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Audit of Acting EX Appointments

A Report by the Public Service
Commission of Canada

October 2006

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All of the audit work in this report was conducted in accordance with the legislative mandate and audit policies of the Public Service Commission of Canada.

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Summary

1. Executives are the leaders of the federal public service and it is important that appointments to and within this group, including acting appointments, be above reproach and respect the merit principle and staffing values. It is the responsibility of deputy heads and sub-delegated managers to make staffing decisions which ensure that executives have the attributes and leadership competencies required to lead a competent, non-partisan and representative workforce.
2. The importance of selection decisions surrounding acting executive (EX) appointments was reinforced by a recent Public Service Commission (PSC) analysis of acting appointments and subsequent promotions in the federal public service. Two findings were particularly pertinent. The analysis indicated that for members of employment equity designated groups, other than women, the chance of obtaining an acting appointment is significantly lower than for public servants in general. As well, the analysis estimated that 38 percent of acting EX appointments result in promotion within the first four months following the acting period.
3. The objectives of our audit were to determine the extent to which acting EX appointment decisions respected the merit principle of the previous *Public Service Employment Act* (PSEA), related legislation, regulations and policies, and staffing values, as outlined in departmental Staffing Delegation and Accountability Agreements signed by deputy heads with the PSC; and to assess the effectiveness of departmental staffing management frameworks governing acting appointments for periods greater than four months to the EX Group, and greater than six months within the EX Group. The audit covered acting EX appointments in seven selected departments during the fiscal years 2002-2003 and 2003-2004.
4. We examined 89 staffing files related to acting EX appointments made with or without competition. This represented about 40 percent of the total number of acting EX appointments made in the seven departments included in the scope of the audit. We found that hiring managers regularly used without competition processes in order to expedite acting EX appointments. When hiring managers considered only one candidate for an acting appointment, we expected them to provide an acceptable rationale or justification supporting their decision. Of the 80 without competition files we reviewed, 73 files (or 91 percent) did not contain a rationale or justification for the appointment of the specific individual. As well, none of the 80 without competition files contained sufficient assessment information to indicate that the candidate had been fully assessed against the statement of qualifications.
5. Nine of the staffing files we examined concerned acting EX appointments involving a competition process. We found that two thirds of these files did not contain sufficient evidence to demonstrate compliance with applicable legislation and policy.

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6. We expected to find effective staffing management frameworks in place to manage the processes for acting EX appointments. We found deficiencies in planning and an absence of clearly defined roles and responsibilities. We also found a lack of monitoring and reporting mechanisms, despite the growing number of acting EX appointments.
 7. Under the new PSEA, which came into force in December 2005, deputy heads who are delegated staffing authorities are accountable for all appointments, including acting EX appointments. As well, deputy heads are expected to establish human resources plans and to monitor and report on their organization's staffing system and practices. Roles and responsibilities are to be clearly defined in written sub-delegation instruments. Appointment decisions are to be sufficiently documented to provide evidence of compliance with the merit principle, staffing values, and legislative, regulatory and policy requirements. In doing so, deputy heads would fulfill their obligations under their delegation agreements and uphold the integrity of the appointment system.

Introduction

8. In March 2004 there were approximately 3 800 executives out of a total workforce of 170 000 in the federal public service. Under the previous *Public Service Employment Act* (PSEA), deputy heads were responsible for ensuring that executive (EX) acting appointments were based on merit and non-partisanship and were made in a fair, equitable and transparent manner. This responsibility applied to appointments made to fill positions on an acting basis for more than four months where the actor’s permanent position was below the EX level (i.e. the feeder group) or more than six months where the actor’s permanent position was within the EX level.
9. An acting appointment means the temporary performance of the duties of another position by an employee, if the performance of those duties would have constituted a promotion had they been appointed to the position.
10. During fiscal year 2003-2004, acting appointments greater than four months represented 18 percent of appointments for all occupational groups in the federal public service. Acting appointments for the same duration in the EX Group represented 30 percent of all types of EX appointments in 2002-2003 and 33 percent of such appointments in 2003-2004 (**Exhibit 1**).

Exhibit 1: Appointments to and within the EX Group, by type

Fiscal year	Appointments to the public service		Promotions		Lateral and downward movement		Acting, to and within the EX Group		TOTAL	
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
2002-2003	84	5%	709	40%	442	25%	530	30%	1 765	100%
2003-2004	76	4%	599	35%	482	28%	572	33%	1 729	100%

Source: PSC Annual Reports, Public Service Commission of Canada.

11. During fiscal year 2005-2006 acting appointments greater than four months in the EX Group increased to 37 percent.
12. In deciding to carry out an audit of acting appointments for periods greater than four months to the EX Group, and six months within the EX Group, in a selection of departments subject to the previous PSEA, the Public Service Commission (PSC) was concerned that these appointments did not meet the conditions of delegated authority.

13. The PSC was also concerned about the results of a 2001 study on barriers and prospects in the EX Group, conducted by the Association of Professional Executives of the Public Service of Canada (APEX). According to the study, 42 percent of respondents felt that employees holding an acting position for an extended time gained a definite advantage in the competitive process.
14. APEX representatives noted that someone holding a long-term acting EX appointment might feel the position was rightfully his or hers, and might have difficulty accepting the subsequent appointment of someone else to the position on a permanent basis.

