



Guide on the selection of executives for retention or lay-off

Date: May 8, 2012

Author: Policy Development Directorate

Guide on the selection of executives for retention or lay-off

Important Notice

This Guide is intended to be a work in progress. It will be updated periodically to remain as accurate as possible.

It was last updated in May 2012.

To assist deputy heads and human resources (HR) advisors in dealing with career transition for executives situations, the Office of the Chief Human Resources Officer/Treasury Board Secretariat (OCHRO/TBS) and the Public Service Commission (PSC) have put together a workforce management information kit that consists of a series of guides on specific components of the career transition process. In addition to this guide, the PSC also offers the [Priority Administration Guide](#).

For general information on career transition for executives for organizations for which the Treasury Board (TB) is the employer and whose staffing processes are conducted in accordance with the [Public Service Employment Act \(PSEA\)](#), consult the other guides that comprise this information kit, including the TB [Directive on Career Transition for Executives](#).

For information about career transition in general for the separate agencies whose staffing processes are conducted in accordance with PSEA, and for which the TB is not the employer, consult the separate agency.

For information about the PSC's Priority Administration System and other related topics, consult the PSC's [Priority Administration Web site](#).

For more information on the classification process for organizations for which the TB is the employer, consult the TB [Directive on Executive \(EX\) Group Organization and Classification](#). For the separate agencies, contact the separate agency.

Managers and HR Advisors should ensure they consult their organization's business and HR plans when conducting a selection for retention or lay-off process. As well, they should consult with their organizational classification and labour relations advisors where necessary.

Effective Date: May 2012

Contact: Strategic Consultants

Table of contents

1. Definitions
2. Introduction
3. Values
4. Considerations
5. Examples to demonstrate where selection of executives for retention or lay-off does not apply
 - 5.1. Situation 1 – Workforce reduction, with unique position to be eliminated:
 - 5.2. Situation 2 – Workforce reduction, with all similar positions to be eliminated:
 - 5.3. Situation 3 – Workforce reduction, with all positions to be eliminated and new positions to be created, and with new merit criteria:
6. Process to select executives for retention or lay-off
 - 6.1. Situation 4 – Workforce reduction, with no significant change to the duties, but with changes to the merit criteria:
7. Conclusion
8. Legal basis
9. References and related documentation
10. Frequently Asked Questions

1. Definitions

Affected executive (*cadre supérieur touché*) – is an indeterminate executive who has been informed in writing that his or her services may no longer be required because of a career transition situation.

Alternative delivery initiative (*diversification des modes d'exécution*) – is the transfer of any work, undertaking or business of the core public administration to any body or corporation that is a separate agency or that is outside the core public administration.

Core public administration (*Administration publique centrale*) – is that part in or under any department or organization, or other portion of the federal public administration specified in Schedules I and IV to the *Financial Administration Act* (FAA).

Executive (*cadre supérieur*) – according to the [Directive on Career Transition for Executives](#), "an employee appointed to the Executive Group (EX-01 to EX-05 levels), including director, director general, assistant deputy minister or equivalent. For purposes of this directive,

employees who are classified in the following groups and levels are considered to be executive equivalents: Defence Scientific Service (DS) Group, levels 7A, 7B and 8; Medical Officer (MD-MOF) Group, levels 4 and 5; and Medical Specialist (MD-MSP) Group, level 3.”

Identify for lay-off (*désignation aux fins d’une mise en disponibilité*) – with the exception of when an executive is selected for lay-off as a result of a selection for retention or lay-off process conducted pursuant to subsection 64(2) of the PSEA, means the deputy head has determined that the executive will be laid off pursuant to subsection 64(1) of the PSEA; the executive subsequently is declared surplus or is laid off directly upon the executive’s request.

Lay-off (*mise en disponibilité*) – is the termination of an executive’s services because of a lack of work, the discontinuance of a function or the transfer of work or a function outside the public service.

Merit criteria (*critères de mérite*) – for the purpose of determining merit, they are essential qualifications, asset qualifications, organizational needs and operational requirements.

Organization (*organisation*) – is any portion of the federal public administration named in Schedules I, IV, or V to the FAA.

Public service (*fonction publique*) – as defined in the PSEA, is the several positions in or under:

- the departments named in Schedule I to the FAA;
- the organizations named in Schedule IV to the FAA; and
- the separate agencies named in Schedule V of the FAA.

Select for lay-off (*sélection aux fins de mise en disponibilité*) – means the deputy head has determined that some but not all of the executives in a part of the organization are to be laid off pursuant to subsection 64(2) of the PSEA, has conducted a selection for retention or lay-off process, and has selected an executive for lay-off; the executive subsequently is declared surplus or is laid off directly upon the executive’s request.

Separate agency (*organisme distinct*) - is an organization named in Schedule V to the FAA, and for which the TB is not the employer. Separate agencies are not subject to the [Directive on Career Transition for Executives](#). Seven of these separate agencies conduct their staffing in accordance with the PSEA:

- the Financial Consumer Agency of Canada;
- Indian Oil and Gas Canada;
- the National Energy Board;
- the Office of the Auditor General of Canada;
- the Office of the Correctional Investigator of Canada;
- the Office of the Superintendent of Financial Institutions; and
- the Public Service Labour Relations Board.

Surplus executive (*cadre supérieur excédentaire*) – is an indeterminate executive who has been informed in writing by their deputy head that they will be laid off and has been formally declared surplus.

2.Introduction

The public service is an institution dedicated to serving Canadians and their elected officials. To successfully play this vital role, it must be able to continuously adapt and respond to the evolving social, political and economic environment and the ensuing changes in the policies and priorities of the government of the day. This means that deputy heads must at times review and adjust their programs and services to ensure continued relevance, performance, value for money and alignment with the government's priorities. Changes in programs and services may result in a career transition situation.

In accordance with TB policies, career transition is a situation that occurs when a deputy head has determined that the services of one or more **indeterminate** executives will not be required beyond a specific date because of:

- a lack of work;
- the discontinuance of a function;
- the transfer of work or a function outside those portions of the federal public administration named in Schedule I, IV, or V to the *Financial Administration Act*.

Subsection 64(1) of the PSEA states that when the services of an employee (which includes executives) are no longer required by reason of lack of work, the discontinuance of a function or the transfer of work or a function outside those portions of the federal public administration named in Schedules I, IV or V to the FAA, the deputy head may, in accordance with the regulations of the Commission, lay off the employee.

Subsection 64(2) states that where some but not all of the employees (which includes executives) in any part of the deputy head's organization are to be laid off, the employee (which includes executives) to be laid off shall be selected in accordance with the regulations of the Commission. Subsection 21(1) of the *Public Service Employment Regulations* (PSER) states that the identification of the employees (which includes executives) employed in similar positions or performing similar duties in the same occupational group and level within the affected part of the organization that are to be retained is to be made in accordance with merit.

However, it is important to recognize that subsection 64(3) states that where employment is terminated in the circumstances referred to in paragraph 12(1)(f) of the FAA, subsection 64(1) does not apply. Paragraph 12(1)(f) of the FAA provides for the termination of employment of persons to whom an offer of employment is made as a result of the transfer of any work, undertaking or business from the core public administration to any body or corporation that is not part of the core public administration. In other words, this guide does not apply to alternative delivery initiatives.

For the purposes of this guide, employee includes members of the executive group. For all other employees, please refer to the Guide on the selection of employees for retention or lay-off.

This guide outlines the process to follow when selecting executives to be retained or to be laid off. It focuses on:

- identifying the affected executives who are to be assessed;
- planning the process, establishing merit and selection criteria;
- choosing assessment methods and conducting the assessments; and

- selecting the executives to be retained and those who are to be laid off.

3.Values

The objective of the process is to select, on the basis of merit, those executives who are to be retained to carry on the continuing work of the affected part of the organization, and those who are to be laid off.

Merit is met when the PSC is satisfied that the executive meets the merit criteria required for the work to be performed, which includes the essential qualifications, as well as the current and future asset qualifications, operational requirements and organizational needs. However, while the PSC must be satisfied that merit is met, the guiding values of fairness, transparency, access and representativeness guide deputy heads in the process of selecting executives who are to be retained and those who are to be laid off.

