

Federal Court



Cour fédérale

Date: 20170103

Docket: T-233-16

Citation: 2017 FC 4

Ottawa, Ontario, January 3, 2017

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

TODD STOROZUK

Applicant

and

ATTORNEY GENERAL

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Todd Storozuk, has been a member of the Royal Canadian Mounted Police [RCMP] since 1993. In 2012, he applied for a Drug Enforcement Supervisor/Investigator position at the Coquitlam Detachment of the RCMP in British Columbia. His application for this position was not successful; had the Applicant been the successful candidate for the position, he would have been promoted from the rank of corporal to that of sergeant.

[2] Accordingly, on May 1, 2012 the Applicant filed a grievance pursuant to section 31 of the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 [Act], alleging that selection of the successful candidate was based on criteria not listed in the job posting and that he was the better candidate for the job. An adjudicator denied his grievance in a decision dated January 5, 2016. The Applicant has now applied for judicial review of the adjudicator's decision.

I. Background

[3] On February 8, 2012, the RCMP advertised a posting for a Drug Enforcement Supervisor/Investigator position [the Position] at the Coquitlam Detachment. The promotional process for non-commissioned RCMP officers is outlined in a policy document entitled *NCO Promotional Process, Selection Guide for Career Development and Resource Advisor, Validation Committee and Line Officers* [the Selection Guide]. In accordance with the Selection Guide, the job posting outlined the requirements for prospective candidates and indicated that applications were to include a competency résumé, a covering letter, and a member conduct disclosure. The job posting also included a synopsis for the Position to assist candidates in explaining why they were the most qualified.

[4] The synopsis contained conflicting language as to whether there were any desirable attributes for the Position. The synopsis listed five specific desirable attributes but later stated that no desirables were identified for the Position:

As such it would be desirable that the incumbent possess the following:

1. An operational understanding of the principals [sic] of Mahjor [sic] Case Management

2. Familiarity with Crime Reduction methodology
3. Court recognized Drug Expert
4. Undercover Operator and/or Cover person trained
5. Current experience in Drug investigations as a primary investigator

Desirables: Policy allows for the Line Officer/Delegate to identify desirables that he/she deems relevant to this position. A desirable is not a requirement for the position but will be considered in the Selection process and can be addressed in the COVERING LETTER. The Line Officer has identified the following desirables for this position: N/A

[5] Applications for the Position were reviewed by a senior officer of the RCMP [the Selecting Line Officer or SLO]; no interviews were conducted. The SLO evaluated the applications and recommended the most suitable candidate to a human resources officer for approval. The Selection Guide provides line officers with considerable discretion when evaluating an application package and determining which candidate warrants recommendation. The Selection Guide provides (at page 36) that:

The line officer is to take the available information and determine which of the candidates is right for the position being filled. There are no strict rules for considering the information on each candidate. The line officer needs to look at the information collectively, draw on his or her knowledge of the position and/or unit, and recommend the right candidate by considering person-position or person-unit fit.

[6] On April 24, 2012, the SLO informed the Applicant that another candidate had been recommended for the position. The SLO provided written reasons as to why the successful candidate was recommended. The SLO determined that, although the Applicant had met the requirements for the position and demonstrated experience working in a supervisory position, the

successful candidate's competency résumé and covering letter were superior to those of the Applicant.

A. *The Grievance Process*

[7] At the time of the SLO's decision, the grievance process was governed by the *Act* and the *Commissioner's Standing Orders (Grievances)*, SOR/2003-181 [*Standing Orders*], as repealed by *Commissioners Standing Orders (General Administration)*, SOR/2014-293. Prior to its amendment in 2014, subsection 31(1) of the *Act* allowed RCMP members who were "aggrieved by any decision, act or omission in the administration of the affairs of the Force" to file a written grievance.

[8] The *Act* and the *Standing Orders* established a two-step grievance process, Level I and Level II. Subsection 17(1) of the *Standing Orders* provided that the adjudicator's role was to "determine if the decision, act or omission that is the subject of the grievance is consistent with applicable legislation and Royal Canadian Mounted Police and Treasury Board policies." If the decision, act, or omission was inconsistent with the applicable legislation or policies, the adjudicator was then required to determine whether the grievor had suffered any prejudice (*Standing Orders* at 17(2)).

