

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2025 CHRT 14

**Date:** March 5, 2025

**File No.:** T2721/9721

**Between:**

**Zia Rehman**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Department of National Defence**

**Respondent**

**Decision**

**Member:** Athanasios Hadjis

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## **I. OVERVIEW**

[1] The Complainant, Zia Rehman, immigrated to Canada from Pakistan in 2006. In 2016, he applied to an appointment process run by the Respondent, the Department of National Defence (DND), for clerical and administrative positions at the Canadian Forces Base in Cold Lake, Alberta, known formally as 4 Wing, 1 Canadian Air Division (the “Base” or “CFB Cold Lake”). Mr. Rehman was assessed and placed in a pool of qualified candidates. DND appointed candidates from this pool to various positions. Mr. Rehman was not one of them. He alleges that he was not appointed on account of his race, colour, national or ethnic origin, and religion.

[2] The Canadian Human Rights Commission (the “Commission”) agrees that Mr. Rehman was a victim of discriminatory practices. It submits that the subtle scent of discrimination permeated DND’s handling of Mr. Rehman’s candidacy. He did not fit DND’s prototype of an ideal candidate, and it placed insurmountable and artificial barriers to appointment for him and others like him.

[3] DND denies Mr. Rehman’s allegations. It contends that Mr. Rehman lacked the specific qualifications and assets required for some of the positions that were filled and that the candidates who were appointed to the other positions were better qualified or better suited for the appointments. The prohibited grounds of discrimination alleged in Mr. Rehman’s complaint were not factors in the outcome.

[4] The Commission and DND were represented by counsel at the hearing. Mr. Rehman was represented by his brother Atiq Rehman, whom I will refer to as Mr. Atiq in this decision to distinguish him from the Complainant.

## **II. DECISION**

[5] I find that Mr. Rehman has not proven that he was discriminated against. With respect to each appointment, Mr. Rehman either lacked the type of qualification being sought, or there was a reasonable non-pretextual explanation for appointing someone else. Furthermore, Mr. Rehman and the Commission did not prove that systemic barriers and

profiling prevented him from being appointed based on his race, colour, national or ethnic origin, and religion. I therefore conclude that these prohibited grounds of discrimination were not factors in his not being appointed and dismiss Mr. Rehman's complaint.

### III. LEGAL FRAMEWORK AND ISSUES

[6] Section 7(a) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the "Act") states that it is a discriminatory practice, directly or indirectly, to refuse to employ any individual on a prohibited ground of discrimination. Prohibited grounds of discrimination include race, national or ethnic origin, colour, and religion (s. 3(1) of the Act).

[7] Complainants in human rights cases must prove on a balance of probabilities (in other words, that it is more likely than not) that:

- 1) they have a characteristic or characteristics protected from discrimination under the Act;
- 2) they experienced an adverse impact; and
- 3) the protected characteristic or characteristics were a factor in the adverse impact.

(*Moore v. British Columbia (Education)*, 2012 SCC 61 at para 33 [*Moore*]; *Commission des droits de la personne et de la jeunesse v. Bombardier Inc. (Bombardier Aerospace Training Centre)*, 2015 SCC 39 at paras 44–52 [*Bombardier*]).

[8] Since Mr. Rehman's complaint involves s. 7(a) of the Act, it means that he must prove:

- 1) he has the protected characteristics he alleged (race, national or ethnic origin, colour, and religion);
- 2) he was subjected to adverse treatment (refusal of employment); and
- 3) the prohibited grounds of discrimination were factors in the denial of employment.

[9] Mr. Rehman does not have to prove that DND intended to discriminate against him (*Bombardier* at paras 40–41). It is the result, or the adverse impact or effect, that is significant (*Ont. Human Rights Commission v. Simpsons-Sears*, [1985] 2 SCR 536, 1985 CanLII 18 at paras 12 and 14).

[10] It is also not necessary for Mr. Rehman to show that a prohibited ground of discrimination was the sole factor in the adverse treatment (*First Nations Child and Family Caring Society of Canada v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 at para 25).

[11] Discrimination is not usually direct or intentional. The Tribunal analyzes the circumstances of the complaint to determine whether there is any subtle scent of discrimination. Discrimination may be inferred when the evidence presented in support of the discrimination allegations makes this inference more probable than other possible inferences or hypotheses (*Brunskill v. Canada Post Corporation*, 2019 CHRT 22 at paras 62–63 [*Brunskill*]). Evidence of discrimination, even if circumstantial, must nevertheless be tangibly linked to a respondent's impugned decision or conduct (see *Bombardier* at para 88).

[12] The Commission and DND referred in their submissions to what has been described as the test in *Shakes v. Rex Pak Ltd.*, 1981 CanLII 4315 (ON HRT) [*Shakes*]. *Shakes* has been used over the years to determine if the threshold test for discrimination (often referred to as the *prima facie* case of discrimination) had been established where a complainant alleged that they were not hired based on a prohibited ground of discrimination. I do not believe *Shakes* is a helpful guide in this case.

[13] According to *Shakes*, as applied by the Tribunal, the *prima facie* case was considered to have been made out if a complainant demonstrated that they were qualified for a particular employment opportunity, they were not hired, and someone no better qualified but lacking the complainant's characteristic obtained the position. The evidence of the complainant was then said to be complete and sufficient to justify a verdict in their favour in the absence of an answer from the respondent. That answer encompassed the evidence that the respondent presented to explain why it had opted to appoint the other person and not the complainant. For an application of *Shakes* in this manner, see for instance my decision in *Marchand v. Department of National Defence*, 2011 CHRT 3 at paras 18 and following.

[14] At the time when the Tribunal began applying *Shakes* to cases under the Act, it tended to analyze human rights complaints in silos. The Tribunal was expected to only look

at the complainant's and Commission's evidence to assess if a *prima facie* case had been made out. The respondent's evidence could not be considered. Once the *prima facie* case was made, then the Tribunal would turn to the respondent's evidence to see if there was a reasonable explanation that is not a pretext for the *prima facie* discrimination (see *Lincoln v. Bay Ferries Ltd.*, 2004 FCA 204 at para 22 [*"Bay Ferries"*]).

[15] The Supreme Court of Canada in *Bombardier*, however, made it apparent that this silo-based approach should not be followed in determining if a *prima facie* case of discrimination has been proven. As the Tribunal observed in *Emmett v. Canada Revenue Agency*, 2018 CHRT 23 at paras 62–63 [*"Emmett"*], the Supreme Court in *Bombardier* rejected the narrow interpretation of the complainant's burden of proof ascribed in *Bay Ferries*. At the initial stage of the analysis, the Tribunal must also consider the responding party's evidence that contradicts the complainant's evidence.

[16] Thus, as noted in *Brunskill* at para 64, the Tribunal must look at the evidence in its entirety. This also includes the evidence filed by the responding party. In other words, the complainant's and respondent's evidence should not be analyzed in silos.

[17] Once the *prima facie* case of discrimination is factually established based on all the parties' evidence, then the Tribunal can consider any of the respondent's legal defences to justify the discrimination (*Bombardier* at para 64; *Moore* at para 33), such as those set out in s. 15(2) of the Act (e.g., *bona fide* occupational requirements or *bona fide* justifications).

[18] Except for the very recent decision in *SM, SV and JR v. Royal Canadian Mounted Police*, 2024 CHRT 113 [*"SM"*], the Tribunal has not applied or referred to *Shakes* for several years, perhaps because of the impact of the Supreme Court of Canada's decisions in *Moore* and *Bombardier*. In *SM*, which was a case where the complainants alleged that they had not been promoted on discriminatory grounds, the Tribunal referred to *Shakes* in its analysis (*SM* at paras 73–75). However, the Tribunal pointed out that *Shakes* does not supplant the *Moore* test, citing *Emmett* and *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2005 FCA 154 [*"Morris"*] at paras 25–26. In *Morris*, which was issued well before *Bombardier*, the Federal Court of Appeal had already held that the *Shakes* test

only served as a useful guide that was not to be applied in a rigid or arbitrary fashion in every hiring case.

[19] I do not consider *Shakes* to be a helpful guide any longer, particularly in this case. Aside from the fact that *Shakes* dates from before these more recent jurisprudential developments, it is also problematic due to its reliance on the notion of a “qualified” candidate. This lends itself to confusion in cases such as this involving federal public service staffing rules where the complainant and all the candidates and appointees are considered “qualified” within the specific meaning of the applicable staffing legislation, as I explain later.

[20] As noted in *SM*, *Moore* is the proper test to apply.

[21] Accordingly, the issues for determining if Mr. Rehman has proven a *prima facie* case of discrimination are the following:

- 1) Does Mr. Rehman have the protected characteristics he alleges?
- 2) Did Mr. Rehman suffer an adverse impact?
- 3) If so, were any of the protected characteristics factors in the adverse impact?

[22] If a *prima facie* case was proven, I would then have to consider if DND has provided a valid justification for the discrimination. However, given my finding, for the reasons outlined below, that a *prima facie* case of discrimination was not proven, the latter part of the analysis is unnecessary.

[23] I begin my analysis by setting out the background facts leading up to the appointment process and DND’s assessment of Mr. Rehman. I then analyze one by one the facts of each of the appointments for which Mr. Rehman was not selected and determine if the *Moore* criteria were met. I can state in advance that Mr. Rehman easily proved the first two *Moore* criteria overall—he has the protected personal characteristics and suffered the adverse impact of not having been appointed to any position. My analysis at this “one-by-one” stage focuses therefore on whether his personal characteristics were factors in his not being appointed when viewing each appointment separately.

[24] Finally, I conduct a global analysis to consider the systemic issues raised by Mr. Rehman and the Commission to again determine if any of his protected characteristics were factors in his not being appointed to any position.



#### **IV. BACKGROUND**

##### **A. Mr. Rehman's background, education, and employment history**

[25] Mr. Rehman was born in Pakistan in 1969. His first and second languages are Saraiki and Urdu. He states that his religion is Islam, and he self-identifies as a South Asian Brown Muslim visible minority person. According to Mr. Rehman, 97% of Pakistan's population is Muslim.

[26] He learned English at school when he was 16, and he speaks it with an accent. He graduated in 1994 with a Bachelor of Arts degree from Gomal University in Pakistan. In 2003, he earned a Bachelor of Science degree in business administration at the International College of the Cayman Islands, majoring in international finance. His studies there included an internship at an international bank.

[27] Mr. Rehman came to Canada in June of 2006, sponsored by his brother, Mr. Atiq, who was already living here. By 2008, Mr. Rehman had settled in Calgary, Alberta. He married in 2011 and has one daughter.

[28] Since 2009, he has worked as a night auditor at a casino located west of Calgary, about halfway to Banff. He has also worked part time as a guest services agent at a hotel and as a tax associate for a seasonal tax preparation service.

[29] Mr. Rehman testified that his goal in Canada is to make a better life for himself and his family. He was not satisfied with his jobs since they did not offer an opportunity for growth. He wanted to find something better. Over the years, he applied for many positions in the private and public sectors to no avail. He believes that, as an immigrant, he was discriminated against as soon as people met him or heard his voice. He also feels that he has been a victim of Islamophobia.

[30] In the summer of 2016, DND posted an advertisement for an appointment process on the Government of Canada's job website (Selection Process No. 16-DND-EA-CLDLK-405389). The process was open to all persons residing in Canada and to Canadian citizens residing abroad. The two positions to be staffed at CFB Cold Lake were identified as

Administrative Assistants/Clerks at the CR-03 and CR-04 levels. The salary range was between \$40,786 and \$48,777. The jobs' duties were stated to include reception, records management, data entry and retrieval, document creation, processing and tracking, coordination and support of meetings and events, and the use and maintenance of office equipment and supplies.

[31] The advertisement added that a pool of qualified candidates may be created and used to staff similar permanent and temporary vacancies within DND in Cold Lake. As I elaborate later, 18 appointments were eventually made through this process.

[32] Mr. Rehman saw the advertisement and applied on August 8, 2016. The salary range was not much different than what he was already earning, but he viewed the DND positions as an opportunity to get his foot in the door at DND. He was mindful that DND employs many people across the country and elsewhere. In addition, employment with the federal public service would provide him better benefits than those offered at the casino.

[33] Mr. Rehman examined the requirements for the position and believed he would qualify.

[34] I will now explain how the appointment process worked.

## **B. The public service staffing framework**

[35] DND is a federal department listed under Schedule I of the *Financial Administration Act*, R.S.C., 1985, c. F-11, and established pursuant to the *National Defence Act*, R.S.C., 1985, c. N-5. It is part of what is commonly referred to as the core federal public service.

[36] The *Public Service Employment Act*, S.C., 2003, c. 22, ss. 12, 13 (PSEA) sets out the rules for appointments in the public service. Section 30 of the PSEA provides that "appointments...to or from within the public service shall be made on the basis of merit and must be free from political influence". An appointment is based on merit when the person to be appointed meets the essential qualifications for the work to be performed, as established by the organization's deputy head, including official language proficiency.

[37] In addition, the following factors may be taken into consideration when determining whom to appoint (s. 30(2)(b) of the PSEA):

- (i) any additional qualifications that the deputy head may consider to be an asset for the work to be performed, or for the organization, currently or in the future;
- (ii) any current or future operational requirements of the organization that may be identified by the deputy head; and,
- (iii) any current or future needs of the organization that may be identified by the deputy head.

[38] Deputy heads for departments like DND are their deputy ministers (s. 2 of the PSEA). Deputy heads may delegate to other persons the performance of their powers and functions under the PSEA (s. 24 of the PSEA).

[39] If a candidate is found to meet all the essential qualifications for a position, they are placed in a pool of qualified candidates. This means that the organization can fill the position with anyone from this supply of pre-assessed candidates. Processes to select persons for appointments in the public service are called selection or appointment processes.

[40] The former Public Service Staffing Tribunal (PSST) noted in *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8 at para 63, that the PSEA provides managers with considerable discretion to choose the person for appointment who not only meets the essential qualifications for the position, but is also the “right fit” because of additional asset qualifications, current or future needs, and/or operational requirements (see also *Visca v. Deputy Minister of Justice*, 2007 PSST 24 at para 42).

[41] Section 30(4) of the PSEA states that management is not required to consider more than one person for an appointment to be made on the basis of merit. In other words, a manager may select a person from the pool of qualified candidates without looking at any of the other qualified candidates in the pool.

[42] In its final written submissions, the Commission contended that I should not apply these principles to this case because Mr. Rehman’s complaint is not about a decision made under the PSEA but about DND’s refusal to hire him in breach of the CHRA. I disagree. Parliament has enacted legislation that sets out rules for the appointment of public servants. DND was required to comply with this legislation in selecting whom to appoint in the

appointment process to which Mr. Rehman applied. The Tribunal cannot ignore these rules. They are the framework for this appointment process. The Tribunal's task in dealing with this human rights complaint is to determine whether any prohibited grounds of discrimination were factors in DND's decisions. This is not a conflation of tests, as the Commission suggests. It is an application of the Act to a framework established by Parliament for federal public service employment. There is no contradiction or "hodgepodge of disparate legal principles".

[43] It is also inaccurate to suggest that the federal public service employment law principles are somehow foreign to notions of human rights. Most of the applicable staffing principles were established in decisions by the Federal Public Sector Labour Relations and Employment Board (FPSLREB) and its predecessor, the PSST, which have been endorsed by the Federal Court (see *Abi-Mansour v. Canada (Attorney General)*, 2015 FC 882 at para 67; *Soucy v. Canada (Attorney General)*, 2019 FC 989 at para 41 [*"Soucy"*]). Under the PSEA, these tribunals are expressly empowered to interpret or apply the Act. Indeed, the Commission has a statutory right to make submissions to the FPSLREB in staffing cases involving the interpretation or application of the Act (s. 65 of the PSEA). The fact that the FPSLREB cannot deal with complaints about external processes that are open to the general public, such as this one, is of no consequence. The staffing rules relevant to this case are essentially the same whether the appointment process is external or internal (see *Soucy*, which applied these principles in a case involving an external appointment process).

[44] I will now explain how the appointment process at issue in this case came about.

### **C. The appointment process to which Mr. Rehman applied**

[45] Captain (Capt.) Gail Sullivan was a senior finance officer at CFB Cold Lake. She testified that DND needed to fill clerical and administrative (classified as "CR") positions at the Base on an ongoing basis as vacancies were regularly coming up. Hiring managers appointed people to these positions from pools of qualified candidates. In 2016, an existing pool had been depleted, and she was asked to coordinate the Assessment Board (the "Board") comprised of Canadian Armed Forces (CAF) members to create a new pool.

[46] Rita St. Amand, a DND resourcing officer, who provided staffing services to DND and its managers, was assigned to take the lead on providing human resources support and advice for the selection process. She developed the list of merit criteria, known as the Statement of Merit Criteria (SMC), for the process based on prior appointment processes to staff CR positions in western Canada. She consulted key hiring managers for multiple CR positions on what to include in the SMC. She tried to minimize the number of qualifications required to find a candidate qualified to be able to build as large a pool as possible. As several DND witnesses involved in this appointment process testified, it is difficult to staff positions at CFB Cold Lake, particularly at CR-03 and CR-04 entry-level salaries, given the Base's semi-isolated location, its northern climate, the high housing costs, and other factors.

[47] Ms. St. Amand explained that the team responsible for this appointment process tried to meet the varied needs of hiring managers. Not every position required the same experience. So, rather than making multiple lists of qualifications, the team grouped the qualifications under a single list. Managers would identify the experience to be applied to the position they were staffing and select from those candidates who met the given qualifications.

[48] The essential qualifications for the process were set out in the SMC, as listed in the following paragraphs. I have omitted some portions that are not relevant to the issues of the case. Some qualifications were common to positions at both CR-03 and CR-04 levels, while additional ones were required to qualify for a CR-04 level position.

### **Essential Qualifications**

1) **Official language proficiency:**

CR-03/04: English Essential.

2) **Education.**

CR-03/04: Successful completion of a secondary school diploma or an acceptable combination of education, training and/or experience.

3) **Experience:**

**EX 1**

CR-03/04: Recent experience using Microsoft Office software, such as Outlook, Word or Excel in an office environment.

**EX 2**

CR-03/04: Recent experience providing general administrative support services in an office environment including but not limited to formatting documents, photocopying, filing, data entry or processing.

**EX 3**

CR-04: Positions will require recent experience providing administrative support services in an office environment in one or more of the following areas (as applicable to the position being staffed)

- Health services/medical;
- Finance, such as accounts payables, accounts receivables, or reconciliations;
- Human resources;
- Pay/payroll or benefits;
- Travel coordination or processing claims;
- Procurement/contracting;
- Material management or with inventory control systems; or
- Client service.

4) **Abilities (CR-03/04):**

Ability to communicate effectively.  
Ability to manage multiple priorities.

5) **Personal suitability (CR-03/04):**

Effective interpersonal relationships  
Attention to detail/thoroughness  
Initiative  
Flexibility  
Dependability

Some positions may require one or more of the following (as applicable to the position being staffed):

Discretion  
Client Service Orientation  
Autonomy

[49] The SMC also listed a series of Asset Qualifications, which a manager could consider in determining whom to appoint from the pool of qualified candidates:

**Asset Qualifications**

1) **Education:**

Post secondary education in a relevant field of study (for example: business administration, office administration, etc.).  
Possession of a medical terminology certificate.

2) **Experience:**

Experience using one or more of the following computer systems/software:

- financial management accounting databases (i.e. Simply Accounting, AccPac, etc.); or
- Departmental (DND) systems, such as PeopleSoft, Human Resource Management System (HRMS), Defence Resource Management Information System (DRMIS), or ClaimsX.
- Experience in supervision.

[50] In addition, the SMC stated that appointees would need a reliability and security clearance, which could include the Reliability and Secret levels.

[51] The SMC also mentioned that employment equity considerations may be applied:

**Organizational Needs**

In support of achieving a diversified workforce, consideration may be given to candidates self-identifying as belonging to one of the following employment equity groups: Aboriginal peoples, Visible Minorities, Persons with Disabilities and Women.

[52] Persons who viewed the advertisement for the appointment process could click on a link and apply online. The applicants would answer a series of questions and paste their resume into the application.

**D. How candidates were assessed**

[53] The first stage in assessing the candidates involved screening them to determine if they met the essential educational and experience qualifications, as well as the asset qualifications. Some of the Board members, or on occasion Ms. St. Amand, would review the candidates' applications to determine if they can be screened in. They were assessed on a "Meets/Does not meet" basis. When it came to the third experience criterion (EX 3), a candidate need only have been found to have experience in one of the eight categories to be qualified. In contrast, even if a candidate did not have any of the asset qualifications, they would still be screened in if they satisfied the essential educational and experience criteria (EX 1, EX 2, and EX 3).

