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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

BETWEEN

JEAN DONOVAN

Complainant

and

**DEPUTY HEAD
(Department of Citizenship and Immigration)**

Respondent

and

OTHER PARTIES

Indexed as

Donovan v. Deputy Head (Department of Citizenship and Immigration)

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

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

For the Complainant: Herself

For the Respondent: Patrick Turcot, counsel

For the Public Service Commission: Louise Bard, senior analyst

Heard at Sydney, Nova Scotia,
April 12 to 14, 2023.

REASONS FOR DECISION

I. Complaint before the Board

[1] On November 21, 2018, Jean Donovan (“the complainant”) made a complaint to the Federal Public Sector Labour Relations and Employment Board (“the Board”) under s. 77(1)(b) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*).

[2] She alleged that the deputy head of the Department of Citizenship and Immigration (“the respondent”) abused its authority by choosing a non-advertised appointment process to appoint John Hollohan (“the appointee”) to a project manager position classified at the PM-05 group and level. The appointment process number was 2018-IMC-INA-28730. A notice of consideration was issued on October 31, 2018. The notification of appointment was issued on November 6, 2018.

[3] The respondent’s department is commonly known as Immigration, Refugees and Citizenship Canada (IRCC). At the time the complaint was made, the complainant and the appointee both worked for IRCC at its Case Processing Centre in Sydney, Nova Scotia (“CPC-Sydney”).

[4] The delegated authority for this appointment process was RoseAnne Poirier, who at the time was the director of CPC-Sydney. She was the sole witness called by the respondent.

[5] The respondent denied abusing its authority in the appointment process.

[6] The Public Service Commission (PSC) did not attend the hearing and provided written submissions to address applicable policies and guidelines. It did not take a position on the merits of the complaint.

[7] For the following reasons, the complaint is dismissed.

II. Procedural issues

[8] To help provide a framework for my reasons for decision, I will begin by reviewing several procedural issues that arose before the hearing commenced.

[9] The complaint was originally scheduled to be heard in February 2020. The hearing was postponed at the request of the complainant, for health reasons.

[10] In November 2020, the complainant was asked to confirm her availability for a rescheduling of the hearing for no later than December 8, 2020. No reply was received. On January 24, 2022, the respondent requested a confirmation that the complainant intended to proceed with the complaint. In response, she requested that a hearing be scheduled for the fall of 2022. A hearing was scheduled for November 9 and 10, 2022, via videoconference. On October 3, 2022, the complainant requested a postponement of the hearing and an accommodation by having her complaint heard at an in-person hearing. Most of the correspondence with her was done via mail and courier as she did not have a working personal email address.

[11] A case management conference (CMC) was held on November 9, 2022. At it, the Board discussed with the parties the allegations that had been made, the complainant's search for legal representation, and the expectations about an in-person hearing if she represented herself.

[12] At the CMC, the allegations that the complainant had made were summarized as follows:

1. The complainant alleged abuse of authority in the respondent's choice of a non-advertised appointment process when a valid pool existed. She also alleged that other candidates who were qualified were not considered.
2. The complainant alleged a "... conflict of personality in the selection board ...".
3. The complainant alleged "... favouritism in the choice of the appointee."

[13] Following the CMC, the Board's registry provided the complainant with information on how to make a request to amend her allegations, a copy of the *Public Service Staffing Complaint Regulations* (SOR/2006-6; "the *Regulations*"), and the Board's *Procedural Guide for Staffing Complaints*. The Board established a deadline of December 12, 2022, for the parties to provide it with a list of the witnesses whom they intended to call at the hearing.

[14] The respondent complied with the Board's deadline, but the complainant did not. Following a second request by the Board for the required information, on February 21, 2023, she made a 10-page written submission about her complaint. She did not

make a request to amend her allegations; nor did she provide a list of the witnesses whom she intended to call.

[15] A second CMC was held on March 8, 2023, to discuss preparation for the in-person hearing, which had been scheduled for April 12 to 14, 2023, in Sydney, Nova Scotia. On this call, the complainant stated that she hoped to confirm that afternoon that she had retained a lawyer to represent her.

[16] On March 13, 2022, less than a month before the hearing, the complainant reported that she would represent herself at it. She also made requests to amend her allegations and for an order for the production of information (“OPI request”) numbering 23 items.

