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



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

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BETWEEN

**GEORGE SGANOS**

Complainant

and

**SECRETARY OF THE TREASURY BOARD**

Respondent

and

**OTHER PARTIES**

Indexed as

*Sganos v. Secretary of the Treasury Board*

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

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

**For the Complainant:** Melynda Layton, counsel

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

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

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Heard at Ottawa, Ontario,  
June 10 to 14, 2024.

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## REASONS FOR DECISION

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### Introduction

[1] This decision highlights the importance of transparency and fairness where broad discretion is given to hiring managers in choosing to use a non-advertised appointment process. It also underscores that non-advertised processes remain a risk area requiring more robust oversight under deputy heads' directions.

[2] On March 9, 2017, the complainant, George Sganos, makes a complaint with the predecessor to the Federal Public Sector Labour Relations and Employment Board ("the Board"), the Public Service Labour Relations and Employment Board, against the indeterminate appointment of Celia Cheshire to a senior policy analyst position classified at the FI-04 group and level in the Costing Centre of Expertise ("the Costing Centre") of the Treasury Board Secretariat ("the TBS"). On December 1, 2017, he makes a second complaint, with the Board, after Derrick Pockiak's analyst position was reclassified FI-04. Ms. Cheshire and Mr. Pockiak will sometimes be referred to together as "the appointees" in this decision.

[3] The complainant claims that the respondent, the secretary of the Treasury Board, abused its authority in the choice of a non-advertised appointment process and in the application of merit under ss. 77(1)(a) and (b) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; "the *PSEA*").

[4] The complainant alleges that the two appointments did not respect the Public Service Commission's (PSC) *Appointment Policy*. He claims that Michael Lionais, the hiring manager, provided Ms. Cheshire with a five-month undocumented acting appointment. He also alleges that when Mr. Pockiak's acting appointment as an FI-04 senior policy analyst ended, he continued acting in that position, even though he did not meet the bilingual-imperative requirement for that position at the CBC language proficiency level.

[5] The complainant submits that the senior policy analyst position job description did not describe the work that Ms. Cheshire performed as Mr. Lionais' chief of staff. He also claims that Mr. Lionais acted in bad faith and disregarded the *PSEA* when he retroactively reclassified Mr. Pockiak's position from FI-03 to FI-04.

[6] The complainant argues that Mr. Lionais was in a conflict of interest because of his role with the Canadian chapter of the International Cost Estimating and Analysis Association (ICEAA). The complainant claims that Mr. Lionais appointed the appointees for reasons of personal favouritism and bias because they supported ICEAA training in the federal government.

[7] The respondent denies any abuse of authority in the choice of non-advertised processes or in the appointees' assessments. It essentially submits that the appointments were made in good faith, without personal favouritism and in line with the relevant appointment policies and the *PSEA*.

[8] When resolving these complaints, I examined each essential question about Mr. Pockiak's acting and indeterminate appointments, followed by those of Ms. Cheshire.

[9] Mr. Pockiak, with the approval of Mr. Lionais, continued to assume the duties of the senior policy analyst position after his acting appointment of less than four months ended even though he did not meet the second-language proficiency requirements at the CBC level. The respondent argued that Mr. Lionais had assigned temporarily these duties to Mr. Pockiak as it is the employer's right.

[10] I found that it was not an assignment but in fact a continuation of the acting appointment. I concluded that the respondent was deceitful and not transparent, that it acted in bad faith when it used a non-advertised process to retroactively appoint Mr. Pockiak as an FI-04, and that it disregarded the *PSEA*'s requirements.

[11] I determined that the appointment of Mr. Pockiak to the senior analyst position, through a reclassification from FI-03 to FI-04, was not done based on merit, as he did not meet the bilingual-imperative requirement. I found that the retroactive appointment was a subterfuge by the respondent to circumvent the requirements of the *PSEA*.

[12] As for Ms. Cheshire, Mr. Lionais had assigned her the duties of the senior analyst position for more than four months previous to her indeterminate appointment in this position. I also found that the assignment of these duties constituted an acting appointment under the *PSEA*. The respondent disregarded the notification requirements and was not transparent when it used a non-advertised process.

[13] However, I found that Mr. Lionais was not in a conflict of interest in his role with ICEAA Canada and that he did not make the appointments for reasons of personal favouritism or bias to favour the appointees.

### **Context**

[14] In the summer of 2013, the Costing Centre is established within the Office of the Comptroller General of Canada (OCG). With this initiative, the federal government seeks to improve the quality of costing information following the controversy around the F-35 fighter jets costs after their announced purchase in 2010.

[15] The Costing Centre's main purpose is to improve the quality of costing information used by ministers by performing due-diligence analysis of Treasury Board submissions, charging, and payments. Its mandate includes strengthening federal departments' costing capacity by identifying professional costing accreditations and by professionalizing costing functions in the public service.

[16] Further to that initiative, Bill Mathews, Comptroller General, asks Roger Ermuth, Assistant Comptroller General, Financial Management Sector, to explore the recognized costing certifications available for the public service.

[17] On May 5, 2014, Mr. Lionais arrives from the Department of Public Safety to manage the Costing Centre as Acting Executive Director, Costing and Transfer Payments. He meets with Mr. Ermuth, who explains to him the ICEAA's role, as he is not familiar with it. The ICEAA is a United-States-based organization that provides training and certification and promotes professionalizing cost estimating, analysis, and allied fields, mostly for defence procurement. Mr. Ermuth indicates that in his consultations to that point, the ICEAA and the American University which offers courses on procurement were recommended for training and professionalizing costing functions in the federal government.

[18] At this time, the Canada School of Public Service provides costing training and offers two courses. However, the training is considered too general and is planned to be dropped. As for the American University, it had a memorandum of understanding (MOU) with the Department of National Defence (DND) to provide two costing courses, but the MOU has lapsed.

[19] On June 9 to 12, 2014, an ICEAA conference is held in Denver, Colorado, and is attended by some federal public service employees of the DND, the Costing Centre, and the Office of the Parliamentary Budget Officer. Mr. Lionais does not attend the conference, as he has just arrived at the Costing Centre. After the conference, a group of the Canadian attendees meets and recommends to Mr. Lionais to implement the ICEAA's training in the federal government.

[20] On May 5, 2015, ICEAA Canada is incorporated as a federal nonprofit corporation. Peter Weltman, Parliamentary Budget Officer, is ICEAA Canada's president. Its official address is also the address of the office of the Parliamentary Budget Officer on O'Connor Street in Ottawa, Ontario.

