Date: 20240312

Files: EMP-2017-11567 and 11568

Citation: 2024 FPSLREB 33

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

CATHY TURNER

Complainant

and

DEPUTY HEAD
(Royal Canadian Mounted Police)

Respondent

Indexed as
Turner v. Deputy Head (Royal Canadian Mounted Police)

In the matter of complaints of abuse of authority pursuant to sections 77(1)(a) and (b) of the *Public Service Employment Act*

Before: Amélie Lavictoire, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Jena Russell, representative

For the Respondent: Laetitia Bonaparte Auguste, counsel

Decided on the basis of written submissions, filed August 1 and 30 and December 8, 2023.

REASONS FOR DECISION

I. Introduction

[1] In 2021, a panel of the Federal Public Sector Labour Relations and Employment Board ("the Board") issued a decision granting, in part, a staffing complaint made by Cathy Turner ("the complainant") and declaring that the respondent, the deputy head of the Royal Canadian Mounted Police (RCMP), had abused its authority in the application of merit in the context of two appointments to training coordinator positions; see *Turner v. Deputy Head (Royal Canadian Mounted Police)*, 2021 FPSLREB 52 ("*Turner FPSLREB*"). In that decision, the Board declined to exercise its authority to order the appointments revoked. It held that revocation orders are, and should only be, granted under rare circumstances (see *Turner FPSLREB*, at para. 79). It dismissed the complaint insofar as it alleged that the respondent had abused its authority by selecting a non-advertised appointment process.

[2] The complainant filed an application for the judicial review of that decision, challenging the portion of the Board's decision addressing the issue of remedy.

[3] In 2022, the Federal Court of Appeal granted the judicial review application and set aside the portion of the Board's decision that dealt with remedy; see *Turner v. Canada (Attorney General)*, 2022 FCA 192 ("*Turner FCA*").

[4] The Court found that the Board's pronouncement to the effect that revocation is only rarely awarded conflicted with the jurisprudence of the Board and of its predecessor, the Public Service Staffing Tribunal (PSST). The Court noted that the Board and the PSST had ordered appointments revoked in close to half the reported cases (see *Turner FCA*, at para. 3). It found that the Board had not considered its own jurisprudence or that of the PSST on the remedial issues and that it had not offered any explanation for its conclusion that revocation was not warranted.

[5] The Court remitted the remedial issues to a different panel of the Board for redetermination, leaving it to the new panel to decide what, if any, additional evidence might be required for the redetermination of those issues (see *Turner FCA*, at para. 9).

[6] A hearing was scheduled for late July 2023. In May 2023, the respondent raised an objection, arguing that the remedial issues were now moot, in part because the appointees no longer occupy the positions at issue.

[7] A case management conference was held to discuss the respondent's objection and the nature and extent of the evidence required, if any, to redetermine the remedy. Although the complainant expressed a preference for an oral hearing on the matter so that she could present oral arguments, neither party suggested that further evidence was required for me to determine the remedial issues. After hearing both parties' submissions with respect to the objection and the necessity for the Board to hear additional evidence, the Board directed that the matter would be decided based on written submissions.

[8] After it received both parties' written submissions, the Board requested further submissions from the complainant. Because her representative at that time had not filed a reply to the respondent's submissions, the complainant had left unaddressed and unanswered several arguments and themes that the respondent addressed in its submissions. The Board sought further submissions from her on three specific issues: the respondent's objection based on mootness, what remedy other than revocation — if any — would be appropriate in the circumstances of this case, and the guiding principles that emerge from the jurisprudence of the Board and the PSST with respect to the circumstances in which revocation was found warranted. The complainant filed additional submissions. The respondent declined to file a sur-reply.

[9] The appointees were provided an opportunity to file written submissions. They did not do so.

[10] The Public Service Commission declined to provide written submissions.

[11] This decision constitutes the Board's redetermination of the remedial issues that the Federal Court of Appeal overturned.

II. Summary of the Board's key findings and conclusions in *Turner FPSLREB*

[12] At issue in *Turner FPSLREB* was a non-advertised appointment process for two training coordinator positions classified at the AS-02 group and level. The complainant had made a complaint with the Board alleging that the respondent had abused its authority in the application of merit as well as in its choice to use a non-advertised appointment process to staff the two training coordinator positions. Seeing as the Board dismissed the complaint insofar as it related to the respondent's choice of a non-advertised appointment process, the Board's findings and conclusions on that

topic will not be summarized in this case. They are not relevant to the remedial issues to be determined.

