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AUDIT

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ADMINISTRATION SERVICE



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Audit of the Courts Administration Service

Audit conclusion

We found that the Courts Administration Service (CAS) had most elements of an appropriate framework, practices and systems in place to manage its appointment activities. CAS had established a sub-delegation instrument that was accessible to all employees. Related controls around the exercise of sub-delegated appointment authorities were established, although there is room for improvement in how these controls are implemented.

We found that the mandatory appointment policies were established and compliant and were accessible to all employees. We found that the organization had developed additional tools, such as staffing procedures and templates, to support and guide sub-delegated managers in conducting staffing activities. However, some parts of these tools were not aligned with the Public Service Commission's policy requirements. Roles and responsibilities were defined and communicated to managers and human resources professionals.

We found that CAS conducted monitoring through file reviews and by reviewing appointment data and other records. The results of these monitoring activities were communicated in annual reports to senior management, who approved recommendations and action plans. There is room for improvement in the organization's follow-up on the action plans.

In examining some of the organization's typical appointment processes, we found some issues related to the design and application of CAS' appointment framework. The organization has indicated that they are working to address these observations.



Audit of the Courts Administration Service

1. This audit covers the Courts Administration Service's (CAS) appointment activities for the period of April 2010 to December 2013. The first objective of the audit was to determine whether CAS had an appropriate framework, practices and systems in place to manage its appointment activities. The second objective was to determine if appointments and appointment processes in CAS complied with the *Public Service Employment Act* (PSEA), any applicable statutory instruments, the Public Service Commission's (PSC) Appointment Framework, including the Appointment Delegation and Accountability Instrument, and the organization's own appointment policies.
2. CAS was established in July 2003 by the *Courts Administration Service Act* (CASA). The role of CAS is to provide all necessary administrative services and support to four courts of law: the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court of Canada and the Tax Court of Canada. It facilitates coordination and cooperation among the four courts to meet their requirements and ensures public access to the courts and their records. Pursuant to section 2 of the CASA, CAS is mandated to enhance judicial independence by placing administrative services at arm's length from the Government of Canada and by affirming the roles of chief justices and judges in the management of the courts.
3. The Chief Administrator heads CAS and is responsible for managing human, financial and material resources. CAS had a staff of 612 employees as of March 31, 2013. The majority of employees (72%) were located in the National Capital Region. The organization carried out 473 appointments under the PSEA during the period covered by the audit. The majority of appointments were to law clerk positions.
4. During the period covered by the audit, CAS had an Integrated Human Resources Plan for the period 2011-2014 and a Recruitment and Staffing Approach 2010-2013. We were informed that CAS had not been able to proceed with planned staffing strategies due to budgetary constraints. Instead, it relied on its senior management to approve each appointment. Therefore, the PSC did not include, in the conduct of its audit, the verification of the staffing strategies to determine whether these described planned organizational staffing priorities and how and when they were achieved.
5. As part of our audit, we conducted interviews and analyzed relevant documentation. The audit effort focussed on a review of the organization's appointment framework, practices and systems, including an assessment of the sub-delegation process, appointment policies, the definition of roles and responsibilities, the availability of adequate human resources support and the use of monitoring. Also, we reviewed typical appointment processes with CAS officials in order to understand their practices.



Observations on the Appointment Framework

Sub-delegation of appointment authorities

6. The *Public Service Employment Act* (PSEA) gives the Public Service Commission (PSC) exclusive authority to make appointments to and within the public service. The PSC delegates many of its appointment and appointment-related authorities to deputy heads who, in turn, may sub-delegate the exercise of these authorities. The PSC expects deputy heads to have a sub-delegation instrument in place that is well managed and accessible across the organization.
7. The Chief Administrator had established a Policy Instrument of Delegation of Human Resources Management Authorities that described the terms and conditions of sub-delegation. This document was accessible to all employees.
8. In compliance with the PSC's Appointment Delegation and Accountability Instrument (ADAI), the Chief Administrator retained the authority for sub-delegating appointment and appointment-related authorities and revoking sub-delegation. However, we found that the sub-delegation instrument indicated that the Chief Administrator could investigate and revoke external appointments and exempt a person, on medical grounds, from having to meet language requirements in non-imperative appointments. These authorities are retained by the PSC as per the PSC's ADAI and are not sub-delegated to deputy heads. Courts Administration Service's (CAS) officials informed the PSC that this delegation authority was never exercised by the Chief Administrator and that the sub-delegation instrument was adjusted in April 2015 in order to address these observations.
9. In order to become sub-delegated, a manager had to occupy a sub-delegated position, complete the required training, receive a staffing sub-delegation letter signed by the Chief Administrator and sign it to confirm their acceptance of the sub-delegated authorities. We found that the organization was able to demonstrate that most of the sub-delegated managers who signed offers of appointment in the appointments we examined (7 of the 10) met the conditions of sub-delegation. Of the remaining managers, one was sub-delegated appointment authority before completing the required training, one was not sub-delegated when the offer of appointment was signed and, in the last case, the organization was unable to provide a copy of the letter of sub-delegation, as required by the Chief Administrator. **Refer to recommendation 1 at the end of this report.**

Appointment policies

10. The PSC expects deputy heads to establish mandatory appointment policies for area of selection, corrective action and revocation as well as criteria for the use of non-advertised processes. The PSC also expects the other appointment policies that organizations develop be compliant with the PSEA, any applicable statutory instruments and the PSC's Appointment Framework.