[21] In October 2015, Mr. Pockiak starts working at the Costing Centre as an analyst classified at the FI-03 group and level. He reports to David Downing, FI-04 Senior Policy Analyst, who heads the Major Acquisitions and Construction Section. His responsibilities are to review cost estimates for Treasury Board submissions, improve costing practices, and provide guidelines to federal departments.

[22] On December 14, 2015, an MOU ("the 2015 MOU") is concluded between the TBS, represented by Mr. Ermuth, and ICEAA Canada, represented by Mr. Weltman. The 2015 MOU provides for the TBS to share information to the ICEAA for its use in developing Canadian accreditations in costing. The ICEAA is to inform the TBS of best and leading practices in cost estimating and analysis, for possible inclusion in guidance documents. Mr. Lionais is identified in the 2015 MOU as the TBS's representative for the agreement.

[23] On May 28, 2015, Mr. Lionais shares an email that he received with the Cost Centre team. In it, Mr. Weltman indicates that Mr. Lionais will be the director of training for ICEAA Canada and that a study group for the ICEAA certification exam will start in late June and will meet every two weeks. Afterwards, Cost Estimating Community of Practice (CECoP) meetings are held, and invitations are sent to participants in the federal government. Mary Ng, Senior Policy Analyst, Costing Centre, organizes the CECOP meetings and sends the invitations for them, along with the supporting documents, in both official languages.

[24] On January 19, 2016, in a meeting at the Costing Centre, Mr. Lionais announces that in the future, the FI-04 senior policy analyst positions will be filled through

advertised processes. In February 2016, the Canada School of Public Service's costing courses are cancelled.

[25] On June 10, 2016, Mr. Pockiak attends the ICEAA conference in Atlanta, Georgia. In July 2016, he begins leading a costing pilot project to support the federal government's National Shipbuilding Strategy.

[26] In the summer of 2016, Ms. Cheshire participates in an advertised process for a two-year term for an FI-04 manager, financial management, position at the Public Health Agency of Canada (PHAC). On September 26, 2016, she is one of three candidates found qualified for it.

[27] On October 31, 2016, Mr. Pockiak begins an acting appointment of four months less a day as an FI-04 senior policy analyst at the Costing Centre. He reports directly to Mr. Lionais. At the end of the acting appointment on January 30, 2017, Mr. Pockiak continues nevertheless to perform those duties at his substantive FI-03 group and level.

[28] On February 8, 2017, the Notification of Consideration (NOC) is posted for Ms. Cheshire's non-advertised indeterminate appointment as an FI-04 senior policy advisor. On February 23, 2017, the Notification of Appointment or Proposal of Appointment ("the NAPA") follows. On the same date, Mr. Ermuth sends her an offer-of-employment letter for that position, which she accepts. The complainant makes his complaint on March 9, 2017.

[29] On May 8, 2017, Liane Gallivan, Executive Assistant, OCG, asks Mr. Lionais to approve the reclassification request for Mr. Pockiak. She also requests his approval for the attached justification for the reclassification, which explains that the action will be dated as of November 2016, as Mr. Pockiak has been acting in the role. It also specifies that for the time being, Mr. Pockiak will not have direct reports; however, once he completes language training, the role will involve supervising others. Mr. Lionais responds that he will have to discuss it with Mr. Ermuth.

[30] On June 4, 2017, Mr. Pockiak attends the ICEAA conference in Portland, Oregon.

[31] On June 15, 2017, Ms. Gallivan writes to Mr. Lionais, asking again for his approval of the reclassification. She indicates that she will print the FI-04 work description for his signature and Mr. Pockiak's signature. On June 15, 2017, Mr. Lionais

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approves the process to reclassify Mr. Pockiak's analyst position to FI-04. On June 28, 2017, Mr. Pockiak is assessed for his French-language proficiency level.

[32] On August 18, 2017, Mr. Pockiak writes to colleagues at the Costing Centre, to let them know about new staff in the Costing Policy team. He signs his email as the acting senior policy analyst.

[33] On September 29, 2017, Mr. Lionais announces that Mr. Pockiak will begin full-time French-language training on October 2, 2017. While he is away, Ms. Cheshire will manage the Costing Policy team.

[34] On November 7, 2017, a NOC is posted for the appointment and reclassification of Mr. Pockiak's analyst position to FI-04. On November 10, 2017, Ms. Cheshire leaves the TBS to work at the PHAC. On November 17, 2017, the NAPA for the reclassification of Mr. Pockiak's position as an FI-04 analyst is posted.

[35] On November 28, 2017, Mr. Lionais confirms to Mr. Pockiak that his FI-03 analyst position has been reclassified and that he is being promoted to FI-04 retroactively to November 1, 2016. The complainant makes his complaint with the Board on December 1, 2017.

[36] Mr. Pockiak meets the BBB language proficiency level bilingualism requirement on December 19, 2018.

[37] On January 16, 2020, a NOC is posted for Mr. Pockiak's appointment as an EX-01 director, bilingual imperative at the CBC language proficiency level, at the TBS, following an advertised process. The NAPA for his appointment is posted on January 22, 2020.

[38] On June 7, 2022, Mr. Pockiak leaves the Costing Centre for DND.

### **Analysis - General principles**

[39] The Board does not have jurisdiction over classification matters, which are undertaken under s. 11.1(b) of the *Financial Administration Act* (R.S.C., 1985, c. F-11). However, it does not preclude the Board examining classification-related evidence to the extent that it relates to an abuse of authority in an appointment process.

See *Kilbray v. Canada (Attorney General)*, 2009 FC 390; *Rinn v. Deputy Minister of*

*Transport, Infrastructure and Communities*, 2007 PSST 44; and *Velasco v. Deputy Minister of Transport, Infrastructure and Communities*, 2011 PSST 17.

[40] Section 30(1) of the *PSEA* clearly states that appointments shall be made on the basis of merit. Section 30(2)(a), in turn, sets out the criteria for making an appointment on the basis of merit. Those provisions read in part as follows:

**30 (1)** Appointments by the Commission to or from within the public service shall be made on the basis of merit and must be free from political influence.

**(2)** An appointment is made on the basis of merit when

**(a)** the Commission is satisfied that the person to be appointed meets the essential qualifications for the work to be performed, as established by the deputy head, including official language proficiency ....

...

**30 (1)** Les nominations — internes ou externes — à la fonction publique faites par la Commission sont fondées sur le mérite et sont indépendantes de toute influence politique.

