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File: 771-02-42741

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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

YONITA PARKES

Complainant

and

**DEPUTY HEAD
(Department of Citizenship and Immigration)**

Respondent

and

OTHER PARTIES

Indexed as

Parkes v. Deputy Head (Department of Citizenship and Immigration)

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

Before: Gorette Fukamusenge, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Boris Subara, counsel

For the Public Service Commission: Maude Bissonnette Trudeau

Heard via teleconference,
September 10 and 11, 2024.

REASONS FOR DECISION

I. Complaint before the Board

[1] This complaint is about abuse of authority under s. 77(1)(b) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*), allegedly caused by discrimination. The complainant, Yonita Parkes, who identifies as being of “Afro-South American descent”, alleged that the Department of Citizenship and Immigration, commonly known as Immigration, Refugees and Citizenship Canada (“the respondent” or IRCC) abused its authority by discriminating against her when it used a non-advertised appointment process (numbered 2019-IMC-INA-ACIN-31925) when it appointed a senior immigration officer (SIO) classified at the PM-04 group and level in its Reviews and Interventions Unit.

[2] The acting assignment that began on April 1, 2021, and ended on March 31, 2023, is in dispute.

[3] Essentially, the complainant alleged that the respondent engaged in a discriminatory practice by using non-advertised processes to appoint SIOs, which deprived her of career advancement opportunities and discriminated against her based on race, colour, and national and ethnic origin, in contravention to ss. 7, 10, and 14 of the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*). She also alleged that there was an existing inventory (or “staffing process”), numbered 2019-IMC-IA-29808 (“Inventory 2019-IMC-IA-29808”), for the purposes of making SIO appointments, to which she applied but for which was never evaluated.

[4] The respondent contended that the complainant’s allegations fall outside the scope of the complaint and that the complainant was not evaluated during the staffing process numbered 2019-IMC-IA-29808 because she did not apply in time. Further, it emphasized that the appointee in this case was initially selected for an acting appointment through an advertised process (numbered 11-IMC-IA-ONT-MRI-180) and that after that process expired, it extended the appointment due to its satisfaction with the appointee’s performance and to meet operational requirements.

[5] For the reasons that follow, the complaint is dismissed. The complainant insisted that she is a victim of systemic discrimination against Black employees. Even if I take judicial notice of the existence of anti-Black discrimination as a broader societal

issue, the facts and the evidence before me do not establish that her race, colour, or national or ethnic origin was a factor in the respondent's decision to use a non-advertised appointment process.

[6] The complainant devoted significant effort to focussing on what she perceived as systemic discrimination within the IRCC and the federal public service in general. The systemic issues that she presented provided contextual background but fell outside the scope of the complaint under review. They might be more appropriately addressed through other processes specifically designed to examine broad systemic issues.

[7] My key conclusions are as follows:

- the appointments made from Inventory 2019-IMC-IA-29808 are outside the complaint's scope;
- the staffing-complaint process is not the appropriate forum for inquiring into allegations of broad systemic issues; and
- the respondent provided a satisfactory explanation for using a non-advertised appointment process.

[8] I will begin by summarizing the procedural history and evidentiary issues and clarifying the complaint's scope. This will provide the context within which the complaint was assessed.

A. Procedural and evidentiary issues

[9] When the complainant made her complaint, in March 2021, she submitted 13 supporting documents and indicated an intention to present additional materials at the hearing. The initial hearing was scheduled to proceed on December 18 and 19, 2023. As part of the hearing preparation, the Federal Public Sector Labour Relations and Employment Board ("the Board") attempted to convene a pre-hearing conference. However, the parties were unable to agree to a mutually convenient date.

[10] On November 27, 2023, the Board directed the parties to submit their books of documents and lists of witnesses, including a brief description of each witness's anticipated testimony, by December 11, 2023. The respondent complied on December 12, 2023.

[11] On December 16, 2023, the complainant, unrepresented by legal counsel, submitted a 144-page document entitled *Additional Complaint Submissions*.

Subsequently, on December 18, 2023, the first day of the hearing, she emailed to the Board's registry and the other parties a document entitled *Updated Submissions*, along with a list of 4 proposed witnesses and a brief summary of their anticipated testimonies. A relevant excerpt from that email reads as follows:

...
Kindly see attached updated submission with copy of grievance filed June 24, 219 [sic], under tab 16.A. and below description of witness testimony....

The below witnesses will provide testimony of their experience working at R&I/ICAC during the relevant time period, including the business line, advancement opportunities, workplace investigations and discrimination, in addition to targeting of the Complainant. These witnesses will corroborate my experience and several incidents that got to the heart of the complaint.

...

[12] At the opening of the hearing on December 18, 2023, the respondent raised two objections. First, it objected to the late production of the additional documents and requested an adjournment of the hearing. It argued that it would be unfair to proceed without it having the opportunity to review the complainant's documents, prepare for cross-examination, and determine whether it would need to call one or more additional witnesses. Second, it objected to me hearing evidence related to the appointments made from Inventory 2019-IMC-IA-29808, arguing that they fell outside the complaint's scope.

[13] For her part, the complainant maintained that appointments from Inventory 2019-IMC-IA-29808 are connected to the issues raised in her complaint. She did not oppose the adjournment request.

[14] When I considered the respondent's objections that were related to the complainant's late disclosure and the resulting adjournment request, I was guided by the principles of natural justice, which require that among other things, all parties be given a fair and reasonable opportunity to understand the case against them, to respond to it, and to present their evidence and arguments (see *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 SCR 385 at 402; and *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras. 21 to 28).

[15] The parties were directed to submit their books of documents by December 11, 2023. However, as of the first day of the hearing on December 18, 2023, the complainant had not yet submitted her documents. Considering the principles of procedural fairness and the objective of preventing an ambush at the hearing, I upheld the respondent's objection to the late disclosure and adjourned the hearing to a later date.

