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



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

BETWEEN

JOLAINE BOIS

Complainant

and

**DEPUTY HEAD
(Royal Canadian Mounted Police)**

Respondent

and

OTHER PARTIES

Indexed as

Bois v. Deputy Head (Royal Canadian Mounted Police)

In the matter of a complaint of abuse of authority under ss. 77(1)(a) and (b) of the
Public Service Employment Act

Before: Gorette Fukamusenge, a panel of the Federal Public Sector Labour
Relations and Employment Board

For the Complainant: Herself

For the Respondent: Alexandre Petterson, counsel

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

Heard by videoconference,

April 15 and 16, 2024.
[FPSLREB Translation]

REASONS FOR DECISION**(FPSLREB TRANSLATION)**

I. Complaint before the Board

[1] Jolaine Bois (“the complainant”) contested a non-advertised appointment process that the deputy head of the Royal Canadian Mounted Police (RCMP or “the respondent”) conducted. The process in question was used to fill a human resources manager position at the PE-05 group and level.

[2] The complaint was made under ss. 77(1)(a) and (b) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*). The complainant alleged that the respondent abused its authority in the application of merit and by choosing a non-advertised appointment process.

[3] According to the complainant, the respondent reportedly concealed or communicated inconsistent information about an acting appointment for the appointee, changed the organizational structure, and lowered the language requirements — from CBC to BBB — to favour the appointee.

[4] The respondent argued that the position that is the subject of this complaint had a BBB linguistic profile. It explained that for the appointment, it used a pool of candidates who had qualified in part for a similar position but that required a CBC linguistic profile. It specified that first, it offered the position to another candidate in the pool before offering it to the appointee.

[5] For the reasons set out in this decision, the complaint is dismissed. Certainly, it seems that a failure occurred in communicating the steps that led to the position’s transfer and the use of the process in question. However, the adduced evidence did not demonstrate the existence of an abuse of authority, such as personal favouritism or bad faith, in the choice of the non-advertised process or in the assessment of merit.

[6] To summarize, the complaint’s dismissal is based mainly on these points:

- The non-advertised process was not chosen to favour the appointee; the respondent even offered the position to another candidate.
- The respondent chose to keep the position at the BBB language level, for which it had the authority.
- The appointee was assessed based on the merit criteria of a similar position. He was selected from the existing pool, which was established based on that assessment.

- The fact that the respondent did not inform its personnel of its intentions when it introduced the new position under its direction can be perceived as a lack of transparency. However, this fact does not necessarily constitute an abuse of authority.

II. Summary of the relevant evidence

A. For the complainant

[7] When the events at issue took place, the complainant was a civilian member of the RCMP. She held a senior human resources analyst, policy and programs, position within the Corporate Staffing - Policies, Planning, and Promotion Unit (“the CSPPP Unit”) in the Human Resources branch.

[8] Essentially, the complainant alleged that the respondent’s decision to add another position at the PE-05 group and level in its CSPPP Unit was made in bad faith. She argued that the linguistic requirements were lowered, from CBC to BBB, which was a change to the position’s merit criteria. She claimed that that change was made based on the appointee’s profile, to ensure his appointment, and that the respondent concealed or manipulated the information solely to benefit itself.

[9] In addition, the complainant indicated that Jonathan Caron, the CSPPP Unit’s director, appointed the appointee to the position in question on an acting basis “[translation] in a concealed and hurried way”. Supposedly, the appointment was made without consulting or informing the Unit’s other employees. The complainant added that Mr. Caron concealed and then denied the appointment, that he provided conflicting information about it, and that when she asked for information about the position’s history, instead of answering, he questioned her about its relevance.

[10] The complainant also stated that on May 25, 2023, Mr. Caron informed her that he would retroactively appoint the appointee to the position in question on an acting basis as of January 25, 2023. Apparently, Mr. Caron indicated that the person had held the position on an interim basis since that date. The complainant stated that on July 5, 2023, she learned that the acting appointment’s start date was February 6, 2023, and not January 25, 2023.

[11] Similarly, the complainant questioned the duties that the appointee carried out during his acting appointment from February 6, 2023, until his indeterminate appointment. According to her, while the human resources manager manages,

supervises, and directs a work unit, the appointee did not supervise any employees during that time.

[12] The complainant also questioned whether Mr. Caron submitted the staffing request for the appointee's acting appointment for the period from February 6, 2023, to June 5, 2023, on May 11, 2023, which was the date on which the notification was issued that the appointee's appointment was indeterminate.

