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Report of the Review of the *Public Service Modernization Act,* 2003

Canada



**Report of the Review
of the *Public Service
Modernization Act,*
2003**

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represented by the President of the Treasury Board, 2011

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The Honourable Tony Clement
President of the Treasury Board
and Minister for FedNor
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

I have the honour of transmitting to you, for tabling in Parliament, the *Report of the Review of the Public Service Modernization Act, 2003*.

The Report is submitted in accordance with section 136 of the *Public Service Employment Act* and section 252 of the *Public Service Labour Relations Act*.

The Review has afforded me a unique opportunity to engage with a broad cross-section of individuals about the legislation governing people management in the federal public service. I am grateful for the generosity with which senior officials, managers, employees, and their respective representatives shared their observations and their ideas. I feel confident that their collaboration to harness the potential offered by the legislation will respond to Canadians' needs and expectations, and ensure that Canada's federal public service remains a model to which others aspire.

Yours sincerely,

Original Signed By
Susan M.W. Cartwright
Senior Advisor

Speaker of the Senate

Dear Mr. Speaker:

Pursuant to section 136 of the *Public Service Employment Act* and section 252 of the *Public Service Labour Relations Act*, I have the honour of submitting to Parliament, through your good offices, the *Report of the Review of the Public Service Modernization Act, 2003*.

Yours sincerely,

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President of the Treasury Board and
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Executive Summary

This Report is the culmination of the legislative review of the *Public Service Modernization Act*, which was passed into law in 2003 and came into force during the two years that followed. It was described at the time as “the single biggest change to public service human resources management in more than 35 years.”¹ Two component statutes, the *Public Service Employment Act* (PSEA) and the *Public Service Labour Relations Act* (PSLRA), require that a review of the acts, and their administration and operation, be conducted five years after coming into force, following which a report is to be tabled in Parliament. In June 2009, a team was established to conduct the Review. The Review Team received input from a cross-section of organizations, stakeholders and experts. The team’s research and analysis are contained in the following pages, accompanied by a series of recommendations by which the potential of the legislation can be realized.

The introduction of the PSMA was preceded by numerous calls, over several years, for significant change to both employment and labour relations legislation in the federal public service. The Government responded by establishing the Task Force on Modernizing Human Resources Management in April 2001 to design a modern policy, legislative and institutional framework for the management of human resources. The result was the *Public Service Modernization Act* (PSMA), which was intended to transform the way the Government hires, manages and supports its employees by modernizing staffing, improving learning opportunities, fostering collaborative labour relations, and clarifying managerial roles and accountability.

A significant investment was made between 2003 and 2005, as the legislation came into force, notably in meeting the requirements of the legislation to create new entities, mechanisms and processes and in training HR staff and managers. The Auditor General concluded in 2005 that, technically speaking, the legislation had been implemented.

However, maximizing the potential of the legislation through its administration and operation required more than technical and structural changes. Behaviour and culture change were also needed, but the attention and effort to realize them were not sustained. The progress that has been witnessed since 2005 was not sufficiently widespread or shared to allow the Review Team to conclude that the behaviour and culture change envisaged by the architects of the PSMA has been realized.

1. Government of Canada communications material, 2005.

As a result of listening to stakeholders, as well as its own research and analysis, the Review Team concluded that the legislation is adequate and provides an appropriate framework for people management in the federal public service. Nonetheless, among the recommendations are some possible legislative changes, which reflect the experience of stakeholders administering the PSEA and PSLRA during the five years since they came into force.

Proposals to amend the legislation were also received, largely from three central HR organizations, most of them related to their internal operations. A small number of proposals originated with bargaining agents. Each proposal was assessed against a common set of criteria. When the proposed changes would enhance the effectiveness of the legislation and/or the organization, they were retained. However, proposals were not accepted when the Review Team felt they would limit flexibility, or blur or complicate roles and responsibilities. Similarly, when results could be achieved more effectively through non-legislative means or when the legislative change was disproportionate to the challenge identified and the risk it presents, legislative change was not advocated.

Although some of the recommendations can be achieved only through legislative change, the Review Team does not believe that amending the Acts is urgent because the proposed changes will not have a tangible impact on public servants as they serve Canadians. Moreover, non-legislative changes offer considerably greater promise for bringing about discernible change, even though they will often be difficult and will demand sustained commitment and effort.

Despite countless reports, recommendations and changes, the federal public service still faces some of the same challenges in people management as it has faced over the last 50 years. These challenges do not originate in the legislation, nor will productive responses to them lie in legislative changes. The answers lie in how those challenges are confronted and in how change is pursued. Without a new approach to change, there is a risk that the opportunity to maximize the benefits of the PSMA will be missed.

The Review Team developed a “proposition for change” which outlines such an approach. Active effort is necessary in each of four interconnected areas. A broadly shared and frequently communicated vision (or destination) for the change initiative is imperative. Productive relationships among individuals and organizations must be developed. Individuals and organizations must be capable, confident and sufficiently knowledgeable to be ready to be held accountable for their actions. Finally, supportive changes may be needed to the “wiring” or structural supports (legislation, policy, courses, organizations, etc.). However, reliance on any one area is unlikely to yield the improvements in people management that the architects of the PSMA had intended.

Therefore, in addition to sustained attention, the Review Team believes that efforts should be devoted to developing a clear vision of the end-state for the PSMA and frequent and consistent communication to employees. The vision must be modelled by leaders. Once managers and HR staff are equipped to play their new or different roles, the assessment of their performance must reinforce the vision. Relationships need to be strong and active. New tools, processes, technology and organizations may also be required to support changes in the other three areas but they will not be sufficient on their own. Wiring changes alone cannot be a substitute for, nor should they be mistaken for, real change to behaviour and culture.

The Review Team encountered almost no one who was unequivocally positive about people management in the federal public service, despite the improvements that have been achieved. Senior officials, deputy heads, managers, HR staff, employees and bargaining agents alike were disappointed that more progress has not been made, although their concerns, frustrations and interests differed. The Review Team found there is recognition that the legislation is not being used as it might be and that there is an appetite for change. This readiness presents an unprecedented opportunity for public servants at all levels and their representatives to demonstrate their creativity, determination, dedication and professionalism in making changes to people management. The Canadian public service aspires to excellence, including management excellence. The way in which the public service manages its most important asset, its people, should meet those standards of excellence, to which employees aspire and which Canadians expect and deserve.

Chapter 1: The *Public Service Modernization Act* Legislative Review

Introduction

This Report is the culmination of the *Public Service Modernization Act* (PSMA) legislative review. The Act, which was passed into law in 2003 and came into force during the two years that followed, was described at the time as “the single biggest change to public service human resources management in more than 35 years.”² Two of the four component statutes — the *Public Service Employment Act* (PSEA) and the *Public Service Labour Relations Act* (PSLRA) — require a review of the acts, their administration and operation to be conducted five years after their coming into force, followed by a report to be tabled in Parliament.

This chapter describes the team established for this purpose (the Review Team), the manner in which the Review was conducted, where information was obtained, how it was analysed and who was consulted. It also explains the assumptions and operating principles that underpinned the Review.

Chapter 2 provides an overview of the legislation and its origins. It explores the impetus for change, the context in which the new statutes were introduced and the nature of amendments and requirements. Equally important, it sets out some events and issues facing the public service that, in the Review Team’s opinion, help to understand how the legislation is operating.

Subsequent chapters examine the following areas: vision, roles and clarity; the new staffing regime; supporting change in people management³; loyalty, non-partisanship and political activity; recourse and conflict resolution; and labour relations. In each chapter, the Review Team sets out its lines of inquiry, presents the results of engagement sessions, analysis and research, and offers recommendations for closing any remaining gaps. Finally, Chapter 10 provides the Review Team’s final conclusions and a proposition for change.

2. Government of Canada communications material, 2005.

3. People management goes beyond the transactional activities associated with human resources to building a culture of excellence on foundations such as leadership, values and ethics, and employee engagement and development. It is an integral part of achieving operational objectives and requires sustained leadership and investment of time and resources. It also requires the engagement of managers, employees, human resources practitioners, central organizations, and bargaining agents.

This Report is the culmination of the legislative review examining two of the statutes brought into force under the *Public Service Modernization Act*, as well as their administration and operation. However, it is, almost inevitably, about more than rules and their application. It is also about the relationships among the individuals and organizations that play a role in people management in the public service and the challenges they face in bringing a significant change initiative to fruition in a large organization made up of over a quarter of a million employees and numerous, disparate departments and agencies.

Terminology

Every effort has been made to employ plain language throughout this report; however, given the subject matter and context, the use of some specific terminology related to human resources management and labour relations is unavoidable. At a minimum, it is important to note the following:

- “Bargaining agents” are the employee organizations certified by the Public Service Labour Relations Board for employees in a bargaining unit.
- “Core public administration” refers to the departments named in Schedule I and other portions of the federal public administration named in Schedule IV of the Financial Administration Act.
- “Deputy head” refers to deputy ministers, chief executive officers and/or the person designated by the Governor in Council as the deputy head for purposes of the Public Service Employment Act or the Public Service Labour Relations Act.
- “Employee” for purposes of the PSEA, refers to individuals employed in the departments and agencies to which the Public Service Commission has exclusive authority to make appointments; and for purposes of the PSLRA, refers to persons employed in the public service other than those who are excluded such as casual workers, GIC appointments made under statutes other than the PSEA, students, persons employed on a term basis for a period of less than three months, and persons who occupy a managerial or confidential position.
- “Employer” means the Treasury Board or, in relation to a separate agency, that agency.
- “Public service” means the several positions in or under the departments, organizations and separate agencies named in Schedules I, IV and V of the Financial Administration Act.
- A majority of the findings and recommendations in this report apply to the core public administration. In some instances, for example with regard to Part 7 of the PSEA or in relation to the PSLRA, the findings or recommendations extend to the separate agencies. In those cases the terms “employer” and “public service” should be interpreted broadly.

Links to glossaries of HR terminology used in this report can be found in Appendix F.

Scope and Approach

The PSMA introduced a framework for human resources modernization in the federal public service. It created or revised four key pieces of legislation to modernize staffing, foster collaborative labour relations, clarify managerial roles and strengthen accountability, and provide employees at all levels with access to continuing learning opportunities. The Act includes:

-
- ▶ a new *Public Service Employment Act*, which addresses staffing, employment and political activities;
 - ▶ a new *Public Service Labour Relations Act*, which addresses labour relations, collective bargaining and resolution of related disputes;
 - ▶ an amended *Financial Administration Act*, which addresses authority and accountability; and
 - ▶ an amended *Canadian Centre for Management Development Act*, renamed the *Canada School of Public Service Act*, which addresses learning and development.

The *Financial Administration Act* (FAA) carries no review requirement. The *Canada School of Public Service Act* (CSPSA) calls for the Board of the School to cause a review of the activities and organization of the School, followed by a report to be tabled in Parliament every five years. Only the PSLRA and the PSEA required a review five years after they came into force, in April and December 2005 respectively. To meet this requirement, in June 2009 the Prime Minister designated the President of the Treasury Board as the Minister responsible for both reviews and announced a Senior Advisor at the Privy Council Office to lead the Review. The Senior Advisor was supported in this effort by the Review Team.⁴

The Senior Advisor sought input from the six central human resource (HR) organizations that share responsibility for people management under the PSEA and the PSLRA. They comprised the Office of the Chief Human Resources Officer (OCHRO) acting on behalf of the Treasury Board, the Public Service Commission (the PSC or the Commission), the Public Service Staffing Tribunal (PSST), the Public Service Labour Relations Board (PSLRB), the Canada School of Public Service (CSPS) and the Privy Council Office (PCO). In addition, the Senior Advisor briefed senior officials, stakeholders and other interested parties and offered them an opportunity to provide their input.

The Review Team developed an engagement and consultation strategy so that stakeholders — including deputy heads, public service managers, HR staff, employees and union representatives across the country — had an opportunity to share their diverse views about the legislation and whether it was meeting their expectations, as well as to provide their suggestions on practical actions to protect the public interest and support excellence in people management now and in the future.

4. Information about the Senior Advisor and the members of the Review Team can be found in Appendix B.

The Review Team met with stakeholders individually and in group sessions. Separate agencies, external experts, representatives of employment equity groups and former senior officials were also invited to make a contribution. The Review Team attempted to reach out to a cross-section of new recruits and seasoned employees, as well as representatives of both official languages communities.

Individuals participated in a variety of ways, ranging from discussion groups to written submissions. All participants were asked to complete a questionnaire; feedback from the questionnaires is reflected in the report, and notable findings are summarized in Appendix D.

Statistical and other empirical data were gathered from each of the contributing central HR organizations, as well as from secondary research reports, studies and journals. Much of the information was available publicly, for example, from annual reports posted online, but when new information was requested, the Review Team tried to minimize the reporting burden on individuals and organizations.

In light of the general nature of the requirement for a review in the PSEA and PSLRA,⁵ it was important to establish clearly at the outset the Review's objectives, guiding principles and scope. This was done in consultation with the central HR organizations and approved by the President of the Treasury Board in 2010. To the greatest extent possible, the Review would be forward-looking rather than a report card on implementation, such as was undertaken in 2010 by the Office of the Auditor General and by the Public Service Commission.

In order to understand the context for the PSMA, it was important to consider Parliament's intentions at the time of the legislation's passage. The Review Team examined, among other things, the preambles of the Acts, speeches and parliamentary debates, and communications materials published following proclamation. The Review Team also consulted a cross-section of former senior public service officials and bargaining agent executives who had played a prominent role in the period leading up to proclamation of the PSMA and in the years immediately after it came into force.

It was equally important to understand the current operating environment: the Review Team considered materials produced by stakeholders since the PSMA came into force, including evaluations, audits, special studies, reports and responses to them. The Review Team also drew on reports to Parliament by the President of the Treasury Board, the PSC, the PSST and the

5. Although the provisions in [section 136 of the PSEA](#) and [section 252 of the PSLRA](#) are worded somewhat differently, the purpose of the tasks is substantially the same.

PSLRB. Finally, it considered experiences in other jurisdictions to situate the experience at the federal level in Canada in a broader context.