[9] Adjudicators at both levels were required to "determine what corrective action is appropriate in the circumstances" (*Standing Orders* at 17(2)); however, an adjudicator at a Level II grievance was required to return a grievance to Level I for reconsideration if, among other things, the adjudicator received evidence that could have resulted in a different decision at

Level I (*Standing Orders* at 18(1) (a)). Moreover, a party could not present new evidence at the Level II grievance unless the evidence “could not reasonably have been known by the party at the time the grievance was considered by level I” (*Standing Orders* at 12(3)).

B. *The Level I Grievance*

[10] At the Level I grievance, the Applicant’s initial written submissions challenged the SLO’s written reasons as to why the successful candidate was recommended for the Position. The Applicant questioned not only whether the successful candidate’s experience and qualifications were superior to his own, but also whether the successful candidate had sufficient experience in the drug field and in a supervisory position. The Applicant also challenged the SLO’s comments concerning some of the successful candidate’s attributes which were not listed as desirable attributes in the job posting. Specifically, the Applicant questioned why the SLO highlighted the successful candidate’s experience in “Serious Crime investigations, Surveillance, Interest Based Negotiations, Conflict Mediation, Interview and Interrogation techniques and multi-jurisdictional investigations.”

[11] After filing the grievance, the Applicant was provided with the successful candidate’s application package and allowed to make further written submissions, and he did so on June 21, 2012. The Applicant asserted that he had greater and more relevant experience than the successful candidate, and also highlighted what he regarded as deficiencies in the successful candidate’s investigative skills. The Applicant reiterated his earlier submissions regarding the successful candidate’s attributes which were not listed as desirable attributes. The Applicant

questioned the SLO's rationale for focusing on these attributes, but also provided examples of how he too possessed these attributes.

[12] The Respondent contended at the Level I grievance that the SLO's decision was consistent with applicable policies, pointing in particular to the Career Management Manual [CMM], Chapter 4, Section 10.11.8, which requires a line officer to "identify the recommended candidate whom he/she has determined as being the right person" after considering the candidates' materials and the operational needs of the existing team. The Respondent also pointed to the Selection Guide, arguing that there are no strict rules for a line officer's determination since they must look at the information collectively to "determine which of the candidates is right for the position being filled."

[13] The Respondent further argued that the SLO adhered to policy by relying on the successful candidate's various attributes and by clearly finding that these attributes were relevant in determining that the successful candidate was "the right person." According to the Respondent, the Applicant was not disadvantaged in his ability to compete for the Position because he, too, was able to provide additional qualifications which were not listed in the job posting. The Respondent also submitted that the SLO was entitled to make her decision, despite the Applicant's view that he was better qualified, and she was not obligated to request that each candidate list every qualification the candidate regarded as being relevant to the Position.

[14] In his rebuttal submissions, the Applicant maintained that he possessed more experience than the successful candidate. The Applicant also stated that the SLO did not adhere to policy by

relying on attributes that were not listed as either competencies or desirable attributes. The Applicant further argued that the Selection Guide requires a line officer to specify desirable attributes.

[15] The Level I adjudicator dismissed the Applicant's grievance. The Level II adjudicator did not defer to the Level I grievance decision and considered the matter anew at the Level II stage.

II. The Level II Decision

[16] After reviewing the background facts and the parties' arguments before the Level I adjudicator, as well as the Applicant's request for disclosure of the SLO's notes (including a scoring matrix) and a managerial review of the successful candidate's performance in the Position, the Level II adjudicator [the Adjudicator] outlined the parties' arguments and submissions and identified four issues to be addressed in her decision, namely whether:

1. the documents submitted by the Applicant along with his Level II submission were admissible;
2. the Applicant had established a right to disclosure of the material he identified in his presentation at Level II;
3. the Applicant had established that the SLO erred in recommending a candidate for promotion other than the Applicant; and whether
4. the Applicant had established that the Respondent erred in finding that the rationale written by the SLO for recommending the successful candidate was sound and defensible.

[17] The Adjudicator then acknowledged that her mandate at the Level II grievance, in view of subsection 17(1) of the *Standing Orders*, was to determine whether the SLO's decision was "consistent with applicable legislation and Royal Canadian Mounted Police and Treasury Board policies" and if not, to determine whether the decision "caused a prejudice to the grievor" and "what corrective action is appropriate in the circumstances." She also noted that the Applicant was required to establish that the decision to promote a candidate other than him was inconsistent with policy and the Selection Guide.