[13] In addition, she questioned the "Articulation of Selection Decision" document that Mr. Caron submitted to the chief human resources officer. That step was aimed at obtaining approval to use a non-advertised process for the indeterminate appointment. According to the complainant, the document, which was part of Mr. Caron's May 9, 2023, email to the chief human resources officer, lacked important details explaining how the appointee was selected. The complainant argued that the email does not set out the "Statement of Merit Criteria" or the assessment methods. She also claimed that it is not possible to identify the criteria that were used because there is no process number.

[14] Above all, the complainant insisted on her favouritism allegations. For example, she explained that all the teams under Mr. Caron have directors who hold positions at the PE-05/PN-05 level with a CBC linguistic profile. According to her, Mr. Caron lowered the language requirements for the new position from CBC to BBB, to favour the appointee. She also alleged that the acting appointment, the later indeterminate appointment, and the choice of a non-advertised process also favoured the appointee. She stated repeatedly that how the appointment process was conducted demonstrated a lack of transparency and the manipulation of information. She said that it harmed her and that it affected her morale.

[15] When she made her complaint, the complainant requested that the appointment in question be revoked. At the hearing, she withdrew that request. She requested that the Board declare that the respondent displayed personal favouritism toward the appointee and that an abuse of authority took place.

B. For the respondent

[16] The respondent called Mr. Caron as a witness. He stated that he began the staffing process to replace a manager who had expressed a desire to retire. He

explained that he wanted to ensure a transition and a transfer of records and knowledge.

[17] According to his testimony, the position that was transferred under his direction existed at National Headquarters and had a BBB linguistic profile. Apparently, it was created in 2012, before he arrived at the RCMP. Mr. Caron stated that he checked but did not find a requirement for a CBC linguistic profile. He explained that he wanted to replace the manager, a civilian member, who was considering retirement but that he found that all the candidates in the existing pool were public service employees. He specified that he could not appoint a public service employee to a position reserved for civilian members.

[18] As for using the non-advertised process, Mr. Caron said that his staffing strategy was to go to the pool of prequalified individuals that had been created in an advertised process for a similar position, which had a CBC linguistic profile. He specified that two candidates were still in the pool when the appointment was made. He affirmed that he offered the position at issue in this complaint to one of those two candidates but that that person declined the offer, so he offered it to the appointee.

[19] In its response to the allegations, the respondent justified choosing a non-advertised process as follows:

[Translation]

... the hiring manager, Jonathan Caron, Director, Corporate Staffing, adequately justified and documented the choice of a non-advertised process, which was based on operational needs after the manager's retirement was announced and given the manager's desire to offload the tasks attributable to the manager role before retiring. The hiring manager had on hand a pool of partially qualified candidates (20-RCM-IA-N-N-NCR-CHRO/HRPPS-94942). So, he decided to consider candidates from the pool, to respond to his manager's wish after the manager requested to offload the tasks of the manager's role ... Process 20-RCMIA-N-N-NCR-CHRO/HRPPS-94942 was posted with a linguistic profile of bilingual imperative CBC/CBC, and the position used for the appointment had a linguistic profile of bilingual imperative BBB/BBB. Consequently, an advertised appointment was not possible

...

The same Statement of Merit Criteria was used for the advertised process and the non-advertised appointment. The appointee meets

the essential qualifications for the appointment and has demonstrated his skills while working with the team.

...

[20] In response to the question of whether he ensured that the appointee met the essential qualifications, Mr. Caron stated that the appointee passed the preselection, interview, and references stages and that he met the requirements. Mr. Caron specified that the last thing to assess were the language qualifications. He added that he worked with the operational team and that he received information that the appointee had a BBB linguistic profile.

[21] As for personal favouritism, Mr. Caron stated that he met the appointee while working in another department and that at that time, the appointee was one of the candidates in the Federal Student Work Experience Program during 2007-2008. According to his evidence, he encountered the appointee at the office, depending on his work hours, but the appointee did not report to his team. Later, he encountered the appointee at the RCMP, and they crossed paths about once or twice a week. He added this:

[Translation]

I have considerable difficulty seeing the connection that was submitted. I worked hard to ensure that the process met all the requirements. The fact that we stay in touch within the human resources community is a professional habit, as I regularly talk with the people whom I went to university with or saw in other departments.

We will use our networking in this area. There may be a perception, but rules must be applied, and I would like to make it known that rules were applied.

