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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

TRACY COATES

Complainant

and

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

Respondent

and

OTHER PARTIES

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

In the matter of a complaint of abuse of authority — section 77(1)(a) and (b) of the
Public Service Employment Act

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

For the Complainant: Janelle Bucci, Union of Safety and Justice Employees

For the Respondent: Rebecca Ro, counsel

For the Public Service Commission: Marc-Olivier Payant, senior analyst

Heard at Toronto, Ontario,
August 27, 2024.

REASONS FOR DECISION

I. Complaint before the Board

[1] On August 25, 2022, the Royal Canadian Mounted Police (“the respondent” or RCMP) posted a “Notice of Acting Appointment” (NAA) of an appointee (“the appointee”) to an administrative supervisor position classified at the CR-05 group and level and located in its O Division, Toronto North Detachment, Transnational Serious and Organized Crime (TSOC), in Toronto, Ontario. It was from September 6, 2022, to March 18, 2024. It resulted from a non-advertised appointment process numbered 22-RCM-ACIN-O-LON-GTSOC-NEW-110111.

[2] Tracy Coates (“the complainant”) made her complaint on August 29, 2022, under ss. 77(1)(a) and (b) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; “the Act”), in which she alleged that the respondent abused its authority by not assessing the successful candidate’s essential qualifications, not considering the complainant for the appointment and by choosing a non advertised appointment process.

[3] The Public Service Commission (PSC) did not appear at the hearing but instead provided written submissions addressing its relevant policies and guidelines. It took no position on the merits of the complaint.

[4] For the reasons that follow, I conclude that on a balance of probabilities, the complainant did not demonstrate that the respondent abused its authority. Therefore, the complaint is dismissed.

II. The circumstances of the acting appointment

[5] Inspector Timothy Dell’Anna testified on the respondent’s behalf. At all relevant periods in this matter, he was the officer in charge of the TSOC. The TSOC resulted from the merger of the respondent’s Serious Organized Crime (SOC) and Financial Crime units that occurred in February 2021.

[6] Before the merger, each unit was headed by a staff sergeant, who was a regular member of the RCMP, and was composed of two operational and administrative support clerks classified at the CR-04 group and level. In addition, the SOC had a supervisory position classified at the CR-05 group and level that eventually remained in the TSOC. When the CR-05 position’s incumbent went on her first maternity leave,

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rotating acting assignments were provided to all the CR-04s. The complainant acted twice.

[7] At the TSOC's inception, it was decided that some of the staff sergeant's financial functions would be delegated to the CR-05 position. When the incumbent returned from her leave, and after the TSOC was established, the incumbent left on another maternity leave. Insp. Dell'Anna testified that after consulting the staff sergeant and the incumbent, before she left on her second maternity leave, he determined that with the addition of the new financial functions to the CR-05 position, those occupying the CR-04 positions in the TSOC did not possess the requirements to fulfil all the functions of the CR-05 position.

[8] Insp. Dell'Anna testified further that after he consulted an organization called "PS staffing", he determined that for operational reasons and expediency, the respondent would proceed with an appointment made by way of a non-advertised appointment process. He testified that the appointee's name surfaced from a previous staffing action that did not materialize. The appointee was with a separate organization within the respondent, was classified at the CR-04 group and level, and met the essential qualifications of the CR-05 position. He stated that he knew of her but that he had no previous connection to her, either professional or personal.

[9] The appointee remained in the position for two months before accepting another federal government position. Insp. Dell'Anna stated that her departure coincided with the return to work of a regular member of the RCMP who required a duty to accommodate and that that person was to take over the CR-05 functions until the incumbent returned.

III. The complaint and the allegations

[10] In her complaint form, the complainant stated the following:

... I was promised this Acting Appointment Administration Supervisor CR-5 position to start November 2022. The department has failed to do that. I was excluded from this appointment process. The department failed to assess me correctly. The department showed favoritism to the selected candidate. The department used a non-advertised appointment.

[11] She also made the following allegations:

1. *The department abused Its [sic] authority by not assessing the successful candidates' essential criteria correctly.*
2. *The department abused its authority by not considering the complainant as she met all the essential criteria and assets that the employer was seeking.*
3. *The department abused its authority by choosing the non-advertised selection process. The department chose the selection process to eliminate the complainant, the department knew she met all the essential criteria and assets, and they did not want to hire her.*

IV. Summary of the evidence

A. For the complainant

[12] The complainant aptly testified on her own behalf. She and her representative submitted a well-prepared book of documents to support her complaint.

