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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

JAMES VALOIS

Complainant

and

**DEPUTY HEAD
(Canada Border Services Agency)**

Respondent

and

OTHER PARTIES

Indexed as

Valois v. Deputy Head (Canada Border Services Agency)

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

Before: Brian Russell, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself and Todd Matejka

For the Respondent: Daniel Côté-Finch, counsel

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

Heard via videoconference,
July 31 and August 1, 2025.

REASONS FOR DECISION

I. Complaint before the Board

[1] James Valois (“the complainant”) made this complaint, alleging an abuse of authority in the application of merit concerning the use of an advertised appointment process by the Canada Border Services Agency (“the respondent” or CBSA) used in the appointment of the successful candidate (“the appointee”) to an FB-06 senior program advisor position in the CBSA’s refugees unit (appointment process number 2021-IA-TB-FB_06-622; “the appointment process”).

[2] The complainant alleges that the respondent engaged in bad faith, intentionally circumvented qualified candidates in the appointment process, and abused its authority in the application of merit by only considering one candidate for the appointment and by committing errors during the appointment process.

[3] The complainant also alleges that there were errors related to the application of merit and that during the exchange-of-information process, information and documentation was produced that he believes was not reasonable.

[4] The respondent denies the complainant’s allegations and requests that the Federal Public Sector Labour Relations and Employment Board (“the Board”) dismiss the complaint.

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

[6] For the reasons that follow, I conclude that the complainant did not demonstrate that the respondent’s decision to only consider one candidate for the appointment was an abuse of authority in the application of merit; nor did he demonstrate that the errors committed during the appointment process was an abuse of authority in the application of merit. The respondent’s decision was based on merit: the appointee met the essential qualifications, and the respondent considered its operational requirements to determine that she was the right fit for the job; so, I dismiss his complaint.

II. Summary of the evidence

[7] Three witnesses testified at the hearing, including Andrea Éthier, the acting director of the refugee unit when this staffing process took place, and Kia Jacobs, the manager of the unit and the complainant.

[8] This section will describe the complainant, the refugee unit and how it came about, the refugee unit's staffing needs when the appointee was selected, the appointee's assessment, and the administrative errors in that assessment.

A. The complainant's background

[9] The complainant has worked for the respondent since 2008. He has worked at several locations in Canada and abroad. He has worked at ports of entry, refugee processing offices, the CBSA's national training centre, in the CBSA's counterintelligence and national security section (CINSS), and on a diplomatic post in Beijing, China. He qualified in the same FB-06 appointment process as the appointee, and he was placed in a pool.

B. The refugee unit - background

[10] Ms. Éthier was the acting director of the refugee unit during the staffing process. She has worked for the respondent for 20 years and is currently the manager of its judicial review unit. She started conducting staffing appointments and staffing actions in 2017 and has participated in approximately 25 to 30 of them.

[11] Ms. Éthier testified that originally, the CBSA did not have a refugee unit. Work involving refugees was done out of its traveller branch. In 2017, it experienced a significant increase of asylum seekers arriving at the Canadian border. It was under pressure because of the significant increase in refugee claims. Ms. Éthier testified that since the number of claims did not decrease, the respondent set up the refugee unit.

[12] A second unit was created that was responsible for case tracking and prioritization. Ms. Éthier testified that she was asked to manage that unit. She was then asked to also manage the refugee unit. Eventually, a third unit was created, which was responsible for policy on refugee processing. The three units became the refugee division.

[13] Ms. Éthier testified that there was rapid growth in the refugee division that led to an increase in hiring during that period. A manager was responsible for each unit that reported to her.

[14] Ms. Éthier testified that she did not interview the appointee; nor did she perform the reference checks. Ms. Jacobs, who reported to her, was responsible for identifying and interviewing candidates. Ms. Éthier had staffing delegation training, so she signed off on the paperwork for the appointment process

C. The refugee unit's staffing needs

[15] Ms. Jacobs has worked with the CBSA since 2013, in several roles. She joined the refugee unit in 2022 and worked there until April 2024. She is currently a liaison officer with the respondent, posted in Kingston, Jamaica. She started acting as the manager in the refugee unit in April 2023 and was involved in staffing processes for eight members of the team, including acting and promotional appointments. She did not have any staffing experience before that role. She testified that the appointee was the ninth person that she appointed.