[54] Once a candidate was screened in, they were then assessed for the remaining essential criteria, Abilities and Personal Suitability. This was done in part by an in-person or

telephone interview with two or three of the Board members. Candidates were asked a variety of questions ranging from giving examples of how they have dealt with issues in the past to answering how they would deal with situational examples (scenarios) that were presented to them. For some of the criteria, references were consulted as well. Candidates also had to complete a written exercise. The assessors used a guide with definitions for the criteria being assessed and the factors to look for in candidates' responses and during reference checks.

[55] The rating scale at this stage was threefold—Exceeds standard, Meets standard and Does Not Meet standard (or E, M and, DNM). Some qualifications were only assessed by interview (oral communication, discretion, and client service orientation). Others were only assessed by references (dependability). The written exercise was used to assess three criteria: (1) the abilities to communicate effectively in writing, (2) the ability to manage multiple priorities and deadlines, and (3) the candidate's attention to detail and thoroughness. This latter criterion was also assessed through references.

[56] Four of the qualifications (effective interpersonal relationships, initiative, flexibility, and autonomy) were scored based on the interview and the reference check, following which a global score was assigned. I point this out because Mr. Rehman takes issue with the global score assigned to him for the first of these qualifications, effective interpersonal relationships, which I address later in this decision.

[57] According to a spreadsheet used in this appointment process, at least 56 people applied, but there may have been more. Thirty of the applicants passed all these stages of assessment and were found qualified, including Mr. Rehman. Ten of those persons withdrew their candidacies from the process at some point, leaving 20 persons in the pool of qualified candidates.

#### **E. Mr. Rehman's candidacy and assessment**

[58] Mr. Rehman was screened in at the first stage based on his resume. His application and resume did not list his place of birth, his national or ethnic origin, his race, or his colour. No photos of Mr. Rehman were included. The resume only mentioned Gomal University by



its name, without reference to its location. The second university's location is mentioned (Cayman Islands). The only work experience listed is either from Canada or the Cayman Islands.

[59] Mr. Rehman was assessed as clearly exceeding the educational requirements, having acquired two university degrees. He was also found to have met the two first essential recent experience qualifications (Microsoft Office (EX 1) and general administrative support services (EX 2)). From the eight experience categories for CR-04 positions (EX 3), he was found to meet two: (i) finance (accounts payables, accounts receivables, or reconciliations) and (ii) client service.

[60] For the second stage (the assessment of Abilities and Personal Suitability), Mr. Rehman was first invited to do the written exercise, which he completed by email on September 20, 2016. Three members of the Board assessed his submission and signed the marking sheet: Capt. Sullivan, Major (Maj.) Heather Demchuk, and Warrant Officer (W.O.) Yves Brosseau. Mr. Rehman was found to have met (M) all three assessed criteria. He did not receive any exceeds (E) scores.

[61] Having passed the written exercise, Mr. Rehman was then invited to the interview. He opted to do it by telephone rather than in person, explaining in his response to the invitation that "it is very difficult" for him to travel to Cold Lake from Calgary.

[62] The interview was held on October 3, 2016, by three Board members (Maj. Demchuk, Capt. R.M. Finkle, and B.D. Smith). Maj. Demchuk, who was Capt. Sullivan's supervisor, was the only one of the three to testify at the hearing. Maj. Demchuk explained that all interviewed candidates were asked the same questions. The Board members took notes on the forms provided to them. They would confer afterwards and seek consensus on the marks to assign. The marks were recorded on a table referred to as a "consensus report". The choice of which combination of Board members would interview each candidate was random.

[63] The Board members then assessed Mr. Rehman's reference check and scored him by consensus. According to a completed version of the Board's consensus report,

Mr. Rehman's results were as follows (global scores were only given where two means of assessment were used to assess a criterion):

<b>Qualification</b>	<b>Interview</b>	<b>Reference</b>	<b>Global</b>
Oral Communication	Meets		
Effective Interpersonal Relationships (EIR)	Exceeds	Meets	Meets
Attention to Detail/Thoroughness		Meets	
Initiative	Meets	Meets	Meets
Flexibility	Exceeds	Meets	Meets
Dependability		Meets	
Discretion	Exceeds		
Client Service Orientation	Meets		
Autonomy	Meets	Meets	Meets

[64] The scoring was indicated by a hand-written circle placed around the assigned rating (E / M / DNM).

[65] Mr. Rehman raised two concerns about the evidence regarding this scoring. The first relates to a divergence in two versions of his consensus report that were entered into evidence. The second concern is about the scoring itself with respect to one of the criteria.

[66] The first concern arises from the copy of the consensus report that DND provided to Mr. Rehman with DND's Statement of Particulars for this case in August 2022. This copy did not have any global scores circled under the categories Effective Interpersonal Relationships and Flexibility. This is the version of the document that Mr. Rehman and the Commission included in their Joint Book of Proposed Exhibits. Mr. Rehman entered this version of the document into evidence during his examination in chief, as Exhibit JB-10.

[67] On January 5, 2024, 10 days before the start of the hearing, DND served its Book of Proposed Exhibits, in accordance with the Tribunal's direction. Several days later, on January 9, 2024, DND filed an Amended Book of Proposed Exhibits, which contained

certain additional documents that it described as reorganized copies of documents from Mr. Rehman's Book of Proposed Exhibits. However, one of those documents was a different version of Mr. Rehman's consensus report. This new version was later entered into evidence at the hearing as Exhibit R-473.

[68] R-473 has the global scoring circled for the two criteria that had not been circled on JB-10. Mr. Rehman did not bring up any concerns about JB-10's blank entries during his testimony, nor did he refer to R-473.

[69] In his final submissions, however, Mr. Rehman contends that DND "secretly snuck" R-473 into its exhibits. He submits that DND or its counsel altered JB-10 in an effort to change his global score for Effective Interpersonal Relationships from "Exceeds" to "Meets". The fact that his global score was "Meets" prevented him from being considered for some positions, as I elaborate later in this decision.

[70] DND vigorously denies any suggestion that it altered the document. Its counsel stated that both versions were included in the batch of documents that DND had pulled up from its files for disclosure. It was erroneously thought initially that they were redundant copies of the same document. It was only when preparing the final amended Book of Proposed Exhibits that it was realized that the documents were not identical.

[71] I am not persuaded that DND altered or fabricated R-473 as suggested by Mr. Rehman. Some parts of the two documents are identical, and others are different. The most logical explanation is that JB-10 was a draft document and that R-473 is a later or final version, since all that is different on the scoring sheet from one to the other is the circling of the "M" in the global scoring cells. DND called Maj. Demchuk to testify, and in her evidence in chief she referred to R-473 in addressing how Mr. Rehman was assessed. Neither Mr. Rehman nor the Commission asked her any questions about JB-10 or about any discrepancies between the two. She maintained in her evidence that all his global scores were "Meets".

[72] These "Meets" scores are in fact reflected in other documents, such as the Excel spreadsheets that were used throughout the appointment process when reviewing candidacies. Besides, the suggestion that the blank spaces in JB-10 should be interpreted

to mean that Mr. Rehman's score was really "Exceeds" is not so obvious. In fact, the opposite could equally hold true. In cross-examination, Mr. Atiq asked Lieutenant Colonel (L.Col.) Johnathan MacCormack, who was one of the hiring managers but who was not on the Board or involved in assessing Mr. Rehman, what a blank scoring would mean. L.Col. MacCormack guessed that it could mean "Did Not Meet".

[73] Taking all the circumstances into account, I am satisfied on the balance of probabilities that Mr. Rehman was assessed the global score of "Meets", as reflected in R-473.

[74] Mr. Rehman's second concern regarding the consensus report is the fact that he was given a global score of "Meets" for the criterion Effective Interpersonal Relationships, even though he scored "Exceeds" in his interview and "Meets" from his reference check. He points out that two other candidates, Jennifer Leclerc and Sylvie Sarrazin, also had mixed scoring like him, but they were given a global score of "Exceeds". Mr. Rehman filed a copy of a page from a social media site ostensibly showing Ms. Leclerc's image, based upon which he described her as a Caucasian woman.

[75] However, another candidate, Victoria Ark, who also had a mixed score for this qualification ("Meets" in the interview and "Exceeds" in the reference check) was given a global score of "Meets", like Mr. Rehman. Ms. Ark was assessed by a different panel of Board members than Mr. Rehman.

[76] Maj. Demchuk addressed Mr. Rehman's global score in her evidence. She explained that, in her experience, candidates "talk themselves up" during their interviews, meaning that they embellish their abilities. The reference check in Mr. Rehman's case was his current employer, and as a rule she and the other Board members on her panel who were assessing the group of candidates assigned to them would defer to the independent opinion of the reference over the candidate themselves. Maj. Demchuk's evidence on this point was not challenged or contradicted.

[77] I note that another candidate, Cassandra Clouter, had a mixed score in the inverse direction. She was rated "Meets" at the interview, but "Exceeds" on the reference check, and was assigned a global score of "Exceeds". This would be consistent with the approach that

Maj. Demchuk referred to of deferring to the reference's opinion. One of the Board members who assessed Ms. Clouter was also on the panel with Maj. Demchuk that assessed Mr. Rehman.

[78] Some of the other qualifications were also assessed through interviews and references and, in several instances, candidates (Ms. Ark, Dianne Zevenbergen, and Anita Kervin) saw their global ratings dropped to "Meets" despite being rated "Exceeds" in one of the constituent assessments.

[79] I also note that Ms. Leclerc and Ms. Sarrazin were assessed by an entirely different group of assessors than Mr. Rehman. It may well be that those assessors' perspective on a reference's weight was different than Maj. Demchuk and her group of assessors.

[80] Overall, the evidence does not prove on a balance of probabilities that Mr. Rehman was singled out for different treatment at this assessment stage than other candidates, nor for that matter that a prohibited ground of discrimination was a factor in his assessment of these qualifications.

[81] Furthermore, two other candidates with similar personal characteristics as Mr. Rehman (Manesh Suman and Arun Pillai) were rated as "Exceeds" across the line (EEE) for this qualification. Mr. Rehman led extensive evidence at the hearing claiming that these two visible minority and immigrant candidates were discriminated against like him. Yet, they were assessed with high scores in this category.

[82] The most important fact to retain from this stage of Mr. Rehman's assessment is that he demonstrated that he met or exceeded in all the categories.

[83] Under the category of Asset Qualifications, it was determined that Mr. Rehman satisfied two of the criteria: (i) post-secondary education in a relevant field of study (e.g., business administration, office administration, etc.) and (ii) experience using financial management accounting databases (i.e., Simply Accounting, AccPac, etc.).

[84] On October 26, 2016, DND emailed Mr. Rehman to tell him that he met the Essential Qualifications and was placed in the pool of essentially qualified candidates for a "possible

employment at a future date.” The email added that, should he be considered for an appointment, he would be contacted.

[85] Having described the appointment process and how Mr. Rehman was assessed, I will now analyze if he has proven that the *Moore* criteria for a *prima facie* case of discrimination are met.

## **V. ANALYSIS**

### **A. Does Mr. Rehman have the protected characteristics he alleges?**

[86] Yes. The prohibited grounds of discrimination alleged in his complaint are race, colour, national or ethnic origin, and religion. He identifies as a South Asian person of colour from Pakistan who is of the Muslim faith.

### **B. Did Mr. Rehman suffer an adverse impact?**

[87] Yes. DND did not appoint Mr. Rehman to any position following his application to the appointment process at issue.

### **C. Were any of Mr. Rehman’s personal characteristics factors in the adverse impact when viewing each appointment separately?**

[88] As I mentioned earlier, my analysis of this question focuses first on whether Mr. Rehman’s personal characteristics were factors in his not having been appointed when viewing each appointment separately. I will follow up afterwards with a global analysis to consider the systemic issues raised by Mr. Rehman and the Commission to again examine if any of his personal characteristics were factors in his not having been appointed to any position.

[89] Ms. St. Amand explained the steps that were generally followed to appoint persons in this appointment process. Hiring managers would consult the SMC and select the criteria that were appropriate for the position they were looking to fill. Ms. St. Amand would then pull those names from the pool and generate a package for the hiring managers with details

about the candidates that met those criteria. The hiring managers had no prior knowledge about the identities of the candidates who would be pulled from the pool, except in a couple of instances that I address specifically in my decision.

[90] I first deal with a series of appointments for which Mr. Rehman was clearly not qualified, following which I analyze the appointments for which Mr. Rehman could have been considered.

**(i) Appointments for which Mr. Rehman was not qualified**

[91] With respect to the five appointments that I deal with first below, Mr. Rehman did not meet the qualifications that the hiring managers selected. Consequently, his name was not pulled, and he was not considered for the position.

**(a) Rations Customer Accounts Manager—Cassandra Clouter**

[92] Cassandra Clouter received a letter of offer for the CR-4 position of Rations Customer Accounts Manager on December 8, 2016. The hiring manager was Maj. Suzanne Kaprowski, who oversaw one of the logistics components of the Base, which included food services. The position being staffed involved responsibilities such as food purchasing, dealing with vendors, and paying and reconciling accounts.

[93] After a discussion with Ms. St. Amand about which qualifications were needed for the position, Maj. Kaprowski selected the following criteria: “Meets” in the essential experience in Finance, “Exceeds” in Effective Interpersonal Relationships, and “Meets” for the asset experience of Financial Management Experience.

[94] These criteria yielded four names from the pool of qualified candidates. Mr. Rehman was not one of them because he did not achieve the qualification of “Exceeds” in Effective Interpersonal Relationships.

[95] The four candidates’ applications and assessments were sent to Maj. Kaprowski for her consideration. She testified that she had no knowledge of any of the candidates before

this list was sent to her. Maj. Kaprowski had never heard of Mr. Rehman prior to being notified about this Tribunal hearing. She did not serve on the Board.

[96] Maj. Kaprowski immediately eliminated one of the four candidates from consideration because their spouse was the kitchen's manager. Another candidate was contacted for an interview to determine if she was the right fit for the position. But, before the interview was held, the candidate withdrew her candidacy.

[97] As a result, Maj. Kaprowski reached out to the person she described as the next best qualified candidate for the position, Ms. Clouter. This candidate had experience working as a food service assistant on a casual basis at the Base six to seven years earlier, which meant she was familiar with kitchen operations. Ms. Clouter already resided in Cold Lake. Maj. Kaprowski considered her to be a good fit for the operation.

[98] Ms. Clouter's spouse was a CAF member employed in the food unit to which she would be appointed, but he was not involved in the hiring process. Measures were taken to keep any information from getting to him. The couple ended up working together once Ms. Clouter was hired.

[99] Mr. Rehman challenges DND's decision to appoint Ms. Clouter while not even considering appointing the fourth candidate that Ms. St. Amand pulled from the pool, Mr. Suman, who is an immigrant and a member of a visible minority group. Mr. Rehman submits that DND's treatment of Mr. Suman's candidacy is circumstantial evidence supporting Mr. Rehman's claim.

[100] Mr. Rehman called Mr. Suman as a witness. Mr. Suman was born in Nepal and identifies as South Asian and a visible minority. He is a practising Hindu. After completing his secondary education in Nepal, he attended university in the United Kingdom, France, and the United States. He has a Bachelor of Arts degree, a master's degree in business administration, and a medical office administration diploma. He moved to Canada in 2005, settling in Toronto where he resides to this day. He has been employed as a portfolio analyst and fund administrator at financial institutions on Bay Street in Toronto since arriving here, except for a period from 2013 to 2015 when he was employed as an investment head at a bank in Nepal.



[101] Like Mr. Rehman, he saw DND's job advertisement on the government website and applied. Even though his income at the time greatly exceeded the salary for the CR positions and the educational requirements for those positions were inferior to his level of education, he applied because he wanted to enter the federal public service. He knew little about public administration and figured a job at DND would provide him the opportunity to learn and eventually contribute to his qualifications. He had never worked in the public sector, which he felt prevented him from having the qualifications to apply for any higher-level government jobs. Mr. Suman was willing to take the pay cut in the hope that people would see his work ethic. He expected to be employed at a much higher public service position in Ottawa within three or four years.

[102] Maj. Kaprowski confirmed that Mr. Suman was never invited for a "right fit" interview for the position. Ms. Haynes, the DND staffing advisor, testified that after hiring managers review the files of the qualified candidates that Human Resources (HR) has referred to them (known as referral packages), they may opt to interview a candidate that interests them. They usually have never met the person before, so the interview enables them to get a better idea of the person's experience and background and assess how well the person would fit within their organization.

[103] Maj. Kaprowski selected Ms. Clouter for the previously mentioned reasons, namely her experience at and familiarity with the Base kitchen, as well as the fact that she was already in Cold Lake. Maj. Kaprowski acknowledged that she was willing to hire someone from outside Cold Lake. Indeed, her initial preferred candidate who withdrew her candidacy resided in Quebec, and Maj. Kaprowski had been told that funding would have been made available to relocate that person. Maj. Kaprowski did not consider it a requirement to appoint someone from Cold Lake. It was simply more convenient to select someone who was already local.

[104] There is no evidence that Maj. Kaprowski knew of Mr. Suman's personal characteristics. His application did show that he spoke English, Nepali, and Hindi, and mentioned his temporary work at a bank in Nepal. However, most of his resume related to his work in Canada. There is no mention of his national or ethnic origin, religion, colour, or race.

[105] There is no evidence that these grounds were factors in her decision to basically select the person whose experience is directly associated with the workplace in question and who conveniently lived locally.

[106] The Commission raised concerns in its final submissions about the systemic adverse impact on immigrants of not considering candidates who reside outside Cold Lake. I will address these arguments later in this decision as part of the global analysis.

[107] Refocusing on Mr. Rehman's allegations that he was discriminated against with respect to the staffing of this position, I am satisfied on the balance of probabilities that none of the prohibited grounds of discrimination alleged in his complaint were factors in his not being appointed. He was clearly not qualified for the criteria selected by Maj. Kaprowski, and there is no evidence that she had ever heard of him, let alone knew his personal characteristics.

**(b) Mental Health Clerk—Connie Wilson**

[108] Connie Wilson received a letter of offer for the CR-04 position of Mental Health Clerk on February 24, 2017. The letter was signed by Maj. Valerie MacEachern (then a Captain), as Acting Commanding Officer at the time. From 2016 to 2018, she was the Support Services Manager at the Base's Health Services Centre, which was the unit responsible for the provision of care to CAF members. Her trade was as a health care administrator. Maj. MacEachern was involved in hiring candidates from the pool of qualified candidates. She was also a member of the Board and was involved in assessing the qualifications of some of the candidates.

[109] The Mental Health Clerk's role is to greet mental health patients upon their arrival to the unit, as well as a variety of other tasks such as responding to phone calls, booking patients, working with the health information system, scheduling, coordinating patient outsourcing, recalling patients, and providing any support the mental health team leader requires regarding administrative tasks.

[110] Maj. MacEachern worked with Ms. St. Amand to choose the selection criteria that would be appropriate for the position. They opted for the following essential qualifications:

experience in health services/medical and experience in client service, as well as being assessed as qualified in discretion and client service orientation.

[111] Of these essential qualifications, Mr. Rehman lacked the first experience (health services/medical). Maj. MacEachern explained that it was routine to ask for this experience in her unit since it facilitated “onboarding”.

[112] Ms. Wilson had already been working at the CR-03 level in the unit. When the CR-04 position became vacant due to unforeseen circumstances, Ms. Wilson was appointed on an acting basis to the position temporarily for a period of less than four months.

[113] The Board had assessed Ms. Wilson as meeting all the qualifications that Maj. MacEachern had chosen from the SMC. Maj. MacEachern was not on the panel that assessed Ms. Wilson. Ms. Wilson also already had the required security level for the position: Reliability. Maj. MacEachern testified that when a candidate already has the appropriate security clearance, it speeds up the process of staffing the position. It can take a minimum of 21 days to get a Reliability clearance without even taking into account the time it takes to prepare the request.

[114] Ms. St. Amand gave Maj. MacEachern a copy of Ms. Wilson’s job application. What stood out to her was that Ms. Wilson had 15 years’ experience working as a health care aide and clerk at a hospital, until 2015, which meant she had clerical experience in the domain of health care.

[115] Maj. MacEachern testified that she selected Ms. Wilson for the position not only because she met the essential merit criteria she was seeking, but her unit also already had the benefit of having Ms. Wilson working there, which enabled them to confirm her as a right fit, including the personal attributes of discretion and related experience. Maj. MacEachern stated that it was a very easy decision to make. In addition, managers in the public service are encouraged to offer pathways for promotional appointments to public servants whenever possible, as part of their professional development and career improvement within the public service. Promoting Ms. Wilson to the CR-04 position fulfilled this objective.

[116] In cross-examination, it was pointed out to Maj. MacEachern that Mr. Pillai, who was still in the pool of qualified candidates at the time, met all the essential qualifications. Maj. MacEachern appointed Mr. Pillai to another position some time later. She testified that he is a member of a visible minority group. Mr. Rehman entered into evidence correspondence that DND had sent to the Commission, after he had filed the complaint, in which DND confirmed that Mr. Pillai was an immigrant to Canada from India.