[13] The complainant began her testimony by stating that she had worked in the public sector for more than 27 years as a CR-04 in what became the TSOC. She stated that during that period, she had held acting assignments. She claimed that she felt harassed and discriminated against because she was outspoken in the workplace. She spoke of an incident in which a sergeant asked to use her access code to access an information system, but she refused. She also spoke of an accidental discharge of a firearm inside the premises. No one was injured, but still, it left her so upset that she had to leave the office for the rest of the day. She stated that thanks to her union involvement, she was able to have a room dedicated to RCMP officers where they could clean their firearms.

[14] She then testified about her long experience in accounting and in information management systems and stated that she was the go-to person who provided answers to colleagues and teachers in training sessions. She entered her *résumé* into evidence and discussed her work experience and the courses that she had taken over the years. She testified that she acted in the CR-05 position twice, both before and at the moment the two organizations were joined. She also offered a comparison of her qualifications to those of the appointee, to demonstrate that she also qualified for the position.

[15] The complainant submitted into evidence her "Performance Evaluation Report" for 2022. She testified how she managed through the COVID-19 pandemic and how

demanding that period was and stated that she was proud of herself for achieving a “Succeeded Plus” performance rating.

[16] She testified that as for the acting opportunity, it was known that the incumbent was to take maternity leave, and the complainant was excited and looked forward to the prospect of an 18-month acting opportunity. However, the staff was called to a meeting in July 2022 to discuss staffing the CR-05 position. They were told that someone new, from outside the organization, would staff it. She stated that she was upset and that she took the rest of the day off.

[17] The complainant testified that there was no advertisement as to possibly acting in the CR-05 position, only the NAA. She claimed that she had all the essential qualifications and the required abilities to meet the position’s criteria. She discussed at length her qualifications, to set out how she met the position’s requirements.

[18] She referred to the respondent’s reply to the complaint, which states this:

... Based on her personal knowledge, the manager deemed the complainant not to meet the two finance-related asset experience criteria, namely Experience using a financial database, for example SAP (Systems, Applications & Products) or TEAM and Experience working with financial information....

...

[19] She claimed that she did not know the manager who made that assessment and how that person would have known her experience and qualifications.

[20] The complainant testified about a meeting she had with Insp. Dell’Anna when she returned from an equity conference that she attended in Winnipeg, Manitoba. She stated that she was proud to have been called upon to share with others what she had learned at the conference. However, in her meeting with the inspector, they discussed her staffing complaint, and he inquired, “What would make her happy?”, inferring that the appointee was a qualified CR-05, while she was not. She claimed that he was looking for a term of settlement while what was at issue for her was the pensionable service income that would affect her pension and the rest of her life.

[21] The complainant testified that during that same period, she won an AS-01 opportunity in a different location and that for personal reasons, she turned it down.

[22] She claimed that not having the opportunity to properly express her interest or to be assessed fairly hurt her. She felt that her union activity has hindered her career and that she felt embarrassed at not being appointed.

[23] She testified that the position was staffed for only 2 months and that it was left unfilled after the appointee departed. She stated that she was upset by the fact that 16 months of pensionable service were not assigned to someone, which constituted a cost-saving measure for the respondent. She felt very offended that management preferred leaving the position vacant for that period to appointing her.

[24] In her cross-examination, the complainant confirmed that she did not participate in the staffing process and that she was not involved in posting the NAA or assessing the appointee. Her opinion was that she met the position's financial-experience requirement.

B. For the respondent

[25] As stated earlier in this decision, the respondent called Insp. Dell'Anna to testify. He set out the history of this appointment process.

[26] He testified that he reviewed and approved the appointee's assessment. He reviewed every element of the statement of merit criteria and stated that the appointee met the essential merit criteria and all the "Other qualifications", which he testified were the asset qualifications. He added that he knew that the appointee held a Bachelor of Arts degree in finance along with a high-school diploma. He stated that overall, the appointee met all the position's essential and asset qualifications.

[27] During cross-examination, Insp. Dell'Anna stated that when he prepared for the staffing process, he considered the possibility of offering a rotating acting assignment, as he had done previously. He consulted his staff sergeant and the incumbent. He testified that his operational staff sergeant was also leaving, and that the new CR-05 could not have relied on her, which is why a rotational assignment would not have worked. He reiterated that for operational reasons and expediency, the respondent would proceed with an appointment made by way of a non-advertised appointment process.