[16] Ms. Jacobs testified to the operational context of the staffing process. The refugee division was relatively new. The respondent was being innovative and had to change its organizational process. There were major changes to the intake process for refugees. There was a change in legislation called "refugee reform". The respondent was negotiating with multiple stakeholders, partners, bargaining agents, and human resources (HR). It required additional resources to process claimants. The refugee unit supported the influx of claimants who arrived in 2022 and 2023.

[17] The respondent aimed to staff multiple roles in the new refugee unit. At that time, it had 16 positions, of which 6 were vacant: 2 FB-02, 2 FB-04, and 2 FB-06.

[18] Ms. Jacobs explained that as of the staffing process, the refugee unit had four senior program advisors. One was a casual employee and was not available all year, and one was new in the leadership role, which left two advisors with experience. She testified that the senior program advisors were expected to take a leadership role in the refugee unit. All the advisors were overburdened, so the refugee unit needed someone to help ease the workload.

[19] Ms. Jacobs explained that the refugee division required employees with diverse experience because it was responsible for ensuring the effective and efficient delivery of the asylum program.

[20] Ms. Jacobs explained that FB-06s can be advisors and that they can take on a team-lead role. Before she joined the refugee unit, there was no team-lead role for the advisors, so everything came to her, as the manager, which was not efficient. She wanted to implement a structure in which the FB-02s and FB-04s reported to an FB-06 team lead, and if the FB-06 was not able to resolve the issue, then it would come to her. So, she was looking for a candidate with supervisory experience.

[21] Ms. Jacobs testified that based on the refugee unit's operational demands, she required a candidate who could provide program guidance. The unit was the second level of escalation for refugee processing, so she was looking for candidates who could quickly adapt, interpret, and analyze legislation and knew when to escalate issues to stakeholders. Based on the unit's composition at the time, she was looking for people who were strong in that type of analysis.

D. The process used to hire the appointee

[22] Ms. Jacobs was the hiring manager for the staffing process. Ms. Éthier was the subdelegated manager. The subdelegated manager has the authority to approve the staffing action financially and to act on the minister's behalf. The hiring manager discusses the staffing needs with the team, establishes the needs, finds suitable candidates, assesses them, including determining whether one is the right fit, and prepares paperwork for the HR division. HR reviews it, and it is then sent to the subdelegated manager, for approval.

[23] She testified that based on the refugee unit's needs, she asked HR to provide her with CVs of individuals for FB-02, FB-04, and FB-06 positions. HR provided her with a list of candidates who were in an FB-04 pool, and the appointee's name was provided for consideration for an FB-04 vacancy.

[24] Ms. Jacobs testified that she arranged to meet with the appointee for an interview, along with another colleague, Racha Younes. During the interview, the appointee informed her that she was already an FB-04, that she was in an FB-06 pool because she qualified in an FB-06 process, and that she was interested in FB-06

positions. Ms. Jacobs testified that she did not know the appointee and that she did not have a relationship with her before meeting her at the interview.

[25] Ms. Éthier testified that HR had provided the refugee unit with the names of candidates who had qualified for the FB-06 pool because the refugee unit had already appointed people from that pool. It receives CVs, emails, and cover letters from individuals promoting themselves. It was not unusual. The candidates could be in a pool, at level, or in an acting assignment.

[26] Both Ms. Jacobs and Ms. Éthier testified that the process to staff the position at issue was different because the appointee promoted herself by saying that she was in the FB-06 pool. That was how she came to the respondent's attention.

E. The appointee's qualifications

[27] Ms. Jacobs testified that the appointee was found qualified for the FB-06 position because she had been successful in an advertised appointment process run by the respondent (numbered 2021-IA-TB-FB_06-622) for a senior program advisor position classified at the FB-06 group and level. She testified that she knew about that advertised process because she had also succeeded in it.

[28] The document advising the appointee that she was in the FB-06 pool states that the pool could be used in the future to staff similar FB-06 positions with different tenures, linguistic profiles, and security clearances with the respondent.

[29] The parties agree that the appointee met the essential qualifications. Mr. Valois indicated during the hearing that he is not asserting that the appointee is not qualified. I will focus on the asset qualifications and their assessment because it is one of the key components of this complaint.