- **Fairness** means that decisions are made objectively and free from political influence or personal favouritism; policies and practices reflect the just treatment of persons. Persons have a right to be assessed in the official language(s) of their choice.

In career transition situations, merit criteria must be established objectively, based on the work to be performed, as well as the current and future operational requirements and organizational needs. The process and methods used to select the executives who are to be retained and those who are to be laid off must minimize the impact of the career transition situation on executives, and must reflect the just treatment of affected executives.

- **Transparency** means that information about decisions, policies and practices is communicated in an open and timely manner.

In career transition situations, it is critical that considerable attention be paid to keeping executives informed in a timely fashion, and to explaining the choices and decisions made at appropriate stages of the process. An illustration of this is that deputy heads should inform affected executives of how the merit criteria will be applied to make selection decisions; for example, that strength in a particular merit criterion will be applied to determine who will be selected for retention.

- **Access** means that persons from across the country have a reasonable opportunity to apply, to do so in the official language(s) of their choice, and to be considered for public service employment.

In career transition situations, affected executives are given every reasonable opportunity to continue their careers in the public service, if they so choose.

- **Representativeness** means that appointment processes are conducted without bias and do not create systemic barriers to help achieve a public service that reflects the Canadian population it serves.

In career transition situations, when the representation of members of one or more of the employment equity (EE) designated groups has been identified as a need in the organization's human resources (HR) or EE plan, then being a member of one of the respective EE designated groups may be established as an organizational need merit criterion.

4. Considerations

- The selection for retention or lay-off process and its results may be very stressful for both executives and deputy heads. It must be conducted with respect and sensitivity, and reflect the guiding values indicated above. Senior managers should be conscious that affected executives may be managing selection for retention and lay-off processes for their affected employees, and that their personal experience may be reflected in their management practices. Organizations should ensure that deputy heads and managers are prepared and equipped to deliver difficult messages to executives and that the employee assistance program is accessible to all. Communication with affected executives should be timely and provide as much concrete information as is available to minimize the anxiety that could result. Organizations must consider that the selection for retention or lay-off process may contribute to tensions in the work place, and could lead to a loss of productivity.
- The PSEA and the PSER provide considerable discretion to deputy heads regarding the choice of merit criteria, the selection criteria, and the means of assessment. The selection for retention or lay-off decision may be made by putting greater emphasis on certain merit criteria. Therefore, it is important that organizations keep executives informed, and explain the decisions made at appropriate stages in the process. Early discussion regarding the merit criteria that will be applied may result in deputy heads being made aware of potential concerns, allowing for change where appropriate.
- The PSER prescribe the manner of selecting executives for retention or lay-off in situations where the services of some but not all of the executives in a part of an organization are no longer required. Deputy heads must assess the merit of executives employed in similar positions or performing similar duties in the same occupational group and level in the affected part of the organization, and select the executives who are to be retained in accordance with merit. Deputy heads are therefore responsible for establishing the merit criteria to be applied for the continuing functions, the criteria for selection, and the assessment methods to be used to determine who is to be retained and who is to be laid off.
- When establishing the merit criteria for the functions that will remain, the essential qualifications are based on the current requirements and needs of the work to be performed. Asset qualifications, as well as operational requirements and organizational needs, may be based on the current and future needs of the affected part of the organization. These needs may include those of the broader organization as long as they are linked to the affected area.
- The PSC [Assessment Policy](#) sets out specific expectations for the assessment of executives in an appointment process. Since the selection of executives for retention or lay-off does not result in an appointment, the requirement for structured interview and structured reference check may be used at the discretion of the deputy head. However, the Key Leadership Competencies form a part of the EX Qualification Standard and must be assessed, and the expectations for official languages must be met. The [EX Appointment Guide for Human Resource Professionals](#) provides specific guidance on related questions.
- There are situations where some positions are to be eliminated, and new positions are to be created in the affected part of the organization. This may result in two processes - an appointment process to fill the new positions, and a selection for retention or lay-off process. When conducting an appointment process to fill the new positions, deputy heads must respect the PSEA, the PSER and the PSC's [Appointment Policy](#), which prescribe the manner of making appointments.
- When executives are selected for lay-off, it does not mean that they have had a performance issue, or that they are unsuitable for employment elsewhere. In fact, the

nature of this exercise, with the reduced number of executives who are retained, could result in executives who are among the organization's better performers being selected for lay-off.

- Poor performance is not a basis for identifying an affected executive, nor for exempting them from the process. Determining the part of the organization that is affected is a business decision that is closely related to budgets and organizational structure, and guidance may be sought from OCHRO/TBS. The selection of executives for retention or lay-off is based on merit, which does not equate to performance. Managers who are dealing with employees with performance issues or disciplinary problems at the time of this decision should be working with OCHRO to make the best use of the existing policies and procedures aimed at resolving performance issues or disciplinary problems. Unless executives are at the point of having their employment terminated for cause, poor performers are included in the selection for retention or lay-off process along with other affected executives.

5.Examples to demonstrate where selection of executives for retention or lay-off does not apply

The following examples are aimed at providing deputy heads with a better understanding of how to deal with situations where a selection of executives for retention or lay-off does not apply.

5.1. Situation 1 – Workforce reduction, with unique position to be eliminated:

The deputy head has determined that the position to be eliminated is unique. In this situation, as there are no executives to be retained, there is no need for assessment. The executive is therefore identified for career transition. There is no recourse to the Public Service Staffing Tribunal (PSST) available when there is no selection for retention or lay-off.

Example 1

There are three executives at the EX-1 group and level, all of whom are responsible for program delivery but in different areas of interest (Program A, Program B, and Program C). The deputy head determines that Program C is no longer a priority and eliminates the program. In this example, the incumbents of the positions responsible for Program A and Program B are not affected, only the position responsible for Program C is eliminated.

5.2. Situation 2 – Workforce reduction, with all similar positions to be eliminated:

The deputy head has determined that all of the similar positions are to be eliminated. In this situation, as there are no executives to be retained, there is no need for assessment. The executives are therefore all identified for career transition. There is no recourse to the Public Service Staffing Tribunal (PSST) available when there is no selection for retention or lay-off.

Example 2

There are two executives at the EX-1 group and level who are both responsible for program delivery at the same regional office. The deputy head determines that the regional office will close at the end of the fiscal year. Therefore, the two executives are identified for career transition.

5.3. Situation 3 - Workforce reduction, with all positions to be eliminated and new positions to be created, and with new merit criteria:

The deputy head has determined that all positions are to be eliminated. There are new positions created and the merit criteria for these positions are new. The classification decisions for all the positions indicate they are new positions from a classification perspective. In this situation, all positions are eliminated, so there is no selection process for retention or lay-off. The selection process is for appointment(s) to the new positions, so the [PSC Assessment Policy](#) will apply, and the context will have implications for the staffing strategy, as follows.

Example 3

There are three executives at the EX-1 group and level, all of whom are responsible for program delivery but in different areas of interest (Program A, Program B, and Program C). Re-organization takes place and the deputy head determines that in the new structure the program areas of A, B, and C will be amalgamated and only two EX-1 positions will be required. One new EX-1 position will be responsible for program policy for all three program areas, while a second new EX-1 position will be responsible for program operations for all three program areas.

The following outlines the steps to be followed in Situation 3. Example 3 will be further explored in the boxes below.

5.3.1. Situation 3: Step 1 – Determine the part of the organization that is affected

When faced with a career transition situation, the deputy head must determine the organizational and geographical boundaries within which positions are to be eliminated. This is a business decision that is closely related to budgets and organizational structure, and guidance may be sought from OCHRO/TBS. As in any selection process, the deputy head and the HR Advisor consult the organization's business and HR plans, as they are a useful source of information when conducting an environmental scan, a work force analysis and a skills gap. By understanding the current and future operational reality facing the organization, the deputy head can make decisions that serve the interests of the organization and that treat executives fairly. As in every step of the process, the deputy head should advise executives of any decisions made in as timely a manner as possible.

Some questions to consider in determining the part of the organization that is affected:

- Is it a division or a directorate?
- Is it more significant, such as an entire branch or a regional office?
- Is it a program or a type of work that is carried out by more than one organization?
- Is the affected area local, regional or national?

