



Chapter 1- Legislative and Administrative Foundations

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1.1 SOURCES OF INFORMATION

1.1.1 Legislation

[Public Service Employment Act \(PSEA\)](#)
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[Standards for Selection and Assessment](#)
[Exclusion Approval Orders and Regulations](#)
[Canadian Human Rights Act](#)
[Canadian Charter of Rights and Freedoms](#)
[Financial Administration Act](#)
[Public Service Staff Relations Act](#)
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[Terms and Conditions of Employment Regulations](#)

1.1.2 Other References

[Staffing Delegation and Accountability Agreement](#)
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1.2 POLICY STATEMENT

The Public Service Commission is responsible for appointments to and within the Public Service in accordance with the provisions and principles of the *Public Service Employment Act*. The Act requires that appointments to and within the Public Service will be based on merit and selection decisions will be fair, transparent and equitable. This contributes to a Public Service that is competent, representative and non-partisan.

The Public Service Commission delegates staffing authorities to Deputy Heads to the maximum extent possible, to assist them to meet their operational objectives and to respond efficiently and effectively to

increasing and changing demands.

Recruitment and selection practices will also be carried out in a manner that is consistent with other federal legislation, including the *Financial Administration Act*, the *Official Languages Act*, the *Employment Equity Act*, the *Canadian Human Rights Act* and the *Charter of Rights and Freedoms*.

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1.3 LEGISLATION

1.3.1 [Public Service Employment Act \(PSEA\)](#)

The *Public Service Employment Act* (PSEA) contains the principles and conditions governing the recruitment and appointment of personnel as well as other aspects of employment in the Public Service such as recourse, lay off, priority for appointment and political activity. The Act reinforces the values and principles inherent in the staffing process which are intended to:

- safeguard, protect and enhance the integrity of the Public Service of Canada;
- maintain and preserve a highly competent and qualified Public Service; and,
- ensure that the Public Service is non-partisan, free of discrimination and its members are representative of Canadian society.

1.3.2 [Employment Equity Act](#)

The purpose of this statute is to achieve equality in the workplace and to correct conditions of disadvantage experienced by certain groups - women, Aboriginal people, persons in a visible minority and persons with disabilities. The Act applies to the public service of Canada and to federally regulated employers, as well as portions of the public sector specified by Order in Council, that employ 100 or more employees.

1.3.3 [Financial Administration Act](#)

The *Financial Administration Act* legislates the administration of public funds. It also defines the Treasury Board's responsibilities related to personnel management in the Public Service (Section 7).

1.3.4 [Public Service Staff Relations Act \(PSSRA\)](#)

This act legislates employer-employee relations in the Public Service. The PSSRA provides employees with the right to grieve issues for which no other recourse is provided in statute. Public Service has the same meaning in PSEA as is set out in the PSSRA.

1.3.5 [Official Languages Act](#)

Among other things, the *Official Languages Act* declares the status of the English and French languages

and establishes the duties of departments in relation to the official languages.

1.3.6 Canadian Human Rights Act

Complements the present laws in Canada by prohibiting discrimination. Contains provisions regarding the duty to accommodate the needs of individuals or classes of individuals to the point of undue hardship.

1.3.7 Canadian Charter of Rights and Freedoms

The Charter provides a vehicle for the courts to assess government action and allows them to strike down or fundamentally alter laws and government programs that infringe upon individual rights and freedoms. It also provides a basis for individuals to challenge government decisions, programs or legislation when they think that these infringe upon their rights. The Charter provides a guarantee of equality of treatment and freedom from discrimination. It also provides a prohibition against discrimination in relation to province of residence or work.

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1.4 OTHER REFERENCES

1.4.1 Public Service Employment Regulations, (PSER)

[Section 35](#) of the *Public Service Employment Act* (PSEA) provides the authority to the Public Service Commission to make the *Public Service Employment Regulations*, (PSER) to carry out and give effect to the Act.

The Regulations are made for several reasons. In some cases, sections of the Act direct that something must be done by regulation. In these circumstances, the PSER are necessary to enable something to be done that would not otherwise be possible. In other cases, the Regulations provide the framework for how things will be done where the Act provides only global direction. The Regulations also promote efficiency and effectiveness by enabling the practical application of the flexibility provided by the Act. Finally, the Regulations contain many provisions protecting the rights of individuals to fair and equitable treatment in the staffing process.

1.4.2 Standards for Selection and Assessment

The Standards for Selection and Assessment apply to all occupational groups except the Executive Group. They are established by the Public Commission pursuant to [Section 12](#) of the *Public Service Employment Act* (PSEA). The Standards for Selection and Assessment comprise two sections. The first prescribes adherence to generic standards which safeguard the merit principle in personnel selection and assessment. These generic standards ensure that the necessary and relevant qualifications are identified and that the pertinent information is collected and integrated in such a way as to provide a sound basis for staffing decisions. The second section prescribes group-specific standards, cut-off scores with respect to particular qualifications and related assessment techniques.

