Date: 20250410

Files: 771-02-49132 and 49133

Citation: 2025 FPSLREB 35

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

MPUME MTIMKULU

Complainant

and

DEPUTY HEAD (Department of Justice)

Respondent

and

OTHER PARTIES

Indexed as
Mtimkulu v. Deputy Head (Department of Justice)

In the matter of complaints of abuse of authority - paragraph 77(1)(b) of the *Public Service Employment Act*

Before: Christopher Rootham, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Nadine Rizk, counsel

For the Public Service Commission: Maude Bissonnette Trudeau, senior analyst

Heard by videoconference,
January 8 to 10, 2025.

REASONS FOR DECISION

I. Overview

[1] These two complaints are about non-advertised appointments to the Access to Information and Privacy Office ("the ATIP Office") in the Department of Justice. Both complaints allege that the choice of a non-advertised appointment process was an abuse of authority. Both appointments were announced in early February 2024. In light of their similar backgrounds, I heard them together over a three-day hearing.

[2] I have decided to dismiss both complaints. I have concluded that the decision to use non-advertised appointment processes for these two appointments was not an abuse of authority.

[3] The complaint in file no. 771-02-49132 is about an indeterminate appointment. The respondent initially conducted an advertised appointment process for this position. It was advertised for an at-level appointment. The successful candidate came from a separate agency. When she applied, she was at-level to this position; however, as a result of an increase in pay to the position at the ATIP Office, by the time the respondent decided to appoint her it became a promotion. The respondent created a new non-advertised appointment process to appoint that candidate. I have concluded that it did not abuse its authority by doing so. Even though the appointment was technically a promotion, that was a transitory feature that was the result of the timing of collective bargaining. The respondent did not abuse its authority by switching to this non-advertised appointment process to deal with what amounts to a technicality.

[4] The complaint in file no. 771-02-49133 is against an acting appointment. The respondent appointed the successful candidate to act in a position for four months less a day, to replace someone while they were on leave. It extended the appointment for a year; the complaint is against that extension of the acting appointment. The respondent did not abuse its authority by using a non-advertised appointment process. The evidence is that there was a lot of turnover in the ATIP Office and at this level of position in particular. The need to stabilize the ATIP Office in light of that turnover adequately justified not advertising this acting appointment.

II. Factual background for both complaints

[5] As I said in the overview, both complaints are about non-advertised appointments to the ATIP Office in the Department of Justice. Both of the appointments were made in February 2024, and the events surrounding those appointments ran from May 2023 until that time. Therefore, I will begin with an overview of the ATIP Office.

[6] The ATIP Office is led by a director. Benoit Guilbert was the acting director between March 2023 and September 2024. Mr. Guilbert described that the ATIP Office was divided into three groups: a privacy and policy group, an operational group, and a complaints group. There were a total of 5 managers for those groups, each at the PM-6 classification. The privacy and policy group was led by an employee with the title of manager, ATIP policy and programs. The operational group had three managers with the title of manager, ATIP operations. The operational group handled ATIP requests. The complaints group was led by a single manager who also had the title of manager, ATIP operations. The complaints group helped respond to ATIP complaints, so the manager of that group dealt with the Office of the Information Commissioner of Canada ("OIC") or the Office of the Privacy Commissioner of Canada ("OPC"). There were approximately 50 positions in total in the ATIP Office.

[7] Mr. Guilbert testified about some of the broader challenges facing the ATIP Office.

[8] First, he testified that the ATIP Office had been having challenges meeting its statutory access-to-information or privacy obligations. This led to a fraught relationship between the complaints group and the OIC and OPC.

[9] Second, he testified that it was notoriously difficult to staff the ATIP Office.

[10] Third, he testified that there was a lot of staffing turnover at the ATIP Office during his tenure there of roughly 18 months. He testified that he was responsible for a total of 67 staffing actions. He characterized that as a lot of staffing actions, and I agree with that characterization. Specifically, at the PM-6 level, he testified about the challenges keeping those 5 positions filled. In 2023, 2 managers went on maternity and parental leave, another manager left the ATIP Office for a different job, and, from the testimonies of the witnesses, it seems as if one of the operations manager positions

had been unfilled for a while (although their testimony on this point was not as clear as it could have been). This turnover at the PM-6 level had a knock-on effect at lower levels, as those leaves were backfilled by more junior employees, who themselves were backfilled by even more junior employees.