[13] In support of her complaint with respect to the application of merit, the complainant argued that the respondent had modified the essential qualifications for the two appointments such that those qualifications did not meet the essential qualifications for the work to be performed. At the hearing, the complainant did not allege that the appointees were not qualified to occupy the positions that they had been appointed to.

[14] In its decision, the Board referred to the appointees as "appointee L" and "appointee M".

[15] As the Court remitted only the remedial issues for redetermination, I am bound by the Board's findings of fact and law set out in *Turner FPSLREB*. Those findings led it to conclude that the respondent had breached the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA* or "the *Act*"), specifically that it had abused its authority in the application of merit.

[16] Most relevant to the remedial issues before me are the following findings and conclusions of the Board in *Turner FPSLREB*. The Board's findings of fact were the following:

- Weeks before the two non-advertised appointments were made, the respondent proceeded with an acting appointment to one of the training coordinator positions. In doing so, it set out the essential qualifications for the training positions. Several of those qualifications explicitly noted training duties.

- The respondent chose to appoint the appointees, who had been previously qualified and placed in a pool for a different AS-02 appointment process. The pool in which the appointees had been placed was for positions that were not specifically related to training.

- The respondent purposely watered down the essential qualifications in the statement of merit criteria for the two training positions. It removed any mention of "training" and referenced new generic qualifications. By doing so, the revised generic qualifications better fit the qualifications established for the positions for which the appointees had been placed in a pool.

[17] The Board declared that an abuse of authority had occurred in the application of merit in the two appointments. Its conclusions and findings of fact and law were the following:

- The resulting qualifications used for these appointments violated the *PSEA* as they no longer represented the actual work to be performed by the appointees.
- The "… non-conformance of the redrafted generic essential qualifications to s. 30(2)(a) …" of the *Act* was a "blatant contravention of the *Act*."
- A list of essential qualifications for a training position from which the respondent removed all references to training that existed in a previous version from only weeks earlier could not be said to reflect the actual or accurate qualifications for the training work to be performed.
- The removal of the references to training from the essential qualifications was "a blatant and intentional omission."
- The respondent's failure to consider training as a relevant aspect of the training coordinator duties in the qualifications for the positions rendered the respondent's decision arbitrary.
- The clear and compelling evidence that the respondent's failure was intentional demonstrated that its decision was made in bad faith.

[18] In its conclusion, the Board wrote that its declaration of an abuse of authority spoke "… to the neglect of well-established appointment processes and the related statutory requirement." It was not related to the appointees themselves.

[19] As previously indicated, the Board declined the complainant's request to order the revocation of the appointments, stating that "[s]uch an order is and should be only exercised under rare circumstances."

III. Additional developments that occurred since *Turner FPSLREB*

[20] Both individuals whose appointments were found to constitute an abuse of authority in *Turner FPSLREB* no longer occupy the positions at issue. They were subsequently promoted to other positions within the RCMP. Appointee L was promoted in 2019 and then again in 2021. She has since left the RCMP. Appointee M was promoted in 2023.

[21] Both training coordinator positions are now occupied by new incumbents. Neither position was staffed via a non-advertised process such as the one at issue in

Turner FPSLREB. No complaints were received with respect to these newest appointments.

[22] The complainant retired from the RCMP in 2022.

[23] The delegated manager responsible for the appointment process at issue in *Turner FPSLREB* retired in 2019.

IV. Summary of the arguments

[24] The complainant's initial written submissions were five pages in length, more than two of which comprised excerpts from *Turner FPSLREB* and *Turner FCA*. The submissions are contained in the following three paragraphs:

> …
>
> *We request that the board order the revocation of the two appointments in the complaint ….*
>
> *The adjudicator for this complaint made it very clear that he found that [sic] abuse of authority by the department as the selection tools used did not reflect the actual duties of the positions sought.*
>
> …
>
> *Revocation is the remedy that is ordered under the act. And if it is not to be ordered it should only be in exceptional circumstances that the board will detail. If this decision is left to stand it will send a message that department's [sic] can abuse their authority and still have the products of their abuse continue as selected candidates in positions even, as in this case there is no evidence that they are qualified for the job that they're doing.*
>
> …

[25] In her additional written submissions, filed at the Board's request, the complainant submits that although she, the incumbents, and the delegated manager no longer occupy the positions that they occupied when the staffing complaint was made, nonetheless, the Board should revoke the appointments. In other cases, the Board has held that the revocation of an appointment is not moot solely because the appointment at issue has ended (see *Spirak v. the Deputy Minister of Public Works and Government Services Canada*, 2012 PSST 20 at para. 81). In the circumstances of this case, the complainant argues that revoking the appointments under s. 81(1) of the *PSEA* is the only appropriate remedy.