**(2)** Une nomination est fondée sur le mérite lorsque les conditions suivantes sont réunies :

**a)** selon la Commission, la personne à nommer possède les qualifications essentielles — notamment la compétence dans les langues officielles — établies par l'administrateur général pour le travail à accomplir;

[...]

[41] Clearly, an appointment is based on merit when the person to be appointed meets the essential qualifications, which include official-language proficiency requirements.

[42] Section 91 of the *Official Languages Act* (R.S.C., 1985, c. 31 (4th Supp.)) provides that a position's language proficiency requirements must not be established arbitrarily. They must be set objectively and according to what is required to perform the duties of the position.

[43] All appointments, even acting appointments of less than four months, require that the person appointed meet the position's language proficiency requirements. As indicated by the respondent's counsel, there are some exemptions. The *Public Service Employment Regulations* (SOR/2005-334; "the *PSE*R") provides for an exemption when a short-term acting appointment cannot be filled with a person who meets the language proficiency requirements. This exemption can apply for acting appointments

of less than 4 or 12 months respectively under ss. 14 and 15 of the *PSER*. There is also an exemption for appointments of less than 18 months when the employee is on language training, under s. 16 of the *PSER*.

[44] As explained by the respondent's counsel, second-language-evaluation results are valid for five years and after that, the results remain valid indefinitely, but only for the position that the employee holds, unless its linguistic profile is raised above the employee's skill level. When an incumbent of a bilingual position is appointed to their own reclassified position, the results remain valid, as long as its linguistic profile is not raised above their evaluation results. See the *Archived- Guidance Series- Official Languages in the Appointment Process*, December 2005, in place at the time of the appointment and for reference the recent guide for *Assessment of official languages in the appointment process*.

[45] As argued by the complainant's counsel, the TBS as the employer for the public service, plays a major role under the *Official Languages Act*. It is responsible for the language requirements of positions within departments and other institutions. See the *Archived -Directive on Official Languages for People Management* ("the *Directive*") modified on 2012-10-15, the *Policy on Official Languages* modified on 2012-10-15, and the *Qualification Standards in Relation to Official Languages* modified on 2016-07-21("the *Qualification Standards*").

[46] As testified by the complainant, managers must establish the language proficiency of a position based on the complexity of the work to be done. The *Qualification Standards* are a guide for managers when establishing the required language proficiency level for a position. Under them, overall simple or routine tasks correspond to a level B, while complex tasks and abstract concepts correspond to a level C. Under the *Directive*, the manager is responsible for objectively establishing the required language proficiency level.

[47] In certain exceptional circumstances, a position may be staffed on a non-imperative basis by a candidate who does not meet the language requirements at the time of appointment but who commits to acquiring the requisite language skills within a certain period.

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**Question 1a) Was the assignment of the senior policy analyst duties to Mr. Pockiak an appointment?**

[48] The complainant submits that Mr. Pockiak continued acting in the FI-04 senior policy analyst position after it ended in January 2017. He argues that a notification should have been issued for Mr. Pockiak's continuous acting appointment.

[49] The respondent argues that the employer has the flexibility to assign duties to an employee. Such an assignment does not constitute an appointment and therefore is not subject to recourse.

[50] Assignments are not mentioned in the *PSEA*, the *PSER*, or the preceding legislation. References to assignments are found in the case law, which defines one as the temporary move of an employee, within a federal government department, to perform the duties of an existing position or to carry out a special project.

[51] While on assignment, the employee retains his or her substantive position and performs duties classified at the same group and level. The employee does not acquire tenure in the assigned position and is expected to return to his or her substantive position. See *Canada (Attorney General) v. Brault*, [1987] 2 S.C.R. 489 at 501 and 502.

[52] Managers have some flexibility when they temporarily assign duties to employees without giving rise to the application of merit and the right of recourse. However, there is recourse under the *PSEA* when duties are not assigned fairly and reasonably, and the assignment is in fact an appointment. When that happens, and the Board determines that the assignment of duties was in fact an appointment, the respondent will be found to have abused its authority under the *PSEA*, and the appointment could be revoked. See *Beyak v. Deputy Minister of Natural Resources Canada*, 2009 PSST 35; and *Doré v. Canada*, [1987] 2 S.C.R. 503.

[53] Mr. Pockiak's second-language evaluation for his French proficiency was carried out on April 12, 2011, and his results were BBB. Second-language-evaluation results are valid for five years, so he met the linguistic profile for the analyst position when he joined the Costing Centre in November 2014. As explained by the respondent's counsel, his results expired in April 2016, and they remained valid only while he occupied his analyst position. See the *Archived-Guidance Series- Official Languages in the Appointment Process*, December 2005 and the recent PSC's *Appointment Framework and Assessment of official languages in the appointment process*.

[54] On October 31, 2016, Mr. Pockiak began an acting appointment in an FI-04 senior policy analyst position that had a CBC linguistic profile. As a senior analyst, he led a team and had supervisory duties that required a higher French proficiency level of CBC. Clearly, he did not meet the linguistic profile. However, since it was an acting appointment of four months less a day, it was excluded from recourse and could be permitted under ss. 14(1) and (2) of the *PSEER*. See also the TBS's *Qualification standards for employment in the core public administration* modified 2015-12-07

[55] At the end of the acting appointment on January 30, 2017, Mr. Pockiak could not continue in the position, as he did not meet the CBC language proficiency level. Therefore, he had to return to his substantive position of an FI-03 analyst. However, as he testified, he was asked to continue in those responsibilities. The respondent's counsel argued that Mr. Lionais assigned Mr. Pockiak to continue his senior policy analyst duties, which included supervisory functions.

[56] To truly be an assignment, Mr. Pockiak should not have acquired tenure in the assigned FI-04 position and should have returned to his substantive position. The assignment was in place until he left for French-language training on October 2, 2017. By virtue of its retroactivity, his indeterminate appointment as an FI-04 analyst displaced what the respondent refers to as the assignment that was in effect from January 31 to October 2, 2017.

[57] While it might have operated as an assignment, the evidence demonstrated that the Mr. Lionais intended it to be an acting appointment. The justification for the May 8, 2017, reclassification stated that Mr. Pockiak had been acting in the FI-04 role since November 2016. It also misrepresented that he would not have anyone directly reporting to him until he completed French-language training. The organizational chart that he signed on June 22, 2017, indicated that his analyst position was reclassified FI-04. The justification for the June 22, 2017, reclassification also signaled that Mr. Pockiak had been operating in the assignment at the FI-04 group and level since November 2016.