[11] Mr. Guilbert testified that the direction that he was given, when he was appointed as the acting director, was to create stability in the ATIP Office, in light of these challenges. I can understand why he was given this instruction to create stability, particularly given the amount of turnover in the ATIP Office.

III. Legal context behind complaints about non-advertised appointments

[12] In both files, the complainant alleges that the deputy head of the Department of Justice abused its authority by choosing a non-advertised instead of an advertised appointment process. The parties do not dispute the general legal framework for these types of complaints.

[13] Section 33 of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; "*PSEA*") provides the authority to use an advertised or a non-advertised appointment process. As stated in *Jarvo v. Deputy Minister of National Defence*, 2011 PSST 6 at para. 25, "There is no preference given to advertised over non-advertised processes in the PSEA." The decisions in *Bérubé-Savoie v. the Deputy Minister of Human Resources and Skills Development Canada*, 2013 PSST 2 and *Marin-Lazarescu v. President of Shared Services Canada*, 2020 FPSLREB 52 at para. 106 confirm this point.

[14] Paragraph 77(1)(b) of the *PSEA* permits a person in the area of recourse (like the complainant in this case) to make a complaint that they were not appointed or proposed for appointment because of an "abuse of authority" in choosing between an advertised and a non-advertised internal appointment process. There is no single or comprehensive meaning for an abuse of authority, although it requires something more than mere error; the conduct must be "… unreasonable, unacceptable or outrageous in some way, such that Parliament could not have intended the person with the authority to exercise its discretion in this manner …" (quoted from *Davidson v. Canada (Attorney General)*, 2021 FCA 226 at para. 25).

IV. The complaint in file no. 771-02-49132

A. The appointment process for this position

[15] This complaint is about a non-advertised indeterminate appointment to a manager, ATIP operations, position in the operational group. The person appointed to the position was expected to lead a broader access-to-information modernization strategy.

[16] Mr. Guilbert tried to find someone for this position through an internal advertised process. He launched an internal advertised process limited to candidates from the Department of Justice in May 2023. That process did not yield any suitable candidates. Therefore, he opened the process to candidates from inside the federal public service within the National Capital Region who applied by June 12, 2023.

[17] Both times, the process was advertised for an assignment, deployment, secondment, or interchange. The intent was to find a candidate who was "at level" — this was not intended to be a promotional opportunity. Mr. Guilbert testified that when he first tried to fill the position with someone from within the Department of Justice, the only three people who applied were not at level, so he did not consider them further.

[18] After opening up the position to candidates from outside the Department of Justice, 12 people applied. Of those 12, only 3 met the basic requirements of the position. Mr. Guilbert created a committee to review the candidates that was composed of 3 PM-6 managers working at the time. That committee reviewed the candidates and decided that 2 of them were not sufficiently experienced. The committee interviewed the remaining candidate, and then Mr. Guilbert interviewed her as well. They all agreed that she was well suited for the position and decided to hire her. Mr. Guilbert was away at the end of September or early October 2023, so one of the ATIP operations managers actually made the offer. The candidate accepted it.

[19] The successful candidate was working at the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC"). FINTRAC is a separate agency and is not part of the core public administration. Therefore, it has its own classification plan. She was classified at the FT-4 group and level within FINTRAC.

[20] As I said earlier, this process was designed to be for candidates who were "at level". The successful candidate was meant to be hired through a "deployment." Section 51 of the *PSEA* sets out rules for what constitutes a deployment. One of those rules is that a deployment may not constitute a "promotion". A promotion is defined in s. 3(1) of the *Definition of Promotion Regulations* (SOR/2005-376) to mean an appointment (or, technically, the "… assignment to an employee of the duties of a position …") to a position with a maximum rate of pay that is either a pay increment or 4% higher than a person's old position. There are technical rules in addition to the general principle I laid out whose precise details are unimportant in this case.

[21] On June 27, 2023 the Public Service Alliance of Canada and the Treasury Board signed a new collective agreement for the Program and Administrative Services bargaining unit. This meant that positions in the PM classification received a pay increase. Some of that pay increase was retroactive to June 21, 2021, and the increases had to be implemented within 180 days.

[22] When the successful candidate applied, the maximum rate of pay of an FT-4 at FINTRAC was higher than that of a PM-6. However, as a result of the new wage rates for the PM group, that was no longer the case in October when it came time to formally appoint the successful candidate — it became a promotion.

[23] The question of whether an appointment from an FT-4 position at FINTRAC to a PM-6 position in the core public administration is a deployment or promotion depends on the precise date of the appointment.

