The Public Service Commission and the implementation of the *Public Service Employment Act* (2003)

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Introduction

In November 2003, the Parliament of Canada enacted the *Public Service Modernization Act* (PSMA), the most important legislative, institutional and policy reforms of the human resources (HR) system of the federal public service in almost four decades. This omnibus bill created a new staffing tribunal, established a new central agency in charge of HR management, reallocated responsibility for important training and development programs offered to public servants and introduced new rules concerning the political activities of public servants. Above all, the PSMA significantly modified the core legislation concerning staffing — the *Public Service Employment Act* (PSEA) — in order to create a new staffing system that would provide more authority and flexibility to managers and executives in organizations, while ensuring that the federal public service would remain both competent and politically non-partisan. As a whole, the reforms were meant to move the HR system of the federal public service away from a prescriptive, rules-based approach and create a more flexible, values-based system relying to a greater extent on the judgment of individuals.

The new PSEA came into force in December 2005. Given its scope and significance, its implementation was bound to represent a significant challenge for the entire public service. However, as the agency entrusted with the statutory authority to appoint people to, and within, the public service, as well as the key independent oversight body reporting to Parliament on staffing, the Public Service Commission (PSC) was one of the central actors involved in the changes to the HR system. By setting staffing policy and offering support and services to organizations, the PSC continues to play an important role in staffing operations across the public service under the new legislative framework. Moreover, its oversight activities, which were to gain prominence under the new system, remain essential in ensuring that organizational staffing practices are consistent with the merit principle and free from political patronage. Finally, its role in overseeing the political activities of public servants was reaffirmed and expanded by the new legislation. In this context, while the responsibility for leading the implementation of the reforms fell in good part on the new HR agency, then named the Public Service Human Resource Management Agency (PSHRMAC),[1] the PSC necessarily had a central role to play in the implementation of the new PSEA.

The objective of this paper is to document and analyze the efforts that the PSC has made to implement the new PSEA, roughly from the time of its enactment in 2003 to the fall of 2010. By relying on a review of public and internal documents as well as 18 interviews with key informants, we retrace the implementation of this important reform by the PSC, discussing the approach that

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[1] The PSHRMAC was later renamed the Canada Public Service Agency. Then, in March 2009, the agency was further transformed into a new Office of the Chief Human Resources Officer, housed within the Treasury Board of Canada Secretariat (TBS). The creation of the new office was meant to simplify the governance of HR within the federal public service, including by regrouping the HR functions previously handled by the Agency with functions already housed within the TBS, such as pension and benefits, labour relations and compensation policy. These changes did not affect the mandate, functions or organization of the PSC.

was adopted, the key steps that were taken and the challenges that were encountered along the way.[2] As it responded to the new PSEA, the internal transformation of the PSC as an organization and its efforts to help change the broader HR system of the public service were inextricably linked. In this perspective, the paper examines both the measures taken internally to implement the new PSEA and those aimed externally to transform the staffing system and the framework regulating the political activities of public servants.

Overall, the paper shows that, despite being challenged to effect changes of a rare magnitude under a daunting timeline, the PSC has successfully created and deployed a new delegated staffing system in just a few years and it has put in place a renewed and expanded framework for dealing with the political engagement of public servants. It also significantly transformed itself in the process. Moreover, since the new Act came into force, the PSC has continued to introduce adjustments to the new staffing system, strengthened its oversight capacity, reduced the reporting burden of organizations and made its policies clearer and easier to put into operation. Further adjustments are still in the process of being adopted and implemented. On the whole, there is no doubt that a great deal has been done and that, acting on the letter and intent of the new legislation, the PSC significantly contributed to a major transformation of the staffing system of the public service.

However, the study also reveals that the implementation process encountered a series of challenges that have probably hindered the capacity of the public service to derive the full benefits intended by the 2003 reform. In particular, the full implementation of the new PSEA, and the staffing philosophy that it embodies, was hindered by unresolved tensions and some confusion between the roles to be played by the PSC and the new central HR agency created by the reform (now part of the Treasury Board of Canada Secretariat), by uncertainty and disagreements around the true nature of a "values-based" staffing system, by difficulties in training organizational managers and HR specialists to make sure that they could take full advantage of the reforms and, in some cases, by some difficulties in pursuing simultaneously two functions: to serve as a staffing agency working with organizational managers and to act as an independent oversight body reporting directly to Parliament on the staffing done by organizations. By the fall of 2010, the implementation of the PSEA remained a work in progress: the institutional and normative framework of the new system continues to be adjusted but the challenge of knowledge transfer and cultural change is seen by most interviewees as remaining particularly salient.

The paper begins by providing a brief overview of the intent and content of the new PSEA. The second section, which makes up the bulk of the paper, examines a series of key issues associated with the implementation of the Act by the PSC. Subsection 2.1 first looks at the

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[2] It is important to note that the paper does not seek to evaluate the results and outcomes achieved through the implementation of the new legislation or assess the extent to which the objectives of the staffing reforms have been achieved to date. For example, there is no attempt to directly assess whether managers are actually using and benefiting from added flexibility in staffing, whether the speed of staffing has improved or whether the new provisions have had any effect on non-partisanship. In addition, the paper does not examine the efforts made by other HR-related agencies, such as the Office of the Chief Human Resources Officer, or departments in implementing the PSEA and other parts of the PSMA. The focus here is exclusively on the steps taken by the PSC to put the new legislation in place, the choices that were made in this regard and the challenges that were encountered along the way.

co-ordination of implementation efforts between the PSC and other organizations. Then, in subsection 2.2, we discuss the development of new staffing policies and the development of the delegation and accountability frameworks used under the new system. The following section looks at the efforts deployed to inform and train organizational managers and HR specialists. Subsection 2.4 focuses on some of the more significant organizational issues raised by the implementation of the new PSEA, namely the investment in a more substantial oversight capacity and debates about the future role of staffing services offered to organizations by the PSC. In the final section, we examine the efforts deployed by the PSC to put into place the reformed framework for dealing with the political activities of public servants. We then offer some concluding remarks on our findings.

1. Staffing reform and the new *Public Service Employment Act*

The reform enacted in 2003 was the culmination of an extensive process, driven by the senior leadership of the public service and motivated by the perceived need to modernize the ways in which the federal bureaucracy acquires, develops and deploys its human resources. Its more immediate origins can be traced back to the publication of a highly critical study of the HR system published by the Office of the Auditor General in 2000, which decried the system's complexity and inefficiency and called for large-scale changes.[3] Following the publication of this report, the government committed itself, notably in its Speech from the Throne in 2001, to comprehensive reforms to make sure that the public service could continue to attract and develop highly qualified people in an era when the knowledge, skills and creativity of an organization's personnel matter more than ever to its success. A few weeks later, the Clerk of the Privy Council announced a fundamental reform of the public service's HR approach and operations, including its staffing legislation, deemed to be too constraining to make the public service a modern and people-centered organization.[4] This reform process was subsequently led by a task force appointed by the Clerk and headed by a senior deputy minister, Ran Quail. The report of the Quail Task Force served as the basis for the reforms that were eventually enacted.[5]

While these events constituted the more proximate causes of the changes adopted at the end of 2003, their overall intent and philosophy can easily be situated in longer-term trends. For decades prior to the changes, managers and executives in the public service had expressed concerns with the centralized, rules-heavy and complex nature of the staffing system, decrying its ensuing rigidity and inefficiency. In fact, the core intent of the reform — to introduce greater flexibility in the system and further delegate staffing to organizational managers — was the impetus of many smaller policy and legislative changes made over preceding decades. This search for more managerial flexibility was also at the centre of several reform proposals debated within and outside the PSC in the past. As recently as the mid-1990s, the PSC had moved of its own volition toward a more delegated and values-based staffing system, anchored in a series of delegation agreements signed with organizations.[6]

In this perspective, while the 2003 changes were undoubtedly more extensive and radical, they also conformed to a longer-term trend in policy. The core philosophy underpinning this trend is a move toward a "values-based HR decision-making system," one that relies as little as possible on a set of

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[3]   Office of the Auditor General of Canada (2000) *Streamlining the Human Resources Management Regime: A Study of Changing Roles and Responsibilities*, Ottawa.

[4]   See Clerk of the Privy Council (2001) *Eighth Annual Report to the Prime Minister on the Public Service of Canada*, Privy Council Office, Ottawa.

[5]   For a more complete account of these events, see Luc Juillet and Ken Rasmussen (2008) *Defending a Contested Ideal: Merit and the Public Service Commission*, 1908-2008, Ottawa, University of Ottawa Press, 199-206.

[6]   See Luc Juillet and Ken Rasmussen (2008) *Defending a Contested Ideal: Merit and the Public Service Commission, 1908-2008*, Ottawa, University of Ottawa Press, 191-194.

prescribed rules and practices and to a greater extent on the responsible judgment of employees who are trusted to live up to a set of core values, such as non-partisanship, fairness and transparency. Under such a system, organizational managers and executives would operate under a relatively light staffing framework mandated by central agencies, would be entrusted to develop their own internal HR practices consistent with this framework and its underlying values and would be monitored, including through periodic audits, to ensure compliance with the basic rules of the system and the values that it is meant to embody. This, in a nutshell, is meant to be the approach flowing from the new PSEA.

While the shift toward a values-based system indicates the broad direction of the changes, it leaves unanswered many questions about how the new staffing system is to work in practice. At the time of crafting the new legislation, key choices were made in this regard; many of them with significant implications for the PSC. In fact, those key choices went a long way to setting the implementation agenda for the PSC. We now discuss some of those key choices.

A central question addressed at the time of the reform was whether the statutory authority for appointments, and its associated policy-setting role, should be removed from the PSC, which would simply become an auditing body reporting to Parliament. The Quail Task Force was explicitly considering such a "bold option" as a means of obtaining radical changes in the HR system. For many advocates of reform, such a move would go a long way toward improving the efficiency of staffing, simplifying the governance of HR and ensuring direct control of staffing policy by public service executives. That being said, such a move was not without complications, as the task force debated where the staffing authority would then reside and what the respective roles of the Treasury Board of Canada Secretariat and organization heads might be under a new system.

However, this option was strongly opposed by the PSC itself, which believed that relying solely on the public reporting of audits would not provide it with the necessary leverage over organizations to ensure that some staffing values, such as political impartiality or equity, would be respected.[7] Under pressure to achieve greater efficiency, agencies falling more directly under the control of the government might be tempted to give short shrift to other values associated with the staffing system and their executives would be more exposed to potential pressures from politicians seeking to influence the staffing process. Only an independent agency, the president of the PSC argued at the time, would be in a position to properly defend the political neutrality of the public service and strive to maintain a balance among competing values of efficiency, fairness, transparency and equity of access.[8] In what was clearly a very difficult situation, the President strongly defended the PSC's independence and staffing authority, even appealing directly to the President of the Treasury Board and threatening to alert parliamentarians and the public about these concerns.[9]

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[7]   For a brief overview of this debate, see Luc Juillet and Ken Rasmussen (2008) D*efending a Contested Ideal: Merit and the Public Service Commission, 1908-2008*, Ottawa, University of Ottawa Press, 206-210.

[8]   See, for example, the comments in Public Service Commission (2002) *Annual Report 2001-2002: Protecting Merit and the Public Trust*, Ottawa, Minister of Public Works and Government Services Canada, 14-15.

[9]   Luc Juillet and Ken Rasmussen (2008) *Defending a Contested Ideal: Merit and the Public Service Commission, 1908-2008*, Ottawa, University of Ottawa Press, 208.

The deputy ministers' community was split over the issue and the debate that ensued was, by all accounts, very difficult. When interviewed for this study, a senior executive who was at the Privy Council Office at the time described it metaphorically as a "small civil war." However, at the end of the debate, according to a senior member of the Quail Task Force interviewed for this study, a clear majority of deputy ministers preferred to leave the statutory authority for appointments with the PSC. In particular, some deputy heads were convinced that the possibility of relying on an independent agent of Parliament to resist potential political pressures for hiring particular individuals remained a necessary feature of our system of public administration. In other words, despite the fact that the days of rampant patronage are long gone, these deputy ministers believed that the PSC remains an institutional backstop against the threat of politicization, an important institutional safeguard that could prove occasionally useful to senior executives in fending off political pressures. Other deputy heads, more open in principle to a radical institutional change, simply did not think that the battle that would be required to remove the appointment and appointment-related authorities from the Commission would be worth it.[10] These views were eventually bolstered when a new Clerk of the Pricy Council was appointed and the incoming individual, Alex Himelfarb, seemed to favour a more cautious approach to the reforms.[11]

Consequently, after much debate at the highest level of the public service, the decision was made to leave the legal authority for appointments to the Commission, which would be explicitly asked to delegate it to organizations by the statute. This call for the delegation of staffing authority "to as low a level as possible within the public service" was eventually written into the preamble to the new statute. However, as one would expect, the exact extent, method and conditions under which this delegation would occur were left unspecified in the legislation. At the same time, the delegation of authority also implied the development of a solid system of oversight to ensure that the conditions of delegation would be respected and that delegated authority would be exercised in a manner consistent with the values enunciated in the legislation. In 2003, such a robust and extensive oversight capacity, especially with regard to audits, did not exist at the PSC. Consequently, the development of a delegation framework and an adequate oversight regime became important issues during the implementation of the new PSEA.

As we will discuss later, another legacy of this high-level debate on the institutional position of the PSC has been that, following the adoption of the PSEA, some senior executives remained dissatisfied with the enduring role of the PSC. According to some of our interviews, at least to some extent, this battle was carried over into the implementation phase. As a senior executive of the Commission explained in an interview, some of the tensions that subsequently emerged between the PSC and the PSHRMAC through the implementation process could clearly be traced back to this original disagreement about the role of the PSC. For other executives, the debate on the role of the PSC simply contributed to some ongoing confusion about the respective roles of the PSC and the PSHRMAC. As the senior executive put it: "For some people, the ambivalence about the role of the PSC under the new system persisted after the Act [was adopted]."

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[10] Confidential interview with a former senior executive at a central agency.

[11] Interview with a senior executive with the Quail Task Force at the time.