Communication with executives

It is important to keep all executives advised throughout the career transition process of major decisions affecting them. This step is important because at this stage, the deputy head has made critical decisions that will affect not only the life of the organization but, more importantly, will affect the lives of executives. It is essential that each executive have this information as soon as possible to help them make important decisions about their own lives and careers.

Communication with executives at this step should cover the following:

- the business and HR plans of the organization, as a context for understanding why career transition is being applied in the affected part of the organization;
- the services and information available to affected executives and the organization's career transition plans respecting affected executives; and
- any other information available at this early point.

Early and frequent communication does not mean that the deputy head cannot change his or her mind. If changes are necessary, the deputy head should be able to clearly explain the rationale for the changes as they relate to the needs of the organization.

Example:

There are three positions at the EX-1 group and level, all of whom are responsible for program delivery but in different areas of interest (Program A, Program B, and Program C). Re-organization takes place and the deputy head determines that in the new structure the program areas of A, B, and C will be amalgamated.

Based on this information, the deputy head determines that the affected part of the organization is the programs directorate where the positions are located.

5.3.2. Situation 3: Step 2 - Identify the similar affected positions and executives

As all positions in the affected part of the organization are affected, there is no need to identify which are similar. The executives who occupy the positions are identified as affected.

Considerations when identifying affected executives

It is important to note that some executives performing the duties of the affected positions are identified as affected, while others are not.

- Executives to be **identified** as affected are:
 - incumbents of the affected positions who are performing duties elsewhere, such as:
 - executives on assignment/secondment elsewhere; and
 - executives who have been appointed on an acting basis elsewhere;
 - incumbents of the affected positions who are on a leave of absence, unless their positions have been filled indeterminately behind them; and

- all other incumbents of the affected positions.
- Executives **not to be identified** as affected are:
 - executives who are employed on a term basis - they are subject to lay-off; but are not subject to the [Directive on Career Transition for Executives](#), nor are they entitled to a priority appointment;
 - executives who resign or retire before the expected lay-off date;
 - executives who cease their employment while on special deployment;
 - executives who are employed as casual workers;
 - executives who are performing the duties of the affected positions, but who do not occupy them on a substantive basis, such as:
 - executives on assignment/secondment from elsewhere; and
 - executives appointed on an acting basis from elsewhere.

The deputy head should ensure that executives working in the affected area understand why some executives have not been identified as affected.

As indicated in [Considerations](#) above, performance is not a basis for identifying an affected executive, nor for exempting them from the process.

Communication with executives

Communication with executives at this step should cover the following:

- an explanation of the new organizational structure, including the number of positions that are to be eliminated, and the number that have been created;
- a brief description of the new positions;
- the staffing strategy for the new positions;
- the number of executives who have been identified as affected;
- an explanation as to why some executives were not identified as affected;
- a reiteration of the services and information available to affected executives and the organization's career transition plans respecting affected executives; and
- any other information that is available at this point.

Example:

Of the three positions that have been identified as affected, there are executives occupying each one. All three incumbents were hired on an indeterminate basis.

Career transition will apply to all three executives unless the positions are vacated before the career transition takes place.

5.3.3. Situation 3: Step 3 - Determine the selection strategy

The deputy head has the flexibility to determine the appropriate staffing and lay-off strategy, so depending on the situation, different options exist. The HR Advisor supports the deputy head by providing advice on a selection strategy. Once the strategy has been determined, it can be used to make further decisions, such as establishing the merit criteria, the appropriate assessment methods and the selection criteria for the new positions.

For example, executives may volunteer for lay-off at any time, and a valid strategy may be to invite executives to volunteer for lay-off as early as possible.

The staffing strategy is crucial because there is an elimination of the existing positions at the same time as the creation of new positions. In this situation, the deputy head should conduct an appointment process to fill the new positions first. This provides an opportunity for some of the affected executives to be placed, thus reducing their number. The deputy head establishes and applies essential qualifications and the other merit criteria, including "placement of affected executives" as an organizational need for the appointment process. Should some of the affected executives be appointed to the new positions, the deputy head then identifies the remaining affected executives for lay-off. Conducting an appointment process and then identifying for lay-off the remaining affected executives allows those who participated in the appointment process an opportunity to complain to the PSST, as provided by [section 77](#) of the PSEA.

This approach is fair and transparent to the affected executives, while providing them with access, as they have an opportunity to be considered for the new positions. As well, appointing affected executives to the new positions first results in a reduction in the number of executives to be identified for lay-off. There is an appropriate recourse mechanism available for executives for the selection for appointment.

Considerations when conducting an appointment process to fill the new positions

As the selection strategy includes conducting an appointment process prior to identifying for career transition any of the affected executives, the deputy head should consider several options to limit the impact of career transition on them.

An appointment process conducted in this situation is subject to the PSEA and the PSC's [Appointment Policy](#), as is any other appointment process. Executives who are to be appointed must meet all the merit criteria required for the work to be performed, including official language proficiency, unless excluded pursuant to the [Public Service Official Languages Exclusion Approval Order](#). The [Assessment Policy](#) requirements for executives apply to this situation, as do [Informal Discussion](#) and [Notification](#).

Affected executives do not have a priority status until they have selected the appropriate option according to [Directive on Career Transition for Executives](#). Persons with a priority status must be considered before other executives, and that precedence must be respected.

If the organization's [criteria for use of non-advertised appointments](#) permit, the deputy head should consider invoking [section 43](#) of the PSEA, which provides that should the PSC consider that the appointment of a priority person would result in another person having a priority right, then the PSC may decide to not apply the provision in that case. This means that when requesting priority clearance for the appointment process, the PSC may agree to not refer any other priority persons.

If the organization's area of selection policy permits, the area of selection could be limited to the affected area of the organization. This would ensure that affected executives are considered first, after other priorities.

Whether the area of selection is limited or not, when establishing the merit criteria for the new positions, the deputy head could establish an organizational need of "placement of affected executives", and apply this merit criterion to select executives for appointment. This would ensure that affected executives are considered first for appointment, after other priorities.

An appointment process conducted under these circumstances may result in an increased level of stress on the affected executives, and should therefore be conducted as quickly as possible.

Communication with executives

Communication with executives at this step should cover the following:

- an invitation to executives to volunteer for lay-off;
- the overall strategy and the process to be followed for both the appointment process and the identification for career transition, in general terms;
- a reiteration of the services and information available to affected executives and the organization's career transition plans respecting affected executives; and
- any other information that is available at this point.

Example:

In the new organizational structure, only two EX-1 positions will be required. One new EX-1 position will be responsible for policy while a second new EX-1 position will be responsible for operations.

Career transition will apply to all three positions unless the positions are vacated before it takes place. The deputy head decides to conduct an appointment process to fill the two new positions as soon as possible.

5.3.4. Situation 3: Step 4 – Communicate results to executives

Once as many affected executives as possible have been placed elsewhere, the deputy head is encouraged to inform executives, on an individual basis, that they have been identified for career transition. To ensure transparency and fairness of the process, all affected executives should be informed at the same time.

Section 65 of the PSEA, which provides for recourse to the PSST when some but not all of the executives are selected for lay-off, does not apply in this case, as all executives are to be identified for career transition.

The deputy head must inform the PSC in writing of the names of the executives who are surplus and of the proposed lay-off dates. Organizations provide this information to the PSC by registering in its Priority Information Management System (PIMS) executives who have selected the surplus period option pursuant to the Directive on Career Transition for Executives. PIMS is designed to facilitate the appointment of persons who are entitled to a priority for appointment.

Example:

The deputy head completes the appointment process and appoints two of the three affected executives to the new positions.

Following the appointment process, the deputy head provides an opportunity for informal discussion to the remaining executive (who is not appointed to a position) as well as recourse to the PSST under section 77 of the PSEA.

The remaining executive, who is not appointed to a position, is then identified for career transition and there will be no recourse to the PSST as there is no selection for retention or lay-off.

6. Process to select executives for retention or lay-off

The assessment and selection of executives for retention or lay-off (SERLO) process is different from an appointment process as all the executives involved in the selection already met the merit criteria for their substantive position, if the qualifications have not changed. At the time of their appointment, the executives were fully assessed against all the requirements of their position. The goal of the SERLO process is to differentiate between the executives to be retained and those to be selected for lay-off, all of whom had previously been found qualified.