[16] I deferred ruling on the objection to the relevance of Inventory 2019-IMC-IA-29808 to a later stage in the proceedings. The hearing was then rescheduled to proceed on September 10 and 11, 2024. The relevance of appointments from Inventory 2019-IMC-IA-29808 was further discussed during a pre-hearing conference. The respondent maintained its objection to examine appointments tied to Inventory 2019-IMC-IA-29808 and now argued that the complainant failed to submit a timely application under that process. Later, the Public Service Commission (PSC) offered to verify the complainant's application history. On August 27, 2024, the PSC informed the Board and the respondent of the following:

...

As I offered during the pre-hearing conference, the Public Service Commission (PSC) consulted its internal partner, namely the PSC Public Service Resourcing System (PSRS) team and is able to confirm the following information:

- *On November 26, 2019, at 11:59:41, Yonita Parkes (the complainant) submitted an application to the inventory 2019-IMC-IA-29808.*
- *On May 10, 2020, at 03:06:31, an email has been sent from PSRS as the inventory warning period had been reached.*
- *On May 10, 2020, at 15:44:11, the complainant re-submitted an application.*

The PSC notes that the appointment that is subject to complaint 771-02-42741 relates to non-advertised appointment process 2019-IMC-INA-ACIN-31925, and not to Inventory 2019-IMC-IA-29808. Therefore, please note that the PSC does not take a position on the relevance of this information.

...

[17] At the same pre-hearing conference, the complainant informed the Board and the respondent of her intention to call a fifth witness to testify about systemic discrimination. The respondent objected to the proposed testimony, arguing that the complaint pertains to an individual staffing matter and does not implicate a broader

group of individuals. It emphasized that systemic issues are not within the scope of the complaint before the Board.

[18] I denied the complainant's request, for the following reasons.

[19] First, although the complaint includes allegations of systemic discrimination, they are bald statements, are factually unsupported, and appear to broaden the scope of the complaint, which would extend it beyond the jurisdiction of the staffing-complaint process. In its factual context, the complaint is primarily an individual staffing complaint, challenging the specific appointment process numbered 2019-IMC-INA-ACIN-31925.

[20] Second, the request to call an expert to testify about systemic discrimination was made on the eve of the hearing. When a party intends to call an expert witness, they must notify the other parties as early as possible and indicate whether there is a report or other documents that the expert will rely on. This ensures that the other parties have an opportunity to review the documents, prepare for cross-examination, or present their expert. In this case, the complainant had ample time, since the matter was adjourned a year before, to evaluate the need for an expert witness.

B. Appointments made from Inventory 2019-IMC-IA-29808 are outside the complaint's scope

[21] The complainant argued that appointments made from Inventory 2019-IMC-IA-29808 are linked to the issues raised in her complaint. I agree, in part. Given that the complaint raises allegations of systemic discrimination, those appointments provide contextual background. However, they have not been brought before the Board for a full review. Consequently, they fall outside this complaint's scope, and the complainant did not demonstrate how they could engage the Board's jurisdiction under s. 77 of the *PSEA*.

[22] When I determined the scope of the complaint, I considered its essential character as framed and filed with the Board on March 17, 2021, as well as the supplementary allegations submitted on May 20, 2021. The original complaint states as follows:

...

The Senior Immigration Officer - Inventory (Selection process number: 2019-IMC-IA-29808) has been open since 2019.

I applied to Senior Immigration Officer - Inventory in 2019.

A large number of Senior Immigration Officer appointments have taken place since 2019.

I noticed my colleagues who applied to the Senior Immigration Officer process were being evaluated while I remained in the inventory, unevaluated.

In June of 2020 it came to my attention that my unit was conducting yet another round of hiring of Senior Immigration Officers.

In June of 2020 I wrote an email to my Assistant Director (Hiring Manager) requesting clarity on the unit's commitment to employment equity and the advancement of equity seeking groups, highlighting that I had applied to the Senior Immigration Officer inventory in 2019 and appear to be the only one in the unit who had not been afforded the opportunity to be evaluated under the process.

To this day I remain in the inventory, unevaluated.

The unit has grown exponentially as a result of Senior Immigration Officer appointments.

In March of 2021 it came to my attention that a Senior Immigration Officer appointment (2019-IMC-INA-ACIN-31925) had taken place in my unit via a non-advertised process despite there being an advertised Senior Immigration Officer process open, which I had also applied to.

Given there is an open process I do not see the justification for appointments via non-advertised means.

Further, I do not see justification, particularly with the CHRA in mind, for the exclusion of myself from consideration for a Senior Immigration Officer appointment, as I have applied to the advertised process albeit I have not been afforded the opportunity to compete.

...

What corrective action is being sought

That individual(s) appointed via a non-advertised appointment undergo evaluation and compete via the open advertised process.

That I be afforded the right to compete in the open advertised process [2019-IMC-IA-29808] for which I applied in 2019 and brought to the attention of the hiring manager in June of 2020.

That I received [sic] damages based on my exclusion from the appointment process.

That hiring managers undergo anti-discrimination training and testing specifically related to employment.

...

[23] It appears from the formulation of those allegations that the complainant's principal preoccupation is that she was allegedly excluded from Inventory 2019-IMC-IA-29808. The complaint's main issue or essential character is clearly grounded in the appointments made under Inventory 2019-IMC-IA-29808. However, they were not formally challenged before the Board. Therefore, they are outside the complaint's scope. The complainant attempted to use the non-advertised appointment process numbered 2019-IMC-INA-ACIN-31925 to have the respondent's staffing practices reviewed. Such an approach is not consistent with the recourse established under s. 77 of the PSEA.

[24] On May 21, 2021, the complainant filed supplementary allegations, a relevant portion of which states as follows:

...

Particulars:

This matter is filed pursuant to section 77 (1) (b) of the Public Service Employment Act (PSEA).