III. Summary of the arguments

A. For the complainant

[22] The complainant argued that there was a lack of transparency before and during the process, that she was not treated fairly, and that there was a lack of equality for the other employees. According to her, the respondent changed the language requirements to favour the appointee, who did not have the CBC level. It did not establish a culture of transparency, the employees were not informed, and no communication was done. She insisted that many contradictions were made and that

she lost confidence in senior management due to the non-advertised appointment process.

[23] To support her arguments on the lack of transparency, the complainant cited *Bergeron-Quirion v. Deputy Head (Department of Agriculture and Agri-Food)*, 2024 FPSLREB 19; *Burt v. Deputy Minister of Veterans Affairs*, 2019 FPSLREB 31; and *Huard v. Deputy Head (Office of Infrastructure of Canada)*, 2023 FPSLREB 9.

[24] The complainant also raised issues of bad faith. According to her, the respondent acted in bad faith by transferring a position without transparency and by making an acting appointment without informing the CSPPP Unit employees. According to her, it is clear that Mr. Caron favoured the appointee by giving her that opportunity, that equal treatment did not occur, and that the employees were informed of the position's existence only after the fact.

[25] Citing paragraphs 138 and 139 of *Ayotte v. Deputy Minister of National Defence*, 2009 PSST 21, the complainant argued that the *PSEA* provides that bad faith and personal favouritism are among the things that constitute an abuse of authority.

[26] The complainant also argued that the events in this case were similar to those described in *Beyak v. Deputy Minister of Natural Resources Canada*, 2009 PSST 35. She explained that the respondent appointed the appointee on an acting basis retroactively and that it deliberately failed to notify the employees, even though normally, the events of employees arriving or leaving are always shared.

[27] The complainant argued that the respondent was unwilling to consider other candidates. She cited the fact that Mr. Caron used a process dating from 2020, even though many changes occurred since then. Several people would have been interested in the position, but he decided not to advertise it because he was biased. The complainant referenced the comments in paragraph 149 of *Beyak*, which stated that in that case, the former Board found that non-advertised appointment processes were chosen because the manager wanted to reward the appointee.

[28] The complainant added that in this case, the appointment was made arbitrarily. The essential qualifications were determined in a manner tainted by personal favouritism. The language requirement was not determined objectively, solely to favour the appointee, who did not hold the CBC linguistic profile and did not meet the

position's true requirements, which included supervising employees and all the other aspects of the PE-05 group-and-level position.

B. For the respondent

[29] The respondent insisted that the choice of process and the appointee's appointment involved no deception. Mr. Caron explained that two candidates were still in the existing pool and that only after one of them declined the offer for the same position with the same BBB linguistic profile was the process started to appoint the appointee. Mr. Caron and the appointee had no close ties. The evidence set out that the appointee met all the essential qualifications and that the appointment was based on merit. The appointee was assessed and had the necessary qualifications and the ability to manage a team, and the complainant presented no evidence to challenge the appointee's qualifications. According to the respondent, the complainant's arguments were not compelling.

[30] The respondent argued that no abuse of authority occurred with respect to the choice of process or personal favouritism, as the appointee met the requirements before and when he received the appointment. Mr. Caron stated that only one candidate was left and that the purpose of the appointee's appointment was to meet an operational need to replace a manager in anticipation of her retirement and to ensure a transition. Mr. Caron did not appoint an outsider; he appointed someone who had experience and several years with the RCMP. After the manager made the retirement announcement, transitional measures were put in place. Mr. Caron made explanations, and the complainant did not challenge his evidence.

[31] There was no personal favouritism as it is defined in the case law. There was also no direct link between the non-advertised appointment and the acting appointment. If there was one, it would have been of a lesser degree. The complainant had the burden of demonstrating an abuse of authority; she had to provide convincing and unequivocal evidence. To support that argument, the respondent referred to paragraphs 42 and 43 of *Jolin v. Deputy Head of Service Canada*, 2007 PSST 11.

[32] In addition, the respondent emphasized that abuse of authority involves more than a simple error; it must constitute outrageous conduct. That level was not reached. The complainant did not demonstrate that a serious error was made. To support that

assertion, the respondent cited paragraphs 61 and 62 of *Lavigne v. Canada (Justice)*, 2009 FC 684.

[33] Citing *Jarvo v. Deputy Minister of National Defence*, 2011 PSST 6 at paras. 32 to 35, the respondent also argued that the *PSEA* does not dictate any preference between an advertised or a non-advertised process. An opportunity does not have to be offered to all employees, and the *PSEA* does not contain an obligation to consider more than one candidate in a process. Non-advertised processes are not unfair on the grounds that employees do not have access to them. The inability to apply is not a lack of fairness.