[17] On March 22, 2023, I issued a letter decision denying the complainant’s OPI request and her request to amend her allegations.

[18] On the OPI request, I noted that the respondent agreed to provide the complainant with documents or information related to 8 of her 23 requests. I declined to make an order to produce the other information because she failed to provide any explanation as to why any of the requests were arguably relevant to the matter before the Board, which is required by s. 17(2)(d) of the *Regulations*.

[19] The complainant’s request to amend her allegations comprised four elements. First, she requested to amend her allegation that there was a conflict of personality within the selection committee to include an allegation that the respondent had violated s. 9 of the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*). I denied it, noting that s. 9 of the *CHRA* prohibits discrimination by an employee organization. The respondent is not an employee organization.

[20] Second, she wished to amend the allegation that there was a conflict of personality within the selection committee to include an allegation that the respondent had violated s. 147 of the *Canada Labour Code* (R.S.C., 1985, c. L-2; “the *Code*”). I denied it, noting that a complaint that the respondent violated the *Code* can be made only under s. 240 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2) in reference to ss. 133 and 147 of the *Code* and not via a staffing complaint made under the *PSEA*.

[21] Third and fourth, the complainant requested to amend her conflict-of-personality allegation to include a reference to s. 10 of the *CHRA* and to add a new allegation that the respondent had discriminated against her on the basis of genetic characteristics, disability, and sex.

[22] In dismissing the complainant's request to amend her allegations, I noted that the process for making a request to amend her allegations was discussed at the CMC on November 9, 2022, and that she had been provided with detailed information on how to make such a request. Yet, she did not provide the Board with a detailed explanation as to why she could not have included the discrimination allegations with her original allegations or why her allegations should be amended, as required by s. 23(2)(d) of the *Regulations*. She stated that she had received new information in February 2023 via an access-to-information request (ATIP). However, she provided no explanation of that information, how it related to the appointment process in question, or how it gave rise to her requests to add discrimination allegations.

[23] On March 30, 2023, the complainant made a further OPI request, requesting information about an acting appointment of another appointee made in 2022 to a PM-05 project manager position. On April 4, 2023, I denied the complainant's OPI request on the basis that she had not demonstrated the arguable relevance between the appointment process in question and a subsequent appointment made to a similar position.

[24] On April 4, 2023, the complainant requested that the Board issue summonses for two witnesses whom she wished to call, both human resources advisors with the respondent. When the hearing commenced, she said that she would not call any witnesses other than herself.

[25] At the commencement of the hearing, the complainant again stated that she wished to introduce evidence and make arguments alleging that the respondent had discriminated against her in the appointment process in question. In making this request, she referenced the content of an exchange of emails in her book of documents, which she said she received in February of 2023 through an ATIP request.

[26] I reviewed the email exchange, which took place between April 27 and 29, 2020. It concerned a privacy breach in which an email was sent to staff who had been working from home during the COVID-19 pandemic in such a way that some of their

home email addresses were disclosed to other staff. The complainant had made a privacy complaint about the breach.

[27] One of the emails was authored by Ms. Poirier. In it, she explained the following to IRCC officials in Ottawa, Ontario, about the complainant: "... [she] is well known to management and I am available to provide details if required." Another official then wrote about the complainant as follows: "The employee in question has been on local managements [*sic*] radar for some time now, and will take any opportunity to raise an issue no matter how minute."

[28] After hearing the parties' submissions and reviewing the document in question, I reiterated my decision (of March 22, 2023) that I would not hear further evidence or argument with respect to a discrimination allegation. The emails in question were exchanged a full 17 months after the appointment in question was made and the making of this complaint. Although the emails suggest that the complainant was known to local management and that management felt that she had a habit of making complaints, there is no hint in the emails that the respondent was discriminating against her on the basis of characteristics protected under the *CHRA*. Moreover, the emails shed no light on the respondent's decision to use a non-advertised appointment process to appoint the appointee, which is what this complaint is about. They addressed the entirely different subject of a privacy breach because an email was sent to home email addresses.

[29] Therefore, I directed that the hearing proceed on the three allegations originally made by the complainant.