[28] He confirmed that the appointee effectively stayed in the position for two months and that a regular RCMP member requiring duty-to-accommodate measures

took over the CR-05 functions for the remainder of the period. That is why the CR-05 position remained vacant until the incumbent returned. He stated that it is a normal way of functioning for a member with a duty to accommodate to take on clerical work.

V. Summary of the arguments

A. For the complainant

[29] The complainant's representative relied on *Ayotte v. Deputy Minister of National Defence*, 2009 PSST 21 at para. 143, to state that the respondent failed "... to complete a written rationale explaining how the non-advertised appointment process meets the established criteria and the four appointment values of fairness, transparency, access and representativeness." She argued from *Ayotte* that "[d]eputy heads must comply with this policy pursuant to section 16 of the *PSEA*."

[30] She then referred to *Hunter v. Deputy Minister of Industry*, 2019 FPSLREB 83 at para. 62, to argue that the choice of selection process should be supported by a written rationale.

[31] She referred to the PSC's argument that referred to s. 36 of the *Act* and that stated that the respondent may use the assessment method that it considers appropriate. However, she argued that personal knowledge of the appointee does not amount to an appropriate assessment method. She argued that the complainant was denied a complete assessment and that her experience applying s. 34 of the *Financial Administration Act* (R.S.C., 1985, c. F-11) was still valid, although it might be dated. She stated that leaving the CR-05 position vacant amounted to a cost-saving measure. She concluded by stating that the process was not transparent; hence, the appointment constituted an abuse of authority by the respondent.

B. For the respondent

[32] The respondent referred to ss. 30(1) and (2) of the *Act*. It also referred to *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8, *Glasgow v. Deputy Minister of Public Works and Government Services Canada*, 2008 PSST 7 at paras. 39 to 41, and *Portree v. Deputy Head of Service Canada*, 2006 PSST 14 at para. 46, to support the argument that there was no evidence of abuse authority in any way or of bad faith and that the appointee was a great fit for the position.

[33] The respondent argued it had the discretion to determine the qualifications and the assessment method, per ss. 31 and 36(1) of the *Act*. To support this argument, it referred to *Abi-Mansour v. Deputy Minister of Fisheries and Oceans*, 2021 FPSLRB 3 at para. 46, and *Jolin v. Deputy Head of Service Canada*, 2007 PSST 11 at para. 25.

[34] The respondent stated that the evidence established that the appointee met all the qualifications and that her “Narrative Assessment” clearly established how she met all the essential qualifications criteria. It also stated that the appointee was the right fit for the position.

[35] The respondent argued that the complainant claimed that she was not assessed properly and stated that under s. 30(4) of the *Act*, it is not required to consider more than one person for an appointment to be made based on merit. It also argued that there is no guaranteed right to a position, relying on *Jack v. Commissioner of the Correctional Service of Canada*, 2011 PSST 26 at para. 18.

[36] The respondent argued it had the discretion to decide the appointment process under s. 33 of the *Act*. It claimed that it had to move quickly to staff the position, that the appointee was the right fit, and that the appointee was releasable from her then-current position.

[37] The respondent submitted that the complainant failed to set out that an abuse of authority occurred and that there was an operational requirement for a new person in the CR-05 position because the needs had changed. It argued that there was no requirement to consider more than one person for the position. The respondent stated that Insp. Dell’Anna knew of the appointee but that he had no personal relationship with her.

[38] The respondent relied on *Lavigne v. Canada (Justice)*, 2009 FC 684 at paras. 53, 55 to 57, 60 to 62, and 86, *Broughton v. Deputy Minister of Public Works and Government Services*, 2007 PSST 20 at para. 54, and *Portree*.

VI. Reasons

[39] I will begin my analysis with the allegation under s. 77(1)(b) of the *Act*, which include an abuse of authority by the respondent in its choice between an advertised and a non-advertised appointment process. I will then turn to the analysis of the

allegations under s. 77(1)(a), which include that the respondent abused its authority in the application of the merit under s. 30(2).

A. Allegations under s. 77(1)(b) of the Act – choice of process

[40] The complainant alleged that the respondent abused its authority by choosing a non-advertised appointment process, to exclude her from the appointment process. She claimed that she was promised the acting appointment but that the respondent failed to keep the promise, failed to assess her correctly, and chose the appointment process to eliminate her and that the respondent knew that she met all the essential criteria and assets and did not want to hire her.