The steps to be followed during a SERLO process are:

Step 1 - Determine the part of the organization that is affected

Step 2 - Identify the similar affected positions and executives

Step 3 - Determine the selection strategy

Step 4 - Review the merit criteria and determine the selection criteria

Step 5 - Determine the assessment methods to be used, and assess the affected executives

Step 6 - Determine which executives are to be retained and which are to be laid off

Step 7 - Communicate results to employees

Career transition can lead to various situations where executives must be selected for retention or lay-off, depending on the particulars of the organization and the reasons for the career transition situation. Understanding what makes each situation unique is important because different provisions of the PSEA and the PSER may apply, and because of the impact on the organization and the affected executives.

Deputy heads and HR Advisors should first determine if the following situation relates to their circumstances.

6.1. Situation 4 - Workforce reduction, with no significant change to the duties, but with changes to the merit criteria:

The deputy head has determined that some, but not all, of the similar positions are to be eliminated. There may be some changes to the duties of the positions that will remain, and there are different or additional merit criteria established for the remaining positions. The classification decisions for the remaining positions indicate they are the same existing positions from a classification perspective.

Example 4

There are currently five regional EX-1 positions in an organization that provides service delivery to five different regions (Atlantic Region, Ontario Region, Manitoba Region, Alberta Region, and B.C. Region). The deputy head decides to reduce the number of EX-1 positions to three: Ontario Region and Manitoba Region are amalgamated to become Central Region; and Alberta Region and B.C. Region are amalgamated to become Western Region.

6.1.1. Step 1 – Determine the part of the organization that is affected

When faced with a career transition situation, the deputy head must determine the organizational and geographical boundaries within which the executives are to be selected for retention or lay-off. In doing so, the deputy head and the HR Advisor should first consult the organization's business and HR plans, as they are a useful source of information when conducting an environmental scan, a work force analysis and a skills gap. By understanding the current and future operational reality facing the organization, the deputy head can make decisions that serve the interests of the organization and that treat executives fairly. As in every step of this process, the deputy head should advise executives of any decisions made in as timely a manner as possible.

Some questions to consider in determining the part of the organization that is affected:

- Is it a division or a directorate?
- Is it more significant, such as an entire branch or a regional office?
- Is it a program or a type of work that is carried out by more than one organization?
- Is the affected area local, regional, or national?

Communication with executives

It is important to keep all executives advised throughout the career transition process of major decisions affecting them. This step is important because at this stage, the deputy head has made critical decisions that will affect not only the life of the organization but, more importantly, will affect the lives of executives. It is essential that each executive have this information as soon as possible to help executives make important decisions about their own lives and careers.

Communication with executives at this step should cover the following:

- the business and HR plans of the organization, as a context for understanding why career transition is being applied in the affected part of the organization;

- the services and information available to affected executives and the organization's career transition plans respecting affected executives; and
- any other information available at this early point.

Early and frequent communication does not mean that the deputy head cannot change their mind. If changes are necessary, the deputy head should be able to clearly explain the rationale for the changes as they relate to the needs of the remaining positions and the organization.

Example:

There are currently five regional EX-1 positions in an organization that provides service delivery to five different regions (Atlantic Region, Ontario Region, Manitoba Region, Alberta Region, and B.C. Region). The deputy head decides to reduce the number of EX-1 positions to three. Ontario Region and Manitoba Region are amalgamated to become Central Region, and Alberta Region and B.C. Region are amalgamated to become Western Region.

Based on this decision, the deputy head will have to determine if the affected part of the organization is the entire organization (which is national), or if the affected part of the organization is all regions except Atlantic Region.

There are advantages and disadvantages to both options and depending on the specific situation, deputy heads will make different decisions.

The deputy head makes the decision that the affected part of the organization includes Ontario Region, Manitoba Region, Alberta Region and B.C. Region.

6.1.2. Step 2 - Identify the similar affected positions and executives

The deputy head identifies the similar positions that are affected. The executives who occupy the positions are identified as affected, and are to be assessed to select which are to be retained and which are to be laid off.

As indicated in [Section 4](#), affected executives who have presented performance, incapacity or disciplinary problems should be dealt with prior to the selection for retention or lay-off process, in accordance with employer policies. Regardless, these executives are included in the selection for retention or lay-off process.

Considerations when identifying the similar affected positions

Some questions to consider:

- Are any of the positions unique or stand-alone?
- Are there any pools of reasonably homogeneous positions, for example, those with the same or very similar duties? The similar positions might be EX-01 program delivery, or they might be positions that are classified as EX-01 Director of Programs, including program delivery, program design and program evaluation.

- Do the positions require the same or similar merit criteria?

Considerations when identifying affected executives

It is important to note that some executives performing the duties of the affected positions are identified as affected, while others are not.

- Executives to be **identified** as affected are:
 - incumbents of the affected positions who are performing duties elsewhere, such as:
 - executives on assignment/secondment elsewhere; and
 - executives who have been appointed on an acting basis elsewhere;
 - incumbents of the affected positions who are on a leave of absence, unless their positions have been filled indeterminately behind them; and
 - all other incumbents of the affected positions.
- Executives **not to be identified** as affected are:
 - executives who are employed on a term basis - they are subject to lay-off; but are not subject to the [Directive on Career Transition for Executives](#), nor are they entitled to a priority appointment;
 - executives who resign or retire before the expected lay-off date;
 - executives who cease their employment while on special deployment;
 - executives who are employed as casual workers;
 - executives who are performing the duties of the affected positions, but who do not occupy them on a substantive basis, such as:
 - executives on assignment/secondment from elsewhere; and
 - executives appointed on an acting basis from elsewhere.

The deputy head should ensure that executives working in the affected area understand why some executives have not been identified as affected.

Communication with executives

Communication with executives at this step should cover the following:

- an explanation of the new organizational structure, including the number of positions to be eliminated;
- a brief description of the remaining positions;
- the selection strategy for the remaining positions;
- the number of executives who have been identified as affected and will be assessed for the selection for retention or lay-off process;
- an explanation as to why some executives were not identified as affected;
- a reiteration of the services and information available to affected executives and the organization's career transition plans respecting affected executives; and
- any other information that is available at this point.

Example:

The deputy head made the decision that the affected part of the organization includes Ontario Region, Manitoba Region, Alberta Region and B.C. Region. As such, the four EX-1 positions affected are in these same regions.

Atlantic Region is not affected and therefore, the EX-1 position in Atlantic Region is not subject to the selection of executives for retention or lay-off process.

The deputy head confirms that the executives within the affected part of the organization were all hired on an indeterminate basis.

6.1.3. Step 3 - Determine the selection strategy for the existing positions

The deputy head has the flexibility to determine the appropriate selection strategy, so depending on the situation, different options exist. The HR Advisor supports the deputy head by providing advice on a selection strategy. Once the strategy has been determined, it can be used to make further decisions, such as establishing the merit criteria, the appropriate assessment methods and the selection criteria.

For example, while executives may volunteer for lay-off at any time, if the number of executives to be selected for lay-off is small compared to the number to be retained, a valid strategy may be to invite executives to volunteer for lay-off as early in the process as possible. The deputy head should consider which criteria will be used to choose between the volunteers if more executives volunteer than positions are to be eliminated.

Communication with executives

Communication with executives at this step should cover the following:

- an invitation to executives to volunteer for lay-off;
- the overall selection strategy and the process to be followed for the selection for retention or lay-off process, in general terms;
- a reiteration of the services and information available to affected executives and the organization's career transition plans respecting affected executives; and
- any other information that is available at this point.

Example:

Of the four affected executives, none have deployed out, and no one has volunteered for lay-off. The deputy head sends an email to all four, individually or together, to confirm that they will be included in the selection for retention or lay-off process, and to ask if anyone is interested in volunteering for lay-off.

6.1.4. Step 4 - Establish the merit criteria and the selection criteria

The deputy head reviews the organization's business and HR plans, in consultation with the HR Advisor. The deputy head must not only establish the merit criteria to determine their relevance with respect to the continuing work to be performed, but may also establish new or different merit criteria, taking into account the changes to the duties to be performed, as well as the current and future operational requirements and needs of the organization.