[24] Just for context, I reviewed the rates of pay for PM-6 and FT-4 positions. The PM group's collective agreement is publicly available; FINTRAC posts its current pay rates online for April 1 each year, and I found a job poster for a FINTRAC position disclosing the salary as of April 1, 2023. The PM-6 group has five pay increments. The smallest increase between increments was $3246 before the new collective agreement, $3572 in 2023, and $3643 in 2024. Therefore, a "promotion" to a PM-6 position was from any position with a maximum rate of pay less than $111 346 before the new collective agreement, $122 600 when the collective agreement was implemented in 2023, and less than $125 374 as of June 21, 2024.

[25] The precise salary details are not important to this decision. However, just to illustrate the situation, the respective pay rates and their impact are as follows:

Date	**FT-4**	**PM-6**	**Result**
April 1, 2023 (i.e. before new PM collective agreement)	$121 300	$114 592	Not a promotion
June 27, 2023 (when new PM collective agreement signed)	$121 300	$126 172	Promotion
April 1, 2024	$124 035	$126 172	Not a promotion
June 21, 2024	$124 035	$129 017	Promotion

[26] There is no dispute that, in this case, the appointment would have been a deployment when the successful candidate applied for the job, but was a promotion when Mr. Guilbert decided to hire her. After consulting human resources experts, Mr. Guilbert decided to appoint the successful candidate using a non-advertised appointment process. Additionally, the successful candidate's official-language proficiencies had expired and needed to be renewed. Therefore, it took until February 7, 2024, to complete the appointment process for the successful candidate. Mr. Guilbert was on leave at that time, so the appointment was finalized by someone to whom he had delegated his appointment authority while he was away.

B. Changing from an advertised to a non-advertised process was not an abuse of authority

[27] I have concluded that the change from an advertised to a non-advertised process was not an abuse of authority.

[28] I want to emphasize that I have reached that conclusion based on the unique facts of this case.

[29] There are two problems in principle with a change from an advertised to a non-advertised process. The first problem is transparency. One of the values or principles in appointments made under the *PSEA* is transparency. The *PSEA* "… requires some level of transparency in appointments" (from *Mousseau Bailey v. Deputy Head (Department of Indigenous Services)*, 2024 FPSLREB 52 at para. 119). A change from an advertised to a non-advertised appointment process could be non-transparent. I appreciate that all non-advertised appointments processes are "opaque by nature" and that the transparency usually comes from the notice of appointment (see *Mousseau*

Bailey, at para. 119), but there can be something particularly opaque about advertising a position only to appoint someone to that position using a non-advertised process.

[30] However, in this case, the successful candidate was part of the advertised appointment process. She was the only candidate who was successful in that process. It was only after discovering that it would be trying to appoint her during the window of time when her appointment would be a promotion instead of a deployment that the Department of Justice changed this from an advertised to a non-advertised appointment process. Any concerns that I have about whether this change was transparent (and, to be clear, those concerns are very minor on the facts of this case) do not rise to the level of an abuse of authority.

[31] Second, the change to a non-advertised process in this case was done because the Department of Justice changed it from a deployment to a promotional appointment. The initial advertisement for the position stated that it was to be an assignment, deployment, secondment, or interchange — in other words, it was open only to candidates who were "at level". The ultimate appointment was not "at level".

[32] There is a broader principle under the *PSEA* that the qualifications for a position cannot be changed partway through a staffing process. In *Burke v. Deputy Minister of Department of National Defence*, 2009 PSST 3, the Board concluded that amending a statement of merit criteria after the candidates had been assessed, without reassessing all the candidates with the revised statement of merit criteria, is a "fundamental error" (see paragraph 44) in an appointment process. More to the point, in *De Santis v. Commissioner of the Correctional Service of Canada*, 2016 PSLREB 34, the hiring manager lowered the educational qualifications between an email asking candidates to express interest in the position and when he chose the successful candidate. The Board concluded that this was an abuse of authority because "… a criterion cannot be altered between the posting of the Expression of Interest and the assessment without further notice being given to all those concerned by the Expression of Interest" (see paragraph 39).

[33] I have concluded that the change from an at-level to a promotional appointment was not an abuse of authority, for three reasons.