[34] The case law has established a standard to demonstrate whether personal favouritism occurred, which is that compelling evidence is required; see *Glasgow v. Deputy Minister of Public Works and Government Services Canada*, 2008 PSST 7 at paras. 39, 41, and 44 to 46. By using the term “personal favouritism”, the legislator set the bar high, since not everything constitutes personal favouritism. For example, it may involve a personal relationship, which is not so in this case. It emerged from the evidence that during his career, Mr. Caron knew and interacted with the appointee while he worked in the public service. Evidence is required that favouritism occurred; see *Carlson-Needham v. Deputy Minister of National Defence*, 2007 PSST 38 at paras. 52 to 54.

[35] According to *Desalliers v. Deputy Head (Department of Citizenship and Immigration)*, 2022 FPSLREB 70 at paras. 139 to 146, another example of favouritism would be a prior relationship. The evidence before the Board demonstrated only a professional relationship. Another example would be when a family member or a friend is appointed. According to the respondent, the personal-favouritism allegation is unfounded.

[36] The merit principle was respected, since the other candidate in the pool had the opportunity to occupy the position but declined it. The evidence set out that the appointee met the qualifications. Furthermore, the respondent has broad discretionary power to choose the right person. Mr. Caron explained why the appointee met the qualifications. The appointee has extensive staffing knowledge and experience, held PE-05 group-and-level positions, and was able to manage work groups. The complainant did not explain how the appointee did not meet the criteria.

[37] The evidence established that the manager considering retirement had stopped performing management functions, which left the position vacant, and that in anticipation of retirement, she was transferred to other projects. Her retirement was scheduled for summer 2023, but a position still remained vacant.

[38] In 2020, the respondent ran the advertised process numbered 20-RCM-IA-N-N-NCR-CHRO/HRPPS-94942 for a similar position at the PE-05/PN-05 level. It allowed creating a pool, from which the appointee was selected. The complainant applied to that process but was not selected. The choice of process did not constitute an abuse of authority, as Mr. Caron had to respond to a staffing need. That action fell within the scope of the discretionary power granted to him under the *PSEA*.

C. For the Public Service Commission

[39] The Public Service Commission (PSC) did not participate in the hearing of this complaint. But it did make general submissions and indicated that it did not take a position on the issue of whether an abuse of authority occurred or whether its *Appointment Policy* was followed in this appointment.

IV. Analysis and decision

A. The basic principles

[40] First, it is useful to recall certain inescapable principles that the legislator prescribed in the *PSEA* about federal public service staffing. One, which emerges from the *PSEA*'s applicable provisions, dictates that appointments are made on the basis of a merit-based selection according to what the delegated deputy head considers appropriate to decide whether a person meets the essential qualifications (see ss. 30(2) and 36(1)). Another principle states that the choice of process and the determination of the qualifications to use for a position belong exclusively to the deputy head (see ss. 33 and 36(1)).

[41] For convenience, the provisions set out in those sections are reproduced as follows:

Appointment on basis of merit

30 (1) *Appointments by the Commission to or from within the public service shall be made on the*

Principles

30 (1) *Les nominations — internes ou externes — à la fonction publique faites par la Commission sont*

basis of merit and must be free from political influence.

fondées sur le mérite et sont indépendantes de toute influence politique.

Meaning of merit

Définition du mérite

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

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

(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; and

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;

...

[...]

Qualification standards

Normes de qualification

31 (1) The employer may establish qualification standards, in relation to education, knowledge, experience, occupational certification, language or other qualifications, that the employer considers necessary or desirable having regard to the nature of the work to be performed and the present and future needs of the public service.

31 (1) L'employeur peut fixer des normes de qualification, notamment en matière d'instruction, de connaissances, d'expérience, d'attestation professionnelle ou de langue, nécessaires ou souhaitables à son avis du fait de la nature du travail à accomplir et des besoins actuels et futurs de la fonction publique.

...

[...]

Appointment processes

Processus de nomination

33 In making an appointment, the Commission may use an advertised or non-advertised appointment process.

33 La Commission peut, en vue d'une nomination, avoir recours à un processus de nomination annoncé ou à un processus de nomination non annoncé.

...

[...]

36 (1) In making an appointment, the Commission may, subject to subsection (2), use any assessment method, such as a review of past performance and accomplishments, interviews and examinations, that it considers appropriate to determine whether a person meets the

36 (1) Sous réserve du paragraphe (2), la Commission peut avoir recours à toute méthode d'évaluation — notamment la prise en compte des réalisations et du rendement antérieur, examens ou entrevues — qu'elle estime indiquée pour décider si une personne

qualifications referred to in paragraph 30(2)(a) and subparagraph 30(2)(b)(i).

possède les qualifications visées à l'alinéa 30(2)a) et au sous-alinéa 30(2)b)(i).

