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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

KIMBERLY MCCARNEY

Complainant

and

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

Respondent

and

OTHER PARTIES

Indexed as

McCarney v. Deputy Head (Royal Canadian Mounted Police)

In the matter of a complaint of abuse of authority under section 77(1)(a) of the *Public Service Employment Act*

Before: Joanne B. Archibald, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Shauna Ward, Union of Safety and Justice Employees

For the Respondent: Mathew Yaworski, counsel

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

Heard via videoconference,

October 2 and 3, 2025.

REASONS FOR DECISION

I. Introduction

[1] The complainant, Kimberly McCarney, made a complaint under ss. 77(1)(a) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*), alleging abuse of authority by the respondent, the deputy head of the Royal Canadian Mounted Police (RCMP). According to the complainant, abuse of authority occurred in the application of merit in an advertised appointment process for a detachment services supervisor position, classified AS-02 and located in Airdrie, Alberta (“the AS-02 position”). The appointment process number was 22-RCM-IA-K-SAD-AIRDRIE-110927 (“the appointment process”).

[2] The respondent denied abusing its authority in the appointment process.

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

[4] For the following reasons, the complaint is dismissed.

II. Background

[5] On November 8, 2022, the complainant applied to the appointment process. Her interview took place on December 14, 2022. Before the interview, all the candidates were provided with question 10, which was one of two questions used to assess the essential personal suitability qualification of working effectively with others (“PS2”).

[6] Following the interview, the assessment board members, Insp. Lauren Weare, Tracy Dirk, and S/Sgt. Troy Switzer (“the assessment board”), determined that the complainant did not meet the requirements for the AS-02 position. Specifically, she did not attain the minimum required score to pass PS2.

[7] On March 9, 2023, the respondent posted a *Notification of Appointment or Proposal of Appointment* for Eileen Stanlick (“the appointee” or “ES”). On March 15, 2023, the complainant made the complaint.

III. Summary of the evidence

A. For the complainant

[8] The complainant alleged that the respondent abused its authority in the assessment of merit in evaluating her response to question 10. Further, it showed bias when it included the appointee in emails about the assessment process, and it demonstrated personal favouritism by improperly identified the appointee as the backup AS-02 in the articulation of the reasons for her selection for appointment.

1. Assessment of question 10

[9] The complainant testified that she has worked with the respondent since 2006. She submitted an application to the appointment process, as she felt that she met the AS-02 position's requirements. After being notified that she was not successful, she asked for an informal discussion.

[10] On January 31, 2023, an informal discussion took place with the complainant, Insp. Weare, and the human resources advisor (HRA), Christie Kan, attending. The complainant understood from Insp. Weare that the concern with her answer to question 10 was that she gave an example of a peer-to-peer conflict, while the assessment board wanted her to describe a supervisor's perspective when dealing with a subordinate.

[11] In her evidence, the complainant described the circumstances of the conflict. After trying multiple times to resolve the matter with her peer, she went to her supervisor. She told Insp. Weare that everything in her response was in the assessment board members' notes. According to the complainant, during the informal discussion, Insp. Weare advised her that she had to be confident that the complainant would not come to her every time she encountered a conflict.

[12] In the complainant's view, this indicated that the assessment board wrongly assessed her supervisory skills, rather than PS2.

[13] The complainant then requested a second informal discussion. It took place on March 6, 2023. She, her union representative, Insp. Weare, and the HRA attended.

[14] The complainant testified that Insp. Weare then told her that she did not provide enough information to the assessment board, such as how many times she sat

with her peer and every tool she employed to solve the problem. Insp. Weare denied that the assessment board expected a demonstration of supervisory experience in the response to question 10.

[15] The complainant stated that she responded to Insp. Weare to explain that she met with the colleague but that they could not solve the issue together. She then went to her supervisor.

[16] The complainant felt that she set out the problem and the resolution. As she reviewed the appointee's response to question 10, she could not understand the answer or the underlying problem that it addressed.

[17] She also believed that the assessment board unfairly asked the appointee a clarifying question but that it failed to ask her any questions. In cross-examination, she distinguished a clarifying question from a prompt, stating that the former required a short answer while the latter pushed a candidate to say something more.

2. Bias

[18] The complainant expressed frustration with an email sent on November 14, 2022, by an assistant in the respondent's Public Service Human Resources unit (PSHR) to Insp. Weare that was copied to the appointee. This occurred before the candidates were assessed and when the appointee was appointed to act in the AS-02 position. The email stated the following:

Good Morning,

*The following are the application numbers for the AS-02,
Detachment Services Supervisor poster:*

Total Submitted: 5

Accepted: 5

Rejected: 0

In Progress: 9

The poster is set to close tomorrow night. Please let me know if you would like the poster to be extended or if you would like to allow it to close.