A second key choice made at the time that the reform was adopted was the decision to entrench in legislation, for the first time in history, a definition of the merit principle. Meant to modify the conception that had emerged through court decisions under the previous system, which was faulted for much of its rigidity, the new definition makes clear that a meritorious appointment is one where the appointed candidate meets the essential requirements of the position to be filled and not necessarily the one who would be deemed the most qualified following an exhaustive and systematic ranking of all candidates. In this perspective, the Act even explicitly states that, to be based on merit, an appointment process does not need to consider several candidates. However, at the same time, appointment decisions are also clearly expected to respect the values that the law continues to associate with the staffing system, such as fairness, representativeness, access and transparency. The manner in which the system is to ensure that the redefined principle of merit is applied and that the values of the system are respected is an issue that needed to be addressed through the adoption of staffing policies. For the PSC, the only entity holding the legal authority to make appointments and hence the only body able to set the conditions of its use, policy development would then also become a crucial task of the implementation of the PSEA.

Other choices made in 2003 had a profound impact on the PSC as an organization. The PSMA effectively removed the responsibility of hearing the appeals of organizational staffing decisions from the PSC by creating a separate independent staffing tribunal, the Public Service Staffing Tribunal (PSST). Simultaneously, the decision was made to severely circumscribe the grounds for appeal to cases involving the abuse of authority by managers. Other complaints, such as appeals based on errors committed in good faith, were to be dealt with by deputy heads through internal organizational processes. These decisions put an end to a long-standing function of the PSC, by transferring it to the PSST and to deputy heads. Similarly, the training and development programs, which historically had been an important component of the PSC, were transferred to other organizations in an effort to regroup HR functions under the leadership of the Treasury Board. For the PSC, this change also constituted an important organizational transformation. In narrow budget terms, the loss of this function alone meant a sizeable and permanent transfer of $55M out of its annual budget to the Canada School of Public Service (CSPS) and the newly created PSHRMAC. Combined with the transformation of its branch offering staffing services, including a partial shift to a cost-recovery model in recent years, and the need to build up its audit branch, these substantial organizational changes represented an important component of the implementation of the 2003 reforms.

Finally, Part 7 of the new PSEA contains new provisions concerning the political activities of public servants. While these measures are not directly related to staffing (although they have clear implications for the conditions of employment of public servants), they speak directly to the Commission's mandate to protect the political impartiality of the public service. In 1991, a decision of the Supreme Court of Canada affirmed the political rights of public servants and invalidated some of the sections of the old PSEA that simply prohibited public servants from engaging in political activities in favour of or against a political party or a candidate in an election. In the *Osborne* decision, the Supreme Court deemed this approach to be excessive and unduly curtailing

the political rights of public servants. While recognizing the need to ensure the political impartiality of the public service, the Supreme Court essentially asked Parliament to find an approach that would better balance this legitimate objective against the constitutional rights of public servants.[12]

In effect, while it left intact the sections of the PSEA requiring public servants to obtain the explicit permission of the PSC before running in federal or provincial elections, the *Osborne* decision nevertheless created a hole in the regulation of their political activities.[13] To remediate this situation, the new PSEA contains provisions that allow public servants to engage in political activities insofar as they do not impair, or appear to impair, their ability to perform their work in a politically impartial manner. The only exception concerns deputy heads, who are prohibited from engaging in any form of political activity with the exception of voting. This part of the PSEA clearly reaffirms the role of the PSC in this area. For example, it gives the PSC the explicit mandate to recommend regulations identifying specific political activities to be prohibited (if it deems it necessary) and it also entrusts the PSC with the task of investigating allegations that either a deputy head or an employee has violated the rules concerning political activities. Furthermore, the new legislation extends the need for obtaining the PSC's permission before running for office to elections occurring at the municipal level and gives the Commission the authority to decide whether a successful candidate must take a leave of absence or even resign from their position while holding a municipal office. Overall, these new provisions regarding the political involvement of public servants also required significant work by the Commission as it proceeded to implement the new PSEA.

While the broad survey of the new PSEA presented in this section necessarily remains limited, it nevertheless offers a picture of the nature and the magnitude of the challenges presented by the implementation of the new legislation by the PSC. To create a new set of staffing policies, design and deploy an extensively delegated model of staffing, significantly restructure itself as an organization and develop a new and expanded system to regulate the political activities of employees across the entire public service: a daunting set of objectives by any measure. To meet them simultaneously within a fairly short time frame, while continuing to operate the existing staffing system for the first two years, was obviously an ambitious program for the PSC. In the next section, we examine how the Commission proceeded to implement the new PSEA in all of those areas and the challenges that it encountered along the way.

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[12] *Osborne v. Canada (Treasury Board)*, [1991] 2 R.C.S. 69. See also Luc Juillet and Ken Rasmussen (2008) *Defending a Contested Ideal: Merit and the Public Service Commission, 1908-2008*, Ottawa, University of Ottawa Press, 137-139.

[13] It should be pointed out that, when these provisions of the old PSEA were struck down by the Supreme Court, the Treasury Board of Canada Secretariat's Office on Values and Ethics essentially became responsible for dealing with these cases of political activities unrelated to candidacies in elections. It did so in the context of the broader legal concept of the "duty of loyalty to the employer" and the *Values and Ethics Code for the Public Service*. Even after the adoption of the new PSEA, the PSC and the TBS faced the necessity to work together to ensure that the new statutory provisions, and their related regulatory and policy measures, remained compatible and coherent with the ethics code and labour law principles.

However, before examining its implementation, it must be noted that the new PSEA was not the sole staffing reform pursued by the PSC during this period. As part of the broader agenda of HR modernization, a number of other initiatives were already under way and could not be stopped because of the adoption of the new legislation. For example, the increased use of a national area of selection for appointments to the public service, strongly supported by a group of parliamentarians who see the measure as a key step toward more equitable access to public employment by Canadians, also represented a significant endeavour. The mandatory use of a national area of selection for open competitions to fill senior officer-level positions had been introduced in the fall of 2001 and pilot projects had taken place for lower-level officers in 2002. While the Commission has proceeded with care, fearing the ensuing rise in the volume of applicants for many positions and the resulting administrative burden for organizations, the file continued to evolve as the PSC turned its attention to the PSEA's implementation.

In this same period, the PSC was pursuing some large-scale technological projects related to e-recruitment tools. Better information technology must be a key part of the solution for dealing with high volumes of applicants and alleviating the administrative burden of organizations in the area of staffing. A modern, sophisticated IT infrastructure is a must for large-scale staffing processes. In this perspective, a new technology was launched in April 2003 to help advance the use of electronic recruitment tools (e.g. for receiving and screening applications) but, as the PSC turned its attention to PSEA implementation, considerable efforts and long-term funding remained necessary to complete this project. Moreover, in the same period, the Commission was experimenting with collective staffing (i.e. the use of shared, pre-qualified pools of candidates) and introducing policy changes concerning the conversion of term positions into indeterminate ones. While some of these policy issues are easily reconcilable with the new PSEA, others, such as collective staffing initiatives, have raised some particular policy complications under the new Act. In sum, according to some interviewees, the work of implementing the new legislation was at times complicated by the added burden of continuing with some of the reforms that predated the adoption of the PSEA.

In fact, some interviewees made the same point in reference to other system-wide reforms, such as the adoption of the *Federal Accountability Act*, the tightening of budgetary controls and the launch of expenditure reviews. These reforms clearly affected the PSC as an organization as it was trying to mobilize its energies and resources for the implementation of the HR reform. They also made it more difficult to compete for the attention of executives and managers, who were generally the common target of all these administrative reforms and frequently felt overwhelmed and demoralized by what seemed like an onslaught of changes. As one executive put it: "With all this talk about accountability, I think that it just became easier [for the PSC] to be perceived like just another cop sent after the departments. The overall context in which the HR reforms took place made them a tough sell." While this paper does not systematically examine those interactions, it is certainly worth remembering that the implementation of the new PSEA was not the only preoccupation of the public service over this period.

2. The Public Service Commission and the implementation of the *Public Service Employment Act* (2003)

The bill proposing the PSMA, which contained the changes to the PSEA, was tabled in Parliament in February 2003. Adopted by Parliament on November 4, 2003, it received Royal Assent a few days later. However, the PSMA specified that some of its components would come into force at a later date. The new staffing provisions included in the renewed PSEA were scheduled to come fully into force only on December 31, 2005, leaving about two years for the PSC and the organizations affected (or created) by the reforms to prepare for a smooth transition to the new staffing regime. The new provisions concerning the political activities of public servants, contained in Part 7 of the new PSEA, were originally scheduled to come into force even earlier, at the end of 2004. At the Commission's request, the government subsequently decided that these new measures would also come into force at the end of December 2005.

The PSC made full use of the years preceding the coming into force of the Act to prepare for the implementation of the new provisions. In fact, the Commission's implementation planning began even before the Act was finally approved by Parliament, an approach made possible by the long process of HR modernization that led to the new legislation. As a senior official of the Commission stated during an interview: "our people had been involved and had followed closely the reform process and the evolution of the draft legislation, including while it was considered by the House of Commons, so they understood the legislation well and were well-prepared to move on its implementation."

Yet, despite its early start, the PSC still faced a daunting timeline to implement such wide-ranging changes. In about 24 months, it needed to consult key stakeholders; develop new regulations, policies and guidance documents; establish new administrative processes; agree on delegation instruments and agreements with organizations; communicate the changes to the entire public service; and help train managers and HR specialists for the new system — and it needed to do all this while it was changing leadership and transforming itself significantly as an organization. In fact, given the need to give organizations enough time to organize themselves to handle the new delegated framework, the PSC decided that most of the deliverables needed to be completed within the first 18 months following the enactment of the PSEA.[14]

In the fall of 2003, to drive the process and stick to this ambitious schedule, the Merit Policy and Accountability Branch established a project management office to support implementation activities within the PSC. It also initially created a core working group, meeting bi-weekly and composed of executives from its key branches, including Resourcing Policy and Legislation, Information Management and Review, Delegation, Communications and Outreach and Legal Services.[15] This internal group led and supported the implementation process within the PSC in

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[14] Public Service Commission, *The Public Service Commission's Implementation Plan for the New Legislation*, internal memo dated November 12, 2003, 2.

[15] Ibid, 2.

the early days of the implementation effort. As the implementation unfolded, some organizational changes were made, such as the creation of a PSEA Implementation Task Force in the winter of 2004, which met every morning to discuss the state of the project. According to our interviews, within the PSC, collaboration was particularly close among the directors general in charge of policy development, delegation and oversight. Because of the tight deadlines, it was necessary to move forward simultaneously on all these dimensions of the new framework, and doing so while ensuring the coherence of the overall framework represented an important challenge. Daily communication proved an essential factor in meeting this challenge. Extensive communication within the PSC was also necessary to ensure that feedback received from organizations and other stakeholders was relayed effectively to the whole PSC implementation team. In sum, internally, with the exception of the work on the political activities provisions, which followed a largely separate process, the implementation of the Act benefitted internally from a strong and integrated project management effort in those few important years leading to December 2005.

2.1. Communication, co-ordination and the debates about the role of the Public Service Commission

One of the first key issue that confronted the PSC as it turned to the implementation of the new Act was to settle on an approach that would help it reconcile the need to collaborate extensively with other organizations with the simultaneous need to keep, and be perceived as keeping, its independence as an oversight body reporting directly to Parliament. This long-standing issue in the history of the PSC seemed to be brought out again in full force by the reform: the overall effect of the changes was clearly to strengthen the oversight responsibilities of the Commission, but, as we saw, the reformers also stopped short of depriving the PSC of its responsibilities as an executive agency, including the delivery of staffing services to organizations. Once again, the PSC seemed to be at once both in and out of the executive family, a situation that raised questions about how it should approach the implementation of the PSEA.

As we will discuss later, the complex and unique position ascribed to the PSC by Parliament raised some straightforward issues of project management, such as the extent to which it should rely on the government-wide governance structure for HR reforms to guide its implementation work, but, at a deeper level, it also created difficulties and personal tensions that affected the implementation process. As we saw previously, at the time of adopting the reform, the deputy minister community was divided on whether the PSC should be reduced to a parliamentary agent auditing staffing practices. While the decision was made to leave it much of its executive responsibilities and authorities, after the reform had been enacted, some of the key figures involved in HR modernization remained convinced that the Commission's role in staffing should be minimized. Furthermore, within the broader community of senior officials, there also remained some ambivalence about the proper role of the PSC under the new system. The creation of the PSHRMAC, which officially was to exercise leadership within the bureaucracy on HR issues, generally added to this ambivalence and, in the end, generated a fair amount of confusion about how the new staffing system was to work.

The creation of the PSHRMAC, which quickly sought to involve itself in several staffing policy issues, also created some tension between the two agencies. According to interviewees, this tension manifested itself in a myriad of ways. For example, the PSC and the PSHRMAC ended up clashing over matters of staffing policy and the training of managers. In fact, it is evident from interviewing people both within and outside the PSC that, especially in the early years of implementation, the tensions between the two agencies about their respective roles and responsibilities were quite strong and did not help with the system-wide implementation of the new Act. In particular, they sowed a fair bit of confusion about the reform among organizational managers and executives, leading to some loss of momentum and credibility. In this respect, the problem seems to have been particularly acute for the PSHRMAC, a newer organization with less stable leadership. The inter-organizational tensions resulted in some wasted time and energy for many people involved in the implementation process.

As for the PSC, its institutional position also raised some questions about how it should present itself throughout its implementation efforts. Its leadership was attentive from the beginning to the need to effectively communicate its future role to organizations, but it was equally conscious of the difficulties of playing up its renewed emphasis on oversight and auditing without losing the trust of organizational managers. To help it think through these issues, in December 2002, the Commission directed its Communication and Outreach division to write a discussion paper exploring potential approaches. The communication and consultation approach was later endorsed by the Commissioners.

This paper, completed in May 2003, was insightful in identifying early one of the challenges of the implementation process.[16] It made the point that, when using an oversight model placing greater emphasis on auditing of delegated authority, effective public communication, especially about the results of audits, would become essential to maintain its credibility as an independent agency and establish its reputation as a strong oversight body.[17] However, this might be a tricky endeavour since it touched on the Commission's complex institutional position: a balance would have to be struck between publicly denouncing shortcomings in the staffing practices of organizations and preserving a constructive, trust-based relationship with organizational managers and executives. However, such a balance would be necessary to maintain a smoothly functioning staffing system while overcoming potential distrust of employees and parliamentarians in an audit-based oversight model (as opposed to one more closely controlling individual transactions).