Essential qualifications

Essential qualifications are qualifications that are required for the executive to perform the work. To be selected for retention, an executive must meet each essential qualification. When a deputy head identifies a qualification as essential, the deputy head is stating that if an executive does not meet that qualification, he or she could not function in the position. If a qualification is not essential to perform the work, then it may be an asset for the work to be performed and, if so, it should be identified that way.

Essential qualifications may be assessed using "meets/does not meet" as a basis for the selection decision, and this would be appropriate when assessing some essential qualifications, for example, education. However, the degree to which an executive meets an essential qualification would likely be the deciding factor in a selection for retention or lay-off process. If strength in a particular essential qualification, such as strategic thinking, is to be used as a criterion for the selection for retention, it would not be possible to differentiate among executives if they were assessed on a "meets/does not meet" basis for the qualification.

Official language proficiency

The *Official Languages Act* states that official language requirements must be set objectively for the functions to be performed. As well, [paragraph 30\(2\)\(a\)](#), which defines the meaning of merit, provides that official language proficiency is an essential qualification. For this reason, official language proficiency may be established only as an essential qualification, and not as an asset qualification.

As the selection for retention or lay-off process is not an appointment process, non-imperative staffing, as provided for in the [Public Service Official Languages Exclusion Approval Order](#), does not apply.

Other merit criteria

While all essential qualifications are established for the work to be performed, the other merit criteria (asset qualifications, operational requirements and organizational needs) may be established for both the current and future needs of the position and the organization. It is equally important to establish the other merit criteria to retain executives for the current and future needs of the organization.

Examples of how the merit criteria may be established:

- A regional office serves an area that includes a major ethnic community that is accustomed to having a number of officers who speak the language of the community. If the organization needs an executive who possesses the language skills of the community in order to effectively engage stakeholders, then it would be appropriate to apply that skill as an asset qualification to the selection of one of the executives to be retained, but not to others, or to apply a higher level of skill to some but not to others.

Establishing the selection criteria

Prior to conducting the selection for retention or lay-off process, the deputy head should objectively establish the criteria he or she will use to select executives for retention. The selection criteria are based on the merit criteria being applied. It could be a strength in one particular merit criterion, or a combination of the merit criteria, and could vary from one position to another. The guiding values of fairness, access, transparency and representativeness must be respected when selecting executives for retention or lay-off.

For example, if the affected part of the organization were to become the strategic policy centre of an organization, one selection criterion could be strength in horizontal relationships for half of the similar positions, and strength in rigorous research for the other half. This would recognize that even though the executives were being assessed for retention in similar positions, the emphasis in some positions would not be exactly the same as in others.

Informing executives about the selection criteria early may avoid a misperception of personal favouritism.

Communication with executives

Communication with executives at this step should cover the following:

- the merit criteria, including their definitions and if applicable, the relative weighting of each one;
- the selection criteria that will be used to select the executives to be retained;
- an invitation to executives to identify any accommodations they may need for the assessment process;
- an invitation to executives to volunteer for lay-off;
- a reiteration of the services and information available to affected executives and the organization's career transition plans respecting affected executives; and
- any other information that is available at this point.

Example:

The affected executives have all worked with the deputy head for at least two years, and are performing well in their positions.

The deputy head's review of the existing and future work indicates that:

- the regions will continue to provide service delivery; and
- the EX-1 positions will be responsible for a larger geographical area with additional offices.

The deputy head has decided to establish the following as essential qualifications:

- A secondary school diploma;

- official language proficiency - bilingual CBC/CBC;
- Values and Ethics;
- Strategic Thinking: Analysis and Ideas;
- Engagement;
- Management Excellence: Action Management, People Management, Financial Management.

The deputy head also establishes knowledge of the current issues in the Ontario Region, Manitoba Region, Alberta Region and B.C. Region as an asset qualification.

After the deputy head's review of the existing and future work, the deputy head decides to use the following selection criteria:

- to ensure that the regional issues will continue to be well managed, the level at which an executive demonstrates strength in Strategic Thinking in the context of knowledge of the current issues in each of the regions; and
- based on the current and emerging issues in the Central Region and the Western Region, Engagement and the sub-component of People Management will be used to ensure that internal as well as external stakeholders including employees will have as minimal an impact with this change as possible.

6.1.5. Step 5 - Determine the assessment methods to be used, and assess the affected executives

The objective of the assessment process is to determine that the executives selected for retention meet the merit criteria required to perform the continuing functions of their positions, based on the needs identified in the organization's business or HR plans. Appropriate assessment methods must be chosen or developed so the executives can be assessed against each merit criterion to ensure the right executives are selected for retention.

Executives who volunteer and are accepted for lay-off, and executives who resign or retire before the expected career transition date are not included in the assessment process.

Assessment methods must produce information that is relevant to all the merit criteria being assessed. The amount of information needed to assess an executive's competence with respect to a particular merit criterion depends on the nature and the importance of the criterion, as identified by the deputy head. The use of multiple, well-developed assessment tools generally provides more complete and valid information. The integration of information from more than one source ensures a more complete and accurate picture of the executive being assessed.

When determining which assessment method to use, the deputy head may choose to use assessment methods such as interviews, written examinations, reference checks, etc. Using different sources of information enhances the assessment process and permits an evaluation of the consistency of performance over time and across various situations. However, this does not preclude the deputy head from using other assessment methods, such as descriptions of an executive's past performance and the deputy head's own knowledge of an executive's

performance, as a source of information if it will provide sufficient information to assess an executive against a particular merit criterion.

In all cases, the deputy head must ensure that the executives selected for retention meet the essential qualifications and any other merit criteria that are being applied. Although executives selected for retention must always meet the essential qualifications, the deputy head may select those who meet an asset qualification, an organizational need or an operational requirement before assessing the essential qualifications if it is more efficient to do so.

Additional information regarding assessment may be found in the PSC's [Guidance Series – Assessment, Selection and Appointment](#).

Considerations related to the assessment of official language proficiency

When assessing official language proficiency to select executives for retention or lay-off in bilingual positions, it is important to note that the results of Second Language Evaluation (SLE) tests are valid for five years, unless the executive is exemptedⁱ from undertaking further second official language assessment. When this time period expires, the SLE test results of an executive are deemed to be valid for an indefinite period with regard to the executive's substantive position, as long as the linguistic profile of the position has not been raised above the executive's skill level.

Regardless of whether the official language proficiency requirements of the position are changed, when executives remain in their substantive position, if their most recent SLE test results demonstrate that they meet the official language proficiency requirements of their positions, the executives' SLE test results remain valid, even if they were obtained more than five years ago.

However, if the executives' most recent SLE test results demonstrate that they do not meet the official language proficiency requirements of their position, then the executive must undertake another SLE test to demonstrate that they meet those requirements.

Communication with executives

Communication with executives at this step should cover the following:

- a reminder of the merit criteria, including their definitions, and if applicable the relative weighting of each one;
- a reminder of the selection criteria that will be used to select the executives who are to be retained;
- the overall process and expected timing of the assessment;
- the assessment methods to be used;
- an invitation to executives to identify any accommodations they may need for the assessment process;
- a reiteration of the services and information available to affected executives and the organization's career transition plans respecting affected executives; and
- any other information that is available at this point.

Example:

The deputy head has determined the assessment methods to be used to assess each merit criterion:

- a secondary school diploma – a review of the executive’s file to confirm the executive’s educational credentials;
- official language proficiency - bilingual CBC/CBC – obtain a copy of the executive’s most recent SLE results from the PSC, and use the SLE for those executives who do not meet the requirement;
- Values and Ethics – the deputy head’s personal knowledge, which will be recorded through a narrative assessment, and reference checks;
- Strategic Thinking: Analysis and Ideas – a review of the executive’s past performance using performance appraisals, interview, and reference checks;
- Engagement – a review of the executive’s past performance using performance appraisals, interview, and reference checks;
- Management Excellence: Action Management, People Management, Financial Management – a review of the executive’s past performance using performance appraisals, interview, and reference checks;
- knowledge of the current issues in the Ontario Region, Manitoba Region, Alberta Region and B.C. Region - interview, and reference checks.

