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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

OLIVIA LETEMPLIER

Complainant

and

DEPUTY MINISTER OF THE DEPARTMENT OF INDIGENOUS SERVICES

Respondent

and

OTHER PARTIES

Indexed as

Letemplier v. Deputy Minister of the Department of Indigenous Services

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

Before: Caroline Engmann, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Patrick Turcot, counsel

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

Heard via videoconference,

July 29 and 30, 2025.

REASONS FOR DECISION

I. Complaints before the Board

[1] Olivia Letemplier (“the complainant”) made two complaints to the Federal Public Sector Labour Relations and Employment Board (“the Board”) that the deputy head of Indigenous Services Canada (ISC or “the respondent”) abused its authority in two appointment processes related to Paul Asselin (“the appointee”).

[2] She made the first complaint on February 15, 2024, against appointment process number 23-DIS-NCR-INA-604187, which was a notice of the appointee’s acting appointment to the position of Senior Manager / Advisor (Social) - A at the EC-08 group and level beginning on October 23, 2023.

[3] She made the second complaint on June 27, 2024, against appointment process number 24-DIS-NCR-INA-625890, which was a notice of the appointee’s indeterminate promotional appointment to the position of Senior Manager / Advisor (Social) - A at the EC-08 group and level.

[4] In both complaints, she alleged that the respondent abused its authority by violating the values of diversity, equity, official languages and the values and ethics code for the public sector. At the hearing, she stated that the alleged abuse of authority in both complaints was based on alleged violations of the *Official Languages Act* (R.S.C., 1985, c. 31 (4th Supp.); *OLA*), the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*), the *Employment Equity Act* (S.C. 1995, c. 44), and the *Values and Ethics Code of the Public Service of Canada*. Except for the issue of discrimination, I need not make any determination as to alleged violations of these statutes, for purposes of these complaints.

[5] The Board consolidated the two complaints, and they were heard together.

[6] In this decision, “the Board” refers to the present Board in its current iteration and all its predecessors. The first appointment process is referred to as the “acting EC08 appointment”, and the second appointment process is referred to as the “indeterminate EC08 promotional appointment”.

[7] The respondent conceded that it abused its authority with respect to both appointment processes.

[8] The complaints are allowed. Since the respondent has already revoked the acting EC08 appointment, the Board makes no specific order in relation to it. As for the indeterminate EC08 promotional appointment, the Board orders that it be revoked, effective the date of this decision. The parties have agreed on additional corrective actions for both complaints on a confidential basis. The Board has also made specific recommendations to the Public Service Commission (PSC) with respect to the choice of process.

II. Summary of the allegations

[9] The complainant alleged that the respondent favoured the appointee by giving him multiple acting opportunities at higher levels through non-advertised processes, without seeking expressions of interest from other potential candidates in the workplace.

[10] She alleged that the appointee has benefited from repeated favouritism and that the respondent continually breached core public service values such as transparency, equity, accessibility, accountability, and official-languages requirements.

[11] The respondent discriminated against the complainant based on her race.

[12] The respondent had no intention of correcting the continued abuses of authority in the staffing actions involving the appointee, as evidenced by the coordination of the timelines between the ending of the acting EC08 appointment and the beginning of the indeterminate EC08 promotional appointment.

[13] As remedy, the complainant asks that the indeterminate EC08 promotional appointment be revoked and that an advertised process be conducted. She also asks that a plan be set in place to avoid such actions in the future and for an investigation into the hiring manager's actions.

III. The hearing process

[14] Section 97 of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*) permits the Board to provide mediation services to the parties at any stage of a proceeding to resolve a complaint. The assigned Board member mediates all or parts of a complaint and is not prevented from continuing the hearing on any remaining unresolved issues. On the first day of the hearing, the Board proposed to use mediation to resolve all or portions of the complaints. The hearing proceeded on that

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basis and the parties agreed to mediate not long after the start of the hearing. The mediation did not result in the withdrawal of any issues, but a copy of an agreed statement of facts was provided to the Board and the parties continued with the hearing.

IV. Summary of the evidence

[15] Each party filed a book of documents, both of which have been retained as exhibits. Additional documents were tendered into evidence. The parties submitted an agreed statement of facts, which I have reproduced almost verbatim in this decision. The complainant testified on her own behalf. The respondent called no witnesses.

[16] The PSC did not attend the hearing, but it provided its standard written submissions to address its applicable policies and guidelines. It took no position on the merits of the complaints.

A. Agreed statement of facts

[17] Effective October 23, 2023, the respondent appointed the appointee to the acting EC08 appointment for a period of four months less one day. Subsequently, on February 6, 2024, it extended that acting appointment by way of a non-advertised appointment process. Since the appointee did not meet the position's language profile, the respondent applied an exemption under s. 15 of the *Public Service Employment Regulations* (SOR/2005-334; *PSER*), which provides as follows:

15 (1) Subject to subsection (2), an acting appointment of four months or more but not more than twelve months to an encumbered bilingual position that the Commission cannot fill with an acting appointment of a person who meets the language proficiency qualification under paragraph 30(2)(a) of the Act is excluded from the application of that paragraph respecting official language proficiency.

(2) Subsection (1) does not apply to an acting appointment to the same position if the cumulative period of the acting appointments of all

15 (1) Sous réserve du paragraphe (2), les nominations intérimaires de quatre mois ou plus mais d'au plus douze mois à tout poste bilingue non vacant que la Commission n'a pas été en mesure de combler par la nomination intérimaire d'une personne qui possède la qualification de la compétence dans les langues officielles prévue à l'alinéa 30(2)a de la Loi sont soustraites à l'application de cet alinéa quant à la compétence dans les langues officielles.