As the discussion paper put it, from a communications perspective focused on the PSC:

> "If the public, and their agent, Parliament, is [sic] to be convinced that the new PSC is acting in their interest, we must ensure that those that we oversee know we have the clout to make their wrongdoings public. The "bad PSC cop" needs to make strategic appearances. At the same time, HR issues are rarely the top news story across the country. We must face the fact that if we create some controversy to get noticed, as owner-overseer, it may not be in our

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[16] Public Service Commission of Canada (Communications and Outreach), *Communication Options for the New PSC*, May 2003, internal document.

[17] Ibid, 7.

interest to continually shame a system we have a hand in managing. Much of communications challenges centre on this very point: finding the right balance between our two roles of owner and operator."[18]

Obviously, achieving this balance constitutes more than a communication challenge: it goes to the heart of the new staffing regime's operation. With respect to the implementation of the new PSEA, it highlighted the need to define with greater clarity the respective roles and responsibilities of organizations, the new HR agency reporting to the Treasury Board and the PSC under the new legislative framework. As we saw earlier, while the new legislation is clear that the delegation of staffing authority to organizational managers should be as extensive as possible, it left to the Commission its statutory authority for making appointments and did not turn it exclusively into an auditing body.[19] As a result, part of the challenge of implementation for the Commission would be to define with greater precision its role and relationship with other actors in the system as it straddled the functions of ensuring external oversight, making staffing policy and guiding organizations and delivering staffing services.

This challenge surfaced periodically throughout the implementation process and, in fact, remains controversial today. As one senior PSC official told us:

> "I think that the implementation of the reform has been weakened by some ongoing confusion about who is supposed to be doing what. We created elaborate co-ordination structures with PSHRMAC and others, but I don't think that there ever was clear agreement among senior leaders on how the respective roles and responsibilities should be handled. There is probably more confusion around OCHRO but DMs are not very clear on the Commission either. [...] One DM told me: 'The PSC is telling us: 'we're here to help you, but don't forget that our auditors will be watching you.' Another senior deputy told me: 'You guys have become just another auditor on our back.'"

Obviously, it is impossible, in the context of this study, to ascertain how representative these views are of the overall deputy heads' community. But these comments, echoed by other interviewees, certainly illustrate the challenge faced by the Commission in positioning itself vis-à-vis other actors as it operates under the new PSEA.

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[18] Ibid, 3.

[19] The new PSEA not only allows the PSC to delegate staffing authority to deputy heads, its preamble also makes clear that the delegation should be as extensive as possible within organizations. The preamble to the Act contains the following statements: "[...] authority to make appointments to and within the public service has been vested in the Public Service Commission, which can delegate this authority to deputy heads; [...] delegation of staffing authority should be to as low a level as possible within the public service, and should afford public service managers the flexibility necessary to staff, to manage and to lead their personnel to achieve results for Canadians; [...]."

The Public Service Commission and government-wide co-ordination of human resources modernization

This challenge also clearly had immediate repercussions on how to handle the implementation process. On one hand, it was seen as imperative to fully co-ordinate implementation activities with other agencies, such as the PSHRMAC and the CSPS, to avoid duplication of efforts, ensure coherence in policy development and prevent inconsistency in communicating with organizations. On the other hand, in keeping with the spirit of the new legislation, the PSC also needed to be sure to preserve its independence, and be seen as doing so, as it went about developing a new staffing policy and communicating its future role to organizations and other stakeholders.[20] As a result, while it did its own consultations and outreach, the PSC also participated extensively in co-ordination committees established by other organizations and in several joint consultation, information and training initiatives, particularly with the PSHRMAC.

To assist in the implementation of the PSMA, the Treasury Board of Canada Secretariat established a Human Resource Management Implementation (HRMI) Governance Structure in the fall of 2003. It consisted of a committee of deputy ministers (DMs), five DM sub-committees and an assistant deputy minister HR Advisory Group. These committees were supported by an HRMI Secretariat created within the Treasury Board of Canada Secretariat, which served in effect as a project management office for the implementation of the Act. The DM committee essentially served as an advisory group to the Secretary of the Treasury Board for the implementation of the new legislation, conveying the views of senior executives on HR reforms, providing input into the Secretariat's decisions and helping it identify potential difficulties throughout the process. Each sub-committee focused on a particular set of issues, such as labour-management relations or information management, and tried to ensure the sharing of information and the co-ordination of efforts.[21]

The PSC was well-integrated into this governance structure and used its presence on these committees to share information and consult their members about its plans. The Commission's President sat personally on the DM committee and one of its vice-presidents or directors general served on each of the five sub-committees. The sub-committee on staffing and staffing recourse was of special importance to the PSC, as its recommendations had to be compatible with any staffing policy eventually adopted by the Commission. Represented by its Vice-President (Merit Policy and Accountability), the PSC used this venue to share its early thinking on policy and delegation as well as to seek other organizations' views on some of the key issues within its purview. It also sought to use these discussions to send key signals about how it would approach its renewed role. As one internal memo put it at the time:

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[20] See, for example, Public Service Commission, *Interface with TBS' Human Resources Modernization Implementation Governance Structure*, internal memo dated November 12, 2003, as well as Public Service Commission, *PSC Consultations for Human Resources Modernization Implementation*, internal memo dated November 12, 2003.

[21] The five sub-committees were the following: Staffing and Staffing Recourse; Labour-Management Relations and Dispute Resolution; Accountability, Performance Management and Reporting; Learning, Culture Change and Communications; and Information Management and Systems.

"By [sharing its initial thinking on policy, delegation and accountability], the PSC will be in a position to influence the development of the new staffing system, while getting valuable input toward the development of its own framework. The early involvement of the PSC in these discussions is essential to counter a widespread impression that there will be no rules in the new staffing system."[22]

As we can see, it was important for the PSC to signal from the outset that it would remain a key player in the staffing system, even under a highly delegated model.

This preoccupation with signalling its independence also affected the PSC's approach to consultations. As a PSC manager wrote in the early days of implementation: "Key to the development and implementation [of the new staffing system] will be a communication and consultation strategy that repositions the PSC relationships with stakeholders."[23] In this perspective, the PSC was clearly determined to complement any input that it would receive from the joint HRMI governance structure with input gained from its own consultations, including with organizations and bargaining agents. As an internal document on the issue stated at the time:

"The guiding philosophy of these consultations will be to demonstrate the independence of the new PSC (by consulting broadly and independently and in particular with unions), yet leveraging the opportunities provided by the various DM/ADM/Parliamentary committee meetings and other HR fora to inform them of our plans and be informed of their issues and concerns."

In sum, while the PSC did participate in the overall HR modernization governance structure, its objective in doing so was not solely to ensure a necessary level of co-ordination. It was also to use those committees as forums for consulting key stakeholders and for asserting its unique role and independence within the staffing system. It also conducted several independent consultations. Co-ordination, consultation and communication objectives were clearly intermingled in this first phase of the implementation process, which served as the basis for the development of the new appointment and delegation system mandated by the PSEA.

2.2. The development of the new staffing framework: policy development and delegation

While the enactment of the new PSEA marked the adoption of a new delegated staffing model, following its adoption in 2003, much remained to be done to make the Act a reality. For the PSC, the first necessary step in the implementation of the Act was the development of a new appointment framework, including new regulations, policies and delegation instruments as well as a strengthened

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[22] Public Service Commission, *Interface with TBS' Human Resources Modernization Implementation Governance Structure*, internal memo dated November 12, 2003, 2.

[23] Public Service Commission, *The Public Service Commission's Implementation Plan for the New Legislation*, internal memo dated November 12, 2003.

oversight system, to make sure that staffing could be effectively delegated to executives and managers while ensuring the integrity of the merit system. Obviously, the design and deployment of this new appointment framework represented a significant challenge and it occupied much of the two years that followed the adoption of the PSEA. By the spring of 2005, much of the framework had been designed and the PSC could start to work with organizations on delegation agreements. However, it took until the very end of 2005 to finalize some policies, conclude some agreements and get the new regulations formally adopted by the Governor in Council.

In developing this framework, the PSC clearly intended to respect the spirit of the reform and limit as much as possible the number and complexity of regulations and policies associated with the new system in order to avoid encouraging the return to a heavily rules-based regime. An internal document, produced in late 2003 by the Merit Policy and Accountability Branch to set out the Commission's approach to the development of the new policy framework, illustrates its thinking on this issue and is worth quoting at length:

> "To establish an appropriate balance between the flexibility inherent in the legislation and the need to ensure the integrity of the appointment process the following approach to policy has been proposed: Through policy the PSC will establish core values and principles that will guide managerial decision-making in the appointment process. These are based on the premise that merit and non-partisanship must be applied in accordance with core values (such as fairness, equity, transparency, flexibility, diversity and excellence) that operate within a system of accountability to preserve the integrity of the appointment system. [...]

> Where possible, the PSC will avoid imposing prescriptive policy and detailed procedures that could jeopardize the flexible, values-based approach inherent in the proposed legislation but will provide guidance around key activities to help managers make balanced decisions and ensure the integrity of appointments. [...]

> Guidelines would for the most part illustrate best practices and important considerations to help departments develop their own internal policies on specific subjects, particularly where the existence of an internal policy is a requirement of delegation.

> The PSC will actively monitor the appointment system and, where deficiencies are found, will take steps to correct them. This may mean adding additional policy requirements, but only for those departments and in those cases where problems are uncovered; it would make no sense to constrain unnecessarily those well-performing departments when isolated difficulties are uncovered."[24]

In sum, in developing the new appointment framework, it is clear that the PSC intended to preserve as much flexibility for organizational executives and managers as possible, but that it also recognized the challenge of striking a balance between necessary guidance and managerial flexibility.

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[24] Public Service Commission, *New Policy Framework*, internal memo dated November 23, 2003, 2.

As part of its work on developing the new framework, the Commission set out to consult its key stakeholders on the proposed content of regulations and policies. As we discussed earlier, the government-wide HR modernization governance structure, especially the DM sub-committees, proved very useful in getting the views of departments and other central agencies, but the PSC also conducted separate consultations with key stakeholders.

Throughout the first two years, the Vice-President (Merit Policy and Accountability) stayed in close contact with a selected group of assistant deputy ministers responsible for HR in their organizations, having weekly "coffee and muffins" meetings to discuss PSEA implementation. The Vice-President also chaired a committee of directors general of HR, which was instrumental in putting the word out about the reform. In addition to those initiatives, the PSC also had numerous meetings with various stakeholders, including with unions, the association of executives (APEX), members of the HR community and executives. The PSC Advisory Council, which includes both organizational representatives and unions, also provided feedback on policy development and other implementation issues. In particular, a consultation group on political activities was established in March 2004, and was heavily involved in shaping the approach finally adopted by the PSC.[25]

Moreover, in the fall of 2004, the PSC conducted a series of cross-country consultations on the new appointment framework, the delegation of authorities to appoint people to the executive group and the regulation of political activities. In total, 15 sessions were held, including 12 outside the National Capital Region. Out of the 599 public servants who participated in these sessions, 231 were members of the executive group.[26] A wide range of concerns were expressed at these sessions. For example, participants expressed concerns that organizations lacked the resources for effective implementation of the PSEA and they perceived a lack of commitment to the reform by their senior management, which they feared could be problematic given the enormity of the changes. There was also significant discussion about the new recourse process, including the role of informal discussions and the concept of "abuse of authority" under the new Act. There were also significant concerns about the delegation of authorities for staffing executive positions: some participants feared that it would lead to abuse, while others decried that it would result in the loss of a coherent corporate approach to the executive group and limit future interorganizational mobility.

Finally, the PSC also held some large conferences, involving over 100 participants, to "pre-test" its policy framework and evaluate how some important policy choices would be received by organizations. In some cases, these conferences led to changes meant to adapt policies to the needs of organizations. In other cases, they provided the PSC with a better understanding of the risks associated with some of its policy choices and made for more informed, if still sometimes unpopular, policy decisions.

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[25] Public Service Commission, *Detailed Strategy for Consulting with the PSCAC Consultation Group*, internal document dated March 2004, and confidential interview with a former executive of the PSC.

[26] Public Service Commission, *Summary of PSC Cross-Country Consultations*, internal document dated November 30, 2004, 1.

Overall, these conferences and the other consultations outlined earlier made for a very open process of policy development. As a senior executive leading this work said in an interview, "the development of policy was anything but a closed, inward-looking process. I think that this was an essential ingredient [of our approach for implementing the new PSEA]." Another senior executive involved in this work also confirmed that the extensive consultations undertaken by the PSC, either through the HRMI governance committees or by itself, had a clear impact on the policies adopted by the Commission: "Sometimes they led us to significantly change our approach, like in the case of political activities, and sometimes they allowed us to come up with new versions of the policies that would make more sense to departments. But there is no question that they had an impact." According to this same executive, while the feedback received through the high-level HRMI governance committees was important, the separate consultations held by the PSC often proved more useful as they allowed for more informal, detailed exchanges on how things would work on the ground. Finally, another interviewee who was involved in these consultations on behalf of their organization and the National Staffing Council also remarked on the extensive consultations of the PSC: "We really felt that we were meaningfully consulted and that the PSC was taking account of our concerns."

The outcome of all this work is a fairly elaborate staffing framework that ties together a few regulations, a set of staffing policies further detailed and explained through guidelines and other supporting documents, a series of delegation agreements setting the basic conditions for the use of delegated authorities by organizations and a reporting system supporting the monitoring and accountability of organizations. Obviously, the ensuing framework remains fairly extensive. In order to ensure that it can appropriately report to Parliament on the use of its delegated authority, the Commission requires a strong framework specifying the requirements of delegation, the fundamental norms to be respected in staffing as well as a full continuum of oversight, from periodic reporting to investigations and audits. Without such a system, it would be impossible for the PSC to provide assurances to parliamentarians about the staffing practices of organizations.