The delegation model

15. Under the PSEA, the PSC has the authority to make appointments to or from within the public service. The PSEA enables the PSC to delegate this authority to deputy heads. The PSC delegated to deputy heads the authority to make acting appointments to and within the EX Group under the previous PSEA and under the new PSEA, which came into force in December 2005.
16. Under the previous PSEA, the PSC delegated its staffing authorities to deputy heads through a Staffing Delegation and Accountability Agreement (SDAA). In signing this agreement, deputy heads accepted the authorities, obligations and responsibilities associated with it and undertook to respect the values, expectations and legal obligations associated with accountability for staffing.
17. Under the new PSEA, the SDAA was replaced by the Appointment Delegation and Accountability Instrument (ADAI). This instrument identifies the appointment and appointment-related authorities being delegated, the authorities that may be sub-delegated, the conditions of the delegation and how deputy heads will be held accountable. Similar to the SDAA, in signing the ADAI, deputy heads agree to respect the requirements of the PSEA, *Public Service Employment Regulations* and the PSC appointment policies.

Focus of the audit

18. The objectives of the audit were to:
 - determine the extent to which acting EX appointment decisions in selected departments/ agencies respected the merit principle of the previous PSEA, related legislation, regulations and policies, and staffing values, as they are outlined in departmental Staffing Delegation and Accountability Agreements (SDAAs) signed by deputy heads with the PSC; and
 - assess the effectiveness of departmental staffing management frameworks governing acting appointments for periods greater than four months to the EX Group, and six months within the EX Group.
19. The audit covered acting EX appointments in fiscal years 2002-2003 and 2003-2004. It excluded acting appointments of four months or less to the EX Group and six months or less within the EX Group.
20. Under the previous *Public Service Employment Regulations* (PSER), acting appointments for four months or less to the EX Group were excluded from the provisions of merit and appeal rights. Acting appointments for six months or less within the EX Group were also excluded from the provision of merit. Moreover, any appointments within the EX Group, including actings, were excluded from the provision of appeal rights.
21. Seven federal organizations were selected for the audit:
 - Canadian Radio-television and Telecommunications Commission (CRTC);
 - Department of Finance Canada;
 - Department of National Defence;
 - Indian and Northern Affairs Canada;
 - Natural Resources Canada;
 - Transport Canada; and
 - Treasury Board of Canada Secretariat (TBS).

The audit focused on overall issues and not necessarily on the selected organizations. As a result, each observation does not necessarily apply to every organization.

22. The selection took into account the size of each organization's workforce, its structure (whether centralized or decentralized), its demographics and its mandate. The EX population in the selected departments represented about 22 percent of the EX population in the federal public service as at March 31, 2004.

23. We also looked at the Office of the Commissioner of Official Languages and Statistics Canada. Although neither had acting EX appointments during the audit period, we included these two organizations to find out whether they were managing their executive cadre differently than the other seven departments.
24. We examined 89 acting EX appointments for periods greater than four months to the EX Group, and six months within the EX Group made with or without competition (**Exhibit 2**). This represented about 40 percent of the total number of acting EX appointments for periods greater than four months to the EX Group, and six months within the EX Group within the selected departments during the period 2002-2004.

Exhibit 2: Acting EX appointments by organization and type of selection process, April 1, 2002, to March 31, 2004

Organization	Type of selection process				Total appointments	
	With competition		Without competition			
CRTC	1	14%	6	86%	7	100%
Finance Canada	0	0%	14	100%	14	100%
National Defence	0	0%	7	100%	7	100%
Indian and Northern Affairs Canada	2	14%	12	86%	14	100%
Natural Resources Canada	6	35%	11	65%	17	100%
Transport Canada	0	0%	16	100%	16	100%
TBS	0	0%	14	100%	14	100%
Total	9	10%	80	90%	89	100%

Source: Audit Branch, Public Service Commission of Canada.

25. For more details, see **About the Audit** at the end of this report.

Observations

Documentary evidence did not provide assurance of compliance with legislative and policy requirements

26. Under the previous PSEA, hiring managers had the choice of staffing positions through a competition process or a without competition process.
27. The legislative and policy requirements governing without competition processes included:
 - providing a written rationale or justification if the request was for the appointment of a specific individual to or within the EX Group;
 - applying the merit principle by choosing the best qualified candidate;
 - preparing a formal assessment; and
 - issuing appeal rights for appointments from the feeder groups to the EX Group.
28. Of the 89 staffing files we examined, 80 (or 90 percent) concerned acting appointments made without competition. While the selection of a without competition process for acting appointments is a legitimate staffing option, we expected hiring managers to respect the legislative and policy requirements when using without competition processes.

29. In addition, the PSEA staffing values and principles had to be respected (**Exhibit 3**).

Exhibit 3: Staffing values and principles under the previous PSEA

Results values

Competence: Attributes which ensure that public servants are qualified to fulfil their public duty.

Non-partisanship: Employees are appointed and promoted objectively, free from political or bureaucratic patronage.

Representativeness: The composition of the public service reflects that of the labour market.