(2) Le paragraphe (1) ne s'applique pas aux nominations intérimaires à un même poste si la durée cumulative des nominations

persons in that position is more than twelve months.

intérimaires d'une ou de plusieurs personnes à ce poste est de plus de douze mois.

[18] After the “Notification of Acting Appointment” was issued, the complainant exercised her right and made a staffing complaint under s. 77(1) of the *PSEA*, alleging that the respondent abused its authority for the following reasons:

- 1) invoking the *OLA*'s exemptions to staff the bilingual imperative position even though she was qualified and is fully bilingual;
- 2) selecting a non-advertised process and citing an immediate need to manage an unexpected, complex file without projected resources, despite the file having been with the respondent for more than two years;
- 3) discriminating against the complainant by stating that her flexible work arrangement was a factor in not considering her for the position; and
- 4) favouring the appointee, given the multiple non-advertised acting appointments made without soliciting expressions of interest that he had benefited from in the previous two years.

[19] On April 29, 2024, the respondent confirmed that the *PSEER* exemption under s. 15(1) was not applied correctly and that it would end the acting appointment. It conceded that the appointee had developed the requisite expertise when he acted in the one-year non-advertised EX-01 appointment that ended on October 20, 2023.

[20] The complainant was advised that she had not been considered for the acting EC-08 position.

[21] On May 28, 2024, the respondent confirmed that it had informed the appointee that the acting appointment would be terminated, effective June 5, 2024.

[22] The respondent published a “Notice of Consideration” promoting the appointee to the indeterminate EC08 promotional appointment with a bilingual non-imperative BBB language profile effective June 3, 2024. A notification of appointment was issued on June 12, 2024.

[23] The complainant exercised her right to make a staffing complaint under s. 77(1) of the *PSEA*. In her second complaint, she alleged that the respondent abused its authority as follows:

- 1) By selecting a non-advertised process. Specifically, she alleged that the decision to proceed with that process directly contravened the values of diversity and employment equity, official languages, and the *Values and Ethics Code for the Public Sector*. She further alleged that the respondent

continued to repeatedly provide the appointee with non-advertised appointments at higher levels, even though he is not bilingual.

- 2) Discriminating on the grounds of race. The complainant is a fully bilingual Inuk woman and was not considered for this position.

[24] Considering all the above, the parties agreed that the respondent's actions amounted to an abuse of authority within the meaning of the *PSEA* and that therefore, the Board should allow both complaints.

[25] The parties jointly request that the Board allow the complaints, revoke the indeterminate EC08 promotional appointment, and order no other corrective measures, as they have resolved the issues by way of a confidential agreement.

B. Policy documents

1. The PSC's *Appointment Policy*

[26] The PSC submitted its *Appointment Policy*, which applied to the appointment processes underlying these complaints. It requires deputy heads to respect their obligations relating to the duty to accommodate, employment equity, and official languages throughout an appointment process.

[27] When the deputy head makes an appointment, the policy requires the deputy head to ensure that the proposed appointee meets each essential qualification, including official-language proficiency and any asset qualifications, organizational needs, or operational requirements applied in the process.

[28] The deputy head is also required to complete an evaluation of its assessment methods and how it identified biases or barriers that would disadvantage persons belonging to equity-seeking groups and the efforts made to remove or mitigate their impacts, if identified.

2. The Treasury Board's *Directive on Official Languages for People Management* ("the directive")

[29] The directive outlines the requirements related to the linguistic identification and staffing of bilingual positions and the equal participation of English- and French-speaking Canadians in federal institutions. One of its expected results is to ensure that bilingual positions are staffed with candidates who meet the language requirements of the position at the time they are appointed, unless exceptional staffing situations exist. Examples of "exceptional staffing situations" include a potentially limited applicant

pool due to the highly specialized nature of the duties and the knowledge needed for the position or when it is anticipated that an insufficient number of applications would be received for the position.

[30] Managers staffing bilingual positions non-imperatively must provide written reasons and justification and must explain the measures taken to ensure that a position's bilingual functions are carried out until the incumbent meets the position's language requirements.

3. The *Public Service Official Languages Exclusion Approval Order* (SI/2005-118; *PSOLEAO*)

[31] The *PSOLEAO* is intended to provide an appropriate balance between ensuring that appointees meet the official-language proficiency requirements of bilingual positions and fostering unilingual Canadians' accessibility to bilingual positions in the federal public service. It sets out these three circumstances in which exclusions are made for persons who do not meet the language proficiency of a bilingual position at the time of appointment: 1) when the appointee agrees to become bilingual within a specified time frame, 2) when the appointee is excluded on medical grounds, and 3) when the appointee is eligible for an immediate annuity.

[32] When an appointee agrees to become bilingual within the specified time frame, the deputy head must ensure that the person is provided with appropriate language training, to attain the requisite proficiency. If the person fails to achieve the requisite level within the time frame, the deputy head must deploy the person somewhere else (see the *PSER*, s.16).

C. The complainant's testimony

[33] The complainant went through the timeline that she prepared for the purposes of the hearing. It is retained as an exhibit. She is an Inuk and Innu woman descended from the Indigenous peoples of Quebec and Labrador and is a direct descendent of the Innu of Nitassian, which is a boreal territory with a vast landmass and colonially referenced as the lower north shore of Quebec. She outlined the Indigenous values that are commonly articulated as the seven grandfather teachings of love, truth, wisdom, respect, courage, honesty, and humility.