1.4.3 Public Service Terms and Conditions of Employment Regulations (PSTCER)

The PSTCER regulate the terms and conditions of employment for employees in the Public Service for whom Treasury Board is the employer. The Regulations deal with such matters as: pay, hours of work,

overtime, holidays and leave; part-time and seasonal employment; and discipline, special retirement and death benefits.

1.4.4 Exclusion Approval Orders

[Section 41](#) of the PSEA allows for the exclusion of person(s) and position(s) in whole or in part from its operation where "the Commission decides that is not practicable nor in the best interests of the Public Service to apply this Act or any provision thereof". Exclusion approval orders may be required in exceptional circumstances and may be of a general or specific nature, for example applying to an individual appointment. These decisions require the approval of the Governor in Council.

By definition, the test of practicability means that it is not feasible to apply the PSEA or some of its provisions in the particular circumstances. The test of best interests means that the decision to exclude person(s) or position(s) must be to facilitate an objective that is considered as promoting the best interests of the Public Service. These transcend the interests of employees, those of management or even those of the government of the day. They include broad considerations such as efficiency, responsiveness and equity. For example, an exclusion approval order may be needed to facilitate the implementation of new legislation or to give effect to court orders or federal-provincial agreements.

Special regulations may be needed to deal with positions or persons wholly or partly excluded from the operation of the PSEA. Such regulations are made by the Governor in Council, on the recommendation of the Commission. These regulations are designed to ensure that the order is implemented in an appropriate and consistent manner.

A summary of exclusion approval orders and pertaining Regulations that are in effect are attached at [Annex A](#).

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1.5 THE STAFFING DELEGATION AND ACCOUNTABILITY AGREEMENT (SDAA)

The Public Service Commission is the agency responsible for making appointments to a large part of the Public Service. The authority to make appointments to and from within the Public Service is given to the Commission by the [Public Service Employment Act](#) (PSEA). The Act and the [Public Service Employment Regulations](#) (PSER) establish the basic framework for determining the way in which appointments are made. The Act allows the Commission to delegate many of its staffing authorities to deputy heads. In accepting delegation, the Deputy Head becomes accountable to the Commission for ensuring that staffing is conducted in a manner that respects the requirements of the PSEA, PSER, [Employment Equity Act](#) (EEA) and other federal statutes, the Commission's [Standards for Selection and Assessment](#) and the values and principles underlying selection according to merit.

The agreement sets out the principles and values from which staffing is conducted in the Public Service, the Commission's expectations of those exercising delegated authority and the specific authorities that have been delegated. The agreement may be modified at the request of either party at any time.

Along with the delegated authority comes accountability. Although the Commission delegates its appointment authority to departments, it remains responsible along with the deputy head of the delegated department for ensuring that appointments reflect the values underlying selection according to merit. The accountability framework sets out clear performance expectations agreed upon by the parties.

Deputy Heads must report on the exercise of delegated authorities to the Commission on a periodic basis. The Commission assesses the information provided, attests to its validity and gives feedback to

departments. The Commission may conduct audits and thematic reviews to fulfil its due diligence role as needed. The accountability framework constitutes Annex B of the Staffing Delegation and Accountability Agreement.

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1.6 TREASURY BOARD POLICIES AND DIRECTIVES

Treasury Board, as the employer, establishes a variety of policies and directives with respect to its authorities under the [Financial Administration Act](#) and the [Public Service Staff Relations Act](#). These include, for example, terms and conditions of employment, rates of pay in the Public Service, travel and relocation directives, etc. Under the [Public Service Employment Act](#) the Treasury Board also has responsibility to direct the manner in which deployments may be made. For more information about the deployment policy and directives, please consult [Chapter 9, Deployments](#).

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Annex A

EXISTING EAOS AND REGULATIONS BY SHORT TITLE

Locally-Engaged Staff Employment Regulations

The Regulations made pursuant to it make provision for the appointment of persons locally engaged at Canadian embassies, missions, military establishments or other establishments outside Canada. The principal user is Foreign Affairs and International Trade. It is also used by National Defence.

Justice - Certain Persons and Positions in the LA (Law) Group (P.C. 1997-1050)

This Order allows the Department of Justice to deploy and appoint lawyers classified at the LA2B, LA3A, LA3B and LA3C salary levels without recourse and appeal as for the Executive Group. Lawyers at the LA-2B level and above in other departments are subject to the same provisions as lawyers with the Department of Justice when they are appointed or deployed to a position in the Department of Justice.

Regulatory Enforcement (RE) GROUP Exclusion Approval Order

This Order facilitates the redeployment of employees in the Regulatory and Enforcement group in the Office of the Superintendent of Financial Institutions when their appointments do not result in a change in their personal group and level. Specifically, the Order excludes from the following sections of the PSEA: 10, 18, 21(1), 29(3), 30(1), and (2) and 39(3) and (4) and provides that, with the exception of the initial appointment of an employee to an RE position, all appointments to or within the Group will not be subject to appeal. It also allows the appointments without appeal of persons from the EX group to the RE group and of persons from the RE group to the EX group.

Note: This order, although still in effect, is not operational because of changes made to the organization's classification system.