Review Objectives and Guiding Principles

The objectives for the Review were:

- ▶ to prepare a report for the President of the Treasury Board to table before Parliament on a review of the acts, their administration and operation in relation to the intentions at the time the legislation was passed and the current context for people management in the public service;
- ▶ to create opportunities for HR partner organizations, agencies and departments, management, HR staff, and employees and their representatives to talk about the application and implementation of the legislation; and
- ▶ to recommend practical legislative or non-legislative changes in order to try and make a positive difference to people management for deputy heads, managers, HR staff, employees and their representatives, keeping in mind the public interest.

The Review was guided by an overarching set of principles to ensure that it would:

- ▶ be informed by other human resources and renewal initiatives and groups active across the public service (e.g., the Prime Minister's Advisory Committee on the Public Service, Public Service Renewal), as well as by other reports and studies (by the Public Service Commission and the Office of the Auditor General, for example);
- ▶ take into consideration the importance of maintaining institutional and legislative clarity;
- ▶ neither increase the existing set of rules nor add to the reporting burden for departments and agencies;
- ▶ be inclusive and transparent by providing stakeholders with information and opportunities for meaningful engagement;
- ▶ capitalize on existing information to the extent possible and, where new information was required, coordinate efforts to obtain it;
- ▶ be informed by the past, but focus recommendations on the future;
- ▶ use existing networks and bodies for governance and consultation rather than creating new bodies; and
- ▶ present fiscally responsible, incremental and practical recommendations.

Defining the scope of the Review was crucial for managing the process and timelines, as well as for setting realistic expectations for stakeholders. In broad terms, the Review Team assumed the current framework for people management in the public service would continue; for example, the team assumed that organizations would continue their current mandates and structures. In addition, unless specific issues arose during the Review or stakeholders flagged them as being significant, the team's work did not include an examination of definitions; sections of the PSEA and PSLRA that were re-enactments of previous legislation or of sections that had not yet been put into practice (such as the provisions of the PSLRA related to strike votes, which have not occurred since the new legislation came into force).

Lines of Inquiry

The Review Team explored the following broad lines of inquiry:

- ▶ whether the division of authorities, roles and responsibilities between the Public Service Commission, Treasury Board, the Office of the Chief Human Resources Officer, the Public Service Staffing Tribunal, the Public Service Labour Relations Board, the Canada School of Public Service, the Privy Council Office and deputy heads are clear, consistent, effective and without overlap and duplication;
- ▶ whether deputy heads, employees and their respective representatives have the knowledge, skills and capacity to exercise their authorities and to fulfil their roles and responsibilities under the legislation, supported by information and systems that enable results;
- ▶ whether deputy heads are able to meet their organizational needs efficiently and effectively, in accordance with the values and principles of the legislation;
- ▶ whether the provisions of the legislation pertaining to the management of individuals enable deputy heads, managers and employees to conduct their business within a sustainable work environment; and
- ▶ whether the employer(s), deputy heads and bargaining agents are able to work together in the public interest to establish terms and conditions of employment and resolve disputes.

The PSEA and the PSLRA constitute only a portion of the system for people management in the public service. The Review's mandate did not extend beyond the two statutes to important areas such as classification, compensation, official languages and integrated planning. However, to form a solid assessment of the administration and operation of the two statutes, this broader context had to be considered. When issues were raised that lay beyond the scope of the Review but that were inextricably linked to a matter that was within its scope, the Review Team made efforts to consider the issues within the broader construct.

The Review Team is very conscious that the nature of such an exercise entails making generalizations across a very large enterprise (the federal public service), which comprises very different organizations and a sizeable number of employees. Where shortcomings are identified, readers should not conclude that the Review Team failed to find either that important progress has been made or to encounter leadership, and deliberate, capable managers and HR staff, who are meeting the objectives of the legislation. Where the report notes implementation gaps that should be closed, it is to ensure that the practices of the best become the norm, and that they become visible across the enterprise.

Profile

The federal public service comprises the core public administration (CPA) and 27 separate agencies. The CPA consists of more than 80 departments and agencies named in Schedules I and IV of the *Financial Administration Act*. The Treasury Board is the employer for more than 200,000 individuals in the CPA, of which approximately 86 percent are represented by a bargaining agent.

The PSLRA applies to the CPA and the 27 separate agencies (listed in Schedule V of the FAA). Although the separate agencies are the employer for purposes of negotiations and setting compensation, they must obtain a mandate to bargain from the President of the Treasury Board.

All of the organizations that make up the CPA and only 6 of the 27 separate agencies⁶ are subject to the PSEA. The deputy heads of these organizations are delegated authority to make appointments by the Public Service Commission and are subject to any terms, conditions, policies, regulations and oversight the PSC establishes. The remaining separate agencies get their appointment authority from their enabling legislation.

6. For purposes of the PSEA, the separate agencies are the Office of the Correctional Investigator of Canada, Indian Oil and Gas Canada, the National Energy Board, the Public Service Labour Relations Board, the Office of the Superintendent of Financial Institutions, and the Financial Consumer Agency of Canada.

The data that follows was gathered from several sources. It reflects the situation in the CPA as of December 31, 2010, unless otherwise indicated.

Size

CPA:	214,985
Federal public service (includes CPA):	277,680

Gender

Women:	117,726 (54.8%)
Men:	97,259 (45.2%)

First Official Language

English:	69.1%
French:	30.4%

Representation (as at March 31, 2010)

Persons with disabilities:	5.7%
Visible minorities:	10.7%
Aboriginal peoples:	4.6%
Women:	54.8%

Average Age

All CPA:	43.9 years
Personnel Administration (PE) group:	42.6 years
Executive (EX) group:	49.9 years

Years of Experience

0–4 years:	23%
5–14 years:	37%
15–24 years:	22%
25+ years:	19%

Employee Tenure

Indeterminate:	89.73%
Term:	6.02%
Casuals:	2.14%
Students:	2.11%

Regional Distribution

Atlantic:	10.67%
British Columbia and Northern Canada:	9.50%
National Capital Region (NCR):	43.43%
Ontario (excluding NCR):	13.00%
Prairies:	11.31%
Quebec (excluding NCR):	11.34%
Outside Canada:	0.76%

Mobility (as at March 31, 2010)

New indeterminate employees:	16,304
From general public:	8,104
Indeterminate movements within CPA:	43,975
Promotions:	22,965
Transfers/Deployments:	21,010
Retirements/Departures:	9,330

Unionized Employees

CPA:	86.2%
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Bargaining Agents (Federal public service)

Association of Canadian Financial Officers
Association of Justice Counsel
Canadian Association of Professional Employees
Canadian Federal Pilots Association
Canadian Merchant Service Guild
Canadian Military Colleges Faculty Association
Canadian Auto Workers — Local 2182
Communications, Energy and Paperworkers Union of Canada — Local 588-G
Federal Government Dockyard Chargehands Association
Federal Government Dockyard Trades and Labour Council (East)
Federal Government Dockyard Trades and Labour Council (West)
International Brotherhood of Electrical Workers — Local 2228

National Automobile, Aerospace, Transportation, and General Workers Union of Canada

Professional Association of Foreign Service Officers

Professional Institute of the Public Service of Canada

Public Service Alliance of Canada

Union of Canadian Correctional Officers / Syndicat des agents correctionnels du Canada —
La Confédération des syndicats nationaux

Who Does What in People Management?

Clerk, Privy Council

Under PSEA

- ▶ Reports annually to Prime Minister on the public service
- ▶ Responsible for administering selection processes for deputy heads and GIC appointees

Public Service Commission

Under PSEA

- ▶ Appoints or provides for appointment to and within public service
- ▶ Investigates allegations of fraud, political interference, breach of political activity provisions, and errors or omissions with regard to external appointments
- ▶ Administers political activity provisions
- ▶ Sets terms and conditions, establishes policy and makes regulations related to appointments, revocation, corrective action and political activity
- ▶ Oversees authority delegated to deputy heads, conducts audits and studies
- ▶ Provides staffing and assessment services, some of which are on a cost-recovery basis
- ▶ Reports annually to Parliament and may make special reports

Treasury Board of Canada

Under PSEA

- ▶ May establish qualification standards and professional development programs
- ▶ May regulate deployment, probation, the definition of promotion and appointment to level
- ▶ Reports annually to Parliament

Under FAA

- ▶ Responsible for HR management in public service, including determining terms and conditions of employment, pensions, compensation and benefits

-
- ▶ Determines organization of public service and provides for classification
 - ▶ Negotiates collective agreements with bargaining agents
 - ▶ Establishes policies, programs or directives with respect to strike management, discipline, disclosure of wrongdoing in the public service, prevention of harassment and employment equity
 - ▶ Reports annually to Parliament

Under PSLRA

- ▶ May establish policies or directives with regard to informal conflict management systems

Public Service Staffing Tribunal

Under PSEA

- ▶ Hears and decides staffing complaints
- ▶ Offers mediation services to assist parties to resolve staffing complaints
- ▶ Reports annually to Parliament

Public Service Labour Relations Board

Under PSLRA

- ▶ Administers collective bargaining and grievance adjudication systems for the federal public service
- ▶ Offers mediation services to assist parties to resolve disputes
- ▶ Administers Part II, *Canada Labour Code*, for the public service
- ▶ Conducts compensation research and analysis
- ▶ Reports annually to Parliament

Under PSECA

- ▶ Deals with pay equity complaints

Canada School of Public Service

Under CSPSA

- ▶ Formulates and provides training, orientation and development programs for public service managers and employees
- ▶ Supports deputy heads in meeting the learning needs of their organizations
- ▶ Carries out research into public management and administration
- ▶ Contributes to a culture of continuous learning and public service excellence

Deputy Heads

Under FAA

- ▶ Establish learning, training and development needs
- ▶ Provide awards
- ▶ Set standards of discipline
- ▶ Demote or terminate employees
- ▶ Assess performance
- ▶ Determine organizational and work requirements

Under PSEA

- ▶ Establish merit criteria, area of selection and assessment methods
- ▶ Determine if, when, and how to staff positions
- ▶ Deploy to and within own organization

Under PSLRA

- ▶ Hear and decide grievances relative to decisions and actions in own organization

Miscellaneous

Under the Public Servants Disclosure Protection Act

- ▶ The Public Sector Integrity Commissioner investigates and decides on matters related to disclosure and reprisal, while the Public Servants Disclosure Protection Tribunal hears and decides on complaints related to reprisal linked to a disclosure of wrongdoing in the workplace.

Under the Official Languages Act

- ▶ The Commissioner of Official Languages ensures compliance with and investigates allegations about breaches of the Act.

Under the Canadian Human Rights Act

- ▶ The Canadian Human Rights Commission administers the Act, including carrying out investigations related to discrimination based on a prohibited ground and referring matters to the Canadian Human Rights Tribunal. It also ensures compliance with the *Employment Equity Act*.

Chapter 2: The Origins of the *Public Service Modernization Act*

The Impetus for Change

In April 2000, a report by the Auditor General drew attention to the “urgent need to deal with long-standing issues and emerging challenges for HR management in the public service.”⁷ The report described HR governance as unduly complex and outdated, administrative systems as cumbersome, costly and outmoded, and the framework as ill-suited to an environment that demands flexibility and adaptability. It cited rule-bound and inefficient staffing as a major source of frustration for managers and employees. It called for greater authority for managers, along with increased accountability and streamlining of staffing and related recourse while respecting employees’ interests. It also expressed concerns about long-standing “fractured responsibility” for HR management among deputy heads, the Public Service Commission and the Treasury Board.

Two other influential reports published shortly thereafter also highlighted problems with the public service HR system. The Advisory Committee on Senior Level Retention and Compensation⁸ argued that the public service needed a long-term HR strategy and supported the concept of structural change. The second report of the Advisory Committee on Labour-Management Relations in the Federal Public Service⁹ focused on the need for significant change to labour relations legislation following several years with no collective bargaining or wage increases.

These reports led the Government to signal its commitment to change in the Speech from the Throne in January 2001: reforms would “ensure that the Public Service is innovative, dynamic and reflective of the diversity of the country — able to attract and develop the talent needed to serve Canadians in the 21st century.”¹⁰

7. Office of the Auditor General of Canada, [Report of the Auditor General of Canada, April 2000, Chapter 9 — Streamlining the Human Resource Management Regime: A Study of Changing Roles and Responsibilities](#), Main Points.

8. Advisory Committee on Senior Level Retention and Compensation, [Third Report](#), December 2000.

9. Advisory Committee on Labour-Management Relations in the Federal Public Service, [Working Together in the Public Interest](#), June 2001.

10. [Speech from the Throne to Open the First Session of the 37th Parliament of Canada](#), January 30, 2001.

From this commitment came the Task Force on Modernizing Human Resources Management in the Public Service,¹¹ established in April 2001. The Task Force's terms of reference were to "recommend a modern policy, legislative and institutional framework for the management of human resources to enable the Public Service to retain, attract and develop the talent needed to serve Canadians in the 21st century."¹² Over the next two years, the Task Force engaged with public servants across the country, including deputy heads and HR staff, as well as bargaining agents, external advisors, academics and former Clerks of the Privy Council. It also reviewed three decades of reports, white papers, studies, audits and jurisprudence. As a result of the Task Force's work, a new model was developed: the *Public Service Modernization Act* was intended not only to simplify and streamline staffing and labour relations but also to pave the way for greater innovation and responsiveness in a system that had become bogged down in technicalities and process.

The PSMA's four components are described below, two of which (the PSEA and the PSLRA) are the focus of this report.

Financial Administration Act

Although the *Financial Administration Act* is not the object of this Review, the changes made to it through the PSMA are relevant. The FAA was amended to place responsibility for certain aspects of people management directly in the hands of deputy heads, subject to policies and directives of the Treasury Board. The changes conferred new responsibilities on deputy heads for determining learning and development requirements, providing awards, and establishing standards of discipline and setting penalties. In addition, the President of the Treasury Board is required to report annually to Parliament on the administration of the people management provisions of the Act.

Canada School of Public Service Act

The *Canada School of Public Service Act* amended the *Canadian Centre for Management Development Act* to clarify responsibilities and mandates for the provision of learning and development activities for employees in the public service. The PSMA made the Canada School of Public Service responsible for such activities.

11. The Task Force is also referred to as the "Quail Task Force" in some documents.

12. Task Force on Modernizing Human Resources Management in the Public Service, working papers, *Terms of Reference*, May 10, 2001.