[34] She explained that the grandfather teachings that were most applicable to her experiences at ISC over the two-and-a-half years before the hearing were truth, respect,

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courage, and honesty. It is important to tell the truth and to speak about what one has lived and experienced. She was truthful throughout the entire process. Respect is mutual and reciprocal, and one must give respect to receive respect. She was also honest and transparent throughout the entire process. Courage is represented by the bear. Courage was tough for her during this period because she had to face her foes in the workplace with integrity, even when the consequences were most unpleasant. She persevered and followed through with the courage of the bear.

[35] She is passionate about official languages and has a deep attachment and respect for the French language. She was born into a unilingual Anglophone family in Quebec. Her parents fought hard to enrol her in a French school, and she has continued this tradition with her children.

[36] She brought the appointee to ISC as her direct report. She had previously worked with him at another department, and over the years, she has encouraged him to invest in his second language, to advance his career. The appointee was appointed as a substantive EC-07 through an advertised appointment process to an English-essential position at ISC in March 2022.

[37] When the appointee was initially appointed through a non-advertised process to an EX-01 acting position in October 2022, she was very disappointed because in early 2022, she had specifically expressed an interest in acting assignments in the executive cadre. She wanted the experience to assess whether the executive cadre was a good fit for her career aspirations since she had been a manager for a very long time.

[38] On November 8, 2022, she met with the Assistant Deputy Minister (ADM) and another senior manager and expressed concerns about the appointee's EX-01 acting appointment. She conveyed that the appointment process lacked transparency and accessibility, was exclusive and culturally insensitive, and lacked diversity and equity. She testified that the ADM was empathetic and took responsibility for how the appointment was handled. He was apologetic, and the complainant believed that he was sincere. She testified that the ADM assured her that that approach would not happen again.

[39] The respondent objected to the reference to the appointee's EX-01 acting appointment on grounds of relevance and referred to jurisprudence on the scope of the Board's jurisdiction. The complainant could have exercised her recourse rights

against that process but did not. She opposed the objection and explained that she did not exercise recourse at that time because she believed what the ADM said about that approach not happening again.

[40] I reserved my decision on the objection and allowed the complainant to continue her narrative.

[41] Having heard the totality of the complainant's narrative, I overrule the respondent's objection. First, I find that the reference to the EX-01 acting appointment process and her discussion with the ADM was offered as relevant background information and as part of her motivations and narrative. Second, the complaints refer to this appointment process as part of the basis for the abuse-of-authority allegation.

[42] On October 23, 2023, the appointee received the acting EC08 appointment without any expressions of interest being solicited. It was for four months less a day, so there were no recourse rights. On December 2, 2023, the complainant wrote to the deputy minister and other members of senior management, flagging that what had happened the previous year with the appointee's EX-01 acting appointment happened again. She stated this:

...

... I was informed by [the appointee] that his reporting relationship had changed, and he would now be reporting directly to [the senior director] in an EC08 position and that he had already communicated same to his team members. As I understand the paperwork is in process. The terms of this promotion are unknown to me.

In a nearly exact replication of the events of last year, no expression of interest was issued, no one approached me (or anyone else to my knowledge) to communicate this opportunity, its statement of merit criteria or any other parameters.

Given the nature of the specifics of this situation, I am highlighting to you a breach [sic] to the following values and ethics of the public service:

- 1. Diversity and employment equity;*
- 2. Official Languages in the public service; and,*
- 3. Core values of respect for people and integrity in upholding the highest ethical standards.*

My request of you is that you halt this staffing action pending an investigation

...

[43] On December 18, 2023, the respondent launched an appointment process to staff several positions at the EX-01 group and level. The advertisement stated that there were immediate staffing needs in the western regions and the National Capital Region. The complainant successfully applied to the process, and her name was placed in a pool of partially assessed candidates.

[44] On January 9, 2024, she met with the ISC's ombuds and another ADM, to reiterate her concerns about staffing practices in the branch. She conveyed to them that she was a very experienced manager, highly qualified, bilingual at the ECE proficiency level, and an Inuk woman who had previously expressed an interest in staffing opportunities at higher levels, but she had been consistently overlooked. She testified that during the meeting, the ADM asked her how he could help her with her career. She conveyed that her objective was not for herself; rather, she had never wavered in her contention that staffing processes in the branch did not respect the core public service values and ethics and that the official-languages requirement had been breached.

[45] On February 6, 2024, the respondent posted a notice of the appointee's acting appointment to the position of Senior Manager/Advisor (Social) (EC-08). It stated that the appointment began on October 23, 2023. One of the essential qualifications was bilingual imperative at the BBB/BBB level, which the appointee did not meet. The notice specified that an exemption from official-languages proficiency was applied for the acting EC08 appointment.

[46] She emailed the ISC's Ombuds and the ADM on February 11, 2024, reiterating her concerns conveyed earlier at their January 9, 2024, meeting. She noted that the notice of the appointee's acting EC08 appointment invoked an exemption under s. 15(1) of the *PSEER* because the position could not be filled with a qualified bilingual employee from the branch or sector. She questioned how that was possible since there was no call for an expression of interest. She stated that she had the experience and was bilingual and that she could have been considered. She concluded her email as follows:

...

... it is important to me to uphold the values and ethics of our public service and, as a result, I feel the continued need to be

transparent and to communicate my objectives clearly. Unfortunately, to date the onus has been on me to seek out information and prompt discussion on these matters. My ultimate objective is to contribute to the correction of approaches taken in this sector to ensure that core public service values and ethics, and adherence to official languages are upheld. As Assistant Deputy Minister you have the ability to achieve this objective. My objections to the specific staffing actions related to [the appointee] are in support of this.

...

[47] Based on the heavily redacted documents that she obtained through the respondent's access-to-information branch, she surmised that there were internal discussions about the risks associated with the appointment process, particularly related to the appointee's second-language qualification and the *OLA's* requirements. She testified that when a person supervises a team of bilingual employees, they must be bilingual. A redacted email thread suggested that the risk could be managed because at least three persons on the team could provide bilingual service.

