Date: 20250429

File: 771-02-47151

Citation: 2025 FPSLREB 45

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

BRIAN TRAINOR

Complainant

and

DEPUTY HEAD
(Correctional Service of Canada)

Respondent

and

OTHER PARTIES

Indexed as
Trainor v. Deputy Head (Correctional Service of Canada)

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

Before: Adrian Bieniasiewicz, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself

For the Respondent: Frédérique Jacquart-Ducharme, counsel

For the Public Service Commission: Maude Bissonnette Trudeau

Heard via teleconference,
July 24, 2024.

REASONS FOR DECISION

I. Complaint before the Board

[1] This complaint pertains to an appointment to a manager position ("the position") with the Correctional Service of Canada ("CSC") at its National Satellite Training Academy ("the academy") on an acting basis. It is classified at the AS-07 group and level and is located in Summerside, Prince Edward Island.

[2] The complainant, Brian Trainor, made this complaint under ss. 77(1)(a) and (b) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; "*PSEA*"). He alleges that the deputy head of the Correctional Service of Canada ("the respondent") abused its authority in the assessment of his application and by choosing a non-advertised appointment process. He further claims that the respondent showed personal favouritism toward the person appointed ("the appointee") by reappointing her to the position and that more broadly, it failed to uphold the values of the *PSEA*.

[3] The complainant also alleges that the respondent discriminated against him on the ground of disability by screening him out of the appointment process despite his Internal Permanent Accommodation Status ("IPAS").

[4] The respondent denies the complainant's allegations and requests that the Board dismiss the complaint.

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

[6] For the following reasons, I find that the complainant did not establish that the respondent abused its authority. As a result, I dismiss the complaint.

II. Summary of the evidence

[7] The complainant testified on his own behalf. He did not call any witnesses. The respondent called two witnesses, Kristi Reilly, National Manager of the Duty to Accommodate Program, and Chantal Lachance, Director of Management of Learning Solutions, both with the CSC.

[8] The complainant has been employed with the CSC for approximately 30 years. He has held senior management positions for much of that time. For the last 25 years, he has overseen security operations for correctional officers, inmates, and training staff, including an emergency response team. He has also supervised staff and inmates.

[9] In 2022, due to an injury on duty, the complainant was granted IPAS within the CSC. In other words, he had duty-to-accommodate status within the CSC.

[10] At the time the non-advertised appointment process at issue was undertaken in early 2023, the complainant was on assignment as an Acting Coordinator, Harassment and Violence Prevention, at the CSC's national headquarters. However, his substantive position remained that of an indeterminate AS-07 Assistant Warden of Interventions at CSC's Joyceville Institution in Kingston, Ontario, which he had held prior to his relocation to Prince Edward Island around 2022.

[11] After learning that he had been unsuccessful in securing the acting appointment, he deployed to a position with the CSC's Harassment and Violence Prevention Team classified at the AS-05 group and level.

A. IPAS confers no right to appointment

[12] IPAS is a status within the CSC. It is available to CSC employees who cannot remain in or return to their substantive positions due to permanent limitations, restrictions, or accommodation needs. Employees with IPAS are considered first for indeterminate or temporary positions of six months or longer within the CSC. There are no promotional opportunities through IPAS. An employee with IPAS can be placed at their current or a lower level but never at a higher level. The names and contact information of employees with IPAS are entered into CSC's internal database.

[13] A manager seeking to fill a vacant indeterminate or temporary position of six months or longer must consult the IPAS database, to identify whether any suitable IPAS employees must be considered. If a suitable candidate is identified, the IPAS coordinator or their subordinate will provide the hiring manager with the employee's contact information. The manager will then reach out to the employee, to gauge their interest in the position. If the hiring manager determines after an assessment that the IPAS employee is suitable for the position, they will be offered it. If, however, the

hiring manager determines that the IPAS employee is not qualified, they will notify the person managing the IPAS database and provide reasons for their decision. That step is necessary to obtain the clearance to continue with the staffing process.

B. The position was temporary and managed on rotational basis

[14] The academy is a temporary solution to address the training needs of CSC employees. Its funding is temporary and is approved yearly by the CSC's Executive Committee. Everyone working at the academy is on an assignment or on a rotational basis. There are no opportunities to be appointed there indeterminately.

