



## Chapter 4 - Area of Selection

### Examples

[Organizational Criterion](#) | [Occupational Criterion](#) | [Geographic Criterion](#) | [Sliding Areas of Selection](#) | [Employment Equity](#)

#### EXAMPLES FOR 4.6.1 - USE OF THE ORGANIZATIONAL CRITERION

##### Internal selection processes:

i) An area of selection that is open to "*employees of the Public Service*" would include individuals who meet the definition of 'employee' above. In other words, they would have to be from departments and agencies on [List A](#) (all the organizations in Part I and the separate employers in Part II for which the PSC is the appointing authority) and in the Canada Customs and Revenue Agency;

ii) An area of selection that is open to "*persons employed in the Public Service*" would include all the individuals who are employed or deemed to be employed in the Public Service;

iii) An area of selection that is open to "*employees of department X*" would mean that only those employees appointed (or deployed) to positions in department X would be eligible; employees seconded from another department would not be eligible as they have not been appointed (or deployed) to a position in Department X.

iv) An area of selection that is open to "*persons employed in department X*" would include employees of department X, as well as persons on secondment from other Public Service departments or organizations.

**Note:** As mentioned earlier, in the case of a secondment, eligibility would be determined based on the individual's substantive employment situation. A person who has been appointed by the Governor-in-Council (GIC), or who has been seconded from an organization that is part of the Public Service, would be eligible. Should the person be on an Interchange assignment from an organization outside the Public Service (e.g., from a municipal government), then that person is employed by the municipal government, and would not be eligible for appointment through internal processes.

v) An area of selection that is open to "persons employed in the department of Agriculture and Agri-Food (AGR), the Canadian Food Inspection Agency (CFIA), and the Canadian Dairy Commission (CDC)" would include employees of AGR, GIC appointees and persons on secondment with AGR from other Public Service departments or organizations; in addition, individuals employed in CFIA and the CDC would be eligible. *This example illustrates how organizations from different parts of the Public Service can be specified in the area of selection.*

vi) An area of selection that is open to "*employees of the Public Service and to persons employed by Farm Credit Canada*" would include all the employees of departments and

agencies on List A, CCRA staff members, as well as individuals employed in Farm Credit Canada (which is on [List B](#)).

vii) The area of selection for a closed competition is open to "*persons employed in department A*" in Montreal, Quebec" and the following individuals apply:

a) a person seconded from department "B" (a Public Service department) to a position in Department "A" in Montreal, Quebec:

**Eligible** - this is a person employed in the Public Service who is now also employed, through the secondment, in Department "A".

b) a casual employee in Department "A" occupying a position in Montreal, Quebec:

**Not eligible** - casual employees are excluded from all provisions of the PSEA ([PSEA S.S. 21.2\(3\)](#)) and are not eligible to apply in closed competitions.

c) a part-time worker in Department "A" occupying a position in Montreal, Quebec:

**Not eligible** - part-time workers (1/3 or less of regular hours of work) are not employees and are excluded from all provisions of the PSEA ([Part-Time Workers' Exclusion Approval Order](#)).

d) an employee of Department "A" occupying a position in Montreal, Quebec:

**Eligible** - this person is eligible by virtue of being an employee of Department "A".

e) a member of the Canadian Forces in Department "A" in Montreal, Quebec (through Interchange Canada):

**Not eligible** - members of the Canadian Forces are not considered to be persons employed in the Public Service, therefore they are not eligible for appointment through internal processes.

f) a person appointed to a position in Department "A" in Montreal, Quebec by the Governor in Council:

**Eligible** - this person is eligible by virtue of having been appointed to Department "A" by the Governor in Council.

g) an employee of Department "A" in Ottawa, Ontario who has been appointed on an acting basis to a position in the same department in Montreal, Quebec:

**Eligible** - the person has been appointed to a position in Department "A" pursuant to the PSEA, making him an employee of the Department. The person has also been temporarily appointed, via the acting, to a position in Montreal.

h) a part-time employee of Department "A" occupying a position in Montreal, Quebec:

**Eligible** - the person has been appointed to a position in Department "A" pursuant to the PSEA, making him an employee of the Department.

i) an employee of Department "A" who has been seconded from his position in Montreal, Quebec to a position in Department "B" in Montreal, Quebec:

**Eligible** - the person continues to be a person employed in Department "A" through his or her substantive position. The secondment does not alter this fact.

### **External selection processes:**

**Position: AI-06, indeterminate, Senior Aviation Policy Analyst, Transport Canada, in Ottawa.**

i) An area of selection might read "*persons residing or employed in the National Capital Region and employees of Nav Canada across Canada*".