[48] She made her complaint against the acting EC08 appointment on February 15, 2024.

[49] She received the respondent's reply to her complaint on April 29, 2024. In it, the respondent confirmed that it had incorrectly applied the *PSEER* exclusion and that therefore, it would end the acting EC08 appointment.

[50] Contrary to what the respondent stated in its reply, it did not end the acting EC08 appointment until a month later, following the complainant's persistent inquiries. On May 29, 2024, it informed her that the appointment would end effective June 5, 2024.

[51] According to the documents that she received through her access-to-information request, there were internal discussions to speed up the appointee's indeterminate promotional appointment to align with the end of the acting appointment. In an internal email dated May 12, 2024, between staffing personnel and management, it was noted that the process had become urgent because the bargaining agent had asked when the acting appointment would end.

[52] On May 28, 2024, the respondent posted a notice of consideration for the appointee's indeterminate EC08 promotional appointment to the position of Senior

Manager/Advisor (Social) (EC-08). One of the essential qualifications was bilingual proficiency of BBB/BBB, non-imperative. It would appear from the relevant organizational chart that it was a new position.

[53] The complainant met with the Deputy Minister on June 2, 2024, to express her concerns about the staffing processes in the branch, particularly the rampant use of non-advertised processes to staff senior positions.

[54] The respondent appointed the appointee and posted the notification on June 12, 2024.

[55] The complainant made the second complaint on June 27, 2024. In it, she alleged that the respondent engaged in unethical actions, including lying and a lack of accessibility, equity, and diversity and application of official-languages requirements, which have gone on over the past 18 months. She claimed that the respondent abused its authority by choosing non-advertised processes to staff EC-08 and EX-01 positions. She also alleged that it discriminated against her on the ground of her race.

[56] The complainant indicated that in its reply to the complaint, the respondent denied that it abused its authority, and explained that the appointee had signed an agreement to become bilingual under the *PSOLEAO*.

V. Summary of the arguments

A. For the complainant

[57] The complainant reiterated her concerns that the appointment processes lacked transparency and accessibility, and that the respondent breached the public service values and ethics.

[58] The respondent disregarded the values of diversity and inclusivity, and the complainant was overlooked, despite her qualifications and her expression of interest in advancing her career. Contrary to what was stated in the articulation of the selection decision, she also applied to processes. The respondent's persistent use of non-advertised processes for appointments to EC-08 and EX-01 positions results in exclusions and violates the principles of accessibility and transparency.

[59] She relied on her timeline and the documentation in her book of documents.

B. For the PSC

[60] The PSC submitted its standard written submissions on its *Appointment Policy*, as well as specific submissions on the complaints.

[61] The expected results of the PSC's *Appointment Policy* are as follows:

...

- *A non-partisan and representative workforce of individuals drawn from across the country, benefiting from the diversity, linguistic duality, and range of backgrounds and skills of Canadians;*
- *Appointment processes that are inclusive, free from discrimination, and where reasonable efforts have been made to remove biases or barriers, or mitigate their impact;*
- *Appointment processes conducted in a fair and transparent manner and in good faith;*
- *Appointments of highly competent persons who meet the needs of organizations; and*
- *Timely correction of errors and omissions.*

...

[62] Deputy heads and anyone exercising the PSC's delegated authority must comply with its policies. While not complying with them is problematic, it does not necessarily constitute abuse of authority. The Board must consider such a breach as a factor when it determines whether there was an abuse of authority in an appointment process.

[63] The essential qualifications in the merit criteria, including the official-language proficiency, for an appointment process must relate to the work to be performed and must meet or exceed any applicable qualification standard set by the employer.

[64] The deputy head may use either an advertised or a non-advertised appointment process.

[65] All appointments made to or from within the public service must be based on merit, except for acting appointments of less than four months and casual appointments. The deputy head need not consider more than one person for an appointment to be based on merit.

[66] The PSC's *Appointment Policy* requires deputy heads to ensure that persons to be appointed meet each essential qualification, including the official-language

proficiency, as well as any asset qualification and any operational requirements or organizational needs applied to the appointment process.

[67] The *PSOLEAO* specifies three circumstances in which a candidate who meets the required level of proficiency in only one of the official languages may be excluded from meeting the official-language proficiency requirements in their second official language. They are 1) when the candidate agrees to become bilingual, 2) when there are medical grounds to exclude the candidate, and 3) when the candidate is eligible for an immediate annuity. The exclusion applies to candidates who meet the required level of proficiency for the bilingual position in their first official language and are appointed through a bilingual non-imperative appointment.

[68] The PSC took no position on the merits of the complaints and on whether its *Appointment Policy* was breached.

C. For the respondent

[69] The respondent referred to the following cases: *Agnaou v. Deputy Minister of Justice*, 2012 PSST 16; *Attorney General of Canada v. Cameron*, 2009 FC 618; *Brown v. Commissioner of Correctional Service of Canada*, 2012 PSST 17; *Chung v. Deputy Head (Department of National Defence)*, 2024 FPSLRB 133; *Clout v. Deputy Minister of Public Safety and Emergency Preparedness*, 2008 PSST 22; *Hutlet v. Deputy Head (Department of National Defence)*, 2023 FPSLRB 73; *Jack v. Commissioner of the Correctional Service of Canada*, 2011 PSST 26; *Jalal v. Deputy Minister of Human Resources and Skills Development Canada*, 2011 PSST 38; *Morris v. Commissioner of Correctional Service of Canada*, 2009 PSST 9; *Murray v. Chairperson of the Immigration and Refugee Board of Canada*, 2009 PSST 33; *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536 (“O’Malley”); *Portree v. Deputy Head of Service Canada*, 2006 PSST 14; *Pugh v. Deputy Minister of Justice*, 2012 PSST 31; *Robbins v. the Deputy Head of Service Canada*, 2006 PSST 17; *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8; and *Visca v. Deputy Minister of Justice*, 2007 PSST 24.

