWING INITIATIVE AND BEING ACTION-ORIENTED Julie shows confidence in her ideas and decisions. She keeps herself informed about operational objectives and results. She remains calm and focused under pressure. She notifies her team lead of any anomalies.*

*CLIENT-FOCUSED ATTITUDE ... Julie welcomes her clients in a friendly manner. She ensures that she does not make mistakes in files and revisits situations when the procedures are not sufficiently clear, with the goal of providing the best possible client service. She acts with fairness and out of respect for diversity. She does everything in her power to help her client at that person's level by directing the client to other resources when necessary. She ensures that the client understands the decision. She carries out her transactions on day 2 when required.*

[22] Mr. Goyette-Codère rated the complainant as “Pass”. The form states that this rating means that the performance met all expectations, that the employee achieved all employment objectives, and that the employee contributed positively to achieving organizational objectives.

[23] The complainant adduced into evidence a document that Ms. Morin signed on June 15, 2016, and that recommended extending the complainant's team lead appointment on an acting basis for seven months. The document stated that the evaluation period began in October 2014. None of Ms. Morin's comments was negative. The following comments seem the most related to this complaint:

[Translation]

...

*She is professional in all circumstances, and her French is impeccable. Her administrative style is at a good level, and the tone is adapted to the circumstances, in both official languages.*

...

*Julie expresses herself clearly orally and in writing, in both official languages. She is able to adapt her speech based on her audience. During her interactions with citizens, she adopts a professional and respectful tone.*

...

*At team meetings, Julie freely shares her opinion, while respecting her colleagues' perspectives.*

*Julie makes decisions based on the federal government's standards, vision, and mission and by always keeping citizens and her clients in mind.*

...

*Julie takes the time necessary to deepen her fact-findings with citizens and colleagues. She assimilates information rapidly and recognizes the clues that can help her find a solution. Julie asks the necessary questions to determine the issue, but also turns her*

*thoughts into actions by providing realistic and effective solutions to resolve the issue.*

...

*Julie asks for leave and submits her requests within prescribed deadlines. She adheres closely to her schedule and uses the recommended methods. Therefore, Julie meets her obligations and set expectations.*

*Competency: Values and Ethics*

*Julie always shows concern for adhering to Service Canada's Code of Conduct and to the Guidelines. She acts ethically. In her work team and with her clients, she encourages and supports bilingualism and addresses others in their language of choice. She adheres to her work schedule. She is conscious of the organizational image she must project and does so professionally.*

*Julie acts with completely transparency and fairness by informing her superior of her actions without delay.*

...

*Julie is open to change and to new initiatives. She quickly perceives things needing improvement and does not hesitate to propose new solutions to management or at meetings. She always participates actively and respectfully in team meetings because for Julie, participation is important for an attractive work environment.*

*Julie acts with full transparency and fairness by informing her team lead of her actions without delay, whether about an absence or periods of disconnection from or a lack of adherence to Impact 360.*

...

[24] The complainant stated that she was very surprised when she received negative references from Mr. Goyette-Codère and Ms. Morin, given that they had never expressed such criticisms when they supervised her. She does not understand what happened. She believes that there was some collusion, especially since those referees have back-to-back offices and talk every day. On that point, she adduced the office layout into evidence, which was not contested.

[25] For over an hour on January 18, 2017, with Ms. St-Pierre and Ms. Ouellet, the complainant discussed her results and concerns. Both the complainant and Ms. St-Pierre testified about the details of the discussion. In addition, a version was filed at the hearing that undoubtedly was transcribed from Ms. St-Pierre's contemporaneous notes. In the discussion, the complainant complained about the negative natures Mr. Goyette-Codère's and Ms. Morin's references. According to her, the references did

not reflect reality. Ms. Ouellet reportedly told her that the selection committee's role was not to question references or doubt those providing them. The complainant apparently said that her performance evaluations had no negative comments. Ms. St-Pierre specified that the selection committee did not consult candidates' performance evaluations. According to the complainant, she was then apparently told that out of a concern for fairness, had that been done for one candidate, then it would have had to have been done for them all.

[26] In the January 18, 2017, discussion, the complainant also mentioned that some of Mr. Goyette-Codère's comments did not cover the period when he supervised her because they referred to her as the team lead, yet she was not a team lead then. According to Ms. St-Pierre's notes, Ms. Ouellet replied that she took note of that last concern of the complainant and that she would look into it. Ms. St-Pierre stated that after checking with the respondent's human-resources specialists, the selection committee concluded that nothing inappropriate had occurred.