III. Evidence before the Board

A. For the complainant

[30] The evidence presented by the complainant consisted of the following:

- the 10-page written statement that she provided on February 21, 2023;
- a written summary of her testimony (and arguments) provided at the hearing;
- her oral testimony, both direct and under cross-examination; and
- 10 documents that were admitted as exhibits.

[31] The complainant began working at CPC-Sydney in 1992 at the CR-02 group and level. According to her, the appointee began working there the same day and at the same group and level.

[32] The complainant worked in a number of different positions over her career at IRCC, primarily at the CR-03 group and level. She testified that she had acting experience in the finance department at the CR-04 group and level. She also had experience acting in positions classified at the PM-01 and AS-02 groups and levels, which included working on policies and procedures and the implementation of new initiatives, the setup of offices and computers, and security. She said that she had received good references and encouragement to take on higher-level roles. She said that she was "... probably the only person in the department that can walk a proof or minor grant application through the building."

[33] The complainant testified that in 2010, she applied successfully in a pool for a CR-05 position, and that she then acted at that level for 3.5 years. She said that when that job was reclassified to the PM-01 group and level, she had to apply in another pool. As she failed the first part of the appointment process for that pool, she said that she was "demoted" back to a CR-03 position.

[34] The complainant testified that several human resources officers and managers had informed her that she should apply for advertised positions if she wanted a promotion. She testified that she was told not to expect to be appointed through a non-advertised process as IRCC prefers to use advertised processes. She testified that the respondent had run a pool for positions at the PM-05 group and level through an advertised process numbered 2015-IMC-IA-22938. She did not submit an application to that pool process. She did not understand why the respondent did not use it when it appointed the appointee to the PM-05 project manager position.

[35] She also testified that she would meet with human resources staff at IRCC every time a position was filled through a non-advertised process, and they would never accommodate her. She said that her managers and the human resources officers had told her that employees normally must apply in a process to receive a promotion. She referenced a list of appointments, provided to her by the respondent, made through non-advertised processes.

[36] At the time the complaint was made, the complainant was employed at the CR-03 group and level.

[37] Referencing organizational charts that demonstrated that the appointee did not report to Ms. Poirier before his appointment, the complainant testified that she did not believe that Ms. Poirier could have known his work well enough to assess him for the PM-05 position. At the same time, in support of her argument that personal favouritism factored into the appointment, she testified that the appointee's office was next to Ms. Poirier's, and they attended many management team meetings together.

[38] The complainant also testified that she believed that Ms. Poirier chose the appointee because she wished to have a relationship with a younger man. She also testified that the appointee had been fired from his job and had hired a labour lawyer and that as a resolution to that dispute, he received the appointment in question.

[39] The complainant testified that after the respondent posted the notice of consideration for the appointee's appointment, she sent an email to Ms. Poirier that stated this: "I would like to have a meeting to discuss how a person could be appointed to such a high level (PM05) without having to compete in a process? I would like to express my interest in being appointed to a non-advertised process at a higher level as well."

[40] The complainant testified that when the informal discussion meeting took place, Ms. Poirier said that "she can do what she wants". The complainant testified that the meeting was upsetting to her and that she was in tears at it.

[41] The complainant testified that in 2018, she was on sick leave for a period of 8 to 12 weeks. In June or July of 2019, she began an extended period of absence due to illness. In December of 2022, she medically retired from IRCC.

B. For the respondent

[42] In addition to calling Ms. Poirier as its witness, the respondent submitted a book of documents consisting of seven tabs, all of which were admitted as exhibits.

[43] At the time of the appointment process in question, Ms. Poirier was the director of CPC-Sydney. She testified that it was the largest processing centre in IRCC, with a

total employee population of between 800 and 1000. At the time of the hearing, Ms. Poirier had been retired for approximately 2 months.

[44] Ms. Poirier was the author of an email that provided the rationale for the use of a non-advertised process to appoint the appointee, dated October 19, 2018. In that email, she explained that the intent of the project manager position was to take ownership of changes in policies and procedures and the implementation of new initiatives, so that operational managers could concentrate on day-to-day responsibilities in a large production environment. She explained that she required someone with experience working with the management team in a collaborative manner and with a background in finance, accommodations, security, and administration. A “Statement of Merit Criteria” was developed, flowing from the work description created for the position.