Although it has not been a common practice to use the organizational element for open competitions, it may in some cases be an option to consider as there are no provisions in the PSEA preventing the use of the organizational criterion in open competitions.

ii) An area of selection that reads "*employees of Nav Canada across Canada*" would be inappropriate, since open competitions are also open to persons employed in the Public Service. Restricting the area of selection to Nav Canada employees would therefore not meet the requirements of the PSEA.

## **EXAMPLES FOR 4.6.2 - USE OF THE OCCUPATIONAL CRITERION**

### **Internal selection processes**

i) Lawyers and notaries employed in the department of Justice Canada, the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada and the Office of the Commissioner for Federal Judicial Affairs.

ii) employees in the Management Trainee program

iii) persons employed in the social services field

iv) persons employed in the field of pay and benefits

### **External selection processes**

**Position: NU-CHN-03, Zone Nursing Officer, Health Canada, Moose Factory, Ontario.**

i) An area of selection might read: "*Open to registered nurses...*". Although it has not been a

common practice to use the occupational element for open competitions, it may in some cases be an option to consider as there are no provisions in the PSEA preventing the use of the occupational criterion in open competitions.

ii) An inappropriate area of selection might read "*Open to registered nurses employed by the Ontario provincial government...*" While the occupational element is used correctly, the competition would not be open to persons employed in the Public Service and therefore would not meet the requirements of the PSEA.

## **BASIC PRINCIPLES AND EXAMPLES FOR 4.6.3 - USE OF THE GEOGRAPHIC CRITERION**

### **A) Area of Selection and [The Canadian Charter of Rights and Freedoms](#) (Charter), the [Agreement on Internal Trade \(AIT\)](#) and the [Social Union Framework Agreement \(SUFA\)](#) Basic Principles:**

i) The Charter does not make a distinction between open and closed competitions and therefore the mobility provisions apply to all staffing actions (open and closed competitions, as well as other staffing processes).

ii) The only criterion that could infringe upon the Charter's mobility provisions is the geographic criterion. The organizational and occupational criteria do not, in and of themselves, infringe upon the Charter provisions with respect to mobility, since they deal with the part of the organization and the type or field of employment in which potential candidates must be employed, rather than the province or territory of residence.

iii) An area of selection would likely be contrary to the mobility provisions of the Charter if:

- it corresponds to the boundaries of one or more provinces or territories (e.g., *an area of selection that is restricted to Quebec and Ontario or to the Atlantic provinces*); or

-it corresponds to most of a province or territory (e.g., *the area of selection includes all of Alberta except Red Deer, or the area of selection includes all of Quebec except the very northern tip*); or

-it corresponds to a province and part of another (for example, *the area of selection includes Nova Scotia and St. John's, Nfld.*)

In all of these cases, residents of the province falling within the area of selection are given an advantage over the residents of other provinces. The risk is not reduced by using language that does not refer to provinces if the effect is the same (e.g., "north of the 60<sup>th</sup> parallel").

iv) If something cannot legally be done in a direct manner, it should not be done indirectly either. For example,

a) an area of selection that includes all of the counties or regions of a province would in effect correspond to the totality of a province;

b) an area of selection that would be *"open to persons who work in a province"* would have the same effect as an area of selection that is *"open to persons residing in that province"*, since generally, most people reside in the province where they are employed. Such an area of selection would result in a definite advantage being given to the residents of the province, as most of the eligible applicants would also reside there.

v) If an organizational criterion is used in combination with a geographic criterion that is provincial (e.g., *employees of Transport Canada in Newfoundland*), there is a substantial risk of conflict with s. 6, even if not all qualified residents of the province are eligible. Indeed, it is possible that other employees of the same organization in another province could legitimately complain that, vis-à-vis them, the primary distinction is based on the province of residence. The validity of such an area of selection would depend on how the courts define the comparative groups. For instance, the courts may decide to compare the eligible candidates to employees from the same department in other provinces, rather than comparing them to employees from other departments in the same province who are not eligible. It is likely that a review of the purpose behind the area of selection would lead to a finding of a violation of mobility rights.

vi) An area of selection that is only a fraction of a province (e.g., a locality, such as Calgary) is unlikely to be problematic since non-residents of the area are treated equally, irrespective of their province of residence. However, the use of an organizational criterion in combination with a geographic criterion that is a fraction of a province could be problematic if a department only has establishments in that fraction of the province and has establishments in other provinces. The legality of an area of selection limited to that fraction of the province in such a case would depend on the purpose of the limitation. If it is not a disguised means of using provincial boundaries, then the limitation may be lawful. If, for example, the department's normal practice is to use local areas of selection when staffing clerical positions because this yields a sufficient number of qualified candidates and there is no valid reason to expand the area of selection beyond this, then the use of a locality in such a case is not a disguised means of using provincial boundaries even if there is only one establishment in the province. On the other hand, if the same department, in staffing engineer positions, limits the area of selection to the locality, when the usual practice is to open the competition nationally to the entire department, the use of the locality could be perceived to be a disguised means of setting provincial boundaries.