[41] The complainant had the burden of proof to demonstrate the respondent abuse its authority as stated in *Tibbs v. Canada (National Defence)*, 2006 PSST 8, para. 55. To succeed, the complainant had to demonstrate on a balance of probabilities or on the evidence that the respondent indeed abused its authority in how it assessed the appointee or in its choice of process.

[42] Section 33 of the Act provides that “[in] making an appointment, the Commission may use an advertised or non-advertised appointment process.” This implies that the mere fact of selecting a non-advertised process does not in itself constitute an abuse of authority by the respondent.

[43] The fact that the respondent chose a non-advertised appointment process did not constitute an abuse of authority. The circumstances surrounding the choice of process or the appointment itself will determine whether an abuse of authority occurred. Choosing a non-advertised appointment process is not an abuse of authority.

1. The promise

[44] The complainant stated in her complaint form that she was promised the acting position. However, she did not adduce any evidence whatsoever to prove that allegation. The simple statement by the complainant that a promise was made does not suffice to establish the creation of an obligation on the respondent’s part. The respondent referred to *Jack*, which states that “... there is no guaranteed right of access to every appointment that may arise.” That case in turn referred to *Jarvo v. Deputy Minister of National Defence*, 2011 PSST 6 at para. 32, which states, “Neither the PSEA nor PSC’s *Appointment Policy* guarantees an employee a right of access to every

appointment opportunity.” I find that the complainant had the false impression that the past process of rotational appointments would be repeated, hence the belief of a promise, in these circumstances the evidence established that it was not.

[45] Since there is no evidence that a promise of an acting appointment was made to the complainant or that such a promise would have established an obligation on the respondent, this allegation is not proven.

2. Exclusion from the appointment process

[46] The complainant alleged that she was excluded from the appointment process, that she was not considered for the acting position, and that choosing a non-advertised appointment process constituted an abuse of authority. She claimed that she was harassed and discriminated against because of her outspokenness and her union activity.

[47] The complainant argued that she acted in the CR-05 position previously and that she should have had the opportunity to be considered for the appointment. She relied on *Ayotte* and *Hunter* to affirm that a written rationale was required to support choosing a non-advertised appointment process.

[48] She referred to the PSC’s submission that recognized that under s. 36 of the *Act*, the PSC may use the assessment method it considers most appropriate to assess candidates. But she argued that the respondent used someone’s personal knowledge of the complainant to assess her, which was not a proper and complete assessment of her qualifications.

[49] Insp. Dell’Anna testified that after he consulted the incumbent and the staff sergeant, they considered the clerks within the unit and did not feel that the clerks were able to take over the CR-05 responsibilities. He also testified that the operational needs had changed and that he had to move quickly to staff the position. Insp. Dell’Anna confirmed that he knew the appointee from a previous appointment process, that she could be released from her organization, and that she was ready to start.

[50] Section 30(4) of the *Act* states that the respondent is not required to consider more than one person to make an appointment on the basis of merit. Consequently, the respondent was not required to consider anyone other than the appointee.

[51] The evidence from the inspector was that after consulting his staff sergeant and the incumbent, he concluded that he had to appoint someone from outside the organization whose qualifications would meet those in the statement of merit criteria. The justifications of both the selection-process decision and the choice of appointee were well supported in the “Public Service Staffing Action Request” form. Along with that form, the respondent submitted into evidence the appointee’s Narrative Assessment.

[52] Relying on *Ayotte*, the complainant argued that the respondent failed to act to ensure that its decision was supported by a written justification and that several mistakes were made throughout the appointment process. The errors that she invokes are related to her own assessment. However, her own assessment was not required in the circumstances of a non-advertised appointment process. She further failed to demonstrate that these errors constituted an abuse of authority.

[53] The Federal Court in *Lavigne* analyzed in depth the notion of abuse of authority, along with its definition and that of the merit criteria. It states at paragraph 61 that “... a complaint of abuse of authority will be deemed founded where bad faith or personal favouritism was established. The principle of bad faith requires an element of intent.”

[54] In this case, I find that the evidence of the justification of the choice of appointment process, both as heard from Insp. Dell’Anna during the hearing and as entered as documentary evidence, supports that decision. The complainant stated that she should have been appointed or at least been considered for appointment: however, she offered no evidence to support her allegations. Therefore, she did not demonstrate that an abuse of authority occurred in the choice of process.