[117] Even though Mr. Pillai was qualified, he was not invited to a “right fit” interview, unlike Ms. Wilson who was invited. Maj. MacEachern acknowledged that it is possible she only considered Ms. Wilson for the job, given that she was in the pool of qualified candidates and had the required qualifications. Maj. MacEachern does not recall if the applications of any of the other qualified candidates who met the selection criteria chosen for this position were presented to her, although normally several candidates’ files would be sent to her. However, under s. 30(4) of the PSEA, she was not required to consider more than one person for the appointment to be merit-based. Maj. MacEachern’s key consideration was to offer an opportunity for advancement to the person who was already employed in the unit and acting in the position: Ms. Wilson.

[118] Returning to Mr. Rehman’s allegations that he was discriminated against with respect to the staffing of this position, I am more than satisfied on the balance of probabilities that none of the prohibited grounds of discrimination alleged in his complaint were factors in his not being appointed. He was clearly not qualified for the criteria selected by Maj. MacEachern.

[119] Maj. MacEachern testified that she did not know the national, ethnic, or religious origin of Mr. Rehman’s name. She described herself as French Canadian, and she stated that she does not even know what gender the name “Zia” is associated with. There is certainly no evidence that Maj. MacEachern ever was aware of Mr. Rehman’s personal characteristics or that he identified as a visible minority when she made this appointment for which his name was not presented to her.

[120] Mr. Rehman has therefore not established that his personal characteristics were factors in his not being appointed to this position.

**(c) Health Info/Records Management Clerk—Sylvie Sarrazin**

[121] Ms. Sarrazin received a letter of offer for the CR-4 position of Health Info/Records Management Clerk on March 30, 2017. Maj. MacEachern was the staffing officer for this appointment. She testified that the responsibilities for this clerk position included scanning and organizing information received into the CAF health information system, entering into the computer system outsourced reports that are received by fax, and dealing with patient requests for medical files. The clerk is also responsible for sending information to Veterans Affairs Canada.

[122] Maj. MacEachern worked with Ms. St. Amand to choose from the SMC the selection criteria that would be appropriate for the position. In the experience category, they initially considered experience in Health Services, but this search was “unproductive”. Consequently, the essential experience qualification was modified to experience in providing administrative support in the area of client service. With respect to the Personal Suitability category, Maj. MacEachern explained that there had been conflict in this workplace, and for that reason she was looking for someone with strong interpersonal skills. There was also a directive in place to prioritize client service. She and Ms. St. Amand therefore opted to only pull qualified candidates who had Exceeds-level ratings under Effective Interpersonal Relationships and Client Service Orientation.

[123] Of these essential qualifications, Mr. Rehman possessed Client Service experience, but he lacked “Exceeds” ratings for both Personal Suitability criteria. He was therefore not qualified, and his application was not forwarded to Maj. MacEachern for consideration.

[124] Maj. MacEachern testified that Ms. Sarrazin was chosen from the names that were pulled based on the selected criteria because of several factors, but principally her recent work experience as a file clerk for a social services agency, which is directly related to the type of experience needed for the position.

[125] Maj. MacEachern had served on the Board panel that assessed Ms. Sarrazin for Personal Suitability and recalled being very impressed with her answers and pleasant nature. She gave detailed responses that well reflected the expected answers in the marking

guide. Maj. MacEachern noted at the time that Ms. Sarrazin had demonstrated clear and concise oral communication skills.

[126] Maj. MacEachern also considered Ms. Sarrazin's fluency in French to be a "value-added" asset. Although the position was classified as English essential, which meant that knowledge of French was not a requirement, the presence of a significant number of French-speaking persons in and around the Base rendered this proficiency an asset.

[127] In addition, Ms. Sarrazin's spouse was a CAF member at CFB Cold Lake. Maj. MacEachern testified that there was "chatter" at the time about the development of a new military spousal initiative to encourage the hiring of spouses, but it was not really a factor as such in her appointment.

[128] Maj. MacEachern observed that even if Mr. Rehman had met the Personal Suitability qualifications at the required "Exceeds" level, he would not have been a right fit for the position. Although his experience was more "elaborate" than Ms. Sarrazin's and included file management, it was mostly financial in nature and not what her team needed.

[129] In any event, Mr. Rehman's Personal Suitability qualifications assessments were not sufficient to meet the criteria selected by Maj. MacEachern and Ms. St. Amand for the position. His name was therefore not pulled from the pool to be considered for this appointment.

[130] Being unqualified for the position, Mr. Rehman has not proven on a balance of probabilities that his personal characteristics were factors in the decision to appoint Mr. Sarrazin and not consider Mr. Rehman for this appointment.

**(d) Mental Health Clerk—Brooke Lattik**

[131] Ms. Lattik received a letter of offer for the CR-04 position of Mental Health Clerk on July 18, 2017. Maj. MacEachern was the staffing officer for this appointment and signed the letter of offer. She testified that this is an administrative position in support of the mental health department. This position is like Ms. Wilson's. Its responsibilities included answering the telephone, greeting patients, checking them into the health information system, assisting

with templating and the scheduling of the team, assisting the team leader with any administrative tasks related to their role and coordinating outsource care on behalf of patients.

[132] Maj. MacEachern testified that she, in discussion with Ms. St Amand, decided to consider candidates in the pool that met the following criteria: experience providing administrative support services in client service and an “Exceeds” assessment for Effective Interpersonal Relationships. With respect to the latter criterion, Maj. MacEachern said it is important that the appointee have the tools to deal with mental patients who were often distraught and in crisis. Someone who was strong in the area of Effective Interpersonal Relationships would suggest that the person is able to manage stressful situations and difficult patients.

[133] These were the same two criteria that were used to filter candidates for another position that Maj. MacEachern was looking to fill, that of Care Delivery Unit (CDU) Clerk. So, Ms. St Amand pulled up the same list of seven candidates, which included Ms. Lattik. I address the CDU Clerk appointment later in this decision. A couple of the candidates were no longer available by this point, but there remained a sufficient number to consider for the appointment.

[134] Since Mr. Rehman did not have an “Exceeds” for the Effective Interpersonal Relationships criterion, he was filtered out and not considered. His name was not on the list brought forward to Maj. MacEachern.

[135] Maj. MacEachern explained that she reviewed the material in Ms. Lattik’s file and how she was scored. Ms. Lattik’s scores for the seven Personal Suitability criteria were all “Exceeds”. Maj. MacEachern invited Ms. Lattik for a “right fit” interview during which she made a good impression and “interviewed well.”

[136] Furthermore, Maj. MacEachern noted that Ms. Lattik was already a public servant working as a “secretary” for a commanding officer at the Base in a term appointment. As such, she was a “current employee”, and she already had the required security clearance. This was a significant factor in deciding to appoint Ms. Lattik, since it meant that Maj. MacEachern would not need to first obtain a security clearance. Ms. Lattik could begin

working at least a month earlier than someone for whom a clearance would need to be obtained. Maj. MacEachern needed to staff the position quickly because there are only two clerk positions on the mental health team, and any vacancy must be filled promptly. Any deficiency can cause harm to patients' experience and to the staff's job satisfaction.

[137] In addition, appointing Ms. Lattik helped promote her career advancement, which as mentioned with respect to Ms. Wilson's appointment is encouraged, as part of public servants' professional development and career improvement within the public service.

[138] In sum, Maj. MacEachern's principal motivation for choosing Ms. Lattik over the other filtered candidates was the speed with which the appointee could begin to work in the position. Maj. MacEachern did not even consider Mr. Rehman for the position as he did not meet the essential criteria selected.

[139] Mr. Rehman has therefore not established that any of the discriminatory grounds alleged was a factor in his not being appointed to this position.

[140] Mr. Rehman observed that Mr. Pillai and Mr. Suman were on the list of candidates that met the criteria that Maj. MacEachern had selected for this position. Maj. MacEachern recalled being presented Mr. Pillai's file. She explained, however, that her priority was to appoint someone quickly. Mr. Pillai did not already have a security clearance and was from outside Cold Lake. That meant it would take time before he could begin working in the position, which would not accord with her need to staff the position quickly.

[141] This is not to say that Maj. MacEachern was not interested in Mr. Pillai's candidacy. She was considering staffing another position in the near future, that of Administrative Assistant. She felt that Mr. Pillai would be a good fit for the position, especially given his information technology and health clinic experience. Maj. MacEachern did in fact end up hiring Mr. Pillai for that job, as discussed just below.

[142] Maj. MacEachern was asked in cross-examination why she and Ms. St. Amand had not selected health services experience as an additional filter like she had done for Ms. Wilson's position. Had she done so, Mr. Pillai may have been the only candidate to meet



all the qualifications. Maj. MacEachern testified that adding health services experience as a criterion made the selection pool too small and was not considered sufficient.

[143] Besides, there is nothing to indicate that any of Mr. Pillai's personal characteristics were factors in Maj. MacEachern's decision to appoint Ms. Lattik, a person who was already employed at the Base, had security clearance, and could begin working immediately. I am not persuaded that discrimination based on Mr. Pillai's personal characteristics can be inferred from her decision to prioritize these considerations.

[144] Maj. MacEachern was not questioned about Mr. Suman regarding this appointment. However, in relation to the appointment of another person (Ms. Wilson) to a similar mental health clerk position, Maj. MacEachern noted that Mr. Suman was less likely to be considered, given that, according to his resume, his experience centred on finance.

**(e) Administrative Assistant—Arun Pillai**

[145] Mr. Pillai received a letter of offer for the CR-04-level position of Administrative Assistant on September 19, 2018. Maj. MacEachern was the staffing officer for this appointment. Her supervisor signed the letter of offer.

[146] Maj. MacEachern testified that this is the sole Administrative Assistant position in her team. The job is focused on supporting the command team consisting of the Commanding Officer, the Wing Surgeon, and the Clinic Warrant. The position's day-to-day functions include scheduling, deliverables, drafting letters, and assisting in quality-improving projects.

[147] Maj. MacEachern began trying to staff this vacant position in August 2017. She sent an email to a student employee in HR on August 15, 2017, in which she mentioned Mr. Pillai specifically as someone whose candidacy she had come across when dealing with Ms. Lattik's appointment. HR verified and confirmed to Maj. MacEachern that 16 qualified candidates remained in the pool. Maj. MacEachern asked that the candidates with health services/medical experience be filtered through. On September 18, 2017, Maj. MacEachern was informed that the filter yielded the candidacy of one person—Mr. Pillai. His referral package was sent to her.

[148] Maj. MacEachern testified that she decided to appoint him at that time. He was perfect for the position. She noted from his resume that he had a master's degree in computer science, which appealed to her given the administrative responsibilities of the job. She was also impressed with his experience in office administration, client services, and office support as well as his experience in a health clinic. Maj. MacEachern testified that Mr. Pillai did very well in his "right fit" interview and was very enthusiastic. He had all the tools to succeed.

[149] The Board consensus report setting out Mr. Pillai's scoring for Personal Suitability was filed in evidence. Maj. MacEachern was not one of the assessors. As mentioned earlier, the report showed that Mr. Pillai was rated "Exceeds" in all categories. A comment was typed in at the bottom of the report stating the following:

Comments: M Pillai interview went well although it was hard to understand everything due the phone line and his strong accent. His answers were logical and relevant to each questions asked. Mr. Pillai could also be a good choice for the [Administrative Assistant] position.

[sic throughout]

[150] Maj. MacEachern testified that she would not have looked at the report itself or those comments since she only consulted an Excel spreadsheet that documented the "Exceeds" scores. She did however state that Ms. St Amand may have told her about the assessors' recommendation that he be appointed to the Administrative Assistant position. She was not asked any questions during her testimony about the reference to Mr. Pillai's accent.

[151] Mr. Pillai did not, however, receive his letter of offer until over a year later. Mr. Rehman claims that this made Mr. Pillai the last person to be appointed from this appointment process. He contends that Mr. Pillai's status as a racialized immigrant from India was a factor in this outcome, which would support his claim of discrimination. Other candidates who did not have a university education like Mr. Pillai were appointed before him.

[152] Maj. MacEachern explained the delay. In 2017, she was assigned to act in her supervisor's position, while also performing the duties of her substantive position. In this period, four of her employees vacated their positions, which further added to her workload.

By the time her supervisor returned in October 2017, Maj. MacEachern was overwhelmed and unable to keep up with her files. She described herself as experiencing a burnout. This all meant that she was slow to follow up on her decision to appoint Mr. Pillai.

[153] To further complicate matters, there was an excessive delay in processing Mr. Pillai's security clearance. She had issues with the work quality of the person responsible for this task. Data entry errors were made, and inaccurate documents were submitted to the reliability status portal, which slowed down the processing of Mr. Pillai's clearance.

[154] On August 27, 2018, an email was finally sent to Maj. MacEachern confirming that Mr. Pillai's Reliability-level security status had been approved effective August 23, 2018. Maj. MacEachern immediately asked that Mr. Pillai's file be moved forward for appointment. The letter of offer was sent to him three weeks later.

[155] I am not persuaded by Mr. Rehman's submission that Mr. Pillai's personal characteristics were factors in the decision to formally appoint him last. Maj. MacEachern was clear in her testimony that she intended to immediately appoint him in August 2017, and the emails from that time support that claim. She sought Mr. Pillai out by name when she first emailed HR. She confirmed in her evidence that Mr. Pillai was an outstanding candidate who proved to be an excellent employee, just as she anticipated. He eventually left this job in 2020 to relocate back to Toronto.

[156] Maj. MacEachern had mentioned in her first email to HR on August 15, 2017, that she had considered Mr. Pillai for another position but had appointed someone else to it using a different selection process. The Commission contends that Maj. MacEachern deliberately overlooked and delayed appointing Mr. Pillai and that I should infer that discriminatory grounds were factors in this decision. I am not persuaded by this argument. It is inconsistent with the facts and context of Maj. MacEachern's exchanges with HR. She was suggesting Mr. Pillai as a likely appointee, and her later interactions to get him appointed as soon as possible after his security clearance, combined with her glowing overall assessment of Mr. Pillai's skills and experience, point to the exact opposite of an intention to deny or delay his employment.

[157] Returning to Mr. Rehman's candidacy, his protected characteristics were clearly not factors in the decision to appoint Mr. Pillai. Mr. Rehman did not have the essential health services/medical experience qualification. His candidacy and those of the other remaining 14 candidates were filtered out as a result. Only Mr. Pillai's name was put forward, and Maj. MacEachern decided to appoint him. Mr. Rehman did not meet the essential criteria established for this job.

[158] I will now deal with the appointments for which the selection criteria did not preclude Mr. Rehman from consideration.

**(ii) Other appointments—in chronological order**

**(a) Financial Services/Financial Management Clerk (indeterminate)—  
Dianne Zevenbergen**

[159] Dianne Zevenbergen received a letter of offer for the CR-04 position of Financial Services/Financial Management Clerk on October 28, 2016. Capt. Sullivan signed the letter. She testified that this was an entry-level clerical position, which involved looking after customers with budgets and performing tasks such as credit card management and dealing with accounts payable and receivable.

[160] Ms. Zevenbergen had already been appointed to this position in October 2015, on a one-year term which was about to come to an end. The letter of offer appointed her to the same position on an indeterminate basis, with the same duties.

[161] Ms. St. Amand testified that taking someone who is already doing a job on a term and appointing them to the same job on an indeterminate basis is a common and efficient method to staff a position. Ms. Zevenbergen was qualified in the pool. She met or exceeded all the Personal Suitability qualifications in the Board's assessment.

[162] Capt. Sullivan testified that the intention in this appointment was to basically convert Ms. Zevenbergen's term appointment to an indeterminate one. It ensured continuity in the position since she was doing it for a year already. Ms. Zevenbergen had retired from the

CAF after a career of over 20 years during which she had a similar occupation as a finance clerk. She already resided in Cold Lake. She was the right fit for the position.

[163] Capt. Sullivan did not consider any of the other candidates for this appointment, including Mr. Rehman. As noted earlier in this decision, s.30(4) of the PSEA states that management is not required to consider more than one person for the appointment to be made on the basis of merit.

[164] Capt. Sullivan maintains that Mr. Rehman's protected characteristics had no bearing on the decision to appoint Ms. Zevenbergen on an indeterminate basis. He was not even considered for it since Ms. Zevenbergen was already a right fit for the job. Furthermore, her letter of offer was sent only two days after Mr. Rehman was informed that the Board had determined he met the essential qualifications in the selection process (October 26, 2016), meaning that he was effectively not yet qualified when the appointment decision for this position was being made.

[165] Mr. Rehman pointed out that Capt. Sullivan had served as one of Ms. Zevenbergen's references for his Personal Suitability assessment. However, she had no role in the assessment. Ms. Haynes testified that it is not uncommon for hiring managers to provide references for a candidate, especially if the size of the organization or workplace is not particularly large. Ms. Haynes pointed out that all hiring managers are taught to act fairly and impartially when performing their duties.

[166] I am satisfied on the balance of probabilities that Mr. Rehman's personal characteristics were not a factor in the decision to appoint Ms. Zevenbergen and not appoint him or any of the other candidates from the pool to this position. Management simply decided to retain the person already employed in the position and who was in the pool of qualified candidates.

**(b) Executive Secretary (indeterminate)—Brooke Lattik**

[167] Ms. Lattik received a letter of offer for an indeterminate appointment to the position of Executive Secretary on November 25, 2016. The position was initially classified as ST-SCY-2, but it was later renamed Executive Assistant and reclassified as a CR position. Ms. Lattik held this job until she was appointed Mental Health Clerk in July 2017, which I discussed earlier in this decision.

[168] L.Col. J.L.K. Armstrong, who was the Commanding Officer at 1 Air Maintenance Squadron, signed the letter of offer. Maj. Sara Emond was a logistics officer for this and other units and held the rank of Captain at the time. L.Col. Armstrong was her supervisor. Maj. Emond testified about this appointment. She explained that this was the only civilian position in a squadron of 400 people. The position served as a central spoke through which all exchanges between management and the Base's 13 shops passed. The position therefore required strong communication and interpersonal skills and an ability to figure things out without assistance from others.

[169] The screening packages of all qualified candidates were provided when the position was being staffed. Maj. E. North, who was a peer of Maj. Emond, and W.O. Chantal Racine, who reported to Maj. Emond, reviewed the packages and selected three candidates for further consideration. Maj. Emond was on leave at the time. They listed the candidates in order of preference—the first choice was Ms. Lattik, followed by Mr. Pillai, and then another candidate, whom I need only refer to as "JR".

[170] Maj. Emond described Ms. Lattik as a strong candidate. She scored "Exceeds" in the written exercise and "Exceeds" in every category of Personal Suitability. L.Col. Armstrong along with Maj. North and W.O. Racine were the Board members who had assessed Ms. Lattik. Maj. North wrote in an email that Ms. Lattik communicated fluently and effectively in English throughout her interview. She spoke with confidence and was able to answer questions in a straightforward manner. According to Maj. Emond, Lt. Col. Armstrong was in turn impressed with Ms. Lattik's technological skills and initiative. They all concluded that her answers, education, and knowledge were the right fit for an administrative role.

[171] The fact that Ms. Lattik exceeded in all qualifications, plus the facts that her spouse was a technician employed on the Base and that she resided locally all worked in favour of considering her as the primary candidate for the appointment. These qualifications also enabled her to start up quickly in the position, which was important since this critical position had been vacant for over three months, and they were “desperate” to hire someone quickly.

[172] In contrast, when Maj. Emond was asked why Mr. Rehman’s candidacy was not included in the list of preferred candidates for the position, she pointed out that most of his qualifications were in the domain of finance rather than administration.

[173] Ms. Emond testified that she had no knowledge of Mr. Rehman’s race, colour, national or ethnic origin, or religion.

[174] As for Mr. Pillai, with respect to this appointment, aside from the fact that Ms. Lattik was a very strong candidate, Maj. Emond noted that the fact that she was a local candidate who could be speedily appointed to fill a position that had been vacant too long made Ms. Lattik the best fit. From the candidates that they reviewed, they ranked Ms. Lattik first, just ahead of Mr. Pillai. Ms. Lattik was an extremely strong candidate, which placed significant weight on the “right fit” decision.

[175] In final submissions, the Commission observed that Ms. Lattik’s most recent work experience was at retailers like Walmart (cash office associate/customer service manager) and Shoppers Drug Mart (front store manager). The Commission suggested that Mr. Pillai’s education and work experience exceeded Ms. Lattik’s. He was a census coordinator in 2016, and, from 2012 to 2015, he was a clinical coordinator and administrator. Mr. Pillai had university degrees. Ms. Lattik had a secondary school diploma. Although the Commission never put this question directly to Maj. Emond, it is clear from her evidence that she recognized that Mr. Pillai would be a good choice for this entry-level position described as secretarial, but that Ms. Lattik was a slightly better choice given the additional factors of being locally and readily available for employment and the fact that her spouse was a CAF member. It is not so obvious that her recent work experience was any more relevant than his for this secretarial entry-level position. As for education, the minimum was all that was

being sought. Ms. Emond was not asked if, and there is no evidence that, a university education would be of any assistance for the performance of this job.