### **Examples:**

#### **Consistent with mobility provisions**

The following examples appear to be consistent with the mobility provisions of the Charter, in that they strive to protect citizens' rights with respect to mobility and do not discriminate primarily on the province of residence of candidates.

#### **Internal selection processes**

i) An area of selection that is open to *"persons employed in the Public Service in Winnipeg, Manitoba"* would appear to be consistent with s. 6 of the Charter, since the city of Winnipeg is only one of several cities (in the province) where there are Public Service offices.

- ii) An area of selection that is open to *"persons employed in the Public Service who are currently working in the National Capital Region (NCR)"*.
- iii) An area of selection that is open to *"employees of department X who are currently working in Canada"*.
- iv) An area of selection that is open to *"persons employed in department X and agency Y (separate employer) who are currently working in Canada and to persons employed in the Public Service in the NCR"*.
- v) An area of selection that is open to *" persons employed in department X in Canada and persons employed in the Public Service in the NCR, Montreal and greater Metropolitan Toronto"*.
- vi) An area of selection that is open to *"persons employed in the Public Service in Canada"* , while Charter compliant, may be confusing to prospective candidates. If the department wants to clearly indicate that persons employed in the Public Service who are stationed abroad are eligible, it could phrase the area as: *"persons employed in the Public Service, including those who are currently working outside Canada"*.

### **External selection processes**

#### **Position: CR-04, term, Service Delivery Assistant, HRDC, in Stephenville, NF.**

- i) Persons residing or employed in Stephenville and Kippens, Nfld. (Postal code: A2N area).
- ii) Persons residing or employed in the area served by the Human Resource Centre of Canada located in Stephenville, Nfld.
- iii) Persons residing or employed in Stephenville and within a (number) kilometer radius of Stephenville, Nfld.

#### **Position: AO-CAI-03, indeterminate, Airworthiness Inspector, Transport Canada in Edmonton, Alberta.**

- iv) Persons residing or employed in Canada. Due to the highly specialized skill set of this position and knowledge of the job market availability, it may be desirable to open the area of selection to all of Canada.

### **May violate the mobility provisions of the Charter**

The following are examples of areas of selection that should be avoided, since it is likely that they would be found by the courts to be contrary to the mobility provisions of the Charter, or, in the case of external staffing processes, may be subject to a founded complaint under the SUFA or AIT. In the following examples, department X is a large department, with offices across Canada, some of which serve one or more provinces or territories.

### **Internal selection processes**

- i) An area of selection that is open to *"persons employed in the Public Service in Manitoba,*

*Saskatchewan and Ontario*" would limit eligibility primarily to individuals residing in those three provinces.

ii) An area of selection that is open to *"persons employed in department X in the BC/Yukon region"* would limit eligibility to the individuals employed by the department in British Columbia and the Yukon territory (most of which likely reside in the province or territory).

iii) An area of selection that is open to *"persons employed in the Public Service in PEI and in department X across Canada"*. The first part of the area of selection is problematic, since the area of selection is restricted primarily to individuals residing in the province of PEI. The second part would include all the individuals employed in the department across Canada, which would be consistent with the Charter.

iv) An area of selection that is open to *"employees of departments X and Y in the Pacific Region"* would limit eligibility primarily to individuals residing in the province of British Columbia.

v) An area of selection that is open to *"employees of department X in the Quebec region, excluding the NCR"*. This area of selection would likely be contrary to the mobility provisions of the Charter since it corresponds to most of the province of Quebec, except for Hull and adjacent areas on the Quebec side of the NCR.

### **External selection processes**

i) "Persons residing in Newfoundland". Using a provincial boundary contravenes the mobility provisions of the Charter & the AIT.

ii) "Persons residing in New Brunswick, Bas-Saint-Laurent or Gaspésie region of Quebec". This is an artificial area to attempt to go beyond the province. Also, the area of selection must not have a province as a component, i.e. New Brunswick.

iii) "Persons residing or employed in the area served by Transport Canada's (TC) Western Region". Prospective applicants may not be aware of the area serviced by TC's Western Region. Also, if TC's Western Region is composed of a grouping of provinces (for example Manitoba, Saskatchewan and Alberta) this would contravene the mobility provisions of the Charter and the AIT.

iv) "Preference may be given to candidates residing or working in the area". No area of selection has been specified, therefore, it would be Canada-wide (or international). Furthermore, the PSEA (s. 19) is very clear that the local preference only applies to qualified candidates who reside in the area served by the local office; in this case the area served by the local office has not been specified.

v)" Persons residing within commuting distance of Toronto". This is an inappropriate use of the geographic criterion, since no limit has been set. Potential candidates would not know if they are eligible to apply and it would be difficult to screen on the area of selection.