[58] I consider that on the preponderance of evidence, there was an arrangement by which at the end of the acting appointment on January 30, 2017, Mr. Pockiak was to operate as assigned to the same senior policy analyst duties until he was appointed on an indeterminate basis as an FI-04. Furthermore, as he did not meet the senior policy

analyst position's CBC linguistic profile, Mr. Lionais reclassified Mr. Pockiak's analyst position to FI-04 while maintaining the same BBB linguistic profile, even though his duties required supervising a team and a CBC language proficiency level.

[59] I find that the respondent was not transparent. It was certainly unreasonable and even deceitful to assign senior policy analyst duties to Mr. Pockiak because he did not meet the position's CBC language proficiency level and then to retroactively reclassify the position as an analyst with a BBB language proficiency level.

[60] Furthermore, under s. 48 of the *PSEA* and s. 13 of the *PSER*, a non-advertised process requires that notification be given to persons in the area of selection when a person is considered for an appointment or when an appointment is made or proposed. As well, s. 13 of the *PSER* provides for the respondent to notify of an acting appointment of four months or more and the right to recourse.

[61] As found earlier in this decision, by assigning him the senior policy analyst duties, Mr. Lionais intended to extend the acting appointment that began on October 31, 2016, and that was supposed to end on January 30, 2017. As required under s. 13 of the *PSER*, notification of that acting appointment should have been posted as soon as it was of four months' duration.

[62] The Board finds that the respondent abused its authority under s. 77(1)(a) of the *PSEA* by deceitfully assigning the FI-04 senior policy analyst duties to Mr. Pockiak. Although, the respondent submitted it was an assignment, in fact it was a continuation of the acting appointment. As well, the respondent abused its authority by disregarding the requirements of the *PSEA* and *PSER* and by failing to provide notification of the continuation of the acting appointment and the right to recourse.

**Question 1b): Was assigning the duties of senior advisor to Ms. Cheshire an acting appointment?**

[63] The complainant claims that Mr. Lionais provided Ms. Cheshire with a five-month undocumented acting appointment.

[64] The respondent argues that the employer has the flexibility to assign duties to an employee without constituting an appointment and therefore an assignment is not subject to recourse.

[65] On September 26, 2016, Ms. Cheshire was found qualified for an FI-04 manager position at the PHAC and received an offer for it in October 2016. She testified that at the same time, Mr. Lionais approached her to take a role in his office as his senior advisor. She told him that she had just been offered the PHAC position, classified FI-04. She was informed that both Mr. Lionais and Mr. Ermuth were open to look for her appointment as an FI-04.

[66] Mr. Lionais told her that there would be no appointment process and that she should occupy the position for a year, as it would be a time-limited opportunity for learning. She would be responsible for all deliverables from the directors reporting to him. She agreed to this proposal and started in her new role and duties soon after. She referred to her position as the senior advisor, which Mr. Lionais found appropriate.

[67] On October 13, 2016, the complainant meets with Mr. Lionais, who tells him that Ms. Cheshire will now be the secretary for the CECOP. On October 25, 2016, Mr. Downing informs his employees that Ms. Cheshire will no longer be part of their team, as she now reports directly to Mr. Lionais.

[68] On December 28, 2016, Ms. Cheshire sends an email to the Costing Center's employees where her signature block identifies her as Senior Advisor, OCG. On February 8, 2017, the NOC is issued for Ms. Cheshire's non-advertised appointment. As well, on February 16, 2017, she sends another email to the Costing Center's employees where her signature block identifies her as Senior Advisor, OCG. The notification of her indeterminate appointment is posted on February 23, 2017.

[69] The evidence demonstrates that the assignment of the senior advisor duties was in fact an acting appointment that disregarded the requirements of the *PSEA*. Ms. Cheshire did not return to her FI-03 analyst position, and the assignment was ended by her indeterminate appointment as a senior advisor at a higher level.

[70] I find that there was an arrangement with Mr. Lionais by which Ms. Cheshire would perform the senior policy advisor duties until her indeterminate appointment was finalized. It was indeed an acting appointment of over four months when it started in October 2016 and lasted until her appointment, which was effective February 27, 2017.

[71] However, there was no retroactivity to her FI-04 appointment, and the assignment was for a shorter period than Mr. Pockiak's assignment. Ms. Cheshire met the merit criteria and the CBC language proficiency level.

**Question 2a): Did the respondent abuse its authority by using a non-advertised process for Mr. Pockiak's retroactive appointment?**

[72] The complainant claims that Mr. Lionais proceeded with a non-advertised process and that he delayed the NOC until November 2017. By then, the appointee had left the workplace, on October 2, 2017, for full-time French-language training that would last 15 months.

[73] The respondent replies that the NOC was posted on November 7, 2017, when the reclassification became effective and when Mr. Pockiak was appointed. It argues that Mr. Lionais acted within the limits of what the *PSEA*, the PSC's *Appointment Framework*, and TBS departmental policy instruments permit.

[74] The PSC submits that under s. 16 of the *PSEA*, managers are required to comply with its *Appointment Policy*. If a manager does not comply, the Board will consider this when it determines whether there was an abuse of authority. See *Robert v. Deputy Minister of Citizenship and Immigration*, 2008 PSST 24.

[75] The preamble is an integral part of the *PSEA*. It provides key guidelines to interpret that Act. Appointments must be based on merit and respect linguistic duality. Managers have considerable discretion in staffing matters, but their discretion must be exercised in accordance with fair and transparent employment practices and respect for employees. Managers are accountable for their conformity to the PSC's policies on appointment. See *Tibbs v. Canada (National Defence)*, 2006 PSST 8 at paras. 61 to 64 and 73; and *Robert*.

[76] The *PSEA* does not differentiate between an advertised and a non-advertised process. Nevertheless, managers must be fair and transparent if they choose to proceed with a non-advertised process. They are accountable for how they comply with the PSC's *Appointment Policy*. As only one person is considered, managers are required to document and explain how they proceeded and why they chose a non-advertised process. The Board will consider it and any related evidence when it determines whether there was an abuse of authority in the choice of a non-advertised process. See *Beyak*, at paras. 119 to 127; *Hunter v. Deputy Minister of Industry*, 2019 FPSLREB 83 at *Federal Public Sector Labour Relations and Employment Board Act* and *Public Service Employment Act*

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paras. 53 to 93; and *Munden v. Commissioner of the Royal Canadian Mounted Police*, 2024 FPSLRB 141.