Thank you,

...

[Emphasis in the original]

[19] The complainant asserted that copying the email to the appointee presented an unprofessional conflict of interest. She noted that the appointee also received a copy of Insp. Weare's response that indicated that there was no need for an extension to the closing date.

[20] Initially, the complainant stated that when PSHR copied the email to the appointee, it knew that she was occupying the AS-02 position and that she was a candidate in the appointment process. In cross-examination, she modified her testimony, to state that her assertions were only possibilities.

3. Personal favouritism

[21] The complainant referred to the articulation of the selection decision, in which the appointee was described as "the 'backup' to the AS02 supervisor". According to her, no backup position exists. It was improper to describe the appointee as such.

B. For the respondent

[22] Insp. Weare, the hiring manager for the AS-02 position, testified that she chaired the assessment board. She is the detachment commander for the RCMP's Airdrie-Beiseker detachment. She, S/Sgt. Switzer, and Ms. Dirk, then the incumbent of the AS-02 position, constituted the assessment board.

[23] Insp. Weare explained that the Airdrie location is staffed by regular RCMP members, federal employees, and municipal employees, all of whom fall within her purview. The AS-02 incumbent oversees five federal employees. There is a history of conflict among the employee group. Further challenges arose when the Beiseker office's functions were integrated into the Airdrie detachment. To respond to this history, she placed considerable weight on PS2.

1. Assessment of question 10

[24] Insp. Weare testified as to the assessment of the candidates. She reviewed her notes and identified the notes of the other assessment board members. She provided detail on the assessment of the complainant's responses to questions 9 and 10, both of which assessed PS2.

[25] For question 9, the complainant's answer described the consequences of sending improperly completed traffic tickets to provincial court and her role in implementing a system to review ticket quality before they went to court.

[26] According to Insp. Weare, the complainant recognized the errors, informed the members who wrote the tickets, and prevented the conflict from escalating to the commander.

[27] The outcome that the complainant described was good, and her answer to question 9 met the requirements of PS2. She clearly laid out a goal and accepted responsibility for moving to submit error-free tickets in court.

[28] Insp. Weare also testified as to the complainant's answer to question 10. She stated that that answer described her feelings in a conflict situation with a peer.

[29] The assessment board considered that the answer did not meet the requirements for PS2. The complainant did not provide sufficient information to allow an understanding of the source of the conflict and whether she explored the colleague's concerns or listened to their point of view. The answer did not address what could have been done between the two to resolve the rift before engaging a supervisor, as the complainant did.

[30] The assessment guide instructed the assessment board to consider the responses to questions 9 and 10 together when scoring PS2. The assessment board reached a consensus that the strengths of the answer for question 9 did not compensate for the deficits in question 10. The complainant did not satisfy the requirements of PS2. She was eliminated from further consideration.

[31] Insp. Weare reviewed the assessments for the two qualified candidates.

[32] For question 10, Karen Day (KD) described a situation of conflict between two subordinate employees and how she guided them to informal conflict management. She explained that they held a meeting that appeared to resolve the conflict.

[33] Insp. Weare asked KD who attended the meeting, and she responded that only the two subordinate employees attended.

[34] The assessment board rated KD's answer as excellent.

[35] To answer question 10, the appointee described the implementation of a peer-review process. She explained that peer review started to be a competition among employees, to find errors and mistakes in one another's work. When she identified the concern, it resulted in the elimination of the peer review. The supervisor assumed the reviewer role.

[36] Insp. Weare testified that ES clearly identified the conflict within the unit and the impact on the team dynamic. She listened to those affected, and they trusted her to speak up. ES's rating for PS2 was "Satisfactory".

[37] Following the interview and reference checks, the assessment board determined that KD and ES were qualified and eligible for appointment. KD declined the AS-02 position. It was then offered to ES, who accepted it.

[38] Insp. Weare recalled attending two informal discussion meetings with the complainant after the appointment process was completed. She testified that in the first meeting, she provided a broad statement addressing PS2 and explained to the complainant that for question 10, the assessment board wanted more detail, which her answer lacked.