[42] It arises from those provisions that the legislator granted fairly broad discretionary power to the deputy head. However, it is crucial to note that no discretionary power is absolute. It must be exercised in accordance with the Act's objectives. That interpretation has been firmly established in the case law for many years. Examples can be found in the following decisions: *Myskiw v. Commissioner of the Correctional Service of Canada*, 2018 FPSLREB 70 at paras. 32 and 53; *Canada (Attorney General) v. Allard*, 2008 FC 1294 at para. 52; *Canada (Attorney General) v. Mercer*, 2004 FCA 301 at paras. 15 and 16; *Hay v. Deputy Head (Correctional Service of Canada)*, 2022 FPSLREB 106 at para. 32; and *Sachs v. The President of the Public Health Agency of Canada*, 2017 FPSLREB 3 at para. 21.

B. The issues to decide

[43] The complaint was made under ss. 77(1)(a) and (b) of the *PSEA*. Thus, the issues are whether, one, the respondent demonstrated an abuse of authority by choosing the non-advertised process and, two, in its assessment of the appointee's merits. Therefore, the complainant had the onus of proof to demonstrate that on a balance of probabilities, an abuse of authority occurred in this case.

1. Did the respondent use a non-advertised appointment process to favour the appointee?

[44] No evidence allows making such a conclusion.

[45] The complainant's theory was that the entire course of the appointment process, including the choice of process, was done for the purpose of favouring the appointee. She alleged that the appointee did not possess the required qualifications. Among the examples that she provided to demonstrate the abuse of authority are the following allegations. The respondent changed the organizational structure by adding a position to favour the appointee. In addition, it concealed or manipulated information about the existence of the position in question, employees were informed of the choice of process and the appointment after the fact, the justification for the selection decision did not include a process number, and it was misleading or did not specify the criteria that were assessed.

[46] Not only does that theory rely on unsubstantiated allegations, but also, it disregards an inescapable reality, which is the fact that the respondent had the discretion to establish the new position under its direction, to choose the nature of the process to use, and to determine the assessment criteria. Certainly, this discretionary power is not absolute. It must be exercised with a rational and reasonable justification. That said, in the absence of evidence demonstrating that on the balance of probabilities, the choice of process was made for reasons contrary to the *PSEA*'s objectives, including bad faith, personal favouritism, or any other conduct, such as an arbitrary or discriminatory decision, it would be unreasonable to conclude that an abuse of authority took place. The complainant's arguments were based on unproven allegations or impressions.

[47] For example, the complainant claimed that the appointee did not possess the qualifications required for the position. However, the evidence on file demonstrated that the appointee's qualifications were assessed and that the appointee was placed in the pool of partially qualified candidates for the other, similar appointment process (numbered 20-RCM-IA-N-N-NCR-CHRO/HRPPS-94942).

[48] Although the language requirement for that other position was CBC, the respondent decided to keep the contested position at BBB. The Statement of Merit Criteria and the job description at issue were the same. The respondent used the results from the other process to proceed with a non-advertised process. I do not find that its approach compromised the *PSEA*. To the contrary, it was legitimate for the respondent to use it (see *Huard*, at para. 122). As noted in several decisions, including *Huard*, at para. 110, "The fact of proceeding with a non-advertised process is not in itself abusive."

[49] The complainant could not simply allege that the respondent demonstrated an abuse of authority because a non-advertised process was chosen. It was up to her to demonstrate that that choice constituted an abuse of authority. She did not. The *PSEA* provides (at s. 33) and it is well established in the case law that the deputy head (in this case, the respondent) has the discretionary power to choose between an advertised process and a non-advertised process (see, for example, *Huard*, at para. 110; and *Burt*, at para. 120).

[50] Although the case law has broadened the definition of the concept of abuse of authority, it still requires demonstrating more than a simple error or omission (see *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8 at para. 73). Other cases have advocated that conduct demonstrating an abuse of authority “... may involve an act, omission or error that Parliament cannot have envisaged as part of the discretion given to those with delegated staffing authority” (see, for example, *Abi-Mansour v. Deputy Head of the Department of Employment and Social Development*, 2020 FPSLREB 36 at para. 91; and *Davidson v. Canada (Attorney General)*, 2021 FCA 226 at para. 25).