[26] According to her, blatantly contravening the *PSEA* constitutes bad faith, which is one of the most serious forms of abuse of authority. When the Board concludes that a respondent acted in bad faith, all necessary action should be taken to correct the abuse (see *Glasgow v. Deputy Minister of Public Works and Government Services Canada*, 2008 PSST 7 at paras. 39 and 40). It would be improper for there to be no consequences simply because the appointee has left the department. That would undermine the intent of the legislation (see *Beyak v. Deputy Minister of Natural Resources Canada*, 2009 PSST 35 at para. 192) and allow a deputy head to avoid the consequences of their actions by moving the appointee, whose appointment has been found to have given rise to an abuse of authority, to another position (see *Lo v. Canada (Public Service Commission Appeal Board)*, 1997 CanLII 5849 (FCA) at para. 12).

[27] The respondent argues that identifying the appropriate remedy in a staffing matter is fact dependent. The objective sought must be that of remedying the abuse of authority found to exist in the appointment process at issue. While revocation is an available remedy, a revocation order is not an automatic remedy (see s. 81(1) of the *PSEA*; also, *Monfourny v. Deputy Head (Department of National Defence)*, 2023 FPSLREB 37 at para. 113). It is one of several options available to the Board in the exercise of its statutory discretion.

[28] The respondent submits that in the circumstances of this case, a declaration of abuse of authority remains the only appropriate remedy. According to it, a revocation order would be moot and would be unresponsive to the Board's finding of abuse of authority. The appointees no longer occupy the positions at issue, and those positions have since been staffed through separate appointment processes. The respondent also argues that revocation would not remedy the situation that led the Board to declare abuse of authority in the application of merit, specifically, the failure to assess the appointees with respect to the appropriate essential qualifications.

V. Reasons

[29] Except for the remedial issues, the Federal Court of Appeal did not overturn the Board's findings of fact and conclusions of fact and law in *Turner FPSLREB*. Only the remedial issues were remitted to the Board for redetermination.

[30] The starting point of any analysis with respect to remedial issues is the *PSEA*, specifically the provisions that address the Board's remedial powers. Sections 81(1)

and 82 of the *PSEA* guide the Board's exercise of its remedial discretion. Sections 81(2) and (3) that set out remedial actions with respect to discrimination and breaches of accessibility legislation are not relevant in the circumstances of this case:

…	[…]
Corrective action when complaint upheld	***Plainte fondée***
81 (1) *If the Board finds a complaint under section 77 to be substantiated, the Board may order the Commission or the deputy head to revoke the appointment or not to make the appointment, as the case may be, and to take any corrective action that the Board considers appropriate.*	***81 (1)*** *Si elle juge la plainte fondée, la Commission des relations de travail et de l'emploi peut ordonner à la Commission ou à l'administrateur général de révoquer la nomination ou de ne pas faire la nomination, selon le cas, et de prendre les mesures correctives qu'elle estime indiquées.*
…	[…]
Restrictions	***Restriction***
82 *The Board may not order the Commission to make an appointment or to conduct a new appointment process.*	***82*** *La Commission des relations de travail et de l'emploi ne peut ordonner à la Commission de faire une nomination ou d'entreprendre un nouveau processus de nomination.*
…	[…]

[31] The Board's jurisprudence demonstrates that it has exercised its remedial powers under s. 81(1) of the *PSEA* by granting declarations of abuse of authority, ordering complainants reassessed, revoking appointments, and issuing recommendations.

[32] The Board's findings in *Turner FPSLREB* amply support its declaration of abuse of authority in the application of merit, and neither party has suggested that a similar declaration should not be issued again. Consequently, I declare abuse of authority in the application of merit in the appointments of both appointees.

[33] A declaration constitutes a direct and unambiguous statement of the Board to the effect that an abuse of authority has occurred. It can serve as the impetus for change in how the deputy head conducts appointment processes, while also providing

information to all deputy heads with respect to the Board's interpretation and application of the requirements of the *Act*. However, in certain circumstances, the Board may find that a declaration alone is insufficient to remedy the nature and seriousness of the abuse of authority at issue.