[39] Insp. Weare testified that at the second informal discussion meeting, she indicated that the complainant's answer for question 10 addressed what the complainant experienced but that it went no further. It indicated that she consulted her supervisor to resolve the situation and that she failed to communicate the nature of the conflict, the steps taken to listen to the individual involved, or the exploration of resolution at the lowest level. Insp. Weare stated that these missing elements distinguished the complainant's answers from the successful candidates' answers.

[40] In cross-examination, Insp. Weare was asked why did she not ask the complainant to clarify her answer for question 10, as she had for KD. She explained that she asked KD a question to clarify who attended an informal conflict-resolution meeting. For the complainant, the missing information required more than mere clarification, and asking her a clarifying question would have been prompting her to provide a more complete answer.

[41] The HRA testified about the first informal discussion meeting. She recalled that when the complainant questioned why she was not found qualified, Insp. Weare described PS2, specifically what she looked for in the answers to question 10.

[42] In cross-examination, the HRA recalled that the complainant's example did not supply sufficient information. It indicated that the conflict escalated to the manager but did not provide detail of what happened before that escalation.

[43] In the second informal discussion, it became clear to the HRA that the complainant misapprehended the requirements of question 10 and thought that it required her to respond as a supervisor to a subordinate employee. Insp. Weare clarified that that was not so. The response should have indicated the ability to work effectively with others. It did not require her to respond as a supervisor to a subordinate employee.

2. Bias

[44] The HRA testified about her role in the appointment process. Concerning the November 14, 2022, email, she testified that PSHR's standard practice was to send an email the day before a closing date, to ask the hiring manager whether they wanted to extend the date. Her assistant sent the email and copied it to the appointee, who was acting in the AS-02 position at the time.

[45] Before the closing date, Public Service Resourcing System, administered by the Public Service Commission, did not allow PSHR to identify the applicants or view their applications. It could only retrieve data as to the number of applications accepted, rejected, and in progress, as reflected in the November 14, 2022, email.

3. Unfair advantage

[46] Insp. Weare explained the use of the word "backup" by describing movement in the work unit and the loss of experienced personnel. The appointee became the natural choice to act in the AS-02 position when the incumbent was absent.

IV. Arguments

A. For the complainant

[47] The complainant felt that the assessment board unfairly scored her answer to question 10. In her view, she properly indicated that the parties met but that the

situation did not improve. As a result, she went to the supervisor, who set the expectations for each person. The assessment board could have asked her clarifying questions, if her answer was unclear.

[48] Further, the complainant felt that Insp. Weare's reasons for finding her not qualified changed from first requiring a peer-to-peer response, then to a supervisor's response to a subordinate, and finally to identifying how many meetings were held between the parties to the conflict. This indicates a clear abuse of authority.

[49] As for the appointee's receipt of the November 14, 2022, email, the complainant's position was that it gave her an advantage, whether it reminded her to apply or made her participation in the appointment process less stressful by knowing that there were only five applicants.

[50] The complainant objected to the respondent's articulation of the selection decision, which described the appointee as the backup to the AS-02 position. A backup position did not exist, and identifying ES as such was improper.

B. For the respondent

[51] The respondent argued that there was no abuse of authority. While the complainant might be disappointed in the outcome of the assessment process, it does not mean that it abused its authority.

[52] PS2 was an essential qualification. Given the unique work environment and the complement of RCMP members and federal and municipal employees, together with a history of conflict, PS2 was important. The uncontradicted evidence showed that the assessment board reached consensus on the candidate ratings.

[53] The importance of providing a detailed response was indicated to candidates in the interview guide. The complainant's answer had insufficient detail to determine the nature of the conflict that she had experienced.

[54] The assessment board asked KD a clarifying question, only to confirm the individuals who were present at a meeting. Asking the complainant for information describing her efforts to resolve the workplace conflict would have gone beyond clarification, to prompt her to expand her answer.

[55] The HRA's testimony indicated her observation during the second informal discussion meeting that the complainant misconstrued the requirements of question 10. While it assessed a candidate's potential to become a supervisor and work effectively with others, it did not require them to respond with an example taken from a supervisory perspective.

[56] In the context of the informal discussion, the HRA understood that Insp. Weare told the complainant that she could not come to her with every conflict that came up. If every issue came to her, as the detachment commander, then in essence, she would become the decision maker for unit-level disputes between employees.

[57] Concerning the November 14, 2022, email, PSHR was unaware of the names of the applicants at the time it was sent. Any suggestion that the names were known was speculative and unsupported by evidence.

[58] As for the use of the word "backup" to describe the appointee, the respondent noted that the appointee still had to apply, be screened in, and succeed in an interview and the reference checks that would follow. She received the appointment only because KD declined it.