[18] The Adjudicator determined, with respect to the first issue noted above, that the documents attached to the Applicant's written submissions were inadmissible by virtue of subsection 12(3) of the *Standing Orders* because they "were in existence and accessible at the time the Grievor submitted his arguments at Level I and their existence should have been known to the Griever."

[19] As to the second issue, the Adjudicator found that, by failing to request disclosure of material already in existence at the time he engaged in early resolution of the grievance, the Applicant had missed his opportunity to disclosure of such material. She also found that the performance review report about the successful candidate was not relevant and did not need to be disclosed to the Applicant.

[20] The Adjudicator then addressed the third issue, namely, whether the Applicant had established that the SLO erred in recommending a candidate for promotion other than the Applicant. In this regard, the Adjudicator found that: "the Grievor has not provided any evidence

that would cause me to question the SLO's recommendation and to adopt, by default, the Grievor's opinion that the Grievor was the superior candidate." The Adjudicator addressed the Applicant's arguments concerning the formatting of the synopsis for the Position and the SLO being influenced by factors not identified as desirables; she determined though, that the SLO was not bound by strict rules for considering each candidate's information and that it was "the Grievor's responsibility to clearly establish, in his examples and Covering Letter, that he best met the requirements of the position." Ultimately, with respect to this third issue, the Adjudicator concluded that the Applicant had "expressed strictly his personal opinion, thus failing to establish that the Respondent's actions were inconsistent with policy and with the Guide."

[21] With respect to the final issue as to whether the Applicant had established that the SLO's rationale for recommending the successful candidate was not sound and defensible, the Adjudicator determined that the Applicant had not offered any convincing arguments that the rationale fell short of being informative or defensible. The Adjudicator stated: "I can readily identify and understand the strengths that convinced the SLO to recommend the candidate she found best demonstrated the qualities required of the incumbent of the position. Though the Grievor may genuinely believe he was the best candidate for the position, it is not an error for the SLO to conclude otherwise as long as she can articulate her reasons in a manner that I find reasonable." The Adjudicator thus concluded:

[53] As a result of my examination of the Record, I find that the Grievor has not established, on a balance of probabilities, an inconsistent application of policy....Based on the evidence in the Record, I find that the promotion process was followed and that the outcome was supported by a rationale sufficiently sound, defensible and informative to be considered reasonable ... Therefore, the Respondent's decision to adopt the SLO's

recommendation and promote a member other than the Grievor must stand.

III. Issues

[22] This application for judicial review raises the following issues:

1. What is the standard of review?
2. Did the Adjudicator breach any duty of procedural fairness?
3. Was the Adjudicator's decision reasonable?

IV. Analysis

[23] Before addressing the above issues, it should be noted that the Respondent challenged certain portions of the Applicant's affidavit because it included several documents which the Adjudicator refused to accept at the Level II grievance and introduced evidence not before the Adjudicator. At the hearing of this matter, the Applicant (who represented himself in this proceeding) was informed that this additional documentation could not be accepted upon judicial review of the Adjudicator's decision since it did not fall within one of the recognized exceptions to the general rule that the record for judicial review is usually limited to that which was before a decision-maker. This additional documentation has therefore not been considered in reviewing the Adjudicator's decision.

A. *Standard of Review*

[24] The *Standing Orders* governed the grievance process for promotional decisions only from August 20, 2010 to November 27, 2014. Although the case law is not altogether clear as to

the appropriate standard of review applicable when reviewing a decision of a Level II adjudicator acting under the *Standing Orders*, I am satisfied that the appropriate standard of review for the Adjudicator's decision in this case is that of deferential reasonableness in view of the following decisions.

[25] For example, in *Mousseau v Canada (Attorney General)*, 2012 FC 1285, [2012] FCJ No 1366 [*Mousseau*], Justice Tremblay-Lamer stated that the decision of a Level II adjudicator concerning the grievance of an officer's work transfer was reviewable on the reasonableness standard:

[15] In the case of a judicial review of a decision of an RCMP adjudicator, given the adjudicator's specialized expertise and broad powers with regard to the questions before him or her, "great deference should be given to the Adjudicator in this matter" (*Sansfaçon v Canada (Attorney General)*, 2008 FC 110 citing *Shephard v Canada (Royal Canadian Mounted Police)*, 2003 FC 1296 at paras 35-36; *Smith v Canada (Attorney General)*, 2005 FC 868 at para 13; *Gillis v Canada (Attorney General)*, 2006 FC 568 at para 27), especially when it involves an internal grievance process and internal policies at the RCMP. Therefore, the applicable standard of review is reasonableness. Consequently, this Court must determine whether the findings are justified, transparent and intelligible, and fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). In *Canada (Attorney General) v Boogaard*, 2015 FCA 150 at para 6, [2015] FCJ No 775 [*Boogaard*], the Federal Court of Appeal held that the reasonableness standard applied to the Commissioner's letter indicating that he would not promote a senior officer (this matter did not involve a grievance).