[70] The respondent noted that the complainant received at least 2 acting appointments at the EX-01 group and level after she made her complaints, for a total of 20 days from March 4 to 8, 2024, and December 27, 2024, to January 10, 2025.

[71] The respondent reviewed the applicable case law. The burden is on the complainant to establish that there was an abuse of authority (see *Tibbs*, at para. 50). The Board's role is not investigative; it is not mandated to go on a fact-finding mission on the complainant's behalf (see *Portree*, at para. 48).

[72] The definition of "abuse of authority" in the *PSEA* is not static, and the respondent's discretion is not absolute. The Board must consider the *PSEA* in its entirety when it determines if there was an abuse of authority. A finding of abuse of authority warrants the Board's intervention.

[73] For both processes, the respondent acknowledged that the appointee did not meet the positions' linguistic requirements. In the first process, the respondent improperly invoked the exemption under s. 15(1) of the *PSEER*. The complainant is fully bilingual and could have been considered for that position. The respondent conceded that it abused its authority by proceeding with the non-advertised, non-imperative process for the indeterminate promotional appointment because she could have been considered for it.

[74] The respondent's discretion to choose an advertised or a non-advertised appointment process is not absolute and can be challenged through a complaint under s. 77(1)(b) of the *PSEA*. In *Clout*, the Board held that a complainant must establish on a balance of probabilities that the decision to choose a non-advertised appointment process was an abuse of authority (see *Clout*, at paras. 31 to 34). On this point, the respondent also relied on *Hutlet*, *Jack*, and *Robbins*.

[75] On the discrimination issue, the respondent argued that the burden was on the complainant to establish a *prima facie* case, citing *O'Malley* from the Supreme Court of Canada, which explained that a "... *prima facie* case ... 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" (see *O'Malley*, at para. 28).

[76] The respondent argued that an abstract belief that one has been the subject of discrimination is not enough, and that the belief must be backed by facts (see *Agnaou*, at para. 61). It also referred to *Brown* and *Jalal*.

[77] In this case, the parties have agreed through their agreed statement of facts that discrimination would have been a factor in management's decision not to consider the complainant for the position in question.

[78] With respect to remedy, the respondent referred to the parties' agreed statement of facts in which they requested that the complaints be allowed and that the Board revoke the appointee's appointment to the indeterminate EC-08 position. Since the parties have resolved issues relating to corrective measures by way of a confidential agreement, the Board ought not to order any other corrective action.

VI. Reasons

[79] The complainant alleged that the respondent abused its authority in the appointment processes underlying her complaints. She claimed that the respondent breached the merit principle because the appointee did not meet the position's language proficiency level. She also alleged that the respondent discriminated against her by not considering her for both appointment processes. Finally, she claimed that the respondent abused its authority in choosing a non-advertised process to specifically favour the appointee.

[80] As corrective action, she is seeking a revocation of the indeterminate EC08 promotional appointment, an order that the respondent conduct a new advertised appointment process and an order that the hiring manager's actions be investigated.

[81] I will address each of her allegations in the paragraphs that follow. I will also address the issue of remedy as well as the respondent's request for a confidentiality order in relation to a settlement offer that it made to the complainant before the hearing commenced.

A. Application of merit

[82] Under s. 30(1) of the *PSEA*, all appointments to or from within the public service "... shall be made on the basis of merit and must be free from political influence."

[83] The meaning of "merit" in the *PSEA* is not static; rather, it is based on satisfying certain criteria. Section 30(2) states 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 the essential qualifications for the work to be performed, as established by the deputy head, including the 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;*

(b) *The Commission has regard to*

b) *la Commission prend en compte :*

(i) *any additional qualifications that the deputy head may consider to be an asset for the work to be performed, or for the organization, currently or in the future,*

(i) *toute qualification supplémentaire que l'administrateur général considère comme un atout pour le travail à accomplir ou pour l'administration, pour le présent ou l'avenir,*

(ii) *any current or future operational requirements of the organization that may be identified by the deputy head, and*

(ii) *toute exigence opérationnelle actuelle ou future de l'administration précisée par l'administrateur général,*

(iii) *any current or future needs of the organization that may be identified by the deputy head.*

(iii) *tout besoin actuel ou futur de l'administration précisé par l'administrateur général.*

[84] The current and future needs of the organization may include the current and future needs of the public service, as identified by the employer and that the deputy head determines relevant to its organization (see the *PSEA*, s. 30(3)). The scope of the “current and future needs” of the public service at large can be very broad; for instance, it could extend to diversity and inclusion initiatives across the public service.

[85] I note that the preamble to the *PSEA* affirms that the Government of Canada “... is committed to an inclusive public service that reflects the diversity of Canada’s population [and] embodies [Canada’s] linguistic duality ...”, among other values. It also specifies that Canada will continue to gain from a public service that is representative of its diversity and that is able to serve the public with integrity and in their official language of choice. It also states that the Government of Canada is committed to fair and transparent employment practices, respect for employees, effective dialogue, and recourse aimed at resolving appointment issues.