The matter concerns the employment practices of Immigration, Refugees and Citizenship Canada (IRCC) within the Domestic Network's (DN) Humanitarian Migration and Integrity Division (HMID), executed under the authority of Reviews and Interventions (R&I), also known as Integrated Claim Analysis Centre (ICAC), located at 5343 Dundas Street West, Etobicoke, Ontario.

...

This complaint alleges:

i. that the Respondent pursued a policy, rule, practice, or standard which deprived me of employment advancement, and that race as well as national or ethnic origin are a basis of the said deprivation, related to Section 7, 10 and 14 of the CHRA

...

Relevant Facts:

On or about March 19, 2019, the department of Immigration, Refugees and Citizenship Canada opened the internally advertised Senior Immigration Officer - Inventory (2019-IMC-IA-29808) selection process, which is advertised to close on November 8, 2021.

...

Since the opening of the aforementioned inventory a number of selection rounds have been conducted by R&I/ICAC which have resulted in over 50 Senior Immigration Officer appointments from the inventory.

...

Of all those employed by R&I/ICAC prior to the opening of the Senior Immigration Officer - Inventory and who applied to the inventory, I am the only employee to not have their application considered.

Specifically, 20 employees of R&I were afforded the opportunity to have their application considered. Of those afforded the opportunity to have their applications considered, two are Afro or Black. Of the two, one was appointed to the position of Senior Immigration Officer and neither had filed a grievance against the Respondent.

To date my application has not been considered. I continue to be deprived of employment advancement concerning the position of Senior Immigration Officer.

...

On or about March 15, 2021, it came to my attention via a Notice of Acting Appointment posted on GC Jobs that a Senior Immigration Officer appointment (2019-IMC-INA-ACIN-31925) had taken place at R&I/ICAC via a non-advertised process. Noting the existence of the advertised Senior Immigration Officer - Inventory, which I had applied to, continues to be open and ought to have been relied upon to meet operational needs, I found the choice to consult a non-advertised appointment process to be an abuse of authority which deprived me of employment advancement.

Management was not contacted regarding the non-advertised appointment in questions as I noted Assistant Director Geraldine Nerdjivanian was listed as the point of contact on the Notice of Acting Appointment and I had previously contacted the Assistant Director in June of 2020 seeking clarification on Senior Immigration Officer appointments in the unit, highlighting that I had submitted my application for consideration the previous year.

On or about March 17, 2021 I filed a complaint under section 77 (1) (b) of the PSEA concerning non-advertised appointment process 2019-IMC-INA-ACIN-31925.

...

[Sic throughout]

[25] The complainant alleged that she applied for an SIO position through Inventory 2019-IMC-IA-29808 and that unlike her colleagues, she remained in that inventory without being evaluated. She further asserted that the respondent applied a policy, rule, practice, or standard that denied her career advancement opportunities and that the denial was based on her race and national or ethnic origin, in contravention of ss. 7, 10, and 14 of the CHRA. She argued that appointments made from Inventory

2019-IMC-IA-29808 are linked to the non-advertised appointment process under review. That argument is not founded by factual or evidentiary support.

[26] First, a staffing complaint is not only limited in scope and nature but also must comply with the applicable timelines. For instance, according to s. 10 of the *Public Service Staffing Complaints Regulations* (SOR/2006-6; “the *Regulations*”), a complaint must be received by the Board no later than 15 days after the day on which the person is notified of the appointment or proposed appointment to which the complaint relates. Normally, the notification of appointment or proposal for appointment informs employees within the area of selection of their right to make a complaint and the closing date of the period in which to make it.

[27] In this case, the complainant explained that since the launch of Inventory 2019-IMC-IA-29808, the respondent conducted multiple selection processes, which resulted in over 50 SIOs being appointed. In one of the appointments that she referenced in relation to Inventory 2019-IMC-IA-29808, the notification date of that acting appointment was August 31, 2020, and the complaint period’s closing date was September 15, 2020. If the complainant wished to challenge appointments from Inventory 2019-IMC-IA-29808, the appropriate course of action would have been to initiate a complaint, in accordance with the *Regulations’* applicable provisions.

[28] Second, the complainant referred to a discriminatory policy, rule, practice, or standard that the respondent allegedly applied. However, she did not identify or provide factual detail about the challenged specific policy, rule, practice, or standard. In the absence of such particulars, I am unable to assess the nature of the alleged policy or rule or determine whether it falls within the complaint’s scope.

[29] It has been consistently affirmed that the Board has the authority to examine only appointment processes that are the subjects of complaints before it (see, for example, the Federal Court’s decision in *Canada (Attorney General) v. Cameron*, 2009 FC 618 at paras. 18 to 21). Given that the Board’s jurisdiction is limited to matters formally brought before it, appointments made under Inventory 2019-IMC-IA-29808 are outside the complaint’s scope.

C. The staffing-complaint process is not the appropriate forum for inquiring into allegations of broad systemic issues

[30] The Board's jurisdiction under s. 77 of the *PSEA* is limited to considering and disposing of individual staffing complaints related to abuses of authority in internal appointment processes. Although it can apply and interpret the *CHRA* to address discrimination within specific staffing complaints, the Board does not have the mandate under the *PSEA* to investigate broad systemic issues or general discrimination complaints. Further, the Board has consistently affirmed that a complaint made under s. 77 must be personal to the complainant (see, for example, *Silke v. Deputy Minister of National Defence*, 2010 PSST 9 at para. 68; and *Brown v. Commissioner of Correctional Service of Canada*, 2012 PSST 17 at para. 23). The complainant attempted to raise concerns about the respondent's internal staffing decisions that involved other individuals. However, this complaint can pertain solely to her and her personal interests, not to matters concerning any other particular individuals or groups.