Process values

Fairness: Fair practices are those where decisions are made objectively, free from political or bureaucratic patronage, and that reflect the just treatment of employees and applicants.

Equity: Equitable practices are those which provide equal access to employment opportunities and that are barrier-free and inclusive.

Transparency: Transparent practices are those where there is open communication with employees and applicants about resourcing approaches and decisions.

Management and service delivery principles

Flexibility: Resourcing approaches are adapted to the specific needs of the organization.

Affordability/efficiency: Resourcing approaches ensure good value for money and are simple, timely and effective in their delivery.

Source: Staffing Delegation and Accountability Agreement, Public Service Commission of Canada.

Rationale for the selection of the actor was rarely documented

30. When hiring managers considered only one candidate for an acting appointment, they were required to provide an acceptable rationale or justification supporting their decision.
31. Of the 80 without competition files we reviewed, 73 files (or 91 percent) did not contain a rationale or justification for the appointment of the specific individual. Of the seven rationales or justifications that were on file, only three—one from National Defence and two from Transport Canada—were adequate.

Narrow areas of selection compromised the staffing values of fairness, equity of access and transparency

32. Acting EX appointments are meant to give hiring managers the flexibility to deal with short-term operational requirements expeditiously. However, for acting appointments for periods greater than four months to the EX Group and six months within the EX Group, we expected hiring managers to take into consideration a sufficient number of potential candidates within the area of selection.
33. In almost all of the 80 without competition files we reviewed, we found no evidence that hiring managers considered any potential candidates other than the selected person.
34. Hiring managers we interviewed stated that their primary concern was to minimize the impact on operational effectiveness by filling an acting opportunity as quickly as possible.
35. Hiring managers based their decisions on their knowledge of individuals working in their branch or sector. They derived their knowledge mainly from direct and indirect reporting relationships, information provided by other senior managers, and the mid-year and annual performance management review of employees eligible for performance pay or pay at risk. Some of the hiring managers we interviewed stated that they were reasonably certain there had been no one else who had the competencies required for the job, was available, and was willing to assume higher-level duties.
36. At Indian and Northern Affairs Canada and at Natural Resources Canada, hiring managers whom we interviewed were fairly confident about their awareness and knowledge of the experience and competencies of employees in the EX Group, but they were less confident in the case of employees in feeder groups. They noted problems in identifying qualified feeder group candidates. Many workers in highly specialized areas were not interested in moving to senior management ranks, even on a temporary basis. Furthermore, for employees below the EX level who earned significant overtime pay, there was no financial incentive to accept an acting EX appointment.
37. We are concerned that narrow areas of selection for acting EX appointments, particularly appointments from the feeder groups, may have compromised the staffing values of fairness, equity of access and transparency.

Almost half of acting EX appointments made using without competition processes were to vacant positions

38. The without competition staffing files we reviewed indicated various circumstances for the use of acting EX appointments (**Exhibit 4**).

Exhibit 4: Circumstances for Without Competition Acting EX Appointments

Organization	Vacancy			Incumbent on language training	Incumbent on assignment elsewhere	Other	Total files reviewed
	Acting over 12 months (a)	Acting 12 mos. & under (b)	Total vacant positions (a + b)				
CRTC	3	0	3	1	0	2	6
Finance Canada	0	7	7	6	0	1	14
National Defence	2	2	4	0	3	0	7
Indian and Northern Affairs Canada	1	2	3	2	5	2	12
Natural Resources Canada	2	1	3	1	3	4	11
Transport Canada	1	4	5	7	1	3	16
TBS	6	2	8	2	3	1	14
Total	15	18	33 (41%)	19 (24%)	15 (19%)	13 (16%)	80 (100%)

Source: Audit Branch, Public Service Commission of Canada.

39. At the CRTC, Natural Resources Canada, and TBS, acting EX appointments were also used to temporarily fill positions in newly formed work areas. National Defence addressed staffing emergencies and employee development by filling certain positions with a member of the military; this practice may explain the relatively small number (15) of acting EX appointments of civilian employees in this large department during our audit period.
40. We expected without competition processes under the previous PSEA to respect the staffing values of fairness, equity of access and transparency. Hiring managers and human resources advisors should have considered at the outset the impact on these values when using a without competition process for acting EX appointments. If the actor is subsequently appointed on a permanent basis, the result may be a perception of favouritism or undue advantage.

41. In our review of the without competition files, we noted that 33 out of 80 acting EX appointments (or 41 percent) were to vacant positions – almost half of them for longer than 12 months. As defined in the PSER, acting appointments are intended to be temporary.

PSC analysis of acting appointments and subsequent promotions

42. The PSC recently conducted an analysis of acting appointments and subsequent promotions in the federal public service using 2002-2003 and 2003-2004 data of all departments and agencies subject to the PSEA. The government-wide analysis concluded that in almost 70 percent of cases, promotion of the actor following an acting appointment takes place almost immediately (less than a month) after the end of the acting appointment. This interval between the two staffing actions is short enough to indicate that the promotion decision regarding the actor was in progress (if not actually made) before the end of the acting appointment.
43. The analysis also showed that the rate of promotion within the first four months following the end of an acting appointment to and within the EX Group is estimated to be 38 percent. The analysis also concluded that, while the probability of subsequent promotion is high at the start of the acting appointment, it increases only marginally thereafter.
44. In our opinion, this analysis underlines how important it is for hiring managers to make acting EX appointments in a fair, equitable and transparent manner.