### **III. Summary of the arguments**

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

[27] The complainant asked that her complaint be allowed. According to her, the respondent deliberately failed to consider the facts she submitted in response to the references and did not carry out the verifications it should have, which constitutes an abuse of authority. Still according to her, the respondent also abused its authority by destroying the handwritten notes taken during the reference checks after the notes were transcribed.

[28] Those who provided references were not always clear and did not provide concrete examples to support their negative comments. Mr. Goyette-Codère's and Ms. Morin's references were almost copies-and-pastes of each other. In addition, in part, Mr. Goyette-Codère's reference covered a period during which he did not supervise the complainant. He referred to her role as the team lead, which she was not when he supervised her.

[29] The complainant criticized the fact that the selection committee completely ignored what she raised at the January 18, 2017, discussion. It could have remedied the situation then. It could have double-checked the information it received due to the significant consequences of its decision on the complainant.

[30] The complainant had never received criticism or reprisals from her supervisors and had difficulty understanding why the references were so negative. According to her, the references as provided did not at all reflect reality. By solely considering them and by refusing to go further when it assessed the “Values and Ethics” competency, the committee abused its authority.

[31] The deficiencies raised by the references were in no way emphasized in the evaluations prepared by the same people who provided the references. If truly, there were deficiencies, they would have been noted in the evaluations. That proved that simply eliminating the complainant from the selection process was desired. She could do nothing about it.

[32] According to the complainant, the selection committee could have done much more when it realized that the first two references were inconsistent. It could have recalled Mr. Riopel to ask him for his reaction to Mr. Goyette-Codère’s negative comments. It could also have checked the complainant’s file.

[33] The complainant found it offensive that such things could happen in the federal public service. She asked not for the selection process to be set aside or to be appointed to the position at the PM-03 group and level. She is no longer interested in the position, as her current position is at the AS-04 group and level. In addition, she is now in an acting position at the AS-05 group and level. Instead, she asked the Board to order the respondent to reassess her on the “Values and Ethics” competency to correct the abuse of authority.

[34] The complainant referred me to the 2011 version of the Treasury Board’s *Values and Ethics Code for the Public Sector* and the 2016 version of the *ESDC Code of Conduct*. She also referred me to the following decisions: *Lavolette v. Commissioner of the Correctional Service of Canada*, 2015 PSLREB 6; *Rizqy v. Deputy Minister of Employment and Social Development*, 2021 FPSLREB 12; *Nadeau v. Deputy Minister of Employment and Social Development Canada*, 2019 FPSLREB 9; *Hammond v. Canada (Attorney General)*, 2009 FC 570; and *Hill v. Deputy Minister of Public Works and Government Services*, 2017 FPSLREB 21.

**B. For the respondent**

[35] The purpose of the selection process was to fill a team lead position at the PM-03 group and level. The selection committee had to assess the candidates who had met the basic requirements for a series of competencies, including “Values and Ethics”. To do this, it decided to use test results and references that the candidates supplied. The test results counted for 40% of the mark and the references for 60%. All in all, the complainant did not obtain a pass mark, and she failed.

[36] In the beginning, the selection committee contacted the people for the two most recent references that the complainant supplied. The comments received from the two individuals were inconsistent. The selection committee then contacted the complainant’s supervisor at the time. The complainant had supplied the third referee’s name to the committee. When all the comments from the three people were combined, the committee concluded that the complainant did not satisfy the “Values and Ethics” competency.

[37] The complainant had the burden of proving that the respondent committed an abuse of authority. It was up to her to prove it; she did not.

[38] It was up to the selection committee to determine the means to assess the “Values and Ethics” competency. The respondent was diligent in assessing this competency. It spoke with the referees that the complainant identified, compiled the results received, and found that it had enough information to assess her.

[39] The complainant raised the similarities between the references provided by Mr. Goyette-Codère and Ms. Morin. They did not collude in any way. In addition, they had no conflict with the complainant.