Still, in the end, the new staffing framework remains far less detailed and prescriptive than the one that it replaced. As one of the interviewees pointed out, the old staffing manual, with its 46 chapters, has been replaced by a set of 10 broadly formulated policies, more authorities have been delegated, such as the authority to staff executive positions, and the grounds for appealing staffing decisions have been narrowed: "On the whole, it's really a new world." Another former senior executive of the PSC similarly underscored the significance of the change: "I would say that we reduced the volume of policy, if you just take the number of pages as an indication, by a factor of ten. That's why the senior leaders of the HR community were strong backers of the reform."

All the pieces of the new appointment framework came into place by the end of 2005, just in time for the coming into force of the new PSEA. The regulations were formally adopted in November 2005. The more comprehensive regulations, the *Public Service Employment Regulations*, were officially adopted on November 4, 2005, and cover a range of issues, including entitlements to appointment in priority, appointment to the executive group, acting appointments and lay-offs. Then, a few weeks later, the Commission also adopted new regulations addressing potential exemptions of

official languages requirements in non-imperative appointments.[27] The regulations concerning the legislation's provisions on the political activities of public servants were also adopted at the end of November 2005. In addition to those regulations, the PSC also developed a set of ten policies touching on various aspects of the staffing framework, such as the choice of area of selection, the design of assessment processes and the use of corrective actions. In contrast to the staffing manual of the past, this set of policies, even with their associated guidelines and guidance documents, represented a significant reduction of the number of rules or requirements associated with the staffing process.

On April 25, 2005, the President of the Commission wrote to all deputy heads, announcing that the new appointment framework had been completed and that it should now be used to develop their organizations' own staffing approach.[28] The President also highlighted some of the support that would be made available to organizations during this process, ranging from the advice of the Commission's strategic HR consultants to a series of support documents and information sessions. Obviously, the development of organizational staffing systems and policies represented a crucial step for the implementation of the new PSEA, as it constituted an essential precondition for the delegation of staffing authority by the PSC. While some preparatory work could have taken place within organizations awaiting the new staffing authorities, the completion of the PSC's appointment framework now left them about eight months to complete the work if the authorities were to be delegated on time for the Act's coming into force.

The Appointment Delegation and Accountability Instrument (ADAI), which establishes the terms and conditions of delegation of staffing authorities to deputy heads, is the key instrument developed by the PSC to formalize the delegation of staffing to organizations. In effect, these instruments are agreements signed between deputy heads and the Commission that include a schedule of the various appointment and appointment-related authorities delegated to deputy heads, identify the conditions attached by the Commission to this delegation and provide a description of the accountability and audit expectations placed on organizations. The ADAI also stipulates the conditions placed by the Commission on the sub-delegation of staffing authorities from the deputy heads to organizational managers.

The PSC successfully developed the framework for these agreements over the course of 2004 and, once the organizations developed their own staffing systems in accordance to the new appointment framework, the Commission was able to proceed with the delegation of authorities. By December 2005, ADAIs had been signed with 80 deputy heads, covering most of the positions regulated by the PSEA.[29] Furthermore, under these agreements, the Commission typically delegated 32 of the 37 appointment authorities that it possesses under the PSEA, a clear indication that the delegation

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[27] The *Public Service Official Languages Exclusion Approval Order* and its associated *Public Service Official Languages Appointment Regulations* were adopted on November 21, 2005.

[28] Letter from Dr. Maria Barrados, President of the Public Service Commission, to all deputy heads, entitled "The PSC's New Appointment Framework," dated April 25, 2005. The letter is available on-line at www.psc-cfp.gc.ca/plcy-pltq/messages/ltr-dh-ag-eng.htm.

[29] Public Service Commission of Canada (2006) *Annual Report, 2005-2006*, 19.

is now extensive and that the Commission's implementation efforts followed the intent of the 2003 legislative reforms.[30] By June 2010, delegation agreements have been signed with the deputy heads of 84 organizations. According to some of our interviewees, the development of the delegation agreements was made easier by the fact that the PSC had already signed similar agreements under the previous system. The development of the new delegation instruments could build on this work. As one former executive who was involved in this work said, "the new agreements were clearly unprecedented in their scope, but otherwise they were not very different than what had been done in the past, so we were not starting from scratch and it helped in our discussions with departments."

To support the delegation process, the PSC developed a Staffing Management Accountability Framework (SMAF), identifying the necessary elements that organizations must have in place in order to benefit from delegated staffing authorities, including requirements in the areas of policy, training and communication and accountability. The SMAF has been designed around four key areas considered to be important for the successful implementation of the PSEA: the delegation of staffing authorities to deputy heads; the integration of HR needs into organizational business planning; the development of adequate HR support systems for staffing; and proper accountability measures focused on staffing results. The new accountability framework was first used during the 2005-2006 fiscal year and the Commission modified it in 2007-2008 to better reflect operational requirements.

Finally, to assist in its ongoing monitoring of organizational staffing, the PSC also designed an annual reporting instrument, the Departmental Staffing Accountability Report (DSAR), which is meant to provide an annual assessment of the effectiveness of staffing activities of individual organizations. On the basis of these annual reports, the PSC provides feedback to deputy heads on its evaluation of their organization's staffing system and practices. A summary of the organization's DSAR is also made public through the Commission's annual reports, providing a greater measure of transparency and parliamentary accountability. In keeping with changes made to the SMAF, the DSAR was also modified in 2007 to improve the operation of the system. Among other things, the changes sought to increase the use of quantitative indicators, make better use of existing data and place more emphasis on the need for organizations to engage in self-assessments of their staffing systems. Further changes also helped streamline the reporting process by reducing the number of questions that organizations must address.[31] For example, for 2009-2010, the number of indicators was further reduced from 37 to 29. The PSC estimates that, as a result of such measures, the reporting burden of organizations had already been reduced by 60% by 2008-2009.

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[30] The five authorities that the Commission does not delegate, due to an estimated high level of risk, are those to revoke appointments and to take corrective actions following investigations in various circumstances (i.e. external processes, non-delegated internal processes, political influence in appointments and the occurrence of fraud in appointments) as well as the authority, through the *Public Service Official Languages Exclusion Approval Order*, to exempt a person, on medical grounds, from having to meet the required level of official language proficiency of a bilingual position.

[31] Independent Review Committee, *Review of Public Service Commission Oversight – Report of the Independent Review Committee*, January 2009, 28.

Together, the new regulations, the appointment policies, the ADAI, the SMAF and the DSAR constitute a new comprehensive appointment framework for the public service, translating the provisions of the new PSEA into an operational delegated staffing regime. Its completion was a central task of the implementation of the new PSEA by the PSC. However, as one can expect, as organizations began to operate under the new framework, a number of problems and irritants began to be identified. The first few years following the coming into force of the legislation were largely spent learning to work with the new system, both in organizations and within the PSC.

In November 2008, the PSC began a comprehensive review of the appointment policy framework to ensure that it is consistent with PSEA requirements and to find areas of possible improvements based on the first three years of experience with the new legislation. This review of policies, guidelines and supporting documents was based on the analysis of the data garnered through the Commission's oversight activities since the new legislation came into force as well as extensive consultations with key stakeholders, such as the National Staffing Council and the Human Resources Council. The PSC also analyzed the decisions rendered by the PSST over its first three years of operation and held internal focus groups with employees involved in the operation of different parts of the new staffing system. The review was completed toward the end of 2009.

As a result of the review, the PSC made a number of adjustments to its policies, guidelines and guidance documents, but there have been few significant policy changes. For the most part, policy documents were amended to clarify their meaning, simplify their use and address minor errors, inconsistencies or omissions. For example, updates were made to the guidelines concerning the use of informal discussions to resolve potential complaints arising from hiring processes, the requirements for documenting key steps in the appointment process and the appointment of executives.[32] To make them more manageable for organizations, the PSC has also reduced the number of guiding documents. According to our interviews, the PSC tried to avoid adding to the list of documents prescribing or even suggesting how to proceed with various steps of the staffing process, but organizational managers often called for more precise guidance on various parts of the staffing process. For example, despite initially refusing, the PSC recently produced a new "staffing checklist" at the insistence of organizations. While the PSC argued that such a checklist could be seen as a binding list of requirements and end up limiting the flexibility of organizations, managers insisted that it would help their work by providing a greater measure of certainty to those who desired it.

Among the more significant policy changes that are being made as a result of the policy review, the President of the Commission announced in the spring of 2010 that a new Merit and Appointment Values Policy would be adopted to clarify that staffing processes must comply, as a matter of obligation, with the core legislative requirements of the merit system and be consistent with the values that the legislation saw as underpinning the appointment process, such as fairness,

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[32] See Letter to the Heads of Human Resources entitled "Public Service Commission Support and Guidance" by Donald Lemaire (Vice-President, Policy Branch, PSC), dated July 21, 2009.

equity of access, transparency and representativeness.[33] Another significant policy clarification that is being considered by the Commission concerns the use of non-advertised processes, a controversial matter within organizations. While acknowledging that such processes are allowed under the new legislation, the PSC is concerned that, if used too frequently, they will end up undermining some of the fundamental values of the system, especially fairness and equity of access. As a result, a change to the *Choice of Appointment Process Policy* is under consideration by the Commission, which would explicitly establish advertised processes as the standard practice in most situations as these processes best reflect the values guiding the staffing system of the public service.[34]

At one level, these policy adjustments speak to a more fundamental challenge that the PSC has encountered through the implementation of the new Act: achieving a shared understanding of what a values-based staffing system really means in practice. As the first few years of operation of the new system have made clear, many organizational executives and managers believe that compliance with the new staffing framework should essentially require conformity with the minimal legal requirements spelled out in the Act, especially the narrower definition of meritorious appointment. However, for others, including the PSC, a values-based staffing system must in fact require more than simple compliance with the letter of the law. The new PSEA makes clear that the appointments made by virtue of the Act should also be broadly consistent with the set of values associated with staffing the public service. These values are listed in the legislation's preamble and the PSC must uphold them.

In this latter perspective, compliance with a values-based system can be a demanding and complex matter. Because it is not simply reduced to compliance with standardized rules, it can be achieved (and publicly defended, if necessary) in different ways depending on the circumstances, but the respect of the values must still be ensured and hiring managers must be able to reasonably defend their choices. Compliance with a values-based system may also require that managers consider the relative importance of competing values when they enter in conflict in particular circumstances. In those circumstances, they must rely on their judgment to decide how best to deal with such tensions among values and be ready to explain and defend their choices. For example, the need to address a pressing HR shortage could mean that a staffing process will fall short of living up to some values. However, if the hiring manager has considered these values and exercised reasonable judgment in designing the best process under the circumstances, such behaviour should not be judged to be problematic. In other words, a values-based system is predicated on both the adherence to shared values and the considered exercise of managerial judgment, which is precisely why it should be able to sustain a more flexible staffing system.

However, this debate about the nature of a values-based staffing system is not merely academic; it has direct consequences for the type of demands placed on hiring managers and the nature of the rules created to regulate their behaviour. In the case of the new PSEA, it has generated some confusion and disagreement about how prescriptive the PSC should be in setting policies and on

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[33] See the "Message from the President" published in the spring 2010 edition of the Info-PSC Newsletter, available on the PSC Web site (www.psc-cfp.gc.ca/centres/newsletter-bulletin/index-eng.htm) on June 21, 2010.

[34] Interview with a senior executive of the PSC.

whether organizations could be unfairly criticized for not living up to appointment values that are stated in excessively broad terms. Partly for this reason, many organizational managers and HR professionals have actually been asking the PSC for further guidance and more and clearer rules, in order to get a better sense of what is expected of them and what could be found problematic in the course of an eventual investigation or an audit of their staffing decisions. In contrast, others have been faulting the PSC for preventing potential gains in flexibility by encouraging organizations to fear an adverse audit and indirectly encouraging them to revert to their old rules-heavy practices to protect themselves. In both cases, there seems to be a discomfort with the approach of the new system, founded on more extensive oversight of managerial practices based on values and a broader set of policy statements.

This situation has obviously presented a challenge in the implementation of the new Act. In an interview, a senior official of the Commission pointed out: "We're criticized for being too controlling, but at the same time, managers, and especially the HR people, keep asking us for more rules."

An executive attributed part of the difficulty to an early, fundamental misunderstanding about the reform:

> "Managers were promised fewer rules and more flexibility after the reform. For many of them, that simply meant the promise of more freedom and fewer obligations. But a values-based system actually demands more involvement by managers: they have to make more choices, be clearer on what they want, and be able to explain how the choices that they made are consistent with the values. In practice, a values-based system gives you more freedom but it also requires more discipline."

Another interviewee expressed similar views: "People are asking for rules; they want more guidance. Frankly, I do not think that the departments were well prepared to shift to a values-based system." In fact, there is widespread consensus among the executives that we interviewed that informing and training managers has been a significant problem in implementing the new PSEA.

2.3. Getting the word out: informing and training managers and human resources advisors

Beyond the creation of the new staffing framework, the conclusion of delegation agreements and the adoption of new provisions on political activities, the successful implementation of the new PSEA required a significant effort to inform and train managers, as well as organizational HR advisors, on the provisions of the new system. To take full advantage of the new possibilities, a long-term commitment to continuous learning and cultural change is clearly needed, but, in the few years preceding the new legislation's coming into force, there was also a more immediate need to get the word out and to offer training on the new HR regime. Organizational managers and staffing advisors were the key communities to reach: managers needed to understand the new framework, including its emphasis on delegation and the new flexibilities that it offered, but staffing advisors would also play a key role in supporting hiring managers. Reaching both communities was essential. However, given the size of the federal public service, the task was also very challenging:

the PSC estimated that 18 000 individuals would require a basic understanding of the new system, while about 2 000 would need "an in-depth functional knowledge" of the new staffing system for the reform to be effectively implemented. Unfortunately, training managers and staffing advisors proved to be a difficult challenge in the implementation of the new PSEA.