The assessment process will proceed as follows:

- Executives will be asked to identify any accommodations they may require for the interview;
- The deputy head will complete the review of the executives’ files to review the education requirements as well as the performance appraisals and complete a written narrative assessment of their personal knowledge;
- Executives will be asked to provide references;
- The HR Advisor supports the deputy head by obtaining each executive’s latest SLE results from the PSC;
- For those executives who do not meet the required Official Language Proficiency, the HR Advisor supports the deputy head by making the arrangements to administer the SLE.

6.1.6. Step 6 – Determine which executives are to be retained and which are to be laid off.

Selection is a crucial step in the decision-making process, and all decisions must be recorded and substantiated to ensure accountability of decisions. Thus, it is important that the deputy head has confidence in the assessment process and the reason for the selection decision, and that he or she can clearly explain them to the affected executives.

The selection of the executives to be retained and those to be laid off is based on the selection strategy that was developed and communicated to executives earlier in the process, so that at this point, the deputy head has established and applied the appropriate merit criteria, and has thoroughly assessed the executives against them to make appropriate decisions.

Additional information regarding selection decisions may be found in the PSC's [Guidance Series - Assessment, Selection and Appointment](#).

Example:

In accordance with the original strategy to ensure that the regional issues will continue to be well managed and that stakeholders will experience as little impact with this change as possible, the deputy head selects for retention the executives who demonstrated a greater strength in Engagement, People Management, and Strategic Thinking in the context of knowledge of the current issues in the new Central Region and the new Western Region respectively.

The remaining two executives are selected for lay-off.

6.1.7. Step 7 - Communicate results to executives

Once the determination as to which executives are to be selected for retention and which are to be selected for lay-off has been made, the deputy head should inform executives as soon as possible. To ensure transparency and fairness of the process, all executives who were assessed should be informed of the selection results at the same time.

While informal discussion as contemplated by [section 47](#) of the PSEA does not apply to the selection for retention or lay-off process, the guiding values of fairness and transparency mean that the deputy head should be prepared to discuss and explain the assessment results to executives. Information provided to an executive would relate only to that executive, as the [Privacy Act](#) protects personal information. Any information about a third party must not be disclosed.

Advise the executives who have been selected for lay-off, and provide them with an opportunity to complain to the PSST

[Subsection 21\(5\)](#) of the PSER requires the deputy head to inform, in writing, the executives who have been selected for lay-off of their selection and the proposed lay-off date. Pursuant to [section 65](#) of the PSEA, executives who are informed they have been selected for lay-off are also informed of:

- their opportunity to complain to the Public Service Staffing Tribunal (PSST); executives may complain on the grounds that their selection constituted an abuse of authority - as stated in [subsection 2\(4\)](#) of the PSEA, abuse of authority includes bad faith and personal favouritism; and
- the manner and the time period within which a complaint may be made, as provided by the [Public Service Staffing Tribunal Regulations](#).

To respect the guiding values of fairness and transparency, the deputy head should advise the executives who are selected for lay-off of the names of the executives who are selected for retention.

[Subsection 65\(2\)](#) of the PSEA provides that no complaint may be made against the decision to lay-off executives, against the determination of the part of the organization and positions to be affected, or the number of executives to be laid off.

Where the PSST finds a complaint to be substantiated, it may set aside the decision to lay-off the executive and order the deputy head to take any corrective action that it considers appropriate.

A full listing of the PSST's mandate and procedures (including the timing of submissions) may be found on the [PSST's Web site](#).

The deputy head must inform the PSC in writing of the names of the executives who have been selected for lay-off and of the proposed lay-off dates. Organizations provide this information to the PSC by registering in its Priority Information Management System (PIMS) executives who have chosen to seek continuing employment in the core public administration pursuant to the [Directive on Career Transition for Executives](#). PIMS is designed to facilitate the appointment of persons who are entitled to a priority for appointment.

Advise the remaining executives they will be retained

Executives who have been selected for retention are advised in writing that they are to be retained, and that they will remain in their current positions.

Example:

The executives who were assessed are informed of the assessment results, and whether they were selected for retention or lay-off. The two executives selected for lay-off based on the selection process are invited to discuss the decision with the deputy head.

All executives to be laid off are informed of their recourse rights to the PSST.

The executives to be retained are also advised that they will remain in their positions, and the other executives have a right to complain about the selection decision to the PSST.

7. Conclusion

The selection of the executives who are to be retained and those who are to be laid-off must be tied to the organization's business and HR plans. The merit criteria must be chosen carefully to meet the requirements of those plans. In accordance with section 21 of the PSER, executives occupying similar positions in the affected part of the organization must be assessed and selected for retention or lay-off on the basis of merit. This allows for the business plan to be realized. It is strongly recommended that executives be advised of the organization's plans and the means and rationale for the assessment as early and as often as appropriate to the situation.

8. Legal basis

Section 64 of the PSEA provides deputy heads with the authority to lay off employees, as long as the lay-offs and the selection of employees to be laid off are in accordance with the PSER:

ss.64

- (1) *Where the services of an employee are no longer required by reason of lack of work, the discontinuance of a function or the transfer of work or a function outside those portions of the federal public administration named in Schedule I, IV or V to the Financial Administration Act, the deputy head may, in accordance with the regulations of the Commission, lay off the employee, in which case the deputy head shall so advise the employee.*
- (2) *Where the deputy head determines under subsection (1) that some but not all of the employees in any part of the deputy head's organization will be laid off, the employees to be laid off shall be selected in accordance with the regulations of the Commission.*
- (3) *Subsection (1) does not apply where employment is terminated in the circumstances referred to in paragraph 12(1)(f) of the Financial Administration Act.*

Section 22 of the PSEA provides the PSC with its general regulatory authority, including the authority to establish regulations respecting the manner in which employees are to be laid off, and the means of selecting those employees:

ss.22

- (1) *The Commission may make any regulations that it considers necessary to give effect to the provisions of this Act relating to matters under its jurisdiction.*
- (2) *Without limiting the generality of subsection (1), the Commission may make regulations*
 - (i) *respecting the manner of laying off employees and the manner of selecting employees to be laid off, for the purposes of section 64.*

Section 21 of the PSER specifies the manner of laying off employees where some but not all of the employees in the affected part of an organization are to be laid off, as follows:

ss. 21

- (1) *If the services of one or more employees of a part of an organization are no longer required in accordance with section 64 of the Act, the deputy head shall assess the merit of the employees employed in similar positions or performing similar duties in the same occupational group and level within that part of the organization, and identify, in **accordance with merit**, [boldface added] the employees who are to be retained having regard to the continuing functions of that part of the organization and the remaining employees who are to be advised that their services are no longer required and are to be laid off.*
- (2) *Deputy heads shall record the reasons for the selection of those employees to be retained.*

- (3) *Despite subsection (1), the determination of employees to be laid off in the Ship Repair group in the Department of National Defence shall be based on a combination of merit and seniority factors and shall be made in consultation with the bargaining agents concerned.*
- (4) *Despite subsection (1), if an employee volunteers to be laid off, the deputy head may advise the employee that their services are no longer required and may lay off the employee.*
- (5) *The deputy head shall, in writing, inform*
 - (a) *the Commission of the names of the employees who are to be laid off in accordance with this section and the proposed date of the lay-off; and*
 - (b) *any employee who is advised that their services are no longer required, of the proposed layoff date.*
- (6) *Subsections (1) to (5) do not apply to an employee who is appointed for a specified period.*

The PSEA defines merit in [section 30](#). The definition includes essential qualifications, current and future asset qualifications, operational requirements and organizational needs. Essential qualifications must always be met; the choice and use of the other merit criteria are at the discretion of the deputy head, and may be applied depending on need. Section 30 of the PSEA refers to appointments, but the definition of merit also applies to the selection of executives to be retained or laid off, pursuant to section 21 of the PSER.

It is important to note that the authority to declare executives surplus flows from Treasury Board's Directive on Career Transition for Executives and not from the PSEA or the PSER. There is no provision in either the PSEA or the PSER to declare executives surplus, only to provide them with an entitlement to a priority for appointment, and to lay them off if they have not been appointed before the end of the surplus period. Executives remain in surplus status for varying periods, as per the [Directive on Career Transition for Executives](#), during which time they may be considered for or marketed for other positions to avoid lay-off.