[86] The official-language proficiency required for a position is a merit criterion for a position that is designated bilingual. The language requirement for both the acting and indeterminate positions was designated bilingual. For acting appointments, s. 15 of the *PSEER* allows a narrow exemption from this merit criterion if 2 conditions are met. First, the acting appointment must be for more than 4 but not more than 12 months. Second, the deputy head must demonstrate that it cannot fill the position with a person who meets the official-language proficiency qualification.

[87] The Board has examined the evidence and accepts the respondent's admission that applying the exemption under s. 15(1) of the *PSEER* to exclude the appointee from the official-languages requirement for the acting appointment was improper.

[88] The respondent did not fulfil the requirements of s. 15 of the *PSEER*, as it has acknowledged, with respect to both the acting EC08 appointment and indeterminate EC08 promotional appointment processes. There was no evidence that it searched for other candidates who met the official-language proficiency requirement.

[89] The respondent also failed to comply with the Treasury Board's directive that requires written reasons and justification for staffing bilingual positions non-imperatively. Managers must explain measures taken to ensure that a position's bilingual functions are carried out until the incumbent meets its linguistic requirements. The respondent provided a document titled "Justification for Non-Imperative Staffing of Bilingual Positions" dated May 23, 2024. The instructions section of this document clearly states:

...

The justification must include answers to the following questions:

...

- *What are the interim administrative measures put in place to ensure that the bilingual functions of the position being staffed are carried out?*
- *What steps will be put in place if the employee does not meet the required language profile at the end of the training period?*

[90] There was nothing in that document responding to these 2 questions. This omission is particularly glaring since the appointee was to go on language training for 32 weeks immediately following his appointment.

[91] There was no evidence that when it made the indeterminate EC08 promotional appointment, the respondent considered its human resources plan, its employment equity plan and targets, and its current or future operational requirements and needs, as identified by the deputy head.

[92] I find that the respondent abused its authority under s. 77(1)(a) of the *PSEA* when it made the acting EC08 appointment and the indeterminate EC08 promotional appointment because the appointee did not meet one of the merit qualifications for the position, namely, its language proficiency requirement.

B. Discrimination

[93] In considering whether a s. 77 complaint is substantiated, the Board may interpret and apply the *CHRA*, other than its provisions relating to the right to equal pay for work of equal value (see s. 80 of the *PSEA*). For all purposes of the *CHRA*, race is a prohibited ground of discrimination (see s. 3(1) of the *CHRA*). In relation to employment, s. 7 of the *CHRA* provides that it is a discriminatory practice, directly or indirectly to refuse to employ or differentiate adversely in relation to an employee on a prohibited ground.

[94] The complainant alleged that the respondent discriminated against her on the basis of her race by not considering her for the appointments at issue in these complaints. She is an Inuk and Innu woman descended from the Indigenous peoples of Quebec and Labrador.

[95] She also alleged that the respondent discriminated against her based on her flexible work arrangements. She did not provide any information or evidence to support this allegation so I will not address it in these reasons. I simply note that a flexible work arrangement is not a prohibited ground under the *CHRA* (see *CHRA*, ss. 3 and 7).

[96] In its submissions and in the agreed statement of facts, the respondent has conceded that discrimination would have been a factor in management's decision not to consider the complainant for the position in question.

[97] Despite the parties' position on the discrimination issue, I must assess whether the complaint can be substantiated based on discrimination.

[98] Recent amendments to the *PSEA* require deputy heads to evaluate and identify biases and barriers in assessment methods that disadvantage persons belonging to any equity-seeking group and to make reasonable efforts to remove them or to mitigate their impacts (see the *PSEA*, s.36(2)). The scope of an error, omission, or improper conduct is expanded to include an error, omission, or improper conduct that results from a bias or barrier that disadvantages persons belonging to any equity-seeking group (see the *PSEA*, s. 2(5)).

[99] Not all statutes contain a preamble, but if one exists, it is an important component of the legislation and is useful in interpreting its provisions (see Ruth Sullivan, *The Construction of Statutes*, 7th Ed., chapter 14).

[100] I agree with the respondent that the *PSEA*'s provisions must be read in their entirety. When doing so, I must consider the values and objectives espoused in the preamble as well as specific provisions in the legislation.

[101] If the amended provisions in the *PSEA* about diversity and inclusion are to have any impact, the Board's review of allegations of abuse of authority must be comprehensive, given the very broad grant of discretion in staffing to deputy heads.

[102] Many invaluable objectives and values come into play. The exchange of information in the complaint process and the disclosure of relevant information can be broader than just the documents in the staffing file. In some cases, documents such as the department's human resources plan and its employment-equity and diversity goals may be arguably relevant to allegations involving individual and systemic issues. In this case, the complainant had to obtain documents through the access-to-information system.

[103] According to information that the complainant obtained through her access-to-information request, the ISC *Staffing Framework* has a module that specifically mandates that Indigenous recruitment must be factored into the design of staffing strategies and all appointment-related decisions. ISC also avows a commitment to fostering an inclusive environment to retain Indigenous talent. There is no evidence that the respondent took those imperatives into account when it made both appointment decisions at issue in these complaints.

[104] The test for discrimination is two-fold. First the complainant must demonstrate a *prima facie* case of discrimination. Once she establishes a *prima facie* case, the burden shifts to the respondent to justify its conduct or action. If it fails to justify its conduct or action within the framework of exemptions allowed under the human rights statute, a finding of discrimination will be made (see *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33).

[105] The threshold to establish a *prima facie* case is low. In *O'Malley*, the Supreme Court of Canada explained that a *prima facie* case "... 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" (see *O'Malley* at para. 28).

[106] Applying the first step of the *Moore* test, the complainant must first show that she has a characteristic that is protected from discrimination, in this case, race. Second, she must demonstrate that she experienced an adverse impact, in this case, she was not considered for acting opportunities at higher levels despite being qualified. Third, she must show that the protected characteristic was a factor in the adverse impact. It is common ground between the parties that the complainant's race would have been a fact in her not being considered in both appointment processes.