[51] On the other hand, the complainant complained that the respondent chose a non-advertised process and that it did not inform its personnel. The very name of the process could not be clearer — it is a “non-advertised process”, meaning that it is not disclosed, and the position is not posted either internally within the organization or externally. Once again, unless there is evidence that demonstrates deception in the choice of process, an abuse of authority cannot be concluded.

[52] That said, I believe that the respondent neglected to inform the personnel as soon as it had the opportunity to establish the position on the organization chart that is the subject of this complaint and that it decided to use it for an acting appointment before using it for an indeterminate appointment. The evidence set out that the process started in January 2023. According to the complainant’s testimony, only at the end of March 2023 did her manager inform her that her reporting relationship would change starting in April 2023. In addition, the acting staffing request for February 6 to June 5, 2023, was signed on May 11, 2023, which was the same date as the “Notification of Consideration” for the indeterminate candidacy. It is the same position, and the appointments involved the same person. The delay communicating the information about the position’s creation, as well as the retroactive appointment, might have led to doubts and well-founded perceptions.

[53] The failure to inform the staff members about the position’s addition to the organization chart and the intentions for its use, as well as the reporting relationship change without initially informing the affected employees, could be perceived as a lack of transparency. The respondent had the authority to change the organizational structure and to use the position for an acting appointment, but all that could have been communicated to the relevant teams at the beginning of the staffing process.

[54] However, by itself, the failure to inform the personnel of the staffing intentions did not necessarily constitute an abuse of authority. As stated earlier, an abuse of authority is more than a simple error or omission.

[55] Certainly, in the absence of information, it is arguable to question, suspect, and theorize. However, suspicions and theories alone do not justify abuse-of-authority allegations. No evidence set out that the failure to inform the personnel was done to favour the appointee, as the complainant alleged, or that it caused her harm. In any case, she was not part of the pool of prequalified candidates used for the appointment.

[56] During his testimony, Mr. Caron explained that the idea of borrowing a position from another unit came from National Headquarters and that when the appointment decision was made, non-advertised appointments required the director general's approval. In that respect, an email exchange dated May 9, 2023, which was adduced in evidence, set out that Mr. Caron sought and obtained the director general's approval to proceed with the non-advertised process.

[57] According to Mr. Caron's testimony, the choice of process was determined on the grounds that the RCMP has a unique characteristic, which is that there are three groups of employees: regular members, civilian members, and public service employees. He stated that that characteristic creates duplicate positions, since a civilian member cannot be appointed to a position for a public service employee, and vice versa. For example, if a unit has a position for a civilian employee, it cannot be used to recruit a public service employee.

[58] In the complaint form, the complainant indicated that that statement is not true. She explained that since staffing activities for civilian members and public service members were standardized as of June 1, 2016, public service employees can be placed in civilian positions by converting the positions in question. However, at the hearing, Mr. Caron's testimony was not contradicted. If there is a policy for standardizing staffing activities, it was not submitted as evidence.

[59] Mr. Caron indicated that the constraints with respect to employee mobility within the RCMP's different groups led him to use the new position, even though a similar position already existed under his direction. He specified that he noticed that the candidates who remained in the pool were all public service employees, while he had to replace a manager who held a position for civilian members. He said that due to

the mobility constraint, he could not appoint a public service employee to a position reserved for civilian employees and that another position had to be used.

[60] In the context that Mr. Caron explained, although it would have been helpful to inform the teams of all the planning, I find that explanation acceptable. In particular, no evidence was adduced that the unadvertised process was chosen in bad faith or with the intention of personally favouring the appointee. The respondent considered those who had already been assessed and were part of the existing pool for the similar position. The decision was to take a qualified person and appoint them through a non-advertised process. Under the provisions of s. 30(4) of the *PSEA*, the PSC or its delegate is not required to consider more than one person for the appointment to be made on the basis of merit, and as noted in *Huard*, a non-advertised process is necessarily a choice made for one person.

[61] The complainant argued that choosing a non-advertised process was not justified and that the respondent alleged that there was a need to replace the manager who had announced her retirement, but she was still on the job. That argument is not relevant. The fact that the manager's supposed retirement did not materialize did not demonstrate any deception on the respondent's part. The argument that it introduced that criterion to camouflage the choice of the non-advertised process is nothing but an unfounded allegation. Once again, allegations alone, without evidence, do not substantiate bad faith or camouflage. Good faith is always presumed, and it is up to the person alleging bad faith to substantiate it (see, for example, *D'Almeida v. Royal Canadian Mounted Police*, 2020 FPSLREB 23 at para. 57). No such evidence was adduced.