[77] The PSC's former policy, the *Choice of Appointment Process*, required the respondent to prepare a written rationale to demonstrate how the choice of a non-advertised process respected the appointed values such as fairness and transparency. Since April 2016, the PSC's *Appointment Policy* requires that an *Articulation of the Selection Decision* be completed for all appointments that are subject to merit. Deputy heads now establish directions on the use of advertised and non-advertised appointments.

[78] The respondent has established those directions in the *TBS Departmental Application Guide on the Choice of Appointment Process and the Articulation of the Selection Decision* ("the TBS Guide on the choice of appointment process") which outlines several key principles. Hiring managers and human resources (HR) advisors are expected to work together and engage in strategic discussions on the choice of appointment process, the selection decision, and the impact of that decision on the appointment values.

[79] Most importantly, hiring managers must complete an articulation of the selection decision that provides an unbiased, evidence-based explanation of why a candidate was selected. A key consideration in this articulation is how the choice of appointment process will impact the business results and the guiding appointment values, such as fairness and transparency. Relevant questions for the manager include: How will this appointment process impact your employees? How have you communicated—or how do you plan to communicate—this decision to your team? What are the reasons why other staffing options could not be applied? All this information must be documented in the appointment file and retained for a minimum of five years.

[80] The respondent put in evidence, as justification for the selection decision, a two-page document dated June 22, 2017, providing reasons for reclassifying the analyst position to FI-04. It was signed by Mr. Lionais and Mr. Pockiak and stated that Mr. Pockiak continued, at the FI-03 group and level, with the same responsibilities after the acting appointment to the FI-04 senior policy analyst position ended in January 2017.

[81] While it can be argued that the justification of June 22, 2017, is an articulation of the selection decision, it is incomplete and fails to comply with the requirements of the TBS Guide on the choice of appointment process. To be unbiased and fact-based, Mr. Lionais would have to explain why a non-advertised process was chosen for the retroactive appointment. He would have to justify why the reclassification was warranted for a position with supervisory functions and a required French CBC language proficiency level. He would have had to consider the impact of proceeding with a non-advertised appointment and its 15-month retroactive application on the employees of the Costing Center as well the appointment values of transparency and fairness.

[82] Moreover, this justification lacks transparency in several areas. It fails to mention that Mr. Lionais assigned the duties to Mr. Pockiak, although he could not continue with the acting appointment when it ended on January 30, 2017. It is silent on the important fact that Mr. Pockiak did not meet the required CBC language proficiency level for the FI-04 position, which had a supervisory role. It also ignores that the analyst position, once reclassified, had substantially changed, with a supervisory role. It does not mention that Mr. Pockiak's BBB second-language-evaluation results had expired; therefore, he could not qualify for a new position that required a BBB language proficiency level.

[83] Mr. Lionais testified that he did not remember many of the events at issue, as they took place several years ago. It was also implied that some documents could have been lost because the staffing actions happened several years ago. Nonetheless, the respondent was put on notice early that the complainant would seek relevant documents for this appointment. As early as February 8, 2018, the Board granted his request for an order for provision of information for all staffing actions since November 2014 for Mr. Pockiak.

[84] When a complainant claims that there has been an abuse of authority and presents some evidence in support, then the respondent will likely raise a positive defence to the claim. While the respondent can simply deny the claim, it is open to the Board to draw reasonable inferences from uncontested facts. If the respondent does not present evidence to explain its reasons for a particular course of action or conduct, it risks being faced with a substantiated complaint. See *Tibbs*, at para. 54; and

*Ammirante v. Deputy Minister of Citizenship and Immigration*, 2010 PSST 3 at paras. 110 and 111.

[85] Transparent employment practices also apply to determining the language proficiency level for a position, as prescribed in the *PSEA*'s preamble. However, the appointment file in this case was incomplete, and several key documents were missing. For instance, there was no document explaining Mr. Lionais' reasons for determining the BBB language proficiency level for the analyst position. HR's responses to Mr. Lionais' reclassification request for the BBB language proficiency level were not in the appointment file and were not provided at the hearing.

[86] Mr. Lionais testified that he received an exemption to authorize the BBB language proficiency level for the analyst position's reclassification to FI-04. However, the respondent confirmed at the hearing, that an exemption could not be found. In its absence, and on a balance of probabilities, I conclude that no such exemption was granted.

[87] The complainant presents in evidence two emails, from July 5 and 10, 2017, which the OCG sent to HR at the TBS. They provided requested documents for the proposed reclassification. He argues that the approval for the reclassification to FI-04 would have been obtained after those two emails were sent, likely in August 2017.

[88] The respondent did not provide in evidence HR's response to those emails or any response confirming the reclassification date. In the absence of any evidence to the contrary, I find that on a balance of probabilities, HR's confirmation for the reclassification would have been sent in August 2017.

[89] The complainant argues that the NOCs and appointment notices were delayed until November 2017 but that they should have been posted when the appointment through the reclassification was confirmed in August 2017. He submits that Mr. Pockiak left on October 2, 2017, for full-time French-language training and that the notifications were delayed on purpose to November 2017, after he left. The respondent did not provide reasons for the delay.

[90] The respondent did not provide any evidence to explain the delay for the notification of the appointment. The complainant argued that this was done on purpose so that employees of the Costing Center would not ask questions or file

complaints following Mr. Pockiak's appointment, as he had left for French-language training. The complainant was the only employee who filed a complaint.

[91] As explained previously, in the absence of any evidence by the respondent to explain the delay, the complainant's explanation is reasonable. Given also the level of deceitfulness otherwise displayed in this appointment process, I conclude on a balance of probability that the notification was delayed on purpose.

[92] I consider that the respondent's choice of proceeding through a non-advertised process and its conduct did not conform to the *PSEA*'s appointment values of fairness and transparency. No evaluation was made, or consideration given to the lack of fairness and transparency of proceeding through a non-advertised appointment process retroactive to 15 months earlier. No evidence was provided by the respondent to explain the delay issuing the notification of the appointment.

[93] The respondent did not provide evidence or an explanation on why it was fair and transparent to proceed by assigning the same duties to an employee who could not continue in the FI-04 acting senior policy analyst position, as he did not meet the CBC language proficiency level.

[94] For all those reasons, I find that the respondent abused its authority in the choice of a non-advertised process under s. 77(1)(b) of the *PSEA*.

**Question 2b): Did the respondent abuse its authority by using a non-advertised process for Ms. Cheshire's promotional appointment?**

[95] The complainant argues that the respondent was not transparent, as Ms. Cheshire was in fact in an acting position for over four months. He claims that the rationale for the choice of a non-advertised process did not meet the PSC's policy. He also argues that an advertised process should have been chosen, as there was no pressing urgency.