[31] As noted, a complaint made under s. 77 of the *PSEA* is inherently personal and confined to the complainant's individual circumstances. As such, the complainant lacks standing to advance claims on others' behalf. I find that by seeking to introduce evidence of other Black employees or appointments unrelated to the challenged non-advertised process, she sought an inquiry into systemic discrimination within the IRCC, which falls outside the scope of my jurisdiction.

[32] In her efforts to support her claim of systemic racial discrimination, the complainant sought to adduce the following documents in evidence:

- a document entitled *PSAC Written Submission on Staffing in the Federal Public Service* that was presented at a session on staffing with the Treasury Board Secretariat - Office of the Chief Human Resources Officer on January 28, 2021;
- the PSC's staffing data for IRCC;
- a document entitled *Ethics in the hiring process*, sent in an email dated March 24, 2022;
- an email entitled "Focus Group Summary" from the Black Employee Network (BEN), dated September 8, 2021;
- an email entitled "Important Update on the Call to Action", dated June 21, 2023;

- an email entitled “Today @ IRCC”, which included a link to the *Ethics in the hiring process* document from the *Connexion* post, dated March 24, 2022;
- an email entitled “RE: Report: OPP-DART P-ICAC Dashboard - Weekly”, dated October 20, 2020;
- an email entitled “OPS Sector 2022 Public Service Employee Survey results”, dated August 16, 2023;
- an email entitled “Pollara Report”, dated August 17, 2023;
- a Microsoft PowerPoint document entitled *Anti-Racism Task Force - 2023 Pollara Research Report on Anti-Racism at IRCC - Town Hall Presentation*, dated August 2023;
- a document entitled *Overview of issues Raised to Senior Management Regarding HMDI [sic] Etobicoke*;
- an email entitled *HMDI Independent Review: Notice to staff- “Independent Review, Lessons Learned and Health Check - Etobicoke”*; and
- an independent review follow-up entitled *Ops Sector Event for Black History Month*, dated February 4, 2022.

[33] None of those documents was permitted, as none was relevant to the individual complaint contesting the non-advertised process numbered 2019-IMC-INA-ACIN-31925. Evidence is relevant only if it has a clear connection that reasonably supports the allegations (see *Commission de la Santé & de la Sécurité du Travail v. Her Majesty the Queen*, 2000 CanLII 16617 (FC) at paras. 31 to 34). In this case, there is no connection between the documents and the appointment process under review. Even on their own, those documents do not help establish that the complainant’s race, colour, or national or ethnic origin was a factor in the respondent’s decision to choose the non-advertised process.

[34] The complainant cited *Canada (Human Rights Commission) v. Canada (Department of National Health and Welfare)*, 1998 CanLII 7740 (FC) at paras. 19 to 22, to argue that I should have allowed her to adduce those documents as a form of circumstantial evidence. In that decision, the Federal Court was asked to review a decision of the Canadian Human Rights Tribunal (“the Tribunal”), which dismissed the complainant’s allegations that the respondent had adopted a discriminatory practice on the basis of race, colour, or national or ethnic origin, contrary to s. 7 of the *CHRA*. At paragraph 22, the Court observed as follows: “The Tribunal erred in disallowing the

applicants from adducing general evidence of a systemic problem as circumstantial evidence to infer that discrimination probably occurred in this particular case as well”.

[35] That decision does not help. In this case, the complainant’s evidence is primarily circumstantial. Evidence, even circumstantial, must demonstrate a tangible and direct link to the conduct being challenged (see *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para. 88; and *Brown*, at para. 73). As previously indicated, there is no link between the circumstantial evidence that was presented and the decision being challenged; namely, the use of the non-advertised process.

[36] Further, unlike the Board, which is not mandated to run inquiries into systemic-discrimination complaints, the Tribunal has the authority to conduct inquiries into complaints that the Canadian Human Rights Commission (CHRC) refers to it. While the Board can hear and admit evidence of systemic discrimination as circumstantial evidence when it finds that the evidence is relevant, it is not empowered to convert the staffing-complaint process into a systemic-discrimination inquiry. That approach aligns with the reasoning in *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 64, where the Supreme Court of Canada affirmed that tribunals may consider systemic evidence to evaluate individual claims but that they are not required to function as commissions of inquiry.

[37] Similarly, in *Alexander v. Canada (Attorney General)*, 2011 FC 1278, the Federal Court examined a question brought in judicial review about the limits of a tribunal’s authority when addressing discrimination allegations. At paragraphs 68 and 69, as follows, the Court observed that while tribunals have jurisdiction to consider such allegations, they must remain within the scope of the complaint as made, and tribunals must refrain from undertaking broader systemic inquiries, absent a proper evidentiary basis:

[68] The applicants submitted a complaint pursuant to section 77 of the PSEA. Section 77 deals with internal appointments and any review pursuant to this section is confined to issues about the fairness of the specific appointment process. The tribunal is empowered to interpret and apply the Canadian Human Rights Act, RS 1985, c H-6, in complaints brought under section 77. This includes issues of discrimination based on race or ethnic origin. However, such consideration is confined to the tribunal's authority to consider specific appointment processes pursuant to section 77

and does not include the broad examination sought by the applicants....

[69] In the course of preparing for the tribunal hearing, the applicants sought to enlarge their complaint and have the tribunal examine all staffing appointments in the Ontario region of Health Canada from April 2004 to the date of the hearing. The tribunal did not allow the applicants to expand their complaint to include these issues of systemic racism and discrimination. This decision was correct as these issues are beyond the tribunal's mandate.

[38] As an inquiry into systemic discrimination in the respondent's hiring and promotion practices exceeds the scope of this individual complaint, I have decided that the proposed evidence is irrelevant. That determination of the systemic-discrimination evidence in this case should not be interpreted as a denial of the potential systemic discrimination within the respondent's organization or the federal public service in general but rather as a reflection of the limitations of the complaint as made, the lack of relevance in the evidence presented, and the Board's jurisdiction.