[40] The selection committee’s role was not to investigate the truthfulness of the references or to check the candidates’ personnel files; otherwise, it would never have finished. The complainant had proposed as much to the selection committee at the informal discussion. Performance evaluations and reference checks measure different things. Additionally, an informal discussion is not an opportunity to reassess candidates. Instead, it is a step in the process that is aimed at dialoguing with candidates.

[41] According to the respondent, the destruction of Mr. Cheney's handwritten notes in no way constitutes an abuse of authority. He transcribed his notes and was under no obligation to keep them after that.

[42] To support its arguments, the respondent referred me to the following decisions: *Canada (Attorney General) v. Cameron*, 2009 FC 618; *Lavigne v. Canada (Justice)*, 2009 FC 684; *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8; *Portree v. Deputy Head of Service Canada*, 2006 PSST 14; *Visca v. Deputy Minister of Justice*, 2007 PSST 24; *Elazzouzi v. Deputy Minister of Human Resources and Skills Development Canada*, 2011 PSST 11; *Montpetit v. the President of the Canada Border Services Agency*, 2013 PSST 17; *Gaudreau v. Deputy Minister of Fisheries and Oceans*, 2013 PSST 23; *Jean Pierre v. President of the Canada Border Services Agency*, 2013 PSST 28; *Gandhi v. Canada (Canada Border Services Agency)*, 2015 FC 436; *Pierre v. Canada (Border Services Agency)*, 2016 FCA 124; *Dionne v. Deputy Minister of National Defence*, 2008 PSST 11; *Pellicore v. President of the Canada Border Services Agency*, 2010 PSST 23; *Cannon v. Deputy Minister of Fisheries and Oceans*, 2013 PSST 21; and *Chen-Walker v. Director of Public Prosecutions*, 2019 FPSLRB 65.

### C. For the Public Service Commission

[43] The Public Service Commission did not appear at the hearing. However, it submitted a 23-page document noting its interpretation of the applicable law. I read it carefully. It was of little use to me because of its rather general nature. Nevertheless, it noted a part of the case law that is somewhat outdated. The decisions that the parties submitted, which for the most part are rather recent, suffice for me to make an informed decision based on the applicable law.

## IV. Analysis and reasons

[44] The complaint referred to s. 77(1)(a) of the *PSEA*, which reads as follows:

*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*

*(a) an abuse of authority by the Commission or the deputy head in the exercise of its or his or her authority under subsection 30(2) ....*

...

[45] The complainant alleged that the respondent abused its authority when it assessed the “Values and Ethics” competency, specifically during the use of references to assess it. Recall that 40% of it was assessed using the Dolmen Test result, on which the complainant obtained 63%. The other 60% was assessed based on the references. At the time, she obtained 50%, which all in all caused her to fail this competency, since the pass mark was 60%.

[46] *Tibbs*, rendered by the Public Service Staffing Tribunal (PSST), specified what constitutes abuse of authority within the meaning of the *PSEA*. The PSST stated the following at paragraph 70 of that decision:

*[70] As highlighted in the complainant’s submissions, Jones & de Villars, supra, have identified five categories of abuse found in jurisprudence. As the learned authors note at page 171, these same general principles of administrative law apply to all forms of discretionary administrative decisions. The five categories of abuse are:*

- 1. When a delegate exercises his/her/its discretion with an improper intention in mind (including acting for an unauthorized purpose, in bad faith, or on irrelevant considerations).*
- 2. When a delegate acts on inadequate material (including where there is no evidence, or without considering relevant matters).*
- 3. When there is an improper result (including unreasonable, discriminatory, or retroactive administrative actions).*
- 4. When the delegate exercises discretion on an erroneous view of the law.*
- 5. When a delegate refuses to exercise his/her/its discretion by adopting a policy which fetters the ability to consider individual cases with an open mind.*

[47] As the Board found in *Rizqy*, for example, or in *Abi-Mansour v. Deputy Minister of Fisheries and Oceans*, 2021 FPSLREB 3, or *Ross v. Commissioner of the Correctional Service of Canada*, 2017 PSLREB 48, abuse of authority does not have to be intentional for the Board to find that it occurred. The complainant had to prove to me on a balance of probabilities not that the respondent intentionally abused its authority but rather that its actions, decisions, or behaviour constituted an abuse of authority.



[48] In itself, using reference checks as a tool to assess a competency does not constitute an abuse of authority. That is not the issue. Instead, the issue is determining whether the respondent abused its authority when it chose not to consider the points that the complainant raised at the January 18, 2017, discussion.