None of the without competition files contained sufficient evidence of assessment

45. In a without competition process under the previous PSEA, the hiring manager was required to assess the qualifications of the candidate being appointed against the statement of qualifications.
46. The statement of qualifications was required to include the five leadership competency areas (**Exhibit 5**). These leadership competencies are unique to the EX Group and must be met for all appointments (including actings) from the feeder groups to the EX Group in the federal public service. We expected the staffing files to contain evidence of an assessment of the candidate against the leadership competencies included in the statement of qualifications.

Exhibit 5: Leadership competency areas

Intellectual competencies: Cognitive capacity; creativity

Future building competency: Visioning

Management competencies: Action management; organizational awareness; teamwork; partnering

Relationship competencies: Interpersonal relations; communication

Personal competencies: Stamina / stress resistance; ethics and values; personality; behavioural flexibility; self-confidence

Source: Staffing Manual, Ch. 14, Public Service Commission of Canada.

47. Of the 80 without competition acting EX appointment files we reviewed, 57 (or 71 percent) were from the feeder groups to the EX Group. More than half of these files did not contain statements of qualifications which included the leadership competencies. The remaining files that did include the leadership competencies did not contain adequate assessment information.
48. Thus, none of the 57 acting appointments made without competition from the feeder groups to the EX Group contained adequate assessment information of the leadership competencies required for all executive appointments in the federal public service.
49. Furthermore, all 80 without competition files (i.e. acting appointments to and within the EX Group) should have contained an assessment of the individual against the other components of a statement of qualifications that would normally include experience, knowledge and other requirements related to the position. We found that none of the files contained sufficient information to demonstrate that the candidate had been fully assessed against the statement of qualifications.

Two thirds of the files for competition processes lacked the required assessment information

50. When hiring managers used a competition process, PSC policies required them to assess candidates in a fair, equitable and transparent manner using appropriate assessment methods. We expected hiring managers to respect the legislative and policy requirements for competition processes. Of the files we selected, nine concerned acting EX appointments involving a competition process.
51. Three files contained sufficient and appropriate information to conclude that hiring managers had respected the merit principle and staffing values, as required by applicable legislation and policy.
52. In the remaining six files, we found two where candidates were assessed but it was unclear how their applications were screened into the competition; one where the key leadership competency areas were not identified in the statement of qualifications; and three where the candidates were not assessed against the competency areas.
53. Accordingly, in two thirds of the competition processes, we found insufficient evidence in the staffing files that hiring managers complied with applicable legislation and policy.

Right to appeal was not communicated in 44 percent of the without competition files

54. PSC policies required the posting of a notice of right to appeal for without competition processes for appointments made to the EX Group. This gave potential candidates within the area of selection an opportunity to challenge the appointment decision before an independent appeal board. In the case of without competition processes, postings ensured that appeal rights could be exercised by individuals who might have applied had there been a competition. The appeal process was a way of confirming whether an appointment decision was based on merit and made in a fair, equitable and transparent manner without favouritism.
55. For the 57 acting appointments for periods greater than four months to the EX Group, in the without competition files we examined, we found no evidence in 25 cases (or 44 percent) that the notice of right to appeal had been posted. This serious contravention of the previous PSEA meant that appeal rights were denied to other potential candidates within the area of selection.

Other required documentation was missing

56. Staffing files are official records of the selection and appointment decisions made by persons exercising staffing authority on behalf of the deputy head. All staffing files are required to contain documentation specified in PSC policy, supporting the selection and appointment decisions.
57. **Security clearance.** Security clearance is a condition of employment that must be met before the delegated authority gives final approval of the appointment. This information is required to be placed on staffing files. We found that all or almost all staffing files at CRTC, National Defence, Natural Resources Canada and Transport Canada contained the required security clearance information. However, the information was missing in 85 percent or more of the staffing files at Finance Canada, Indian and Northern Affairs Canada and TBS. Departmental officials told us that security clearances had been done but not filed.
58. **Language requirements.** Unless exempted by the *Public Service Official Languages Exclusion Approval Order*, the selected candidate must meet the language requirements of the position at the time of appointment. Our selection of 89 files contained 60 appointments that were subject to language requirements. For these 60 appointments, we found that all or almost all staffing files at CRTC, National Defence and TBS contained the required language information. However, the information was missing in 60 percent of the staffing files at Indian and Northern Affairs Canada and in about 25 percent of the staffing files at Finance Canada, Natural Resources Canada and Transport Canada.

59. **Letter of offer.** The letter of offer is the official appointment document. It contains standardized requirements referring to various conditions that apply to the appointment. In 37 of the 89 files (42 percent), a letter of offer was missing, not signed, or not signed by the appropriate delegated authority. There was significant variability in the results in this area – the majority of the files at Natural Resources Canada, Transport Canada and TBS complied with the requirements.
60. Where the security clearance and language requirements have not been met in advance, the acting EX appointments should not be considered as approved. Moreover, if the letter of offer is missing, not signed, or not properly signed; no agreement officially exists between the two parties.
61. We discussed with the departmental human resources advisors the inadequate documentary evidence, as well as the lack of assurance of compliance with legislative and policy requirements in the majority of acting EX appointments. The advisors acknowledged the incompleteness and inconsistency of the file documentation in support of acting EX appointments, but did not provide a reasonable explanation for the deficiencies.