V. Analysis

[59] Section 77(1)(a) of the *PSEA* provides as follows:

77 (1) When the Commission has made or proposed an appointment in an internal appointment process, a person in the area of recourse referred to in subsection (2) may — in the manner and within the period provided by the Board's regulations — make a complaint to the Board that he or she was not appointed or proposed for appointment by reason of

(a) an abuse of authority by the Commission or the deputy head in

77 (1) Lorsque la Commission a fait une proposition de nomination ou une nomination dans le cadre d'un processus de nomination interne, la personne qui est dans la zone de recours visée au paragraphe (2) peut, selon les modalités et dans le délai fixés par règlement de la Commission des relations de travail et de l'emploi, présenter à celle-ci une plainte selon laquelle elle n'a pas été nommée ou fait l'objet d'une proposition de nomination pour l'une ou l'autre des raisons suivantes :

a) abus de pouvoir de la part de la Commission ou de l'administrateur général dans l'exercice de leurs

the exercise of its or his or her authority under subsection 30(2) attributions respectives au titre du paragraphe 30(2);

[60] A complainant who comes before the Federal Public Sector Labour Relations and Employment Board (“the Board”) bears the onus of proving their allegations on the standard of the balance of probabilities (see *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8).

[61] The complainant advanced a case alleging abuse of authority in the application of merit in the assessment of candidates in the appointment process. Section 30 of the PSEA provides that public service appointments must be made on the basis of merit. Therefore, to be considered for appointment, a person must demonstrate that they meet the qualifications for the position, thus demonstrating merit.

[62] Given the allegations presented during the hearing, this analysis is organized to address the allegations concerning merit, bias, and personal favouritism. Of note, the allegations that the complainant filed earlier included an assertion that the HRA had acted improperly by seeking guidance from someone else. The complainant did not pursue that allegation during the hearing.

A. Assessment of question 10

[63] The Board’s role is not to assess or reassess the complainant, but to determine whether there was an abuse of authority in the assessment of merit.

[64] The complainant did not attain the pass mark for PS2, which was an essential qualification assessed during the interview. As for her answer, she argued that she actively engaged another employee in resolving their dispute before she resorted to going to the supervisor.

[65] Question 10 was provided to the candidates in advance of the interview, allowing them an opportunity to prepare a response. The email sent to the complainant included PS2, question 10, and the indicators for an answer, as follows:

...

Working effectively with others

- *Tell me about a time when you observed that the input from a member of your team did not meet the expectations or the standards required for the work and so you provided that team*

member with constructive feedback to help improve their contribution.

- o Describe the goals of the team's work.*
- o What was the issue with the team member's contribution?*
- o What feedback did you give to that team member?*
- o How did the team member receive the feedback?*
- o What effect did your input have on the work of the team?*

[66] Insp. Weare identified the assessment board members' notes. I accept that while the notes are often cryptic, they provide some sense of the interview and indications of what a candidate might have said. I also acknowledge the complainant's evidence that during the first informal discussion, she told Insp. Weare that her answer was entirely in the board's notes.

[67] Reviewing those notes, it appears that the complainant responded by stating broadly that she had conversations with an employee but that the conflict did not improve. She then referred the matter to her supervisor for resolution.

[68] The assessment board members' notes do not record that the complainant described the goals of the team's work, the issue, the feedback that she gave, or the colleague's reaction, and she did not address the effect on the team's work.

[69] The complainant argued that a clarifying question could have remedied any deficiency in her answer. I do not agree. The absence of content in the answer could not have been rectified with a clarifying question. The question posed to KD properly asked her for a simple clarification of who attended a meeting and did not lead her to elaborate on an overlooked area.

[70] In summary, the evidence failed to demonstrate that the complainant's answer addressed the five bulleted indicators. It was a structured interview, and the assessment board could only evaluate the information presented during the interview. A clarifying question could not reasonably have assisted her, given the absence of information in the answer that she provided. It may be that the complainant possessed all the information required to demonstrate that she met the indicators for PS2. However, she neglected to provide it at the interview. Neither the informal discussion nor the hearing before the Board presented an opportunity for her to supplement the answer that she provided at that time.

[71] As for the answers provided by KD and ES, Insp. Weare provided a logical, coherent explanation of the strength of their answers relative to PS2 and related it to the indicators for PS2. The evidence does not demonstrate that their answers were deficient or that in comparison, the complainant was unfairly assessed. There is no basis for the Board's intervention.