[176] It was pointed out to Maj. Emond in cross-examination that the Board's consensus report regarding Mr. Pillai's assessment for Abilities and Personal Suitability contained a comment that, although his interview went well, it was hard to understand everything due to the phone line and his strong accent. Maj. Emond testified that she did not draw the implication from the comment that Mr. Pillai was an immigrant or visible minority. The comment also stated that his answers were logical and relevant and that he would be a good choice for the Administrative Assistant position, to which he was later appointed, as I discussed earlier in the decision. Maj. Emond never interviewed Mr. Pillai and claimed to not even know his gender. Indeed, in the Board's report assessing his written exam prior to his interview, which was conducted by telephone, Mr. Pillai is referred to as Ms. Pillai.

[177] Maj. Emond submitted that the accent being referred to could have been the other official language, French, assuming the interview was conducted in English. This hypothesis seems doubtful to me, however, since candidates are presumably entitled to conduct their interviews in the official language of their choice, and, according to Maj. Emond, Maj. North is a francophone. I accept that the interviewers likely understood the accent to be something other than French. This fact is not sufficient to prove by inference that Maj. Emond or the rest of the team had made any specific assumptions about Mr. Pillai's national or ethnic origin, race, colour, or religion, or that these characteristics were factors in the decision to rank him just behind Ms. Lattik, but ahead of many others, in preference for the appointment to this position. Maj. Emond pointed out that L.Col. Armstrong identifies as a member of a visible minority group and W.O. Racine as Indigenous, though these facts alone do not necessarily preclude the possibility that prohibited grounds of discrimination were factors in their decision-making.

[178] I also again note that Mr. Pillai was appointed to a position from this appointment process. He did not testify in this case, and there is no evidence that he ever filed any human rights complaint about any appointment from this process.



[179] These facts regarding Mr. Pillai are not sufficient to infer that prohibited grounds of discrimination were factors in the decision not to appoint Mr. Rehman to this position. I am satisfied that Ms. Lattik was ranked first because she was found to be a better candidate for the position than all the other qualified candidates, including Mr. Rehman.

**(c) A series of one-year term appointments in the Wing Comptroller Branch**

[180] Maj. Demchuk was the Wing Comptroller, or senior financial officer, for the Base. The Wing Comptroller (WCompt) Branch that she headed is the financial office that manages all the Base's public funds. All transactions involving the Base would be processed through the Branch. Maj. Demchuk needed to staff several accounts payable clerk positions for terms of one year less a day, which for simplicity I will refer to as one-year appointments. She explained that one of the reasons she took the lead in the development of the appointment process at issue in this case is because she was having a lot of difficulty staffing these term positions since her arrival there in 2015.

[181] Many employees would end up taking indeterminate positions elsewhere, so she actively sought to develop the pool of qualified candidates from which she could staff the term positions in her branch. From the various possible essential experience qualifications for the pool, she was only interested in persons who had accounts payable related experience. Maj. Demchuk ended up appointing four persons from the pool for one-year term appointments.

**(d) WCompt Administrative Coordinator (term)—Victoria Ark**

[182] Victoria Ark was the first of Maj. Demchuk's appointments. Ms. Ark received a letter of offer for the CR-04 position of WCompt Administrative Coordinator on November 28, 2016, for a one-year term (from December 12, 2016, to December 11, 2017). Maj. Demchuk signed the letter. The position dealt with the branch's accounts payable and occasionally other general accounts payable. The previous incumbent in the position was absent on a long-term sick leave since 2015. Maj. Demchuk had asked HR to be timely in staffing the vacant position.

[183] Maj. Demchuk required that the candidates to be considered for this position have experience in finance as well as the asset experience of using financial management accounting systems. She selected these criteria about mid- to late- October 2016. Maj. Demchuk initially tried to hold off moving too rapidly to make this appointment. She knew that other managers were looking to hire people from the pool of qualified candidates for indeterminate positions. She did not want to take a candidate “off the market” by appointing them for a term and thereby jeopardizing their chances for an indeterminate appointment.

[184] However, Ms. St. Amand reassured Maj. Demchuk that it would be acceptable to proceed immediately with an appointment. Accordingly, on October 27, 2016, Maj. Demchuk informed Ms. St. Amand that, from the candidates who met the criteria, her “top three” choices in order of preference were a candidate whom I need only refer to as “RS”, as she was not ultimately appointed, Ms. Ark, and Ms. Clouter.

[185] It is worth noting that Mr. Rehman was only informed that he was found qualified one day earlier, on October 26, 2016. There is no evidence indicating that his file was placed before Maj. Demchuk by the time she considered which of the qualified candidates to go forward with for this first appointment.

[186] Although RS was the first-ranked candidate, there was some issue with obtaining her required security clearance, so Maj. Demchuk offered the position to the next ranking candidate, Ms. Ark.

[187] Maj. Demchuk testified that Ms. Ark was an “ideal candidate.” She had been working on the Base since March 2016 for Brookfield GRS, which is the contractor that provides global relocation services to CAF members. Maj. Demchuk considered that experience very valuable, as it meant Ms. Ark was already familiar with the Base’s culture and its installations, as well as how the military operates. It was easy for Ms. Ark to “roll over” to Maj. Demchuk’s team. In her prior jobs, Ms. Ark had experience with accounts payable, particularly in processing invoices and entering data into the accounting system for invoice payment.

[188] In addition, Ms. Ark already had her security clearance since she was working on the Base. It was also noted that she was living in the Cold Lake area.

[189] Maj. Demchuk testified that, as anticipated, Ms. Ark turned out to be a very good employee. She worked efficiently and finished her tasks promptly, often by midday. She would then seek out additional tasks to perform. Therefore, not surprisingly, within months, another manager hired Ms. Ark to an indeterminate position.

[190] With respect to Mr. Rehman, aside from the fact that his file was not placed before Maj. Demchuk, by the time she looked at which of the qualified candidates to go forward with for this first appointment, Maj. Demchuk testified that she had no knowledge of his race, colour, religion, national or ethnic origin. His personal characteristics were therefore not a consideration in the decision to appoint Ms. Ark and not him.

[191] Maj. Demchuk may not have known the specifics about Mr. Rehman's personal characteristics, but I do note that she did participate in his initial telephone interview with the Board before being qualified, and she testified that he spoke English with an accent during the interview. She added that she found him to be clear and concise in his answers, but it is likely that she knew English was not his first language.

[192] Maj. Demchuk's awareness of Mr. Rehman's personal characteristics could be relevant with respect to the later appointments in which she was involved, and for which Mr. Rehman was clearly a qualified candidate in consideration. However, with respect to the position to which Ms. Ark was appointed, it appears that Maj. Demchuk had basically already selected the three top candidates before Mr. Rehman was even determined to be qualified. As a result, he was never considered for this position.

[193] I am therefore satisfied on a balance of probabilities that none of the prohibited grounds of discrimination alleged in Mr. Rehman's complaint were factors in the decision to select Ms. Ark for the term appointment. There is no evidence that Mr. Rehman was yet qualified for this position by the time the decision on whom to appoint was effectively made. Furthermore, there was ample justification provided for selecting Ms. Ark for the appointment, no part of which relates to Mr. Rehman or his personal characteristics.

**(e) How Mr. Rehman's candidacy was dealt with ahead of the next three WCompt term appointments**

[194] Mr. Rehman had been found to be qualified by the time Maj. Demchuk made her three remaining one-year term appointments from this process. A significant part of Mr. Rehman's allegations of discrimination in this case can be traced back to his perception of how Maj. Demchuk and her team dealt with his candidacy after he was notified on October 26, 2016, that he had been placed in the pool of qualified candidates.

[195] Mr. Rehman alleged in his complaint that DND deliberately did not contact him as it was preparing to make the WCompt term appointments and that DND lied when it claimed that it had reached out to him.

[196] Mr. Rehman based this belief on an email that he received from DND on December 6, 2016, stating that management had recently contacted him to confirm if he was interested in one of these term positions, and, if not, whether he was interested in indeterminate positions only. The email asked him to respond by December 13, 2016.

[197] Mr. Rehman immediately responded that he was interested in these and any term or indeterminate positions. He pointed out that he had not received any email from DND after being notified that he was in the pool. DND responded that it had contacted him by telephone and asked that he confirm his phone numbers, which he provided in response. These email exchanges all occurred on December 6, 2016.

[198] Mr. Rehman was the first to give evidence at the hearing, and he adamantly maintained in his testimony that he had never been called by anyone from DND. In the lead-up to the hearing, DND stated that it did not have access to any phone records to confirm that the call was made. Mr. Rehman alleged in his Statement of Particulars that this proved the phone call was "fictitious", which showed that DND intended to deny him a career there.

[199] To support his assertion, Mr. Rehman subpoenaed a representative of DND's telephone services provider, Telus, to give evidence at the hearing. The representative, Rebecca O'Grady, testified that, according to Telus's records, Capt. Sullivan had indeed made a call to Mr. Rehman's cellular phone on Wednesday, November 23, 2016, at

12:40 p.m. The duration of the call was 1.5 minutes. Ms. O'Grady confirmed that for the call to have been recorded, either an individual or the automated voicemail on Mr. Rehman's phone must have answered.

[200] As other evidence adduced later in this case showed, Maj. Demchuk had asked her staff (i.e., Capt. Sullivan) to contact everyone in the pool and see if they were interested in a term position. If so, a security clearance interview would be arranged unless they already had a clearance. Maj. Demchuk testified that management needed to confirm if candidates were really interested in a job. For term appointments, they were informed that there would not be any moving allowance and even that funding may not ultimately be available for the job, all of which could influence the candidates' decision. In Maj. Demchuk's experience, many people participate in appointment processes and get into pools just to practice their testing abilities, without having any real interest in the job.

[201] Following up on Maj. Demchuk's instructions, Capt. Sullivan called all the candidates by telephone, not just Mr. Rehman. She set out everyone's response in an email that she sent to Ms. St. Amand on November 28, 2016. With respect to Mr. Rehman, Capt. Sullivan noted that she "left [message] 23 Nov, no response." The copy of the email filed in evidence has hand-written annotations with Ms. St. Amand's initials. Notes next to Mr. Rehman's and several other candidates' names indicate that follow-up emails were sent on December 6, 2016. Mr. Rehman did indeed receive that email on that date, as already mentioned.

[202] In sum, the evidence proves that Mr. Rehman was in fact contacted by telephone and that for some reason he did not immediately respond. Nevertheless, DND followed up with him, and he confirmed his interest in a term position. His accusation of DND's alleged fictitious telephone call is completely unfounded.

[203] Mr. Rehman takes issue with DND's decision to telephone him instead of sending him an email. The job advertisement referred to candidates being contacted by email. However, as DND points out, the advertisement actually said that DND's "intention is to communicate with candidates via e-mail." The statement did not preclude other forms of communication being used. Capt. Sullivan testified that at the time she had not even seen the job advertisement and the reference to emailed communications. Maj. Demchuk testified

that, due to the urgency to staff these positions, management needed to know as soon as possible which of the candidates would be interested in a one-year term appointment for which no relocation allowance would be available, which is why the direct contact by telephone was made. Moreover, all the candidates were contacted this way, not just Mr. Rehman.

[204] The evidence showed that 11 of the candidates contacted by Capt. Sullivan said they were interested in a term appointment. Mr. Suman interestingly declined the invitation, stating that he was only interested in an indeterminate posting. Five of the candidates were already located in Cold Lake and another, whom I need only refer to as WR, was going to be moving to Cold Lake and would be in town in the upcoming weeks. Capt. Sullivan and Maj. Demchuk decided to begin the security clearance verifications for these persons who were or would shortly be residing in Cold Lake.

[205] There was a discussion between Capt. Sullivan and Ms. St. Amand about whether to also proceed with the security check of the remaining interested candidates who were out of town, including Mr. Rehman who was in Calgary and other candidates in places such as Saskatoon, Saskatchewan, and Colbolt, Ontario. Ms. St. Amand advised the Tribunal that the fact that the others were out of town did not preclude their consideration or prevent her from verifying their security clearance. But it would require working with security officers from other organizations.

[206] Capt. Sullivan informed Ms. St Amand in response that Maj. Demchuk decided not to follow up with the remaining “out-of-towners” who did not already have a security clearance. Capt. Sullivan noted that they only had three positions to fill and potentially seven candidates’ files were already being verified for their security clearance. Given the staffing shortages, management did not have time to spend additional resources on the process. One of the out-of-towners had said she was planning to move to Cold Lake in January 2017, and Capt. Sullivan wrote that they might consider looking into her candidacy and completing her security clearance once she settled in Cold Lake. Capt. Sullivan also informed Ms. St. Amand that the Cold Lake-based candidates would be selected for appointment in the order that their security clearances would come through. Whoever was cleared first would be the first to get an offer.

[207] Maj. Demchuk testified that it could take five months to complete the process to hire someone who is out of town. She also pointed out that these appointments were for terms of one year less a day, which meant that moving allowances would not be available for appointees. This fact combined with Cold Lake's high cost of living meant that it was unlikely out-of-towners would be interested in such an appointment.

[208] Mr. Rehman questions why he was not invited to come to Cold Lake for a security interview. He argues that he could have taken the five-hour drive from Calgary, do his interview, and return home in the afternoon. He claims that this was a "no-brainer" option available to Capt. Sullivan and Maj. Demchuk and that he was singled out due to his personal characteristics. However, while it could have been an option, it was simply unnecessary to invite anyone from out of town. The evidence is persuasive that management had more than enough qualified candidates to choose from for the three remaining positions.

[209] Maj. Demchuk testified that it was common for out-of-town candidates to initially say they are interested in moving to Cold Lake for a position only to change their minds after learning about how difficult and expensive it is to live there. Maj. Demchuk pointed to what happened with one such candidate, WR, who said she was interested in the position since her daughter lived in Cold Lake. Nonetheless, WR later changed her mind and withdrew her candidacy. Consequently, it is usually not worth the expenditure of resources to security check individuals from out-of-town given the probability that they will end up not accepting an offer of employment for a term position of less than one year.

[210] Moreover, Mr. Rehman's argument is somewhat disingenuous since when he was invited to his interview in October 2016 to assess his Personal Suitability and Abilities, he responded by email that it was very difficult for him to come to Cold Lake and asked to be interviewed by telephone.

[211] I therefore find there is no merit to his contention that the decision not to invite him to Cold Lake demonstrates differential treatment based on his personal characteristics.

[212] Mr. Rehman also argued that the other out-of-towners were not interested in term positions, which effectively meant that he, as the sole visible minority candidate, was singled

out as the only out-of-towner not to be considered for appointment to these positions. However, Mr. Rehman misrepresents the facts. The document that he claims showed that those candidates were uninterested was created one year later, by another manager, regarding other appointments. The evidence is uncontradicted that the remaining out-of-towners were still interested in the fall of 2016 and that Mr. Rehman was not the only out-of-towner who was not further considered for the WCompt positions. Just like his claim that he was never telephoned, this is another instance where the actual facts are not as Mr. Rehman perceived them.

**(f) WCompt Administrative Coordinator (term)—Caryn Czernick**

[213] Caryn Czernick was one of the candidates who was already residing in Cold Lake. On February 1, 2017, Ms. Czernick received a letter of offer for the CR-04 position of WCompt Administrative Coordinator, for a one-year term (from February 20, 2017, to February 19, 2018). Maj. Demchuk signed the letter. Capt. Sullivan explained that this position was actually a financial services position, but its designation was slow to be changed. It was eventually updated.

[214] Maj. Demchuk and Capt. Sullivan testified that, after the short list of local candidates was reviewed, Ms. Czernick was offered the position because she was already living nearby and had obtained her security clearance. She had the appropriate essential experience as well as asset experience in the use of financial management accounting databases. Ms. Czernick met all the assessed qualifications, although according to her consensus report she was not found to exceed in any. Ms. Czernick was also selected because she had great experience in finance, accounts payable, and bookkeeping.

[215] I am satisfied on the balance of probabilities that Mr. Rehman's characteristics were not factors in the decision to appoint Ms. Czernick to this position and not him. He was excluded from consideration because he did not live in town, as were several other candidates. There is no evidence that prohibited grounds of discrimination were factors in his or any of those other out-of-town candidates' exclusion from further consideration.



[216] Mr. Rehman and the Commission contend that the DND's managers' decisions not to consider out-of-towners, particularly those residing in large cities, systemically adversely affected immigrants and racialized persons whom they argue were concentrated in those places. I address this argument in my global analysis later in this decision.

**(g) Financial Services Clerk (WCompt) (term)—Anita Kervin**

[217] Anita Kervin was also one of the qualified candidates already residing in Cold Lake. She received a letter of offer for the CR-04 position of Financial Services Clerk on February 8, 2017, for a one-year term appointment (from February 13, 2017, to February 12, 2018). Maj. Demchuk signed the letter. This position was like Ms. Zevenbergen's. It involved looking after customers with budgets and performing tasks such as credit card management and dealing with accounts payable and receivable.

[218] Maj. Demchuk testified that Ms. Kervin had a "strong file." The position called for experience in finance and asset experience in financial management database systems. Ms. Kervin was screened into the process as meeting all eight of the possible essential experience qualifications including finance. She also met almost all the possible asset experiences, including the use of financial management database systems. Her Board consensus report shows that she was assessed as "Exceeds" in five of the nine Personal Suitability and Abilities qualifications. Ms. Kervin had worked in accounts payable relating to invoicing for 10 years and had served as a supervisor, which Maj. Demchuk considered an additional asset. In addition, Ms. Kervin was available to begin working immediately.

[219] Mr. Rehman tried to call into question whether Ms. Kervin was in fact living in Cold Lake. He noted that her reference check was provided in September 2016 by a supervisor in Halifax, Nova Scotia. Her application, which has a first submission date of July 23, 2016, had a Nova Scotia address on it. The resume portion of the application showed that she was employed in Nova Scotia in 2016. Mr. Rehman submitted that the telephone number she provided had a Nova Scotia area code. The Board's interview of Ms. Kervin, on October 3, 2016, was done by telephone and not in person. Mr. Rehman claimed in his final

arguments that DND appointed Ms. Kervin even though she lived out of town to “accommodate” her because she was “Caucasian”.

[220] Maj. Demchuk pointed out, however, that the permanent home address on the application is in Cold Lake. She explained in her testimony that Ms. Kervin was living in Nova Scotia when she applied in July 2016. By the time her candidacy was being considered for the WCompt term appointments in late November 2016, Ms. Kervin had moved to her Cold Lake address. Maj. Demchuk noted that Ms. Kervin’s security clearance was approved in December 2016. For that to have occurred, Ms. Kervin’s provincial driver’s licence address had to match the Cold Lake address that DND was dealing with. Had there been a discrepancy, the security team would have prevented the clearance from being given. Maj. Demchuk said that this is what happened to another candidate who was slow in changing her driver’s licence information, which resulted in that candidate’s clearance being delayed.

[221] Maj. Demchuk also pointed out that Ms. Kervin began working in the position in Cold Lake a couple of weeks after being selected and within less than a week after receiving her letter of offer. This would not have been possible if Ms. Kervin was still residing in Nova Scotia at the time.

[222] For her part, Capt. Sullivan testified that she always relied on the Cold Lake permanent address when dealing with Ms. Kervin’s candidacy. Accordingly, the letter of offer was sent to the Cold Lake address. I note that the November 28, 2016, email that Capt. Sullivan sent to Ms. St. Amand with the results of her calls to the candidates indicates that Ms. Kervin was booked for her security clearance appointment on December 2, 2016. As the evidence has shown, security clearance appointments were held in Cold Lake and only for locally available candidates. The email clearly identified who, among those who responded to Capt. Sullivan’s call, was residing out of town with details about their whereabouts. There is no such annotation next to Ms. Kervin’s name. Capt. Sullivan testified that it was her clear understanding while processing Ms. Kervin’s file that she was a Cold Lake resident.

[223] Regarding the telephone number, Capt. Sullivan pointed out that people do not necessarily change their mobile phone numbers when they move, though the evidence does not show whether the number in question was for a mobile phone. I find that the fact that Ms. Kervin was interviewed in early October by telephone does not necessarily mean that she was not a Cold Lake resident when her candidacy was being considered for the term appointment in late November.

[224] For these reasons, I am satisfied on the preponderance of evidence that Ms. Kervin was indeed a Cold Lake resident when being considered for the term appointment to this WCompt position.

[225] As in the case of Ms. Czernick's appointment, Mr. Rehman's personal characteristics were not factors in the decision to appoint Ms. Kervin to this position and not him. He, like several other candidates, was excluded from consideration because he did not live in town. He has not proven that prohibited grounds of discrimination were factors in his or any of those other out-of-town candidates' exclusion from further consideration.