Staffing management frameworks were ineffective

62. A staffing management framework comprises the organization's infrastructure and practices that ensure that staffing is carried out effectively and in conformity with the PSC's policy and delegation requirements, with staffing values and with other governing authorities. We expected to find staffing management frameworks in place that provided evidence of human resources planning, recognition of employment equity objectives, defined roles and responsibilities, and monitoring of appointments.

Human resources plans for acting EX appointments were lacking in most organizations

63. Human resources planning is a process that identifies the current and future human resources requirements for an organization to achieve its goals. Human resources planning should serve as a link between human resources management and the business plan of an organization. This can help identify optimal strategies and activities for such important human resources management components as recruitment, retention, learning, development, promotion, succession, employment equity and official languages. We expected to find formalized human resources plans for the EX Group, including acting EX appointments, linked to each organization's business plan.

64. Statistics Canada was one of two organizations selected without any acting EX appointments during the audit period. We noted that Statistics Canada applied and has continued to apply a holistic approach, with strategic, integrated planning around business and human resources needs, combined with the corporate management of the EX feeder group (**Exhibit 6**).

Exhibit 6: Human resources planning at Statistics Canada

Statistics Canada has carried out strategic business and human resources planning for many years. The approach involves extensive analysis of current, short-term and long-term business requirements. A human resources forecasting tool allows the organization to analyze its workforce and forecast its personnel needs in conjunction with current and future business needs. Human resources planning for the EX Group is required to take into account employment equity and official languages considerations. With this system in place, senior managers told us that they knew what the staffing needs would be—from the senior management cadre down to entry-level positions—for the current year as well as the longer term.

Statistics Canada uses its EX Selection and Development Program to staff EX 01 positions. This Program systematically assesses and develops participants' knowledge and skills. Program participants are chosen through a rigorous competitive process, advertised nationally. On entering the program, participants join a pool and are developed over an 18 – 36 month period according to their individual needs.

Human resources management at Statistics Canada is conducted through the leadership of senior executives who serve on a number of committees, each of which is responsible for a particular human resources management issue (e.g. recruitment, learning, exceptional staffing cases). The committees comprise line managers, with support and guidance provided by the human resources function.

All EX staffing decisions (e.g. promotions, rotations) go through the Policy Committee, Statistics Canada's Senior Executive Committee, which also discusses strengths and potential within the EX feeder group. Statistics Canada does not staff in direct response to departures; instead the EX pool is filled on the basis of projected needs. This means that there is a ready pool of EX candidates from which to draw as needed, depending on the experience and skills required. In this way the EX and EX feeder groups are well known to senior management, are corporately managed, and all aspects of human resources management of the executive cadre are integrated.

Source: Statistics Canada.

65. The Office of the Commissioner of Official Languages was the other organization without any acting EX appointments during the audit period. The explanation we were given was that this is a small organization with a relatively stable workforce, and employees prefer to stay for the duration of the Commissioner's mandate.
66. None of the other organizations in our audit, all of whom made acting appointments, provided evidence of formal human resources plans for the EX Group, including a component for acting EX appointments for periods greater than four months to the EX Group, and six months within the EX Group.
67. The senior managers we interviewed stated that they or other senior committee members held discussions about staffing needs and succession planning for the EX Group mainly during the annual and/or semi-annual planning forums. Finance Canada, Indian and Northern Affairs Canada, Transport Canada and TBS provided evidence that such discussions were documented.

Embracing Change considerations

68. In June 2000, Treasury Board (the Employer of the federal public service) endorsed *Embracing Change*, the action plan developed by the Task Force on the Participation of Visible Minorities in the Federal Public Service. The plan recommended that, by 2005, one appointment in five for entry into the EX Group be filled by a qualified visible minority candidate. Deputy heads are accountable for meeting *Embracing Change* recommendations.
69. Since this was a government-wide initiative endorsed by the Employer, as a best practice, we expected deputy heads to take into consideration the *Embracing Change* recommendations when making acting EX appointments.
70. In interviews with managers of Natural Resources Canada, we learned that in fall 2002 the Department launched the Management Development Assignment Program; the aim was to develop an internal pool of feeder group managers with exposure to EX-level assignments, who would be better prepared for future EX Group opportunities. Half of the assignments were to be designated for visible minorities. However there was only one intake to the program before it was suspended. Natural Resources Canada is currently re-evaluating the program.
71. As referred to earlier (paragraph 42), the PSC recently conducted an analysis of acting appointments and subsequent promotions in the federal public service using 2002-2003 and 2003-2004 data of all departments and agencies subject to the PSEA. The results of this analysis revealed that for members of employment equity designated groups, other than women, the chance of obtaining an acting appointment is significantly lower than for public servants in general. These observations reinforce the importance of the selection phase as a determining factor in the outcome of acting appointments. However, once such persons are selected for an acting appointment, they have no distinct advantage or disadvantage in obtaining a subsequent promotion.
72. In October 2002, the PSC released a study on *Executive Succession Reconsidered: Planning for Public Service Renewal*. The study revealed that approximately four out of five visible minority respondents showed an interest in an executive career. In fact, 52 percent of visible minority respondents indicated they were very interested, compared to 33 percent of other respondents. The study noted that this greater interest was encouraging for increasing representativeness in the senior ranks.
73. From our interviews with senior managers and our review of file documentation, we did not find that *Embracing Change* was a consideration for acting appointments to the EX Group during the period of the audit.
74. In our opinion, human resources planning offers the potential to approach acting EX appointments more strategically, including consideration of the *Embracing Change* recommendations.