Public Service Employment Act

The *Public Service Employment Act* has a relatively extensive preamble that sets out a series of broad principles as a guide to the requirements of the Act.¹³ It recognizes, for example, that the values of merit and non-partisanship are cornerstones of employment in the public service. It also acknowledges the importance of a public service that strives for excellence, that is representative, and that is able to serve the public with integrity and in either of Canada's official languages. Authority to make appointments to and within the public service is vested in the PSC, but the expectation is clear that this authority will be delegated to deputy heads, who may further delegate this authority, usually to managers within their organization. The delegation of authority was intended to provide managers with "the flexibility to staff, manage and lead their personnel ... to achieve results for Canadians."¹⁴ However, increased authority is balanced by greater accountability and expectations that employment practices will be fair and transparent, that employees would be respected, and that there will be effective dialogue and recourse aimed at resolving appointment issues.

These expectations have come to be known as "values" or "staffing values"; the new regime for staffing was described, from the time the PSEA was introduced, as a "values-based" regime. These values are not new; they are found in the *Values and Ethics Code for the Public Service*, and a number have endured since the public service first became merit-based in 1918. In a sense, the public service has been "values-based" for a long time. The explicit inclusion of values in the preamble of the PSEA was intended, not to replace the rules governing employment, but to make it clear that the exercise of discretion by managers (an entirely appropriate and essential part of the management function) is to be guided by these values. In the case of the PSEA, using values as guideposts for decision making offered an opportunity to reduce highly prescriptive or limiting approaches to staffing and respond to the problems with the status quo the Task Force had identified.

Part 1 of the PSEA describes the Commission's mandate to appoint or provide for the appointment of persons to or from within the public service, to conduct investigations and audits, and to administer the provisions related to political activities of employees and deputy heads. It lays out the responsibilities of the Commission, deputy heads and the employer (represented by the Treasury Board for the core public administration and by the separate agencies¹⁵ over which

13. Values also appear in the preamble to the PSLRA and are similarly intended to communicate expectations and to guide decision making.

14. *Public Service Employment Act, 2003*, [Preamble](#).

15. For purposes of the PSEA, the separate agencies are the Office of the Correctional Investigator of Canada, Indian Oil and Gas Canada, the National Energy Board, the Public Service Labour Relations Board, the Office of the Superintendent of Financial Institutions, and the Financial Consumer Agency of Canada.

the Commission has appointment authority). This Part also describes the organization and composition of the Commission, and the reporting obligations and options of the Commission and the Treasury Board.

Part 2 establishes that merit is the basis for appointing employees to and within those parts of the public service subject to the PSEA. Defining an appointment based on merit is one of the key mechanisms by which the Act gives “public service managers the flexibility necessary to staff ... to achieve results for Canadians.”¹⁶ It enables managers to exercise discretion and consider the changing nature of work in, and demands on, the public service. Selection criteria include both qualifications that are essential to the work to be performed and qualifications that may be an asset. Managers may also take into consideration operational requirements and organizational needs. They may make appointments using an advertised or a non-advertised process; determine areas of selection in which individuals must be employed or reside to be eligible for consideration; consider persons employed in other parts of the federal public administration; develop and use assessment methods and tools to help determine if candidates possess the desired qualifications; and may exclude appointments from certain requirements in predetermined circumstances.

Many of the changes contained in Part 2 contribute to fair and transparent practices and the values contained in the preamble. For example, candidates must be offered the choice of official language in which they wish to be assessed; in internal appointment processes, they must provide unsuccessful candidates with an informal discussion to help them better understand why they were eliminated from consideration. Furthermore, candidates in internal processes must be informed when appointments are made in case they wish to bring a complaint to the Public Service Staffing Tribunal.

Part 3 sets out the authorities and obligations related to deployment, an alternative resourcing mechanism that is not an appointment.

The terms and conditions associated with appointments and deployments, such as the requirement for all new entrants to the CPA to take an oath of office, are found in Part 4. This Part covers a broad range of provisions, including when employment takes effect, probation, tenure, status, the authority to establish rates of pay on appointment and the requirements for laying off employees.

16. *Public Service Employment Act, 2003*, [Preamble](#).

Part 5 addresses investigations and complaints related to internal and external appointment processes.¹⁷ It describes the responsibilities of the Commission to investigate and of the new PSST to consider and dispose of complaints and to order corrective action.

The Commission's authority to investigate applies to external appointment processes for the most part. The Commission may investigate internal appointment processes only if asked to do so by the responsible deputy head, in cases where authority has not been delegated to a deputy head, or in cases of suspected political influence or fraud.

The creation of the Public Service Staffing Tribunal is an important component of Part 5. The PSST hears and decides complaints about internal appointments, lay off decisions, implementation of corrective measures, and revocations of appointments. The Tribunal may also provide mediation services and has discretion over the manner in which cases may be heard, including the use of telephone or videoconferences. It may dismiss complaints summarily that it deems to be frivolous or vexatious.

A new efficiency measure in Part 5, intended to reduce the incidence of individuals bringing staffing complaints to two venues, gives the Tribunal authority to interpret and apply the *Canadian Human Rights Act*¹⁸ when considering a complaint. Part 6 of the Act establishes the Tribunal and describes its powers and responsibilities, including that it report to Parliament annually.

Part 7 recognizes the right of employees to engage in political activities while maintaining political impartiality in the public service. It describes, for example, the nature of political activities in which employees may engage as long as they neither impair nor are perceived to impair their ability to perform their duties in a politically impartial manner. It also stipulates that employees must request permission from the Commission to seek nomination as a candidate in a federal, provincial, territorial or municipal election and must comply with any conditions that may be required. This Part also sets out the Commission's authorities regarding allegations of failure to comply with requirements related to political activities.

17. Internal appointment processes are ones for which only persons employed in the public service may be considered, whereas members of the general public as well as persons employed in the public service are eligible to be considered in external appointment processes, [Public Service Employment Act, 2003, Subsection 2\(1\)](#).

18. The Tribunal may interpret and apply the provisions of the *Canadian Human Rights Act* other than those related to the right to equal pay for work of equal value, [Public Service Employment Act, 2003, Section 80](#).

Part 8 establishes a number of general provisions, including, for example, the Governor in Council's¹⁹ authority to make regulations and determine their application; to appoint the Clerk of the Privy Council and Secretary to the Cabinet (who is also the head of the public service); and to appoint other senior officials and diplomatic personnel. Ministers and Leaders of the Opposition in the House of Commons and in the Senate may appoint their executive assistants and other staff in their offices.

Public Service Labour Relations Act

The *Public Service Labour Relations Act* was enacted to provide for a labour relations regime in the public service based on greater cooperation and consultation between the employer and bargaining agents. It requires the establishment of labour-management consultation committees, enables co-development, enhances opportunities for conciliation and provides for negotiated essential services agreements.

A comprehensive preamble describes a regime in which protection of the public interest is paramount. It acknowledges that effective labour-management relations are a cornerstone of good people management and that collaboration, communication and sustained dialogue improve the ability of the public service to serve and protect the public interest. The preamble confirms that collective bargaining is important for establishing terms and conditions that address the parties' interests. It also articulates the Government's commitment to fair, credible and efficient resolution of disputes linked to terms and conditions of employment, and recognizes that bargaining agents represent employees' interests in the bargaining process and in resolving workplace issues and rights disputes. Mutual respect and harmonious labour-management relations are recognized as essential to a productive and effective public service.

The new Act eliminates certain managerial and confidential exclusions from representation that existed in former legislation, the *Public Service Staff Relations Act*, and updates the approach to unfair labour practices. It provides for the establishment of conflict management capacity within organizations and more comprehensive grievance provisions than existed previously. It also establishes the Public Service Labour Relations Board (replacing the former Public Service Staff Relations Board), with a mandate to provide adjudication services, mediation services and compensation analysis and research services, as well as to arbitrate collective bargaining disputes.

19. Governor in Council (GIC) means the Governor General of Canada acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada, [Interpretation Act, Subsection 35\(1\)](#).

Part 1 recognizes the fundamental freedom of every employee to join an employee organization and participate in its lawful activities. It also establishes the rights of the Treasury Board and the separate agencies to determine how they organize the public service, to assign work and to classify positions within their purviews. An important new feature is the requirement for deputy heads to establish a labour-management consultation committee in each department and agency to exchange information on workplace issues and to co-develop workplace improvements.

This Part establishes the PSLRB's mandate to provide adjudication, mediation, and compensation analysis and research services, as well as to certify bargaining agents and make exclusions. Part 1 requires that the responsible Minister as designated by the GIC establish an advisory board to provide advice to the Chairperson of the PSLRB on its compensation analysis and research services.

It also sets out the procedures and requirements for bargaining collectively and introduces two-tier bargaining, which enables the employer, the bargaining agent and deputy heads to bargain any terms and conditions of employment applicable to employees that belong to a subset of the bargaining unit. In the event of a collective bargaining impasse, the employer has the right to determine which essential services to the public must be provided and at what level, and this Part sets out the process for obtaining agreement on the positions necessary to do so.

This Part establishes a range of mechanisms to resolve disputes when parties have bargained in good faith but are unable to reach a collective agreement. These include, for example, arbitration, conciliation and the establishment of a public interest commission (another new feature of the legislation), as well as related requirements, procedures and powers for each mechanism. Other dispute resolution mechanisms include final and binding determination and votes on the employer's offer. Requirements and procedures related to strikes, including prohibitions, offences and punishments, are also outlined.

Neither the employer, nor a person who occupies a managerial or confidential position may engage in unfair labour practices by participating in or interfering with the formation or administration of an employee organization (i.e., a union). They may not discriminate against an employee organization or a person who belongs to one. Similarly, neither a certified bargaining agent, nor any of its officers or representatives may engage in an unfair labour practice or act in a manner that is arbitrary or discriminatory or that is in bad faith when representing an employee in the bargaining unit. The PSLRB examines and determines complaints about unfair labour practices and any failure to bargain in good faith, to implement arbitral awards, and to observe terms and conditions, among other things.

Part 2 establishes the right of employees, bargaining agents and, in some cases, employers to present grievances. At the same time, it introduces the requirement for deputy heads in the CPA, in consultation with the responsible bargaining agents, to establish an informal conflict management system as an alternative to the formal grievance process. Employees may present individual grievances about the application and administration of statutes, regulations, collective agreements, arbitral awards or terms and conditions of employment. In some circumstances, an employee may refer an individual grievance to adjudication if it has not been dealt with to the employee's satisfaction through the departmental grievance process. In the case of a grievance related to the collective agreement or an arbitral award, the employee must first obtain the bargaining agent's approval and its agreement to represent him or her in the adjudication proceedings.

Part 2 also lays out the process by which group grievances may be presented. A bargaining agent may present a grievance on behalf of employees who feel aggrieved by an issue that is common to the group, such as a provision of a collective agreement or an arbitral award. Policy grievances, which relate to the interpretation or application of a collective agreement or an arbitral award as it applies to either the employer or a bargaining agent or the bargaining unit generally, may also be presented.

The procedures for dealing with grievances that have been presented to the PSLRB for adjudication are specified in this Part, including the Board's authority to make regulations.

Part 3 addresses occupational health and safety by specifying that Part II of the *Canada Labour Code* applies to the public service. It defines certain terms used in the Code to mean those used in the PSLRA.

Part 4 covers a number of general provisions, including, for example, how defects in form or technical irregularities are to be dealt with; protection for certain individuals from civil or criminal proceedings with respect to the discharge of their responsibilities; non-disclosure of notes and drafts; and the authority to fix rates of remuneration and expenses for members of arbitration boards, mediators, adjudicators, the compensation research advisory board and members of public interest commissions.

The Broader Context

Understanding the new legislation is important, but it is also crucial to understand the environment in which the statutes were introduced and what happened subsequently.

In 2003, the Government made the first of several changes to the framework for HR governance by creating a new agency to oversee implementation of the PSMA and to share responsibilities for people management with the Treasury Board of Canada Secretariat. The responsibilities of the new agency, the Public Service Human Resources Management Agency of Canada (PSHRMAC), included leadership and services in HR planning, accountability, modernization, employment equity, values and ethics, and official languages, as well as policies and compensation for executives, learning policy and management of development programs. Responsibility for managing pensions, health and dental care, labour relations, compensation and the setting of terms and conditions of employment remained with the Secretariat.

Given the importance of people management, the findings of the 2000 report by the Auditor General and the magnitude of change foreseen under the PSMA, it is not surprising that the Auditor General reported in 2005 on the progress being made to prepare for the changes. The report concluded that the Government had “established a good foundation for managing the implementation process,”²⁰ but expressed continuing concern about the division of roles and responsibilities between the Treasury Board as the employer and the new Agency. The Auditor General called for a clear definition of expected outcomes from the PSMA, as well as monitoring and reporting on progress.²¹

In 2004, the Commission of Inquiry into the Sponsorship Program and Advertising Activities, led by Justice John Gomery, had attracted a great deal of attention among public servants, who saw leaders and colleagues appear before the Commission to be questioned about issues of management policy, decision making and accountability. Although the effect of the Commission is impossible to quantify, there seems little doubt that the media coverage, public commentary and Justice Gomery’s report²² made public servants more cautious. Despite assertions, including those of the Auditor General that more rules were not the answer,²³ many public servants, as well as parliamentarians, saw safety and greater certainty in rules.

20. Office of the Auditor General of Canada, *2005 February Status Report of the Auditor General of Canada, Chapter 3 — Modernization of Human Resources Management: Managing the Reforms, Main Points*.

21. Ibid. at [paragraph 3.79](#).

22. Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Who is Responsible? Phase 1 Report*, February 1, 2006.

23. Office of the Auditor General of Canada, *2003 November Report of the Auditor General of Canada, Matters of Special Importance*.

At the time the PSMA component statutes came into force in 2005, the Clerk of the Privy Council's *Twelfth Annual Report to the Prime Minister on the Public Service of Canada*²⁴ commented:

The *Public Service Modernization Act* is intended to help us compete for the talent we will need and to tap and develop the talent we have. It is intended to build a new relationship between management and labour and to clear the brush away — the layers of rules and process — to help us become more agile and more open.

The following year the Clerk asserted that, with the coming into force of the legislation, implementation was complete:

With the coming into force of the new *Public Service Employment Act* on December 31, 2005, the *Public Service Modernization Act* (PSMA) is now fully implemented. The modernization of the human resources regime sets an important milestone in public sector reform by reinforcing key elements of the public service culture, including accountability, fairness and transparency. The PSMA assigns greater flexibility to departments and agencies in managing people so that the right people are put in the right jobs on a timely basis. It supports more collaborative labour management relations, providing a foundation for cooperation while generating trust between managers and employees. These changes underscore our fundamental commitment to merit and non-partisanship, and the importance of public service values in managing people.²⁵

The *Federal Accountability Act* (FedAA) followed in 2006. Although changes introduced in the Act were not predominantly related to the public service, deputy heads were designated as “accounting officers” within the framework of ministerial accountability through the FedAA amendments to the *Financial Administration Act*. The impression persists that the focus on accountability and management dampened enthusiasm to innovate, experiment and take risks.