Management Trainee Program Exclusion Approval Order

This Order is intended to facilitate the initial appointment of persons to positions in the MM group within the Management Trainee Program. The Order excludes appointments made to positions at MM-01 level from the provisions of the PSEA respecting merit, appeals as well as statutory and regulatory priorities.

Appointment and Deployment to Rotational Positions of Employees of the Department of External Affairs and the Canada Employment and Immigration Commission Exclusion Approval Order

This Order allows flexibility to meet operational needs in assigning rotational staff to posts abroad as well as in Ottawa by excluding certain staff and rotational positions from some provisions of the PSEA. The provisions excluded from are [10](#) , [18](#) , [21](#) , [29\(3\)](#) , [30\(1\) and \(2\)](#) , [34.3](#), [34.4](#), [34.5](#) , [35\(2\)\(a\)](#) and [39\(3\) and \(4\)](#) .

Recruitment of and promotion of rotational employees are not subject to the Order and remain subject to the full application of the PSEA.

Appointment of Alternates Exclusion Approval Order

Alternation is an exchange of positions between an "affected employee" (i.e. who may be declared surplus to requirements but who would like to remain employed in the Public Service) and an "alternate" (i.e. an employee whose position is not to be eliminated but who volunteers to leave the Public Service no more than five days after the alternation takes place.

Alternations can be made through either deployments or appointments. Deployments are normally used but an appointment must be made every time an alternation involves positions classified in two different occupational groups. - Does this just predate intergroup deployments or is there something specific in the Order that prevents it.

This Order facilitates the appointment of alternates by approving the exclusion of persons from the operation of subsections [21\(1\) and \(1.1\)](#) of the PSEA relating to appeals and approving the exclusion of the positions to which alternates will be appointed from the operation of section 10 of the PSEA respecting merit, from the operation of subsections [29](#) (3), [30](#) (1) and (2), and [39](#) (3) and (4) of that Act respecting leave of absence, lay-off, and ministers' staff priorities for appointment and from any regulations made under paragraph [35](#) (2)(a) of the same Act respecting other priorities for appointment.

Part-time Work Exclusion Approval Order

This Order excludes from the provisions of the PSEA persons who are not ordinarily required to work more than one-third of the normal scheduled daily or weekly hours of work established for persons doing similar work.

Student Employment Programs Exclusion Approval Order

This Order excludes the hiring of students for Student Employment Programs identified by Treasury Board from the application of the PSEA with the exception of subsections [16](#) (4) and [17](#) (4). Subsections 16(4) and 17(4) give preference for selection to persons who are Canadian citizens when there are sufficient qualified applicants who are Canadian citizens.

Student Employment Programs Regulations

The regulations pertaining to the order govern the way in which positions are staffed for these programs, namely, that Deputy heads have the authority to make appointments of persons who possess the competencies required for the work to be performed. Appointments are subject to terms and conditions established by the Public Service Commission.

Pre-qualified Pool Exclusion Approval Order and Pre-qualified Pool Recourse Regulations

The Order excludes from the operation of [section 21](#) of the PSEA of certain persons who would otherwise have a right to appeal appointments made from a pre-qualified pool. The Regulations provide for an individual interest-based recourse process, which will provide individuals with meaningful information, close to the point where the decision is made, for resolution by management. The Regulations also

provide for an independent third-party review of departmental decisions.

Certain Non-Canadian Citizens Exclusion Approval Order (oath of allegiance)

This Order excludes from the operation of [section 23](#) of the PSEA, non-Canadian citizens whose citizenship would be forfeited were they to take the oath of allegiance to the Queen on being appointed to the Public Service.

Public Service Official Languages Exclusion Approval Order and the Public Service Official Languages Appointment Regulations

The Order and Regulations provide for the exclusion from the operation of [section 10](#) of the PSEA of unilingual persons who are willing and eligible to undertake language training, in order that they may be appointed to bilingual positions which do not immediately require an incumbent with a knowledge of both official languages. The Order also approves the exclusion, in certain cases, from the operation of [section 20](#) of the PSEA, of unilingual persons who have acquired rights with respect to their bilingual positions from the obligation of meeting the necessary language requirements. Provisions specific to CAP participants and members of the Executive group are also described.

National Defence - Communications Security Establishment (P.C. 1975-709)

This Order excludes from the operation of the PSEA (other than [section 37](#)) all positions and employees of the Communications Security Establishment.

Non-Public Funds Staff Exclusion Approval Order

This Order provides an exclusion from the PSEA of the Staff of the Non-Public Funds, Canadian Forces. These persons, although under the *Public Service Staff Relations Act* in order to provide them with collective bargaining rights, are not employees.

Office of the Governor General's Secretary (P.C. 1984-519)

The Order gives to the Governor General the same discretion as is given to Cabinet Ministers, namely, to appoint a certain number of staff members without reference to the PSEA. Persons appointed under the Order are automatically terminated thirty days after a Governor General ceases to hold office.

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http://www.psc-cfp.gc.ca/staf_dot/pol-guid/chap_01/index_e.htm