II. Summary of the relevant evidence

A. The complainant's evidence and arguments

[39] To support her case, the complainant called four witnesses, including Latisha Lattibeaudere, Lana Dodson, and Maneet Dhaliwal. Their testimonies primarily addressed two areas, the process identified as Inventory 2019-IMC-IA-29808, and their individual experiences related to internal staffing matters with the respondent's hiring practices and their career advancements. I did not find it reasonable to admit as evidence testimonies about appointment processes that were not presented before the Board for a comprehensive review.

[40] While I appreciate the context that those witnesses provided, their testimonies were not relevant to the appointment process under review. The central issue before the Board does not concern the respondent's broader hiring practices but rather the specific circumstances of the non-advertised process numbered 2019-IMC-INA-ACIN-31925. As their testimonies are not relevant to determining this complaint, they will not be summarized or considered further in this decision.

[41] The complainant also attempted to have the fourth witness, Roberto Lonardi, testify on matters related to workplace issues, including a harassment complaint. After the respondent objected, on the ground of irrelevancy, the testimony did not proceed

further. Mr. Lonardi could not testify about facts that were not mentioned in the complaint. Neither the initial complaint nor the subsequent allegations refer to any facts about a harassment situation.

[42] The complainant testified on her own behalf. During her testimony, she referenced examples of SIO appointments dating to 2016 and those made from Inventory 2019-IMC-IA-29808. As noted earlier, this evidence was not considered helpful, as the appointment processes cited are not within the scope of the matter currently before the Board. Throughout the hearing, the complainant was consistently reminded that her focus extended beyond the parameters of the complaint under review.

[43] The complainant argued that the use of the non-advertised process numbered 2019-IMC-INA-ACIN-31925, to assign the appointee to the SIO position, was an abuse of authority under s. 77(1)(b) of the *PSEA*, given the availability of an advertised appointment process (numbered 2019-IMC-IA-29808) for the same position. She maintained that she was adversely impacted by the abuse of authority, with respect to her career progression.

[44] The complainant alleged that she experienced a lack of advancement, which she attributed to discrimination under ss. 7, 10, and 14 of the *CHRA* and to retaliation. She asserted that the respondent retaliated against her for filing a grievance under article 19, entitled “No Discrimination”, of the PA group collective agreement. She argued that retaliation is relevant to a complaint of abuse of authority under the *PSEA*.

[45] The complainant contended that there was no urgent need to use a non-advertised process because the respondent had been aware since April 2018 that it would require a significant number of SIOs.

[46] The complainant also submitted that at the material time, she was qualified, but that someone unqualified was hired. She argued that although s. 33 of the *PSEA* allows managers to choose either a non-advertised or an advertised process, many other experienced individuals wanted to advance their careers.

[47] Additionally, the complainant argued that most of the appointments at IRCC were conducted via non-advertised process. In support, she referred to a chart entitled “Advertised / non-advertised for Immigration Refugees and Citizenship Canada, total

count. The chart compares the figures based on the type of process, non-advertised or advertised, used in IRCC's hiring.

[48] In her efforts to demonstrate systemic discrimination, the complainant sought to introduce a number of documents, including a summary entitled *Summary of Focus Group Session - (June -August 2021)*, which highlighted the barriers to recruiting Black employees, as well as recommendations.

[49] The respondent objected to introducing that document. It argued that the complainant was attempting to expand the complaint's scope. The respondent insisted that no one can make a complaint on behalf of another group. The document was not admitted as evidence, for lack of relevance.

B. The respondent's evidence and arguments

[50] The respondent called three witnesses, Geraldine Nerdjivanian, Assistant Director, IRCC; Stacy Beech, Manager, Client Services; and Catrinna Du, Senior Policy and Program Advisor.

[51] Ms. Beech's testimony focussed primarily on the general steps of the application processes, particularly in the context of Inventory 2019-IMC-IA-29808. She provided an explanation of both a "pull" and a "pool". Understanding those terms may help the reader contextualize the complaint's factual circumstances. For convenience, I have reproduced them in this paragraph, and I will also use them throughout the remainder of this analysis. The following is according to Ms. Beech's testimony:

...

2. An **"inventory"** is a selection process that is open to continuously receiving applications over an extended period of time. At any time during the inventory period the hiring manager may conduct a "pull" from the inventory.

...

4. A **"pool"** is a list of candidates who have successfully demonstrated through assessment (e.g., exams, interviews, etc.) that they meet the merit criteria identified for the position. ...

5. A **"pull"** is a list of applicants from the inventory that is sent to the hiring manager for assessment.

...

8. When a candidate applies to an inventory, it does not mean that the candidate is qualified. It simply means the application is sitting

in a digital pile of applications along with many others. It does not mean that the candidate should expect a job offer or even hear from anybody as a result of the application.

*9. When a candidate is “**pulled**” from the inventory their application is assessed against the area of selection, education, and experience criteria by the assessment board. Candidates who demonstrate that they meet these criteria are invited for further assessments (e.g., exams, interviews, etc.). Only if the candidate is found qualified after all the assessments will they be placed in a pool of qualified candidates.*

...

[Emphasis added]

[52] As Ms. Beech presented during her testimony, the following details the number of pulls conducted in 2019 from a document entitled *Reviews and Interventions/ICAC from the SIO - Inventory (2019-IMC-IA-29808) in Work Location 2 - Greater Toronto Area*, along with the corresponding dates of each selection round:

...

- *Pull 1 - April 10, 2019 at 10:57 AM Eastern*
- *Pull 2 - August 26, 2019 at 11:48 AM Eastern*
- *Pull 3 - November 21, 2019 at 9:12 AM Eastern*
- *Pull 3b - November 26, 2019 at 8:58 AM Eastern*

...

[53] In addition, Ms. Beech testified that everyone who applied on time was **pulled**, no matter their ethnicity, race, or colour, and that the latest **pull** was conducted on November 26, 2019.