[45] Ms. Poirier evaluated the appointee in relation to the Statement of Merit Criteria for the position. She documented that the appointee had experience as an AS-04 supervisor of material management, in finance and security, and in financial management at the FI-01 group and level. She testified that at the time of the appointment, the appointee did not report to her but provided support to the management team in the area of financial management and participated in biweekly management meetings. She testified that she had also spoken with the appointee’s supervisor in Ottawa before completing the assessment. The evaluation documented how the appointee met each of the 14 requirements of the position.

[46] Ms. Poirier testified that she had no relationship with the appointee outside work. Contrary to the complainant’s allegation, she denied that the appointment was made due to personal favouritism. She pointed out that the appointee is older than she is. She testified that the appointee had not been fired from his job and that she had no knowledge of the labour lawyer mentioned by the complainant and denied that the appointment was made for any reason other than merit.

[47] Ms. Poirier also testified about the informal discussion she had with the complainant following the publication of the notice of consideration. She denied saying that she can do what she wants. She testified that the delegation of staffing is quite prescribed and that her staffing options were limited to those allowed for in the legislation and departmental policy. As the director, her job was to assess the needs of

the organization. CPC-Sydney is a big operation, with 800 people. It was in that context that she made the choice to make a non-advertised appointment.

[48] Ms. Poirier testified that she recalled the complainant being upset and crying at the informal discussion. She did not intend that result; she said that she tried to give the complainant clear information about the process and insight into how she might apply for positions. She testified that the complainant called the local managers who sat on selection boards “incompetent”. She testified that because the complainant had cried, she felt that she had not done a good job with the discussion. She recalled saying that the next time they had a conversation, they should invite a union representative and human resources advisor.

[49] Ms. Poirier testified that in early 2019, after a few months in the PM-05 program manager position, the appointee was reassigned to fill a vacancy in an operations manager position to address an urgent operational need, but that in that role, he continued to perform some of the duties of the program manager position. She testified that the appointee retired from IRCC in 2021.

IV. Analysis and reasons

[50] It is well established that in a complaint made under s. 77 of the *PSEA*, the complainant bears the burden of proving that the respondent abused its authority in the making of an appointment; see *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8 at paras. 48 to 55. It is also well established that an allegation of abuse of authority is a serious matter that should not be made lightly; see *Portree v. Deputy Head of Service Canada*, 2006 PSST 14 at paras. 47 and 50). More than mere omissions, errors, or improper conduct are required to establish that an abuse of authority has taken place; see *Lavigne v. Canada (Justice)*, 2009 FC 684 at paras. 53 to 62 and 81.

[51] As stated by the former Public Service Staffing Tribunal (PSST) in *Portee*, at para. 50:

50 An employee must understand that a complaint is more than merely stating a perceived injustice. The complaint must set out the facts upon which the complainant relies in proving his or her case to the Tribunal. A complaint goes beyond merely alleging that the respondent abused his or her authority. The allegations must allege serious facts and a chronology of the events, times, and dates and any witnesses if applicable.

[52] In this case, for the reasons elaborated in the paragraphs that follow, the complainant failed to prove her case that the respondent abused its authority. Her allegation that it did so in the choice of a non-advertised process amounts to nothing more than a wish that she had been considered for the position. Her allegation that there was a conflict of personality in the selection board was entirely unsubstantiated. Her allegation that the respondent demonstrated personal favouritism was also entirely unsubstantiated.

A. The choice of a non-advertised process

[53] The complainant alleged that the respondent abused its authority by choosing a non-advertised process when a valid pool existed from which an appointment could have been made. She alleged that other candidates who were qualified were not considered.

[54] However, s. 33 of the *PSEA* provides that the PSC (and therefore the delegated staffing authority) may use either an advertised or a non-advertised appointment process. The choice to use a non-advertised process is not in and of itself an abuse of authority; see *Robbins v. the Deputy Head of Service Canada*, 2006 PSST 17 at paras. 36 and 41. Under s. 30(4) of the *PSEA*, there is no requirement that the PSC, or its delegated authority pursuant to s. 15(1) of the *PSEA* such as the deputy head in this case, consider more than one person to make an appointment based on merit. Employees do not have a guaranteed right of access to every appointment that might arise, and the fact that others may be qualified does not establish that a respondent abused its authority; see *Thompson v. President of the Canada Border Services Agency*, 2017 PSLREB 22 at para. 54.