Roles and responsibilities were not clearly defined for acting EX appointments

75. The Staffing Delegation and Accountability Agreements (SDAA) outlined deputy heads' roles and responsibilities in achieving compliance with legislative requirements and PSC policy. While the SDAAs did not specifically identify how deputy heads should fulfill their accountabilities, we expected them to have clearly outlined in writing the roles and responsibilities of those granted the sub-delegated authority. We also expected deputy heads to have put in place procedures and practices that would facilitate decision-making on staffing issues, such as acting EX appointments.
76. We did not find any written documentation outlining the roles and responsibilities of those granted the sub-delegated authority in the organizations we examined.
77. In some organizations we found mechanisms such as a senior management human resources committee, which provided a forum for discussing acting EX appointments (**Exhibit 7**).

Exhibit 7: Roles played by human resources committees

At the Treasury Board Secretariat, a Senior Human Resources Council was mandated to develop a policy for human resources issues related to the management of the TBS Executive Group.

At Indian and Northern Affairs Canada, the deputy head chaired the Executive Resourcing Committee. Senior managers told us that they were responsible for presenting strategies to fill opportunities such as acting EX appointments.

Transport Canada has a highly structured performance and career review process for EX-level staff, as well as others who receive performance pay. Reviews are held annually at two levels: within each branch and region, and ultimately at the Deputy Minister's Career Review Board. The review process is not intended to deal primarily with resourcing strategies but it does address these, including acting situations.

Source: Audit Branch, Public Service Commission of Canada.

78. The roles and responsibilities of human resources advisors varied across the seven selected departments. The majority told us they were responsible for processing the acting EX appointment transactions, and/or providing some guidance on policy and procedures. However, at Finance Canada and TBS, a manager in human resources was granted sub-delegated authority to approve acting EX appointments for periods greater than four months to the EX Group, and six months within the EX Group, in order to expedite the processing of the appointments.
79. Human resources advisors have an obligation to inform the deputy head of potential deficiencies and/or issues that might place their delegated authority at risk. They are also accountable for providing staffing advice to hiring managers, including an effective challenge function.

80. Human resources advisors told us that they challenged the staffing actions of hiring managers and proposed other solutions when they were concerned about risk to the merit principle and staffing values. However, their interventions were not documented.
81. In our opinion, clearly defined roles and responsibilities would reinforce the accountabilities of all parties involved in making acting EX appointment decisions, and ensure adherence to the legislative and policy requirements.

Acting EX appointments were not monitored

82. The purpose of managing information and reporting is to provide deputy heads, hiring managers and human resources advisors with the information they need to manage daily operations, support decision making and demonstrate accountability.
83. Monitoring involves the review of activities and operations against plans, procedures or performance standards to determine whether they are functioning as intended and producing the desired results. Regular review of staffing patterns may identify potential weaknesses in approach. The organization is expected to take any required corrective action and improve existing policies and processes. For effective monitoring, the organization must have reliable and accessible staffing information.
84. For the period 2002-2003 and 2003-2004, the Staffing Delegation and Accountability Agreements required deputy heads to monitor staffing activity, although they made no specific mention of monitoring acting EX appointments.
85. However, in December 1999 the President of the PSC sent a letter to all deputy heads of departments/agencies under the legislative authority of the PSEA, formally expressing concern about long-term acting EX appointments. The PSC was concerned about a possible unfair advantage to any employee holding an acting position for an extended period.
86. In December 2002, the PSC sent a follow-up letter to 16 departments and agencies (including five of the seven in our audit) that continued to have a high proportion of acting EX appointments for periods exceeding 12 months. The PSC asked for qualitative data about employees who had held acting positions for nine months or longer as of October 1, 2002. It also asked for a copy of each organization's acting EX policy. The PSC received the requested information but after this initial request did not continue to monitor the situation.
87. In the seven organizations in our audit, we found no documentary evidence that acting EX appointments for periods greater than four months to the EX Group, and six months within the EX Group were monitored regularly. Some hiring managers we interviewed were informed about long-term acting EX appointments but they did not take any action to resolve the situation, such as permanently staffing the positions.