[54] Ms. Nerdjivanian testified that when she started working for the IRCC in June 2019, there was already a process that was the routine for appointing SIOs — Inventory 2019-IMC-IA-29808. In September 2019, a trilateral pilot project named the Integrated Claim Analysis Centre (ICAC) was formally launched, to bring the IRCC, the Canada Border Services Agency, and the Immigration and Refugee Board to work together. The ICAC received funding through the investments announced in Budget 2019 in the *Budget Implementation Act, 2019, No. 1* (S.C. 2019, c. 29) to manage a significant workload increase.

[55] Ms. Nerdjivanian stated that when the ICAC was launched, there was already an influx of asylum claims, resulting in a backlog of cases. She stated that “there were files that were there for many months.” After Budget 2019 was implemented, changes were made to the in-Canada asylum system, supported by funding of around \$1.5 billion. Ms. Nerdjivanian explained that to meet increased demands, The IRCC had to hire approximately 71 SIOs within a short time by using existing candidate pools and the Post-secondary Recruitment Program and by trying to retain all temporary staff members who had demonstrated that they were able to achieve the performance objectives.

[56] Ms. Nerdjivanian stated that before joining the Reviews and Interventions Unit, the appointee was an experienced PM-03 immigration officer who had been evaluated against the essential qualifications in 2011 through the advertised process numbered 11-IMC-IA-ONT-MRI-180 and had been placed in a fully assessed pool of qualified candidates. In January 2019, the appointee was offered an acting SIO position at the PM-04 group and level in the Reviews and Interventions Unit, based on the results of that process.

[57] Ms. Nerdjivanian stressed that the respondent saw no issue in extending the appointee’s assignment because the Treasury Board had heavily scrutinized it, and it did not want to lose a very experienced SIO, as training a new SIO could take 8 to 12 months. She explained that the appointee was fully trained and was “a very high producer”.

[58] Asked why the respondent did not choose someone from Inventory 2019-IMC-IA-29808, she responded, “It was only to extend this specific one, we only considered [the appointee].”

[59] In her testimony, Ms. Du emphasized that the appointee had already accumulated 12 months of SIO experience and was on track to meeting her performance objectives. She testified that when the appointee’s assessment was completed, she determined that the appointee was qualified for the acting appointment. She explained that the appointee was found to possess the competencies to respond to the Reviews and Interventions Unit’s demanding and important operational needs. According to Ms. Du, the appointee met all the essential qualifications of the position with respect to education, experience, and abilities.

[60] In its arguments, the respondent maintained that the scope of this complaint is limited to the acting period of April 1, 2021, to March 31, 2023, and that any previous acting periods in the position are not relevant.

[61] The respondent submitted that had the complainant applied on time, she would have been pulled and evaluated, as were other candidates. She had eight months to apply but waited until after the deadline had passed to do it. She admitted that she knew that the hiring had been taking place since March 2019 and that she was reminded to apply before November 2019.

C. The PSC

[62] The PSC did not participate in the hearing but provided written submissions. It stated that it was not taking a position on the merits of the complaint. Aside from an email clarifying that the complaint concerns appointment process numbered 2019-IMC-INA-ACIN-31925 and not the one numbered 2019-IMC-IA-29808, the PSC addressed only the general principles of the burden of proof.

D. The CHRC's submissions

[63] In a complaint made under s. 77 of the *PSEA*, with an issue involving the *CHRA*'s interpretation or application, s. 78 of the *PSEA* and s. 20 of the *Regulations* require that the complainant give notice to the CHRC. The complainant in this case served the CHRC with a notice of the issue, in accordance with the *Regulations*. In its response, the CHRC indicated that it would not participate in this matter and that it was closing its file.

III. Analysis and reasons

A. The legal test for *prima facie* discrimination

[64] The test for establishing a *prima facie* case of discrimination is well-settled. It is commonly referred to as the *Moore* test. Under this test, the complainant bears the burden of establishing, on a balance of probabilities, a *prima facie* case of discrimination. If such a case is established, the burden then shifts to the respondent to justify the conduct or practice. (See *Moore*, at para. 33). The *prima facie* test consists of three steps. I will address them in the following sections.

[65] The complainant submitted that the use of the non-advertised process was discriminatory. She alleged that the respondent pursued a policy, rule, or practice that

deprived her of employment advancement and that race as well as national or ethnic origin was the basis of that deprivation. She raised that ss. 7, 10, and 14 of the *CHRA* were breached. Under s. 3(1) of the *CHRA*, race, colour, national or ethnic origin, are prohibited grounds of discrimination.

[66] When I considered whether the complainant established a *prima facie* case of discrimination related to the non-advertised process numbered 2019-IMC-INA-ACIN-31925, I was guided by the landmark Supreme Court of Canada decisions that discussed systemic discrimination, *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536 (“*O’Malley*”), and *Moore*.

[67] In *O’Malley*, the Supreme Court of Canada stated the following:

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

[68] The complainant had the burden of proving the *CHRA* violations, to establish that the respondent’s decision was discriminatory. Although intent need not be proven, the evidence must consist of more than personal opinions. In addition, bald statements unsupported by facts are not sufficient; the evidence must be supported by objective facts or circumstances (see, for example, *Abi-Mansour v. Deputy Minister of Justice*, 2021 FPSLREB 16 at para. 101).

[69] To prove that the respondent’s conduct was discriminatory, the complainant must meet the three-step test set out in *Moore*, at para. 33, which has been reaffirmed in several court and tribunal decisions (see, for example, *Stewart v. Elk Valley Coal Corp.*, 2017 SCC 30 at para. 24; *Ngueyo v. Deputy Head (Canada School of Public Service)* 2024 FPSLREB 107 at para. 72). Under the *Moore* test, the complainant was required to set out 1) that she has a characteristic protected from discrimination under the *CHRA*, 2) that she experienced an adverse impact, and 3) that the protected characteristic was a factor in the adverse impact.