[226] The systemic discrimination allegation will be addressed later in the decision, as mentioned previously.

**(h) Financial Services Clerk (WCompt) (term)—Jody HawkrIDGE**

[227] Jody HawkrIDGE received a letter of offer for the CR-04 position of Financial Services Clerk (WCompt) on June 8, 2017, for a one-year term (from June 26, 2017, to June 25, 2018). Capt. Sullivan signed the letter. The position's functions were like those of the other Financial Services Clerks mentioned above.

[228] By April 2017, when management was looking to fill this post, most of the other Cold Lake-based qualified candidates had either been appointed or had withdrawn their interest in any appointment. There remained two candidates—Ms. HawkrIDGE and RS. However, their security clearances were still being processed.

[229] As I mentioned earlier, Capt. Sullivan had told Ms. St. Amand on December 13, 2016, that the Cold Lake-based candidates would be selected in the order that their security

clearances would come through. Between the remaining two candidates, Ms. Hawkrige was the first to get her security clearance, in late May 2017. On May 30, 2017, Maj. Demchuk asked Ms. St. Amand to finalize her appointment. The issues regarding RS's security clearance were never resolved, and she eventually withdrew from the appointment process.

[230] Capt. Sullivan explained why Ms. Hawkrige was a right fit for the position. She had experience in bookkeeping and accounts payable, which directly aligned with the responsibilities of this job, and she was available for immediate hire. It would make for a seamless appointment. Maj. Demchuk similarly testified that Ms. Hawkrige's bookkeeping, payroll and software experience were important factors in her selection, along with her existing security clearance, and the fact that she already resided in Cold Lake.

[231] Mr. Rehman pointed out that Ms. Hawkrige did not have a secondary school diploma, in contrast to his university degrees. Maj. Demchuk explained that the SMC's essential education qualification was for a secondary school diploma or an acceptable combination of education, training and/or experience. A mark on Ms. Hawkrige's screening checklist indicated that she was found to have met the education qualification through her experience.

[232] The Commission suggested, in its cross-examination of Capt. Sullivan, that because Mr. Rehman had more education, he was more qualified and should have been hired for this position. However, Capt. Sullivan explained that Ms. Hawkrige was only required to meet the educational qualification as set out in the SMC. Post-secondary education was not a requirement for this job and, as such, Mr. Rehman was not "more qualified" than her in terms of education.

[233] Maj. Demchuk similarly said that the fact that he had a post-secondary degree had no bearing on the staffing decisions being made. These were entry-level positions. Maj. Demchuk acknowledged that if Mr. Rehman had stood out as a stellar candidate for these positions, she might have hypothetically considered going the "extra mile" to have him security cleared in Calgary. But he was just an average candidate. His experience and other qualifications were no better than any of the seven candidates who were already in Cold Lake. For some of the WCompt term positions, the other candidates already had the

experience and knowledge for the job. Mr. Rehman, on the other hand, would have needed specific training “from the ground up” for such positions, which would have made for further complications. His qualifications simply did not warrant focusing attention beyond the candidates who were already living there.

[234] I find DND’s submissions persuasive. There is no evidence that Mr. Rehman was excluded from consideration for any other reason than the fact that he did not reside in Cold Lake.

[235] Like the other similar WCompt appointments, Mr. Rehman has not proven that his personal characteristics were factors in the decision to appoint Ms. Hawkridge to this position and not him. He, along with the other out-of-town candidates, were excluded from consideration because they did not reside in Cold Lake.

**(i) Procurement/Customer Service Agent (indeterminate)—Danielle Brown**

[236] Danielle Brown received a letter of offer to be employed on an indeterminate basis in the CR-04 position of Procurement/Customer Service Agent on June 15, 2017. L.Col. Lydia Evequoz was the hiring manager for this appointment. She testified that this was the most junior administrative position of the Real Property Operations Unit, which manages the Base’s maintenance operation infrastructure. The job was procurement related and involved buying and accounting for material such as plumbing supplies and tools.

[237] The incumbent in the indeterminate position retired in January 2017. There were normally two CR-04s handling these tasks. L.Col. Evequoz could not afford to let the position stay vacant since they handle 3000 requests annually. The remaining employee could not deal with that volume. Ms. Brown had therefore been hired as a casual employee to do this job beginning in January 2017. L.Col. Evequoz explained that casual hiring is fairly common in the federal public service. It is basically a short-term employment contract for a maximum of 90 days per year. The hiring process for casual employees just requires that a form be filled online.

[238] L.Col. Evequoz nonetheless needed to have a full-time employee in the job. In April 2017, she took the steps to staff the position on an indeterminate basis. She reviewed the SMC and selected the experience criteria that were needed for the position—finance and client service. She knew that Ms. Brown was in the pool of qualified CR-04 candidates. Ms. Brown’s screening checklist showed she met both experience criteria.

[239] L.Col. Evequoz testified that once it was determined that Ms. Brown was in the pool and met the sought after essential experience and given that she had already been doing the work for several months, it was a “no-brainer” to appoint her. Converting her from casual to indeterminate employment would provide stability and predictability within staff, and the funding was available to support this “conversion”. L.Col. Evequoz noted that Ms. Brown did not only have experience in this job but had also done similar accounts work on a casual basis the previous year elsewhere in the same unit using the same financial system.

[240] L.Col. Evequoz did not consider any other candidate for this appointment, including Mr. Rehman. Once she learned that Ms. Brown, who was already doing the job as a casual, was also qualified in the pool, she selected her for appointment. It did not matter if any of the other candidates in the pool potentially had additional qualifications. Given that Ms. Brown met the criteria and was doing the job already, it was easy to just offer her the indeterminate position.

[241] L.Col. Evequoz testified that she never knew of Mr. Rehman or any of the other candidates for that matter. Had Ms. Brown turned down the offer of employment, she would have turned her mind to the other candidates in the pool. However, Ms. Brown accepted the offer.

[242] There is no evidence that Mr. Rehman’s protected characteristics were factors in the decision not to select him for this position. He and all the other remaining qualified candidates were not even considered given that Ms. Brown was an obvious choice; she had qualified in the process and was doing the job already. As I have mentioned, s. 30(4) of the PSEA states that management is not required to consider more than one person for an appointment to be based on merit. Furthermore, there is no evidence that any of

Mr. Rehman's protected characteristics were factors in the decision not to consider looking at any of the other qualified candidates.

[243] The Commission suggested that, in only considering one candidate, other persons including those employed elsewhere in DND may have ended up being excluded. That may have been the outcome, but it does not necessarily mean the prohibited grounds of discrimination became factors in the appointment.

**(j) Financial Services Clerk (WCompt) (indeterminate)—Anita Kervin**

[244] Earlier in this decision, I explained that Ms. Kervin was appointed to this position for a one-year term beginning on February 13, 2017. On July 19, 2017, she received a letter of offer from Capt. Sullivan to be employed in the same position on an indeterminate basis.

[245] A document signed by Ms. St. Amand on July 14, 2017, setting out the rationale for the appointment (the "Articulation of Selection") was entered into evidence. It explains that a decision was made to select someone from among the CR-04 term employees employed at that time. The Articulation of Selection stated that Ms. Kervin was selected because she already met the essential merit criteria and the additional selection criteria applied by management for this position (experience in finance and the asset experience in financial management systems).

[246] Capt. Sullivan testified that Ms. Kervin was selected for this appointment because she was already in this position and was still in Cold Lake. It was basically an internal conversion of status from term to indeterminate, which meant that other candidates including Mr. Rehman were not considered for this appointment.

[247] Mr. Rehman claims that he and Mr. Suman were discriminated against because they, as university graduates, were not considered for this indeterminate appointment even though Ms. Kervin was a "weaker candidate". In making this argument, Mr. Rehman states without foundation that Ms. Kervin did not have a secondary school education (regrettably by repeatedly using the term "high school dropout"). In fact, Ms. Kervin's screening checklist indicates that she did meet the educational qualification, and her resume shows that she held post-secondary business-related diplomas and a certificate, which the Commission

also noted in their final submissions. DND points out that Ms. Kervin's post-secondary education is in fields related to this position.

[248] Furthermore, DND submits that Ms. Kervin was the right fit for this appointment not only because she demonstrated her abilities in the position for six months as a term appointee, but because she had experience in all eight of the process's essential experience areas and four of the possible asset qualifications. She scored "Exceeds" on five of the essential Personal Suitability criteria and had a strong reference.

[249] More significantly, as I just mentioned in relation to Ms. Brown's appointment, Capt. Sullivan was not required to consider more than one of the qualified candidates for this appointment. Ms. Kervin was already working in the position, had already been found qualified for it, and was performing her work satisfactorily. Capt. Sullivan considered her the right fit for conversion from term to indeterminate status. There is no evidence to suggest let alone prove that Mr. Rehman's personal characteristics were factors in this decision.

**(k) Financial Clerk (indeterminate)—Victoria Ark**

[250] As mentioned earlier in this decision, Maj. Demchuk appointed Ms. Ark to the CR-04 position of Financial Clerk for a term of one year less a day effective December 12, 2016. On July 25, 2017, she received a letter of offer from another Base branch (Wing Administration) for indeterminate employment as a Financial Clerk. The letter was signed by L.Col. Dianne Godfrey-White, who held the rank of Major at the time.

[251] L.Col. Godfrey-White testified that the Wing Administration branch manages all matters relating to personnel, records, leases, second language training, and accommodations. She needed to fill the Financial Clerk position on an indeterminate basis and sought to do so from the existing pool of qualified candidates. She conferred with Ms. St. Amand to select the criteria to use, settling upon experience in finance and client service. She had no knowledge of any of the candidates in the pool when the criteria were selected. The list generated included those who were already employed in term positions.

[252] Ms. Ark was one of the persons included in the list that Ms. St. Amand provided. L.Col. Godfrey-White determined that this was the candidate she wanted to appoint. Ms. Ark



was already employed at the Base, meaning that she already had the needed security clearance, which would speed her hiring “dramatically.” Ms. Ark’s existing Base employment and her prior work at Brookfield GRS, the firm that handled the CAF’s global relocation service, also meant she was familiar with military culture and structure.

[253] L.Col. Godfrey-White then interviewed Ms. Ark to confirm if she was indeed a right fit and realized immediately that she had made the right decision. She described Ms. Ark as the perfect match. L.Col. Godfrey-White also spoke to Maj. Demchuk who only had great things to say about Ms. Ark and joked that L.Col. Godfrey-White was “stealing” her.

[254] L.Col. Godfrey-White testified that she hired Ms. Ark because she was well regarded, had a great reputation, was local, knew military culture and structure, was smart and communicative, and had a pleasant demeanour. She was clearly the right fit.

[255] L.Col. Godfrey-White recalled that, after immediately selecting Ms. Ark from the list, she did not review the files of any of the other candidates, including Mr. Rehman. His protected characteristics had no bearing on his not being appointed. She did not even consider his or any other person’s candidacy.

[256] There is no evidence that Mr. Rehman’s protected characteristics were factors in the decision not to select him for this position. L.Col. Godfrey-White acknowledged that, in her career, she did not recall having appointed anyone who would identify as a member of a visible minority group. This is not sufficient to alter my finding. Mr. Rehman and the other persons on the list prepared by Ms. St. Amand were not even considered by L.Col. Godfrey-White once she selected Ms. Ark, whom she saw as an obvious choice for the position. To reiterate, s. 30(4) of the PSEA states that management is not required to consider more than one person for an appointment to be merit-based. There is no evidence that any of Mr. Rehman’s personal characteristics were factors in the decision not to look beyond Ms. Ark to any of the other candidates on the list.

**(I) Wing Logistics Orderly Room Clerk (indeterminate)—Mandy Grove**

[257] Mandy Grove received a letter of offer on September 28, 2017, to be employed on an indeterminate basis in the CR-03 position of Orderly Room Clerk in the Wing Logistics (Wing Log) and Engineering squadron. The letter was signed by L.Col. Andrea MacRae, who was the commanding officer.

[258] Colleen Aitken and Ms. Haynes testified about this appointment. Ms. Aitken is a retired Petty Officer First Class and was a CAF HR Manager at the time of the appointment. She provided recommendations to L.Col. MacRae. Ms. Haynes was the DND staffing advisor for this appointment.

[259] The Orderly Room Clerk performed basic administrative tasks such as filing mail and other documents, sending orders out, preparing passes, and doing entries on the PeopleSoft application. The responsibilities were fewer than for a CR-04-level position.

[260] The position had recently been vacated and needed to be filled. At the time of the appointment, Ms. Grove was already performing the job as a casual employee.

[261] According to the Articulation for Selection, which Ms. Aitken had prepared, HR sent several candidates' files to management to review. Three were found to be "of possible merit," including Ms. Grove's. Ms. Aitken does not recall the names of the other candidates. In general, Ms. Aitken did not have a strong recollection of the events given that over six years had elapsed. In her 32-year career with the CAF, this was the only civilian appointment process that she was ever involved in.

[262] Ms. Aitken did recall that Ms. Grove and another female candidate were invited for a "right fit" interview. The Articulation of Selection states that Ms. Grove's references, who were CAF members, were contacted and provided very strong testimonials about her abilities and work ethics. According to Ms. Grove's resume, her job experience included employment as a Client Services Administrator and 2nd in Command at the CAF Flying Training School in Manitoba, from 2011 to 2014. Her supervising Sergeant from that job was one of the references contacted.

[263] Ms. Aitken testified that Ms. Grove was selected for the appointment because she was already in Cold Lake doing the job as a casual employee and had experience at the CR-03 level. She was perfect for the job and had everything they needed. Ms. Haynes testified that taking a casual employee and appointing them on an indeterminate basis is a staffing action that has become more and more common.

[264] Ms. Aitken confirmed that Ms. Grove's spouse was a serving CAF member posted to CFB Cold Lake, but she maintained that this had no impact on the decision to appoint Ms. Grove.

[265] Ms. Aitken also testified that Ms. Grove was a member of a visible minority group. I note in passing, however, that according to the list of applicants on the Public Service Resourcing System, Ms. Grove had not formally identified herself in her application as a member of a visible minority group, nor for that matter had Mr. Pillai and Mr. Suman.

[266] Mr. Rehman pointed out that Ms. Grove's consensus report shows that she merely met all the assessed qualifications; she did not exceed in any. Ms. Aitken responded that was not a consideration. As long as all the qualifications were met, Ms. Grove was considered qualified for appointment. She was in the pool of qualified candidates, which enabled management to appoint her.

[267] Only one other candidate was interviewed. Most of the other candidates including Mr. Rehman were not even considered for this appointment. There is no evidence that Mr. Rehman's personal characteristics were factors in the decision not to appoint him or any other qualified candidates—his candidacy was effectively not even considered as it is apparent management's intention was to simply convert the casual employee's tenure to indeterminate.

**(m) Purchasing Clerk/Operator (indeterminate)—Megan Trainor**

[268] Megan Trainor received a letter of offer on October 6, 2017, to be employed on an indeterminate basis in the CR-03 position of Purchasing Clerk/Operator at the squadron that supports the Base's telecommunications, Telecommunications Information Services (TIS),

part of the larger Wing Log and Engineering squadron. The letter was signed by L.Col. MacRae, the commanding officer.

[269] L.Col. MacCormack was the officer in charge of TIS. The position was about to become vacant, and there was an urgent need to staff it. He began the steps to find a replacement by first making sure the financing was in place for the appointment. However, soon afterwards, he was deployed outside the Base for a few months. Ms. Trainor was appointed while L.Col. MacCormack was away, but he was able to testify about the circumstances of her appointment.

[270] Ms. Trainor had worked summers in the squadron from 2007 to 2010, as a switchboard operator. Even though her employment there was not recent, everyone who had worked with Ms. Trainor spoke very highly of her work and recommended that she be appointed. HR had confirmed to management that she was in the pool of qualified candidates and could be selected for appointment.

[271] L.Col. MacCormack explained that this was not a “lofty” position. It just required someone with a basic level of education who could coordinate with squadron staff and get procurement done. Having someone like Ms. Trainor who already understood TIS’s operations and activities was an asset.

[272] The Articulation of Selection for Ms. Trainor’s appointment noted, as another reason for her appointment, the difficulty historically in recruiting suitable candidates for these kinds of jobs at CFB Cold Lake. L.Col. MacCormack explained that the location is semi-isolated with a challenging climate. Housing is expensive, particularly when considering the relatively low salaries for CR-03 level positions, which makes it difficult to support a family.

[273] Appointing Ms. Trainor addressed this problem. She had housing in Cold Lake and was aware of the living and working conditions there. L.Col. MacCormack noted that not having to bear the cost of moving someone to this semi-isolated environment would also yield savings.

[274] In sum, L.Col. MacCormack said that Ms. Trainor was selected because she impressed a lot of people with her summer work, was highly recommended, and was well liked. As such, she was a “known commodity.” Appointing her was a low-risk proposition.

[275] To L.Col. MacCormack’s knowledge and based on the discussions he had with colleagues before his deployment, no file other than Ms. Trainor’s was considered for this position.

[276] Mr. Rehman points out that Ms. Trainor was not the strongest of candidates in the pool. In fact, according to her consensus report of February 6, 2017, the Board found at the interview stage that she did not meet the qualifications of Initiative and Flexibility. However, after her reference check was taken into account, the Board decided that she met both qualifications. Maj. MacEachern was one of the three Board members who assessed Ms. Trainor. She explained that the reference check was sufficient to give her a global “Meets” score. The panel concluded that Ms. Trainor’s failure to provide specific examples in support of her answers was due to her inexperience in doing oral interviews. The reference checks mitigated the effect.

[277] Irrespective of how this assessment was reached, the fact is that by the time L.Col. MacCormack’s team at TIS considered appointing Ms. Trainor eight months later, she was considered qualified, having met all the criteria.

[278] Mr. Rehman submits, nonetheless, that both he and Mr. Suman, with university degrees and multiple “Exceeds” ratings in their consensus reports, were better candidates than Ms. Trainor, who had a secondary school diploma and no university-level education. At the hearing, L.Col. MacCormack was presented Mr. Rehman’s and Mr. Suman’s consensus reports, which he seemingly had never seen before, and he acknowledged that, based on “these limited metrics,” they were better candidates than Ms. Trainor.

[279] But L.Col. MacCormack reiterated that no other candidate’s file was considered aside from Ms. Trainor’s. She was never compared to any other candidate.

[280] As in the case of several of these appointments, L.Col. MacCormack and his team did not consider any candidates other than Ms. Trainor for this appointment. Once HR

confirmed to them that she was qualified in the pool and could be appointed, they selected her. It did not matter if any of the other candidates in the pool had more education or work experience. Given that Ms. Trainor was qualified, highly recommended, locally based, and familiar with the workplace and its operations, it made sense to appoint her.

[281] The Commission argues that the appointment of persons with profiles like Ms. Trainor's is evidence of a systemic bias against persons with personal characteristics like Mr. Rehman. As I already mentioned, I address this argument later in this decision.

[282] In sum, therefore, the evidence does not establish that Mr. Rehman's personal characteristics were a factor in the decision to appoint Ms. Trainor. She was qualified and was the only candidate to be considered.

**(n) Executive Secretary (indeterminate)—Jennifer Leclerc**

[283] Ms. Leclerc received a letter of offer on January 3, 2018, from L.Col. Armstrong for employment on an indeterminate basis in the same Executive Secretary position to which Ms. Lattik had been appointed in November 2016. Ms. Lattik vacated this position in July 2017 when she was appointed Mental Health Clerk, as discussed earlier.

[284] Maj. Emond provided guidance to L.Col. Armstrong on the process to again fill the position from the existing pool of qualified CR-03/CR-04 candidates.

[285] Ms. Haynes was asked to provide Maj. Emond the names of people remaining in the pool. Maj. Emond noted in correspondence with her that months were passing and the position remained vacant, which was creating problems—the position needed to be filled as soon as possible.

[286] Ms. Haynes sent Maj. Emond the referral packages containing the resumes and assessments of the 15 remaining candidates in the pool. Ms. Haynes also contacted the remaining candidates to see if they were interested in being considered for this position. Five of them confirmed interest, and Maj. Emond was given their names: Ms. Leclerc, Mr. Pillai, Mr. Rehman, Mr. Suman, and a fifth person who need only be referred to as DT.

[287] Maj. Emond testified that management thoroughly reviewed the referral packages of the interested candidates. Ms. Leclerc's candidacy stood out. She resided in Cold Lake and had over nine years of experience as a supervisor at Brookfield GRS. She coordinated global relocation for military staff, both at CFB Cold Lake as well as remotely for staff at the CAF base in Shilo, Manitoba. In Maj. Emond's assessment, Ms. Leclerc would likely have been supervising three to five persons in that role along with having the commensurate financial authority. Maj. Emond knew that the job required autonomous work and the ability to deal with a lot of stress, especially considering it involved dual locations. This meant that Ms. Leclerc must have had good time management and interpersonal skills.