88. During the period of the audit, deputy heads were also required to adhere to the Public Service Human Resources Management Agency of Canada Policy on Acting Pay for Executives.¹ The Policy sought to encourage departments and agencies to monitor and, where possible, limit the length of longer-term acting EX appointments. The Policy required deputy heads to seek pay approval for acting EX appointments within the EX Group extending beyond 12 months. This requirement was reiterated in Chapter 14 of the *PSC Staffing Manual*. Of the files we examined, 13 involved acting appointments within the EX Group for longer than 12 months. Nine of these appointments (from CRTC, Transport Canada and TBS) complied with this requirement while, the remaining four appointments (from Indian and Northern Affairs Canada, Natural Resources Canada and TBS) did not contain evidence of approval for the continuance of the acting pay.
89. In our opinion, monitoring systems and practices would have identified the weaknesses we noted in this audit, including those regarding respect of the merit principle and staffing values. Such monitoring would have allowed departments to identify and implement corrective measures in a timely fashion.

Managing acting EX appointments under the new PSEA

90. In December 2005, the new PSEA came into force, along with associated regulations and the PSC Appointment Framework. There are three main components to this Framework: appointment policies; delegation; and accountability. In accepting the conditions of delegation specified in the Appointment Delegation and Accountability Instrument (ADAI) that they signed with the PSC, deputy heads agreed to adhere to a number of conditions established by statute to uphold the integrity of appointments, including the protection of merit and non-partisanship, within the federal public service.

Recommendation

Deputy heads must ensure that acting EX appointments for periods of four months or more:

- respect merit, non-partisanship, and the appointment values;
- adhere to the requirements of the new PSEA, the *Public Service Employment Regulations*, and any other statutory instruments as they pertain to the integrity of appointments and the appointment values; and
- adhere to the PSC's appointment policies.

91. The regulations under the new PSEA provide that the time period for excluding acting appointments from merit and complaint to the Public Service Staffing Tribunal is less than four months for all positions. The following paragraphs make reference to the requirement of the new PSC Appointment Framework that address most of the significant deficiencies we noted in this audit.

¹ Up to December 2003, this policy was under the authority of Treasury Board Secretariat.

92. **Human resources planning.** The PSC Appointment Policy was developed with the expectation that deputy heads were to undertake human resources planning, including developing staffing strategies, within their organization, in accordance with Employer policy. Human resources planning linked to organizational and business planning is key to a manager's ability to make appointment decisions quickly and in accordance with the appointment values.
93. **Defining roles and responsibilities.** The ADAI signed by deputy heads requires that roles and responsibilities be clearly defined through a sub-delegation structure codified in writing and communicated throughout the organization. The Instrument also stipulates that those to whom sub-delegation is granted must have access to necessary training and to a human resources specialist whose expertise in the Appointment Framework of the new PSEA has been validated by the PSC.
94. **Choosing an appointment process.** Under the new PSEA, the without competition process no longer exists. However, it is still possible to consider and appoint a single candidate for a position through a non-advertised appointment process.
95. The PSC Policy on Choice of Appointment Process requires deputy heads to: ensure that the choice of advertised or non-advertised processes is consistent with the organization's human resources plan and the appointment values; establish and communicate the criteria for the use of non-advertised processes; and ensure that a written rationale demonstrates how a non-advertised process meets the established criteria and the appointment values.
96. **Assessing merit.** The new PSEA introduced a new approach to merit. A merit-based appointment now means that the person appointed meets the essential qualifications for the work to be performed, including official language proficiency. In addition, the person appointed meets any asset qualifications, operational requirements or organizational needs that may be identified by the hiring manager and applied by the person(s) responsible for the assessment. More than one person does not have to be considered for an appointment to be merit-based.
97. The PSC Policy on Assessment requires deputy heads to ensure the assessment processes and methods effectively assess the essential qualifications and other merit criteria identified and are administered fairly. When assessing persons for appointment to and within the EX Group, the policy requires the use of a structured interview and reference check, and any other assessment tools considered necessary to support the appointment decision.
98. **Ensuring adequate documentation.** The PSC Policy on Selection and Appointment requires that deputy heads ensure appointments and the reasons for the appointment decision have been documented, and that offers of appointment are in writing and clearly set out all the conditions of appointment.

99. **Departmental monitoring of acting EX appointments.** The ADAI states that deputy heads are accountable for actively monitoring the application of the delegated authorities to ensure compliance with the new PSEA and any other statutory requirements and policies as they pertain to the integrity of appointments and the appointment values.
100. More specifically with respect to the monitoring of acting appointments, the PSC Policy on Choice of Appointment Process requires that deputy heads establish a monitoring and review mechanism for acting appointments over 12 months and appointments to the EX Group through non-advertised processes.

Other matters

101. **Notification.** At present, all appointments, with the exception of acting appointments, require that persons in the area of selection be notified in writing of the name of the person being considered for the appointment. In addition, a minimum five calendar day waiting period applies before the appointment is finalized. This provides persons in the area of selection who are eliminated from consideration for the appointment the opportunity to discuss this with the hiring manager, who may then reconsider and alter the decision before the appointment becomes final.
102. In the case of acting appointments, no waiting period applies. Once persons in the area of selection are informed in writing of the name of the person to be appointed, the acting appointment becomes final and takes effect immediately.
103. To further enhance transparency and communication throughout the appointment process, as a result of this audit the PSC has committed to reviewing the appropriateness of extending the application of the minimum five calendar day waiting period to acting appointments of four months or more.
104. **Accountability.** While providing more flexibility in the appointment process, the new PSEA also requires that those delegated and sub-delegated to make appointment decisions be accountable to the PSC for the proper use of their delegated authorities. The PSC assesses the staffing performance of department/agencies through a risk management perspective and recommends corrective action as needed. The PSC has established a Staffing Management Accountability Framework (SMAF) to hold deputy heads accountable for the way they exercise their delegated authorities.
105. As a result of this audit, the PSC has committed to including acting EX appointments of four months or more in its existing oversight activities and making any adjustments to the SMAF to address the acting EX appointments, as it considers appropriate.