To reach such a large audience in a relatively short time frame is a daunting and costly challenge under the best of circumstances, but, in the case of the PSEA, it was compounded by the difficulties of collaborating among organizations. Early on in the implementation process, the PSC reached an understanding with the PSHRMAC and the CSPS on the training that had to be part of the implementation process. According to our interviewees, the PSC would largely focus on informing HR advisors, while managers would mainly be looked after by the PSHRMAC. In both cases, they would work through the CSPS to the extent possible, as the PSMA clearly made it the central training institution of the public service. Unfortunately, both the PSHRMAC and the CSPS struggled with their training efforts. Preoccupied with their own organizational restructuring and facing other challenges at the time, the two agencies did not fully deliver on their training commitments.

In fact, according to interviewees, the PSHRMAC ended up offering very limited training. There is no doubt that, as a new central agency, it faced many organizational challenges, but its limited training efforts were also the result of some strategic choices at a senior level. According to one of its former senior executives, the agency originally pushed for a more extensive learning strategy, led by the centre of government and with significant emphasis placed on reaching people in the regions. It was argued that central co-ordination would allow for the systematic inclusion of managers, HR specialists and union representatives in joint initiatives, ensuring a common understanding of the new HR framework. However, at the end of a series of discussions, including with other central agencies, it was decided that, given the intent of the legislation to establish a significantly decentralized HR regime, the training of managers should also be largely left under the responsibility of the organizations. In this perspective, a large part of the budgets requested by the PSHRMAC for training and cultural change projects was refused by the Treasury Board of Canada Secretariat. Deputy heads, it was thought, should find the required resources to deliver their part of the desired training and take the lead in training their own people.

As a result of these decisions, according to this former PSHRMAC senior executive, the extent and quality of training varied considerably across organizations and several organizations essentially "missed the boat." In some organizations, where deputy heads and other senior executives saw the new HR regime as an important initiative, more efforts were deployed; in other organizations, senior executives were not that engaged in HR reforms and not enough was done to prepare managers. In the end, the interviewee concluded, "the training offered on the new system was insufficient. I think that it was the most important weakness of our implementation. And it goes beyond 'training,' you know, we're really talking about a change of culture. [...] It's why it has been five years and managers are just now starting the use the flexibilities given by the new Act. The old culture is very much working against the new system and we did not do enough to take that on from the outset."

As for the CSPS, the agency was also facing its own challenges by having to deliver programs while undergoing significant internal reorganization. As we saw earlier, the CSPS was created out of the Canadian Centre for Management Development (CCMD) by the enactment of the PSMA in 2003

and it inherited from the large-scale training programs that used to be offered by the PSC, including its technical and language training programs. These were sizeable changes and, according to our interviews, they were compounded by some difficulties in leadership as the new organization was establishing itself. In this difficult context, the PSMA Learning Strategy, which included training on the new PSEA, represented "the first time that the newly formed CSPS was tasked with developing a major, cohesive learning intervention."[35] In delivering on this task, the CSPS encountered difficulties that undermined the quality and extent of the training offered in support of the implementation of the new PSEA.

Firstly, the CSPS had difficulty developing some of the necessary training modules and recruiting the subject-matter experts required to fulfill its commitment to the PSHRMAC and the PSC. Internal documents show that the PSC was quite concerned about the CSPS's ability to deliver the required training and that it had to intervene on several occasions to modify the content of the CSPS's training modules. As early as the fall of 2004, consultations across the country had identified the timing and availability of training as a key concern of organizational managers: several participants worried that the required training would be offered too late to ensure implementation by the end of 2005.[36] In a meeting with the CSPS in January 2005, the PSC identified the lack of understanding of the legislation and the new appointment framework as a key message received during those consultations and highlighted the need for more tools, support and training than had been anticipated.[37]

As the coming into force of the Act was approaching, the CSPS cancelled the first offerings of its new courses on the reformed staffing system, which raised the anxiety of organizations.[38] The cancellation of these courses also had repercussions on the Commission's efforts to help ensure that HR specialists were properly informed to handle the new system. In this regard, the PSC's Personnel Psychology Centre had developed an Appointment Framework Knowledge Test (AFKT) to certify that staffing advisors possessed a minimum understanding of the new framework. By the fall of 2005, it was finding that many of them were waiting to take the training before taking the test. Similarly, organizations that were planning to offer in-house training were still waiting for the CSPS training material to carry out their training.[39] This situation was slowly being addressed but still represented a problem.

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[35] Canada School of Public Service (2008) *First Two Years of Implementation: CSPS Responsibilities under the Public Service Modernization Act Learning Strategy, Formative evaluation report*, 1.

[36] Public Service Commission, Summary of PSC Cross-Country Consultations, internal document dated November 30, 2004, 2-3.

[37] Public Service Commission, *PSMA/PSEA Implementation: PSC Rollout Strategy – Meeting with CSPS*, internal document dated January 6, 2005, 2-3.

[38] Public Service Commission, *Learning Needs for PSEA Implementation – Meeting with Ruth Dantzer, November 8, 2005*, internal briefing note dated November 7, 2005, 1.

[39] Ibid.

Then, in the course of visits to 20 organizations early in the fall of 2005, the PSC found that "a good portion of organizations raised concerns about the availability of training from the Canada School of Public Service (CSPS) which was impacting on their readiness for coming-into-force of the new PSEA" and that, "as of mid-October, 84% of large/medium organizations had not undertaken training of sub-delegated managers and 79% had not undertaken training of the general manager population."[40] In light of this situation, the President of the PSC met with the President of the CSPS in November 2005 to discuss potential remedial measures. At that meeting, the PSC identified a series of four courses that it considered essential for the coming into force of the new legislation and offered specific recommendations to improve their delivery.

While the availability of the courses was an issue, the PSC was also concerned by some of their content as well as by the competence of some of the private sector trainers retained by the CSPS. Some PSC employees who had attended the pilot versions of the courses or reviewed the course material had found gaps and factual errors in what was being offered.[41] One of our interviewees, an organizational executive who was sitting on the National Staffing Council at the time, also recalled the organizations being disappointed with the CSPS's courses: "We spent a lot of time advising the School on what was needed for the new courses, even going through very specific material for them. But the courses came out late and much of our input was not reflected in the course material." To help improve the delivery of courses, the PSC offered to make some of its subject-matter experts available to support the CSPS for the period from December 2005 to the end of March 2006.[42] But while some corrective measures were taken, there remained dissatisfaction with the training provided by the CSPS over this important period as the new PSEA came into force.

In 2008, the CSPS published its own assessment of the first two years of its efforts to deliver on the PSMA Learning Strategy, essentially covering its work up to March 2006. Relying mainly on documentary evidence and interviews with its own staff, it found that, despite the environmental and management challenges that it faced, the CSPS considered that it had delivered appropriate and high-quality training.[43] The authors of the evaluation nevertheless found that: "Without exception, CSPS respondents (61 of 61) indicated that the overall program management of the PSMA Learning Strategy required significant improvement. [...] CSPS's organizational structure, corporate culture, and business processes were stretched to meet the challenge. Respondents cited poor co-ordination and communication, poor corporate service support (such as marketing,

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[40] Ibid, 1.

[41] Confidential interview with a former senior executive of the PSC.

[42] Public Service Commission, *Learning Needs for PSEA Implementation – Meeting with Ruth Dantzer, November 8, 2005*, internal briefing note dated November 7, 2005, 1.

[43] Canada School of Public Service (2008) *First Two Years of Implementation: CSPS Responsibilities under the Public Service Modernization Act Learning Strategy, Formative evaluation report*, iii.

finance, human resources, contracting and procurement), and a lack of effective planning as the principal reasons for their overall assessment."[44] There is no doubt that the PSMA-related training proved to be a significant organizational challenge for the CSPS.

In addition to those organizational difficulties, the CSPS evaluation also reports that it proved difficult to attract the attention of managers in the early period of the project. Some of the earlier events and conferences meant to raise awareness and introduce the new PSMA were very poorly attended.[45] Moreover, because of the tight deadlines, the training had to start before the work on the new enabling guidelines and directives was completed, which meant that the CSPS sometimes found itself without definitive guidance from the PSHRMAC and the PSC with regard to course content.[46] The report also points out that the rush to train people before the Act came into force meant that there was a surge in demand for qualified trainers and subject-matter experts during those few years, the CSPS even having to compete with organizations that were putting on their own training sessions for the recruitment of personnel. This shortage of experts contributed to the difficulties in offering adequate training.[47]

Evidently, there were many difficulties that hindered the effectiveness of training on the new PSEA, a key step in the implementation process. As a result, throughout the few years surrounding the coming into force of the new Act, the PSC was concerned by the lack of readiness of managers.[48] It itself took some steps to reach HR advisors and managers directly. One initiative consisted in offering three series of "Get Ready" information sessions between April 2005 and April 2006. The first series, delivered in the spring and summer of 2005, covered the new appointment framework as well as the staffing services that the PSC would continue to offer to organizations. At those sessions, the PSHRMAC also covered the key policies that it was introducing as the employer. The second series of sessions, offered in the fall of 2005, covered executive appointments, transition measures, investigations and the new staffing tribunal as well as the new framework concerning the political activities of public servants. Finally, in March and April 2006, the PSC offered a final series of workshops covering the new appointment regulations, provisions concerning official languages and the management of high-volume processes under a national area of selection. Overall, about 46 of these information sessions were delivered to HR specialists.[49] These sessions, which were offered in various locations across the public service, proved to be very popular and were well-attended. That being said, by virtue of their size and relatively short duration, the sessions could only have a limited reach and the PSC was conscious that "a considerable number of staffing advisors and their assistants still [required] training on the new PSEA" by the time the Act came into force.

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[44] Ibid, 31.

[45] Ibid, 24.

[46] Ibid, vii and 25.

[47] Ibid, vii.

[48] Confidential interviews with two former executives of the PSC.

[49] See Public Service Commission of Canada (2006) *Annual Report, 2005-2006,* 35.

In addition to these information sessions, the PSC also developed a number of tools to help with organizational implementation of the new system. For example, a transition guide was created to help deal with the period when hiring processes undertaken under the old system would overlap with the implementation of the new rules. As we saw earlier, the PSC also designed a test to help deputy heads verify that HR specialists in their organization possessed the necessary expertise on the new appointment framework before it came into operation. The AFKT was introduced in September 2005 and, by the end of March 2006, about 1 500 individuals had taken it. Overall, the results confirmed that the HR specialists who took the test possessed the minimum level of expertise necessary to guide managers under the new system.[50] However, the PSC also found at the time that five large organizations and one medium-sized organization still did not meet its standard of having 80% of staffing advisors successfully complete the AFKT, a condition inscribed in the ADAI signed with organizations.

Finally, the PSC also used its "Smart Shops" series, a pre-existing and ongoing series of information sessions offered at the Commission's offices, to offer briefings on various aspects of the new system, especially once the "Get Ready" sessions were over. For example, during 2008-2009, the PSC offered 144 information sessions on the new staffing rules, reaching 3 689 participants in various federal organizations. Similarly, 29 information sessions were offered on the new rules concerning political activities, reaching about 450 public servants.[51] And as recently as May 2010, the PSC expanded its offerings, launching additional information sessions on PSEA-relevant issues, such as the appointment of executives and how to establish and apply merit criteria.[52] As a way of ensuring continuous learning by staffing advisors, the PSC also made their participation in learning activities one of the 29 indicators of the SMAF used by the Commission to assess the performance of organizations.[53]

Despite these efforts, the vast majority of interviewees, both from the PSC and from other organizations, mentioned lack of training and insufficient outreach as important weaknesses of the implementation process. One interviewee, who was working in a department when the Act came into force, remembered how, at the time, senior managers in the department were only offered half a day of training on the new staffing system. As the interviewee pointed out: "Staffing is really not the primary focus for most managers, but, under the new law, our expectations are very high. I don't think that managers were well prepared." An official of the Commission expressed the same views regarding HR advisors: "We did a lot to train the HR community, but it's still not enough. There is a lot of turnover in this community and we relied too much on the CSPS, which did not offer much. In the end, it was not enough."

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[50] More precisely, 98% of HR specialists who took the test passed, indicating that they possessed the minimum required knowledge to be considered as having "expertise" in the new appointment framework. See Public Service Commission of Canada (2006) *Annual Report, 2005-2006*, 35.

[51] Public Service Commission of Canada (2009) *Departmental Performance Report 2008-2009*.

[52] See Letter to the Heads of Human Resources entitled "Public Service Commission Information Sessions" by Gerry Thom (Vice-President, Staffing and Assessment Services Branch, PSC), dated May 5, 2010.

[53] See Public Service Commission of Canada (2010) *Annual Report 2009-2010*, 144.

This problem also seems to have persisted over time. An executive at the PSC recounted travelling, in the fall of 2007, with some senior executives of the PSHRMAC across the country to talk with public servants about HR modernization. This tour revolved around a series of large conferences, where participants could also discuss among themselves at smaller workshops. The series of meetings revealed a considerable lack of information and knowledge about the new staffing system on the part of participating public servants. At some of the workshops, the executive recalled, HR advisors and organizational managers vehemently disagreed about some of the basic features of the new PSEA. Another interviewee, who took part in this tour on behalf of the PSHRMAC at the time, also found that participants remained poorly informed about the new legislative provisions, especially in the smaller regional centres. Overall, the experience underscored just how much progress there remained to be made on informing and training managers and staffing advisors almost two full years after the Act came into force.

Even now, there are concerns that many managers, and even HR specialists, do not know enough about the new legislation and the possibilities that it offers. One interviewee who is in close contact with HR specialists in organizations stated that, "Even today, you call an HR person in a department and he has a tough time explaining how the new law differs from the old one. [...] There were not enough information sessions: the change was immense and we should have invested much more in outreach and marketing." The difficulty of engaging HR specialists seems to be compounded by the fact that many of them find their role ambiguous under the new system. As authority is being delegated to managers, organizational HR specialists tend to see themselves as advisors. Yet, given the flexibility intended by the new system and its focus on values instead of prescriptive rules, the provision of authoritative advice is more difficult. According to some of the interviews, this situation has left some staffing specialists struggling with their new role. Moreover, several interviewees made the point that many long-serving HR specialists were not supportive of the reform in the first place and, for those nearing retirement, there is limited appetite for embracing a significant change in approach. All these factors have added to the challenge of engaging organizational staffing advisors in the diffusion of information and knowledge about the new system.