[62] The complainant cited the comments in paragraph 138 of *Ayotte*, stating that "[b]ad faith and personal favouritism are among the most serious forms of abuse of authority." She is right on that. However, those principles should be supported by evidence. She adduced no evidence that demonstrated bad faith or personal favouritism.

[63] Furthermore, *Ayotte*, at para. 139, states, "Bad faith has also been given a broader meaning that does not require improper intent where there is serious carelessness or recklessness." In my opinion, I do not find that the choice of the non-

advertised process to fill the position subject to this complaint was marked by “carelessness” and less still that it was done deliberately, to favour the appointee.

[64] As stated earlier, the fundamental principles dictate that the choice of process to use rests solely with the deputy head, which in this case was the respondent. Although that power is not absolute, it was up to the complainant to demonstrate the abuse of authority. She did not submit evidence of one. The allegation that the choice of process was intended to favour the appointee is unfounded. The respondent initially offered the position to another candidate from the existing pool. The evidence adduced does not lead to the conclusion that abuse of authority occurred in the choice of process.

2. Was there abuse of authority in the application of merit?

[65] Once again, there is no evidence that allows for such a conclusion.

[66] The complainant alleged that the respondent gave the appointee an unfair advantage by lowering the linguistic profile requirements. She argued that transferring a position from another directorate and assigning it the BBB language requirement when it was identified as similar to the position from the 2020 process (numbered 20-RCM-IA-N-N-NCR-CHRO/HRPPS-94942), which required a CBC linguistic profile, represented a change to the merit criteria related to the position based on the appointee’s profile, to ensure his appointment. According to the complainant, it constituted personal favouritism.

3. Was there personal favouritism?

[67] Although the complainant claimed that personal favouritism influenced the choice of process and the assessment of merit, no evidence supports this allegation. According to the Board’s consistent case law, personal favouritism is at issue when the appointee was chosen not based on their qualifications but on the grounds of their personal relationship with the decision maker (see *Glasgow*, at paras. 36 to 41). That is not so in this case.

[68] Personal favouritism requires evidence (either direct or circumstantial) that demonstrates a personal relationship. At paragraph 39 of *Glasgow*, the Board emphasized that s. 2(4) of the *PSEA*, which defines “abuse of authority”, specifically refers to “personal favouritism”, thus excluding any other form of favouritism by

adding the word “personal” before “favouritism”. I would say that personal favouritism is a subcategory of general favouritism, when the reason for the preference is a personal relationship. Thus, favouritism in general can have a varied or broader basis under the circumstances. In other words, not all favouritism is necessarily personal favouritism.

[69] For example, paragraph 141 of *Desalliers* illustrates what can be deemed personal favouritism. It includes notably changing a Statement of Merit Criteria based on a candidate’s profile or modifying a position’s essential qualifications to ensure that someone is appointed. That is precisely what the complainant alleged took place in this case. Essentially, she maintained that the respondent altered the merit criteria by lowering the linguistic profile from CBC to BBB, to ensure that the appointee was appointed.

[70] However, contrary to those allegations, no changes were made to the merit criteria or the essential qualifications for the position that is the subject of this complaint. The respondent explained that the position that was transferred under his direction would have been created in 2012 with a BBB linguistic profile, even before his transfer to the CSPPP Unit. He stated that he considered the fact that the position might require a higher level, but he found nothing to that effect, and he left the position with the BBB linguistic profile. He added that he offered the same position to another candidate from the pool created from the results of the 2020 process (numbered 20-RCM-IA-N-N-NCR-CHRO/HRPPS-94942) before offering it to the appointee. That testimony was not challenged in any way. In this context, I believe that the complainant’s allegations are unfounded.

[71] The issue of whether the respondent abused its authority in the application of merit is determined based on the circumstances surrounding each case. In this case, it is uncontested that the position in question had a BBB linguistic profile and that the appointee met the BBB language requirements on appointment. It is also uncontested that the appointee had been placed in the pool of partially qualified candidates for the 2020 process (numbered 20-RCM-IA-N-N-NCR-CHRO/HRPPS-94942), which had the same criteria except for the language requirements.

[72] The fact that the appointee was appointed using the results of that process for a position with a BBB linguistic profile may be seen negatively, but it does not mean that

the respondent altered the merit criteria to give the appointee an unfair advantage. It decided to proceed by a non-advertised process, as provided by the *PSEA*, and the circumstances of this case are not such that one can state that the appointee did not satisfy the selection criteria or the process that was used.