[70] Specifically, the complainant had to demonstrate that race, colour, national or ethnic origin, or ethnicity was one of the factors in the respondent’s decision to use

the non-advertised process. In addition, the existence of such a factor could be inferred from relevant circumstantial evidence.

B. The complainant did not establish a *prima facie* case of discrimination

1. Sections 7(a) and 14 of the *CHRA* are not applicable in this case

[71] Section 7 of the *CHRA* contains two different provisions: s. 7(a) and s. 7(b). Section 7(a), which prohibits the refusal to employ or continue to employ a person, does not apply in this case, as the complainant was employed by the respondent at all relevant times. Section 7(b) prevents any discriminatory treatment or taking adverse measures against an individual in the course of employment. I will examine the implication of this provision in the next part of this discussion.

[72] Similarly, ss. 14(1) (a) and (b) of the *CHRA* are not engaged in this case. Section 14(1)(a) prohibits harassment "... in the provision of goods, services, facilities or accommodation customarily available to the general public ...", while s. 14(1)(b) prohibits harassment "... in the provision of commercial premises or residential accommodation ...". Clearly, those provisions do not apply to the issues raised in the complaint.

[73] The only relevant provision that could be considered is section 14(1)(c), which provides that in matters related to employment, it is a discriminatory practice "... to harass an individual on a prohibited ground of discrimination." However, as noted earlier, there is no factual basis or evidence that indicates that the complainant was harassed in connection with her race, colour, or national or ethnic origin. There are no facts or evidence indicating that she was subjected to harassment in connection with the non-advertised process under review. Apart from citing s. 14, she did not explain how it was engaged. Accordingly, I find that the alleged breach of s. 14 has no merit.

2. The complainant did not establish a *prima facie* case under ss. 7 (b) and 10 of the *CHRA*

[74] Section 7(b) of the *CHRA*, which prohibits adverse differentiation in the course of employment, could have been relevant to this complaint. However, while the complainant alleged that she suffered adverse differential treatment, she did not present evidence or arguments specifically addressing discriminatory treatment under that provision.

[75] Citing *Shakes v. Rex Pak Ltd.*, 1981 CanLII 4315 (ON HRT) at para. 13, the complainant argued that she was qualified for the position but that the appointee received the SIO acting assignment despite her lack of qualifications. She also asserted that she was not evaluated for the SIO position due to discrimination.

[76] My role in this proceeding is not to review the qualifications of either the complainant or the appointee. Further, because the test developed in *Shakes* serves only as a guide (see *O'Bomsawin v. Abenakis of Odanak Council*, 2017 CHRT 4 at para. 48), I have elected to apply the *Moore* test, which is generally recognized in discrimination cases and appears more directly relevant to the issues raised in the complaint and the evidence before me.

[77] The complainant said that she is of “Afro-South American descent”. None of the parties disagree. Also, there is no question that she was not considered for the SIO acting position, which was filled through the non-advertised process. Therefore, the first two elements of the *Moore* test are met. However, the complaint fails at the third part, which requires the complainant to show a link between the adverse impact and the protected ground (e.g., race, colour, or ethnicity) on which the complaint was made. Apart from general allegations of differential treatment and systemic discrimination, there is no evidence to establish that the complainant’s race, colour, or ethnicity was a factor in the respondent’s decision to use the non-advertised staffing process.

[78] The complainant’s premise is that she submitted an application and allegedly remained in Inventory 2019-IMC-IA-29808 without being assessed, due to discrimination. However, the evidence set out that she applied to the process late. Although everyone was reminded three separate times in 2019 to apply to the SIO inventory within the prescribed deadlines, she submitted her application **after** the last group of candidates had already been pulled from it on November 26, 2019. Thus, she missed the opportunity to be evaluated during the months preceding her communication with the assistant director on June 5, 2020. Had she submitted her application to the SIO inventory within the required deadline, the results of this analysis might have been different.

[79] More importantly, the evidence that the complainant attempted to adduce to support her claim of systemic discrimination, as was noted earlier in this decision, is not, on its own, capable of making out a claim of adverse differential treatment or

systemic or individual discrimination. There is no sufficient nexus between her complaint and the evidence that she presented.

[80] The complainant referenced statistical evidence about the respondent's use of advertised or non-advertised appointment processes *Advertised/non-advertised for Immigration, Refugees and Citizenship Canada, total count*, for 2018 to 2022, and the town-hall presentation entitled *2023 Pollara Research Report on Anti-Racism at IRCC*. However, this evidence is simply not relevant and cannot prove either an individual or a systemic-discrimination claim.

[81] Additionally, the complainant insisted on the underrepresentation of Black SIOs within the Reviews and Interventions Unit. This argument cannot help.

[82] As noted in *Murray v. Immigration and Refugee Board*, 2013 CHRT 2 at para. 46, while statistical evidence of underrepresentation may support a complaint made under ss. 7(b) or 10(a) of the *CHRA*, it cannot serve as its sole foundation because such complaints must focus on the alleged discriminatory practices themselves, rather than on underrepresentation alone.

[83] Similarly, one of the key issues in this case is that the complainant relies primarily on documents of a general nature, such as discussion summaries from unions (for example, town-hall meetings, surveys, and statistical data) to argue that she was subjected to discrimination. While those documents refer to discrimination against Black employees, they cannot, on their own, establish the existence of discrimination against the complainant.

[84] The complainant testified that she contacted her assistant director and requested clarity on the Reviews and Interventions Unit's commitment to employment equity and the advancement of equity-seeking groups. However, as previously indicated, she has no standing to advance claims on behalf of others. She made the individual complaint on her behalf, for only her interests, and attempted to introduce evidence centred on broad systemic issues. While systemic evidence can be heard and admitted in the process of an individual complaint, the complaint is not about the underrepresentation of Black employees within the IRCC or the application of the *Employment Equity Act* (S.C. 1995, c. 44) but rather the non-advertised process.