2.4. Restructuring the Public Service Commission: managing change, building oversight and rethinking services

As we saw earlier, the reforms legislated in 2003 did more than amend the staffing legislation and call for new rules for regulating the political activities of public servants: they also required major organizational transformations that directly and significantly affected the PSC. In particular, by consolidating several training and development programs within the new CSPS and by creating a new PSST to take over some of its functions, the reforms profoundly affected the Commission as an organization by reducing its workforce, terminating some of its long-held functions and forcing its restructuring. Other services, such as HR planning and demographic analysis, were also transferred to the new HR agency reporting to the Treasury Board.

Overall, the transfer of these functions out of the PSC was a significant corporate challenge in itself, one that needed to be faced at the same time as the Commission was working on the implementation of the new staffing and political activities provisions. There is no doubt that, by creating organizational instability and unavoidably raising the anxiety of employees who would see their workplace transformed, this reorganization could have hampered the PSEA implementation process. However, by and large, these major organizational changes went well and they do not appear to have significantly impaired the Commission's efforts to implement the new legislation. As the Office of the Auditor General reported in an audit in February 2005, the transfer of functions from the PSC to other agencies "occurred relatively smoothly" due to a strong project management process and leadership from senior executives.[54] Executives interviewed for this study also generally confirmed that this reorganization process unfolded without major difficulties and that it did not impede the implementation of the new legislation. As one interviewee pointed out, the fact that employees were transferred to other organizations "en bloc," without job losses, made the transition much easier.

For employees remaining at the PSC, efforts were made to communicate effectively the nature of the changes, including through the development of a three-year internal communication strategy aimed at informing employees about the future direction of the organization.[55] People interviewed for this study thought that, overall, the morale of employees did not suffer unduly during this transition and that the instability had limited impact on the implementation of the new staffing system. This view seems to be confirmed by employee surveys conducted during this time. For example, the Public Service Employee Survey administered in 2005, during an intensive phase of PSEA implementation, found that 41% of surveyed employees believed that the quality of their work was affected by instability within their organization, a percentage identical to the whole of the public service. In 2008, this percentage was down to about a third of employees. In 2005, two thirds of employees thought that their senior management did a good job of sharing information (52% for the whole public service) and 81% of them thought that the PSC was a good place to work (82% for the entire public service). These numbers suggest that the transformation of the PSC during this crucial period did not generate serious internal difficulties.[56]

Similarly, the results of the Public Service Employee Survey administered in 2008, a period when the new staffing system was in operation and major organizational changes completed, also suggest that the reform process had limited impact on the morale and commitment of employees. It found a high level of job satisfaction at the Commission, with about 80% of surveyed employees reporting that they like their jobs. It also found that the percentage of employees who declared that they were satisfied with their agency (70%), who believed it to be a good place to work (71%) and who stated that they would prefer to stay in their job even if a comparable opportunity was available elsewhere

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[54] Office of the Auditor General of Canada (2005) *Report of the Auditor General of Canada – Chapter 3: Modernization of Human Resources Management: Managing the Reforms*, Ottawa, 1.

[55] Public Service Commission, *Preparing Our Employees for the New PSEA and PSC Transformation: Summary of the Draft Internal Communications Strategy 2004-2007*, internal document dated September 3, 2004.

[56] The complete results of the 2005 survey can be found at www.collectionscanada.gc.ca/webarchives/ 20071116093249/http://www.psagency-agencefp.gc.ca/survey-sondage/2005/results-resultats/index-e.htm.

(55%), was about the same as in the rest of the public service. These results were also much higher than those of the Canadian Public Service Agency, the other organization at the centre of the new HR system.[57]

Struggling with the place of staffing services at the Public Service Commission

In the context of this generally positive record, the employees of the Staffing and Assessment Services Branch, who lived through a difficult transition, represent a significant exception. For the PSC, the overall thrust of the reforms was a move away from a focus on transactions toward a greater focus on policy-setting and oversight. In this general shift, the role of staffing services, a traditionally central function of the organization and one that still represents about half of its operational budget, seemed to be devalued. For many employees, the growing importance attributed to organizational oversight, especially auditing, announced, at best, a more conflicted relationship with organizations that could be antithetical to their relationship with clients. Moreover, across the public service, the staffing reforms often tended to present the future of the PSC as one of an oversight body, a parliamentary agency with limited service-delivery responsibilities. Even within the PSC, the role that staffing services were to play in the future seemed to be ill-defined and continued to be the subject of debates well into 2006. It was well-known that the Commission's senior leadership had doubts about the future of staffing services, whether they would remain within the organization and what importance they would have if they did.

This uncertainty about the future of staffing services within the PSC had significant effects on the morale of these employees. As one interviewee described it, "the service people felt excluded from the reform process, marginalized within their own organization. Some of them learned about the details of the reform through information sessions that they attended with departmental managers, which were offered by their colleagues from the PSC. They felt treated as external clients, as outsiders. [...] A widespread perception was that the Commission was simply waiting to get rid of them, once the system could find a place for them somewhere else." The same executive thought that this situation might have had some impact on the implementation of the new PSEA, constituting at least a missed opportunity: "our service people, who work on the front line, in close contact with departmental managers, should have been at the forefront of our communication with managers and HR specialists, but I think that we missed that boat."

In the years that followed, the importance of staffing services at the PSC was reaffirmed and the situation changed. Consultations with organizations on the issue, concluded at the end of 2005, suggested the need to keep substantial strengths in these areas, particularly with respect to recruitment, assessment and executive appointments services.[58] Within the Commission, the case was made that a significant service-delivery component would help the PSC remain in tune with the operational realities of staffing, providing a useful window onto the staffing system. Significant operational capacity also appeared important in the event that the delegation of staffing authorities should have to be withdrawn from some organizations. There continued to be strong efficiency

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[57] The complete results of the 2008 survey can be found at www.tbs-sct.gc.ca/pses-saff/2008/.

[58] Public Service Commission of Canada (2006) *Annual Report, 2005-2006,* 18.

arguments in favour of some centralized recruitment and assessment services that organizations could access. As a result, and despite obvious disagreements by some of the other key players in the HR regime, the service function has been retained as an important component of the PSC.

While the importance of staffing services has been reaffirmed, it is important to note that this part of the PSC has also been significantly transformed as a result of the reform. In keeping with the new delegated staffing approach, organizational managers are not obligated to use the PSC for staffing and assessment services and the PSC has moved to a cost-recovery model for many of its services. While this change has been difficult, it is now firmly ingrained within the organization, with services falling under the cost-recovery formula meeting their revenue requirements and the managers involved adopting a strong business approach to these operations.

However, offering staffing services can sometimes seem at odds with the prominent oversight component of the PSC's mandate. Simply put, organizational managers can be reluctant to retain the services of staffing professionals who work for the organization that oversees and audits their actions. Even if employees are careful to emphasize their focus on services and their dedication to organizational clients, many managers remain concerned that, in the event that even a small problem would be uncovered by PSC employees working with their organization, they would quickly find themselves under investigation. As one of the interviewee stated: "It's clear that some departmental managers see us as potential spies looking for any error to report to our colleagues in investigations. Obviously, it's false, but the perception is hard to change. The PSC does not have a good reputation with departments; it's seen as the staffing police. For [offering staffing services], it can be a challenge." Yet, despite this challenge, staffing services have been transformed and continue to play a significant role under the new staffing system.

In this period, some changes were also made in the area of staffing and assessment services in order to further the 2003 reforms' intended shift of those operations to a cost-recovery model. Running a cost-recovery operation makes it particularly important for an organization to remain closely aligned with the needs and preferences of its potential organizational clients. Today still, despite the further delegation of staffing realized since the adoption of the new PSEA, the Commission remains the service provider of choice for over 50 federal organizations, a reality that underscores the importance of ensuring the continued quality and integrity of those services.[59] In this perspective, the Commission recently took some steps to ensure that it received proper feedback from its clients in the public service.

For example, in 2008, with the support of the Clerk of the Privy Council, the PSC created a Deputy Minister Advisory Committee (DMAC) on PSC Staffing and Assessment Services to ensure that it would receive the necessary feedback and advice from its potential clients in the public service. The creation of the new advisory committee followed a recommendation of the Prime Minister's Advisory Committee on the Public Service (the Tellier-Mazankowsky Committee), which advocated that the PSC move more fully toward cost-recovery for staffing and assessment services in February 2008. This required ongoing input by deputy heads in the governance of those services

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[59] Public Service Commission of Canada (2009) *Departmental Performance Report 2008-2009.*

to ensure that the Commission remained in tune with the needs of the public service. In the same spirit, the PSC's Staffing and Assessment Services Branch has also recently developed a new Client Satisfaction Survey that is expected to be administered for the first time in 2010.

Building the oversight capacity: investigations and audits

While the branch of the PSC responsible for staffing and assessment services encountered real challenges due to the Commission's growing emphasis on oversight, the provision of a higher level of oversight created its own difficulties for the PSC. For example, according to one of its senior officials, the Commission should have been more attentive to its investigation function in the early years of implementation, a period when it was necessarily focused on policy development and delegation. As a consequence, retirements and turnover resulted in the loss of capacity in this area, a situation that was then difficult to reverse at a time when the new framework came into force. Recruitment and training of personnel were key challenges in this early period. Nevertheless, from 2006 to 2009, the Commission made up for lost time and invested renewed efforts in this sector, including by successfully recruiting more investigators. As part of these renewed efforts, the PSC also released two investigation policies and three investigation frameworks in 2007, fleshing out its approach to investigations under the new Act.

While building its capacity and refining its approach, the PSC also began to investigate cases arising under the new PSEA, while at the same time completing cases related to the former statute.[60] In 2007-2008, the PSC concluded 107 investigations, most of them concerning staffing provisions, and another 62 cases were concluded using an alternative dispute resolution mechanism (referred to as early intervention).[61] In 2008-2009, a total of 90 investigations were concluded into potential violations of the PSEA, its regulations and associated policies. Of those, 73 cases concerned staffing, while 17 dealt with alleged violations of the political activities provisions. In the same fiscal year, an additional 27 cases were resolved through early intervention.[62] In 2009-2010, some 80 investigations were completed concerning staffing, with 4 more completed regarding allegations of improper political activity. An additional four cases were resolved through early intervention.[63]

These numbers serve to illustrate the investigatory capacity that the PSC now deploys as part of its efforts to ensure compliance with the new PSEA, but they obviously only present a partial view of the work of the investigation branch. Given the continuous intake of cases, the Commission always

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[60] Given that the new statute came into force in December 2005, the last selection processes under the former Act were only completed in 2006, opening up the possibility of investigations into 2006 and 2007. In 2006-2007, 121 investigations related to the former Act were closed and, as of the end of March 2007, an additional 117 investigations remained to be completed under the former Act. See Public Service Commission of Canada (2007) *Annual Report 2006-2007*, sections 4.30-4.31.

[61] Public Service Commission of Canada (2008) *Annual Report 2008-2009*, sections 8.32 to 8.46.

[62] Public Service Commission of Canada (2010) *Annual Report 2009-2010*, sections 4.32 and 6.40 to 6.48.

[63] Ibid, section 6.29. The drop in the number cases resolved through alternative dispute resolution reflects the fact that a significant number of cases treated in this fiscal year were referred for investigation as a result of an audit. These cases are not eligible for the alternative dispute resolution mechanism.

has a number of active cases that are either still under investigation or for which a decision on whether to investigate remains to be made. And, as can be expected, it also receives many complaints that, after consideration, do not lead to an investigation. For example, some allegations concern situations that fall outside of the Commission's mandate or where no reasonable basis can be found to open an investigation. As a result, the number of cases considered in a year far exceeds the number of investigations that are concluded in that same year. For example, during the 2009-2010 fiscal year, the PSC closed 326 active cases; 235 of these cases were closed without an investigation. The number of cases now being closed in a year exceeds what it was in the years before the adoption of the new PSEA.[64]

The PSC took corrective action in many of the founded investigations. For example, in founded fraud investigations, corrective action implemented by the Commission included the revocation of an individual's position and/or the institution of a clause whereby the individual concerned would require the permission of the Commission before accepting any position in the federal public service for a period of three years.

In 2007-2008, the PSC began to use its authority to disclose personal information obtained during the course of specific investigations. Subject to certain conditions, the Commission could determine whether the public interest associated with the disclosure of personal information outweighed the privacy interests of the individual. This was a significant evolution in the role that Investigations played in protecting the concepts of merit and non-partisanship in the public service.

To improve knowledge of the Act and publicly document its oversight work, the PSC is also publishing depersonalized summaries of selected cases that were investigated under the new PSEA, an initiative that comes in addition to its annual investigation reports. Without naming the individuals involved, the summaries provide short descriptions of the issues raised by the cases and explain the decisions rendered by the Commission. By early 2010, the PSC had published 57 summaries of investigations covering the period from 2006 to 2009, including 35 cases dealing with allegations of improper political activities and 22 cases concerning appointment decisions.[65] The publication of these summaries would seem to play a potentially important role under a values-based HR system. With respect to both staffing and political activities, the summaries provide a way to better understand how values can be applied or violated in specific circumstances as well as how the Commission is interpreting them in the context of its investigations. Given that

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[64] According to the annual reports of the Commission, it closed 197 cases in 2002-2003, 208 cases in 2003-2004 and 300 cases in 2004-2005. However, given the significant intake of new cases in the first few years of the new PSEA, the PSC ended the 2009-2010 fiscal year with 144 active investigation cases, somewhat more than the 113 that had been carried over from previous years. See Public Service Commission of Canada (2010) *Annual Report 2009-2010*, table 19.

[65] These summaries can be found at www.psc-cfp.gc.ca/inv-enq/summaries-resumes-eng.htm. Under the *Public Service Employment Regulations*, the Commission also has the authority to publish reports on its completed investigations that name the individuals involved when it deems that this would promote better employment practices and accountability and prevent the recurrence of improper practices. The reports are available at www.psc-cfp.gc.ca/inv-enq/rprt/rprt-eng.htm.

a values-based framework must give an important place to education and communication with employees, the published summaries of completed investigations that are deemed to have some educational value by the Commission can potentially serve as a useful tool for implementing the new Act.