[34] First, the change was not to a qualification for the position. In deciding whether there has been an abuse of authority, "… the crucial question is whether a particular

error jeopardizes the *PSEA*'s superordinate purpose of ensuring that appointments are made based on merit" (from *Savoie v. Deputy Head (Department of Employment and Social Development*, 2024 FPSLREB 78 at para. 88). Section 30(2)(a) of the *PSEA* provides that an appointment is made on the basis of merit when the person to be appointed meets the essential qualifications of the work to be performed. Changing from an at-level to a promotional appointment did not jeopardize the merit principle in this case because the change was not to a qualification for the position.

[35] Second, the thing that was changed was a transitory feature or condition. As I have said repeatedly, the successful candidate was not at level when she was appointed, but she was at level when she applied and would have been at level again two months after her appointment.

[36] This situation is analogous to a candidate in an appointment process in which one of the qualifications is a certain level of language or a security clearance. If the candidate's language profile or security clearance has expired, that is just a transitory matter that can be fixed by taking the required second-language test or renewing their security clearance. The successful candidate being at level was similar in this case: she was at level when she applied and would have been again had they waited.

[37] Third, the change still meant that the successful candidate met the purpose behind the condition. Mr. Guilbert wanted to hire someone at level because the successful candidate would be expected to lead a broader access-to-information modernization strategy, while at the same time promoting stability within the ATIP Office. Accomplishing change management and stability at the same time is a narrow needle to thread. It is understandable why he wanted to find someone with managerial experience at the PM-6 level or equivalent instead of looking for someone who wanted to be promoted into this position. The successful candidate was, technically, promoted, but in practice, he concluded that she moved from an at-level position. That she was being promoted was a technicality based on the timing of pay rates at FINTRAC; looked at from a broader viewpoint, it was not a promotion.

[38] Finally, the respondent cited *Marin-Lazarescu* in support of its decision. In that case, the hiring manager originally told his team (including the person acting in the position that was filled by someone else) that the position would be staffed using a deployment. When he found out the salary of the successful candidate, he had to use a

promotion instead. The complainant argued that this change from a deployment to a non-advertised promotion was an abuse of authority. The Board disagreed, stating at paragraph 115 that "[h]aving considered all the circumstances, I do not believe that the change from a deployment to a non-advertised appointment process constituted an abuse of authority." The facts of *Marin-Lazarescu* are different from this case; however, that case does show that changing from a deployment to a non-advertised promotion is not automatically an abuse of authority.

[39] I have concluded that the choice of a non-advertised process was not an abuse of authority. I want to emphasize again that I have reached this conclusion based on the unique facts of this case.

C. There was no abuse of authority in other aspects of the appointment

[40] The complainant made other arguments against this appointment that I will now address.

[41] The complainant argued that the successful candidate was unqualified for the position. The complainant also argued that Mr. Guilbert was too inexperienced to properly understand the duties of the PM-6 position and that he could not have properly assessed the candidate's qualifications. Finally, she argued that the essential qualifications had been changed between the advertised job poster and the assessment of the successful candidate.

[42] The first problem with these three allegations is that they are all outside the scope of this complaint. The form that the Board uses for complaints under the *PSEA* allows complainants to check a box indicating the grounds of their complaints. The complainant checked the box for abuse of authority in the choice of appointment process (s. 77(1)(b) of the *PSEA*) and did not check the box for an abuse of authority in the application of merit (s. 77(1)(a)). These arguments are all about the application of merit, not the choice of a non-advertised appointment process. Complainants also file a statement of allegations after they have had the opportunity to exchange information with respondents. The complainant's statement of allegations do not raise any of these issues. Finally, the complainant filed a request for an order to provide information (what the Board calls an "OPI request"). In that request, the complainant asked for an organizational chart "… to demonstrate [the] position being staffed with [a] specialized skill set …" and because she felt that the organizational chart would show whether the

Department of Justice had needs that justified a non-advertised promotion instead of considering promoting a PM-5, like her.

[43] The complainant made these three allegations for the first time at the hearing. I raised this concern with her on several occasions during the hearing, both when the respondent objected to certain questions she put to witnesses on the basis of relevance to the complaint and again when she made these allegations during her closing argument. She tried to link these issues to the choice of a non-advertised process by arguing that this was all part of the lack of transparency in the process. I have already addressed the transparency issue earlier to the extent it is relevant to the choice of appointment process. Otherwise, I must reject these allegations because they are not properly before me — they were not in the initiating documents or the statement of allegations, the complainant never applied to amend her statement of allegations, and it would be procedurally unfair to the respondent to find against it on the basis of allegations raised for the first time at the hearing.