[15] Broadly speaking, the responsibilities associated with the position pertain to overseeing the CSC's National Correctional Training Program ("the Correctional Training Program"). Specifically, the manager of the academy oversees a team of trainers and administrative staff, ensures the efficiency of the operations, and is responsible for the safety of recruits and their environment. In addition, the manager is responsible for applying, reviewing, updating, and developing procedures to ensure program compliance and alignment with CSC's policies. Financial oversight, including budget management and contract implementation, is also an important component of the position. Furthermore, the manager is required to provide strategic recommendations to the director and the director general of the CSC's Learning and Development Branch and to contribute to the Correctional Training Program's overall success and improvement.

C. The complainant was considered for the position

[16] Ms. Lachance testified that upon her arrival at the CSC on February 15, 2023, she was confronted with urgent, sensitive, and complex matters. In addition, the appointee's initial appointment to the position on an acting basis was ending. It had to be staffed quickly, to help the CSC maintain and achieve business continuity. It needed a highly qualified employee for the position, to ensure that the academy's Correctional Training Program was delivered properly. The CSC relies on the academy to train and prepare new correctional officers. The academy is key to its operations. Ms. Lachance had to ensure that the CSC could meet its mandate. In short, the position had to be staffed with a very experienced manager who had a deep understanding of the Correctional Training Program and significant experience working with CX-03 trainers.

[17] Ms. Lachance looked at her staffing options. However, given the context at the academy and the operational needs, she had no time to go through an advertised process. She decided to continue with the non-advertised appointment process initiated by Julie Rodrigue, Acting Director, Management of Learning Solution, prior to her arrival. In Ms. Lachance's words, it would have made no sense to stop the non-advertised process and start an advertised process, given the operational needs at that time.

[18] The hiring manager complied with the IPAS requirements. Specifically, Ms. Rodrigue, who initiated the appointment process before Ms. Lachance's arrival, queried the IPAS database to determine whether any CSC employees with IPAS had to be considered for the position. On January 27, 2023, she was notified by email that the complainant had to be considered for the position. In that email, the author also provided a table with the complainant's contact information and accommodation needs. The table included a column titled "Manager's Comments", in which the manager was to provide their comments on the IPAS candidate's assessment. The email's author reminded the manager of the CSC's duty to accommodate to the point of undue hardship and to make sincere efforts to explore and secure alternative positions (considering both temporary and permanent alternative work arrangements) for IPAS employees. She concluded the email by stating that "**IPAS priorities do not necessarily need to meet the essential criteria immediately**, as opportunities for on-the-job learning and/or job shadowing should be provided wherever possible" [emphasis in the original]. I will address this last sentence in my analysis and reasons section, to dissipate any confusion that may arise from it.

[19] As required, Ms. Rodrigue informed the complainant of the staffing process by an email dated February 3. She attached the statement of merit criteria (SMC) for the position and asked him to explain how he met the education requirements and experience qualifications that were outlined in the SMC. According to the SMC, the position required a degree from a recognized post-secondary institution or an acceptable combination of education, training, or experience. The three experience qualifications for the position were 1) experience managing national learning programs, 2) experience designing and implementing business processes, and 3) experience managing human and financial resources ("the experience qualifications"). The experience qualifications were part of the position's essential qualifications. The

email also stated that once the requested information was provided, a further assessment would be arranged, if appropriate.

[20] By email dated February 8, the complainant informed Ms. Rodrigue that he was interested in the position. He submitted his résumé and a cover letter outlining how he met the education requirements and experience qualifications. In his view, he met or exceeded the requirements for the position. Ms. Rodrigue decided to assess the complainant further. To that effect, two days later, she asked him to provide her concrete examples and to elaborate more on the experience qualifications. On February 14, the complainant sent an email elaborating how, in his view, he met them.

[21] As indicated earlier in this decision, on February 15, 2023, Ms. Lachance was appointed as the director, management of learning solutions. She replaced Ms. Rodrigue, who had initiated the appointment process. Ms. Rodrigue briefed Ms. Lachance about the process and the CSC's needs. Ms. Lachance continued with the process. To assess the complainant's experience qualifications based on the information that he provided in his February 14 email, Ms. Lachance convened a selection board. It was composed of three managers and one director, including Ms. Rodrigue and herself. The selection board members individually assessed the examples that the complainant provided and then reconvened, to discuss their assessments.