[30] The statement of merit criteria listed nine asset qualifications, as follows:

- *Experience managing people or leading a team*
- *Experience with project management frameworks (e.g. standards and methods to plan, execute, control, deliver and close out projects and activities)*
- *Experience in identifying program improvements or business needs*
- *Experience providing strategic advice and guidance on enforcement related priorities and activities*

- *Experience developing and implementing national strategies or standard operating procedures*
 - *Experience working in an operational environment in any of the following modes: air, land, marine, rail, postal operations or commercial and trade sector*
 - *Experience working with one or more automated operational systems within CBSA (e.g. GCMS, CPIC, ICES, ICS, IPIL etc.)*
 - *Experience in the application and interpretation of the Customs Act, Customs Tariff or the Criminal Code*
 - *Experience in the interpretation or administration of the Immigration and Refugee Protection Act and regulations*
- [Sic throughout]

[31] Ms. Jacobs testified that the appointee did not have to meet all the asset qualifications to be appointed. According to her, the appointee met the following asset qualifications:

- *Experience managing people or leading a team*
 - *Experience in identifying program improvements or business needs*
 - *Experience providing strategic advice and guidance on enforcement related priorities and activities*
 - *Experience developing and implementing national strategies or standard operating procedures*
 - *Experience working with one or more automated operational systems within CBSA (e.g. GCMS, CPIC, ICES, ICS, IPIL etc.)*
 - *Experience in the application and interpretation of the Immigration and Refugee Protection Act and regulations*
- [Sic throughout]

[32] Several documents were completed as part of the appointee's assessment. The first was an Asset Qualification Grid. Ms. Jacobs testified that she did not prepare the document, and she was not certain whether HR prepared it.

[33] Of the nine asset qualifications, the document indicates that the appointee met five of them. It states that she did not have experience with project management frameworks, working in an operational environment, or in the application and interpretation of the *Customs Act* (R.S.C., 1985, c. 1 (2nd Supp.)), *Customs Tariff Act* (S.C. 1997, c. 36) or the *Criminal Code* (R.S.C., 1985, c. C-46). I also note that experience

identifying program improvements or business needs is crossed out. The document indicates that the appointee met the other five asset qualifications.

[34] The second was the Selection Decision Form that Ms. Jacobs prepared. She could not recall the specific date that it was prepared, but she testified that it was likely before the appointee was appointed to the position because the document was sent to HR, which normally reviews documents before an appointment is made. The document states the following about the appointee:

- she gained experience working in an operational immigration setting based on roles with the respondent;
- she has experience working with the CBSA's Global Case Management System (GCMS); in the development and maintenance of tracking systems and databases; and providing information, advice, or guidance based on interpreting program services, regulations, policies, guidelines, or operating procedures to internal stakeholders; and
- she has experience developing or contributing to processes and working collaboratively with different internal and external stakeholders.

[35] It also states that the appointee gained experience in research and analysis with respect to complex immigration files and that she acted as a team lead, delivering guidance to senior program officers, which is an asset for working in the refugee unit and would help in the refugee division. It also states that she was appointed because of her experience at the CBSA's national headquarters and the knowledge that she gained working on refugee claimant files in the CINSS.

[36] Ms. Éthier testified that experience in the CINSS is relevant to the refugee unit because it conducts security screenings of asylum seekers. If an individual makes a refugee claim in Canada, then the application will be security screened for three areas of the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27; *IRPA*): organized crime, terrorism, and crimes against humanity. Those are serious inadmissibility issues, and the respondent screens for applicants who pose a potential threat to Canada and its residents. The appointee had experience in the ability to analyze information from different sources and to draw conclusions on complex files.

[37] Ms. Jacobs was asked about the Selection Decision Form which indicates that the appointee gained experience in an "operational immigration setting" when the Asset Qualification Grid indicates that the appointee does not have "experience working in an operational environment in any of the following modes: air, land, marine, rail, postal operations or commercial and trade sector". She explained that the

appointee did not meet the qualification as described in the statement of merit criteria but that she decided who was the right fit. She explained that there was an amount of flexibility in the assessment. The appointee met the qualification if the specifications for air, land, marine, rail, and postal operations were removed, so she considered that. She also explained that her definition of “operational environment” is one in which an employee is required to respond and produce. According to her, deadlines are implied with an operational environment.

[38] Ms. Jacobs was also asked about the research and analysis involved in complex immigration files, specifically that that was not listed in the asset qualifications. She testified that it fell under the interpretation and administration of the *IRPA* and the *Immigration and Refugee Protection Regulations* (SOR/2002-227). She indicated that the appointee’s work at the CINSS meant that she worked on the most serious files, involving terrorism, organized crime, and crimes against humanity. That work required making decisions on whether a person was inadmissible to enter Canada for that reason. It meant carrying out significant amounts of analysis and research and reading the jurisprudence. She determined that the appointee met the criteria based on her references, interview, and CV.