[73] Under the provisions of s. 30(2)(a) of the *PSEA*, language proficiency is part of the essential qualifications and merit, and the respondent decided to keep it at BBB. The evidence adduced in the file indicated that the appointee was eligible as part of another process for a similar position and met the BBB language criteria. The respondent had the discretionary power to determine the essential qualifications, including those involving the language requirements. It does not appear that that power was used unreasonably or abusively.

[74] The complainant also alleged that the decision's wording did not contain the necessary information to justify the assessed qualifications. She also questioned the fact that the acting appointment was not mentioned in the Articulation of Selection Decision document, even though it is the same position and that it was filled in a non-advertised manner.

[75] The Articulation of Selection Decision, which Mr. Caron emailed to the chief human resources officer on May 9, 2023, reads as follows:

...

I am writing today as your approval is required to proceed forward with the non-advertised appointment of [redacted] at the PE-05 group and level as the Manager, Corporate Staffing - Member Policy within CSPPP.

Background:

- *[Redacted], the current Manager, Corporate Staffing - Member Policy, informed me in March 2023 of her intention to retire and her desire to transition out of her role for the remainder of the fiscal year.*
- *[Redacted] participated and qualified up to the imperative CBC/CBC linguistic requirements in a PE-05 process ran [sic] by CSPPP back in 2020. [Redacted] was put in a partially qualified pool. This is the same process that saw [redacted], [redacted] and [redacted] qualified as well.*
- *Due to changes in HR PSP, I was provided with the opportunity to have a PE-05 with a linguistic profile BBB/BBB.*

- [Redacted] has worked with LRDG and on its own time to maintain and improve his second language and was recently assessed at the BBB level in French.
- [Redacted] has carried out acting at the PE-05 group and level on numerous occasions in the past, most notably while working with the National Promotions Unit administrative processes and reporting abilities back in 2021 and the National Recruiting Program Processing unit, an on-site assessment at Depot in 2022.
- The CSPPP PE-05 process I mentioned above identified the PE-05 positions as imperative CBC only. A non-advertised process would meet the threshold of the staffing guiding principles as I am looking to appoint [redacted] to an imperative BBB position.
- A priority clearance was done and received. The notifications (Notification of consideration and Notification of appointment/Proposed Appointment) will provide opportunity to address/meet the guiding principles, providing accessibility, fairness and transparency.

I am available to discuss this request at your convenience. A reply to this email with your approval would suffice for the staffing file.

Thank you for your time and considering this request.

...

[76] Although the Articulation of Selection Decision does not indicate that the appointee held the position on an acting basis, it includes the necessary information. The email contains a description of the reasons that led to choosing the non-advertised appointment process, as well as the reasons justifying choosing the appointee and how the choice was made.

[77] In addition, the evidence presented at the hearing detailed the appointee's assessment in the process numbered 20-RCM-IA-N-N-NCR-CHRO/HRPPS-94942, the results of which were used for the appointment. That uncontested evidence indicated that the appointee was placed in the pool of partially qualified candidates. Given that the appointee had already been assessed, I believe that the email contains the information necessary to justify the appointment. The email's contents do not appear deceptive, as the complainant alleged. It indicates that the named person "partially" qualified in a similar process, which required a CBC linguistic profile, but the appointee had only a BBB level.

[78] Once again, the complainant did not contest that the appointee participated in an advertised process for a similar position and partially qualified for it. The job description for that position and the appointee's assessment were also adduced as

evidence. Mr. Caron also explained that during the assessment, he requested cover letters, held interviews, and verified employment references. He specified that the ability to manage a team was assessed through a scenario during the interview. The argument that the appointment was arbitrary is unfounded.

[79] The appointee met the merit criteria that the respondent determined, and the respondent had the power to determine the qualifications that it deemed necessary, including the language requirements, which it did by keeping the position at BBB. Although the complainant alleged that the respondent lowered the language requirements for the sole purpose of favouring the appointee, it initially offered the position to another person in the pool. In the circumstances, there is no evidence that the appointee's appointment contravened the principle of merit.

[80] I conclude that the complainant did not demonstrate abuse of authority in the application of merit.

[81] The complainant represented herself. A constant challenge arose distinguishing facts, evidence, and arguments. Her argument consisted of allegations, pure-and-simple statements, suspicions, personal opinions, and speculations. Those do not constitute evidence. Without material facts and supporting evidence, they could not have established that an abuse of authority took place.

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

(The Order appears on the next page)

V. Order

[83] The complaint is dismissed.

April 22, 2025.

FPSLREB Translation

**Goretti Fukamusenge,
a panel of the Federal Public Sector
Labour Relations and Employment Board**