### **B) Area of Selection and Persons Employed Outside Canada (internal processes)**

i) If the area of selection is described as open to *"persons employed in department A in*

*Canada*" then all the persons employed in the department, in Canada, whether by appointment (including GIC appointments), deployment, or secondment from elsewhere in the Public Service, would be eligible. Also, all the employees of the department (as a result of an appointment or deployment) whose position is in Canada would be eligible, even if they have been seconded outside the country, since their substantive position remains in Canada.

ii) If the area of selection is described as open to *"persons employed in the Public Service in Canada"*, then all the persons employed in the Public Service in Canada would be eligible, in addition to those who have been seconded elsewhere, no matter where they are located (since their substantive position remains in Canada).

iii) If a department wishes to limit eligibility to individuals working in the department in Canada only, the area of selection could be open to *"persons employed in Department A, who are currently working in Canada"*. This would make it clear that only persons working in Canada can apply. Those who are working abroad would not be eligible.

iv) If a department wishes to further limit eligibility to its own employees, it could phrase the area of selection as open to *"employees of department A (as a result of an appointment or deployment) who are currently working in Canada"*. This would make it clear that only employees of the department who are currently working in Canada could apply and that secondees would be excluded.

## EXAMPLES FOR 4.7 - SLIDING AREAS OF SELECTION

### Internal selection processes

i) Illustration of a sliding area of selection using the **organizational** criterion:

A closed competition is open to "persons employed in the department of Agriculture and Agri-Food (AGR). Should an insufficient number of candidates be identified, then persons employed in the Canadian Food Inspection Agency (CFIA) and the Canadian Dairy Commission (CDC) will also be eligible".

In this example, the applicant pool within the department is unknown, but it is suspected that the smaller area of selection may yield a sufficient number of candidates to conduct a meritorious selection. If the smaller area of selection is used, then employees of AGR, GIC appointees and persons on secondment with AGR from other Public Service departments or organizations would be eligible. If the larger area of selection is used, then individuals employed in CFIA and the CDC would also be eligible."

ii) Illustration of a sliding area of selection using the **geographic** criterion:

A closed competition is open to *"persons employed in the department of Agriculture and Agri-Food (AGR) in the NCR. Should an insufficient number of candidates be identified, then persons employed in the department of Agriculture and Agri-Food (AGR) who are currently working in Canada will be eligible"*.

### External selection process

An area of selection is open to *"Persons residing of working in Toronto and within a 100*



*kilometre radius of Toronto. Should there be a sufficient number of applicants residing or working in Toronto, only those candidates will be considered".*

This example also illustrates one way of restricting the selection process to the candidate pool within the area served by the local office, should there be a sufficient number of applicants from that area.

## **EXAMPLES FOR 4.8 - EMPLOYMENT EQUITY**

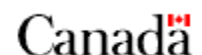
- i) An area of selection that is open to *"persons employed in Transport Canada in the National Capital Region"* could be expanded in order to supplement the initial pool of candidates with additional designated group members. If the department wanted to consider more aboriginal persons for the position under competition, it could, for example, expand the original area of selection to also include *"aboriginal persons employed in the Public Service in the National Capital Region"*. The result would be an area of selection which includes all the persons employed in the Department of Transport (designated group members together with non-designated members), supplemented by aboriginal persons from other parts of the Public Service. At the same time, it must be recalled that only the best qualified candidate from among this pool will be appointed, meaning that a target group person may or may not be the successful candidate.
- ii) An area of selection that is open to *"persons employed in the Public Service in the NCR and persons that are members of a visible minority, persons with disabilities and Aboriginal peoples employed in the Public Service in Montreal or greater Metropolitan Toronto"* would mean that all persons employed in the Public Service in the NCR (designated group members together with non-designated members) would be eligible, as well as employment equity group members from the three designated groups mentioned, that are also employed in the Public Service, in two additional cities.
- iii) An area of selection that is *"open to persons employed in department X and persons with disabilities employed in the Public Service across Canada"* would mean that all those employed by the department (designated group members together with non-designated members) anywhere in Canada would be eligible, as well as all persons with disabilities employed in the Public Service across Canada.

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