[85] Over the course of the hearing, I repeatedly asked the complainant to focus on her complaint's scope. I also raised concerns about the lack of distinction between evidence and arguments. She had to demonstrate on the balance of probabilities that the use of the non-advertised process constituted an abuse of authority by discrimination. But she did not present a *prima facie* case of either direct or systemic discrimination.

3. The respondent provided a satisfactory explanation for using a non-advertised appointment process

[86] As noted above, the complainant did not establish a *prima facie* case of discrimination. Even if she had met all three elements of the *Moore* test, my analysis would not have ended there. I would need to determine whether the respondent provided a reasonable explanation for choosing the non-advertised process. (See, for example, *Murray v. Chairperson of the Immigration and Refugee Board of Canada*, 2009 PSST 33 at para. 105). I find the respondent provided such justification.

[87] The parties agree that since April 2018, the respondent had sought to recruit a number of SIOs, to address a significant increase in caseloads. Ms. Nerdjivanian testified that all possible means were considered, including not only retaining individuals in acting positions but also recruiting through the Post-secondary Recruitment Program and from the internal SIO Inventory 2019-IMC-IA-29808.

[88] Both Ms. Nerdjivanian and Ms. Beech explained that it takes between 8 and 12 months to train an SIO and bring them up to full operational capacity. They explained that the appointee had been working in the Reviews and Interventions Unit for more than 12 months, had completed all the training, and had been highly productive. Ms. Nerdjivanian further stated that the staffing process numbered 11-IMC-IA-ONT-MRI-180, through which the appointee had initially been recruited in January 2019, had expired and that the respondent used the non-advertised process to renew the appointment in 2021. I find that justification clear and reasonable.

[89] The complainant disputed the fact that the appointee was initially offered an SIO acting assignment at the PM-04 group and level, based on the results of the staffing process numbered 11-IMC-IA-ONT-MRI-180, which was conducted in 2011. She contended that the respondent should not have relied on the results of such an outdated process; namely, one that was 10 years old. However, it is unclear whether

she challenged the initial appointment, which occurred in January 2019. During the hearing, the respondent confirmed that the process was still valid as of when the appointment was made, and that testimony was not contradicted.

[90] Particularly, the complainant emphasized the SIO Inventory 2019-IMC-IA-29808 and asserted that she was the only candidate left in it who had not been evaluated. The evidence indicates that the process was widely advertised starting in March 2019, with three subsequent reminders issued on April 3, August 23, and November 23, 2019. Each reminder invited interested candidates to submit applications by the specified deadlines, to be considered in the selection rounds. Although the complainant was aware that recruiting SIOs had been in full swing since March 2019 and although she was reminded to apply **before** November 26, 2019, she applied on November 26, 2019, at 11:59:41 p.m., which was after the last pull from it occurred at 8:58 a.m. (Eastern time) on that day.

[91] The complainant attempted to link her claim of being left in Inventory 2019-IMC-IA-29808 to alleged racial discrimination, asserting that she was excluded from the process based on her race, colour, or national or ethnic origin. On the contrary, Ms. Beech testified that anyone who applied on time was pulled, regardless of their ethnic origin.

[92] After she missed the November 2019 deadline, the complainant renewed her application on May 10, 2020. When she contacted her assistant director on June 5, 2020, she had not yet been pulled from Inventory 2019-IMC-IA-29808 since the last pull had been conducted on November 26, 2019. However, no evidence suggests that she was left in Inventory 2019-IMC-IA-29808 after she renewed her application. It was indicated that Inventory 2019-IMC-IA-29808 continued to receive applications and that it had a closing date scheduled for August 8, 2021. The records set out that the complainant made her complaint with the Board on March 17, 2021, which was before that closing date.

[93] Further, the complainant insisted that she was not considered in the non-advertised process despite having expressed interest. Expressing interest in a position does not automatically confer a right to that position. Under s. 33 of the *PSEA*, the respondent need not consider more than one candidate. Importantly, it is well established that under s. 33, delegated managers have the discretion to use an

advertised or a non-advertised appointment process (see, for example, *Canada (Attorney General) v. Kane*, 2012 SCC 64 at para. 6; *Regier v. Deputy Head of the Correctional Service of Canada*, 2021 FPSLRB 123 at para. 41; *Srivastava v. Deputy Head (Department of Health)*, 2024 FPSLRB 1 at para. 94; and *Bérubé-Savoie v. the Deputy Minister of Human Resources and Skills Development Canada*, 2013 PSST 2 at para. 38).

[94] I recognize that discretion must always be exercised reasonably. The evidence before me does not support a finding that the respondent misused or abused its discretionary authority in this case. On its own, proceeding by a non-advertised process does not equate to abuse of authority or discrimination.

[95] The respondent submitted that it was imperative that it maintain all existing staff members not only to handle the workload but also that they could pass their expertise on to new SIOs. It explained that the non-advertised process was not used to exclude other qualified candidates but rather to mitigate the risk of significant delays processing files and the risk that the IRCC would not meet its mandate and objectives. No other individual was considered because the 2021 appointment was an extension of an acting appointment that had initially been made through an advertised process. I find that in that context, renewing the appointment of an appointee who was already performing the work was entirely reasonable.

[96] Considering all that, I am satisfied that the respondent provided a clear, reasonable, and satisfactory explanation for using the non-advertised appointment process.

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

(The Order appears on the next page)

IV. Order

[98] I find that the complainant did not establish a *prima facie* case of discrimination.

[99] I find that the respondent did not abuse its authority in its choice of the non-advertised appointment process (numbered 2019-IMC-INA-ACIN-31925).

[100] The complaint is dismissed.

January 27, 2026.

**Goretti Fukamusenge,
a panel of the Federal Public Sector
Labour Relations and Employment Board**