[107] The evidence supports a finding of a *prima facie* discrimination in both appointment processes.

[108] The respondent did not present any evidence to justify its conduct in the two underlying appointment processes: neither in the assessment of merit nor in the choice of process. For both, the appointee did not meet the position's linguistic requirement, an essential qualification for the work to be performed under s. 30 of the *PSEA*. In the first appointment process, the respondent improperly invoked s. 15 of the *PSEA* to exempt the appointee from the position's language proficiency qualification. The respondent did not demonstrate that there was no person who met the language proficiency for the position. The complainant met the qualifications, including the language proficiency qualification, but was not considered.

[109] Although the respondent need not consider more than one person for an appointment under s. 30(4) of the *PSEA*, it must comply with the merit principle. In

this case, it had an obligation to consider other employees because of its decision to apply the official languages exemption.

[110] It failed to do so in both appointment processes.

[111] I am satisfied based on the evidence that the complainant's race was a factor in the respondent's decision not to consider her in the appointment processes at issue in the complaints before the Board.

[112] I find that the respondent abused its authority by discriminating against the complainant in both appointment processes because of her race.

C. Choice of process

[113] Although s. 33 of the *PSEA* grants the deputy head broad discretion to use an advertised or a non-advertised process, the discretion is not unfettered, and it must be exercised in accordance with the principles espoused in the *PSEA*, including transparency, accessibility, and accountability. Nothing in the evidence explains the choice of a non-advertised process for these appointments.

[114] The current PSC *Appointment Policy* is silent on the choice of process. In *Morris*, the Board referred to the PSC's *Policy on Choice of Appointment Process*, which no longer exists today. That policy linked the choice of appointment process to the organization's human resources plan and its core and guiding values. It required deputy heads to ensure that there was a written rationale demonstrating how the choice of a non-advertised process met the established criteria and the appointment values (see *Morris*, at para. 65).

[115] The Board further explained that a written justification for using a non-advertised process serves two important purposes. First, it provides sufficient information for the delegated manager to approve its use. Second, it promotes and ensures transparency (see *Morris*, at paras. 87 and 88).

[116] I agree with the Board's statements in *Morris* on information sufficiency and transparency.

[117] The respondent provided a template used to evaluate biases and barriers that disadvantage persons belonging to any equity-seeking group, consistent with recent

amendments to the *PSEA*. There was no such template for documenting a rationale for the choice of process.

[118] The Board finds troubling the use of non-advertised processes, particularly to fill high-level positions, without any apparent guidelines, transparency or accountability.

[119] I wholeheartedly agree with the Board's view in *Sganos v. Secretary of the Treasury Board*, 2025 FPSLRB 41, which was that "... non-advertised processes remain a risk area requiring more robust oversight under deputy heads' directions" (see *Sganos*, at para. 1).

[120] I adopt the Board's recommendations to the PSC outlined at paragraphs 138 and 139 of *Sganos*, as follows:

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

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

[121] I believe that implementing these recommendations will go a long way to promote transparency and accountability in the choice of appointment process.

[122] Based on the evidence, the Board finds that that the respondent's choice of the non-advertised process for both appointment processes was singularly focused on appointing the appointee to the EC08 position indeterminately. During the informal discussion, the respondent explained to the complainant that it used the non-advertised process because it had to meet an immediate need to manage a complex file. However, upon further probing by the complainant, it came to light that the complex file or project had been ongoing for the last 2 years so there was no urgency to staff the position. Furthermore, the plan was to have the appointee immediately go

on language training, possibly for the first 32 weeks of his appointment, thus making the respondent's urgency and immediate need rationale spurious and not credible.

[123] Furthermore, the respondent ensured that there was no break in service by aligning the end of the acting assignment to the beginning of the indeterminate appointment.

[124] The evidence further showed that the appointee was appointed to several positions through non-advertised processes and according to the agreed statement of facts, the respondent favoured the appointee through them and that the appointee benefited from them.

[125] The Board finds that the respondent abused its authority in the choice of process in both appointment processes.

D. Corrective actions

[126] If the board finds that a complaint under s. 77 is substantiated, it may make 3 main corrective actions: 1) order that an appointment be revoked; 2) order the PSC or the deputy head not to make the appointment; and 3) any other corrective action that it considers appropriate. Corrective action may include an order for relief under the *CHRA* and the *Accessible Canada Act* (S.C. 2019, c. 10). The Board may not order the PSC to make an appointment or to conduct a new appointment process (see ss. 81 and 82 of the *PSEA*).

[127] Corrective actions must aim to correct the failures identified in the appointment processes at issue and cannot address errors in past or future appointment processes that are not before the Board (see *Monfourny v. Deputy Head (Department of National Defence)*, 2023 FPSLREB 37 at para. 124 and *Canada (Attorney General) v. Cameron*, 2009 FC 618 at para. 18).

[128] The complaints are substantiated. Since the acting EC08 appointment has already been revoked, the Board limits its order to the indeterminate EC08 promotional appointment. The appointee did not meet one of the merit qualifications for the position, namely, its language proficiency. The appointment was not based on merit. The respondent also abused its authority in the choice of process, as outlined in this decision.

[129] In addition to revocation of the appointment, the complaint requested that the Board order a new advertised process. She also asked that the hiring manager's actions be investigated and that a plan be set in place to prevent future actions as occurred in this case. She also requested an acknowledgement that the repeated favouritism is unacceptable. Apart from the revocation, the Board cannot order any of the other corrective actions that the complainant has requested (see *Robbins* at paras. 51 to 53).