B. Bias

[72] As for the email of November 14, 2022, the complainant alleged a reasonable apprehension of bias favouring ES.

[73] The former Public Service Staffing Tribunal ("the Tribunal") canvassed the issue of bias in *Denny v. Deputy Minister of National Defence*, 2009 PSST 29. An extract from it reads as follows:

...

124 *The test for reasonable apprehension of bias is well established. Suspicions, speculations or possibilities of bias are not enough and bias must be real, probable or reasonably obvious. See Robert W. Macauley & James L.H. Sprague, Practice and Procedure before Administrative Tribunals, vol. 4 (Toronto: Thomson Carswell, 2004), at 39.4.*

125 *In Committee for Justice and Liberty v. Canada (National Energy Board), [1978] 1 S.C.R. 369, at 394, the reasonable apprehension of bias test is set out as follows:*

[T]he apprehension of bias must be a reasonable one held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information....[T]hat test is "what would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly.

126 *In a more recent decision, Newfoundland Telephone Company v. Newfoundland (Board of Commissioners of Public Utilities), [1992] 1 S.C.R. 623; [1992] S.C.J. No. 21 (QL), at para. 22 (QL), the Supreme Court articulated the test as follows: "The test is whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator." The objective test articulated by the Supreme Court in Committee for Justice and Newfoundland Telephone also applies to the circumstances here; members of the assessment board have a duty to act fairly, which includes a bias-free assessment. If a reasonably informed bystander looking at the process could reasonably perceive bias on the part of one or more of the assessment board members, then*

the duty to act fairly has not been met. It is also important to emphasize that one of the key values articulated in the preamble of the PSEA is fairness.

...

[74] The complainant bore the burden of persuading the Board that because of this email, an informed person, viewing the matter realistically and practically, would reasonably apprehend bias on the part of the assessment board whether consciously or unconsciously when assessing the candidates.

[75] The evidence clearly demonstrates that the email was copied to the appointee. It appears that she received it in the normal course of her duties while acting in the AS-02 position. The evidence did not confirm whether she opened or read it.

[76] Reviewing the email's content, I find no assessment material, no questions, no answers, and no candidates' names. The content discloses information about the number of applications that were received. Viewed objectively, it contains no information that bore on the assessment of merit in the appointment process.

[77] The question to be answered is whether the email indicates an apprehension of bias in the appointment process. In my view, it does not. I am not satisfied that particularly given the email's content, merely sending it to the appointee created any inference that the assessment board members were biased when assessing candidates for the AS-02 position.

[78] The complainant argued that receiving the email could have influenced the appointee to apply for the AS-02 position or that knowing the number of applicants could have put her at ease. Her suggestions were speculative, without any evidence to support them.

[79] In view of the evidence, I conclude that a reasonably informed bystander would not perceive an apprehension of bias in the email being sent to the appointee, particularly given the content, which provided no demonstrable personal advantage to her.

C. Personal favouritism

[80] The complainant objected to the written articulation of the selection decision and the appointee's identification as the backup AS-02. I accept this as an allegation of personal favouritism.

[81] I note the well-known test for personal favouritism expressed in the Tribunal's decision in *Glasgow v. Deputy Minister of Public Works and Government Services Canada*, 2008 PSST 7 at para. 41, as follows:

41 Where there is a choice among qualified candidates, paragraph 30(2)(b) of the PSEA indicates that the selection may be made on the basis of additional asset qualifications, operational requirements and organisational needs. The selection should never be for reasons of personal favouritism. Undue personal interests, such as a personal relationship between the person selecting and the appointee should never be the reason for appointing a person. Similarly, the selection of a person as a personal favour, or to gain personal favour with someone else, would be another example of personal favouritism.

[82] Nothing in the evidence suggests an undue personal interest, a personal favour or gain, to support a finding of personal favouritism tainting ES's appointment. On its own, using the word "backup" to explain the dynamics in the work unit and the fact that the appointee became the natural choice to act in the AS-02 position when the incumbent was absent, is not sufficient to conclude personal favoritism in ES's appointment.

[83] I find that personal favouritism was not a factor in ES's appointment to the AS-02 position or in the selection of candidates according to merit.

[84] For all of the above reasons, I find that the complainant did not establish that an abuse of authority occurred in the application of merit and the Board makes the following order:

(The Order appears on the next page)

VI. Order

[85] The complaint is dismissed.

November 20, 2025.

**Joanne B. Archibald,
a panel of the Federal Public Sector
Labour Relations and Employment Board**