24. Privy Council Office of Canada, *Twelfth Annual Report to the Prime Minister on the Public Service of Canada*, March 31, 2005.

25. Privy Council Office of Canada, *Thirteenth Annual Report to the Prime Minister on the Public Service of Canada*, March 31, 2006.

In 2007 the Clerk's *Fourteenth Annual Report to the Prime Minister on the Public Service of Canada* introduced Public Service Renewal (Renewal). The report conceded that observers might wonder why, when the public service had been renewing itself for at least two decades and with other pressing issues facing the Government, more change and upheaval were warranted.²⁶ The Clerk noted that while Canadians "have traditionally been known as innovators in public sector management, there is some evidence that in recent years other countries — Australia, the United Kingdom, New Zealand and the United States — have begun to move forward more boldly than we have." He argued that the public service could ill afford to be complacent and miss a "critical moment"²⁷ when, "compelled by demographics, by national and international circumstances, and by its own immediate history [the public service needs] to rethink how it recruits, develops, manages and retains its workforce."²⁸

Renewal was based on the following key principles: engagement of employees at all levels; ambitious but realistic goals and priorities; establishment of performance benchmarks and readiness to be measured against them; doing only what will make a practical difference to effectiveness; being a learning organization that is ready to adjust its course; and a recommitment to excellence. Renewal placed an emphasis on people management as an ongoing process that required attention from managers and employees at all levels. The Prime Minister's Advisory Committee on the Public Service was formed,²⁹ changes were made to committees at the deputy-head level, expectations of deputy heads were set out, and "an improved toolkit for managers and employees" was launched.

The Clerk's report also underscored the importance of partnerships among the central agencies and other public sector institutions focused on people management. These included the Privy Council Office, the (then) Public Service Human Resources Management Agency of Canada, the Treasury Board of Canada Secretariat, the Canada School of Public Service, the Public Service Commission, and the 200 departments and agencies that make up the federal public service. The report noted that "renewal must be seen to make a difference on the front line if it is to be viewed as a success."³⁰

26. Privy Council Office of Canada, *Fourteenth Annual Report to the Prime Minister on the Public Service of Canada*, March 31, 2007.

27. Ibid. (quoting from Evert Lindquist, *A Critical Moment: Capturing and Conveying the Evolution of the Canadian Public Service*, Canada School of Public Service, 2006).

28. Ibid.

29. Privy Council Office of Canada, *Fifteenth Annual Report to the Prime Minister on the Public Service of Canada*, March 31, 2008.

30. Privy Council Office of Canada, *Fourteenth Annual Report to the Prime Minister on the Public Service of Canada*, March 31, 2007.

In 2008, the Prime Minister's Advisory Committee on the Public Service's second report recommended streamlined HR governance, highlighting the primary responsibility of deputy heads and calling for a "smaller central agency to support and oversee departmental leadership on people management ... and focus on enterprise-wide approaches and policies."³¹ It advocated simplified and integrated data collection and systems for planning and reporting, and reaffirmed the essential responsibility of the Public Service Commission for safeguarding merit and non-partisanship, with the PSC's recruitment and related services to be informed by the views of deputy heads and to be provided on a fully cost-recovered basis. The report also emphasized the importance of explicitly evaluating and recognizing people management skills and extending the tenure of deputy ministers and associate deputy ministers.

In 2008, the Clerk's *Fifteenth Annual Report to the Prime Minister on the Public Service of Canada* committed to acting "to simplify the structure and clarify the accountabilities as recommended by the Advisory Committee." The report promised to develop specific initiatives to strengthen performance management, including by dealing more rigorously with poor performance, and to achieve a better balance between risk taking and accountability. Recruitment remained a focus: the Clerk called for a restructured approach to continue to attract Canada's best talent to join the public service. Such an approach emphasized direct hiring by departments, faster and better hiring processes (using the flexibility offered by the new PSEA), better and more direct interaction with prospective employees, and additional efforts to reflect the diversity of the Canadian population. The report also undertook to clarify and simplify HR governance and accountability, reflecting a key observation about the need for a more focused and hence smaller agency by the Prime Minister's Advisory Committee's second report.³²

31. Privy Council Office of Canada, *Second Report of the Prime Minister's Advisory Committee on the Public Service: Pursuing a High Performance Public Service*, February 22, 2008, in Privy Council Office of Canada, *Fifteenth Annual Report to the Prime Minister on the Public Service of Canada*, March 31, 2008, Annex 3.

32. Ibid.

Quick Fact

The Prime Minister's Advisory Committee on the Public Service's vision of a high-performance public service is one that:

- has the encouragement and the ability to innovate;
- has a creative approach to thinking, efficiency in its processes, and a culture of effective risk management;
- demonstrates non-partisanship, excellence and pride in all facets of its work;
- has a structure to manage human resources effectively, enabling departments to deliver results for Canadians;
- plans, measures and is accountable for its performance;
- has the respect and support of Parliament and the public;
- has active and transparent recruitment practices based on sound planning;
- has strong leadership and a commitment to developing talent;
- has a clear regime for human resources governance and accountability; and
- has rigorous performance management practices.

Source: *Second Report of the Prime Minister's Advisory Committee on the Public Service, 2008.*

The Government had begun a series of strategic reviews of departmental spending in 2007, some of which were horizontal reviews spanning several organizations delivering similar services or with similar responsibilities. In 2008, six organizations (the Canada Public Service Agency,³³ the Canada School of Public Service, the Public Service Commission, the Public Service Labour Relations Board, the Public Service Staffing Tribunal and the Treasury Board of Canada Secretariat) conducted a horizontal review of the central HR management and policy functions they delivered.

In 2009, after the horizontal strategic review of HR management functions and the aforementioned report from the Prime Minister's Advisory Committee on the Public Service,³⁴ the Government moved the Public Service Human Resources Management Agency of Canada — which had been renamed the Canada Public Service Agency (CPSA) in 2007 and reduced somewhat in size and mandate following the strategic review — back into the Secretariat as the

33. Created as the Public Service Human Resources Management Agency of Canada (PSHRMAC) in 2003 to oversee implementation of PSMA and to share Secretariat responsibilities for human resources management, it was renamed the Canada Public Service Agency in 2007.

34. The [Prime Minister's Advisory Committee on the Public Service](#) is an advisory body established in 2006. Its mandate is to provide an assessment of human resources management practices in the federal public service; question current practices and identify pressing issues; serve as a sounding board for senior public service leaders; and make observations and recommendations that will contribute to future development of the public service.

Office of the Chief Human Resources Officer (OCHRO). The creation of this new organization provided an opportunity to reunite the Agency's functions with responsibilities related to people management that had remained with the Secretariat in 2003 (namely, collective bargaining, labour relations, and pensions and benefits) and to reaffirm the central role of deputy heads in managing their human resources.

Referring to the HR management horizontal review, Budget 2009³⁵ contained a brief reference to a realignment of roles and responsibilities across the central HR organizations. The intent was to reduce duplication and overlap in the costs of managing and administering benefit programs to better match them with employees' and pensioners' needs. The Government also committed to directing any savings towards creating and maintaining a modern public service and a forward-looking and productive work environment to better deliver on the priorities of Canadians.³⁶

The Prime Minister's Advisory Committee on the Public Service's third report in 2009 highlighted the need for effective risk management (including reduced oversight for high-performing organizations) and recognized that the resulting "cultural and structural changes are not insignificant undertakings and will take time Sustained leadership, at the most senior levels, will also be key."³⁷ The Committee cautioned that smart and responsible risk taking will, nonetheless, result in mistakes and lessons that have to be learned — a cost outweighed by the benefits of innovation, efficiency and employee engagement. The report also highlighted the pressing need, despite economic circumstances, for modernization of internal processes and systems.

35. Department of Finance Canada, *Canada's Economic Action Plan, Budget 2009, Annex 3, Responsible Spending*, January 27, 2009.

36. Ibid.

37. Privy Council Office of Canada, *Third Report of the Prime Minister's Advisory Committee on the Public Service: Achieving Results: Accountability and Action*, February 26, 2009.

The Clerk's *Sixteenth Annual Report to the Prime Minister on the Public Service of Canada* in 2009 underscored the importance of HR planning and its integration into business planning and the development of key indicators for central tracking of the state of the public service. Once again, emphasis was placed on the need for sustained effort and deliberate innovation:

As we move forward on renewal, it is important to have a shared understanding of what public service is about, and why it is important. Without that shared understanding and a sense of personal ownership, it will be more difficult to sustain the process of renewal into the future.³⁸

The Auditor General's April 2010 Report detailed the results of an audit "to determine whether central human resource agencies and selected departments and agencies have implemented the new requirements of the *Public Service Modernization Act*, including reporting on and assessing progress, and exercised their respective responsibilities ... [and] whether the structures and processes required by the legislation have been put in place." The audit did not assess "whether the legislation had achieved the results intended, but rather if the required reports contained such information ... [and] whether the objective and requirements for the legislative review [had] been established."³⁹

In October 2010, the Public Accounts Committee issued a report in which it noted that a robust HR regime is a key component through which Canadians will benefit from an efficient public service made up of competent, productive and satisfied staff. The Committee reflected long-standing concerns that "the federal government's human resource regime was cumbersome, complex, inflexible, and outdated, and roles and responsibilities were fragmented."⁴⁰ The Committee also concluded that more needs to be done to establish a clear, stable governance structure for HR management and called for reporting on HR management to assess the overall state of labour-management relations, the effectiveness of the new recourse mechanisms, and the correlation between HR planning and staffing. This improved reporting would enable the Chief Human Resources Officer and others to identify trends and to evaluate the effectiveness of legislative changes, which would support Parliament in its oversight role.

38. Privy Council Office of Canada, *Sixteenth Annual Report to the Prime Minister on the Public Service of Canada*, March 31, 2009.

39. Office of the Auditor General of Canada, *Spring 2010, Report of the Auditor General of Canada, Chapter 2 — Modernizing Human Resource Management*, Focus of the Audit.

40. Standing Committee on Public Accounts, *26th Report, 40th Parliament, 3rd Session, in Spring 2010 Report of the Auditor General of Canada, Chapter 2 — Modernizing Human Resource Management*, February 2011.

In his most recent report in 2011,⁴¹ the Clerk notes that the public service is entering a new stage of its evolution, in a world where both the issues and oversight regimes facing government are increasingly complex, and where demographic and technological changes present both challenges and opportunities. In such an environment, public service values are of enduring importance and will guide innovation and intelligent risk taking. The Clerk commits the public service to management excellence, as well as to the highest standards of policy making, service delivery, and regulation. Priorities for the coming year include renewing the workforce through solid data, planning, targeted recruitment and investing in employee development.

In 2011 the Prime Minister's Advisory Committee on the Public Service's fifth report underscored the ongoing importance of Renewal and called for transformation in business processes and systems, and in the way people are managed:

A high performing public service depends upon a modern, flexible, and risk-based people management framework that is understood and upheld by highly competent and committed public service managers who are held to account for achieving results.

We believe that further legislative and machinery changes are neither necessary nor desirable for continued progress in people management. Rather, public service leaders and managers must continue to develop the institutional culture to support effective people management. This new culture must be rooted in a shared vision expressed in public service values, clearly articulated expectations, and a reasonable level of risk taking. It also requires clearly defined accountabilities, including consequences for poor performance.⁴²

The Committee's recommendations reflect its observations on areas that need greater attention, including people management competence at all levels, capturing meaningful information, decreasing the time it takes to hire public servants and fill positions, and providing regular evidence-based assessments of progress.

41. Privy Council Office of Canada, *Eighteenth Annual Report to the Prime Minister on the Public Service of Canada*, March 31, 2011.

42. Privy Council Office of Canada, *Fifth Report of the Prime Minister's Advisory Committee on the Public Service: A Public Service for Challenging Times*, March 31, 2011.

Chapter 3: Clear Roles, Shared Vision and Effective Organizations

The *Public Service Modernization Act* was intended to clarify the roles, responsibilities and accountabilities of those who manage people in the public service by eliminating duplication, aligning responsibilities with roles and establishing new, independent bodies for staffing recourse and compensation analysis.

The Review Team examined whether the division of authorities, roles and responsibilities among the HR organizations and deputy heads is clear, consistent and effective, with little overlap or duplication. More specifically, the Review Team explored whether organizational changes and the exercise of roles and responsibilities support the intentions of the PSMA; whether the HR organizations are able to carry out their mandates; and whether deputy heads have the relevant HR authorities to develop, implement, and fulfil their mandates.

Authorities, Roles and Responsibilities

The PSMA provided for a range of organizational and governance changes. This section describes key roles and responsibilities, including the changes made after *Public Service Employment Act* and the *Public Service Labour Relations Act* came into force. Neither the *Financial Administration Act* nor the *Canada School of Public Service Act* form part of this Review per se, but they are included because it is impossible to speak about roles and responsibilities with respect to staffing or labour relations without looking at some elements of the broader people management governance framework. Although this chapter looks at the roles and responsibilities provided for in the statutes, other, non-legislated roles and responsibilities are discussed elsewhere in this report. There are many of these and they are important to consider when looking at people management in the public service more broadly.

Changes to the FAA put direct authority — for learning, training and development; awards and recognition; discipline; performance management; and termination — in the hands of deputy heads while maintaining the role of the Treasury Board as the board of management and employer, responsible for people management in the public service generally. The Treasury Board retains authority over classification and organization, terms and conditions of employment, collective bargaining, pensions and benefits, HR policy (excluding staffing policy), official languages and employment equity. It is also responsible for some provisions of the PSEA, notably those related to probation, deployment and certain regulatory authorities, as well as reporting to Parliament. In these HR-related areas, the Office of the Chief Human Resources Officer within the Treasury Board of Canada Secretariat provides advice and supports ministers so that human resources are managed soundly, with a focus on results and value for money, across the Government.