[44] Even if the allegations were properly before me, I would reject them. The complainant did not establish that the successful candidate was unqualified for the position. Most of the complainant's argument was that the successful candidate had insufficient experience and expertise in ATIP issues. Mr. Guilbert explained that FINTRAC, as a smaller agency, does not have a dedicated ATIP office in the same way as the Department of Justice does; therefore, the successful candidate performed both ATIP-related and other duties. Mr. Guilbert also explained why the successful candidate's experience in modernization initiatives was more important to him than whether, to use one example emphasized by the complainant, she knew the ATIP software used at the Department of Justice. The complainant pointed out that both Mr. Guilbert and the manager who was on the panel that assessed the successful candidate and prepared the documents to justify her appointment (Jolyanne Ouellet) overestimated the successful candidate's position classification for a job she held from 2004 to 2007, when she performed administrative duties related to ATIP. That may be, but as Mr. Guilbert explained, they used that job (among other jobs that she had held) as part of satisfying themselves of her knowledge, not her experience. Her job classification is not relevant to assess her knowledge of ATIP.

[45] As for Mr. Guilbert's alleged inexperience that disqualified him from being able to assess the successful candidate, that submission has no basis. He had the delegated

authority to appoint the successful candidate. Whether he happened to be an expert in ATIP is irrelevant.

[46] On the alleged change to the essential qualifications, I am satisfied that there was no such change. The complainant points out that the job poster for the advertised appointment listed four duties. The candidate assessment form does not expressly assess the successful candidate against those four duties. That is not an abuse of authority, for two reasons.

[47] First, the job poster lists these items as duties, not qualifications.

[48] Second, even if they were qualifications, they were each assessed — just using slightly different wording. A delegated manager is permitted to clarify or elaborate existing qualifications, so long as they have not interpreted the qualifications in a manner contrary to their plain and ordinary meaning; see *Jean-Pierre v. Chairperson of the Immigration and Refugee Board*, 2016 PSLREB 62 at para. 88; and *Renaud v. Deputy Minister of National Defence*, 2013 PSST 26 at para. 43. To give one example, the job poster lists the duty of "[r]ecent experience in leading and mentoring ATIP teams". The candidate assessment document reworded the experience criterion as "[e]xperience supervising staff", which the successful candidate had in her current job when she applied. Even if there was a material difference between how the experience was worded in the job poster and the candidate assessment, the narrative of their assessment talked about the successful candidate having "guided subordinates", which is not materially different from leading and mentoring an ATIP team.

[49] In cross-examination, Mr. Guilbert described the candidate assessment as supplementary to the job poster, not different from it. I agree with that characterization.

D. Conclusion about this complaint

[50] For these reasons, I have dismissed the complaint in Board file no. 771-02-49132. I have concluded that the respondent did not abuse its authority by selecting a non-advertised appointment process for that position. Its decision was justified in light of the unusual circumstances of this case.

V. The complaint in Board file no. 771-02-49133

[51] This complaint is about a non-advertised acting appointment to a position with the title of manager, ATIP operations. The person in this position was the PM-6 leading the complaints group within the ATIP Office.

[52] The facts that led to this complaint are more straightforward than those in the first one. One of the PM-6 managers (in a different ATIP operations position) planned to go on maternity and parental leave in June 2023. Therefore, in May 2023, Mr. Guilbert asked the employees in the ATIP Office to let him know whether they were interested in acting at the PM-6 level. Three employees volunteered; the complainant did not. He chose one of those employees to act as the manager in that ATIP operations position.

[53] The PM-6 manager in the complaints group left in fall 2023. Also, the acting PM-6 manager who was appointed in June 2023 left in October 2023. Mr. Guilbert decided to appoint the successful candidate to act in the complaints group manager position for four months less a day, starting on October 16, 2023. She was the number two candidate from the three who had expressed interest in May 2023. The successful candidate did a good job leading the complaints group; Mr. Guilbert emphasized that she stabilized the complaints group and made sure that it was more organized and focused on meeting its deadlines. Since the permanent manager was still on leave, he decided to extend her acting appointment for one year, starting on February 16, 2024.

[54] Mr. Guilbert has adequately explained the operational reasons for choosing a non-advertised appointment. He needed to stabilize the ATIP Office and the complaints team in particular. This was evident in light of the musical chairs (my phrase, not his) of acting appointments going on at the PM-6 level and elsewhere. The need for stability was particularly acute in the complaints team in light of the fraught relationship with its regulators.