9. References and related documentation

Legislation

Public Service Employment Act

Public Service Employment Regulations

Public Service Official Languages Exclusion Approval Order

Public Service Official Languages Appointment Regulations

Official Languages Act

Financial Administration Act

[Privacy Act](#)

Other References

Public Service Commission

[Guide to Implementing the Assessment Policy](#)

[Guidance Series – Assessment, Selection and Appointment](#)

[Guide to Assessing Merit](#)

[Assessment Tools \(PSC standardized tests\)](#)

[Priority Administration Web site](#)

[Priority Administration Guide](#)

Treasury Board Secretariat

[Collective Agreements](#)

[Directive on Career Transition for Executives](#)

[Public Service Staffing Tribunal](#)

[Public Service Staffing Tribunal Regulations](#)

[Procedural Guide](#)

[National Joint Council](#)

[Work Force Adjustment Directive](#)

10. Frequently Asked Questions

1. What constitutes a "new" position?

Deputy heads should consult their classification advisor to determine if the positions are new from a classification perspective. If the position is new from a classification perspective, then an appointment or deployment is required to place an affected executive in that position.

2. What happens if the analysis of current and future requirements results in the creation of positions that are very different from the existing positions?

Sometimes career transition or downsizing coincides with reorganization or transformation of the way work is done and results in the creation of positions that cannot reasonably be considered similar to the positions from which executives are to be laid off. If this is the case, different options are available. The following are examples of some of these options:

- Conduct an internal appointment process (advertised or non-advertised), subject to priority clearance from the PSC. Those incumbents of the affected positions who are not appointed to the new positions are identified for career transition.

If the organizational area of selection policy permits, the organization could choose to reduce the area of selection to the affected work unit, since the executives who are not appointed may be identified for career transition.

The organization could also choose to limit appointments to those executives in the affected part of the organization by establishing an organizational need such as 'Employees in the EX group in the affected part of organization X'

Deputy heads should consider invoking [section 43](#) of the PSEA, which provides that should the Commission consider that the appointment of a priority person will result in another person having a priority right, then the Commission may decide to not apply that provision in that case. This means that when requesting priority clearance when conducting the appointment process, the PSC may agree to not refer any other priority persons that may be available.

- Identify all the affected executives for lay-off. Those who choose the surplus entitlement option may be considered as priority persons for the new positions, and could be appointed if they meet the essential qualifications.

This latter approach may be considered less desirable because it limits the flexibility available to the deputy head, who may apply only the essential qualifications when appointing a person with a priority for appointment. In addition, this approach could impose additional stress on executives who might not otherwise have to be declared surplus.

3. Is it necessary to assess an executive's knowledge as part of the process of selection for retention or lay-off?

Not necessarily. The merit criteria must collectively cover the work to be performed, including knowledge, as needed. In some cases, specifying a certain merit criterion implies possession of another. For example, the ability or skill to apply knowledge may, in some circumstances,

presuppose the possession of that knowledge. Another example would be a simulation that requires a certain level of knowledge in order to demonstrate abilities and personal suitability.

In other circumstances, new knowledge may be required that was not required previously, or may be required because the continuing positions, though similar, are not identical. In such cases, it may be reasonable to select on the basis of aptitude to learn and apply the new knowledge. In any event, deputy heads must determine whether or not executives must possess the knowledge to be selected for retention and if required, whether it would be an essential qualification or an asset qualification.

In respecting the guiding values of transparency, it is advisable to communicate clearly to executives which merit criteria are to be assessed. When in doubt, and if it is certain that a knowledge factor will be assessed, it is advisable to state the knowledge factor as a merit criterion.

4. My organization is going through reduction. We are eliminating five of our positions. There are no new positions to be created. I am a deputy head who has supervised the same group of executives for the past 2 years and I know my executives' work. Why do I have to assess every single merit criteria for the executives who have been selected for retention? I have already documented the selection decision and have the assessment of two of the merit criteria.

The PSER requires that the selection for retention be in accordance with merit. In order to demonstrate merit is respected, executives have to be assessed against all merit criteria that is applied. Bear in mind that a deputy head has the flexibility to determine the assessment methods used. For example, section 36 of the PSEA suggests "a review of past performance and accomplishments" as an assessment method.

5. Could an executive's self-assessment be used as one of the assessment tools?

It is a management responsibility to assess executives for retention or lay-off. Deputy heads may use information provided by executives to support their assessment. For example, executives could be asked to provide verifiable behaviour-based descriptions of their performance from their own experience to illustrate the degree to which they possess merit criteria, such as the key leadership competencies. Deputy heads would then verify and assess the information provided against predetermined criteria. The most likely approach would be to use the information in conjunction with information obtained from other sources, such as reference checks or performance appraisals. Note that self-assessments used alone may not be reliable indicators of future performance.

6. Do I have to give executives a lot of notice prior to assessing them?

It depends on your particular situation. Consideration should be given to whether the merit criteria established consist of new merit criteria as well as the assessment methods.

7. Should employment equity considerations factor into determining who to retain and who to lay-off?

Maintaining or achieving employment equity goals may be an organizational need merit criterion, and could be critical to the selection. Deputy heads must ensure that this is a need reflected in the organization's employment equity or HR plan.

Of course, the requirement for executives to self-identify should be made known beforehand to all executives who are to be assessed for retention or lay-off if this is to be applied.

8. How is an executive's second official language assessed in a selection process for retention or lay-off?

Official language proficiency in a bilingual position is assessed on a "meets/does-not-meet" basis using the Second Language Evaluation (SLE) test. It is important to bear in mind that SLE results are valid for five years (unless an executive is exempt from undertaking further second official language assessment). When this time period expires, the SLE results of an executive who has not obtained an exemption are deemed to be valid for an indefinite period, *but solely with regard to the position held by the person*, as long as the linguistic profile of the position has not been raised above the executive's skill level. Consequently, if new positions have been created, executives with expired SLE results will need new SLE results to be appointed or deployed.

9. How are executives who have been appointed on an acting basis in an affected position treated in a process for selection for retention or lay-off?

These executives **are not included** in a selection for retention or lay-off process that includes the position in which they are acting. When the services of the acting executive are no longer required, they will return to their substantive position.

However, "acting" executives **are to be included** in any selection for a retention or lay-off process that affects their substantive position.

10. How are persons on secondments or assignments handled in a process to select executives for retention or lay-off?

The principles that apply to acting appointments also apply to secondments or assignments.

11. How are part time executives in an affected position treated in a process for selection for retention or lay-off?

Part time executives are indeterminate executives and should be treated as such. Management will have to look at the operational requirements and determine if the organization requires a full time position or a part time position in the future.

12. How is personal information concerning executives involved in a selection for retention or lay-off process handled?

Deputy heads must respect the *Privacy Act*, which protects personal information relating to a third party.

Executives assessed in a selection for retention or lay-off process must be provided with sufficient information concerning themselves to understand the decision. The information provided would relate **only to that executive**. This information could include any factors that were taken into account, including the merit criteria used, how the assessment was carried out and the person's assessment results.

Before the selection for retention or lay-off process begins, deputy heads must inform executives of the merit criteria that will be applied. For example, this would include the intent to apply employment equity as an organizational need. To promote transparency, deputy heads should also inform executives of how the merit criteria will be used to make selection decisions. For

example, if ranking will be used to determine who is retained and who will be laid off, this should be communicated to executives.

Communicating these criteria and the intent could lead to the characteristics of the executives who are retained to be deduced by other executives with some degree of accuracy. This could include conclusions about an executive belonging to a designated employment equity group, as well as other attributes, such as knowledge or skills. Executives should be aware that when they self-identify as members of an employment equity group for the purpose of the selection for retention or lay-off process, their membership might be deduced by other executives, by virtue of the outcome of the process.

If executives file a complaint with the PSST, access to information concerning the process, about themselves and about third parties must be in accordance with the PSST regulations and policies.

Any questions respecting privacy and access to information should be discussed with the organization's privacy and access to information experts.