The Public Service Commission has authority under the PSEA for appointments to and within the public service, unless provided for in another statute (for example, the *Canada Revenue Agency Act*). It has a mandate to conduct investigations and audits, and to administer the provisions of the Act related to political activity. It may also establish policy related to the manner of making and revoking appointments and taking corrective action. As noted previously, the PSC has a unique, hybrid character as an executive agency with special reporting authority. The Commission has direct authority to appoint individuals to and within the public service, which it delegates to deputy heads, who, in turn, may sub-delegate authority, usually to managers within their organizations. The Commission may set conditions relative to the authority it delegates to deputy heads, including compliance with any policies it establishes. It may also revise or rescind a delegation; this has happened infrequently and only after the Commission had identified serious errors or weaknesses in the course of an audit. In addition to its policy, delegation and oversight functions, the Commission offers a range of services, notably in the areas of staffing and assessment, on a fee-for-service basis. Its unique combination of executive and independent roles also enables it to report to Parliament on any matter within the scope of its powers and functions.

In 2009, the Canada Public Service Agency and those parts of the Secretariat that dealt with pensions and benefits, labour relations and compensation were consolidated into the new Office of the Chief Human Resources Officer, located within the Secretariat. Its mandate was to make people management across the public service more effective and reduce overlap and duplication of roles.

This new governance recognized that deputy heads have responsibility for the achievement of their organization's business goals and should also, therefore, be responsible for people management in their organizations. The creation of OCHRO was intended to enable deputy heads to assume their responsibilities and to streamline the roles of central HR organizations so that the latter focus only on those activities that must be, or are best, carried out corporately, such as:

- ▶ assisting the Treasury Board in carrying out its role as the employer on issues, including those related to the PSEA and the PSLRA, and providing strategic enterprise-wide leadership on people management more broadly;
- ▶ providing leadership to the HR community; and
- ▶ being responsible for all aspects of compensation, broad HR policy, public service-wide data analysis and performance assessment, and support for senior leadership development.

The Chief Human Resources Officer would also chair both a restructured management advisory committee of deputy heads and the Canada School of Public Service Board of Governors.⁴³

Deputy heads are accountable to the Treasury Board and to the PSC for the HR authorities conferred on them by various statutes. They are also accountable to their respective ministers for the overall performance of their organizations and answer to Parliament for the management of the resources within their own organization. In addition to the authorities contained in the FAA, deputy heads have legislated responsibility in certain areas, subject to direction from the Treasury Board (e.g., deployment, informal conflict management system) or the Commission (e.g., layoff process). Deputy heads are also subject to reviews, audits, and investigations by the Commissioner of Official Languages, the Canadian Human Rights Commission, the Public Sector Integrity Commissioner, and the Auditor General. In summary, deputy heads have both direct and delegated authorities, the latter delegated from more than one source, and they are subject to regular and periodic oversight by a number of entities.

Did You Know?

Appointment authority has been delegated to deputy heads for almost 50 years. In 1963, the former Civil Service Commission delegated to deputy heads the authority for a large portion of internal staffing. It retained authority for recruitment to the public service and appointments at senior levels. In 1967, the then-new PSEA stipulated that the PSC could delegate its authority to deputy heads, except in relation to appeals and inquiries.

Gradually, additional appointment authority was delegated to deputy heads, although recruitment and executive-level appointments remained within the Commission's purview. Throughout the 1990s, sub-delegated staffing authority gradually shifted away from HR staff in departments to line managers. And, in 1993, a new staffing option — deployment — was introduced for which deputy heads had direct authority.

The Task Force on Modernizing Human Resources Management in the Public Service considered various models during the course of its work in 2001–02. Ultimately, after consulting extensively with deputy heads, senior officials and external advisors, and following vigorous debate, it was concluded that a delegated model for staffing authority remained the right option and that the Commission should continue in its role as statutory holder of appointment authority.

43. Treasury Board of Canada Secretariat, [Background — Human Resources Governance](#), February 6, 2009.

With a mandate set out in the PSLRA, the Public Service Labour Relations Board⁴⁴ is an independent quasi-judicial tribunal responsible for administering the collective bargaining and grievance adjudication systems in the federal public service and in Parliament. Under the *Public Sector Equitable Compensation Act*,⁴⁵ the PSLRB will become responsible for dealing with pay equity complaints filed by, or on behalf of, groups of employees pursuant to the *Canadian Human Rights Act*. It offers three types of services: adjudication of grievances, complaints and other labour relations matters; mediation to help parties reach agreement, manage their relations or resolve disputes; and compensation analysis and research to support the bargaining and compensation determination process in the public service.

The Public Service Staffing Tribunal⁴⁶ was established by the *Public Service Employment Act* as part of the changes introduced in the PSMA. The Tribunal has authority to hear and decide complaints related to internal appointments, layoffs, the implementation of corrective measures, orders, and revocations of appointments. As with the PSLRB, the Tribunal may offer mediation services to assist the parties in resolving complaints at any point in the process.

The *Canada School of Public Service Act* made the School, formerly known as the Canadian Centre for Management Development, responsible for fostering a common sense of purpose, values and traditions in the public service, supporting the development of public servants and pursuing excellence in public management and administration. The School does this by helping employees acquire the knowledge, skills and competencies to do their jobs effectively and by assisting deputy heads in meeting the learning needs of their organizations.

Chapter 2 of the Auditor General's 2010 Spring Report, entitled *Modernizing Human Resources Management*, concluded that most of the organizational changes required by the PSMA had been implemented and that new roles and responsibilities were being exercised as intended. The Auditor General observed, however, that there were still challenges associated with the governance of HR management, which was once again in transition as a result of the organizational changes in 2009.

44. The Public Service Labour Relations Board replaced the former Public Service Staff Relations Board.

45. The *Public Sector Equitable Compensation Act* removed the public service from the application of the pay equity regime in the *Canadian Human Rights Act*. It seeks instead to ensure compensation is equitable by making employers and bargaining agents jointly accountable for ensuring fair wages through the collective bargaining process, rather than through protracted complaints to the Canadian Human Rights Commission. The purpose of the *Expenditure Restraint Act* is to control expenditures by setting, as opposed to bargaining, increases in the rates of pay of unionized and non-unionized federal public service employees until 2010–11.

46. Under the former *Public Service Employment Act, 2000*, appeals about whether appointments were made on the basis of merit were heard and decided by the Public Service Commission's appeal boards. Appeal boards did not have jurisdiction over layoff or revocation complaints, nor did they have a legislated mandate for corrective action or mediation services, which were functions carried out by the Commission.

Clarity of Roles, Responsibilities and Accountabilities

In 2008 the Prime Minister's Advisory Committee on the Public Service expressed concern about the state of HR governance and suggested it was still "overly complex, with multiple players and a resulting burden of duplicative and often unnecessary rules," despite legislative changes. The Committee made a series of recommendations in support of its view that deputy heads are the managers of people and that the principal role of the central organizations that share responsibility for people management should be to establish expectations and to provide policy frameworks and guidance to departments and agencies, "without the heavy hand of excessive control."⁴⁷

Some deputy heads question whether a delegated model for staffing continues to be appropriate in the current context. In their view, if deputy heads have primary responsibility for people management this should include direct (and not delegated) authority for all people management functions and actions, leaving the PSC responsible only for the administration of the provisions on political activity and oversight. Just as deputy heads have direct authority for determining discipline, setting standards for performance or establishing learning requirements, they argue, they should be able to develop and implement a staffing system designed to meet their organizational needs. No additional information was offered to demonstrate precisely how the delegated model impedes their ability to develop HR policies, programs and management practices in support of their individual organization's business needs. Ironically, efforts to clarify the role of deputy heads by stating clearly that they are primarily responsible for people management in their organizations may well have served to highlight the fact that their appointment authority is delegated and not direct. Whatever the reason, their frustration was evident.

Quick Fact

When asked whether recent changes to HR governance have helped to clarify roles and responsibilities, 9 out of 10 participants at engagement sessions indicated "not at all" or "to a moderate extent."

Source: PSMA Review Questionnaire

Input from a cross-section of stakeholders indicates that the Commission's hybrid role continues to be a topic of debate and a source of uncertainty, confusion and, many would argue, risk aversion. Managers, HR staff and deputy heads alike noted that the Commission's role as an

47. Privy Council Office of Canada, *Second Report of the Prime Minister's Advisory Committee on the Public Service: Pursuing a High Performance Public Service*, February 2008.

executive agency with special powers (for independent oversight and reporting) is, to them, troublesome. The Commission's policies and guidance fail to provide them with the clarity they seek with respect to the manner in which the PSEA, and the values-based approach it anticipates, should be interpreted and practised. At the same time, the Commission's policies and guidelines send particular messages about the way in which the legislation should be interpreted, notably with respect to the exercise of discretion by managers. This has led to uncertainty among those exercising delegated authority about the Commission's expectations and how organizations will be assessed during PSC audits and investigations. The possibility of withdrawal of delegated authority appears to exert a significant influence on the behaviour of the key players in people management. In a conservative culture such as the public service, uncertainty translates easily into risk aversion and avoidance.

More recently, the PSC has reached out to the internal audit community in departments and is making its audit methodology available, including posting it online. Employees of the PSC meet with hiring managers and HR staff in the course of carrying out staffing audits. They are increasingly relying on the work undertaken within an organization, such as internal audits and on electronic records wherever possible. These are positive developments that may, over time, reduce the uncertainty and apprehension experienced in departments and agencies.

The Commission, the Office of the Chief Human Resources Officer and deputy heads differ in their views about what "ensuring the integrity of the staffing system" should entail. The boundaries between their authorities are not always easy to establish, and there is little consensus on, or comfort with, the resultant need to act in concert and develop strong relationships. For example, the Commission noted that, when an error or omission is identified in the course of an audit, an investigation into alleged fraud or an investigation into an external appointment, it cannot act alone to address all aspects of wrongdoing that may be associated with an appointment. Although the Commission may revoke an appointment or impose conditions on the delegation to a deputy head, in some instances a wrong may be done by someone else, such as another employee, a manager or even HR staff. In such a situation, the responsibility rests with the deputy head to determine follow-up action, including the possibility and nature of discipline.

The authorities for the PSC, deputy head and employer are laid out in not one, but two statutes. In a complex system where several players have related authorities and the effective response to any single event is often concerted and collective action, it is essential that the players collaborate to ensure that the public interest and the integrity of the system are safeguarded.

Therefore, the Review Team recommends that:

3.1 Where the Commission, as a result of an audit or an investigation, has evidence of errors, omissions, fraud or other improper conduct on the part of an individual other than the appointee, it should engage with deputy heads who are responsible for taking appropriate action, including discipline.

Lack of clarity with regard to the Commission's roles and responsibilities extends to proceedings before the Public Service Staffing Tribunal. Bargaining agents and departments both raised concerns about the Commission's role before the Tribunal, where it has on several occasions challenged the actions of its own delegates. Stakeholders described the Commission's role before the Tribunal as confusing, less than transparent and inconsistent with a delegated model. The PSEA provides the deputy head and the Commission a right to be heard by the Tribunal. This has led to instances where the Commission's interventions went beyond interpreting the Act or its policy instruments. In some cases, the Commission's representatives cross-examined parties exercising delegated appointment authority, while in others the Commission's submissions implied that it had already formed an opinion before evidence was adduced or witnesses heard.

The Commission plays an essential role in establishing, interpreting and maintaining its policy and regulatory framework and in representing its views to the Tribunal during hearings. For its part, the Tribunal should be able to seek expert advice from the Commission, which has an interest in (a) ensuring that its policies are accurately reflected, and (b) safeguarding the integrity of the appointment system. However, where the Commission has delegated appointment authority to deputy heads, it is unusual that PSC representatives question, through direct examination or cross-examination, the actions taken and decisions made by its delegates. Even more discomfiting to the complainant and the respondent is that neither party knows ahead of time what the Commission's position might be because, unlike them, it does not exchange information before the hearing. Consequently, in some instances the PSC has appeared to advocate for one party, while in others, it has suggested to the Tribunal an interpretation that might favour the other party. This makes it difficult to anticipate the Commission's interventions at a hearing and contributes to apprehension on the part of its delegates.

Various options are available to address this issue while maintaining the important role the PSC and its delegates must play, including with respect to hearings before the Tribunal. For example, consideration could be given to changing the Commission's status in the legislation from that of a party to that of an intervenor before the PSST. The PSC would still be able to provide its views on the interpretation or application of the PSEA and associated policy instruments. However, such an amendment may create unintended challenges, such as how to ensure the PSC has sufficient and timely access to the facts on which to base its interventions. Therefore, the Review

Team proposes a non-legislative approach, whereby the Commission and deputy heads (represented by the Employer Representation in Recourse Team at OCHRO) review their respective roles before the Tribunal and arrive at a clear understanding of how their representatives (including legal counsel) can fulfil their responsibilities most effectively. It would be useful if such an understanding were recorded in a document such as a Memorandum of Understanding that would then be available to the parties and that would contribute to greater clarity of roles and responsibilities.

Therefore, the Review Team recommends that:

3.2 In order for the Commission, deputy heads and their respective representatives to be able to fulfil their responsibilities effectively, they reach a written agreement on the means for sharing information (i.e., facts) prior to and at hearings before the Tribunal, and on the roles that each will play before the Tribunal.

Not surprisingly, given the relative newness of the organization when the Review was launched, there was a low level of knowledge among stakeholders about OCHRO and its responsibilities, particularly outside the National Capital Region. Furthermore, because this was one of several structural changes in only a few years, a number of stakeholders expressed some ambivalence about the organization and skepticism about the difference it could make and the support it could now offer to departments and agencies. These periodic reorganizations and the subsequent resource reductions that followed the 2008 horizontal strategic review were such that HR staff in particular felt they no longer had a reliable central source of authoritative advice or guidance. This may reflect more their discomfort with a deliberate attempt to remove the central HR organizations from the legitimate business of departments and agencies, than a failure on the part of OCHRO to fulfil its new mandate. On the other hand, deputy heads were cautiously optimistic about the creation of the position of Chief Human Resources Officer and felt that the organization was taking the right approach.

Different organizations play various roles — sometimes under distinct statutes — that intersect. In the area of planning, for example, deputy heads are responsible for determining financial and HR needs to deliver their organization's business. OCHRO issues guidance about and conducts and reports on workforce planning. It is the Commission, however, that audits whether organizations have HR plans in place on which to base their hiring decisions. Although deputy heads and the Treasury Board derive their authority in this area from the *Financial Administration Act*, it is the Chief Human Resources Officer (CHRO) who is tasked with reporting under the PSEA, which also governs the Commission's audit function. In a public service that emphasizes improving efficiency and effectiveness by establishing a principles-based, risk-sensitive and results-focused management regime, the challenge is how to ensure

effective oversight without creating an additional reporting or administrative burden for departments.