[49] The evidence reveals that the first two referees submitted extremely contradictory information. On the whole, the reference provided by Mr. Riopel suggested that the complainant satisfied the “Values and Ethics” competency, while Mr. Goyette-Codère’s suggested the opposite. Faced with such a contradiction, the selection committee decided to ask Ms. Morin to provide a reference.

[50] I was particularly puzzled by Mr. Goyette-Codère’s reference when I compared it to his comments in the complainant’s performance evaluation report, which he signed on March 21, 2016, a date that coincided with the month in which he ceased supervising her. I have repeated these few excerpts from his statements in that evaluation:

...

*Julie follows the reference tools procedures well and adapts well to procedural changes ... She knows and applies the Values and Ethics Code for the Public Sector in terms of protecting information.*

...

*... She starts and ends her days on time....*

...

*... Julie shows good listening skills with clients and colleagues ... She is active and participates in meetings by asking questions and proposing ideas ... She works independently and uses the right tools as needed.*

...

*... She has professional relationships with her colleagues. She participates actively in a healthy work environment by taking part in the occupational health and safety committee. She manages her leave in a sound manner.*

...

*... Julie respects the Values and Ethics Code and performs her duties impartially. She faithfully carries out government decisions. She shows respect for and interest in each client without regard to language or origin. She is transparent with her clients, while following procedures....*

[51] The picture that Mr. Goyette-Codère provided to Mr. Cheney during the reference checks was completely different. Among other things, he told Mr. Cheney then that the situation with the complainant was difficult, that she challenged the set objectives, that she was sanctimonious with clients, that she had a negative effect on the work environment, that she had been absent without notice, and that she required close supervision. However, in his performance evaluation of her, Mr. Goyette-Codère concluded that she merited a “Pass” rating, which meant that her performance met all expectations and that she achieved all work objectives and made a positive contribution to achieving the organization’s objectives.

[52] Contradictions that remain unexplained cannot be ignored. Mr. Goyette-Codère’s reference, at least for the period in which he supervised the complainant, does not seem to reflect reality.

[53] In addition, if I rely on the documents that the respondent adduced into evidence, I conclude that as did the complainant, parts of Mr. Goyette-Codère’s comments did not at all cover his experience supervising her. Instead, they covered the period during which Mr. Riopel or Ms. Morin supervised her. She was working as a team lead then. I have repeated some excerpts of comments that Mr. Goyette-Codère provided, as follows:

*As a leader, she sometimes does not fulfil her mandates within the deadlines. Despite her manager’s instructions and several reminders, she was unable to submit projects by the due dates.*

...

*Her work as an officer is trustworthy. However, as a leader, she often needs reminders. She is not open, and collaborating with her is very difficult. Her manager is considering an improvement plan.*

*As an officer, she follows the law and procedures. Otherwise, as a leader, she does not promote initiative. She is a change resister!*

...

[Emphasis in the original]

[54] In summary, part of Mr. Goyette-Codère’s reference was, at best, based on his personal observation of the complainant and not on his experience of supervising her. When it considered the comments, the selection committee changed the equation. It accepted comments that came not from her supervisor but from someone else,

namely, a work colleague, who at best had observed or had heard about the situations in question.

[55] The evidence still does not allow me to distinguish clearly in the rest of Mr. Goyette-Codère's reference between what came from the period when he supervised the complainant and what came from the period when he did not supervise her. If I rely on the performance evaluation that he signed, nothing in the negative points that he raised apparently came from the period in which he supervised her. For that to be so, the evaluation would have to be incomplete and erroneous, or the reference that he provided would have to be false.

[56] Ms. Morin's reference was entirely inconsistent with her evaluation of the complainant in June 2016. In her reference, Ms. Morin informed Mr. Cheney that the complainant had left work more than once without notifying Ms. Morin, that she had not provided a table indicating her work hours and her absences, that she was not always reliable and professional in their relationship, that she required close supervision, and that her deadlines were not always met. The comments contradict what Ms. Morin wrote on June 15, 2016, in her evaluation of the complainant that was aimed at extending her team lead appointment. Here are some excerpts from the complainant's evaluation:

...

*She is professional in all circumstances, and her French is impeccable ....*

...