Editorial note: While the audit reviewed the above expectations, the PSC no longer requires a policy on corrective action and revocation or criteria for the use of non-advertised processes as of April 1, 2016, the effective date of the new ADAI and the PSC's Appointment Policy. However, the PSC requires deputy heads to establish direction on the use of advertised and non-advertised processes.

11. We found that mandatory appointment policies and criteria were in place and contained the provisions required by the PSC. These policies and criteria were accessible and communicated to all employees.
12. We also found that the organization developed additional tools, such as staffing procedures and templates, to support and guide sub-delegated managers in conducting staffing activities. However, some parts of these tools were not aligned with the PSC's policy requirements and would result in appointments not being compliant if applied by sub-delegated managers. For instance, the PSC required a written rationale for all non-advertised appointments while CAS' staffing tools indicated that some non-advertised appointments were exempted from this requirement (e.g., certain acting appointments of more than four months). **Refer to recommendation 2 at the end of this report.**

Capacity to deliver

13. The PSC expects deputy heads to ensure that those who have been assigned a role in appointment processes have been informed of their roles and responsibilities and have access to tools and the HR support to carry out this role.
14. We found that roles and responsibilities were defined and communicated through various organizational documents, such as the HR management framework, sub-delegation instrument, managers' sub-delegation letters and appointment policies.
15. We also found that sub-delegated managers had access to an HR advisor who had passed the PSC's Appointment Framework Knowledge Test. This test is designed to evaluate the knowledge of all parts of the PSC's Appointment Framework (policy, delegation and accountability) and the legislative framework.

Monitoring

16. Monitoring is an ongoing process that allows deputy heads to assess staffing management and performance related to appointments and appointment processes. Monitoring makes it possible to identify issues that should be corrected, to manage and minimize risk and to improve staffing performance. The PSC expects deputy heads to undertake the mandatory monitoring outlined in the PSC's Appointment Framework, including the ADAI, and adjust practices accordingly.
17. We found that CAS conducted monitoring through file reviews to ensure that the exercise of delegated and sub-delegated authorities and appointment decisions were compliant. The organization also monitored the PSC risk-based policy areas by reviewing appointment data and other records. Results were communicated in annual monitoring reports to senior management, who approved recommendations and action plans. However, action was not taken to address many of the recommendations. For example, checklists were to be developed for offers of appointment to ensure all provisions were included, but CAS officials confirmed that this had not been done. They informed the PSC that a staffing management framework, that will address the monitoring issues and recommendations, was subsequently adopted in March 2015.



Observations on appointments

18. The *Public Service Employment Act* (PSEA) requires that all appointments be made on the basis of merit. Merit is met when the Commission is satisfied that the person to be appointed meets the essential qualifications for the work to be performed, as established by the deputy head and, if applicable, any asset qualifications and organizational needs identified by the deputy head.
19. In addition, the PSEA and the *Public Service Employment Regulations* provide an entitlement for certain persons who meet specific conditions to be appointed in priority to others. The organization must take into consideration persons with priority entitlements prior to making appointments and must also obtain a priority clearance number from the Public Service Commission (PSC) before proceeding with an appointment process or an appointment.
20. We examined the organization's typical appointment processes with Courts Administration Service (CAS) officials. The goal was to understand CAS' appointment framework, practices and systems and determine whether, by applying the organization's controls at key decision points, the appointments would be compliant with the PSC's and CAS' requirements.
21. In examining these appointment processes, we found some issues resulting from the design of certain appointment processes, while others were transactional or administrative errors. For example, in some instances, qualifications were not fully assessed and the justification for area of selection was not provided, as required by CAS' policy. The organization has indicated they are working to address these observations.
22. The PSC is committed to work collaboratively with the Chief Administrator to clarify administrative requirements for appointments to law clerk positions.

Recommendations

1. The Chief Administrator of the Courts Administration Service should ensure that the organization is able to demonstrate that managers meet the conditions of sub-delegation prior to being sub-delegated.
2. The Chief Administrator of the Courts Administration Service should ensure alignment of the organization's staffing tools with the Public Service Commission's *Appointment Policy* requirements.



Overall response by the Courts Administration Service

Courts Administration Service (CAS) is in agreement with the recommendations of this report and welcomes the opportunity to further improve its existing staffing framework, practices and systems. The following recommended measures have already been implemented:

- 1. Training and processes related to the exercise of sub-delegated appointments have been strengthened.*
- 2. Staffing tools and procedures have been updated and where necessary adjustments have been made to better align with the Public Service Commission's (PSC) Appointment Policy requirements.*
- 3. The monitoring framework has been reviewed and the process to follow up on action plans has been improved.*

CAS is looking forward to working collaboratively with the PSC to establish an appropriate administrative framework for the appointment of law clerks that respects judicial independence.

Action taken by the Public Service Commission

Organizations that have been audited by the Public Service Commission (PSC) receive guidance and assistance from the PSC to develop an action plan to address the audit recommendations. Instead of providing an action plan, the Courts Administration Service provided a letter of response indicating that it has implemented measures to address the audit recommendations. The PSC expects the deputy head to monitor the implementation of measures taken and may request an update to determine whether further action is required.

For appointments to law clerk positions, the PSC is committed to working collaboratively with the deputy heads of the organizations that employ law clerks to clarify the administrative requirements around these appointments.