[288] Maj. Emond and L.Col. Armstrong therefore invited Ms. Leclerc to an interview and were able to verify that she would indeed be a right fit for the position. They advised Ms. Haynes that they had selected her for the appointment, with a start date in January 2018.

[289] Maj. Emond testified as to why Ms. Leclerc was selected. Her background showed she had extensive skills in administrative coordination, initiative, and interpersonal relationships. These are the skills that management was looking for. The position was vacant for a long time by then, and work was piling up. Ms. Leclerc resided in Cold Lake and had already completed her security check for another position that she had applied for, thereby avoiding a delay of up to three months, which meant she could begin working soon.

[290] In addition, Ms. Emond testified that Ms. Leclerc's spouse was a CAF member employed on the Base and that, at the time, DND was endeavouring to support the employment of military spouses. This was an additional factor to consider, though it was not mentioned in the Articulation of Selection for the appointment.

[291] The Commission questions the genuineness of Maj. Emond's evidence on this point. It argued in its final submissions that DND's spousal employment initiative was only implemented in 2018, after almost all the appointments had been made. The Commission argued that Maj. Emond's evidence was inaccurate and was a "pretextual attempt" after the fact to justify a past decision to hire Ms. Leclerc over Messrs. Rehman, Suman, and Pillai.

[292] The Commission cross-examined Maj. Emond about the initiative, and she explained where the information could be found on the Internet. DND undertook to obtain and forward the web address. It was sent to the parties and the Tribunal Registry two days later, just as the last witness began testifying on the last day of the hearing. There was some ambiguity in counsel's discussions at the end of the hearing about how this information would be addressed. The Commission suggested that it could reference the web page in its final submissions. I did not deny the Commission this option.

[293] Accordingly, I have looked at the web page referenced in the Commission's final written submissions. It appears to be an announcement dated February 18, 2022, referring to the Military Spouse Employment Initiative and stating that DND launched it in 2018. The web page appears to be from a Government of Canada website, which presumably could always have been found through the ordinary means of browser searches. The Commission's final written submissions also included links to two additional web pages that apparently link to articles or press releases stating that the initiative did not begin until late 2018 and that it was only in 2020 that spouses could be formally treated as priorities. I clicked those links, but the pages are shown as unavailable, possibly because they can only be accessed by certain government computers.

[294] In any event, I am mindful that the other parties were never really offered an opportunity to address the content of the first web page at the hearing nor the additional two web links that were first referenced in the Commission's submissions. The documents were never formally entered into evidence even though, by the time Maj. Emond testified, several respondent witnesses had already referred days earlier to DND's efforts to support military spouses. This issue did not first emerge with the testimony of Maj. Emond.

[295] For these reasons, I will not discount Maj. Emond's testimony over this issue. Her evidence was that the initiative was "underfoot" at the time. Other witnesses such as Maj. MacEachern testified that there was "chatter" at the time about helping military spouses find employment whether a formal policy had yet been adopted or not. Maj. Emond said this consideration was an additional factor in the decision to appoint Ms. Leclerc. Whether or not the initiative had formally been implemented by that time has no significant bearing on the outcome. Besides, Maj. Emond's evidence was clear, convincing, and coherent in that



Ms. Leclerc's experience and skills were ideal for the position she was looking to fill and that was the principal consideration in selecting her.

[296] Mr. Rehman questions why he and the other two visible minority candidates (Mr. Suman and Mr. Pillai) were not invited for a "right fit" interview and ultimately why none of them were selected given that they all had university degrees. Mr. Atiq suggested in his cross-examination of Maj. Emond that Ms. Leclerc did not have any post-secondary education. In fact, she has a Bachelor of Arts degree from McGill University according to her resume, but it was in languages, which was not considered a relevant field of study for this appointment process. As for the other candidates, Maj. Emond noted their post-secondary education was mostly in the business field, which was not a mandatory qualification for the position and therefore irrelevant. Management was looking more "holistically" at the relevant work experience, as well as personal suitability qualities such as interpersonal skills and initiative.

[297] Having identified these qualities from Ms. Leclerc's referral package, management opted to invite her for a "right fit" interview. If, after the interview, Ms. Leclerc was found not to be suitable, then they would have invited another candidate. According to Maj. Emond, it is more efficient to interview only one qualified candidate to begin with. If more than one candidate is interviewed from the outset, then the paperwork increases as explanations of the outcome must be sent to all candidates thereafter. In addition, given the urgency to appoint someone, it made sense to just arrange for one interview.

[298] Maj. Emond explained that Mr. Rehman was not the first one to be invited to an interview because, in contrast to Ms. Leclerc, his background according to his referral package was mostly financial. Management was looking for someone with more administrative skills, like Ms. Leclerc's.

[299] Maj. Emond was forthright in her testimony that she did not know anything about Mr. Rehman's personal characteristics when reviewing his referral package, including his religion and national or ethnic origin. In fact, the package did not even identify his gender, and Maj. Emond thought Mr. Rehman was a woman. As I already mentioned, Maj. Emond was not the only person involved in this matter who made that assumption. Maj. Emond

maintains that no prohibited grounds of discrimination were factors in the decision to select Ms. Leclerc and not to appoint the other interested candidates.

[300] In cross-examination, Maj. Emond conceded that Mr. Pillai's screening assessment suggested he was a "stronger" candidate than Ms. Leclerc. For instance, he had a business-related university degree which was considered an asset in the overall appointment process. He also had experience managing accounting databases. However, neither of these asset qualifications were considerations for appointment to this particular position.

[301] Mr. Pillai was also found qualified in his initial screening for travel coordination or processing claims. Ms. Leclerc had originally submitted in her application that she had this experience as well, but it appears from the form that Ms. St. Amand had scratched that entry out because of insufficient details in Ms. Leclerc's resume that accompanied the application. I note that Ms. St. Amand explicitly wrote next to Ms. Leclerc's reference to the global relocation work in her resume that the duties were not listed, which would explain why Ms. St. Amand would conclude she lacked this experience. Maj. Emond testified, however, that she knew the work that Ms. Leclerc would have performed at her global relocation services job, having served as supervisor of the personnel services section under which that job fell. Maj. Emond added that, when selecting from a pool of qualified candidates, it is appropriate to rely upon one's own knowledge about the candidate's work experience.

[302] Ultimately, the fact is that Maj. Emond knew what type of work Ms. Leclerc had been doing for the previous decade and relied upon that knowledge to draw her conclusions about the type of experience Ms. Leclerc had. In that sense, this does not establish that Ms. Leclerc was an inappropriate choice to be the first to be invited for a "right fit" interview.

[303] The Commission suggested that Maj. Emond must have known that Mr. Pillai was an immigrant and likely a visible minority given that his resume said some of his work experience and education were outside the country. The comment at the bottom of his Board consensus report said that, during his interview, it was hard to understand everything due to the phone line and his strong accent. Maj. Emond testified that she did not draw any such conclusion when reviewing his file. She never heard him speak or met him. The accent being referred to may have been in the other official language, French, and there were many

possible explanations for why he had studied and worked abroad. She did not draw any conclusions about his name either. Maj. Emond pointed out that she is a child of immigrants. I also note, as previously mentioned, that the hiring manager for this appointment, L.Col. Armstrong, is a visible minority. Even if Maj. Emond knew Mr. Pillai was an immigrant, there is no evidence to show that this was a factor in choosing Ms. Leclerc for the first “right fit” interview.

[304] All told, I am not persuaded by this evidence that Mr. Pillai’s personal characteristics were factors in the decision to select Ms. Leclerc for the first “right fit” interview.

[305] Besides, the core issue in this part of the analysis is whether Mr. Rehman was not hired based on his personal characteristics, not Mr. Pillai. Mr. Rehman has not established on the balance of probabilities that his personal characteristics were factors in the decision not to appoint him to this position.

**(o) CDU Clerk (indeterminate)—Simone Nunes-Jonczyk**

[306] Simone Nunes-Jonczyk received a letter of offer on January 16, 2018, for an indeterminate appointment to the CR-04-level position of CDU clerk at the walk-in clinic of the Base’s Health Services Centre. The letter was signed by Maj. Luc Dionne, but Maj. MacEachern testified that she made the decision to appoint Ms. Nunes-Jonczyk and presented it to Maj. Dionne for approval.

[307] Maj. MacEachern testified about the reasons for selecting Ms. Nunes-Jonczyk, as also reflected in the Articulation of Selection document that Ms. St. Amand prepared in consultation with Maj. MacEachern. The job is basically that of an office receptionist. Initially, experience in health services was used as a selection criterion to filter candidates to be considered. This filtering was “unproductive” as it did not generate a sufficient number of candidates who were interested in the position. So, the essential experience criterion that was used to filter candidates was changed to experience providing support services in client service. Maj. MacEachern explained that this sort of experience is often selected for clerks who interface with patients.

[308] This filter generated a larger number of qualified candidates for consideration (14), and their referral packages were sent to Maj. MacEachern. Mr. Rehman was among these candidates. Maj. MacEachern reviewed the material provided, focusing on the candidates' experience and resumes. She recalled that Mr. Rehman's file showed that his skills and experiences were more financial in nature, which was not what she was seeking for this position. Maj. MacEachern said that she never met or spoke to Mr. Rehman and had never seen a photograph of him. She recalls knowing that he did not reside in Cold Lake, though she is not certain if she learned that from his referral package or from Ms. St. Amand directly.

[309] Maj. MacEachern testified about why Ms. Nunes-Jonczyk was selected. In reviewing the referral packages, Maj. MacEachern observed that Ms. Nunes-Jonczyk's had work experience since 2016 as a receptionist at the CAF Morale and Welfare Services run out of the Family Resource Centre located on the Base. It is an organization operating within the CAF (Staff of the Non-Public Funds) to support military families, particularly in dealing with the challenges associated with being frequently uprooted when CAF members are deployed to new locations. The organization helps families integrate when they arrive. For Maj. MacEachern, this work experience meant that Ms. Nunes-Jonczyk had been familiar with the concerns of military members and their families and the support systems available to them.

[310] Maj. MacEachern was one of the two Board members who assessed Ms. Nunes-Jonczyk's Abilities and Personal Suitability qualifications, for which they interviewed her and prepared a consensus report in February 2017. Maj. MacEachern recalled that the panel found the candidate was charismatic and polite, spoke clearly, and provided good examples in her questioning. They assessed her as "Exceeds" in the category of Discretion. Given the nature of CDU Clerk's work, within a health services unit, this was an important consideration for Maj. MacEachern, though I note that Mr. Rehman had the same rating in this category.

[311] Maj. MacEachern also observed that Ms. Nunes-Jonczyk was fluent in French, which she considered an asset. Although the CDU Clerk position was designated as "English Essential", meaning that there was no bilingual requirement, Maj. MacEachern stated that many of the CAF members and their families are francophone and that Ms. Nunes-

Jonczyk's bilingualism would be helpful. In addition, there were several other positions in Maj. MacEachern's unit that are designated as bilingual, so hiring Ms. Nunes-Jonczyk would provide management with the possibility of staffing her in one of those positions in the future.

[312] The Commission points out that for positions designated as English Essential, candidates' knowledge of French cannot be the basis for preference. Jayson Lavergne is a departmental learning advisor for DND who was previously employed as a staffing advisor. He testified that, in federal public service staffing, a manager cannot use proficiency in the other official language as a basis for preferring a candidate. Ms. St. Amand agrees and confirmed in her evidence that a manager cannot make a decision based on an official language that is not required for a position. Second language proficiency cannot be used as a formal "asset" in the staffing context. However, she maintains that knowing this information about a candidate is a nice "tidbit" to be aware of, like knowledge of any other talent a person may have.

[313] Similarly, the fact that Ms. Nunes-Jonczyk resided in Cold Lake was an advantage to consider. It meant that she would more readily be available for employment, although Maj. MacEachern acknowledged that it was not the most important factor in her decision. Ms. Nunes-Jonczyk's spouse was a member of the CAF, but Maj. MacEachern testified that this was not a factor in her decision.

[314] Considering all the evidence specific to Ms. Nunes-Jonczyk's appointment, I am not persuaded on the balance of probabilities that Mr. Rehman's personal characteristics were factors in the decision not to appoint him to this position. Ms. Nunes-Jonczyk was clearly more of a right fit for this receptionist position in the eyes of management. She had recent experience as a receptionist working on the base with CAF members and their families in matters related to health and social services. These were the key factors and fall squarely within what a manager would consider when staffing a position. That Ms. Nunes-Jonczyk lived in town and was bilingual were helpful additional considerations but do not establish that Mr. Rehman was not considered for discriminatory grounds as such. As I have mentioned before, I have reserved the analysis of the global impact of such considerations to later in the decision.

[315] In contrast to Ms. Nunes-Jonczyk, Mr. Rehman's experience was much less of a right fit. His background appeared to be more financial, and his recent experience was nowhere near as related to this job as Ms. Nunes-Jonczyk's.

[316] The final point to note is that Ms. Nunes-Jonczyk possesses some of the personal characteristics that Mr. Rehman invokes. Ms. Nunes-Jonczyk was born in Brazil, and Portuguese is her first language. Maj. MacEachern stated that Ms. Nunes-Jonczyk is a member of a visible minority group, although she did not formally indicate it in her application. At the suggestion in cross-examination that she might not pass as a racialized person, Maj. MacEachern responded that Ms. Nunes-Jonczyk's appearance is "definitely South American."

[317] While the fact that Ms. Nunes-Jonczyk is a racialized person with a national or ethnic origin from outside Canada would not preclude the possibility of discriminatory grounds being a factor in the decision not to appoint Mr. Rehman to this position, it suggests the contrary.

**(p) Correspondence about possible appointments in 2018**

[318] Mr. Rehman alleged in his human rights complaint that during the "last hiring cycle" in the appointment process, eight positions were made available. He claims DND did not consider appointing him to any of these positions. This allegation is based on a series of email exchanges he had with Mr. Lavergne, who was a DND staffing advisor between June 2018 and March 2019. As emerged from the evidence at the hearing, in fact the only appointment to have occurred after Mr. Lavergne began communicating with Mr. Rehman was Mr. Pillai's. There were no other appointments from this appointment process.

[319] Mr. Lavergne testified that he had been on secondment at another federal department until he returned to his staffing advisor job at DND in June 2018. Upon arriving, he had to deal with a variety of files for staffing actions that were assigned to him. He typically handled 30 to 40 staffing actions at a time. One of them was the CR-03/04 appointment process at issue in this case. He took a first look at the file and did not know if any of the qualified candidates were still available and interested in the process. So, he decided to

send a standard email to all the persons in the pool, including Mr. Rehman, to confirm their interest.

[320] The email was sent on July 18, 2018, and stated the following:

**Subject:** confirmation of availability and interest - Cold Lake, Alberta - Administrative/Clerical Positions (16-DND-EA-CLDLK-405389)

Good afternoon

I am currently coordinating the hiring to about 8 Clerical and Administrative positions at 4 Wing Cold Lake for 2018.

You were qualified in a staffing process (16-DND-EA-CLDLK-405389) and my records tell me that you have not been hired for a position which you are qualified for- either not at all, hired into a limited term position, or hired to a CR-03 job and still eligible for a CR-04 job.

**Please reply YES to this email if you are interested and available for CR-03 or CR-04 Administrative/Clerical positions in Cold Lake, Alberta with the Department of National Defence for the summer/fall of 2018. *This includes the ability and interest to relocate to Cold Lake and to go through the security clearance procedures, if necessary.***

Since you applied in the summer of 2016, the "usefulness" of the pool is declining and likely will not be actively used after this.

Thank-you

**Jayson Laverne CPHR**  
Staffing Advisor  
National Staffing Operations / ADM(HR-Civ)  
National Defence / Government of Canada

*(emphasis in original)*

[321] Mr. Laverne explained in his testimony the notion of declining "usefulness" of a pool. In his experience, managers typically are less likely to hire employees from a pool of qualified candidates the more time that passes from when the candidates applied or were assessed. Although technically, a pool is never formally "closed", managers effectively lose interest in appointing people from an older pool and cease actively using it.

[322] Mr. Rehman responded the same day he received Mr. Laverne's email. He confirmed that he was very interested and ready to relocate to Cold Lake and go through

the security clearance procedures. He was available to provide any additional information. Mr. Lavergne acknowledged receipt of Mr. Rehman's response the next day.

[323] On July 25, 2018, Mr. Rehman wrote back to Mr. Lavergne asking if any decision had been made and whether he was still being considered for available job positions. Mr. Lavergne replied on August 3, 2018, that decisions had yet to be made as things had slowed down over the summer posting and holiday season.

[324] On September 26, 2018, Mr. Rehman wrote back again wondering if any hiring decision had been made and if the pool was closed. Mr. Lavergne responded the next day that no decisions had been made yet and that he would inform Mr. Rehman if a manager selected him from the pool for consideration.

[325] On December 3, 2018, Mr. Rehman wrote to Mr. Lavergne again asking if there were any updates and if the pool was under review or closed. Mr. Lavergne apparently did not respond, so on January 2, 2019, Mr. Rehman emailed Mr. Lavergne again wondering if any decision had been made and if the pool was still active.

[326] Mr. Lavergne sent a short email in response on January 11, 2019, thanking Mr. Rehman, and adding, "We will keep you in mind." Mr. Lavergne testified that he had no obligation to tell a candidate whether the process is still considered "open" in the sense that managers were still interested in making appointments from the pool. Mr. Lavergne acknowledged that his short response would have left Mr. Rehman with the impression that it was still open, and indeed he believes that at this point the process was still considered open.

[327] There was no further response from Mr. Lavergne. Mr. Rehman filed his human rights complaint with the Commission on February 27, 2019. As mentioned, Mr. Rehman assumed in his complaint that eight positions remained to be filled, and he was not selected for any of them.

[328] Mr. Lavergne testified that this was not what in fact happened. Only one other appointment was made from this process, that of Mr. Pillai, who received his letter of offer on September 19, 2018, as was discussed earlier in this decision.



[329] At the hearing, Mr. Lavergne was shown a letter dated February 22, 2021, which Peter Hooey, the former DND Director General for Workplace Management, sent to one of the Commission's human rights officers. The letter is a response by DND to the complaint. Mr. Hooey testified that his staff prepared the letter for him, which he signed. The letter explains that while there may have been eight other positions that potentially could be staffed at CFB Cold Lake in early 2018, only one position was ultimately filled from the pool: Mr. Pillai's appointment.

[330] With respect to the other potential positions, they were either cancelled due to lack of funding or approval, or they were staffed with persons who had priority status under the PSEA and the *Public Service Employment Regulations*, SOR/2005-334. Legislative amendments to the PSEA in 2015 provided enhanced employment opportunities for CAF veterans. Mr. Lavergne could not confirm what may have transpired with priority or veteran appointments after he left this staffing advisor position in March 2019, but he did recall that the appointment process was still considered open when he left. In the context of a case management conference call that I conducted on October 7, 2022, DND confirmed in a follow-up document, responding to a specific question from Mr. Rehman, that there were no "relevant or priority hires" from October 2016 to October 2018. I have no evidence about what may have happened after this period. Mr. Hooey's letter noted that, after Mr. Pillai's appointment, there were seven persons left in the pool of qualified candidates.

[331] To summarize this evidence, therefore, although Mr. Rehman suspected and alleged that as many as eight appointments occurred after receiving Mr. Lavergne's email, in fact only one person was appointed from the pool of qualified candidates for this process: Mr. Pillai. Any other potential appointments either never occurred or were staffed by other means in accordance with legislated priority requirements for persons like veterans. There is no basis to the complaint's allegation.

[332] Overall, when viewing each appointment individually, Mr. Rehman did not prove that his personal characteristics were factors in any of the decisions to appoint others and not him.

#### **D. Global analysis—systemic issues**

[333] The Commission argues that notwithstanding DND's explanations for why Mr. Rehman was not appointed to each individual position, the evidence as a whole reveals that a subtle scent of discrimination permeated the way in which DND hiring managers handled his candidacy overall. The Commission contends that Mr. Rehman stood no chance against the insurmountable and artificial barriers DND hiring managers placed in front of him, including

- his overqualifications;
- his not being local;
- DND's predetermined prototype of the ideal candidate;
- DND's presumption that he would not be able to adapt to a small community with limited available housing; and
- his inability to speak French when the position was advertised as English essential.

[334] The Commission alleges that DND's explanations are pretextual and that they also prevented or delayed the hiring of Mr. Suman and Mr. Pillai, who were racialized South Asian immigrant males like Mr. Rehman.

[335] According to the Commission, the evidence demonstrates that DND hiring managers closed their minds to hiring candidates who did not fit their prototype of the ideal candidate based on a narrowed perception of what it took to do the job and who could do the job. This disadvantaged Messrs. Rehman, Suman, and Pillai from being considered fairly and equitably for employment opportunities. The DND witnesses' testimony demonstrated an ingrained attitude of adverse differentiation with respect to Mr. Rehman, as corroborated by its handling of Mr. Suman and Mr. Pillai's candidacies during the staffing process.