[96] The respondent provided only a paragraph as the rationale for proceeding with a non-advertised appointment. The paragraph explains that Ms. Cheshire qualified into an FI-04 pool at Health Canada and later received an offer for a position at that level. It simply states that she is a key member of the Costing Centre team and that she has more to offer. The paragraph then expands on how she would benefit by remaining at the Costing Centre, to further her understanding of central agencies' roles and

responsibilities. It also states that she should be talent-managed, as she has the potential to advance to senior levels within the financial community.

[97] While it can be argued that this paragraph is a rationale for the selection decision, it is clearly insufficient to comply with the requirements of the TBS Guide on the choice of appointment process. To be unbiased and fact-based, this paragraph should have disclosed that Ms. Cheshire had been assigned the duties since October 2016. This rationale does not answer the basic question of why a non-advertised process was chosen for this promotional appointment. Mr. Lionais gives no consideration to the impact on the Costing Centre's employees as well to transparency and fairness by proceeding with a non-advertised process immediately after Ms. Cheshire had been assigned those duties for more than four months.

[98] Moreover, the fact that Ms. Cheshire was offered an FI-04 position does not itself justify that she should have been appointed as an FI-04. The paragraph fails to explain the selection decision and how the change to her duties would justify the promotional appointment from FI-03 to FI-04. The paragraph failed to consider the risk of such a non-advertised promotional appointment.

[99] For all those reasons, I find that the respondent abused its authority in the choice of a non-advertised process under s. 77(1)(b) of the *PSEA* for Ms. Cheshire's appointment.

**Question 3a): Did Mr. Lionais proceed in bad faith with Mr. Pockiak's appointment?**

[100] The complainant claims that Mr. Lionais acted in bad faith when he retroactively reclassified Mr. Pockiak's FI-03 analyst position to FI-04, as Mr. Pockiak did not meet the French CBC language proficiency level requirement. He submits that reclassifying it to FI-04 with a French BBB language proficiency level requirement was a subterfuge to appoint Mr. Pockiak into a position for which he did not qualify.

[101] The respondent argues that Mr. Lionais made a reclassification request in May 2017, which indicated that the linguistic profile of the FI-04 position was BBB. He testified that he had an exemption to classify the position with a BBB language proficiency level requirement. However, the respondent could not find it.

[102] Acting in bad faith implies proceeding with an improper intent, a bias, or a lack of impartiality. The courts have acknowledged that bad faith has a wider meaning,

which includes serious carelessness or recklessness. While direct evidence of bad faith is rare, it is generally established by circumstantial evidence that demonstrates that the action was so inexplicable and incomprehensible in light of how the discretion is meant to be exercised so that a court cannot reasonably conclude that it was performed in good faith. See *Finney v. Barreau du Québec*, 2004 SCC 36; *Entreprises Sibeca Inc. v. Frelighsburg (Municipality)*, 2004 SCC 61; *Roncarelli v. Duplessis*, [1959] S.C.R. 121; and *Paradis Honey Ltd. v. Canada (Agriculture and Agri-Food)*, 2024 FC 1921 at para. 1227.

[103] The Board will conclude that a manager proceeded in bad faith where the evidence demonstrates serious carelessness or recklessness in exercising the delegated staffing authority. As such, the use of an irrational procedure in making an appointment can be considered as evidence of bad faith as it is inconsistent with the exercise of the delegated staffing authority. See *Beyak; Hunter; Ammirante; Rajotte v. President of the Canada Border Services Agency*, 2009 PSST 25; *Ayotte v. Deputy Minister of National Defence*, 2009 PSST 21; and *Cameron v. Deputy Head of Service Canada*, 2008 PSST 16.

[104] The complainant's uncontradicted evidence is that supervisory functions at the Costing Centre required a CBC language proficiency level unless the employee was granted an exemption. This was done when the Costing Centre was initially set up, and some employees were appointed under it as senior policy advisors with a BBB language proficiency level.

[105] As determined earlier in this decision, no such exemption was received for Mr. Pockiak. Nevertheless, Mr. Lionais, without regard for the *Directive* and the *Qualifications Standards*, determined arbitrarily that the FI-04 analyst position would require a BBB language proficiency level, even if Mr. Pockiak had supervisory functions.

[106] Moreover, there is direct evidence of bad faith. On June 15, 2017, Mr. Lionais approved the reclassification justification that Ms. Gallivan sent on May 8, 2017. It states that the reclassification will be dated November 1, 2016, "... as Derrick has been acting in this role ...". It adds this: "For the time being this role will not have direct reports however upon completion of language training this role will involve supervising others."

[107] Clearly, Mr. Lionais acted in bad faith, as he approved a reclassification request that stated that Mr. Pockiak could not have supervisory functions while acting in the senior policy analyst position or after the FI-04 analyst reclassification. Mr. Pockiak's French BBB second-language-evaluation results expired in April 2016 and remained valid only while he occupied his FI-03 analyst position.

[108] As was found earlier in this decision, the respondent failed to observe the *PSEA's* values and ignored its requirements, as well those of the *PSEER* and section 91 of the *Official Languages Act*. The respondent was deceitful and not transparent when it used a non-advertised process to retroactively appoint Mr. Pockiak. That conduct also amounts to bad faith.

[109] I find that Mr. Pockiak's appointment through a reclassification was not based on merit, as he did not meet the bilingual-imperative requirement for the senior policy analyst position at the Costing Centre. I conclude that Mr. Lionais acted in bad faith, as he knew that Mr. Pockiak did not meet the merit criteria.

[110] For all those reasons, I find that the respondent abused its authority under s. 77(1)(a) of the *PSEA* when it made the appointment to the FI-04 analyst position.

**Question 3b): Did Mr. Lionais proceed in bad faith with Ms. Cheshire's appointment?**

[111] I did not find that Mr. Lionais acted in bad faith in Ms. Cheshire's appointment. He did not demonstrate the serious level of carelessness and disregard present in the one for Mr. Pockiak. Ms. Cheshire met the position's merit criteria and required language proficiency level. The assignment's duration was shorter and corresponded to an acting appointment of more than four months. There was no retroactive appointment.

[112] For those reasons, I do not find that the respondent acted in bad faith in Ms. Cheshire's appointment.