[39] Ms. Jacobs explained that in the Selection Decision Form, she tried to explain that the candidate had the large breadth of experience that was necessary for the position. She did not see a need to explicitly state that no other candidates were considered because she had identified a qualified candidate. She also indicated that she did not take the questions in the document literally because they were guidance, used to explain why the appointee was selected.

[40] Ms. Jacobs was taken to the notes that she prepared after the complaint was made that also outlined the basis for her decision. It included that the appointee was not known to her before her name was provided by HR from the FB-04 pool.

[41] The document states that the appointee stood out as a leader who was dedicated and ambitious and who had experience. Ms. Jacobs testified that no one in the refugee division had the same background as the appointee. In her opinion, the best team is made up of people with different backgrounds so that they can support each other. That is beneficial for the entire refugee division.

[42] Ms. Jacobs testified that the combination of the appointee being successful in an FB-06 process as well as the experience and knowledge gained at the CINSS while working on refugee claimant files was the justification used to select her.

[43] Ms. Jacobs was looking to put together a team with diverse experience because refugee processing and intake is multifaceted and involves multiple partners and stakeholders. The refugee unit did not have anyone with CINSS experience, which was useful for all three units in the division.

[44] Ms. Jacobs testified that the appointee's leadership qualities stood out. She sought new opportunities to promote her professional growth by considering joining the refugee unit at the FB-04 group and level, even though she was acting in a higher-level position. The refugee division was relatively new, and the unit required a strong and experienced leader.

[45] The appointee was involved in an initiative with the Canadian Security Intelligence Service (CSIS). She did not have experience collaborating with CSIS, so she had to learn it from scratch. Ms. Jacobs indicated that that quality was essential for the refugee unit because it was relatively new and had a learning curve. Someone had to jump in, even if the work was unfamiliar and hard, and the appointee did that on the CSIS project. According to Ms. Jacobs, she was looking for that quality in a candidate for the position.

[46] Ms. Jacobs testified that she contacted the appointee's references, and she learned that the appointee was an excellent employee who was respected. She was adept at analysis, her legislative analysis was spot on, and she was a hard worker unafraid to think outside the box. One reference indicated that she would be an FB-08 manager one day.

[47] Ms. Jacobs testified that the way that the appointee presented herself in the interview goes to how a hiring manager wants people to present themselves when they negotiate on the respondent's behalf. The decision to select the appointee was discussed with Ms. Éthier and her colleague who attended the interview with the appointee. Both agreed that she was a strong candidate.

[48] Ms. Jacobs testified that she concluded that the appointee was the right fit for the FB-06 position because senior advisors lead and coordinate national strategies, so

they must negotiate policy changes and give advice and insight. Engagement is important; so is putting plans into action. She coordinated strategies with CSIS and negotiated policy and legislative changes. The appointee had experience in all those areas.

[49] Ms. Éthier testified that the appointee is the type of employee whom managers want, based on her experience and skill set, which was an asset to the refugee unit. The appointee had experience working on refugee files from a security screening perspective, which was a great asset for the refugee division. There are backlogs, which speaks to the work necessary to screen an individual.

[50] Ms. Jacobs testified that the right fit in the staffing context means that even if someone qualified in a staffing process and meets the essential criteria, as a manager, she is still required to ensure that their interpersonal skills, history, and experience work well for the position that they are being considered for.

[51] Ms. Éthier testified that the appointee was appointed from an FB-06 pool but that she was not the only one. Approximately three other employees were appointed from the same pool as the appointee into the refugee division. Ms. Éthier testified that the pool is still open, so more candidates might have been appointed.

F. Administrative errors in the appointee's assessment

[52] During the exchange-of-information process, the complainant asked HR for a ranking for the pool. He prepared a document comparing the asset qualifications that he met compared to those that the appointee met. He testified that he did it to demonstrate that he was qualified for the position. He explained that he decided to compare himself with the appointee because the decision as to why she was selected over others ought to be explained. He conceded that the respondent did not have to follow a top-down selection, but a candidate's selection ought to be justified compared to other qualified candidates.

[53] Mr. Valois' document indicates that he met all the asset qualifications listed in the statement of merit criteria and that the appointee did not meet all the asset qualifications.