3. The complainant’s assessment

[55] The complainant argued that the assessment of her qualifications was unfair and incomplete because she does not know who carried it out. Two elements are to be disposed of in that argument, which are her assessment and the requirement that she be assessed.

[56] Relying on *Jack*, the respondent argued that s. 30(4) of the *Act* provides that it was not required to assess more than one candidate for the appointment. As stated above, the employer was not required to consider the complainant.

[57] The inspector's testimony revealed that the staff sergeant and the incumbent considered the CR-04s on the team. However, because of the additional financial functions, they did not feel that the clerks were able to take over the CR-05 responsibilities. Although the complainant and the other CR-04s might disagree with the decision to proceed with a non-advertised appointment, the complainant failed to establish on a balance of probabilities that this constituted an abuse of authority.

[58] The complainant also alleged that the choice of the non-advertised appointment process was meant to exclude her because of her outspokenness and union activities. To support her allegation, she testified that following the accidental discharge of a firearm, she as a union representative advocated for designating a dedicated room for cleaning firearms.

[59] Although, this shows that she did act as a union representative, she failed to adduce any evidence to substantiate the claim that the respondent wanted to exclude her from the appointment because of her outspokenness or union activities. As such, she failed to establish on a balance of probabilities that the respondent abused its authority by choosing a non-advertised process.

B. The Respondent did not abuse its authority under s. 77(1)(a) of the Act – application of merit

[60] The complainant alleged that the respondent abused its authority by not assessing the appointee's essential criteria correctly.

[61] The adduced evidence clearly demonstrated that a statement of merit criteria was developed for the position at issue. Also in evidence was the appointee's Narrative Assessment against every item of the statement of merit criteria. It is a very extensive assessment. Each criterion has a narrative justification supporting how the appointee meets all the identified requirements. The complainant's argument was to the effect that she too met the qualifications, and although some of her experience might have been dated, it was still valid.

[62] As mentioned, I cannot substitute my evaluation of the appointee's qualifications for that of the assessor. The complainant had the burden of proof of demonstrating that, on a balance of probabilities, an abuse of authority occurred in the assessment of the appointee's qualifications. She failed to do so.

C. Allegations of favouritism toward the appointee

[63] Finally, the complainant alleged that the respondent demonstrated favouritism toward the appointee. However, she did not present evidence to support it. This allegation relies mainly on the fact that the appointment stemmed from a non advertised appointment process, not from a personal favoritism.

[64] Insp. Dell'Anna testified that he knew of the appointee, who came from a different organization, from a previous appointment process that was not productive. He testified that he had no personal relationship with her. The complainant's representative cross-examined him, but nothing came out that would have hinted toward favouritism concerning the appointee.

[65] The test to determine the presence of favouritism, known as the reasonable apprehension of bias, is well established. When conducting an appointment process, the question to be answered is whether a reasonably informed bystander could reasonably perceive bias on the part of one or more of the persons responsible for the assessment; if so, the Federal Public Sector Labour Relations and Employment Board ("the Board") can conclude that abuse of authority occurred (see *Gignac v. Deputy Minister of Public Works and Government Services*, 2010 PSST 10, *Drozdowski v. Deputy Head (Department of Public Works and Government Services Canada)*, 2016 PSLREB 33, and *Hansen v. Deputy Head (Department of Justice)*, 2022 FPSLREB 9).

[66] The evidence indicates that the inspector knew the appointee from a previous appointment process, and that he had no personal relationship with her. I find that the complainant failed to establish that on a balance of probabilities, that a reasonably informed bystander could reasonably perceive bias on the part of the respondent. I find that there is no evidence to support a claim of reasonable apprehension of bias either for the appointee.

[67] The complainant commented about the fact that the appointee remained in the position only for 2 months before accepting another position. She also commented that the position remained vacant for 16 months, which prevented others classified at the CR-04 group and level from benefitting from 16 months of pensionable service. She claimed that allowing that vacancy was nothing more than a cost-saving measure by the respondent.

[68] Those considerations, although important for the complainant, are not relevant in determining if the appointment respected the merit criteria. I am tasked with determining if there was abused of authority in the appointment process, and those considerations shed no light whatsoever on that determination.

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

(The Order appears on the next page)

VII. Order

[70] The complaint is dismissed.

May 29, 2025.

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