**Question 4: Was Mr. Lionais in a conflict of interest because of his involvement with ICEAA Canada?**

[113] The *Values and Ethics Code for the Public Sector* is the main guide for public service employees on their obligations and reporting responsibilities with respect to conflicts of interest. The TBS plays an important role as the employer of the public service (See *Policy on Conflict of Interest and Post Employment* which was replaced in

2020 by the *Directive on Conflict of Interest*). As well, the *Public Servants Disclosure Protection Act* (S.C. 2005, c. 46) provides disclosure mechanisms and protection for public service employees' disclosures of wrongdoing.

[114] In the federal government, "conflict of interest" refers to a conflict, whether real, apparent, or potential, which arises between a public service employee's work-related duties and the employee's private interests. The *Values and Ethics Code for the Public Sector* requires that any such conflict always be resolved in the public interest.

[115] The complainant alleges that Mr. Lionais was in a conflict of interest because of his involvement with ICEAA Canada. He explains that Mr. Lionais had a personal interest in ICEAA Canada, as he was an ex-officio board member. He claims that Mr. Lionais benefitted from travelling and attending costing conferences. According to the complainant, Mr. Lionais gave it preferential treatment by establishing the CECOP study group within the federal government.

[116] There was no evidence that Mr. Lionais received any monetary benefit from his participation. The respondent argues that ICEAA Canada had the 2015 MOU with TBS, and as such, Mr. Lionais had no conflict of interest with it.

[117] The complainant explained that he reported to the senior officer for disclosure at the TBS that Mr. Lionais was in a conflict of interest because of his involvement with ICEAA Canada. However, the officer made no finding of a conflict of interest on that allegation. The complainant did not pursue the matter with the Office of the Public Sector Integrity Commissioner.

[118] The evidence indicates that both the controller general and the assistant controller supported professionalizing costing in the public service. Mr. Ermuth signed the 2015 MOU on behalf of the TBS, which identified Mr. Lionais as the departmental representative for the MOU. Mr. Lionais executed Mr. Ermuth's directives. He was not in a real, apparent, or potential conflict of interest when he tried to implement professionalizing costing and promote public service employees' participation in ICEAA Canada.

[119] The federal government's initiative to improve costing shared similar objectives with ICEAA Canada. When Mr. Lionais promoted costing professionalization and ICEAA

courses and certification, he did not prefer his personal interests. It was part of his work-related mandate and duties.

[120] I find that based on the preponderance of the evidence, Mr. Lionais was not in a conflict of interest. This allegation is unfounded.

**Question 5: Did Mr. Lionais appoint the appointees because he was biased due to their support for ICEAA Canada?**

[121] An allegation of bias implies a pre-existing inclination or prejudice that affects impartial judgment. The case law recognizes that bias can be for or against a person or an outcome. See *R. v. Find*, 2001 SCC 32 at paras. 35 to 38; and *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at 394.

[122] The courts have broadened the meaning of bias and have formulated a specific test for establishing it. It is not necessary to determine that a person is biased or to provide evidence of improper intent but rather to objectively view the circumstances, to determine whether there is a reasonable apprehension that the person acted in a biased manner. See *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paras. 45 to 47; *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623 at 636.

[123] It is novel that a complainant makes an allegation of bias in favour of an appointee, as usually, such an allegation is against the complainant. Nevertheless, the reasonable-apprehension-of-bias test can be applied to the complainant's allegation.

[124] The test to determine whether there is a reasonable apprehension of bias has been adapted to staffing complaints that allege bias. The test is as follows. If a reasonably informed bystander can reasonably perceive bias on the part of one or more persons responsible for making an assessment, the Board can conclude that an abuse of authority exists. See *Drozdowski v. Deputy Head (Department of Public Works and Government Services Canada)*, 2016 PSLREB 33 at paras. 22 to 26; *Gignac v. Deputy Minister of Public Works and Government Services*, 2010 PSST 10 at paras. 72 to 74; and *Denny v. Deputy Minister of National Defence*, 2009 PSST 29 at paras. 123 to 126.

[125] A reasonably informed bystander could not reasonably perceive bias on the part of Mr. Lionais. Implementing costing training and ICEAA Canada certification was part

of the federal government's directions to improve costing information across its departments. The fact that the appointees worked on ICEAA Canada matters and helped Mr. Lionais with his related responsibilities was consistent with those directions. No evidence was presented that implementing ICEAA Canada's methods and working to professionalize costing was improper.

[126] Therefore, I find that based on the preponderance of the evidence, the allegation is unfounded that Mr. Lionais was in a conflict of interest.

**Question 6: Did Mr. Lionais appoint the appointees out of personal favouritism?**

[127] At s. 2(4), the *PSEA* states that abuse of authority includes personal favouritism. As established by the jurisprudence, the word "personal" precedes the word "favouritism", emphasizing that both words should be read together, and that personal favouritism, not other types of favouritism, constitutes abuse of authority. See *Glasgow v. Deputy Minister of Public Works and Government Services Canada*, 2008 PSST 7 at paras. 39 to 41.

[128] For example, undue personal interest in appointing a person, such as appointing them as a personal favour or to gain personal favour with a manager, constitutes personal favouritism. Establishing the position's essential qualifications and assessing an employee, to ensure his or her appointment without respecting the position's true requirements, is also personal favouritism. Furthermore, appointing a candidate who does not meet the position's essential qualifications as a personal favour to the candidate also constitutes personal favouritism. See *Beyak*, at para. 185.

[129] The complainant claims that the job description was tailored, and that Ms. Cheshire was improperly assessed as meeting the position's qualification. He also alleges that the position was titled "Senior Policy Analyst", but the work involved being Mr. Lionais' chief of staff or executive director.

[130] As has been the practice in the public service, a generic job description for a senior policy analyst was used for Ms. Cheshire's appointment. It is generic so that it can be used for many positions, including those of a chief of staff or an executive director. She was assessed against the statement of merit criteria, and there is no evidence that she did not meet the merit criteria.

[131] The complainant claims that Mr. Lionais demonstrated personal favouritism toward Mr. Pockiak by supporting his Master of Public Administration degree and by authorizing his travel.

[132] However, I do not find those evidence of personal favouritism, as they were all work-related. Mr. Pockiak's studies were relevant to his work, in particular his paper on whether the federal government's cost estimating policies were sufficient for the effective and efficient realization of projects and programs. As for his travels, they were related to his work on the National Shipbuilding Strategy or to attend ICEAA conferences.

[133] More importantly, I cannot conclude that the reason that Mr. Lionais assessed the appointees as meeting the merit criteria was personal favouritism. He had no personal relationship with them or undue personal interest. He was not in a conflict of interest with respect to the ICEAA. Implementing ICEAA study groups was a valid objective that aligned with federal government objectives.