[54] Mr. Valois noted that there were errors in the Notice of Consideration (NOC) and the "Notification of Appointment or Proposed Appointment" (NAPA). Both documents

indicated that the appointee had qualified in another department's process. He testified that the information was incorrect because she had qualified in the respondent's process. The NOC indicated that the appointee met the experience-related asset qualification about project management frameworks, but the assessment grid that he prepared indicated that she did not meet that one.

[55] The Selection Decision Form had errors. It listed the appointee's personal address and indicated that she had experience in "... an operational immigration setting as a Junior Program Officer, Senior Program Officer, and Senior Program Advisor." Mr. Valois testified that operational experience tended to be defined as front-line operations. Also, the term "operational capacity" tended to be defined as operational personnel, typically front client-facing uniformed personnel. From his perspective, the respondent's assessment of the appointee's experience in an operational immigration setting was inaccurate.

[56] Mr. Valois testified that the experience working with the GCMS and the development and maintenance of tracking systems and databases did not have an explanation as to how or why it was important to the position. Also, other candidates were not given the opportunity to present their experience with complex immigration files. In his view, it was an error that no one else was considered for the position and that no explanation was provided as to why. He testified that he contacted the respondent, to understand its decision, and that he was provided the responses in the deputy head's reply to the complaint that stated that it did not abuse its authority in the appointee's appointment.

[57] According to Mr. Valois, the employer's explanation about the asset qualifications that the appointee met deviated from what the selection board assessed and contradicted what was listed in the Selection Decision Form.

[58] Mr. Valois testified that the respondent applied new asset criteria that were not expressed. He testified that it had to explain its rationale as to why it invoked the new asset criteria and how they were applied. The justifications that were provided were done after the appointment, and they did not exist before the appointee was appointed.

[59] He conceded that an appointment process is about identifying qualified candidates and then selecting the best fit. However, he testified that the type of

process ought to be chosen first and that the candidate ought to be chosen second. He testified that the respondent's organizational needs must be articulated and defined and that the process must proceed before a candidate is selected.

III. Reasons

A. The respondent did not abuse its authority or act in bad faith

[60] Having reviewed all the information that the parties provided and the witnesses' testimonies, I conclude that the respondent did not abuse its authority; nor did it act in bad faith in its choice of considering only one candidate. I also conclude that the errors that it committed during the assessment process did not rise to an abuse of authority.

[61] The complainant had the burden of demonstrating that there was an abuse of authority in this advertised appointment process. To be successful, he had to produce convincing evidence (see *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8; and *Jolin v. Deputy Head of Service Canada*, 2007 PSST 11 at paras. 42 to 44).

B. Considering only one candidate is not an abuse of authority

1. The complainant's position

[62] Mr. Valois argues that the respondent acted in bad faith when it chose to only consider one candidate.

[63] He also argues that there was no explanation why the appointee was selected over others, and the respondent applied new asset criteria that were not expressed. He contends that the respondent must explain its rationale, why it was invoked, and how the asset criteria were determined and evaluated. Also, the justifications provided after the appointee was appointed did not exist before she was appointed. All that amounts to an abuse of authority.

[64] He argues that transparency is an issue. He would not have made his complaint if the articulations and rationales were made before the appointee was appointed. He also argues that there was a deviation from what the selection board assessed and that there was a contradiction in articulating the appointment.

[65] Mr. Valois explained that in his view, the type of process ought to be selected first, and the candidate ought to be selected second; otherwise, it is an abuse of

authority. He also contends that the respondent should have followed the conscientious approach that was used in the FB-04 process by obtaining a list of qualified candidates and assessing them. He argues that extracting the appointee from the pool and then deciding to use a non-advertised process was an abuse of authority. He cites *Hunter v. Deputy Minister of Industry*, 2019 FPSLREB 83, and *Robert v. Deputy Minister of Citizenship and Immigration*, 2008 PSST 24, to support his position. He also cites *Savoie v. Deputy Head (Department of Employment and Social Development)*, 2024 FPSLREB 78 at para. 40, which states that the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*) requires that the choice of appointment process must take place independently from the selection of an appointee.

[66] He argues that it was apparent that no one else was considered for the position. No explanation was given as to why nobody else was considered.

[67] He argues that the respondent did not contact HR for a list of candidates in the FB-06 pool. He contends that had the hiring manager contacted HR for a list of candidates who had the essential and asset qualifications in the NOC, then the appointee would not have been referred to them. He contends that not providing an opportunity for other candidates to express their interest in the opportunity was a significant error.