[22] On February 21, Ms. Rodrigue informed the complainant by email that the selection board's view was that he did not provide enough concrete and specific examples to address the experience qualifications. She concluded the email by informing him that this was his last opportunity to provide concrete and specific examples relating to the experience qualifications. If he failed to, he would be screened out of the process. Ms. Lachance testified that the examples that the complainant provided in his February 14 email were very generic and lacked detail, specifically on the two following experience criteria: 1) managing national learning programs, and 2) designing and implementing business processes.

[23] On February 22, as requested, the complainant submitted additional information, to demonstrate how he met the three experience qualifications. After having reviewed it, the selection board concluded that his example related to the experience criterion of managing national learning programs was mostly about monitoring and ensuring that staff members completed their training rather than

managing national learning programs. In its view, his example focused largely on compliance with mandatory training. As for the experience criterion of designing and implementing business processes, it concluded that the complainant failed to provide details on business processes, which is a step to identify projects. More specifically, he did not provide information on how business processes are designed and implemented. Rather, he just named the projects that he had worked on.

[24] The complainant was not interviewed. Ms. Lachance testified that the complainant was given the opportunity to demonstrate in writing that he would be a good candidate but that unfortunately, he did not succeed. As a result, he was screened out of the process. She explained that although an interview was not a requirement to assess candidates for the position, the selection board would have evaluated the rest of the merit criteria and would probably have interviewed the complainant had he demonstrated that he met the experience qualifications.

[25] In their testimonies, both Ms. Lachance and Ms. Reilly addressed the statement that the author of the email dated January 27, 2023, made, according to which "**IPAS priorities do not necessarily need to meet the essential criteria immediately**, as opportunities for on-the-job learning and/or job shadowing should be provided wherever possible" [emphasis in the original]. In their view, the possibility of offering on-the-job learning or job shadowing depends on factors such as the duration of the staffing, the nature of the position and its responsibilities, and operational needs. Ms. Lachance was aware of that option. However, considering the temporary nature of the position and given the CSC needs described earlier in this decision, she could not place someone in the position who did not immediately meet the merit criteria. It could have compromised delivering the academy's mandate.

[26] Ms. Lachance confirmed that the complainant's disability was not a consideration in the decision to screen him out of the appointment process.

[27] By email dated February 23, 2023, Ms. Rodrigue informed the person responsible for managing the IPAS database that after three attempts, the complainant failed to demonstrate and provide clear and concrete examples that he met the experience qualifications. She indicated that therefore, he would not be considered further in the process. As a result, the IPAS clearance to proceed with the appointment process was granted on February 27.

D. The appointee was appointed on an acting basis for nine months

[28] The appointee met all the essential qualifications. The complainant does not dispute her qualifications or suitability for the position. The respondent appointed her to the position on an acting basis from March 17, 2023, to December 29, 2023. In practical terms, this extended her initial appointment by over nine months.

[29] Ms. Lachance assessed the appointee's essential qualifications, based on the appointee's performance appraisal reports and résumé and the reference checks. She prepared a detailed narrative assessment of the appointee against the SMC.

[30] Ms. Lachance also prepared a document setting out the articulation of the selection decision. In it, she justifies the appointee's appointment and states the need for a highly experienced manager with in-depth understanding of the Correctional Training Program and extensive experience working with the CX group. She indicates that the appointee demonstrated that she possessed the required ability, leadership, knowledge, and experience to manage the academy and to ensure proper program delivery during a challenging period for the academy. She justifies using a non-advertised process to staff the position by citing operational needs and noting that the position is managed on a rotational basis, as the academy is considered a temporary training site.

[31] The appointee is no longer in the position, which is still rotational.

III. Analysis and reasons

[32] The complainant alleges that the respondent abused its authority in the application of merit and the choice of process. Specifically, he contends that the respondent demonstrated personal favouritism toward the appointee, failed to assess his application, and did not uphold the values of the *PSEA*. Furthermore, he alleges that it discriminated against him by not offering him the position first, as required by his IPAS, despite his qualifications for the role. I disagree.

A. Abuse of authority, in general

[33] The *PSEA* does not provide a definition of what constitutes an abuse of authority. However, at s. 2(4), it provides that the concept of "abuse of authority" shall be construed as including bad faith and personal favouritism. The term "including" in that provision suggests that wrongdoings other than bad faith and personal

favouritism can amount to abuse of authority (see *Canada (Attorney General) v. Lahlali*, 2012 FC 601 at paras. 33 to 35; and *Ghafari v. Deputy Head (Statistics Canada)*, 2022 FPSLREB 77 at para. 66).