[130] The Board finds that revocation is warranted in this case because the appointment was not based on merit.

E. Confidentiality order

[131] On July 25, 2025, in a highly unusual move, the respondent emailed the Board and the complainant with the contents of a settlement offer that it had sent to her. It stated that she had refused the offer, and it wanted to discuss the topic of the Board's remedial powers at the start of the hearing.

[132] At the start of the hearing on July 29, 2025, I informed the respondent that it was highly inappropriate to send the details of a settlement offer to the Board because it would primarily compromise the confidentiality of the settlement process since it would remain on the Board's files and could be subject to an open-court request.

[133] After the hearing, the respondent requested that its email be sealed, given the Board's comments at the start of the hearing. It explained that it shared the information in the email with the aim of transparently showing its genuine efforts to resolve the complaints. No public interest would be served by retaining it on the public record because it could have a chilling effect on potential future settlements.

[134] The complainant opposed the request. She explained her position in an email dated July 31, 2025, as follows:

...

... I have never wavered in my requests that senior executives at Indigenous Services Canada (ISC) demonstrate accountability for their disregard on the law and their many breaches of core public service values and ethics. At each turn, I have consistently reiterated my concerns and have been met with harassment, lies, neglect, indifference, escalating breaches of values and ethics, and repeated attempts to circumvent laws such as the employment equity act, the privacy act, and the official languages act.

During all this time, I continuously demonstrated my respect for due process and have been open and transparent with all. I am one individual standing up against an entire department, represented by lawyers, human resources specialists and labour relations specialists, in my attempts to hold senior management accountable for their egregious abuses of authority.

At the eleventh hour, ISC presented me with a settlement offer, which I declined. In my dealings with ISC officials over the past 2.5 years, I have developed a deep and justified mistrust of the department. It is my view that ISC is rotten, right down to its roots.

I do not believe that the email that the respondent shared with the board on July 25, 2025, was sent “with the aim of transparently indicating the Employer’s genuine efforts to resolve this matter.” I believe that it was sent to try and disparage me in front of the board — to try and demonstrate straight out of the gate at the hearing that I did not want to resolve the matter. The reality, of course, is that I have demonstrated nothing but wishing to resolve the matter, for years.

I have great respect for lawyers. They are experts in their fields. They know what is appropriate to share and what is not.

One of the seven grandfather teachings is Honesty: Be Honest in your words and actions. Be Honest first with yourself, and you will more easily be able to be Honest with others. Honesty is represented by the raven. The raven accepts himself for who he is and does not look to try to be like others.

*My position is that the email in question should **not** be sealed from the public record.*

I would also like to take this opportunity to advise the board that I have signed the terms of settlement agreement and shared it with the respondent more than 24 hours ago, however, have yet to receive confirmation that ISC has signed it.

...

[Emphasis in the original]

[Sic throughout]

[135] The respondent asks the Board to limit the open court principle, which applies to it. In *Sherman Estate v. Donovan*, 2021 SCC 25, the Supreme Court of Canada set out a three-step test to apply when ordering a discretionary limit on the open court principle, such as a sealing order. First, it must be established that court openness poses a serious risk to an important public interest. Second, the order sought is necessary to prevent a serious risk to the identified interest because reasonably alternative measures will not prevent the risk. Third, as a matter of proportionality, the benefits of the order outweigh its negative effects (see *Sherman Estate*, at para. 38).

[136] In *Ross v. Public Service Alliance of Canada*, 2017 FPSLREB 13, the Board granted the complainant's request to seal a memorandum of agreement that was meant to resolve certain workplace issues. It decided that it was in the interest of labour relations that the confidentiality of settlement agreements be preserved (see *Ross*, at para. 12; see also *Reid v. Deputy Head (Library and Archives of Canada)*, 2021 FPSLREB 104 at para. 84; *Valderrama v. Deputy Head (Department of Foreign Affairs, Trade and Development)*, 2020 FPSLREB 86 at para. 12; *Fitzgibbon v. Deputy Head (Correctional Service of Canada)*, 2024 FPSLREB 112 at para. 19; and *Catahan Niles v. Professional Institute of the Public Service of Canada*, 2024 FPSLREB 169 at paras. 5 and 68 to 77).

[137] Although the respondent's email was not marked as an exhibit, I find that it is in the public interest to preserve the confidentiality of the settlement offer because it promotes confidence in the settlement process at large to address labour relations issues. In the labour relations context, the benefits of a confidentiality order outweigh the negative ones. Consequently, I order that a portion of the respondent's email dated July 25, 2025, and sent at 4:06 p.m., comprising the portion starting with "Please note that" and ending with "Respectfully submitted" be sealed.

[138] In making this order, I am cognizant of the complainant's frustration with the respondent and the erosion of her trust in how appointments are made in her workplace, as expressed in her email as just reproduced. I hope that she will find a way to heal and regain her trust in the appointment systems.

[139] I also commend the complainant and counsel for the respondent for their collaboration and excellent presentation of the evidence and arguments during the hearing process.

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

(The Order appears on the next page)

VII. Order

[141] The complaints are allowed.

[142] The Board orders that the indeterminate promotional appointment of Mr. Asselin to the position of Senior Manager / Advisor (Social) — A at the EC-08 group and level related to appointment process 24-DIS-NCR-INA-625890 be revoked, effective the date of this decision.

[143] The Board orders sealed the portion of the respondent's email dated July 25, 2025, and sent at 4:06 p.m., comprising the portion starting with "Please note that" and ending with "Respectfully submitted".

October 28, 2025.

**Caroline Engmann,
a panel of the Federal Public Sector
Labour Relations and Employment Board**