In 2010, the PSC reported on the use of temporary help agency personnel in the public service. It is important to note that temporary help agency personnel are not appointed to the public service under the PSEA; their services are obtained on a contractual basis. Deputy heads are accountable for contracts and expenditures, subject to any applicable Treasury Board policies. Their authority usually flows from their departmental statute; policy-making authority governing how they exercise that authority comes from the FAA, which led many to question the Commission's jurisdiction. The Commission has long expressed an interest in the contingent workforce in the public service. In its opinion, temporary help agency contracts are being used in place of appointments under the Act, which the Commission believes is a threat to the overall integrity of the staffing system.⁴⁸

People management responsibilities in the public service are shared among various organizations and individuals. Responsibilities can flow from a single statute or policy or may be governed by several simultaneously. To function optimally, the interrelated responsibilities of all players need to be underpinned by active relationships and cohesive and coordinated action. Deputy heads, managers, HR staff and employees want and should have access to clear and authoritative information so that they are informed by and compliant with legislative and policy requirements. However, they remain frustrated by their inability to locate clear, unequivocal and comprehensive guidance, a matter that appears to have worsened since 2005.

Therefore, the Review Team recommends that:

3.3 In order to provide the best support to decision makers among managers, HR staff and deputy heads, the central HR organizations, departments and agencies must work together to ensure that their policies, tools and guidelines are accurate, up-to-date, integrated and accessible to support effective decision making, compliance and streamlined oversight across the public service. Each must be accountable within his or her own area of responsibility or organization, and the Clerk should be informed by the Chief Human Resources Officer about progress as part of the overall assessment of people management in the federal public service.

48. Public Service Commission of Canada, [Special Report to Parliament: Merit and Non-Partisanship under the Public Service Employment Act \(2003\)](#), paragraph 4.20, March 22, 2011.

A Vision of the End-state for the PSMA

Successful change initiatives require, among other things, a clearly articulated goal or end-state. Leading academics and authors highlight the difficulty of change, the need for strong leadership and clear direction, and the importance of all those involved in a change initiative understanding what it is intended to achieve.

A vision of the end-state for the PSMA might include one or more of the following characteristics:

- information systems and tools are interoperable, user-friendly and efficient;
- recourse is credible, transparent and efficient with an emphasis on informal and early resolution of conflict in the workplace;
- managers have the competence, tools and support necessary to staff, manage and lead their workforce and achieve results for Canadians; and
- central HR organizations provide system-wide coherence and perspective where appropriate.

When the PSMA was introduced, and throughout the preparations for its coming into force, stakeholders heard a great deal about the benefits for them of the new acts, notably greater flexibility to improve both staffing processes and labour relations. Given the depth and breadth of the changes that the legislation was intended to enable, the Review Team expected to find a clear vision for the end-state of the PSMA; one that described what the new structures and practices would be like once the legislation was fully in place, and the roles of key groups, such as managers and HR staff, that would flow from it. Without such a vision, shared by a broad spectrum of players in people management, the chances of arriving at the desired result are reduced. Furthermore, with no specific indicators or benchmarks to show where the system stood upon the PSMA's coming into force and during the next five years, it is difficult to talk about progress and how much further there is to go.

Several documents provide insight into the intended end-state five years ago, based on input at the time from the Public Service Commission, the former Canada Public Service Agency, the Privy Council Office and the Treasury Board of Canada Secretariat. However, there is no single, comprehensive description of clear, common goals towards which everyone can aim. A lack of clarity around how roles and responsibilities should be discharged, the complexity of the people management regime and the frequent need for concerted action are exacerbated by the absence of a broadly shared and sufficiently detailed description of the vision of an end-state for the PSMA. Such a vision would not only clarify expectations and increase the chances of achieving the behaviour and culture changes foreseen by the architects of the PSMA, it would also provide an opportunity to address several other issues mentioned throughout this report.

Therefore, the Review Team recommends that:

- 3.4 The CHRO, in consultation with the Privy Council Office, deputy heads, and the Public Service Commission President, should undertake the development of a description of the shared vision or end-state for a modern people management framework based on the *Public Service Modernization Act*.**

Effective Institutions

It is important that organizations, and the system in which they operate, are both efficient and effective in terms of the administration and operation of the legislation. After five years of experience, the central HR organizations have had the chance to see what works well within their organizations and what could be improved. They came forward with a number of proposals which, in their view, would enhance their efficiency and effectiveness. The Review Team considered each of these carefully in terms of the objectives of the legislation, including clarity of roles and responsibilities, avoiding duplication, improving labour-management relations and increasing efficiency and effectiveness.

Public Service Commission

The Public Service Commission made a number of proposals designed to increase its efficiency in fulfilling its mandate as an executive agency with special authorities. Some of its proposals also appear in the Commission's special report on merit and non-partisanship under the PSEA, tabled in Parliament on March 22, 2011.⁴⁹ They include recommendations for legislative amendments to give commissioners in office a role in the appointment of other commissioners; to establish a framework for the President's compensation; to authorize the Commission to table its reports to Parliament directly; to provide authority to contract for goods and services; to provide services to other jurisdictions and countries and re-spend cost-recovered revenues over multiple years; and to protect its auditors and investigators from being compelled to testify in other proceedings, as well as to protect draft reports and documents.

In terms of the governance and operation of the Commission, it advocates amending the PSEA to expand the authority of the President to execute powers or functions of the Commission on its behalf. The legislation currently gives the Commission as a whole (i.e., the President and the commissioners) authority to determine exclusions, make regulations, develop policy, report to Parliament and other related responsibilities. Internal management is the exclusive authority of

49. Public Service Commission of Canada, [*Special Report to Parliament: Merit and Non-Partisanship under the Public Service Employment Act \(2003\)*](#), Strengthening the Governance and Operation of the Commission, March 22, 2011.

the President as deputy head and Chief Executive Officer (CEO). In order to respond to the present situation, with a full-time CEO and two part-time commissioners, an internal agreement has been put in place to delegate to the President a number of duties and powers to be exercised on behalf of the part-time commissioners. The Commission would like these changes to be legislated.

There is no question that the Commission should be encouraged to operate as efficiently and effectively as possible, and the Commission argues that the current arrangement offers a number of advantages over the way it functioned under the former statute. However, as noted in other parts of this Report, five years is a relatively short period of time in which to assess the success of the legislation and its operation and administration. Moreover, there has been only one Commission in this period. Legislation, once in place, is not easily changed, and so it seems sensible to preserve flexibility where appropriate. In addition, it is worth considering the unique and historic nature of the organization as a commission (as opposed to a department or agency), and the relationship between its construct and its operation. Despite the Commission's apprehension that the agreement governing its internal functioning might not be sufficiently durable over the longer term, this arrangement, unlike a legislative amendment, enables the Commission to meet its efficiency objectives while preserving flexibility for successive Commissions and the Governor in Council to make adjustments that respond to changing needs and circumstances.

The PSC also proposed that commissioners in office, including the President, be able to make recommendations about the appointment of other commissioners. The authority to appoint commissioners lies with the Governor in Council (GIC).⁵⁰

Therefore, the Review Team recommends that:

3.5 The insight and experience of commissioners in office could facilitate transition for the Commission and be useful advice for the GIC where there are changes to the roster of commissioners. As there is nothing in the legislation that precludes sitting commissioners or the President from offering recommendations or suggestions to the GIC, therefore, there is no need to amend the legislation.

50. Governor in Council (GIC) means the Governor General of Canada acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada, [Interpretation Act, Subsection 35\(1\)](#).

With the coming into force of the PSEA, a full-time and two part-time commissioners were appointed on the same date. This inevitably led to a situation whereby the terms of all three were set to expire simultaneously. The current provisions in the legislation are such that the situation could recur if all commissioners are appointed on the same date. This makes transition and knowledge transfer among the outgoing and incoming commissioners more difficult.

Therefore, the Review Team recommends that:

- 3.6 To enhance the operation of the Commission, the terms of the commissioners should be staggered to allow for effective transitions and appropriate succession planning. Although this might be achieved without legislative change, consideration should be given to amending the *Public Service Employment Act* to provide that part-time commissioners hold office for a period of five or seven years, at the GIC's discretion.**

The Public Service Commission is preoccupied by its ability to exercise control over timing of the tabling of annual reports to Parliament, pointing to the uncertainty and operational implications of potential delays caused by the legislation's requirement that such reports be tabled by the designated Minister.⁵¹ From a practical perspective, this has made it difficult to administer and to plan activities associated with tabling. The Commission therefore proposed that the PSEA be amended to provide for direct tabling of the Commission's annual report, as is the case for the Canadian Human Rights Commission.⁵² Although this is an option, others seem equally feasible.

Therefore, the Review Team recommends that:

- 3.7 To achieve timely tabling of the Public Service Commission's annual reports and allow for efficient and effective administration, collaborative engagement between the PSC and the responsible Minister and his or her staff would be useful.**

The Act requires that the commissioners not accept or hold any office or employment, or carry out any activity that is inconsistent with their functions, and that the President devotes the whole of his or her time to the performance of the President's functions. When the PSMA was drafted, the *Conflict of Interest Act* was not yet in force. It has the purpose of limiting any activities that senior officials might undertake that would be in conflict with their official duties, in this case as the PSC President or commissioner.

51. The designated minister is the Minister of Canadian Heritage.

52. See, for example, [Canadian Human Rights Act, section 61](#).

Therefore, the Review Team recommends that:

3.8 Subsection 4(4) be deleted because the President and commissioners of the Public Service Commission are now subject to the *Conflict of Interest Act*, which was not in place when the PSEA was drafted and has the same purpose.

With the exception of the hiring of certain experts, the Commission's authority to contract for goods and services must (as with other organizations within the executive branch of government) be delegated from a minister. Given its independent role, the Commission believes that it should be able to enter into contracts on its own authority. It is also interested in expanding the range of potential clients for its services in the areas of language testing, staffing and assessment to include other entities and jurisdictions beyond the federal and territorial governments, both in Canada and abroad.

As noted previously, the Commission must be able to carry out its responsibilities efficiently and effectively, including, where appropriate, the ability to contract for goods and services. Although the PSC has developed expertise related to public service staffing and assessment, including for official languages, its legislated mandate is to safeguard merit and non-partisanship in the federal public service. Enabling the Commission to enter into contracts to provide services to universities, provincial governments or other countries would extend beyond its current mandate and change the focus and nature of the Commission's role, including potentially setting it up to compete with the private sector.

The Review Team supports the Commission's efforts to secure the authority needed to contract for goods and services with respect to its current legislated mandate and sees some value in the PSC being able to expand its official languages assessment services to universities and other institutions where these services would complement existing efforts to recruit new public servants. This is not meant to expand the range of PSC services or clients, but to enable the provision of language testing services to university students wishing to pursue a career in the public service. That said, the Canada School of Public Service is already piloting the use of its official language teaching material and methods with 10 universities. In the circumstances, discussions between the School and the Commission would be useful to determine which institution is best placed to deliver such services as official languages assessment.

Therefore, the Review Team recommends that:

3.9 The Public Service Commission and the Treasury Board of Canada Secretariat continue to work together to resolve any remaining issues in order that the PSC has the contracting, revenue collection and re-spending authorities needed to discharge its core legislated mandate.

Finally, the Commission proposed that the legislation be amended to provide protection to individuals who carry out investigations or audits on its behalf, as well as to limit disclosure of information obtained until an investigation or audit is made public. It has been the Commission's experience that individuals occasionally wish to compel investigators and auditors to testify in other proceedings or, in some cases, to bring suit against them or the PSC. Safeguarding audit records and findings until a final report has been produced is important for effective oversight and is not uncommon.

Therefore, the Review Team recommends that:

3.10 The Public Service Commission and the Treasury Board of Canada Secretariat (the Chief Human Resources Officer, the Comptroller General and the Chief Information Officer) determine the best means to afford protection to audit and investigation records such as working papers of those acting on behalf of the Commission in the discharge of their duties, whether this is by the same means used for internal audit across the public service or by some other means, such as amending the *Public Service Employment Act*. The Review Team recommends similar protection for individuals as that afforded those acting on behalf of the Public Service Staffing Tribunal and the Public Service Labour Relations Board.

Public Service Labour Relations Board

One of the key features of the new *Public Service Labour Relations Act* was intended to ensure that the employer and bargaining agents would have access to credible, independent advice and information on compensation matters from the new compensation analysis and research services within the Public Service Labour Relations Board. The services to be provided included conducting compensation surveys, compiling information related to compensation, analysing that information, and making the information and the analysis available to the parties and to the public, as well as conducting any other related research that the Chairperson might direct.

In addition, the Chairperson of the PSLRB was to obtain advice on compensation analysis and research services from an advisory board, composed of individuals with relevant knowledge or experience. Total membership was not to exceed 12 (including a chairperson), to be drawn equally from representatives of the employer and the employees. An advisory board was established in January 2006 and operated until December 2007. It comprised representatives of the parties who were also active participants in the bargaining process, with equal numbers from each side.

The PSLRB feels that the work required to support the advisory board outweighed the benefits gained from it, in part because members predictably advocated along party lines. The PSLRB recommended that the Act be amended so that the Chairperson would be required to consult the parties instead, as and how he or she deems appropriate. The Office of the Chief Human Resources Officer was uncomfortable with drawing final conclusions on the utility and success of an advisory board based on a single brief experience which, it argued, was not composed of the type of individuals foreseen by the legislation. The Auditor General's 2010 report identified the provision of compensation research advice to the PSLRB Chairperson as the only institutional change required by the PSMA not yet in place.⁵³

The Review Team sees value in the original purpose of the compensation research advisory board as provided for in the PSLRA.

Therefore, the Review Team recommends that:

3.11 The Chairperson of the Public Service Labour Relations Board take advantage of the opportunity offered by the *Public Service Labour Relations Act* and work with the designated Minister⁵⁴ to ensure that compensation research is supported by an expert, impartial and appropriately remunerated advisory board. The membership of this advisory board, which may number as few as three members, should comprise individuals other than those representing only the interests of the implicated parties.