2. The respondent's position

[68] The respondent argues that it explained its choice of process. It argues that it is obligated to select a candidate who is qualified. It is not required to explain why the appointee was selected over other candidates. It argues that it justified why she was selected, and the fact that the complainant disagrees with the explanation does not rise to an abuse of authority.

[69] The respondent argues that employees do not have a guaranteed right of access to every appointment and cites *Thompson v. President of the Canada Border Services Agency*, 2017 PSLREB 22 at para. 54, and *Jarvo v. Deputy Minister of National Defence*, 2011 PSST 6 at para. 32, to support its position.

[70] It argues that an assertion that one person or others might have been qualified for the appointment process does not establish that it abused its authority.

[71] The respondent argues that the *PSEA* no longer requires ranking candidates and that it does not require a comparative assessment of them for a position to be filled. The only requirement is that the person appointed must meet the essential qualifications for the position. It argues that that is the issue before me. It cites *Aucoin v. President of the Canada Border Services Agency*, 2006 PSST 12 at paras. 42 and 43.

[72] It also argues that choosing the most qualified candidate is not necessary. It has latitude in selecting the candidate who is the “right fit”. The decision may also be based on current and future needs and operational requirements. It cites *Lavigne v. Canada (Justice)*, 2009 FC 684 at para. 86, and *Portree v. Deputy Head of Service Canada*, 2006 PSST 14 at paras. 39 and 40, to support its position.

[73] According to the respondent, the *PSEA* gives it the discretion to choose between an advertised and a non-advertised process. The discretion in making that choice is considerable. It also does not require ranking candidates and making a comparative assessment of them. The person chosen must meet the position’s essential qualifications. The parties agree that the appointee met them.

3. Conclusion

[74] I conclude that assessing only one candidate and not deciding on the process first before selecting the candidate or not getting a list of names from the advertised pool, interviewing candidates and then appointing the successful candidate are not an abuse of authority.

A. Assessing only one candidate

[75] *Savoie* states at para. 29 that a hiring manager does not need to consider more than one person for an appointment to be made based on merit. The appointee met the essential qualifications for the position. That is what is required for an appointment to be based on merit (see section 30 of the *PSEA*, *Savoie* at para. 89 and *Mousseau Bailey v. Deputy Head (Department of Indigenous Services)*, 2024 FPSLREB 52 at para. 122). The respondent does not need to consider more than one person for the appointment to be based on merit (see *Robbins v. Deputy Head of Service Canada*, 2006 PSST 17 at paras. 42 to 45, *Aucoin* at paras. 42 and 43, and *Thompson* at para. 54) so, there was no abuse of authority in assessing only one candidate.

B. Deciding on the process after selecting the candidate

[76] The complainant cites *Savoie* and states that it stands for the proposition that the choice of appointment process must take place independently from selecting an appointee. He argues that *Savoie* supports his position that the process should be selected first, before the qualified candidate is chosen.

[77] I agree with the complainant that the decision states that the choice of appointment process and the selection of the appointee must take place independently. However, there is no requirement for the respondent to identify the process and **then after** select the qualified candidate. The Board Member in *Savoie* stated at para. 45 as follows:

*[45] ... My decision also does not require a hiring manager to choose a non-advertised process **before** they consider whom to appoint. A hiring manager is not expected to decide to use a non-advertised appointment process without having someone in mind for the position.*

[Emphasis added]

[78] If a non-advertised process is chosen, then the respondent should explain why that choice was made. Pressing and urgent operational needs may justify choosing a non-advertised process. See *Yousuf v. Deputy Head (Department of Indigenous Services)*, 2025 FPSLREB 40 at paras. 69 to 71.

[79] Ms. Jacobs and Ms. Éthier testified about the operational requirements that led to the decision to select the appointee. There was significant pressure on the refugees unit because of the volume of claims. Ms. Jacobs testified that the appointee's strong leadership skills and her knowledge gained at the CINSS, while working on refugee claimant files, were key considerations in choosing her.

[80] I note that Mr. Valois argued that the respondent used a non-advertised process to appoint the appointee. Mr. Valois appears to have combined selecting only one candidate with the use of a non-advertised process. The evidence shows that the appointee was selected from a pool from an advertised process.

[81] There was no abuse of authority in deciding on the process after selecting the candidate.