[34] Ordering the revocation of an appointment constitutes an additional and important remedial tool available to the Board. Section 81(1) of the *PSEA* is clear. Revocation is a remedy that the Board may grant when it considers it appropriate based on the facts of a particular case. The jurisprudence that the Federal Court of Appeal cited at paragraphs 4 and 5 of *Turner FCA* illustrates the fact that when the Board has ordered an appointment revoked or has not so ordered, it did so based on its assessment of the facts of the case.

[35] The respondent argues that on the facts of this case, an order revoking the appointments is moot and would not serve to remedy the Board's finding of abuse of authority in the application of merit. Both appointees no longer occupy the positions at issue, and both training coordinator positions are now occupied by new incumbents. The delegated manager responsible for the appointment process retired several years ago.

[36] I do not agree with the respondent's assertion that an order revoking the appointments at issue is automatically moot because both appointees have since moved on. This issue has already been the subject of Board jurisprudence (see, for example, *Ayotte v. Deputy Minister of National Defence*, 2010 PSST 16; *Beyak*; *Spirak*, at para. 81; and *De Santis v. Commissioner of the Correctional Service of Canada*, 2016 PSLREB 34 at paras. 54 and 55). It has been held that there are a number of situations in which the appointee may no longer occupy the position at issue and in which revocation would not be moot and would constitute an appropriate corrective action.

[37] *Ayotte* is of particular relevance. In that case, the PSST held that revocation constituted an appropriate corrective action in a context in which the appointee was no longer employed by the respondent responsible for the impugned appointment. The PSST expressly rejected the respondent's argument according to which there was no reason to order revocation. At paragraph 26, the PSST wrote this: "There is no requirement in the PSEA that the person still be in the position. It is up to the [PSST] to

review the facts and determine if, in the circumstances of the case, revocation is required."

[38] The PSST found that the respondent's actions in the appointment process at issue constituted bad faith. The appointment was not made in accordance with merit, and the respondent demonstrated personal favouritism in the appointment process.

[39] In *Beyak*, the PSST similarly indicated at paragraph 192 that it would be improper for the respondent to suffer no consequences simply because the appointee had since left the department. To hold otherwise would be to undermine the intent of the legislation.

[40] The Federal Court of Appeal has held that revocation is not moot after the appointee has later resigned from the public service (see *Lo*). However, the Federal Court has, at least once, suggested that if an acting appointment has ended, the Board is limited to declaring an abuse of authority without being able to revoke the appointment (see *Canada (Attorney General) v. Cameron*, 2009 FC 618 at para. 19). However, I note that *Cameron* pertains to acting appointments, makes no mention of the Federal Court of Appeal's decision in *Lo*, and was rendered before the Board jurisprudence discussed previously. Accordingly, I find that *Ayotte* and *Beyak* — along with *Lo* — constitute a line of jurisprudence that clearly establishes that the Board may revoke an appointment in circumstances in which the appointee has moved on to another position or has retired.

[41] I am cognizant of the fact that in a recent decision, the Board found abuses of authority in the complainant's assessment and in the choice of appointment process but held that revoking the appointment was "not an option" because the complainant and the appointee were no longer employed by the respondent in that case (see *Massabki v. Deputy Head (Department of Foreign Affairs, Trade and Development)*, 2022 FPSLREB 79 at para. 113). However, the decision provides no explanation as to why a departure from the line of jurisprudence described in the last paragraph was deemed necessary or appropriate in the circumstances of that case. In the absence of such an explanation, I do not believe that there is a reason — based on *Massabki* — to depart from the Board's jurisprudence.

[42] Since I have decided that revoking the appointments at issue is not moot, I will now turn to the issue of whether doing so is an appropriate remedy in the circumstances of this case.

[43] Determining this issue based on the particular facts of a case is compatible with key objectives of the *Act*, notably, ensuring that public service appointments are made based on merit, and establishing a system of accountability in which deputy heads are held to account for the decisions they make when exercising their delegated authority. Corrective measures must aim to remedy the error identified in the appointment process at issue (see *Cameron*, at para. 18). As I have previously indicated, corrective measures may serve to send a message to all deputy heads with respect to the Board's interpretation and application of the requirements of the *Act*. They may also serve to inform deputy heads of the corrective actions likely to be ordered by the Board where they fail to respect the requirements of the *Act* and abuse their authority.