Compensation and research services have existed at the PSLRB since the legislation was amended. However, the Board has identified an issue with respect to operational funding for its work. Concerns have been expressed by the Secretariat regarding both the ambitious extent of the proposed program of research and analysis, as well as the intention to conduct the research on a total compensation (as opposed to a wage-only) basis.

The Review Team recognizes the importance of having credible, impartial compensation research and analysis, to support not only collective bargaining but also the future requirements of the *Public Sector Equitable Compensation Act*, and acknowledges the ongoing efforts of the PSLRB to provide a credible service to the employer and bargaining agents. Moreover, the early experience of the PSLRB in this area could be of benefit to other organizations, notably the Secretariat. The Secretariat will have to continue to work with the PSLRB to ensure it has the

53. Office of the Auditor General of Canada, [Spring 2010 Report of the Auditor General of Canada, Chapter 2 — Modernizing Human Resource Management](#), paragraph 2.33.

54. The designated minister is the Minister of Canadian Heritage.

resources required to fulfil its responsibilities. Continued dialogue between the organizations offers potential for reaching agreement on a sensible approach to the extent of and basis for compensation research and analysis services. This may require the Chairperson to use existing authorities to retain temporary expertise to bolster existing capacity, although such an approach is unlikely to be sufficient in the medium to long term.

Therefore, the Review Team recommends that:

3.12 Although the majority of compensation research by the Public Service Labour Relations Board has so far been conducted on a wage-only basis, consideration should be given to conducting research and analysis on a total compensation basis.

It is worth noting that the PSLRB's funding is subject to the support and approval of one of the parties to collective bargaining, so it is important that the Secretariat maintains the separation between those parts of the Secretariat when dealing with the PSLRB in order to maintain confidence in and the independence of the PSLRB.

Public Service Staffing Tribunal

The Public Service Staffing Tribunal (PSST) has been operational since the PSEA came into force. Since then, the Chairperson has identified a number of challenges associated with attracting members (as opposed to staff) with requisite expertise and with administering its responsibilities. With respect to the expertise of its members and their terms of employment, rates of remuneration and succession planning, the Tribunal identified several issues.

Members, including the Chairperson and Vice-Chairperson, must have knowledge of or experience in employment matters in the public sector. Given that the Tribunal is also called upon to interpret and apply the *Canadian Human Rights Act*, it was suggested that the PSEA be amended to require that the Chairperson and Vice-Chairperson be qualified in the practice of law in Canada. The Tribunal pointed out that, because neither the demand nor the budget is sufficient to support regional operations, it is not practical for full-time members to reside outside the National Capital Region (NCR). Therefore, the Tribunal suggested that the legislation be modified to stipulate that full-time members must reside in the NCR or within a distance specified by the Governor in Council. The Tribunal also recommended that the legislation be amended to give the Chairperson and Vice-Chairperson the same security of tenure provided for the Chairperson and vice-chairpersons at the PSLRB and to extend the terms of temporary members. This would contribute to the ability to attract and retain well-qualified candidates for these roles.

Several members of the PSST, including the current Chairperson and Vice-Chairperson, have been qualified to practice law in Canada. This demonstrates that seeking this expertise and qualification does not require legislative change. Instead, it could be dealt with in the context of the GIC appointment process (for which the Privy Council Office is responsible), along with other terms and conditions of employment, such as place of residence and work.

Reconciling the tenure of the senior officials at the PSST with those of the PSLRB not only enhances the capacity to attract good candidates, it also reflects the independent nature of the Tribunal's decision-making authority.

Therefore, the Review Team recommends that:

3.13 In order to attract well-qualified candidates and to reinforce the independent, quasi-judicial nature of the organizations, the *Public Service Employment Act* be amended to reconcile the security of tenure for the Chairperson and vice-chairpersons of the Public Service Staffing Tribunal and the Public Service Labour Relations Board (i.e., term of office of not more than five years) and extending the length of terms (from two to three years) for temporary PSST members.

The PSST has direct authority to appoint its own staff, similar to a separate agency.⁵⁵ Consequently, although Tribunal staff members are eligible to enter internal appointment processes, they may not be deployed to a department or agency that is subject to the PSEA. Furthermore, unlike true separate agencies, there is no option for the Tribunal to seek the PSC's approval for its staffing program in order to permit deployments of its staff to other organizations in the core public administration. This effectively creates a separate class of person employed in the public service, for whom there are very limited career opportunities given the Tribunal's size and specialization, and represents a potential barrier to the recruitment of skilled individuals.

Therefore, the Review Team recommends:

3.14 Extending to employees of the Public Service Staffing Tribunal the benefit of deployment to and within the core public administration in order to offer reasonable career opportunities to individuals who accept positions at the Tribunal, so that the PSST can attract the expertise necessary to fulfil its roles and responsibilities effectively.

55. Separate agency means a portion of the federal public administration named in [Schedule V, *Financial Administration Act*](#). Most separate agencies make appointments under their own authority rather than under an authority delegated from the Commission under the PSEA.

In addition, the Tribunal proposed that there should be an amendment to the legislation that would increase the number of members, in order to improve workload management. It also suggested the creation of an additional vice-chairperson's position to ensure a smoother transition at the end of the Chairperson's term. The maximum number of members is currently set at seven, but the Tribunal has never had more than five members at any one time. It seems unnecessary, therefore, to amend the legislation to increase the maximum to nine members.

For several months in the period leading up to the Review, the Tribunal was operating with only 40 percent of its complement of full-time members and had no Vice-Chair.⁵⁶ The PSEA requires that decisions be taken by members; consequently, even requests for extensions or to consolidate complaints can not be taken by PSST staff. This is neither efficient nor effective. Not having a full complement of members, combined with the fact that actions cannot be carried out by staff, contributes to a backlog in processing staffing complaints.

Therefore, the Review Team recommends that:

3.15 Legislative amendments to the *Public Service Employment Act* that enable the delegation of certain actions to staff by the Chairperson of the Public Service Staffing Tribunal would help it to better manage its workload, particularly if the Tribunal is not operating with a full complement of members.

Issues of Remuneration

Three of the central HR organizations raised issues related to the remuneration of GIC appointees.

The Public Service Commission is concerned about the role of the GIC in determining the President's and commissioners' salaries, and the appropriateness of remuneration that includes an element of performance pay. The Commission contends that performance pay is inconsistent with the independent nature of the institution and proposes amending the legislation to provide for a fixed rate of pay. In its special report to Parliament, the Commission confined its recommendation to the remuneration of the President, suggesting a rate of pay comparable to the Chief Justice of the Federal Court, whose salary is determined by the *Judges Act*.

The Public Service Staffing Tribunal highlighted a disparity between the rates paid to mediators, depending on the mechanism used to hire them. Mediators hired on contract are paid at a rate that is considerably higher than the remuneration for Tribunal members and staff that perform the same function. Contracting falls outside the scope of the Review, but the legislation provides

56. Members of the Tribunal are appointed by the Governor in Council.

the Chairperson with the authority to fix rates of pay subject to the Treasury Board's approval, which may offer a way in which to address the issue.

Tribunal members are not compensated at the same rate as PSLRB members. The Tribunal's Chairperson has found that this has an impact on the Tribunal's ability to attract well-qualified individuals, particularly since PSST members' rates of pay are lower than those of the representatives that appear before them. In addition, the Office of the Chief Human Resources Officer and some bargaining agents suggested that remuneration rates for members of the PSLRB and the PSST, members of public interest commissions and members of arbitration boards are inadequate. As a result, it is difficult to attract individuals of the right calibre who have the expertise and qualifications needed. This may call into question the credibility of decisions taken by these important organizations and, unfortunately, contribute to the volume of applications for judicial review.

The Review Team agrees that the relationship between levels of remuneration and the ability of both tribunals to attract and retain necessary expertise needs to be examined and addressed. Remuneration policy and compensation processes for GIC appointees are administered by the Privy Council Office's Senior Personnel Secretariat on behalf of the Prime Minister. The Privy Council Office already has a remuneration plan in place for administrative tribunal members and other officials for whom performance pay is inconsistent with the independent nature of their responsibilities. The same remuneration plan is applicable to officials at the Public Service Commission.

Therefore, the Review Team recommends that:

- 3.16 Given that the Public Service Staffing Tribunal, the Public Service Labour Relations Board and the Public Service Commission all raised issues concerning remuneration, and that the Privy Council Office is responsible for Governor-in-Council appointments and remuneration, the three organizations should each meet with the Privy Council Office to discuss the full range of GIC appointment-related issues they face. These include, but are not limited to, succession planning, expertise and qualifications, remuneration and rates of pay for tribunal members and adjudicators, commissioners and members of advisory boards. Remuneration, in particular, should be resolved in consultation with the Privy Council Office in a manner that respects the economic priorities of the Government, supports the effective functioning of the bodies concerned and responds to the individual circumstances of each appointment.**

Office of the Chief Human Resources Officer

Because the Review commenced at the same time as OCHRO was established, the Chief Human Resources Officer was particularly interested in any information gathered and views expressed during this Review, that might help her define and communicate the role of OCHRO in supporting the Treasury Board under the PSEA and PSLRA.

During the period of this Review, the CHRO has made continuing efforts to define and communicate her new role. Given the newness of the organization, it is difficult to determine whether the CHRO and the organization she leads have everything they need to fulfil their roles. However, there are encouraging signs and the organization is working actively in a number of areas; for example, OCHRO is focusing on supporting deputy heads in HR-related litigation, under the PSLRA or the PSEA. This is important for improving efficiency and effectiveness, and for taking a strategic approach to identify potential, system-wide risks, trends and responses. It will also help to inform discussions with deputy heads about the exercise of their HR authorities and the success of efforts to resolve disputes as informally and as close to the workplace as possible.

The CHRO has assumed a leadership role vis-à-vis the HR community. Although it is too soon to draw definitive conclusions, work is under way, in partnership with heads of HR and deputy heads, to identify common requirements in terms of skills, knowledge, competencies and learning for HR staff. This is a promising direction and may serve to address some of the issues identified in Chapter 5 related to the competence of those who share responsibility for the administration and operation of the legislation.

OCHRO has been reviewing components of the Treasury Board policy suite that apply to people management. A number of outdated policies have been revised or rescinded in recent years, which is commendable, but more needs to be done. Despite the fact that it is five years since the PSMA came into force, there are still a number of people management policy documents that have not been updated to reflect the new PSEA and PSLRA.

Therefore, the Review Team recommends that:

- 3.17 Treasury Board's people management policies should be reviewed and revised or rescinded on a priority basis so that deputy heads, managers, HR staff, employees and bargaining agents have access to comprehensive and accurate policy information to guide their actions and decisions.**

In the last year, OCHRO has taken several steps to support deputy heads in fulfilling their people management responsibilities. Emphasis has been placed on helping deputy heads to help themselves through improved access to information, data and tools. These include, for example, the Common HR Business Process, the Executive Talent Management Process, the HR Data Dashboard and a Web page that brings together tools related to performance management. Using new technology such as Web 2.0 is helpful but, on its own, may not reach as broad an audience or address issues to the desired extent. The Review Team also found that more work needs to be done to familiarize stakeholders with the tools, where they can find them, and how they can use them to improve people management by linking better planning to business requirements and to prevent or resolve performance management and workplace issues. During an e-polling survey conducted at the National Managers' Community Professional Development Forum, held in Toronto in May 2011, 70 percent of respondents were not aware of the Web-based performance management tools.

As mentioned earlier in this chapter, OCHRO's enabling legislation is the *Financial Administration Act*, which falls outside the scope of the Review. In March 2009, the Public Service Human Resources Management Agency of Canada (PSHRMAC) was amalgamated with the Treasury Board of Canada Secretariat through Orders in Council, and the position of the CHRO was created to replace the President of PSHRMAC. Legislative amendments passed in 2010 to follow up on these Orders by replacing references in statutes to the Public Service Human Resources Management Agency of Canada and its President, with references to the CHRO have not yet been brought into force. Although OCHRO's governance is generally functioning well, enacting these amendments will remove a potential source of confusion regarding the status of the OCHRO.

Deputy Heads

It is impossible to speak about people management without discussing the roles of deputy heads, who are responsible for decisions that affect more than a quarter of a million people across the federal public service.

During the 18-month period after the PSMA received Royal Assent, the central HR organizations engaged deputy heads in discussions about the impact the legislation would have on their people management responsibilities. Deputy heads attended awareness sessions, received a series of communiqués designed exclusively for them and participated on committees covering such issues as learning, culture change, staffing and recourse, labour relations and conflict management. Simply put, at that time, deputy heads were not only informed, they were actively involved.

The Review Team met with many deputy heads representing a cross-section of departments and agencies. Although many felt that they had a good knowledge of the PSEA, most acknowledged they were less familiar with the PSLRA. The extent to which deputy heads are involved in staffing and labour relations matters varies. In most cases, they lead large organizations and their direct involvement may be limited to hiring at the Assistant Deputy Minister level and meeting with union representatives about significant workforce issues.

Given these circumstances, deputy heads must rely on other means for assurance that, in their organization, people management responsibilities are being met, the provisions of the legislation are operating effectively, and the policies and programs in place are the right ones. For example, there appears to be a growing practice among deputy heads to direct that collective appointment processes be used routinely. However, unless the choice of a selection process is rooted in solid integrated planning, there is a risk that it may not always be the most appropriate option.

As well, deputy heads must have confidence that the HR authorities for which they are accountable are being exercised appropriately. This applies not only to formal grievances and staffing complaints, but also to informal mechanisms, mediation and investigations to resolve workplace issues. Deputy heads also rely on their HR staff and management teams to keep them informed of strengths, weaknesses, challenges and opportunities related to the workforce. Consequently, they must have reliable information sources and relationships in place in order to remain fully aware of developments. They must also be able to set clear expectations for managers and HR staff, and have robust mechanisms that enable them to assess people management performance.

As leaders and as accounting officers, deputy heads also have an interest in their internal HR policy suite and programs, as well as a stake in system-wide requirements and standards. Several committees or working groups offer deputy heads an opportunity to exert their influence and inform themselves about the substance, purpose and impact of the central HR organizations' policy frameworks and programs. These include, for example, the Deputy Minister Committee on Public Service Renewal and the Deputy Minister Advisory Committee on the Public Service Commission.

Conclusion

The authorities, roles and responsibilities laid out in the *Public Service Employment Act* and the *Public Service Labour Relations Act* do not appear to be unclear.