[336] The Commission notes that, of the 15 candidates hired, 14 were women and one was a man. Of the 15 successful candidates, three were visible minorities, though they had not formally self-identified as visible minorities during the application process.

[337] The Commission points out that courts and tribunals have recognized that race discrimination may be especially challenging to prove given that it often manifests in subtle ways and is frequently not accompanied by overt expressions of racial bias, such as racial slurs or epithets. Circumstantial evidence is therefore typically often relied upon in such

cases. Furthermore, racial stereotyping will usually be the result of subtle unconscious beliefs, biases, and prejudices.

[338] Thus, the Tribunal cannot just endorse the discretionary latitude afforded to managers under the PSEA. Rather, the Tribunal's analysis of "right fit" and "merit" must be constrained by binding human rights considerations.

[339] The Commission argues that what transpired in this case is not a matter of "right fit" as suggested by many of the respondent's witnesses but a case of positive stereotypes of CR-03/04 employees driving the appointment process resulting in the exclusion of immigrants who are visible minorities. While the hiring managers repeatedly denied knowing the visible minority or possible immigrant status of Messrs. Rehman, Suman, and Pillai, the law does not require that the DND hiring managers intended to exclude or consciously avoided considering them. Rather, the Tribunal must consider adverse impact within the human rights context.

[340] The prototype of the ideal candidate was applied in appointing candidates to the vacant positions, namely, a woman, with low education, who could be speedily hired because she was local or who could adapt to the isolated community of Cold Lake and would stay. Management relied upon factors such as locality, French language skills, military spousal status, and employment status with DND even though they were not advertised as essential or asset qualifications.

[341] Furthermore, the Commission maintains that a negative stereotype was also operating throughout the process. Management was not looking for an individual with high educational credentials and extensive high-level work experience, coming from a large metropolitan area, as such a person would not be able to adapt to a small community. Management assumed that such individuals would not stay in their appointed jobs and would use DND as a stepping stone to move elsewhere.

[342] The Commission argues that both positive and negative stereotypes served to narrow the pool not based on right fit but based on a preconceived notion of what was and was not a right fit, thus creating barriers for immigrants, most of whom are visible minorities

living in large metropolitan areas. Accordingly, race, national or ethnic origin and colour were factors in the selection process.

[343] I am not persuaded by the Commission's arguments.

[344] First, the facts upon which the arguments are based are not necessarily as the Commission presents them. Second, the Commission and Mr. Rehman led no evidence to support the key premises of these allegations, particularly that visible minority immigrants are concentrated in large metropolitan areas in numbers that differ from the Cold Lake area and that immigrants are more highly educated than other Canadians and are therefore adversely impacted by DND's alleged decision to exclude higher education as a consideration for the jobs that were filled. There was also no evidence that prohibited grounds of discrimination were factors in the other criteria that DND may have applied such as French proficiency or prior employment status.

[345] I will deal with each component of the Commission's submissions by topic.

#### **(i) Education**

[346] Mr. Rehman, Mr. Suman, and Mr. Pillai had post-secondary degrees or certificates in fields relevant to the positions being filled. In contrast, almost all the appointees other than Mr. Pillai had secondary level or equivalent education. One appointee had a university degree but not in a relevant field of study. Two others had post-secondary studies but not university degrees.

[347] The job posting and the SMC made it clear that all that was required for these entry-level clerical positions was successful completion of a secondary school diploma or an acceptable combination of education, training and/or experience. Post secondary education in a relevant field of study or a medical terminology certificate were considered asset qualifications, but not essential.

[348] Ms. St. Amand testified that hiring managers did not exclude any candidates because of their higher education level. She has been an advisor on other appointment processes where education was more valued as a qualification and was a factor in the selection of the

appointee. However, with respect to this process, whether a given candidate had a bachelor's or master's degree was not relevant for the clerical and administrative jobs being staffed. Administrative support service skills and experience, along with the appropriate personal suitability and other abilities were more important. A higher education was not necessarily indicative of the ability to perform a lower-level skill.

[349] Maj. MacEachern echoed these observations when Mr. Atiq asked her in cross-examination if she “preferred” candidates with post-secondary education. She replied that she “typically preferred” persons with less education, adding, however, that she only gave weight to post-secondary education if it was in line with the position that she was filling. In fact, for the persons she managed at the Base's Health Services Centre, she assigned more weight to medical terminology certificates than university diplomas. Candidates with bachelor's or master's degrees would be considered overqualified. Maj. MacEachern noted that while it is good that someone has a post-secondary education that relates to a given position, sometimes she would put greater emphasis on selecting the candidate who could be hired more swiftly even if they did not have that education.

[350] The Commission referred in its final submissions to the testimony of two managers, in particular, Capt. Sullivan and Maj. Demchuk, who were asked their views on the importance of education when making staffing decisions. Capt. Sullivan agreed that someone with a higher level of education would be overqualified for entry-level positions, but she explained that she never eliminated anyone from consideration because they were overqualified. The weight to be assigned would depend on the type of position being filled.

[351] Maj. Demchuk agreed that for the positions she was staffing, post-secondary education was not important at all. This was not a job search for an academic. They were looking to appoint persons to CR-04 level positions who demonstrated that they were hard workers and who were familiar with the computer applications that they would be working on.

[352] The Commission highlighted that Maj. Demchuk then went on to say that she looks for candidates with lower education because, in her experience, hiring someone who is overqualified is “problematic”. They end up using the job as a stepping stone and then

quickly move on to another position. Indeed, Mr. Suman testified that this was his career plan.

[353] However, the context of these statements is significant. The questioning that yielded these responses was hypothetical with respect to Mr. Rehman. As I explained earlier, Mr. Rehman was effectively not considered for any appointment involving Capt. Sullivan and Maj. Demchuk either because he did not reside in Cold Lake or he had not yet been found qualified. Regarding Ms. Kervin's second appointment, Capt. Sullivan simply converted Ms. Kervin's existing job's tenure from term to indeterminate. Capt. Sullivan did not consider any other candidate for this appointment.

[354] Maj. Demchuk was basically asked at the hearing to review Mr. Rehman's profile, and she observed not only that his education was not relevant to the jobs she was filling, but that his experience in the hotel and casino industry was not what she was looking for. His work in accounts payable was not the kind of experience being sought. It would take time to train him. Overall, she felt that, since he met only two of the possible experience qualifications, he was not a well-rounded candidate.

[355] Even if Maj. Demchuk's remarks were indicative of some kind of bias against the appointment of persons with post-secondary education, her opinion had no impact on Mr. Rehman since he was effectively not in the running for any of the jobs she was hiring for—he did not live in Cold Lake or was not yet realistically in the pool.

[356] The Commission also questioned Capt. Sullivan about Mr. Suman, again hypothetically, since Mr. Suman had declined interest in any of the term positions that Capt. Sullivan was hiring for and did not live in Cold Lake. His candidacy, like Mr. Rehman's and other candidates', was also not considered when Ms. Kervin's tenure was simply converted from term to indeterminate.

[357] Capt. Sullivan pointed out that she has hired university graduates in the past to enable them to gain the work experience that they lack. She recognized that Mr. Suman had a post-secondary education and would thus be considered overqualified. He likely was looking for employment as a stepping stone into the federal public service. She noted, however, that he had scored "Exceeds" throughout his consensus report and that she might

have considered taking a chance and appointing him. But, aside from the fact that he was not interested in any term appointment, she found that his work experience in banking did not align with the accounts payable entry-level work that she was hiring for. So, she probably would not have selected him.

[358] As I note, these comments are theoretical and, moreover, are not evidence of even a subtle scent of the discrimination Mr. Rehman alleges that he was the victim of, since he was excluded from consideration for other reasons than being overqualified.

[359] Mr. Rehman questioned how DND could argue that post-secondary education was not relevant for these appointments given that it was listed as an asset qualification in the SMC. This point was, however, addressed by the PSST in *Steeves v. Deputy Minister of National Defence*, 2011 PSST 9 [Steeves], a decision that the Commission referenced in its final written submissions. *Steeves* examined in detail the wording of s. 30(2) of the PSEA, in relation to the definition of merit and concluded, at paras 57–58, that under this provision, managers have considerable discretion and are not under any obligation to make a selection for appointment based on the asset qualifications listed in the SMC.

[360] The Commission referred in its final submissions to the findings in *Sangha v. Mackenzie Valley Land and Water Board*, 2006 CHRT 9 [Sangha]. The Tribunal's remedial order in that decision was reversed by the Federal Court (*Sangha v. Mackenzie Valley Land and Water Board*, 2007 FC 856), but the Tribunal's decision on the merits was not challenged. The *Sangha* Tribunal panel heard the testimony of two experts at the hearing, which was held in 2005. The Tribunal preferred the evidence of the complainant's and Commission's expert, having found that it was more specific than the respondent expert's evidence.

[361] The complainant's and Commission's expert in *Sangha* stated that most immigrants in the decades prior to the hearing were highly educated members of a visible minority, but they were disproportionally excluded from the higher rungs of the job market due to barriers such as difficulties in qualification recognition and lack of credit for non-Canadian work experience. These persons therefore tended to seek employment at lower echelons where their qualifications exceeded the job requirements. Based on this expert evidence, the

Tribunal concluded that the experience of applying for a job for which one is overqualified was disproportionately an immigrant experience. It followed that when an employer established a rule against the hiring of overqualified candidates, it had a greater impact on visible minority immigrant candidates.

[362] The Commission argues that I should draw a similar inference in relation to Mr. Rehman based on Maj. Demchuk's and Capt. Sullivan's comments about overqualification.

[363] I do not agree. The findings in *Sangha* were based entirely on the evidence of experts who filed reports, testified, and were subjected to cross-examination. The Commission and Mr. Rehman did not adduce any expert evidence in this case. The Commission is asking me to rely on findings made by a Tribunal almost 20 years ago based on data that may even be older than that to reach similar conclusions about 2016 to 2018. It would be a serious error on my part to follow the Commission's suggestion and base any findings on such potentially outdated and unreliable information.

[364] To support its argument, the Commission tried to introduce new evidence through its final written submissions. In a footnote, it included a link to a web page with a report from 2019 that purports to say that the education levels of immigrants have not changed. I decline to take this report into account. It was not entered into evidence at the hearing, and the other parties had no opportunity to review it, cross-examine the drafters of the report, or have an opportunity to lead their own evidence, which is in sharp contrast to how the expert evidence was presented in *Sangha*. For me to even consider looking at this 2019 report at this stage would constitute a major denial of procedural fairness to DND.

[365] Besides, there are many important differences between the facts in *Sangha* and in Mr. Rehman's case. In *Sangha*, the respondent admitted that it had established a formal rule against the hiring of overqualified candidates. It deliberately denied employment to the complainant in that case for that reason. In the present case, there is no evidence of any such rule. On the contrary, Ms. St. Amand and Maj. MacEachern testified that someone overqualified may still be appointed provided they had the skills that were being sought for a given position. Mr. Pillai, for instance, was indeed appointed to a CR-04 position, and, as



I indicated earlier, I am not persuaded by Mr. Rehman's and the Commission's claim that Mr. Pillai's was the last appointment or that it was delayed on discriminatory grounds.

[366] Maj. Demchuk and Capt. Sullivan testified about their concerns with appointing overqualified candidates but did not state that there existed a rule akin to *Sangha*. More importantly, they effectively never considered Mr. Rehman's and Mr. Suman's candidacies, not because they were overqualified but for the other reasons I mentioned earlier, such as their not residing in Cold Lake.

[367] So, at the end of the day, there is no evidence of any rule excluding overqualified candidates, and there is certainly no evidence that Mr. Rehman's candidacy was impacted by any such rule, if it existed.

[368] The Commission has not successfully proven this part of its argument.

## **(ii) Exclusion of persons not residing in Cold Lake**

[369] When developing an appointment process in the federal public service, management, in the exercise of its delegated authority from the Public Service Commission, determines an area of selection, which defines who can apply to the process based on geographic and other criteria (s. 34(1) of the PSEA). The job advertisement for this CR-03/04 process said persons residing in Canada and Canadian citizens residing abroad could apply. Thus, candidates from all over the country applied, including Mr. Rehman from Calgary, and Messrs. Suman and Pillai from Toronto.

[370] However, when the time came to select appointees or to pare down the number of persons to consider for appointment, Maj. Demchuk and Capt. Sullivan opted to order security checks only for the qualified candidates who already resided in Cold Lake, even though Ms. St. Amand told them they could use outside resources to conduct security checks for out-of-town candidates. Other managers also used local residency, or relatedly a candidate's status as a spouse of local military staff, as factors to select the right-fit person for appointment.

[371] The Commission and Mr. Rehman contend that this “profiling” practice violated staffing rules and policies and, more importantly, adversely impacted immigrants such as Messrs. Rehman, Suman, and Pillai, who lived in larger metropolitan locations like Calgary and Toronto, where it is alleged newly arrived immigrants are more likely to live.

[372] Mr. Lavergne, who was a staffing advisor until 2019, testified that a policy was implemented at some point, which he could not exactly recall, that the area of selection must be national for all external appointment processes (i.e., processes to which persons who are not already employed in the public service can apply).

[373] The Commission asked Mr. Lavergne in cross-examination whether a process that is “open to the public” can later be restricted. He answered no, adding that once you have advertised a process nationally, you must fairly consider everyone in the area of selection and not use new restrictions. You cannot “discriminate based on someone’s location.”

[374] The Commission contends that DND did just that in deciding to exclude out-of-towners from further consideration or by using a candidate’s local residency as a factor to select them.

[375] However, as DND points out, it is not entirely clear whether Mr. Lavergne was referring in his testimony to the process of assessing candidates to see if they are qualified or to the later stage where a hiring manager looks at all asset criteria including operational requirements to determine whom to select from a pool of qualified candidates. There is no question that the candidacies of the job applicants living outside Cold Lake were considered through all the phases that led to their being qualified. Having an in-town residence only became a factor for management to consider when deciding whom to appoint from the pool of qualified candidates.

[376] DND also highlights the fact that Mr. Rehman and the Commission did not present any legal authority (statute, regulation, or jurisprudence) to support the allegation that a hiring manager involved in an external process to which all Canadians could apply and be qualified cannot use a candidate’s proximity to the job being filled as a criterion for selecting the appointee. The only evidence was Mr. Lavergne’s somewhat ambiguous answer to the question in cross-examination. Similar questions were not asked to any of the other current

staffing advisors who testified in this case. Mr. Lavergne's evidence is therefore not definitive on this point.

[377] More importantly, Mr. Rehman and the Commission did not prove their basic premise that choosing someone from Cold Lake over someone in a large city was inherently discriminatory. No evidence, expert or otherwise, was adduced to support this assertion. Again, in its final written submissions, the Commission referenced a web page in a footnote. The page appears to be an archived document from 2011 from Statistics Canada making some population findings. It was, like the education-related web pages, never entered into evidence, and the other parties had no opportunity to address this document or cross-examine anyone on it. I again decline to take this web page into account for reasons of procedural fairness and quite simply because it is not in evidence.

[378] Besides, the only evidence I do have about the composition of the Cold Lake area is not consistent with Mr. Rehman's and the Commission's allegation. In cross-examination, Capt. Sullivan and L.Col. MacCormack, for instance, testified that Cold Lake has a "diverse" population. Ms. Nunes-Jonczyk, who is a visible minority immigrant according to Maj. MacEachern, had a permanent address in Cold Lake when she applied.

[379] For these reasons, I do not infer from management's consideration of a candidate's proximity to Cold Lake that prohibited grounds of discrimination were factors in Mr. Rehman's not being appointed.

### **(iii) Breaches of staffing rules**

[380] The Commission and Mr. Rehman claim that DND breached numerous rules about staffing in the federal public service and that these breaches further support the inference that Mr. Rehman was discriminated against.

[381] These alleged breaches include the preference for persons who speak French when the position is designated English essential, the preference to appoint people who are already employed as casual workers, the preference to appoint military spouses even before a formal policy to that effect was adopted, the consideration of only one candidate for an

appointment, the reliance on a reference check given by one of the assessors, and as just discussed the preference for locally situated employees.

[382] I will first provide some details about each of these alleged breaches and then address them as a whole.

**(a) French language proficiency**

[383] Ms. St. Amand testified that for positions designated English essential, knowledge of French cannot be used as an asset to determine whom to select for an appointment. It would contravene the *Official Languages Act*, R.S.C., 1985, c. 31 (4<sup>th</sup> Supp). Mr. Lavergne concurred that knowledge of the other official language cannot be relied upon to prefer a candidate. Ms. St. Amand added that while it is a nice “tidbit” to know that an appointee is bilingual, it cannot be relied upon to determine merit under the PSEA.

[384] Maj. MacEachern was the only hiring manager to testify that proficiency in French was a consideration when deciding whom to appoint. She explained that Cold Lake is a bilingual base, and some CAF members at the Base are francophones. In addition, a nearby community is French-speaking. So, she always tries to “build capacity,” since other positions in her unit have been designated bilingual and hiring employees who are bilingual provides her options for staffing in the future.

[385] Consequently, Ms. Sarrazin’s fluency in French was a “value-added” asset. Mr. Pillai’s knowledge of French was also considered an asset, but his bilingualism was not given a lot of weight. Maj. MacEachern also noted that Ms. Nunes-Jonczyk had an advanced knowledge of French but added that her bilingualism was not “determinative” for the appointment.

[386] I note that of the three appointments for which there was any evidence that second language proficiency was considered, Mr. Rehman was not qualified for two (Ms. Sarrazin’s and Mr. Pillai’s positions). Mr. Rehman’s candidacy was only considered for the position to which Ms. Nunes-Jonczyk was appointed. In addition, there was no evidence presented that immigrant Canadians are any less likely to speak French than other Canadians.

**(b) Appointees who were already employed on a casual basis**

[387] Several of the appointees in this process had previously worked at the Base on a casual basis.

[388] Ms. Clouter, who received her letter of offer in December 2016 for her position in food purchasing, had worked as a food service assistant on a casual basis six to seven years earlier.

[389] Ms. Brown was employed on a casual basis as a procurement/customer service agent since January 2017. L.Col. Evequoz testified that appointing her to the same job in June 2017 was an obvious choice since she was already doing it. Ms. Brown had also done similar work on a casual basis elsewhere on the Base the previous year.

[390] Finally, Ms. Grove was already employed on a casual basis as an orderly room clerk when she received a letter of offer in September 2017 to be appointed to the same job on an indeterminate basis.

[391] The Commission contends that this reliance on prior employment status was inappropriate based on Mr. Lavergne's testimony that a candidate cannot be given a preference because they were previously employed on a casual basis. Mr. Lavergne acknowledged, however, that the fact that someone has worked as a casual in a given position can be a factor when assessing if the individual has the advertised qualifications such as experience, education, and abilities, having earned those qualifications doing the job as a casual employee.

[392] The Commission did not present any statutory, regulatory, or jurisprudential authority to confirm that taking a person's prior casual employment into account when hiring is impermissible. None of the other current staffing advisors said anything similar in their evidence. On the contrary, Maj. Emond affirmed in her testimony that the practice in staffing of appointing casual employees to indeterminate positions is becoming more and more common now.

[393] I also note that Mr. Rehman was not qualified for the position to which Ms. Clouter was appointed.

**(c) Ms. Grove's reference check**

[394] Mr. Rehman took issue with the fact that according to Ms. Grove's assessment file for the process, a manager or supervisor did not provide the reference check to the Board assessing her Personal Suitability, as the instructions to the Board required. Ms. Grove's supervisor was no longer employed where she used to work, so the employer gave a reference based solely on her performance reviews. Mr. Rehman submits that Ms. Grove's application should have been rejected as a result.

[395] Ms. Aitken testified that she would do the same thing in similar circumstances. It still meant that a supervisor provided the reference. In the military, staff are re-posted and moved to other places frequently, which means that performance reviews are then relied upon to provide references.

[396] Mr. Rehman did not present any statutory, regulatory, or jurisprudential authority showing that the approach adopted by the Board is not permitted and that job applications must be rejected if this occurs.

**(d) Preference for persons residing locally and military spouses and the consideration of only one candidate**

[397] I have previously addressed these issues.

[398] Based on Mr. Lavergne's evidence, the Commission and Mr. Rehman contend that DND breached staffing rules by considering residency in Cold Lake as a factor in selecting appointees. As I also noted, Mr. Rehman and the Commission did not present any legal authority to support the allegation that a hiring manager involved in an external process to which all Canadians could apply and be qualified cannot use a candidate's proximity to the job being filled as a criterion for selecting the appointee.

[399] As for the preference for military spouses, I have already made a finding that whether or not a formal policy had yet been adopted, I accept that this was an additional factor that management looked at for some of the appointments. Again, no legal authority was submitted to show that applying this factor is a breach of staffing rules.