Conclusion

106. We found in our review of staffing files that all acting EX appointments, for periods greater than four months to the EX Group and six months within the EX Group, made through without competition processes and two thirds of those made through competition processes did not contain sufficient evidence to demonstrate compliance with the previous *Public Service Employment Act (PSEA)*, the regulations, and the staffing values of fairness and equity of access. As well, in 86 out of 89 (or 97 percent) of the staffing files reviewed, the PSC policies and the staffing value of transparency were not respected. Furthermore, we concluded the departmental staffing management frameworks did not effectively support fulfillment of deputy heads' accountabilities with respect to such appointments.
107. Executives are the leaders of the federal public service. It is important that appointments to this group, including acting appointments of four months or more, be above reproach and respect the merit principle and appointment values. Under the new PSEA, deputy heads need to ensure that their acting appointment decisions to and within the EX Group are supported by an effective staffing management framework. In doing so, deputy heads would fulfill their obligations under their delegation agreements and uphold the integrity of the appointment system.

Overall response of the selected departments

We received responses from the deputy heads of the organizations selected for audit. They have accepted the audit findings contained in this report and have agreed to implement the audit recommendations within their respective organizations. In their responses, deputy heads indicated that their organizations planned to or had already taken action to improve staffing activities for acting EX appointments.

About the Audit

Objectives

The objectives of the audit were to:

- determine the extent to which acting EX appointment decisions respected the merit principle of the previous *Public Service Employment Act* (PSEA), related legislation, regulations and policies, and staffing values, as outlined in the departmental Staffing Delegation and Accountability Agreement (SDAA) signed with the PSC; and
- assess the effectiveness of departmental staffing management frameworks governing acting appointments for periods greater than four months to the EX Group, and six months within the EX Group.

The audit covered the fiscal years 2002-2003 and 2003-2004. It excluded acting appointments of four months or less to the EX Group and of six months or less within the EX Group. It also excluded organizations that are currently the subject of other PSC audits.

Under the previous Public Service Employment Regulations (PSER), acting appointments for four months or less to the EX Group were excluded from the provisions of merit and appeal rights. Acting appointments for six months or less within the EX Group were also excluded from the provision of merit. Moreover, any appointments within the EX Group, including actings, were excluded from the provision of appeal rights.

Scope and approach

We examined acting EX appointment staffing activities and related systems/processes during the period from April 1, 2002, to March 31, 2004.

Seven federal organizations were selected for the audit:

- Canadian Radio-television and Telecommunications Commission;
- Department of Finance Canada;
- Department of National Defence;
- Indian and Northern Affairs Canada;
- Natural Resources Canada;
- Transport Canada; and
- Treasury Board Secretariat.

The seven selected departments accounted for about 22 percent of the acting EX appointments, for periods greater than four months, made across all departments subject to the PSEA during the period audited. The selection took into account the size of each organization's workforce, its structure (whether centralized or decentralized), its demographics and its mandate.

We also looked at the Office of the Commissioner of Official Languages and Statistics Canada. Although neither had acting EX appointments during the audit period, we included these two organizations to find out whether they were managing their executive cadre differently than the other seven departments.

We reviewed and analyzed relevant documentation, including:

- organizational plans, guidelines and policies;
- a 2001 study on barriers and prospects in the EX Group, conducted by the Association of Professional Executives of the Public Service of Canada (APEX); and
- an internal PSC analysis on Acting Appointments and Subsequent Promotions in the Federal Public Service.

We conducted interviews with senior managers, hiring managers, human resources advisors, and representatives of the PSC's Executive Resourcing Directorate.

We examined a random selection of 89 acting EX appointments, representing about 40 percent of the total acting EX appointments for the seven selected organizations between April 1, 2002 and March 31, 2004. The sample included 80 appointments without competition and 9 appointments with competition.

Criteria

The audit criteria were structured to address the delegated authorities and accountabilities of deputy heads vis-à-vis the powers, functions, duties and responsibilities of the previous PSEA and associated regulations. The audit criteria also took into account the conditions of departmental Staffing Delegation and Accountability Agreements.

We expected:

- deputy heads to respect the legislative and policy requirements when using without competition processes;
- deputy heads to respect the legislative and policy requirements for competition processes;
- to find formalized human resources plans for the EX Group, including acting EX appointments, linked to each organization's business plan;
- deputy heads to take into consideration a sufficient number of potential candidates;
- deputy heads to take into consideration the *Embracing Change* recommendations when making acting EX appointment decisions;
- deputy heads to have clearly outlined in writing the roles and responsibilities of those granted sub-delegated authority, and to have put in place procedures and practices to facilitate decision-making on staffing issues, such as acting EX appointments; and
- deputy heads to monitor their acting EX appointments and to take corrective actions as required.

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