[34] Abuse of authority is a serious wrongdoing or flaw in a hiring process (see *Portree v. Deputy Head of Service Canada*, 2006 PSST 14 at para. 47). A mere error, omission, or improper conduct will not justify the Board's intervention. The impugned conduct, error, or omission must be unreasonable, unacceptable, or outrageous in some way such that Parliament could not have intended the person with the authority to exercise its discretion in this manner (see *Davidson v. Canada (Attorney General)*, 2021 FCA 226 at para. 25). In other words, the complainant must demonstrate that on a balance of probabilities, serious wrongdoing or a major flaw occurred in the appointment process at issue (see *Monfourny v. Deputy Head (Department of National Defence)*, 2023 FPSLREB 37 at para. 70).

B. The respondent did not abuse its authority by choosing a non-advertised process

[35] The respondent justified the decision to use a non-advertised process based on operational needs. Moreover, because the complainant was granted IPAS, he was considered for the position, and his qualifications were assessed. He did not demonstrate how the respondent's decision to proceed with a non-advertised process constituted an abuse of authority.

[36] Aside from selecting the box on the complaint form corresponding to abuse of authority in the choice of process under s. 77(1)(b) of the *PSEA*, the complainant did not provide any details in his complaint or testimony to support this allegation. In other words, he did not explain why, in his view, proceeding with a non-advertised process to staff the position constituted an abuse of authority.

[37] The mere choice of a non-advertised process does not, in itself, constitute an abuse of authority. The complainant must demonstrate that on a balance of probabilities, the respondent's decision to use a non-advertised process constituted an abuse of authority (see *McConnell v. Deputy Head (Department of Foreign Affairs, Trade and Development)*, 2023 FPSLREB 109 at para. 93).

[38] Section 33 of the *PSEA* specifically allows the Public Service Commission (and, by extension, the person to whom staffing authority is delegated; in this case, the

respondent) to choose between an advertised and a non-advertised process to staff a position. Section 33 reads as follows: "In making an appointment, the Commission may use an advertised or non-advertised appointment process."

[39] Accordingly, deputy heads and their delegated managers enjoy broad discretion in the choice of appointment process (see *Haller v. Deputy Head (Department of National Defence)*, 2022 FPSLREB 100 at para. 60). Of course, despite that broad discretion, a decision to proceed with a non-advertised process may constitute an abuse of authority if it is motivated by improper intent or purpose. However, the complainant did not tender any evidence demonstrating that the respondent's decision to proceed with that process was influenced by improper considerations. I reiterate that despite the use of a non-advertised process, by virtue of his IPAS, the complainant was considered and assessed for the position. The fact that he was found not qualified did not, in itself, establish that the respondent abused its authority in the choice of process.

[40] As the hiring manager explained in the document setting out the articulation of the selection decision and confirmed in her testimony, the respondent chose to proceed with a non-advertised process due to pressing operational needs that had they been unmet, could have compromised delivering the academy's mandate. Specifically, the appointee's acting appointment was about to end. To ensure the proper delivery of the Correctional Training Program, the position had to be filled quickly with an experienced manager having in-depth understanding of the program and significant experience working with the CX group. Furthermore, as previously mentioned, the academy was going through a challenging phase. This evidence was not challenged.

[41] For these reasons, I find that the complainant did not establish that the respondent abused its authority by choosing a non-advertised process to staff the position.

C. The respondent did not personally favour the appointee

[42] The complainant did not present any evidence to establish that personal favouritism played a role in appointing the appointee. There is no shadow of a doubt that personal favouritism has no place in the staffing system. Personal interests, such as a personal relationship between the person making the selection and the appointee, should never be a factor in or influence an appointment decision (see *Glasgow v.*

Deputy Minister of Public Works and Government Services Canada, 2008 PSST 7 at para. 41). Parliament explicitly emphasized that personal favouritism constitutes an abuse of authority (see ss. 2(4) of the *PSEA*). An appointment must be made on the basis of merit (see s. 30(1) of the *PSEA*).

[43] Evidence of personal favouritism can be direct, such as clear proof of a close personal relationship between the person making the selection and the appointee. However, more often it will rely on circumstantial evidence that requires examining the actions, comments, or events that led to and that occurred during the appointment process at issue (see *Glasgow*, at para. 44). However, mere perceptions or suspicions of personal favouritism or the fact that the complainant is disappointed at not being appointed or considers himself more qualified than the appointee are not sufficient to establish personal favouritism. To succeed, a complainant must demonstrate that on a balance of probabilities, the appointee was selected due to personal favouritism.