[26] Similarly, in *Schamborzki v Canada (Attorney General)*, 2015 FC 1262, [2015] FCJ No 1323, the Court reviewed *Mousseau* and other cases involving internal RCMP grievances and concluded that: "the evolution of the jurisprudence favours adoption of the standard of

reasonableness” (para 30); and that “the Commissioner’s decisions should be reviewed on a standard of reasonableness” (para 31).

[27] Accordingly, the Court should not intervene if the Adjudicator’s decision is justifiable, transparent, and intelligible, and it must determine “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190. Those criteria are met if “the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes”: *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708. Additionally, “as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome”; and it is also not “the function of the reviewing court to reweigh the evidence”: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61, [2009] 1 SCR 339.

[28] As to whether any rules of procedural fairness were breached by the Adjudicator, that is an issue subject to the correctness standard of review (see: *Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502). This requires the Court to determine whether the process followed by the Adjudicator achieved the level of fairness required by the circumstances of the matter (see: *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 115, [2002] 1 SCR 3). It is, therefore, not so much a question of whether the Adjudicator’s decision is correct as it is a question of whether the process followed by her in making her

decision was fair (see: *Hashi v Canada (Citizenship and Immigration)*, 2014 FC 154 at para 14, 238 ACWS (3d) 199; and *Makoundi v Canada (Attorney General)*, 2014 FC 1177 at para 35, 471 FTR 71).

B. *Did the Adjudicator breach any duty of procedural fairness?*

[29] There are two aspects of the Adjudicator's decision that raise questions of procedural fairness, one pertaining to an extension of time granted to the Respondent prior to the Level I decision and the other concerning the Adjudicator's treatment of documentation that was not before the Level I adjudicator.

[30] The Applicant states that the Respondent failed to comply with the timeframe policies at the Level I grievance and the Level II Adjudicator failed to address the issue. The Applicant does not challenge the Adjudicator's refusal to accept additional documents at the Level II grievance, although he did continue to rely on some of these documents to support his arguments at the hearing of this matter.

[31] The Respondent notes that although the Applicant raised the issue of the extension of time in his reply submissions at the Level I grievance, he did not provide any substantive arguments. According to the Respondent, the Applicant never alleged that the extension of time was unfair or prejudicial. The Respondent further states that the Applicant never raised this issue at the Level II grievance and it should not be raised for the first time on judicial review. The Respondent also says the Adjudicator properly applied the *Standing Orders* by refusing to allow the Applicant to submit additional documents that were not before the Level I adjudicator.

[32] The Applicant's arguments concerning timeliness are directed towards the RCMP's Office for the Coordination of Grievances [OCG]. The Respondent requested an extension of time to file materials for the Level I grievance because of staffing changes. A case manager at the OCG allowed the extension. Section 4.2.2.3 of the RCMP's grievance policy grants a case manager at the OCG discretion to grant extensions to administrative timeframes to either the grievor or respondent if there are reasonable grounds for so doing, such as "prior operational commitments" and "other unforeseen and exceptional circumstances."

[33] The record is not clear as to whether the Applicant was notified of the OCG's extension decision and provided with an opportunity to voice his objections. At the Level I grievance, the Applicant raised this issue in his reply submissions where he simply stated "I raise issue in respect to time", but he did not elaborate on why the extension of time was inappropriate. The Level I adjudicator never addressed this issue. At the Level II grievance, the Applicant did not raise this issue in his written submissions. Since this issue was not raised before the Adjudicator, it cannot be said that she breached any duty of procedural fairness by not addressing it. In any event, the Applicant has not made any submissions as to why the OCG improperly exercised its discretionary power in granting the extension of time, and I cannot see how he has been prejudiced or unfairly treated by reason of the extension of time granted prior to the Level I grievance decision.

[34] As to the Adjudicator's decision not to allow the Applicant's additional evidence at the Level II grievance, it must be noted that her authority to accept new evidence was constrained by subsection 12(3) of the *Standing Orders*:

12 (3) A party shall not present evidence to level II that was not presented to level I unless the evidence could not reasonably have been known by the party at the time the grievance was considered by level I.