[55] The complainant's testimony on the department's use of advertised and non-advertised processes was contradictory. On the one hand, she testified that she had been informed that if she wanted to advance, she should apply and qualify through an advertised process. She argued that since she was told that several times, the respondent should have been consistent and made this appointment through an advertised process. On the other hand, she introduced and referenced a list of non-advertised appointments made by the respondent and argued that the respondent changed its staffing approach to suit its needs.

[56] The complainant fails to understand that the discretion to choose one process over another is precisely what is allowed for under the *PSEA*.

[57] The complainant cited *Hunter v. Deputy Minister of Industry*, 2019 FPSLREB 83, as authority in support of her allegation that the respondent abused its authority by electing to use a non-advertised process, as well as her argument that it demonstrated personal favouritism towards the appointee. To my knowledge, *Hunter* is one of the few cases in which the Board and its predecessors have found a complaint about the choice of process substantiated.

[58] However, the paragraphs cited by the complainant from the decision (paragraphs 99 to 101) were a summary of the **complainant's** arguments, not the Board's decision.

[59] In *Hunter*, the Board found that the respondent's choice to use a non-advertised process lacked transparency, was poorly documented, and involved serious omissions and errors, amounting to bad faith (see paragraphs 89 to 91).

[60] In this case, the complainant did not introduce any facts or arguments that could lead to a conclusion that the appointment process was in any way similar to what occurred in *Hunter*.

[61] This was made more clearly evident through Ms. Poirier's testimony. She testified that the Statement of Merit Criteria used in the 2015 PM-05 position did not reflect the needs required for the PM-05 project manager position. Therefore, she did not choose to use that pool to fill the position. She developed merit criteria applicable to the requirements of the position and determined that a narrative assessment against those criteria was the appropriate assessment method. She completed that assessment. She chose to use a non-advertised process to make the appointment and concluded that the appointee met all the qualifications established for the position. Her documentation was clear, thorough, and timely.

[62] The complainant also cited *Marin-Lazarescu v. President of Shared Services Canada*, 2020 FPSLREB 52, in support of her allegation that the use of a non-advertised process was an abuse of authority. Once again, the paragraphs she cited (paragraphs 77 to 89) were from the Board's summary of that complainant's arguments. The relevant paragraphs from the Board's **decision** (paragraphs 106 to 123), reinforce a

respondent's discretion to use a non-advertised process. The complaint in *Marin-Lazarescu* was dismissed, and the Board's reasons for that decision support the respondent's arguments in this case.

[63] The complainant cited *Cameron v. Deputy Head of Service Canada*, 2008 PSST 16, as another case in which the Board or its predecessors found an abuse of authority in the use of a non-advertised process. However, in that case the PSST found that the circumstances surrounding the appointment at issue were "inexplicable, and even incomprehensible"; see paragraph 71. I do not find the actions of the respondent in this complaint to be either inexplicable or incomprehensible. In any case, as pointed out by the respondent, the remedy that the PSST ordered in *Cameron* was substantially overturned on judicial review (see *Canada (Attorney General) v. Cameron*, 2009 FC 618).

[64] I noted that the respondent's decision-making process in this appointment was clearly outlined in its reply to the complainant's allegations, which was submitted to the Board on February 4, 2019. Ms. Poirier's testimony and documents added some meat to the bones, but upon reflection, I have concluded that her testimony was not required to conclude that this allegation was unsubstantiated. The complainant's submissions are that she was simply upset that she was not considered for the opportunity. She did not make out her case that the respondent abused its authority.

B. A conflict of personality in the selection board

[65] The complainant alleged that there was a conflict of personality in the selection board. However, neither her allegation, her evidence, nor her arguments indicated exactly what she meant by that.

[66] There was no evidence that Ms. Poirier had even considered the complainant for the PM-05 position before the appointment was made. It was a non-advertised process in a workplace of some 800 staff. The complainant was a CR-03 who might or might not have had some experience relevant to the position, but she was not under consideration. She had some experience acting at a higher level than her substantive position, but by her own admission, she had not applied to the 2015 PM-05 pool. There was no evidence that she had made it known to local management that she was interested in such a position. By her own admission, in about 2014 or 2015, she had been found not qualified for a PM-01 pool. It is simply not logical, given these facts, to

have expected her to be under active consideration for an appointment at the PM-05 group and level.