[44] In this case, the facts suggest that the appointee was appointed to the position not because of personal favouritism but rather because she was qualified. Moreover, the complainant does not dispute that she met all the essential qualifications and that she was appointed based on merit. The facts also suggest that the complainant was unsuccessful in the process not because the respondent personally favoured the appointee but rather because he did not meet the essential qualifications.

[45] In short, the complainant did not establish that the respondent appointed the appointee based on improper motives, such as personal favouritism. No evidence was presented as to the nature and scope of the relationship between the hiring manager and the appointee. The complainant's disappointment at not being appointed to the position is entirely legitimate. However, in the absence of evidence demonstrating that personal favouritism occurred in the appointment process, I dismiss this allegation.

D. No abuse of authority occurred in the complainant's assessment

[46] The complainant did not establish that on the balance of probabilities, the respondent abused its authority in applying merit, particularly in the assessment of his application.

[47] The respondent's decision not to use an interview to assess the experience qualifications did not constitute an abuse of authority, as alleged by the complainant.

Section 36(1) of the *PSEA* expressly provides that the PSC, or its delegate, may use any assessment methods that it considers appropriate to assess qualifications. It reads as follows:

> ***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 qualifications referred to in paragraph 30(2)(a) and subparagraph 30(2)(b)(i).*
>
> ***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 possède les qualifications visées à l'alinéa 30(2)a) et au sous-alinéa 30(2)b)(i).*

[48] Of course, the broad discretion to decide which assessment method to use to assess a given qualification is not absolute. The chosen method must not be unreasonable, and it must allow the qualifications in the statement of merit criteria to be properly assessed (see *Jacobsen v. Deputy Minister of Environment Canada*, 2009 PSST 8 at paras. 36 and 37). As an aside, it is noteworthy that according to Ms. Lachance's testimony, had the complainant demonstrated that he met the experience qualifications, the selection board would have evaluated the remaining merit criteria and likely would have interviewed him.

[49] In this case, the respondent chose to assess the experience qualifications in writing. While the complainant would have preferred an interview either instead of or in addition to a written explanation of how he met them, he did not demonstrate how the respondent's chosen assessment method constituted an abuse of authority.

[50] To be precise, the complainant was given three opportunities to demonstrate in writing that he met the experience qualifications. The first opportunity arose after Ms. Rodrigue's February 3, 2023, email, in which she asked him to explain how he met them. The SMC was included with the email. On February 10, she emailed him again, requesting concrete examples and further elaboration on the experience qualifications, to better assess him. In response, he provided examples and explanations on February 14, but the selection board deemed them unsatisfactory. As a result, he was given a third opportunity to demonstrate that he met the experience qualifications.

Unfortunately, the selection board determined that based on the information that he provided, he did not meet them.

[51] Specifically, as Ms. Lachance explained, the example related to the managing national learning programs criterion primarily focused on ensuring compliance with mandatory training (i.e., monitoring and confirming that staff complete mandatory training) rather than managing national learning programs. As for the designing and implementing business processes criterion, the complainant did not explain how business processes were designed and implemented; he merely listed the projects that he had worked on.

[52] The complainant did not provide any evidence to show that the assessment was flawed or otherwise done in bad faith. I also note that he and the appointee were assessed against the same SMC. It is not enough that he made a blanket statement claiming that he had the required experience. My role is not to reassess the complainant based on the examples that he provided to the selection board but instead to determine whether abuse of authority occurred (see *Thompson v. Deputy Head (Department of Employment and Social Development)*, 2022 FPSLREB 90 at para. 82). Based on the evidence that was presented, I am unable to conclude that the respondent abused its authority in the assessment of merit.