[400] I have stated several times throughout this decision that s. 30(4) of the PSEA provides that management is not required to consider more than one person for an appointment to be merit-based. A manager may select a person from the pool of qualified candidates without looking at any of the other qualified candidates in the pool.

**(e) Discriminatory impact of any alleged staffing rules breaches**

[401] As I have just indicated, most of the allegations of staffing rules breaches are unfounded or are not supported by any legal authority. There is merit perhaps in only one allegation—consideration of French language proficiency to select an employee for an English essential position.

[402] However, even if there were breaches as alleged, the Federal Court held in *Canadian Human Rights Commission v. Attorney General (Canada)*, 2024 FC 1404 at para 23 [*Nipa*] that the mere fact that an inappropriate staffing process was followed does not in and of itself necessarily lead to a finding of discrimination. There must be sufficient circumstances beyond these unusual processes, which, when assessed as a whole, could lead to a finding of subtle scent of discrimination.

[403] There are no such circumstances here. I have reviewed each individual appointment and found that DND has provided reasonable, non-discriminatory explanations for each selection. As I explain in the remaining sections of this decision, there is no evidence that anyone had any knowledge about Mr. Rehman's race, religion, or national or ethnic origin, and there is also no evidence of systemic visible minority underrepresentation in the portion of DND to which these 18 appointments were made. At least three of the appointees were visible minorities, and two were immigrants. There is insufficient evidence for me to conclude, on a balance of probabilities, that as a result of these alleged staffing rules breaches an inference of discrimination is more probable than other possible inferences (*Nipa* at para 24).

[404] But more importantly, I must reiterate that Mr. Rehman and the Commission did not prove on a balance of probabilities that these situations constitute breaches of any staffing

rule, with the possible exception of Maj. MacEachran's consideration of second language proficiency for Ms. Sarrazin's appointment.

**(iv) Discrimination based on candidates' names and credentials**

[405] In his complaint, Mr. Rehman alleged that he was not appointed because DND managers were hiring "only Caucasian" persons and "deliberately excluding non-Caucasian and immigrants from the hiring process," adding that immigrants were easily identifiable by their names and international credentials on their resumes, even if no photos of them were attached to their job applications. Mr. Rehman claimed that managers "throw away the resume based on names common to immigrants."

[406] The Commission submits that immigrants can be affected by employers' preferences for "Canadian sounding" names. The Commission referred in its final submissions to a study, which again was not previously disclosed to DND. It was not entered into evidence, and I will therefore not take it into account. Nonetheless, I am prepared to accept that if a person has a name that is clearly associated with a certain religion or ethnic background, it could possibly constitute evidence to support an inference that this personal characteristic was a factor in the adverse treatment that the person may have experienced.

[407] The evidence in this case, however, shows that at the stage when hiring managers selected the screening criteria for the position they were staffing, they ordinarily had no knowledge or access to the names or any other parts of the candidates' files. It was only after the hiring managers had settled on the filtering criteria that the staffing advisors would generate the referral packages that were provided to the hiring managers. The hiring managers would only then be able to see candidates' names and resumes. This means that for at least six of the appointments in this selection process (the five for which Mr. Rehman was not sufficiently qualified and Ms. Zevenbergen's position), the hiring manager never even saw Mr. Rehman's name and resume. In addition, as Ms. St. Amand testified, there was no indication in the referral packages of whether a candidate had checked off that they identified under any of the designated employment equity groups, including as members of a visible minority group.



[408] The only hiring managers who could have accessed Mr. Rehman's file earlier were those who served on the Board and were involved in his assessment, namely Capt. Sullivan and Maj. Demchuk. Both denied ever having any knowledge of his race, colour, religion, and national or ethnic origin, although I note that they both spoke to him once by telephone. Capt. Sullivan called him to confirm his interest in the process, and Maj. Demchuk interviewed him to assess his qualifications and prepare his consensus report. They must have observed the fact that he spoke accented English, though this does not prove they knew his religion, race, or colour.

[409] However, I would point out that Mr. Rehman was not considered for any of the five appointments involving Capt. Sullivan or Maj. Demchuk because he along with several other candidates did not reside in Cold Lake or because he qualified too late for the appointment (Ms. Zevenbergen's). Consequently, these two managers, who were the only persons to have had any conversation with Mr. Rehman, were never really in a position to appoint him or for that matter to "throw away his resume" because of his immigrant status.

[410] This still leaves those other hiring managers who were provided Mr. Rehman's referral package. They would have had knowledge of his name and access to his resume.

[411] Mr. Atiq cross-examined almost all DND witnesses about their understanding of the origins of people's names. His initial attempt at this questioning was unsettling as he asked a witness whether a given name was Chinese or "white Canadian". This prompted me to inform him of the caution expressed in *Premakumar v. Air Canada*, 2002 CanLII 23561 (CHRT) at para 60. The Tribunal found that assumptions and conclusions should not be made about the ethnicity of successful candidates by looking at their names as the practice is not only unreliable but also antithetical to the philosophy underlying human rights legislation.

[412] Mr. Atiq modified his questioning somewhat thereafter and basically would ask witnesses to what "region" they associated suggested names. Not a single DND witness could associate Messrs. Rehman's, Suman's, and Pillai's names with any particular place, let alone their actual countries of origin or their religion.

[413] Mr. Atiq expanded his questioning, however, to ask the witnesses if they associate the names Mohammed, Mahmood, or Fahad with any religion or ethnic background. Some witnesses said they could not while others made a connection to Islam. The Commission submits that the denials by some of the witnesses point to a lack of candour, which should impact their credibility. I am not persuaded. Given the context and the somewhat accusatory tone of Mr. Atiq's questioning, it is evident that some of the witnesses became defensive in their responses. Besides, the real problem with these questions was that none of the candidates in the pool of qualified candidates actually bore any of these names. They were names of applicants who had withdrawn their candidacy or were screened out early on, before any hiring managers were involved.

[414] The only question that is relevant to Mr. Rehman's allegation is whether hiring managers could reasonably have known that Mr. Rehman was of Pakistani or immigrant origin. Mr. Atiq insisted in his questioning that the managers should have recognized the Muslim origins of Mr. Rehman's name, noting that a founder of Bangladesh bore the same name. Respectfully, I do not find it unreasonable for these managers and public servants specializing in staffing in Canada to be unfamiliar with historical leaders of other countries.

[415] In addition, I am not persuaded that Mr. Rehman's name as such is as obviously foreign or Muslim, akin to the other names that Mr. Atiq proposed to witnesses. The suffix "man" is not uncommon in the last names of persons with origins from various countries. People did not make any national or religious connection to Mr. Rehman's first name, Zia, either and, as I have mentioned several times, he was in fact referred to as a woman in several documents. Interestingly, even Mr. Suman, who was born in Nepal and whom Mr. Rehman called as a witness, claimed he had never heard of Mr. Rehman's name before. He said he would probably associate it with South Asia and could only guess the country of Bangladesh.

[416] Mr. Rehman submits that even if his name was not recognized as an Asian "Muslim name," his resume made it evident. Yet, there is not a single reference to his country of origin in the resume or the entire job application for that matter. The only oblique reference is the mention of his Bachelor of Arts degree from Gomal University under "Education". There is no indication of the university's location. His college in the Cayman Islands is also

mentioned. All the work experience detailed in the resume is from Canada and the Cayman Islands.

[417] No witness knew where Gomal University was, and several noted that it did not matter. Capt. Sullivan, for instance, testified that candidates were taken on their word in their resumes. If they said they had a university degree, it was not questioned in the assessment process.

[418] Mr. Rehman contends that it would have been easy for DND management to have Googled his and the university's name and figured out his Pakistani origin. However, there is no evidence that anyone involved in this process ever Googled anyone's name or the university. Indeed, Mr. Lavergne and Capt. Sullivan were adamant that they never Google anyone when doing a staffing process, the latter noting that there are typically far too many candidates to waste time Googling them.

[419] Mr. Rehman observed that in a letter that Mr. Hooey sent to the Commission's human rights officer on February 22, 2021, during the Commission's initial investigation into the complaint, Mr. Hooey mentioned Mr. Pillai's appointment, noting that he was born in India and had graduated from Indian universities. Mr. Rehman argues that this shows DND must have had knowledge of the candidates' origins.

[420] I do not agree. This document was prepared well after the appointment process and after Mr. Rehman filed the complaint. Mr. Hooey testified that his team prepared this response after conducting research. Several witnesses involved in the process recalled being called by persons who were likely from Mr. Hooey's team. By this time, Mr. Pillai had worked for years at the Base, before returning to Toronto, so he was obviously known personally in Cold Lake. Furthermore, there was evidence that as part of the final security clearance before being employed, appointees must fill out a detailed questionnaire and provide personal identification documents such as passports, which would have revealed information about their place of birth. All of these could have been the source for Mr. Hooey's statement. For these reasons, I am not persuaded that Mr. Hooey's letter demonstrates that the persons involved in the appointment process years earlier knew anything about Mr. Rehman's or Mr. Pillai's origins while they were still candidates.

[421] Mr. Rehman also noted that in another letter sent by Mr. Hooey to the Commission, on July 8, 2021, it states that Mr. Suman identifies as a visible minority person. Yet, the evidence at the hearing revealed that Mr. Suman had never checked off that he identified as a member of a visible minority group when he applied. Mr. Rehman argues that the only reason Mr. Hooey would have made this assertion is if he assumed that someone with Mr. Suman's name belonged to a visible minority, thereby reinforcing Mr. Rehman's claim that DND profiles people based on their name.

[422] I am not persuaded by this argument either. It is not clear on what basis Mr. Hooey's letter described Mr. Suman as a member of a visible minority group. Mr. Rehman called Mr. Hooey as a witness but never put the question to him. As I noted, Mr. Hooey was not involved in the appointment process. Almost all the witnesses who were involved in the appointment process said they had never heard of Mr. Hooey when asked about him. Mr. Hooey relied on his team's investigation to formulate responses to the Commission's human rights officer. I am not prepared to infer from this limited evidence that the hiring managers involved in the appointment process that was held years earlier made any assumptions based on Mr. Rehman's or any other candidate's names.

[423] In sum, Mr. Rehman has not proven that any of the hiring managers or the staffing advisors knew his religion, colour, race, or national or ethnic origin, based on his name and resume.

**(v) Indifference to employment equity considerations as further evidence of discrimination**

[424] The purpose of the *Employment Equity Act* (S.C. 1995, c. 44) (EEA) is to achieve equality in the workplace for persons from four designated groups: women, Indigenous peoples, persons with disabilities, and members of visible minorities (the "EE groups"). The EEA requires federally regulated employers to identify and eliminate barriers in employment and institute policies and practices to achieve representation proportionate to their representation in the population. As part of the core federal public service, DND is subject to the EEA.

[425] During the 2016–18 period at issue in this case, the Treasury Board of Canada’s *Employment Equity Policy* was in effect, which was issued in response to the obligations created under the EEA. It has since been replaced by the *Directive on Employment Equity, Diversity and Inclusion*, which took effect in 2020. The Commission submits that DND’s staffing advisors and hiring managers were indifferent or ignorant about employment equity principles. No considerations were given to achieving a diversified workforce at Cold Lake. The Commission argues that this is evidence of an environment that was more susceptible to discriminatory conduct.

[426] The job advertisement for the staffing process at issue in this case referred to employment equity. It stated, under “Organizational Needs”, that in support of achieving a diversified workforce, consideration may be given to candidates self-identifying as belonging to the four EE groups. It added that if this criterion is used, only those who have so identified themselves will be considered.

[427] The evidence revealed that employment equity was never used as a criterion for any of the appointments.

[428] Job applicants had the opportunity to self-identify as EE group members when they registered on the Public Service Resourcing System as part of the application process. From the 20 people who were ultimately placed in the pool of qualified candidates, seven had identified themselves as women and one person (Mr. Rehman) had identified as belonging to a visible minority group. The evidence is, of course, that in fact there were many more women in the pool as well as at least four other members of visible minority groups. However, self-identification is voluntary and not all persons opted to so declare.

[429] Ms. St. Amand explained that, in the initial discussions with hiring managers, she would present them with the possibility of focusing consideration on qualified candidates from the designated groups. To that end, data using an “employment equity calculator” would be generated in advance showing which of the EE groups, if any, were underrepresented. Several of the calculator results for CR-03 and CR-04 level positions covering the 2016–17 period were entered into evidence. They all showed that, in the part of DND encompassing CFB Cold Lake, there was no underrepresentation of any EE group.

Nationally, there was an underrepresentation of persons from visible minority groups for CR-04 level positions, not for CR-03.

[430] Sylvie Beaulne used to be an HR manager and is now responsible at the national level for DND's staffing team dealing with external appointments. She testified that whether or not an underrepresentation or "gap" of any EE group is identified, employers are under no obligation to apply employment equity considerations. The presence of a gap is just an indicator. HR staff advising management on the appointment process is supposed to discuss with the hiring manager the possibility of addressing any identified gaps.

[431] None of the managers Ms. St. Amand worked with were interested in focusing solely on persons from EE groups. She explained that managers at smaller, remote locations like CFB Cold Lake are hesitant to do so because of the possibility that it will yield an insufficient number of qualified applicants to create an adequate pool from which to pull candidates for appointment. The difficulty recruiting candidates to such remote places is one reason why it was decided to keep essential educational and experience requirements at low levels in this process and open it even to Canadians residing outside the country.

[432] Maj. Demchuk confirmed that since she saw on the calculator that there were no gaps in her region, she opted not to apply employment equity considerations. She was hiring people for terms of less than one year, which already limited potential interest. She was unwilling to filter further to have only one or two candidates to consider.

[433] Ms. Haynes testified that she does not even recall having raised the notion of employment equity with the managers that she worked with in this process. She had observed that the calculator was not showing underrepresentation for any EE group in their region, and she did not consider that there was any obligation to apply employment equity considerations. However, as Ms. Beaulne noted in her testimony, employers are not prevented from considering employment equity even where there are no gaps.

[434] The Commission submits that the staffing team's and management's efforts regarding employment equity were meagre and indicative of an indifference to addressing issues of employment equity and diversity within DND. More than half of the hiring managers who testified did not recall having any training in employment equity.

[435] The Commission referred at the hearing to a 2022 report from the Office of the Ombudsman entitled *Employment Equity and Diversity in the Department of National Defence and the Canadian Armed Forces* (the “Report”). A table in the Report shows that, around the period when the appointments were made, the percentage of persons from visible minority groups within all of DND did not meet DND’s “goals” by between 1.6 and 0.9%. The Commission therefore argues that the Report highlights the presence of workplace culture concerns regarding employment equity at DND. This culture has the effect of resulting in discriminatory practices around hiring in breach of the Act, as demonstrated in Mr. Rehman’s case.

[436] Interestingly, another table in the Report to which the Commission did not refer in its submissions appears to show that in the Administrative Support category, which would seem to encompass CR-03 and CR-04 employees, there is no gap for persons from visible minority groups, and their representation rates amongst employees in this category actually exceeded the rate of qualified persons available in the Canadian labour market.

[437] I make this observation cautiously, however, because although the Report was entered into evidence, no one involved in its preparation was called to testify about it. Consequently, DND strongly objects to any conclusions being drawn from it. The Commission had stated in its Statement of Particulars that it would refer to the Report for context and background and to lend support to Mr. Rehman’s individual claim. DND maintains that the Commission cannot rely on the Report as evidence of discrimination, especially since, as a matter of procedural fairness, it had no opportunity to cross-examine a witness on the Report.

[438] The Report, at pages 22–23, refers to several earlier studies and reviews from 2001 to 2019 that reported about the existence of barriers that created “recruitment issues” for “certain designated groups”. One of those studies apparently noted that the lack of managerial employment equity knowledge led to a perception that DND managers were resistant to employment equity efforts, including a reluctance to focus on qualified designated groups in recruitment practices. A subsequent system review in 2019 identified that the same barriers were still present. These studies were not entered into evidence. The Report also highlighted as an issue the lack of representation of EE groups on selection and

appointment boards. In this appointment process, it appears two Board members were racialized, and many women were involved.

[439] I agree that little weight can be given to the Report's conclusions as they are basically hearsay, and no one involved in its preparation testified or was subject to cross-examination.

[440] Besides, the facts in this case regarding employment equity are clear. HR and management did not apply employment equity considerations largely because there were no gaps in the relevant portion of the department or because of a concern that the pool of available candidates would be rendered insufficient. Most of the hiring managers, all of whom were not employees of DND, but rather CAF military officers, had little or no knowledge of employment equity principles.

[441] In any event, it is not for the Tribunal to decide whether DND was fully compliant with its obligations under the EEA. That role is the Commission's, which is responsible for enforcing the obligations imposed on employers through compliance audits (s. 22 of the EEA; see *Emmett* at paras 176 and 179).

[442] Does this information, in light of all the other evidence and findings in this case, support an inference that Mr. Rehman was discriminated against in not having been appointed? No. DND has provided reasonable explanations for every appointment in this selection process and for why Mr. Rehman was not selected. Mr. Rehman and the Commission have not proven that these explanations were pretextual.

[443] To that end, the Commission described variances between these explanations and DND's Statement of Particulars as evidence of pretexts for discrimination. For instance, DND had written in its Statement of Particulars that six positions were staffed in the "medical field" for which Mr. Rehman was not considered because he did not have experience in this area. Yet, the evidence disclosed that health experience was not a requirement for the positions. Other such discrepancies include the Statement of Particulars incorrectly referencing positions having been filled by veterans, which did not in fact occur, and failing to mention managers' preference for local candidates.



[444] I am not persuaded by the Commission's argument. Mr. Rehman's Statement of Particulars also contains allegations that were ultimately not proven to be true at the hearing, such as the claim that DND had never called him. This is why hearings are conducted—to hear the actual evidence. The main concern would be if a party was denied procedural fairness through a misrepresentation in the Statement of Particulars. I do not believe that has occurred, even by the omission of the detail regarding the preference for locally residing candidates. That information was evident in the copies of the email exchanges that were part of DND's pre-hearing disclosure and later entered into evidence.

[445] I am always mindful that all circumstances must be examined to see if a subtle scent of discrimination still pervades despite proffered explanations. I have not identified it here, even considering management's alleged ignorance or indifference to employment equity principles at the time.

## **VI. CONCLUSION**

[446] When Mr. Rehman filed his complaint, he was aware of a few facts. He applied to this appointment process and was found qualified. He was informed that several positions were to be filled, and he told DND that he was interested in being appointed to any of them. Yet, he was not selected for appointment. He assumed that he was excluded from consideration because his name and credentials easily identified his personal characteristics (race, colour, national or ethnic origin, and religion). Based perhaps in part on his previous experience in not gaining satisfactory employment, he presumed that everyone who was appointed was "Caucasian" and not an immigrant. So, he filed this complaint.

[447] The hearing into the complaint revealed all the facts about this appointment process, Mr. Rehman's candidacy, and why he was not appointed. We learned that Mr. Rehman did not have the required qualification level for five of the appointments, which put him out of consideration for those jobs. For other appointments, he either had effectively not been found qualified yet or was simply not considered for many reasons such as not residing in Cold Lake or because another candidate's experience was better suited for the job.

[448] Mr. Rehman did not prove that prohibited grounds of discrimination were factors in any of these reasons for appointing someone else and not him. The Commission also did not prove that applying these otherwise non-discriminatory criteria had the effect of excluding Mr. Rehman or persons like him with the same personal characteristics.

[449] There was not just one “non-Caucasian” appointee, as Mr. Rehman assumed. In fact, three of the 13 individuals appointed were members of visible minority groups. Besides, as the Tribunal in *Emmett* observed at paras 75 and 77, citing *Canada (Attorney General) v. Walden*, 2010 FC 490 at paras 109–12, a complainant’s case cannot be made out on statistical evidence alone. For statistical evidence to constitute circumstantial evidence of discrimination, the evidence must have a direct relationship to the decisions that are the subject matter of the complaint.

[450] No such relationship has been proven in this case. On the contrary, the evidence showed clearly that Mr. Rehman was not appointed for reasons that were entirely unconnected to his personal characteristics. Prohibited grounds of discrimination were not factors in the decisions not to appoint him.

[451] For these reasons, the complaint is dismissed.

*Signed by*

Athanasios Hadjis  
Tribunal Member

Ottawa, Ontario  
March 5, 2025

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**File No.:** T2721/9721

**Style of Cause:** Zia Rehman v. Department of National Defence

**Decision of the Tribunal Dated:** March 5, 2025

**Date and Place of Hearing:** January 15-19, 2024; and  
January 22-26, 2024  
By videoconference

Final written submissions, March 18 and 19, 2024,  
April 2, 2024, and April 9, 2024.

### **Appearances:**

Atiq Rehman, for the Complainant

Jonathan Bujeau and Caroline Carrasco, for the Canadian Human Rights Commission

Barry Benkendorf and Alexandra Warkentin, for the Respondent