C. The respondent's errors were not an abuse of authority

1. The parties' positions

[82] Mr. Valois argues that the respondent committed errors in the appointment process that meet the threshold of abuse of authority, and he cites *Tibbs*, at paras. 71 to 74. He also cites *Robert* and, *Hunter*, and *Lavigne v. Deputy Minister of Justice*, 2008 PSST 13.

[83] He argues that intent is not necessary to demonstrate bad faith and cites *Hunter* and *Beyak v. The Deputy Minister of Natural Resources Canada*, 2009 PSST 35, to support his position.

[84] The errors are summarized as follows. First, the appointee had to meet all the asset qualifications listed in the NOC, which she did not. Second, asset qualifications were invoked, but there was no explanation as to why they were invoked or how they were assessed. Third, qualifications were not properly assessed, and justifications were not properly articulated. Fourth, the explanations provided were retroactive. They were not in the file when the appointment was made but were filed when the complaint was made. Fifth, the definition used for "operational experience" was incorrect. Sixth, the NOC and the NAPA incorrectly stated that the appointee qualified in a staffing process in another department and not the respondent's process. According to Mr. Valois, the appointee indicated that she did not meet a qualification. The NOC incorrectly listed that she had experience with project management frameworks. She did not have that experience. Finally, the appointee's personal information was provided to the complainant, which he alleges breached her confidentiality and the *Privacy Act* (R.S.C., 1985, c. P-21).

[85] The respondent argues that the errors and omissions in the appointment process were minor and that they do not rise to an abuse of authority. It cites *Lavigne v. Canada (Justice)*, 2009 FC 684 at paras. 62 and 81. I agree.

[86] In this case, the parties do not dispute that the appointee met the essential qualifications.

2. Conclusion

[87] I conclude that the errors in the appointment process do not change the fact that the appointee qualified in an FB-06 appointment process that the respondent ran.

She met the essential and some of the asset qualifications. Ms. Jacobs' testimony was that the appointee was the right fit. The complainant did not convince me that the respondent abused its authority in selecting her.

[88] There was no requirement for the appointee to meet all the asset criteria. For an appointment to be based on merit, the appointee must meet the essential qualifications; see *Guimond v. Deputy Minister of National Defence et al.*, 2009 PSST 23 at paras. 27 to 34.

[89] Mr. Valois alleges that the respondent invoked criteria but that it did not explain why it was invoked or how it was assessed. I disagree. The Selection Decision Form was prepared before the appointment explains why the asset criteria was assessed. In addition, Ms. Jacobs notes that the documents that she prepared after the appointment also explain the operational requirements that led to appointing the appointee.

[90] A belief that the criteria should have been weighed differently, assessed more appropriately, and documented more thoroughly does not mean that any of those items are egregious errors or omissions (see *Cooke v. Deputy Head (Correctional Service of Canada)*, 2025 FPSLREB 24 at para. 110).

[91] I accept that Ms. Jacobs' notes, which explain the appointment, were prepared after the appointment was made; however, the other two documents were prepared before it was made. *Bérubé-Savoie v. Deputy Minister of Human Resources and Skills Development Canada*, 2013 PSST 2 at para. 60, states that it is not an abuse of authority to give further or a more detailed explanation of the decision after the appointment was made.

[92] The complainant's disagreement with the definition of "operational experience" is not enough to demonstrate an abuse of authority; see *Cooke*.

[93] The error on the NOC and the NAPA, stating that the appointee qualified on a process from another department, and the error with one of the asset qualifications do not change the fact that the appointee met the position's essential qualifications. An appointee is not required to meet all the asset qualifications; see *Guimond*.

[94] *Cooke*, at para. 108, states that serious omissions or errors in the exercise of discretion in establishing the essential qualifications of the work to be performed constitute an abuse of authority. They must be so egregious as to be beyond the

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delegated manager's authority. The complainant did not point out errors committed during the appointment process that were so egregious that they were beyond the delegated manager's authority.

[95] I do not have the authority to review breaches of confidentiality under the *Privacy Act*. The Privacy Commissioner is responsible for receiving and investigating such complaints. I conclude that providing the appointee's personal information did not affect the application of merit in the appointment process because the appointee met all the essential qualifications.

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

(The Order appears on the next page)

IV. Order

[97] The complaint is dismissed.

December 12, 2025.

**Brian Russell,
a panel of the Federal Public Sector
Labour Relations and Employment Board**