[55] The complainant's main complaint about this appointment process is that she was interested in the position, that she said so to Mr. Guilbert, and that therefore, he should have opened the position for another expression of interest. It is not clear whether the complainant is saying that he should have done this in October 2023, February 2024, or both. Also, Mr. Guilbert denies that the complainant ever told him that she was interested in this position.

[56] The law is clear: a department is not required to ask its employees who is interested in an acting appointment before proceeding with one. As the Board stated in *Jarvo*, at para. 32: "Neither the PSEA nor PSC's *Appointment Policy* guarantees an employee a right of access to every appointment opportunity." In this case, Mr. Guilbert did ask. The complainant did not express interest. Mr. Guilbert was entitled to pull from the group of employees who had expressed interest the first time. Even if the complainant did tell him later that she would be interested in a PM-6 acting appointment (and I am making no finding one way or the other on that point), there was nothing abusive in him sticking with the employees who put their hands up the first time he asked.

[57] The complainant also alleged that the successful candidate did not have enough experience for the job. As with the first complaint, her complaint as made is against the choice of appointment process and not about the application of merit. This argument is outside the scope of this complaint, just like with the first one. Also, the successful candidate had been acting in the position for four months less a day. This complaint is not about her October appointment. Even if she did not have the experience in October 2023 (and I have no evidence to indicate that she was inexperienced), she certainly did by February 2024.

[58] The complainant also argued that the appointment process was not transparent. Her submissions on this point oscillated between both complaints, so I will deal with them both here. In essence, there was some confusion in the evidence over the preparation of the written justifications for the non-advertised appointments and the assessment of merit. The documents were undated. Mr. Guilbert testified that Ms. Ouellet prepared the documents for the acting appointment, but she testified that she did so only for the indeterminate one and that a different PM-6 prepared the documents for the acting appointment.

[59] The complainant relies on *Martin v. Deputy Head (Correctional Service of Canada)*, 2024 FPSLREB 66, for the proposition that a lack of transparency in the documents means that the appointment was an abuse of authority. Respectfully, that is not what *Martin* says. The complainant relies on paragraph 59 of that decision, in which the Board recites the arguments made by the complainant in that case. The Board actually concluded that there was an abuse of authority because of what it characterized as actions akin to nepotism. Also, the problem with the documents was

much more acute in that case. There were multiple versions of the candidate's assessment document, one of which was unsigned. The argument in *Martin* was that the employer was inconsistent in its assessment of the successful candidate. That is different from this case, in which there is some confusion over when the documents were prepared and who drafted them. There is no confusion over the key point: the delegated authority approved of the contents of those documents. I hesitate to even characterize the failure to date the documents or the confusion over who worked on them as an error; however, if it was an error, it was not serious enough to constitute an abuse of authority.

[60] Finally, the respondent submitted that any inconsistencies or confusion in Mr. Guilbert's testimony was the result of the way that the complainant asked him questions. I agree. The complainant oscillated between the two complaints when asking Mr. Guilbert questions. Her questions often contained lengthy preambles in which she complained about a number of issues related to these complaints and her work environment more generally. I had to intervene on a number of occasions to ask the complainant to clarify her question. On one occasion, I had to excuse the witness to discuss a question with the complainant at length, help her formulate the question, and then ask it on her behalf when the witness returned because she was unable to ask the question without adding irrelevant accusations to it.

[61] I add that Mr. Guilbert had to conduct 67 staffing actions in roughly 18 months; if he forgot some of the dates or details of the documents in these 2 appointment processes, that is entirely understandable.

[62] Finally, the complainant's testimony was even more frail than was Mr. Guilbert's. She prefaced most of her testimony with conditional clauses, such as "my understanding is", and argued with the respondent's counsel during cross-examination over basic things such as whether someone being away for maternity leave was a "vacancy". She also testified that she had no intention of "taking away from anyone else overall", yet she accused everyone involved in these complaints, from the successful candidates to the assessment panel and Mr. Guilbert, of not having enough knowledge or experience of ATIP to do their jobs.

[63] I have concluded that there was no abuse of authority in the choice of a non-advertised appointment process in this complaint. The respondent extended an acting

appointment while the incumbent was on leave, to help stabilize what was otherwise a series of departures and replacements at the PM-6 level in the ATIP Office. The successful candidate was qualified for the position and had been performing in it well. There was no abuse of authority in deciding to extend her acting appointment in these circumstances.

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

(The Order appears on the next page)

VI. Order

[65] The complaints are dismissed.

April 10, 2025.

Christopher Rootham,
a panel of the Federal Public Sector
Labour Relations and Employment Board