[67] It is not clear how an alleged personality conflict between the complainant and Ms. Poirier could have biased Ms. Poirier against her, when there was no indication that the complainant was being considered for the position.

[68] After the respondent published the notification of consideration for this appointment (on October 31, 2018), the complainant requested and was granted an informal discussion. By both accounts, it was a difficult meeting, at which the complainant cried. However, this does not amount to evidence of a personality conflict. Moreover, the meeting happened after the decision to proceed via a non-advertised process had been made.

[69] The complainant argued that the emails exchanged in April 2020 following the privacy breach were evidence that the respondent was biased against her. Based on those emails, she argued, it was clear that she was on local management's radar. However, as I have already noted, those emails were exchanged a full 17 months after the appointment in question was made and this complaint was made. There is no evidence that local management had formed an opinion about the complainant before the appointment in question was made and no evidence whatsoever that such an opinion factored into the decision to appoint the appointee. Once again, the complainant was not considered for the position.

[70] The complainant cited the Board's decision in *Ghafari v. Deputy Head (Statistics Canada)*, 2022 FPSLREB 77 at para. 66, and argued that the definition of abuse of authority in the *PSEA* can include other forms of inappropriate behaviour, such as the emails suggesting that she was known to local management. I agree that inappropriate behaviour could give rise to a substantiated complaint. However, the Board dismissed the complaint in *Ghafari*, deciding that the complainant in that case lacked the evidence required to establish that the respondent abused its authority (upheld in *Ghafari v. Canada (Attorney General)*, 2023 FCA 206). Similarly here, the complainant did not adduce the evidence required to support her argument that the respondent abused its authority.

C. Personal favouritism

[71] The complainant alleged that Ms. Poirier demonstrated personal favouritism toward the appointee. She argued that because the appointee did not report to Ms. Poirier before the appointment, Ms. Poirier could not have properly assessed him for the position. She also argued that because their offices were close to each other, because the appointee had been involved in approving Ms. Poirier's travel arrangements, and because they both attended management meetings, there was personal favouritism involved.

[72] The complainant cited *Hunter* as an authority, but once again, she quoted from the paragraphs that summarized the arguments made by that complainant. In fact, in *Hunter*, the Board rejected the allegation of personal favouritism. At paragraph 112, the Board specifically pointed out the contradiction between a complainant arguing that a hiring manager could not assess an employee who did not report to them (because they could not know their work) and the allegation that a hiring manager had demonstrated personal favouritism (because they knew the appointee too well). In this case, the complainant makes exactly the same argument.

[73] As stated clearly at paragraph 39 of *Glasgow v. Deputy Minister of Public Works and Government Services Canada*, 2008 PSST 7, the legislation emphasizes that there must be personal favouritism to demonstrate an abuse of authority:

*39 Moreover, the words "for greater certainty" found at the beginning of subsection 2(4) are placed there for a purpose. Parliament referred specifically to bad faith and personal favouritism to make certain that there would be no argument that these improper conducts constitute abuse of authority. It is noteworthy that the word **personal** precedes the word **favouritism**, emphasizing Parliament's intention that both words be read together, and that it is **personal favouritism**, not other types of favouritism, that constitutes abuse of authority.*

[Emphasis in the original]

[74] The complainant's testimony (and her cross-examination of Ms. Poirier) about where the appointee's office was located relative to that of Ms. Poirier was frankly irrelevant to the question of whether there was personal favouritism. Even if office proximity was evidence of personal favouritism, after the appointee began in the PM-05 position, he was relocated to another building away from the one where Ms. Poirier worked.

[75] The complainant's allegation that the appointee had been removed or fired from his FI-01 position, had a lawyer representing him, and received the appointment to the PM-05 position as part of a settlement is not supported by any facts placed before the Board.

[76] The most serious allegation made by the complainant was that Ms. Poirier made the appointment because she wanted to have a relationship with a younger man. This is a serious allegation because the existence of personal favouritism can be an abuse of authority.

[77] At the same time, such allegations are not without impact on the individuals who are the subjects of them, which in this case are the appointee and Ms. Poirier as the hiring manager and director of CPC-Sydney.