13. Can the Personnel Psychology Centre tests be used in a selection for retention or lay-off?

Yes, Personnel Psychology Centre (PPC) tests can be used when the criteria assessed by the PPC tests are included among the merit criteria of the position. For information about PPC tests and services, consult its [Web site](#).

14. Can a deputy head use a particular merit criterion as a screening tool in a selection for retention or lay-off process? For example, identifying all executives for career transition who do not meet that criterion and continuing selection with those who do meet it?

This may be an appropriate course of action, especially in a career transition situation that involves a large number of executives and few remaining positions. Any merit criterion may be used as a screening tool in this way. Executives who do not meet that criterion would not be considered further for retention or would be selected for lay-off.

15. How do you manage a selection for retention or lay-off process that involves one or more salary-protected executives occupying positions at the level at which the adjustments are to take place?

Salary-protected executives are considered only in selection for retention or lay-off processes that involve the positions in which they are **employed**. This means that the selection has to do with the classified level of the position occupied by the executive only, rather than the level of the salary protection.

16. There is a term executive in the affected area of the organization who has just, or will shortly achieve, three years' service. Should that executive be included in the selection for retention or lay-off process?

[Section 59 \(1\)](#) of the PSEA provides that conversion to indeterminate status is automatic if the conditions prescribed by the employer are met. If the term executive has reached the end of the cumulative period specified by the employer, the executive is converted to indeterminate status and is included in the assessment for the retention or lay-off process. If the term executive has not yet reached the end of the cumulative period, then he or she should be treated in accordance with the policies of the employer.

17. Must the reasons for retaining and the laying off of executives be documented?

Yes. Abuse of authority is grounds for complaint to the PSST [[PSEA 65\(1\)](#)], which implies that lay-off decisions must be documented. [Paragraph 21\(2\)](#) of the PSEER further expands on the PSEA by requiring that deputy heads record the reason for their decisions.

18. Can the results of a selection for retention or lay-off process be used in a second subsequent selection for retention or lay-off process, for example, four months after the results were initially determined?

Yes, the results may be used more than once, but before doing so, the deputy head must ensure that:

- in the intervening time it is unlikely that the merit of the affected executives has changed significantly;
- there are no new executives in the affected area of the organization occupying similar positions of the same group and level as those who had originally been assessed; and
- a further notice of the new application of the results is provided to the executives, including notification of their right to recourse.

19. Is it possible to deploy (as opposed to appoint) affected executives to newly created positions?

It depends. If new positions are created, a deployment might not be consistent with the values of access and transparency, as they are not subject to the merit principle and there is no right of complaint. Since the process for selecting executives for retention or lay-off is rooted precisely in merit-based selection and transparency, it may be preferable for the executives to be appointed to the new positions.

20. What happens when two executives are equally qualified and I can only select one to retain?

This is a management decision and in some situations it may be difficult to select. Frequent communication with executives is important. There may be solutions that management had not considered that executives may offer as options.

21. Can I use seniority as a selection decision for executives?

No. Selection is based on merit which includes the current and future needs of the organization. Experience can be used as a selection criterion. However, note that the depth and breadth of experience is not always proportionally correlated with years of experience.

22. Can employees on leave be assessed in a SERLO process?

As a first step, Deputy Heads should ensure that the executive's position has not been staffed indeterminately if the person has been on leave continuously for over one year. If a position has been staffed indeterminately, the employee on leave will be eligible for a statutory leave of absence priority and work force adjustment (WFA) will not apply. For more information, refer to the TBS [Directive on Leave and Special Working Arrangements](#), and PSC [Guide on Priority Administration](#).

Assessment of employees on leave

In many circumstances, an employee who is on a leave of absence can be included in a SERLO. The most appropriate option should be determined on a case by case basis in conjunction with labour relations advice. The following factors should be considered when making the determination:

- The nature of the leave;
- The employee's expected date of return from leave;
- Special circumstances linked to grounds in the *Canadian Human Rights Act*; and
- Accommodation measures that might be required for the assessment.

In some situations, the Deputy Head will be in a position to conduct the assessment of the employee without requiring their participation when the assessment can be based entirely on reference checks, performance appraisals or managerial knowledge. Caution must be exercised when considering this option to ensure that the person who has been on leave of absence be given access to the same support and information as other employees.

Employees on a leave of absence that is linked to a protected ground under the *Canadian Human Rights Act* (extended sick leave, maternity leave, etc.) must be accommodated in the SERLO up to the point of undue hardship. (Note: When an employee is on medical leave, a physician may be required to determine fitness to participate in the assessment.) If it is determined that the employee on such a leave cannot be accommodated, labour relations staff should be consulted on how to proceed.

If, after consultation with labour relations, it is determined that the employee can reasonably be expected to participate in the selection for retention or lay-off, refer to the [Assessment Module of the PSC Guide on the Selection of Employees for Retention or Lay-off](#) (and, if appropriate, the PSC [Guide for Assessing Persons with Disabilities](#)). Some important considerations include:

- Will the assessment be conducted without requiring the participation of the employee (i.e., when the assessment is based entirely on reference checks, performance appraisals or managerial knowledge)?
- If the employee's participation is required, accommodation requirements should be determined before the assessment is conducted. Accommodation measures could include conducting assessments outside normal working hours or using alternate methods such as video, teleconference, or e-mail.
- An employee who has been on leave of absence may not have had access to all of the support and information that other employees have been given. They should be provided with the same information at the same time as the employees present on the job, given adequate time to prepare for the assessment and access to resources and other materials that are available through the workplace. The assessment methods may need to be adapted to ensure that:
 - The assessment is fair;
 - Barriers are removed;
 - The result is equivalent to the information that is on hand for other employees;
 - and
 - The result provides adequate support for the selection decision.

As soon as the assessment results are determined, the employee should be informed of the results and provided with the opportunity to complain to the Public Service Staffing Tribunal at the same time as the other employees included in the assessment, in accordance with the considerations set out in Step 7 in the [Guide on the Selection of Employees for Retention or Lay-off](#).

23. What if employees go on sick leave during the SERLO process?

Regardless of when the leave commences, employees on sick leave during a SERLO should be treated as has been explained in the general messaging and in the answer to Question 22. The most appropriate option should be determined on a case by case basis in conjunction with Labour Relations advice.

24. In conducting a selection for retention or lay-off process, what are the biggest differences between one for executives, and one for employees not at the executive level or equivalent?

As per the [Directive on Career Transition for Executives](#), executives who are identified for career transition are given two options to consider:

Option 1. Leave the core public administration,

or

Option 2. Seek continuing employment in the core public administration.

As such, it is the executive who decides if he or she wishes to have the surplus entitlement period and be declared surplus. Although it is the executive who chooses to be declared surplus, it is the deputy head who determines the period of entitlement. Therefore, the selection strategy will be different depending on whether executives will have a priority entitlement.

In assessing executives, the assessment design will be different as executives are subject to the qualification standards which prescribe key leadership competencies. The key leadership competencies and sub-competencies must be assessed and executives must meet them individually. For more information, please consult the TB [Frequently Asked Questions](#) on the [Qualification Standards for the EX Group](#).

The [Personnel Psychology Centre](#) at the PSC has assessors and assessment material that may help you in this selection process.

Executives may have to manage work force adjustment situations whilst undergoing a career transition exercise themselves. This could result in additional stress. The Employee Assistance Plan, counselling through the Personnel Psychology Centre, or other counselling should be made available.

Version Tracking Summary Table

The following guides have been archived and are available for reference purposes. Please consult the current Guide on the selection of executives for retention or lay-off (add link).

Please note: The table below provides a version number as well as a summary of significant changes that relate to each revision.

Document version	Summary of Significant Changes
ARCHIVED – Version 1 March 16, 2012 – May 8, 2012	Working Draft
CURRENT Version 1.1 May 8, 2012	<ol style="list-style-type: none">1. Edit Question 22 and add Question 23 to clarify Leave of Absence situations.2. Add Version Tracking Summary Table

ⁱ Where an employee's SLE test results warrant, the PSC may grant an exemption from further second official language testing for an indefinite period for each of the three language skills (written comprehension, written expression and oral proficiency). However, this exemption does not apply to the assessment of technical or specialized language skills (code P), which is conducted by means of instruments specially designed to assess them.