*Julie asks for leave and submits her requests within prescribed deadlines. She adheres closely to her schedule and uses the recommended methods. Therefore, Julie meets her obligations and set expectations.*

...

*Julie always shows concern for adhering to Service Canada's Code of Conduct and to the Guidelines. She acts ethically ... She adheres to her work schedule. She is conscious of the organizational image she must project and does so professionally.*

*Julie acts with complete transparency and fairness by informing her superior of her actions without delay.*

...

*... She always participates actively and respectfully in team meetings because for Julie, participation is important for an attractive work environment.*

*Julie acts with full transparency and fairness by informing her team lead of her actions without delay, whether about an absence or periods of disconnection from or a lack of adherence to Impact 360.*

...

[57] What else can be said? Ms. Morin's reference and her evaluation are contradictory. This may possibly be explained in part by the fact that the reference was provided on November 3, 2016, while the evaluation was dated June 15, 2016. Just before she began reporting to Ms. Morin, the complainant was an acting team lead and reported to Mr. Riopel, who considered her a good team lead. It is possible that over time, the complainant's relationship with Ms. Morin deteriorated. It is also possible that after a while, the complainant's behaviour changed. It is not for me to answer those questions. However, the selection committee could at least have asked them and have tried to answer them, had it taken the time to inquire further after the January 18, 2017, informal discussion with the complainant.

[58] The evidence presented at the hearing leads me to find that the selection committee did not correctly assess the "Values and Ethics" competency. At the least, it should have tried to go further when it evaluated the competency for the complainant after she raised several concerns at the January 18, 2017, discussion. It should at least have tried to reconcile several fairly obvious contradictions. Instead, it refused to review her past evaluations on the pretext that everyone should be treated the same way. Then, after consulting specialists, it chose to ignore the fact that part of Mr. Goyette-Codère's reference did not cover his time supervising the complainant.

[59] That said, my role is not to assess the complainant but instead to determine whether the noted failures in the assessment of the "Values and Ethics" competency constitute abuse of authority.

[60] I reviewed each decision that the parties submitted. I will comment only on those that offer some clarification with respect to this complaint.

[61] In *Lavigne*, the Federal Court of Canada determined that abuse of authority requires more than an error, omission, or improper conduct. Of course, abuse of authority will always include improper conduct, but the degree to which the conduct is improper may determine whether it constitutes abuse of authority (see *Tibbs*, at para. 66).

[62] The selection committee has the choice of assessment methods. In *Montpetit*, the PSST specified that the selection committee may use any assessment method it considers appropriate, provided that it allows for the proper assessment of candidates' qualifications. Therefore, the selection committee may choose not to consider performance appraisals. However, in that case, nothing suggested that at the informal discussion, the complainant said that her performance appraisals contradicted the negative references that had been received. Instead, she complained that her referees did not know her well enough or that they were in a conflict of interest. The PSST did not accept her arguments.

[63] In *Gaudreau*, the PSST stated that to find abuse of authority in the choice of assessment tools, the complainant must demonstrate that the result was unfair and that the tools were unreasonable. In this case, the complainant did not challenge the assessment tool, which was taking references. Instead, the issue in this case is how the selection committee used it when it failed to examine her concerns more thoroughly.

[64] In *Pellicore*, the PSST wrote that the role of referees is to provide candid assessments of candidates. This does not mean that an assessment board should ignore anything that may call into question the reliability of the information that a referee provides. However, the simple fact that a candidate disagrees with the provided comments does not necessarily establish that the reference is not reliable. The PSST found that no evidence demonstrated that the information that the referees provided was unreliable and that the assessment board had no reason to doubt the validity of the comments.

[65] In *Dionne*, the PSST noted that in a selection process, it is preferable not to recopy notes, as an original document is a much better form of evidence than copied notes. However, the PSST still did not find that it was an abuse of authority. I fully agree with that finding. Of course, in this case, it would have been interesting to read Mr. Cheney's handwritten notes, but nothing could lead me to believe that the document submitted at the hearing did not reflect what Mr. Cheney heard during the reference checks.

[66] In *Hammond*, the Federal Court of Canada set aside a PSST decision on the grounds that the PSST should have found that the selection committee had abused its authority when it based its assessment on inadequate information and that the PSST

had ignored evidence. That Federal Court of Canada decision supports the second type of abuse of authority identified in *Tibbs*, which is that making a decision based on inadequate information and not including relevant things is an abuse of authority.