[78] This allegation made by the complainant was entirely unsubstantiated. No evidence of any sort was tendered to support it. At best, the allegation represents nothing more than office gossip, which appears to have been initiated by the complainant herself. I hesitated at even reporting the allegation in detail because of how hurtful it could be. I give Ms. Poirier credit for calmly denying it and for having the patience and fortitude to point out that the appointee is older than she.

[79] In the hands of a complainant more skilled in their self-representation, I might have declared this allegation vexatious. In the final analysis, I believe that the complainant did not fully comprehend the seriousness of making these allegations at a public hearing. In any case, I find that this allegation is entirely unsubstantiated.

D. Concluding comments

[80] I have concluded that the complainant has failed to establish that the respondent abused its authority by choosing to use a non-advertised appointment process to make the appointment in question. I have concluded that the allegations of a personality conflict in the appointment process, and of personal favouritism, are entirely unsubstantiated by any evidence. As such, the complaint is dismissed.

[81] In addition, I wish to make some concluding comments.

[82] The complainant represented herself in this matter, and the Board engaged in active adjudication. Two lengthy CMC calls were held to prepare for the hearing. The

Board took steps to ensure that its registry provided the complainant with access to the *Regulations* and to the Board's *Procedural Guide for Staffing Complaints*. She was provided access to the forms required to make an OPI request and to request an amendment to her allegations. Documents were sent to her by mail or courier that would normally be sent via email or via a link to the Board's website. The Board accommodated her request for an in-person hearing.

[83] Despite all that assistance, the complainant rarely complied with the deadlines established by the Board. The documents she prepared for the hearing were very difficult to navigate.

[84] I find that the nub of this complaint is centred on one question that the complainant asked during the cross-examination of Ms. Poirier: "Why didn't you pick me for this job?" This was essentially the entire reason for the complaint. The complainant felt that it was unfair that the appointee — who had begun working at IRCC on the same day and at the same level as she had — had received a promotion to a higher-level position, when she had not.

[85] That may be a perfectly good reason to make a complaint, but it is not a sufficient reason to pursue a complaint through to a hearing, in the absence of any reliable evidence that there was an abuse of authority in the making of the appointment.

[86] With the benefit of hindsight, I think it would have been a better use of everyone's resources if a different approach had been taken than the scheduling of an in-person hearing. Specifically, this matter might have been more appropriately decided on the basis of written submissions relying on s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), which allows the Board to decide any matter before it without holding an oral hearing. I will briefly outline how this could have taken place.

[87] Once a notice of consideration is published, the *PSEA* and the *Regulations* set out a process by which an employee can request an informal discussion, so that they can ask questions before making a complaint. Once a complaint is made, there is a requirement to exchange information well before detailed allegations are made.

[88] Complaints must consist of more than unsubstantiated allegations based on assumptions or perceptions. As specified clearly in s. 22(2) of the *Regulations*, a complainant's allegations must include "... (d) a detailed description of the allegations on which the complainant intends to rely and full particulars of the relevant facts ...".

[89] Once detailed allegations are made by the complainant, both the respondent and the PSC have the opportunity to provide a reply. After those replies are filed, the complaint awaits scheduling for a hearing. In this complaint, the deputy head's reply was thorough and comprehensive.

[90] Upon reflection, in this case it would have been appropriate to require the complainant to respond to the deputy head's reply and invite her to demonstrate that she had an arguable case. The complainant did in fact make additional written submissions regarding her complaint, in the form of her 10-page submission of February 21, 2023, provided in response to the Board's request for details about the witnesses the complainant intended to call. The submission did not answer that request, but neither did it demonstrate that the complainant had any evidence to rely on to support her allegations. At the stage her submission was received, I decided the best course of action was to proceed with the in-person hearing. A focused request for the complainant's written submissions inviting her to provide further details about her allegations and the relevant facts she intended to rely on, made at an earlier stage of the proceedings, might have allowed the Board to determine the complaint without a hearing.

[91] Board decisions on staffing complaints are rendered on a balance of probabilities, following a careful weighing of the evidence. In this case, none of the evidence or pleadings provided by the complainant give rise to a factual finding that her complaint should be substantiated.

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

(The Order appears on the next page)

V. Order

[93] The complaint is dismissed.

March 7, 2024.

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