[53] I agree with the respondent that IPAS does not guarantee an appointment. It cannot. Even an employee with IPAS must meet all the essential qualifications established for a position, to be appointed. In its general submissions and those under its *Appointment Policy*, the PSC points out correctly that all appointments to or from within the public service must be based on merit, with the exception of acting appointments of less than four months (see s. 14(1) of the *Public Service Employment Regulations* (SOR/2005-334)) and casual appointments (see s. 50 of the *PSEA*). Indeed, appointing an employee who does not meet all the essential qualifications — subject to the exceptions just mentioned — would contravene s. 30(2) of the *PSEA*, which states in part as follows:

30 (2) *An appointment is made on the basis of merit when*	***30 (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***	***a)*** *selon la Commission, la personne à nommer* ***possède les***

the essential qualifications *for the work to be performed, as established by the deputy head, including official language proficiency; and*	***qualifications essentielles*** *— notamment la compétence dans les langues officielles — établies par l'administrateur général pour le travail à accomplir;*
…	[…]

[Emphasis added]

[54] Consequently, the statement made by the author of the January 27, 2023, email that "**IPAS priorities do not necessarily need to meet the essential criteria immediately**, as opportunities for on-the-job learning and/or job shadowing should be provided wherever possible" [emphasis in the original] cannot be interpreted as permitting an employee to be **appointed** to a position without them meeting all the essential qualifications established for that position. That being said, I would like to note that opportunities other than appointments can provide employees with possibilities for on-the-job learning or job shadowing.

[55] In this case, I accept the respondent's explanation that it was not possible to provide the complainant with an opportunity for on-the-job learning or job shadowing in the position, considering the context and the pressing operational needs detailed in the articulation of the selection decision, as described earlier in this decision. The complainant did not challenge the articulation of the selection decision, which is consistent with Ms. Lachance's overall testimony.

E. There is no *prima facie* case of discrimination

[56] The complainant did not make out a *prima facie* case of discrimination on the basis of disability. Disability was not a factor in him not being appointed to the position.

[57] The Board may interpret and apply the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; "*CHRA*"), in the context of a complaint made under s. 77 of the *PSEA* (see s. 80 of the *PSEA*). Section 7 of the *CHRA* prohibits refusing to employ or continuing to employ any individual or, in the course of employment, differentiating adversely in relation to an employee on a prohibited ground of discrimination. Section 3 of the *CHRA* lists the prohibited grounds of discrimination. Disability is one of them.

[58] In the human rights context, the complainant has the evidentiary onus to prove a *prima facie* case of discrimination. In *Ont. Human Rights Comm. v. Simpsons-Sears,* [1985] 2 S.C.R. 536 at para. 28, the Supreme Court of Canada articulated this evidentiary burden as follows:

> *28 … The complainant in proceedings before human rights tribunals must show a* prima facie *case of discrimination. A* prima facie *case in this context is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent-employer.…*

[59] Specifically, a complainant alleging discrimination is required to demonstrate the following (see *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33):

1) they have a characteristic or characteristics protected from discrimination under the *CHRA*;
2) they experienced an adverse impact; and
3) the protected characteristic or characteristics was or were a factor in the adverse impact.

[60] If the complainant establishes a *prima facie* case of discrimination, then the burden shifts to the respondent to refute the allegation of *prima facie* discrimination, justify its decision or conduct, or do both (see *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, at para. 64).

[61] The complainant need not demonstrate that his disability was the sole or the main factor in the decision not to appoint him to the position. He has only to demonstrate that his disability was a factor in the decision not to offer him the position. As such, he must establish a nexus between his disability and the respondent's decision to screen him out of the appointment process.

[62] The complainant alleges that the respondent discriminated against him on the grounds of disability by excluding him from the appointment process despite his IPAS. I disagree.

[63] It is undisputed that the complainant satisfies the first two criteria of the three-pronged test. First, he possesses a characteristic protected from discrimination: his disability. Second, he experienced an adverse impact, as he was screened out of the appointment process and consequently was not offered the position. However, he did

not offer any evidence to demonstrate that his disability was a factor in the respondent's decision to screen him out.

[64] It is insufficient to merely assert that he was not selected for the position because of his disability. More is required (see *Srivastava v. Deputy Head (Department of Health)*, 2024 FPSLREB 1 at para. 88).

[65] Therefore, I conclude that the complainant failed to establish the necessary nexus between his disability and the decision not to appoint him to the position. In other words, he did not make out a *prima facie* case of discrimination on the basis of disability.

[66] Although the aforementioned is dispositive of the discrimination allegation, I would like to note that the complainant did not challenge Ms. Lachance's testimony that his disability was not a factor in the decision to screen him out of the process. The undisputed evidence sets out that the sole reason the complainant was screened out was that he did not meet the merit criteria. Specifically, he did not have the experience qualifications.

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

(The Order appears on the next page)

IV. Order

[68] The complaint is dismissed.

April 29, 2025.

Adrian Bieniasiewicz,
a panel of the Federal Public Sector
Labour Relations and Employment Board