[67] In *Lavolette*, the complainant notified the assessment board of a conflict he had with his manager, who was one of those who had provided a reference. The complainant informed the assessment board that he had never made some of the mistakes she accused him of making. According to the Board, the assessment board should have gone further and spoken with the manager about the issues that the complainant raised. That discussion would have allowed it to assess the quality of the information that had been received. The evidence submitted at the time showed that the assessment board failed to take such measures, which was a significant failure in its assessment of the complainant. On that basis and on that of two other shortcomings that do not exist in this case, the Board found that abuse of authority occurred.

[68] In *Rizqy*, the Board noted the contradictions between the complainant's performance evaluations, which were positive, and the provided references, which were negative. The respondent did not resolve the contradiction, which, for the Board, was a mistake.

[69] In *Nadeau*, the PSST referred to *Bowman v. Deputy Minister of Citizenship and Immigration Canada*, 2008 PSST 12, to explain the concept of discretion as follows:

*71 The concept of discretion was explained as follows in Bowman v. Deputy Minister of Citizenship and Immigration Canada, 2008 PSST 12:*

[123] ... It may be determined that a strict application of the guideline fetters the ability of the delegate to consider individual cases with an open mind.

...

[127] Moreover, in the context of the *PSEA*, where recourse is now focussed [*sic*] on the exercise of discretion in appointment processes, an assessment board should not refuse to exercise its discretion through strict application of a guideline which fetters its ability to assess each candidate with an open mind. Where the Tribunal determines that the assessment board has fettered its discretion in this way, it may find that the assessment board abused its authority.

...

[70] Based on the facts and the law, I find that the respondent abused its authority in its assessment of the complainant with respect to the “Values and Ethics” competency.

[71] The evidence demonstrated to me that the selection committee was not diligent when it assessed the complainant’s references. It should have sought more information after the January 18, 2017, informal discussion, at which she sounded the alarm. Instead, it decided to ignore what she raised, in the name of purported fairness toward the other candidates. As in *Hammond*, the selection committee based its assessment on inadequate information and ignored important evidence that the complainant raised. It was wrong to not go further in its analysis. Contradictions that remain unexplained cannot be ignored. Had it verified the complainant’s claims, the selection committee would have observed that the reference that Mr. Goyette-Codère provided for the period in which he supervised the complainant did not reflect the reality described in the performance evaluation report he completed for that same period.

[72] I am also concerned by the fact that a significant portion of Mr. Goyette-Codère’s comments did not cover his supervisory period. In other words, for the complainant, the selection committee accepted the reference of one person who was not her supervisor, and by doing so, it treated her differently from the other candidates who, like her, were asked to provide the names of supervisors from the last 24 months. It would have been easy for the committee to note that anomaly from the beginning, even before asking Ms. Morin for a reference. Perhaps that would have allowed reconciling the contradictions between Mr. Goyette-Codère’s comments and those of Mr. Riopel.

[73] In addition, Ms. Morin’s negative reference flatly contradicted her writings about the complainant on June 15, 2016. It is possible that the complainant’s performance deteriorated between June and November 2016. In any case, the selection committee should have reviewed the issue. It did not because it did not take the time to review the complainant’s file after she expressed her concerns to it at the January 18, 2017, informal discussion.

[74] For the reasons cited earlier, I find from the evidence that the respondent abused its authority by refusing to exercise its discretion and by basing its decision on inadequate information.

[75] As remedy, the complainant asked me to order the selection committee to reassess her with respect to the “Values and Ethics” competency.

[76] Even though I fully understand the complainant’s request in her proposed solution, my view is that her request is null and void. She indicated that she is no longer interested in the position because her current substantive position is at a higher level than the team lead position. In addition, she is currently in a position on an acting basis that is one level higher than her substantive position. Even were the selection committee to find that she met the requirements of the team lead position, it would not concretely change anything.

[77] I will limit myself to declaring that the respondent abused its authority when it assessed the complainant with respect to the “Values and Ethics” competency. It abused its authority by refusing to exercise its discretion and by basing its decision on inadequate information.

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

*(The Order appears on the next page)*



**V. Order**

[79] I declare that the respondent abused its authority.

[80] The complaint is allowed.

July 14, 2021.

FPSLREB Translation

**Renaud Paquet,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**