[134] Mr. Lionais deemed that Mr. Pockiak brought an innovative approach to costing and that he was the right fit to lead the team. As for Ms. Cheshire, he offered her a senior policy analyst position, to keep her at the Costing Centre. He felt that she had more to contribute, with her broad experience and work quality.

[135] For these reasons, I find that the complainant did not establish that the appointments were made on the basis of personal favouritism.

## **Recommendations**

### **To the PSC**

[136] The 2016 PSC's *Appointment Framework* and the *Appointment Policy* are high-level documents geared toward HR specialists. However, they are difficult for others to understand, and important information is hard to find. For instance, the *Articulation of the Selection Decision* is required for all merit-based appointments is mentioned only at the end of Annex B of the *Appointment Policy*. No explanation is given as to what it consists of and its requirement for all appointments based on merit.

[137] The PSC's former policy, the *Choice of Appointment Process*, which was replaced in 2016, was much clearer for those not working in staffing. It was more accessible and understandable for employees who had questions and preoccupations with

appointments. I have often observed complainants still referring to the former policy in their allegations about choices of non-advertised processes.

[138] I believe that transparent employment practices and accountability in the exercise of delegated authority would be improved were the PSC to provide general information that is more accessible to the public service's employees and managers.

[139] I would recommend that the *Appointment Policy* include basic information explaining that an *Articulation of the Selection Decision* should be completed for all appointments based on merit and what it should include. It should also explain that deputy heads now establish directions on the choice of non-advertised or advertised processes and generally what these directions provide. As these directions are public documents, links could be listed by organization, to facilitate access and transparency.

### **To the TBS**

[140] The TBS Guide on the choice of appointment process presents practical directions to a hiring manager where the HR advisor plays a key role. The problem is that Mr. Lionais and the HR advisor did not follow them. While Mr. Lionais has since retired from the public service, these complaints demonstrate that stronger accountability and review mechanisms are required for hiring managers and HR advisors.

[141] The hiring manager and the HR advisor should have had key strategic discussions, as required by the TBS Guide on the choice of appointment process. Such discussions would have included the choice of appointment process and the selection decision and its impact on appointment values. Also required were key documents that should have been in the appointment file and accessible for the hearing. They would have included an unbiased and fact-based *Articulation of the Selection Decision* that explained the key considerations made for the choice of the appointments' process. It should have demonstrated how the impact of the choice of selection process was considered on the Costing Center's employees and the PSEA's appointment values.

[142] It is important that HR advisors play their role and support managers, who are not staffing experts. It appears that strategic discussions were not held to review the different options and flexibility that the PSEA offers. There is no record of a response

from HR when incomplete information was provided to support the appointments at issue.

[143] I recommend a sign-off from the HR advisor on key documentation. HR advisors have a proactive role and are responsible with managers for ensuring that appointment files conform to the TBS Guide on the choice of appointment process's requirements.

[144] I also recommend that a form be used for the *Articulation of the Selection Decision*, as is the practice in some departments. It would be a way to ensure that all the requirements of the TBS Guide on the choice of appointment process are enclosed and that the appointment values have been considered.

[145] There was also a lack of transparency in the determination of the BBB language proficiency level as there were no document explaining Mr. Lionais' reasons. It was unclear whether he discussed this with HR. HR's responses to his reclassification request were not in the appointment file. I believe that a form should also be used when determining the official language proficiency level of a position. A rationale for the chosen level should be included in this form and both the HR advisor and the manager should sign it off.

### **Corrective measures**

[146] It is well established that the Board may order an appointment revoked and that it may take any corrective measure that it considers appropriate following a finding of abuse of authority (see s. 81 of the *PSEA*).

[147] The complainant asked that both appointments be revoked, to ensure real consequences for disregarding the *PSEA* and the respondent's own policy.

[148] The respondent argued that revocation should not be ordered for these appointments, as both appointees have left the positions.

[149] Determining the appropriate corrective measures or whether they should be ordered is discretionary and depends on the assessment of the facts in each case. In some circumstances, a declaration that there has been an abuse of authority can be sufficient. In other cases, the facts may require revoking the appointment or ordering other corrective measures.

[150] Revocation is generally ordered when the appointment was not based on merit. It is often ordered when there is a finding of personal favouritism, a reasonable apprehension of bias, or bad faith or when there were significant flaws in the appointment process. When it is not ordered, the decision should explain why in the circumstances of the case and why the Board should depart from the established jurisprudence. See *Turner v. Canada (Attorney General)*, 2022 FCA 192.

[151] The fact that the appointees have left the Costing Centre does not make the complaints moot, as it would be overly easy for a department or an appointee to avoid the recourse process by simply moving the appointee to another position. See *Wylie v. President of the Canada Border Services Agency*, 2006 PSST 7 at paras. 25 to 33; and *Lo v. Canada (Public Service Commission Appeal Board)*, [1997] CanLII 5849 (FCA).

[152] As well, revocation as a corrective measure is not moot because the appointee has left the position. It is a fundamental principle of the *PSEA* and the preceding legislation that public service appointments be based on merit. If the appointment was not based on merit, and the appointee has left the position, then generally, the appointment should be revoked. See *Ayotte v. Deputy Minister of National Defence*, 2010 PSST 16, at para. 19 to 24; *Beyak*, at paras. 192 and 193; and *Turner v. Deputy Head (Royal Canadian Mounted Police)*, 2024 FPSLREB 33 at paras. 33 to 40.

[153] Mr. Lionais essentially abused his authority by assigning duties to Ms. Cheshire that led to her indeterminate appointment and by not respecting the *PSEA*'s notification requirement. However, she met the requirements in the statement of merit criteria, including the language proficiency level. I find that revoking her appointment is not warranted, as it was based on merit.

[154] However, the findings of abuse of authority are far more severe in the complaint against Mr. Pockiak's appointment, which was not based on merit. Mr. Lionais acted in bad faith by assigning duties to Mr. Pockiak because he did not meet the CBC language proficiency level and could not continue acting as a senior policy analyst. Mr. Lionais reclassified the position to avoid the required CBC language proficiency level for supervisory positions at the Costing Centre. He had to take full-time language training for 15 months before he met the BBB language proficiency level.

[155] I find that Mr. Pockiak's appointment was not based on merit and that its revocation is warranted.

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

*(The Order appears on the next page)*

**Order**

[157] The complaints are allowed.

[158] The Board orders that the appointment through a reclassification of Mr. Pockiak's analyst position to a FI-04 position be revoked within 60 days.

April 24, 2025.

**Guy Giguère,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**