[44] Revocation is a discretionary remedy. A review of the jurisprudence of the Board and the PSST reveals that revocation has generally been found appropriate when the appointee did not meet the essential qualifications of the position at issue or when it could not be determined that the appointee met the essential qualifications (see, for example, *Regier v. Deputy Head of the Correctional Service of Canada*, 2021 FPSLREB 123; *Burt v. Deputy Minister of Veterans Affairs*, 2019 FPSLREB 31; *Goncalves v. Commissioner of the Royal Canadian Mounted Police*, 2017 FPSLREB 2; *Sachs v. The President of the Public Health Agency of Canada*, 2017 FPSLREB 3; *De Santis*; *Whalen v. Deputy Minister of Natural Resources Canada*, 2012 PSST 7; *Marcil v. Deputy Minister of Transport, Infrastructure and Communities*, 2011 PSST 31; and *Denny v. Deputy Minister of National Defence*, 2009 PSST 29). This is not surprising, since the appointment of a person who does not meet the essential qualifications of a position does not constitute an appointment based on merit as defined in s. 30 of the *PSEA*. Section 30(2) of the *PSEA* indicates that an appointment is based on merit when the deputy head "… is satisfied that the person to be appointed meets the essential qualifications for the work to be performed …".

[45] Revocation has also generally been ordered when an appointment process has been found tainted by personal favouritism or a reasonable apprehension of bias (see, for example, *Beyak*; *Ayotte*; *Marcil*; *Spirak*; *Bain v. Deputy Minister of Natural Resources Canada*, 2011 PSST 28; and *Amirault v. Deputy Minister of National Defence*, 2012 PSST

6) or when the appointment process was otherwise seriously flawed (see, for example, *Martin v. Deputy Minister of National Defence*, 2010 PSST 19; and *Healey v. Chairperson of the Parole Board of Canada*, 2014 PSST 14).

[46] As the Federal Court of Appeal correctly pointed out at paragraph 3 of *Turner FCA*, revocation appears to have been ordered in close to half the reported Board and PSST cases. What about the other half?

[47] Generally, those cases appear to be ones in which revocation was not requested as a remedy (see, for example, *Myskiw v. Commissioner of the Correctional Service of Canada*, 2019 FPSLREB 107; *Robert v. Deputy Minister of Citizenship and Immigration*, 2008 PSST 24; *Ammirante v. Deputy Minister of Citizenship and Immigration*, 2010 PSST 3; *Hammouch v. Deputy Minister of National Defence*, 2012 PSST 12; and *Laviolette v. Commissioner of the Correctional Service of Canada*, 2015 PSLREB 6), in which the deficiencies in the appointment process pertained exclusively or primarily to the assessment of the complainant and not the appointee (see, for example, *Chiasson v. Deputy Minister of Canadian Heritage*, 2008 PSST 27; and *Hughes v. Deputy Minister of Human Resources and Skills Development Canada*, 2011 PSST 16), or in which the complainant either did not allege or did not demonstrate that the appointee did not meet the merit criteria (see, for example, *Monfourny*; *Hunter v. Deputy Minister of Industry*, 2019 FPSLREB 83; *Gomy v. Deputy Minister of Health*, 2019 FPSLREB 84; *Ostermann v. the Deputy Minister of Human Resources and Skills Development Canada*, 2012 PSST 28; *Gabon v. the Deputy Minister of Environment Canada*, 2012 PSST 29; *Payne v. the Deputy Minister of National Defence*, 2013 PSST 15; *Laviolette*; and *Hill v. Deputy Minister of Public Works and Government Services*, 2017 FPSLREB 21).

[48] The themes that emerge from that jurisprudence reveal that the Board is significantly more likely to order an appointment revoked when it was not based on merit or could not be demonstrated to have been based on merit, when the appointment was tainted by personal favouritism or a reasonable apprehension of bias, or when the Board has concluded that there were significant flaws in the appointment process.

[49] The first of those themes, merit, is relevant to the present case. In *Turner FPSLREB*, the Board found that the respondent intentionally watered down the essential qualifications in the statement of merit criteria for the training coordinator

positions at issue, to be able to appoint the appointees from a pool of candidates that had been established for another type of position. Those facts were not contested (see paragraph 9 of *Turner FPSLREB*).

[50] Merit is assessed at the time of appointment and in light of the essential qualifications for the work to be performed. Although the complainant did not challenge that the appointees were qualified for the training coordinator positions at issue, merit cannot be said to have been respected where a delegated manager intentionally removes a highly relevant item from the essential qualifications, to facilitate an appointment. In circumstances such as those in the present case, the respondent could not conceivably have been "… satisfied that the [appointees met] the essential qualifications for the work to be performed …", as is required by s. 30(2) of the *PSEA*. It knew that the appointees did not meet the essential qualifications for the work to be performed. It appointed them anyway. The appointments were not based on merit, as defined in the *PSEA*.