In addition to investigations, the development of a strong audit capacity, a function that had historically been neglected by the PSC, also represented a significant organizational challenge. Significant investments were made in this area and the number of auditors increased from 5 to 23 between 2003 and 2006.[66] Yet, despite this notable growth, it actually took longer than the PSC anticipated to find the professionals needed to build its audit branch due to difficult labour market conditions. In 2006, the Commission retained the services of a management consulting firm to help it develop an HR and capacity-building strategy for its audit activities. Continued internal reallocation of funding was also necessary to support the growth of the audit branch. Finally, by the middle of 2010, the Commission's audit services could count on a staff of about 65, a number that is likely to remain relatively stable for the moment, but that clearly illustrates the Commission's important oversight role under the new PSEA.[67]

Despite the difficulties in finding the appropriate staff, the audit branch still underwent a rapid growth in personnel in an area that was relatively underdeveloped at the PSC. As a result, it faced challenges common to many fast-growing organizations, such as integrating a new and diverse set of people to a well-established organization and helping them develop a common understanding of their role. To do so, a number of key steps were taken, including the creation of a learning program for employees as well as a professional practices program meant to help ensure the quality and consistency of auditing activities. In 2005, the branch's Professional Practices Directorate developed an audit manual, drawing substantially from the methodology in place at the Office of the Auditor General, to assist in the professionalization and standardization of its practices. Subsequently, a number of other auditing tools were also developed and the PSC worked on a plan that would ensure that audits would focus on matters bearing the most risk and significance for the public service. The shift to a more risk-based approach illustrates the PSC's broader efforts to make the most of its auditing capacity by further improving its methods and processes.

In the fall of 2008, the Commission created an Independent Review Committee to assess its approach and level of activity concerning the oversight of delegated staffing authority. The committee, composed of two retired federal deputy ministers and a former Auditor General of Manitoba, consulted with deputy heads, current and former parliamentarians, bargaining agents and other senior officials within the public service; it also hired consultants to conduct studies of the Commission's data systems, its oversight approach compared with other organizations and its

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[66] Luc Juillet and Ken Rasmussen (2008) *Defending a Contested Ideal: Merit and the Public Service Commission, 1908-2008*, Ottawa, University of Ottawa Press, 211.

[67] Interview with a senior official of the PSC, June 23, 2010. Among this staff of 65, about 40 people are full-time auditors. The remaining 25 individuals are executives in charge of these services, administrative personnel and some employees in charge of related functions, such as the strategic planning of audits and the development of audit methodologies.

efforts to develop greater oversight capacity. In January 2009, the committee reported that the PSC had put in place the right monitoring and auditing activities to fulfill its oversight mandate, and that its approach was reasonable and flowed properly from the requirements of the new PSEA.

However, the committee also recommended that the Commission further develop its capacity with regard to auditing and monitoring.[68] As the Independent Review Committee pointed out, the Commission made significant progress in building its oversight capacity since the new PSEA came into force. According to its findings, the PSC oversight budget for 2008-2009 allocated $23M to oversight activities (about 22% of its budget), a clear improvement over the $14M spent on oversight (about 15% of its budget) in the year prior to the introduction of the new legislation.[69] This significant increase of about $10M dedicated to oversight activities essentially went to support the expansion of the Commission's auditing capacity.

According to the Committee, from 2005 to 2008, the Commission published seven organizational audits (four of them resulting in special conditions being imposed on the delegated authority of the organizations), a level of activity that represents a clear improvement over the past. In more recent years, the Commission's efforts in this area have continued, leading to more audits being completed. In 2010 alone, the PSC published seven new organizational audits, one follow-up organizational audit and one government-wide audit on the use of collective staffing processes. It also published three new studies on various aspects of staffing and updated five other studies on issues of continuing interest for the HR system.[70] Overall, these numbers suggest a continued expansion of the auditing activities of the Commission.

Yet, despite the significance of this reinvestment and the growing level of activity, the Committee also thought that a higher level of effort would be needed in the near future to deliver on the Commission's auditing plan. As the Committee points out, if the PSC were to continue to audit seven organizations per four-year period, it would take 47 years to cover the totality of organizations overseen by the PSC, a far longer time frame than the five-to-seven–year audit cycle to which the Commission aspires.[71] In examining the effectiveness of its approach to oversight, the Independent Review Committee also found that the Commission's performance could probably be improved by ensuring that its expectations be more clearly communicated to organizations (for example, with respect to the use of non-advertised hiring processes), by ensuring ongoing dialogue with departments and central agencies around oversight activities, by better co-ordinating its activities with other oversight agents (such as the Office of the Auditor General and the Office of the Comptroller General) and by investing in better information technology infrastructure.

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[68] Independent Review Committee, *Review of Public Service Commission Oversight – Report of the Independent Review Committee*, January 2009.

[69] Ibid, 1.

[70] For a list of these audits and studies, see www.psc-cfp.gc.ca/adt-vrf/comrpt-rapter-y-eng.htm.

[71] Independent Review Committee, *Review of Public Service Commission Oversight – Report of the Independent Review Committee*, January 2009, 32.

By and large, the PSC responded positively to the Committee's recommendations and it quickly adopted an action plan responding to the 18 recommendations contained in the report. Then in October 2010, the Commission reported that it had fully implemented five of the Committee's recommendations and that the remainder would be implemented by the end of 2012.[72] Within the PSC, interviewees pointed out that the audit function remained in an early stage and that, as its policies are adjusted, its practices improved and its auditors gain experience, the Commission is bound to make efficiency gains in this area. To this effect, and in response to the Committee's report, the PSC fully revised and streamlined its audit methodology in 2009. It also strengthened some of its audit and planning tools and is investing in more training for its employees, including through the implementation of a new professional development program for its auditors. Among other measures, it is also engaging the public service's audit community to a greater extent in an effort to improve its practices, to better co-ordinate its activities with other auditors and to minimize potential duplication and overlap for organizations.[73]

However, in its report, the Committee made another observation about the Commission's audit activities, which in some ways may prove even more important for the implementation of the new PSEA. It noted the crucial importance of a continued effort at effecting cultural change within the public service with regard to staffing and argued that, beyond the continued efforts of the PSC to build a stronger monitoring and audit capacity, the proper implementation of the new PSEA would also require continued engagement and dialogue between the Commission and other key actors in the staffing system. As the Committee put it:

> "It is the view of the Committee that full implementation of the PSEA, as one of the essential foundations of HR renewal, requires renewed engagement by everyone involved including deputy heads, managers, HR specialists and bargaining agents. Simply enhancing PSC oversight, in isolation, will not be enough. A concerted "team effort" is required, including, initially at least, the application of similar emphasis, focus and dialogue to that which occurred in the months prior to the coming into force of the current PSEA legislation in December 2005."[74]

In sum, the effectiveness of the 2003 staffing reforms, especially the adoption of the new PSEA, largely rests on the understanding that organizational executives and managers have of their new staffing authorities and their willingness to make the most of the new flexibility under a values-based staffing approach. In this perspective, building more effective oversight is an essential, but partial, dimension of effectively implementing the PSEA. In the view of the Committee, despite the importance for a strong audit function, it needed to be noted that successful implementation of the new PSEA also required careful attention to the broader cultural challenge inherent in changing the HR system, a challenge that would require sustained engagement by all the actors of the system in striving for new ways of doing things.

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[72] Public Service Commission of Canada (2010) *Annual Report 2009-2010*, 107.

[73] Ibid, 172-177.

[74] Independent Review Committee, *Review of Public Service Commission Oversight – Report of the Independent Review Committee*, January 2009, 3.

2.5. Implementing the new political activities provisions of the *Public Service Employment Act*

As we discussed earlier, Part 7 of the new PSEA contains new provisions concerning the political activities of public servants. The protection of the political impartiality of the public service has always been a central feature of the Commission's mandate. While this objective is achieved in part through the operation of the staffing system (by preventing political interference in appointment decisions, for example), it also entails the regulation of the political activities of public servants. In some instances, the active participation of public servants in the political process runs the risk of compromising the non-partisan and impartial nature of the public service. It can also create a perception of political bias that could undermine the trust of ministers in the loyalty of the public service or in its ability to offer impartial advice. Similarly, if citizens come to see public servants as partisan, it could undercut their trust in being treated fairly, without regard to their political beliefs or affiliation, by the public service. In sum, maintaining a professional, merit-based public service that benefits from the trust of governments and citizens unavoidably requires placing some limits on the political freedoms of public servants.

However, as our recent history has shown, it can be difficult to ascertain what reasonable limits can be imposed on the political participation of public servants in a liberal democracy.[75] As the courts have reminded us, public servants are citizens, too, and a balance must be sought between the protection of their fundamental liberties and the collective interest in an impartial public service. In this perspective, Part 7 of the PSEA, which was largely a response to the *Osborne* decision that had invalidated the total ban on political activities contained in the old Act, largely entrusted the PSC to strike such a balance, safeguarding the impartiality of the public service while interfering as little as possible with the political freedom of employees. The law explicitly forbids deputy ministers from engaging in political activities, with the exception of voting. It also maintains the requirement for public servants to obtain the permission of the PSC before seeking nomination as candidates for parties in elections and before running for office, extending for the first time these requirements to municipal elections. But concerning political activities that do not relate to running for office, the Act remains more open-ended: it leaves it to the PSC to decide where the exact boundaries should lie in what circumstances and to determine what penalties should be imposed on those who cross them.

Hence, the provisions of the PSEA created some specific implementation challenges for the PSC. The Commission first needed to decide whether it should attempt to identify specifically the political activities unrelated to candidacy that should be prohibited to public servants, whether these prohibitions should apply to the same extent (or at all) to all types of public service positions and whether these prohibitions should be either contained in regulations adopted under the PSEA or confined to policy statements. These broad questions were an important part of the internal and external policy discussions that occurred in the first few years of implementation.

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[75] For an overview of the evolution of this question in Canada since the late 1970s, see Luc Juillet and Ken Rasmussen (2008) *Defending a Contested Ideal: Merit and the Public Service Commission, 1908-2008*, Ottawa, University of Ottawa Press, 124-151.

Then, irrespective of the outcome of this debate, the PSC needed to design a process to handle eventual allegations of improper political activities, either by deputy ministers or by lower-level employees. Given the need for transparency and certainty, it was decided early that the various steps and requirements of this process would be set through regulation. Finally, the PSC needed to make some policy choices concerning its management of the requests of permission to run for office or to seek a party's nomination: what criteria should be used to grant those requests? What level of input should be obtained from organizational executives in assessing their employees' requests? Should conditions be attached to employees who do not get elected and want to return to their positions after such a highly visible political involvement? Addressing these policy issues, getting the word out on the new framework for dealing with political activities and organizing itself to deal with an anticipated larger volume of requests and complaints constituted the core of the PSC's implementation agenda on political activities.

While the implementation of Part 7 of the Act was largely handled separately from the staffing issues, the PSC similarly managed to have an early start. Planning began in the first few months of 2003, even before the new PSEA had been adopted by Parliament.[76] As a first step, the Commission's Resourcing Policy and Legislation Directorate conducted a comparative analysis of the models used for similar purposes in other jurisdictions or by other organizations. In this regard, particular attention was paid to the rules used by the Royal Canadian Mounted Police and the Ontario Public Service as well as to the systems in place in the United States, Australia, New Zealand, the United Kingdom and France.[77] The PSC then held informal discussions with a number of agencies with relevant expertise, including lawyers from the Department of Justice, officials from the Treasury Board of Canada Secretariat's Values and Ethics Office and representatives of the Canadian Human Rights Commission.[78] Based on this research and on internal discussions, the PSC was able to identify various options for proceeding with the implementation of this part of the Act as well as additional questions that need to be addressed.

On this basis, the PSC then proceeded to consult organizations, unions and other stakeholders. A number of venues were used for this purpose. The PSC first consulted a select group of organizational executives and union officials through the PSC Advisory Council (PSCAC). A special PSCAC Consultation Group on Political Activities was established in the spring of 2004 and it held six meetings at that time, examining in detail several dimensions of the new political activities framework. One of the issues that came up through these discussions was the need to address the relationship between the new rules on political activities and the *Values and Ethics Code for the Public Service* now administered by the PSHRMAC. As a result of concerns expressed by the group, a bilateral process was established between the PSC and PSHRMAC's Office of

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[76] Memorandum entitled "Political Activities Work Plan – Presentation to the Commission," dated September 24, 2003.

[77] See Public Service Commission, *Political Activities – Other Jurisdictions: Highlights*, undated internal document, 6 pages.

[78] Public Service Commission, *Summary of Consultations and Research*, internal document dated June 7, 2005, 1.

Values and Ethics to clarify and address these issues of co-ordination and to "ensure, to the greatest extent possible, the provision of coherent and seamless advice, guidance, support and direction to employees and departments" on issues of political engagement.[79]

The PSCAC Consultation Group also extensively discussed a list of specific activities that could be explicitly prohibited through regulations. While this discussion was found to be valuable, it revealed the difficulty of obtaining a consensus on what would constitute an unacceptable activity in light of the considerable diversity of circumstances of federal employees. Nevertheless, a few broad principles were identified, including the prohibition against engaging in political activities while on duty, using one's discretionary authority to favour particular businesses based on political affiliation or using government property and resources in the conduct of those activities.[80] The Consultation Group met again on two occasions, in February and June 2005, to provide feedback on the PSC's emerging approach, including the application of a self-assessment tool developed by the PSC to assist employees in making choices with respect to their political involvement.

In October 2004, the PSC also asked the Public Policy Forum (PPF) to prepare a background paper that could be used for consultation and to use it to hold a series of structured interviews seeking the views of various stakeholders.[81] Three broad sets of questions were addressed through this process: whether the PSC should recommend regulations to the government that would define limits on political activities unrelated to candidacy; whether a "cooling-off" period should be imposed on employees who are unsuccessful in running for office before they are allowed to reintegrate positions that are deemed politically sensitive; and how to handle different aspects of the investigation process, such as how much information should be publicly reported and what factors should be considered in determining corrective measures when allegations are substantiated. Using the background paper, the PPF also organized a symposium in October 2004. Chaired by the President of the PSC, the symposium included academics, people with considerable political experience and representatives from various non-profit organizations, such as the head of APEX and a counsel from the Canadian Civil Liberties Association.