12 (3) Aucune partie ne peut présenter au niveau II un élément de preuve qui n'a pas été présenté au niveau I, à moins qu'il s'agisse d'un élément de preuve qui ne pouvait raisonnablement être connu de la partie au moment de l'étude du grief par le niveau I.

[35] The Applicant had the onus of demonstrating why the additional evidence was not reasonably known to him at the Level I grievance. In his submissions, the Applicant claims he was unaware the SLO made notes or a scoring matrix. He points to the Supreme Court of Canada's decision in *May v Ferndale Institution*, 2005 SCC 82, [2005] 3 SCR 809, in support of his argument that the SLO's notes (including the scoring matrix) should have been disclosed and provided to him. The Adjudicator considered this argument, yet rejected it, stating as follows:

[34] By failing to request disclosure of material already in existence at the time he engaged in ER [Early Resolution], and material that should have been known to the Grievor, the Grievor has missed his opportunity to do so.... The fact that the Grievor did not think at level I of asking for disclosure of the SLO's notes, or did not know that the notes existed, does not open the door to disclosure at level II.

[36] The Adjudicator's determination that the SLO's notes could not be accepted as evidence at the Level II grievance did not breach any duty of procedural fairness owed to the Applicant. The Applicant did not request these notes until after the Level I decision and the Adjudicator's authority to accept them as evidence for the Level II grievance was restricted by subsection 12(3) of the *Standing Orders*.

[37] The Adjudicator's rejection of the Applicant's additional evidence which was not presented at Level I also did not breach any duty of procedural fairness owed to the Applicant. All of these documents, other than the SLO's template rationale for her decision provided to another unsuccessful candidate, were in the Applicant's possession before the Level I grievance but not provided to the Level I adjudicator. It was not unfair for the Adjudicator to reject this additional evidence as evidence for the Level II grievance, especially in view of subsection 12(3) of the *Standing Orders*. Although the SLO's template rationale for her decision recommending the successful candidate suggests she may not have undertaken an independent analysis of why the successful candidate was superior to the Applicant, the Applicant did not make any submissions as to why this document should be accepted for the first time at the Level II grievance and, consequently, the Adjudicator rightly refused to accept this document.

[38] In short, I find that the Adjudicator, in rendering her decision, did not breach any duty of procedural fairness owed to the Applicant.

C. *Was the Adjudicator's decision reasonable?*

[39] Although the Applicant's submissions address the decisions by the SLO and the Level I adjudicator, the Court is tasked only with review of the Level II Adjudicator's decision.

[40] The Applicant contends that the Adjudicator ignored his arguments that he was a more appropriate candidate for the position than the successful candidate, and refers to *Smith v Canada (Attorney General)*, 2004 FC 320 at para 10, 129 ACWS (3d) 1020 [*Smith*], where the Court found it was "extremely disconcerting that absolutely no reference is made to the

Applicant's argument" in an adjudicator's grievance decision. The Applicant also refers to *Russell v Commissioner of Royal Canadian Mounted Police*, 2013 FC 755 at para 5, 436 FTR 29, where the Court reviewed a decision by which an RCMP officer had been removed from a promotional competition, and observed that: "The promotion process within the RCMP is complex. It is designed to ensure fair play and to minimize favouritism so that the best qualified person gets the job."

[41] The Respondent maintains that the Adjudicator's decision was reasonable. According to the Respondent, the Adjudicator properly identified the SLO's broad discretion as well as her obligation to review all of the evidence and reasonably determined that the SLO's decision was detailed and compelling. The Respondent distinguishes *Smith*, where the adjudicator had made "absolutely no reference" to the applicant's arguments, on the basis that the Adjudicator here addressed the Applicant's arguments and concerns and provided detailed reasons for the decision.

[42] The Respondent contends that the Adjudicator's comments concerning the desirable attributes were reasonable and that the job positing did not limit the SLO from considering other attributes since a desirable was not a requirement for the position. According to the Respondent, the posting did not limit a prospective candidate's ability to address other attributes, and since the Applicant addressed the attributes listed in the posting, he was not prejudiced. The Respondent also advances the argument that the Applicant was never entitled to the promotion, relying in this regard upon the Federal Court of Appeal's decision in *Canada (Attorney General)*

v Boogaard, 2015 FCA 150, 255 ACWS (3d) 1016, where Justice Stratas placed the issue of a promotion involving a member of the RCMP in context:

[51] While in this case the promotion is of great importance to the respondent, normally we do not think of people having a “right” to a promotion. Often in promotion decisions, only a few win, many more lose, and the difference between winning and losing can legitimately turn upon fine things, sometimes subjective or subtle things. For example, usually we describe people who have been promoted as “deserving” or “lucky.” We do not say that people have been promoted because the employer was legally forced to do it.