[51] It must be assumed that the Board chose its words in *Turner FPSLREB* with care. I am struck by the forceful language that it used. I have not let it go unnoticed that the Board described the respondent's removal of references to training from the essential qualifications of training coordinator positions as a "blatant and intentional omission" that rendered the staffing decision at issue "arbitrary." The intentional nature of the respondent's failure to consider a relevant aspect of the duties of the positions at issue in its essential qualifications was found to demonstrate that the decision had been "made in bad faith." The Board further described the respondent's actions as a "blatant disregard for the requirements" of the *PSEA* and as a "blatant contravention of the *Act*." I agree with the Board's description and characterization, in *Turner FPSLREB*, of the respondent's actions.

[52] Bad faith is among the most serious forms of abuse of authority (see *Ayotte*, at para. 18; and s. 2(4) of the *PSEA*). As *Glasgow* instructs, when it has been found, "… all necessary action should be taken to correct the abuse" (see paragraph 40). That is not to say that revocation will or should follow in all cases in which the Board finds bad faith on the part of a deputy head. The Board's remedial exercise continues to be a determination of the appropriate remedy based on the facts of each case.

[53] In the present case, I cannot overlook the Board's uncontested conclusion that the respondent intentionally watered down the essential qualifications to be able to appoint the appointees, nor can I overlook the Board's clear and forceful language, a language that denounces the respondent's actions in the strongest possible terms. The revocation of the appointments is warranted when, as in this case, the Board has found bad faith and a blatant and intentional contravention of the *PSEA* by manipulating merit criteria to facilitate the appointments at issue.

[54] The respondent breached the *Act*. Unfortunately, the respondent's actions will have repercussions for the appointees. They may be impacted by my conclusion and the order that will follow. The parties have provided no submissions with the respect to the practical impact of an order revoking the appointments several years after the fact. The appointees themselves did not file submissions when they were invited to do so. I must stress that because of that possible impact on the appointees, I have not reached this conclusion easily. My conclusion that revocation is appropriate in the circumstances of this case should not in any way be read as constituting a comment on the appointees' skills and abilities. Rather, it is a consequence of the respondent's actions in the context of the appointment process.

[55] I am cognizant of the fact that occasionally, the passage of time has led the Board to decline to order the revocation of an appointment (see, for example, *Huard v. Deputy Head (Office of Infrastructure of Canada)*, 2023 FPSLREB 9 at paras. 97 to 99, where the Board identified the passage of time as being one of several reasons for which it was not prepared to exercise its discretion to revoke the appointments at issue). As the Board continues to reduce delays in the determination of staffing matters, it is my hope that the passage of time will soon no longer be a relevant consideration to the identification of appropriate corrective measures.

[56] Revoking appointments several years after the fact and, as in this case, after the appointees have occupied the positions for some time and have moved on is not ideal. In the present case, the judicial review and redetermination processes have significantly lengthened the time elapsed since the appointments and the filing of the complaint at issue. However, the Board must determine whether revocation constitutes an appropriate corrective measure based on the facts at the time the abuse of authority occurred, and the complaint was filed, not based on the circumstances at the time of adjudication. Either the appointees satisfied the essential qualifications at the

time of their appointment, or they did not. It is not contested that they did not. It is also not contested that the respondent intentionally modified the essential qualifications to allow the appointments.

[57] Based on my review of the jurisprudence, and considering the facts of this case, the submissions of the parties and the Board's findings in *Turner FPSLREB*, I conclude that an order revoking the appointments should be made. Such an order would be consistent with the jurisprudence described at paragraph 44 where revocation has been found appropriate when the appointee did not meet the essential qualifications of the position at issue.

[58] I have also considered issuing a recommendation in addition to revocation, more specifically, a recommendation that the delegated manager be given training on the requirements of the *PSEA*. However, the delegated manager has retired, and the errors described in *Turner FPSLREB* were his. In such circumstances, a recommendation would serve no useful purpose. The objectives of the *PSEA* are, in my opinion, adequately met by making a declaration and revoking the appointments.

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

(The Order appears on the next page)

VI. Order

[60] I declare that abuse of authority occurred in the application of merit in both appointments.

[61] I order the deputy head to revoke the appointments of the appointees within 60 days of this decision.

March 12, 2024.

Amélie Lavictoire,
a panel of the Federal Public Sector
Labour Relations and Employment Board