As we mentioned earlier, the PSC also used its cross-country consultation process in the fall of 2004 to seek the views of public servants on political activities. Attended by about 600 participants, this national consultation found considerable support for a case-by-case approach, which, while based on common principles, could better take into consideration the particular circumstances of each

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[79] Public Service Commission, *Talking Points for Maureen Stewart for PSCAC Steering Committee*, June 29, 2005, internal document dated June 21, 2005, 2.

[80] Public Service Commission, *Outcome of Discussion of Examples of Possible Unacceptable Political Activities as per Meeting of the PSCAC Consultation Group, March 31, 2004 and April 7, 2004*, undated internal document.

[81] See Public Policy Forum, *Ensuring an Impartial Public Service: An Enhanced Role for the Public Service Commission: A Public Policy Forum Background Paper*, Ottawa, PPF, October 13, 2004.

public servant. On the whole, there appeared "to be consensus in most regions that guidance/policy/principles is the approach to adopt with respect to possible limitations instead of regulations" and that "it would be impossible to have regulations that cover every possibility."[82]

Finally, from the end of January to the middle of March 2005, the PSC undertook another set of consultations by writing to 87 organizations, 19 unions, 13 heads of regional Federal Councils and APEX. This time, the PSC consulted those stakeholders on the basis of a document produced in-house that detailed its proposed approach to political activities.[83] In this document, entitled *A Proposed Approach to Political Activities*, the PSC announced that it would not propose new regulations attempting to define prohibited political activities unrelated to candidacy, but that it would instead provide guidance and support in helping employees make reasonable decisions about their involvement in politics. The guidance would clarify the meaning of the new PSEA provisions, including by providing specific examples, and include some self-assessment tools to assist employees in thinking through the potential implications of their political involvement. However, in the end, the new system would chiefly rely on the informed individual judgment of employees.

While this approach was proposed in part because of the difficulties of crafting regulations that would cover the wide range of circumstances potentially presented by the political engagement of public servants, it is also clearly in keeping with the broader philosophy of the 2003 HR reforms: a growing shift toward a values-based HR system under which employees would be expected, and helped, to rely on their judgment in interpreting the meaning of fundamental public service values in the face of their specific circumstances. The decision not to propose detailed regulations on prohibited political activities is in keeping with this values-based approach.

However, while the Commission could choose to avoid proposing regulations on prohibited political activities, there was clearly a need for legal certainty concerning some other aspects of the new political activities framework. For example, with regard to the investigation of allegations regarding improper political activities, Part 7 of the new PSEA explicitly refers to the need for regulations.[84] To this effect, the consultation document provided details on the investigation process that the Commission proposed to establish through regulation. The regulations would hence cover various elements of this process, such as the information that should be provided in making an allegation and time limits for filing a complaint once an improper action has allegedly taken place. The regulations would then be complemented by guidance documents dealing with other aspects of the investigation process, such as fact gathering and disclosure of information. Similarly, the PSC thought that some elements of the process to request permission to run for office also needed to be stipulated in regulations.

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[82] Public Service Commission, *Summary of PSC Cross-Country Consultations – Fall 2004*, internal document dated November 30, 2004, 8.

[83] Public Service Commission, *A Proposed Approach to Political Activities*, dated January 2005.

[84] Article 118 of the PSEA reads: "The Commission may investigate any allegation, in accordance to the regulations, that an employee has failed to comply [...]."

The PSC found general support for its proposed approach by the 49 non-union organizations that responded to the letter.[85] However, the three unions that responded to the letter expressed strong concerns with the proposal, finding it still too restrictive for public servants and questioning whether the PSC should even be the judge of what is acceptable political participation. Of course, the Commission's role in overseeing political activities is not only long-standing, it is also written in the statute. In fact, as we saw, the PSEA adopted in 2003 even expanded the PSC's role in this regard. In this context, decisions raised by the implementation of the new PSEA were more limited to the approach that it should take in fulfilling this part of its mandate. In this perspective, despite the unions' criticism, the Commission found widespread support for its proposed overall approach to the new measures concerning political activities and it used the results of the consultation to make some minor adjustments to its proposed regulations.[86]

As we can see, the PSC consulted extensively as it developed its approach to implementing the political activities component of the PSEA. According to our interviews, these consultations had an important impact on the approach that was eventually adopted, especially regarding the decision not to identify specific prohibited political activities unrelated to candidacy. In particular, the President of the Commission initially tended to favour the adoption of such regulations and the consultations went a long way to modifying the President's views in this regard. However, one of the disadvantage of this elaborate consultation process was that it required a lot of time. Initially, the government had set December 31, 2004, as the date for the coming into force of this part of the Act, a full year before the staffing provisions would come into effect. But it quickly became clear to the PSC that this deadline would rush the policy process and would severely curtail the possibility of meaningful consultation. As a result, in the summer of 2004, the President of the Commission approached the minister responsible for the Act to seek an extension until the end of 2005. According to a former senior executive interviewed for this study, the President received the support of the DM community in this endeavour, as it also preferred a longer process that would allow for better preparation for implementing the new system.

The new regulations on political activities were finally published in November 2005.[87] They specify the content and required timing of the requests for permission made by aspiring election candidates as well as the procedures to be used to file and investigate allegations of improper political activities. They also contain a schedule providing a form to be used for making allegations of such improper

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[85] Public Service Commission, *Report on the Outcome of Consultations on a Proposed Approach to Political Activities*, internal document dated April 12, 2005, 1.

[86] For example, pages 18 to 21 of the consultation document specified what elements of the investigation process the PSC was proposing to inscribe in regulations and what elements were to be covered through guidance documents. In the end, some of the elements that the PSC proposed to address through guidance documents, such as the disclosure of information, were actually stipulated in the regulations. Conversely, some elements that it proposed to inscribe in the regulations, such as the factors to be considered in determining whether an investigation would be conducted, were not written in the regulations. See pages 18 to 21 of PSC, *A Proposed Approach to Political Activities*, January 2005.

[87] The *Political Activities Regulations* pursuant to section 22 of the *Public Service Employment Act* were released by the PSC on November 18, 2005, and published in the December 14, 2005 edition of the *Canada Gazette* (volume 139, no. 25).

activities. Following the adoption of the regulations, the PSC worked on completing the internal procedures and tools necessary to implement the new rules. For example, three forms were developed and made available on-line to support the processing of requests for permissions and leave to participate in elections.[88] In this regard, a key organizational challenge encountered has been the need to deal with much larger volumes of requests due to the new coverage of municipal elections. Given the number of municipalities, these elections generate a larger number of requests that must be handled in short, intense periods. In 2006, the first year that the new rules were in effect, the PSC's small section responsible for political activities struggled to handle requests in a timely manner, having to resort to temporary help and very long hours. Due to better planning and organization, this problem has since been resolved, even though the number of requests has actually increased in recent years.

Significant efforts were also expanded on outreach and information dissemination. In October 2007, the PSC published a brochure entitled "Political Activities and You" summarizing the legal provisions regulating the political involvement of public servants and providing information on the principles and processes used by the PSC to apply them. This was only one item in a series of documents developed by the PSC, which also included a more elaborate guidance document for activities unrelated to candidacy in elections, a sheet of frequently asked questions, an on-line self assessment tool and a list of designated political activities representatives (DPARs) who can be contacted in various agencies for further information. In fact, the DPARs have proven to be an important feature of the new framework on political activities. Appointed by deputy ministers to be their organization's point of contact on political activities, these representatives have become effective conduits for information between organizations and the PSC on individual cases and on broader policy issues. They also represent a valuable resource for their fellow employees. The only challenges have been that there tends to be significant turnover in DPARs, which works against the development of expertise and institutional memory. There are also few of them in the regions. Still, according to our interviews, they remain an effective link to organizations and employees.

The importance of those efforts reflect the ongoing challenge of reaching such a large group of employees, essentially the entire workforce of the public service (including separate employers who are not covered by the PSEA for staffing), to educate them about the existence and nature of the rules. According to a senior executive of the PSC, the challenge to reach individual public servants, especially outside the National Capital Region, to inform them of the new rules has been one of the most important difficulties in implementing this part of the PSEA. The results of the investigations completed in the first few years of the new system have also confirmed that the lack of knowledge of the new rules remained a problem. Since then, the PSC has experimented with new ways of reaching public servants. For example, it convinced the Department of Municipal Affairs of the Province of Quebec to place information about the new rules on its Web site on municipal elections in the province and letters are occasionally sent to employees to remind them that they must be careful in engaging in politics, referring them to resources to make sound decisions.

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[88] The forms include a Political Candidacy Request Form (to be completed by the employee), a Questionnaire for Supervisors or Managers (used to determine the nature of duties performed by the requesting employee and the level of public visibility of their functions) and a Deputy Head's Input Form (to collect the deputy head's views and estimate the potential organizational impact of the requested leave).

In March 2008, the PSC made an important change when it created the new Political Activities Directorate to better co-ordinate its actions concerning political activities. Prior to this reorganization, at least three different branches of the PSC held some responsibilities concerning this part of the PSEA, a situation that was increasingly regarded as inefficient and that could have contributed to some confusion. By regrouping all these functions, with the notable exception of the investigations of allegations of improper political activities, which continue to be handled by the Investigations Branch, the PSC consolidated its operations and expertise on these issues, a step that should help it offer consistent and easily-accessible advice to public servants on these matters. The PSC also thought that the creation of the directorate would help increase awareness of public servants' obligations under this part of the new PSEA.

Recently, some adjustments were made to the political activities regime in light of the experience gained through implementation. In particular, in January 2010 the PSC adopted a streamlined process for handling requests for permission to run in municipal elections. Following an internal analysis of the requests treated from 2007 to 2009 as well as a consultation exercise with the DPARs across the public service, the PSC dropped the mandatory requirement to obtain input from deputy heads in assessing the potential impacts of the employee's political engagement. It also simplified the forms used by employees and supervisors as part of this process.[89] While deputy heads can still provide their input to the Commission if they want, the new procedure recognizes that requiring their involvement in all decisions often created delays and was frequently unnecessary. It will now be more standard for the Commission to seek the views of more immediate managers on the potential impact of an employee's candidacy on the reality and perception of impartiality in reaching its decision.

In recent years, the Commission also became attentive to emerging challenges with respect to political activities, mostly situations that, while not related to public servants running for office, might compromise the reality or perception of impartiality by the public service. Indeed, some of the cases that the Commission had to address on this score in the first few years of the new Act were rather unexpected. One case involved an employee publicly disclosing their partisan views and activities on an Internet-based social networking site, while another concerned a public servant working in close proximity to the Clerk of the Privy Council who left their position to become the Director of Policy in the Office of the Leader of the Opposition. The issue of involvement in non-governmental advocacy groups, such as environmental organizations, which are not affiliated with a specific party but can publicly voice strong views on government policies and actively lobby for changes in government action, was also discussed.

To explore whether any changes are needed to address such situations, either through policy or regulatory means, the PSC held six roundtables at universities across the country in 2009 as well as a national symposium in Ottawa, which involved 25 experts, in March 2010. In its 2009-2010 Annual Report, the Commission reported on the main messages to come out of those discussions and it announced that it would outline a renewed vision for a non-partisan public service in an

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[89] Letter from Dr. Maria Barrados, President of the Public Service Commission, to all deputy heads, dated January 21, 2010.

upcoming Special Report to Parliament. Among other issues, the Commission is examining whether it might be desirable to establish a politically restricted class of employees through regulations under the PSEA, whether it can provide more precision on the meaning of political activities under current regulations and whether there are some political activities that are not currently covered by the legislation but that should nevertheless be dealt with through other instruments because of the risk that they pose to the non-partisanship of the public service.[90]

In sum, as a result of its considered examination of the new framework and emerging issues, the new political activities regime operated by the PSC under the new PSEA is likely to continue to evolve in the coming years. As it does so, it will be interesting to observe whether the Commission will continue to adhere to an essentially values-based approach or whether it will find the need to formalize some aspects of the regime through the use of regulations and more detailed guidance.

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[90] Public Service Commission of Canada (2010) *Annual Report 2009-2010,* 77.

Conclusion

The reforms enacted in 2003 were wide-ranging and significantly transformed the HR system of the public service. The PSMA certainly represented the most important institutional and legislative changes made to the staffing regime of the federal public service since the late 1960s. For the PSC, the reforms meant making profound changes to its policies, its management instruments and practices, its relationship to stakeholders and even to its very structure as an organization. Such changes, which entailed broad cultural and administrative changes and directly impacted its employees, had to be implemented while ensuring the continued operation and integrity of the staffing system of the federal public service. In this perspective, it is clear that the implementation of the reforms represented a major challenge for the PSC.

As our examination of its efforts in implementing the new legislation has shown, working with its stakeholders and partners, the PSC succeeded in designing and deploying a new delegated system of staffing throughout the public service. To do so, it consulted extensively, broke new ground in putting forward a delegated and values-based approach to staffing and took on expanded responsibilities in the area of political activities. In the process, the PSC also abandoned some of its historic functions, notably in the areas of training and appeals, and it transformed itself as an organization. Yet, its implementation efforts also encountered significant challenges. Among those, our study found that the most significant were the difficulty in informing and training public servants on the new staffing system and the new provisions on political activities, some ongoing disagreement and tensions about the proper role of the PSC as an independent agency in the staffing system and the complexity of embracing a values-based approach.

With respect to this last challenge, the historic reliance on prescriptive rules, the temptation to resolve emerging problems by adopting more detailed guidance and the increasing fear by some organizations of being held accountable for not respecting norms that remain insufficiently precise seem to make the transition to a values-based approach more difficult. However, unless these temptations are resisted, the fundamental objective of the reform — to build a more flexible, innovative and efficient staffing system mostly resting on the judgment of managers — is in danger of not being fully realized. From this perspective, the implementation of the new PSEA can be considered to be an ongoing process. In this regard, one of the senior executives interviewed for this project might have put it best: "I think that [the PSC] was very successful in doing a 'technical implementation' of the PSEA — putting in place the framework, the right systems — but there is still a long way to go before the deeper shift intended by the reform — the shift in culture, the greater reliance on values — becomes a reality. It's at that deeper level that the conversation now needs to take place."