[52] Further, a promotion decision, such as the one in this case, is not a simple one, arrived at by processing information objectively and logically against fixed, legal criteria. Rather, it is a complex, multifaceted decision involving sensitive weighings of information, impressions and indications using criteria that may shift and be weighed differently from time to time depending upon the changing and evolving needs and priorities of the organization. What are the needs and priorities of the organization, both now and in the future, perhaps years later? What is the nature of the position the applicant seeks? Does the applicant have the skills, judgment, experience, reliability, integrity, character and personality to carry out the responsibilities of the position and supervise others? Does the applicant exemplify the values and culture of the organization? How does the applicant compare to others who have previously been promoted and others who now seek promotion? How will others react? The questions could go on and on.

[43] The Applicant does not point to any specific or particular reasons as to how or why the Adjudicator’s decision was unreasonable. The Adjudicator’s role, as defined by subsection 17(1) of the *Standing Orders*, only allows an adjudicator to review whether a line officer’s decision was “consistent with applicable legislation and Royal Canadian Mounted Police and Treasury Board policies.” The Adjudicator did not have the authority or jurisdiction under subsection 17(1) to reweigh the Applicant’s experience and qualifications against those of the successful candidate; nor, for that matter, does this Court. The Adjudicator’s recognition of her

role is not tantamount to ignoring the Applicant's request to have his experience and qualifications reweighed against those of the successful candidate.

[44] In this case, the Adjudicator consulted the CMM and the Selection Guide which outlined the SLO's role in selecting a candidate. The Adjudicator noted that these policies provided the SLO with "much latitude in selecting the candidate deemed the best candidate for the position." In my view, it was reasonable for the Adjudicator to find that the SLO was not "bound by strict rules for considering the information of each candidate".

[45] It was also reasonable for the Adjudicator to determine that the SLO's decision to examine and assess attributes beyond those listed was consistent with policy or legislation. This was reasonable for various reasons. First, the wording of the job posting concerning the desirable attributes was not an issue because the Applicant addressed the listed attributes. Second, the posting expressly stated that there were no required desirables. And third, the job posting encouraged prospective applicants to provide information about how they exceeded requirements and any other relevant information. In this case, the Adjudicator reasonably determined that the SLO had not breached her discretionary mandate by considering additional relevant qualifications.

[46] In short, I find the Adjudicator's decision to be transparent, intelligible, and justifiable, and well within a range of possible, acceptable outcomes defensible in respect of the facts and law.

V. Conclusion

[47] The Adjudicator's decision in this case was transparent, intelligible, and justifiable, and within a range of possible, acceptable outcomes defensible in respect of the facts and law. In rendering her decision, the Adjudicator did not breach any duty of procedural fairness owed to the Applicant. Accordingly, the Applicant's application for judicial review is dismissed.

[48] The Respondent has requested its costs in its memorandum of fact and law. In view of the application having been dismissed, the Respondent is entitled to costs in such amount as may be agreed to by the parties. If the parties are unable to agree as to the amount of such costs within 15 days of the date of this judgment, either party shall thereafter be at liberty to apply for an assessment of costs by an assessment officer in accordance with the *Federal Courts Rules*, SOR/98-106.

JUDGMENT

THIS COURT'S JUDGMENT is that: the Applicant's application under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, as amended, is dismissed with costs in favour of the Respondent; and that the Respondent is entitled to costs in such amount as may be agreed to by the parties, provided that if the parties are unable to agree as to the amount of such costs within 15 days of the date of this judgment, either party shall thereafter be at liberty to apply for an assessment of costs by an assessment officer in accordance with the *Federal Courts Rules*, SOR/98-106.

"Keith M. Boswell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-233-16

STYLE OF CAUSE: TODD STOROZUK v ATTORNEY GENERAL

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: NOVEMBER 14, 2016

JUDGMENT AND REASONS: BOSWELL J.

DATED: JANUARY 3, 2017

APPEARANCES:

Todd Storozuk

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Alison Brown

FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of
Canada
Vancouver, British Columbia

FOR THE RESPONDENT