There is nothing in the PSEA that stipulates that the Commission must delegate staffing authority to deputy heads and managers in departments, or how Parliament intended that the delegated model would work. It is nonetheless clear from the preamble and the sections that provide for the

exercise of powers and functions by deputy heads, including revoking appointments and complying with the Commission's policies, that this model is entirely consistent with the legislation and Parliament's intentions. However, some continue to argue for direct authority rather than a delegated model under the PSEA as the only way to achieve clear roles and responsibilities.

Lack of clarity about roles and responsibilities appears to have come about by the way in which they are interpreted and acted upon by different organizations and individuals, and seems to be much more of an issue with respect to staffing than in labour relations. Confusion persists about who does what to (and for) whom and how, particularly in the areas of planning, recruitment and the provision of advice and guidance. Only time will tell if the non-legislative changes since 2005 have struck the right balance between centralization (with a reduced role for OCHRO) and decentralization of people management to deputy heads, and whether there is room for a greater role for the CHRO as an advocate for people management and for OCHRO as a source of guidance for practitioners. The question "Who is in charge?" is deceptively simple and devilishly difficult to answer in the area of people management. A description of the vision of an end-state of a modern people management framework at the time the PSMA came into force might have provided more clarity around roles, responsibilities and authorities.

Did You Know?

The Canadian federal public service is not alone in looking at its people management regime:

Recruitment processes need to be more efficient and transparent. The quality of learning and development is also a problem. Consultations also revealed concern about the management of underperformance. A number of submissions called for a review of current classification frameworks.

(Blueprint for Reform, 2010 — Australia)

The complex and inefficiency of today's hiring process deters many highly qualified individuals from seeking and obtaining jobs in the Federal Government. Departments and agencies must overhaul the way they recruit and hire. Applicants must be able to apply for jobs through a commonsense hiring process and organizations must be able to select high-quality candidates efficiently and quickly.

Human resource offices must provide critical support for these efforts.

(Presidential Memorandum, 2010 — USA)

A common response to lack of clarity in roles and responsibilities is structural, often a re-organization of some kind. Organizational changes may well be necessary and can serve to simplify a system, but they are unlikely to be sufficient, on their own, to realize change of any magnitude. The very fact that a number of structural changes have been made during a relatively short period, and yet gaps remain in realizing the goals of the PSMA, suggests that structural change is not the answer.

When structural changes are introduced, a deliberate effort must be made with respect to transition. Responsibilities change as roles are transferred; recipients need to be equipped to take them on by acquiring or developing internal capacity. Failure to do so leaves those seeking guidance or advice with neither traditional nor new sources of guidance and information. The PSMA, the horizontal strategic review and the restructuring that followed made deliberate changes to the roles of the central HR organizations and departments and agencies. There was a conscious effort to remove the central HR organizations from legitimate areas of deputy heads' authority; for example, following the horizontal strategic review, the functions and size of the PSC were decreased somewhat, the Agency was reduced in size and moved back within Treasury Board of Canada Secretariat, and the resources of both organizations were reduced to align with their new mandates. But a transition plan was needed to ensure that, by the time changes came into force, deputy heads had created or acquired the in-house expertise and capacity they would need to assume their new roles and had prepared their employees for the new way of working.

The Review Team found a significant number of individuals still looking to the central organizations for guidance and information. When their expectations are not met, they may form an impression that central HR organizations are not doing their jobs. Ongoing demand for support and advice suggests that, despite changing roles, internal capacity has not evolved sufficiently to meet deputy heads' needs to innovate, resolve problems and tailor the new people management regime to their organizational requirements.

Other jurisdictions, such as the United States, Australia, the United Kingdom and some provinces, with different legislative frameworks and organizational models, are grappling with similar challenges in people management, a further indication that structural changes alone are not the answer.

The Review Team sees little purpose, therefore, in advocating for more structural change; it is not convinced that this would result in changes in behaviour or culture. Indeed, not doing so offers a valuable period of stability during which an investment should be made in building key relationships, developing competence, refining training and otherwise maximizing the opportunities made available by the legislation. Any further structural change at this time seems inauspicious given the inherent costs of such change (and the inevitable diversion of employees' efforts from their core business), the current environment of restraint and departments' and agencies' preoccupation with planned strategic and operating reviews. Consistent with calls from a number of parliamentary and public service committees, independent oversight bodies and advisory committees, the Review Team believes that efforts should be made to realize the benefits of the PSMA by focusing on making the current system more effective.

The Review Team believes that it is time for deputy heads, the President of the PSC and the CHRO to forge a new relationship that will, among other things, clarify the way in which roles, responsibilities and authorities are exercised. One way to do this would be for the PSC President and the CHRO to meet with deputy heads and their heads of HR to review authorities, expectations and accountabilities. Such an undertaking must not be one-sided; everyone involved must engage actively and meaningfully.

Another way would be for the CHRO, in concert with PCO, deputy heads and the PSC President, to initiate the development of a shared vision that describes the end-state for a modern people management framework and a high-performing public service. It should be informed by, but not be limited to, the principles that underpin the PSMA. This end-state will become the management goal towards which public servants at all levels work; it will guide risk-based oversight (notably by the PSC); help orient learning and development at the CSPS; and serve as a basis for individual and organizational performance measurement and assessment.

As the head of the newest organization in people management, the CHRO should continue her efforts to bring clarity to and promote understanding of the role of OCHRO within the people management matrix that includes deputy heads, Treasury Board, the Public Service Commission, the Canada School of Public Service, the Public Service Staffing Tribunal, the Public Service Labour Relations Board and the Privy Council Office.

With respect to the efficiency and effectiveness of the central HR organizations, the legislation created a number of new organizations and new roles and responsibilities. The central HR organizations have proposed some legislative changes that would appear to enable them to be more efficient and effective. Some changes proposed by the two tribunals could well have an impact on the operation of recourse (and, in the case of compensation research, support the collective bargaining process), which would benefit people management more broadly. But many of the proposals, including those from the PSC, relate primarily to internal organizational interests and will have little impact on managers, employees and HR staff or on the public service's performance in people management. The Review Team believes that strong and productive relationships and demonstrated competence in people management will achieve results that have a greater impact on people management in the public service.

Chapter 4: Values-Based, Flexible and Effective Hiring

The new *Public Service Employment Act* aimed to modernize staffing in the public service while retaining the values of merit, excellence, non-partisanship, representativeness and the ability to serve members of the public with integrity and in the official language of their choice. For the first time, the Act described when an appointment was based on merit, and it created a new approach to staffing recourse, one feature of which is the Public Service Staffing Tribunal. The Public Service Commission remains responsible for conducting investigations and audits on matters within its jurisdiction.

Authority to make appointments to and within the public service is vested in the Commission. Delegation of this authority to deputy heads, who may further delegate to as low as level as possible within their organizations, is offset by greater accountability and an expectation of fair, transparent employment practices, respect for employees, effective dialogue and recourse aimed at resolving appointment issues.

The Review Team was interested in looking at three issues in particular: whether the new approach to merit is understood and safeguards a professional public service; whether the delegation and accountability model functions effectively; and whether the staffing system offers improved flexibility and efficiency.

A New Approach to Merit

One of the key measures introduced in the new Act was the definition of an appointment based on merit. This measure was intended to replace much of the case law that had accumulated over the preceding 40 years, which concluded that merit meant the appointment of the best-qualified person available. That definition was subject to a large number of rules (many of which were process-focused, complex and inefficient) and was frequently the object of appeals and court challenges.

The new approach to merit gives a hiring manager the opportunity to exercise greater discretion based on strong values when making decisions. Instead of an appointment process that is “prescriptive and in which ranking was mandatory,”⁵⁷ managers now have greater latitude to choose from among qualified candidates the person who, in the manager’s judgement, is the “right fit” for the position based on current and future organizational requirements.

57. Public Service Staffing Tribunal writing in *Visca v. Deputy Minister of Justice et al.* [2007 PSST 0024], May 31, 2007.

When is an Appointment Based on Merit?

30. (2) "An appointment is made on the basis of merit when

"(a) the Commission is satisfied that the person to be appointed meets the essential qualifications for the work to be performed, as established by the deputy head, including official language proficiency; and

"(b) the Commission has regard to

"(i) any additional qualifications that the deputy head may consider to be an asset for the work to be performed, or for the organization, currently or in the future,

"(ii) any current or future operational requirements of the organization that may be identified by the deputy head, and

"(iii) any current or future needs of the organization that may be identified by the deputy head."

Source: [Public Service Employment Act, 2003](#)

Deputy heads have the exclusive authority to determine if, when and how positions will be staffed. They are ultimately responsible for ensuring that appointments within their organizations are based on merit and in a manner consistent with the preamble to the Act. Managers are the key decision makers, enabled and supported by HR staff. Both are accountable to their deputy head, who is accountable to the Commission. Various mechanisms, including policies, delegation instruments, audits, investigations and reporting are intended to ensure that deputy heads and managers exercise their discretion in conformity with legislative requirements.

Many managers consulted during this Review felt that the new approach to merit enables them to appoint individuals who more closely meet a position's requirements than under the previous system. The ability to consider current and future organizational requirements and operational needs, as well as to apply asset qualifications, offers managers more flexibility in identifying well-suited individuals, particularly in a rapidly changing work environment. One of the bargaining agents took a different view, suggesting that going from the appointment of the best-qualified person under the former Act to the new approach to merit is a move to mediocrity.

Some individuals and organizations experienced growing pains in applying the new approach to merit. Merit criteria such as education, experience, knowledge, language or other qualifications are used to determine if a person is qualified for an appointment. Managers appear to be more comfortable with determining the qualifications that are essential than with those that might be an asset given the work to be performed. HR staff feel that other criteria, such as current and future operational requirements and organizational needs are not being used as well as, or to the extent that, they could be. Managers noted that when assessing merit, they tend to rely on

numerical assessments because decisions are easier to explain, particularly to employees who were not selected for appointment.

Managers also believe that employees do not fully understand the new approach to merit, which may undermine their confidence in appointment decisions or lead them to doubt the competence of individuals being appointed. The Commission's Survey of Staffing and the Public Service Employee Survey findings indicate that employees who do not receive an appointment are more likely to feel the assessment process was not fair.⁵⁸ Although a direct correlation has not been established between the findings of either survey and comments made during this Review, it would certainly be in everyone's interest to ensure that employees are well informed about the basis on which appointment decisions are made.

Did You Know?

Neither collective appointment processes nor pools are mentioned in the Act. These are terms used to distinguish current practices from those under the former Act (i.e., competitions, eligibility lists). Collective staffing processes may be used to fill one or more similar positions within or among departments. A pool refers to a group of individuals who have been assessed and from which appointments may be made.

(For more information, see [Audit of Appointments from Collective Staffing Processes](#), Public Service Commission, 2010.)

There is an apprehension that the public service may be losing good prospective candidates because selection processes are too generic or insufficient effort is invested in developing merit criteria and assessment tools that reflect position requirements. Stakeholders pointed to an increasing reliance on collective appointment processes, which made up almost one third of internal advertised appointment processes in 2009–10 according to the Public Service Commission.⁵⁹

Collective appointment processes may be used to staff one or more positions, within or among organizations. To capitalize on collective appointment processes to the greatest extent possible, there is a tendency to develop statements of merit criteria that are generic in nature. Although this approach may attract a greater number and variety of candidates, organizational needs and operational requirements may vary, as will the strengths and weaknesses within a work unit at any point in time. In an effort to save time, some managers use merit criteria and assessment tools from other processes, only to discover that there is not a good match between the

58. More information about the surveys is available in the [Public Service Commission Survey of Staffing, 2010](#) and the [Public Service Employee Survey, 2008](#).

59. Public Service Commission of Canada, [Audit of Appointments from Collective Staffing Processes](#), para.1, October 2010.

individuals being selected and the job requirements. The challenge is not in finding efficiencies so much as in selecting the right ones.

Some challenges associated with using the new approach to merit appear to be related to a lack of training. As described in Chapter 5, the training offered at the time the Act came into force emphasized knowledge transfer to managers and HR staff. Topics included roles and responsibilities, and offered participants an initial exposure to developing merit criteria and new terminology. Little was done to build a shared understanding about the new approach to merit and values-based staffing. During the Review Team's engagement sessions, managers and HR staff acknowledged that they need more knowledge, skills and experience in this area. At the National Managers' Community Professional Development Forum, held in Toronto in May 2011, almost one quarter of the 1,200 delegates indicated that they need a better understanding of the staffing mechanisms available, while more than half felt that expectations, roles and responsibilities need to be more clearly defined.

At its core, the new approach to merit requires adherence to values, deliberate action by managers and greater trust among all stakeholders. Bargaining agents and the Assistant Deputy Minister champions for visible minorities expressed apprehension about selection using the concept of "right fit." They suggested that the use of discretion may not be sufficiently transparent and that it leaves room for managers to make decisions based on narrow considerations. In particular, it may create an opportunity to tailor merit criteria to individuals already chosen for appointments or deliberately include or exclude certain individuals. There is very limited evidence to support this apprehension. In one instance, the Public Service Staffing Tribunal concluded that discrimination on the basis of family status was a factor in an internal appointment process, but found no evidence the appointment was motivated by personal favouritism.

The tension between merit, values, discretion and rules is perhaps best illustrated by the choice of appointment process, i.e., advertised or non-advertised. Many stakeholders expressed the view that the Commission's position on non-advertised appointment processes is overly restrictive and inconsistent with the discretion afforded in the legislation. The Act authorizes the use of either type of appointment process and stipulates that there is no requirement to consider more than one person for an appointment to be based on merit. This is in contrast to the former statute, in which it was explicit that the default was a competitive process to which candidates applied.

The Commission has stated that it expects advertised appointment processes to be the standard practice. It explains that, although non-advertised appointment processes may be used, PSC policy requires a rigorous demonstration of how the choice of a non-advertised process respects the values of the PSEA. It also requires that the choice of appointment process be consistent with

the organization's HR plan. Essentially, the Commission has replicated the former default in the new scheme through its policy suite and public comment.

Although the PSC has concluded that values are being respected, more work needs to be done by stakeholders at all levels to develop a shared understanding of the Act's approach to merit and its relationship to public service values. Employees must have confidence in the process, managers must be able to exercise their authority effectively, and HR staff must be able to provide support and advice that enables business decisions. It is only by taking a comprehensive approach that Canadians will continue to benefit from a professional public service, capable of delivering the highest-quality results and services.

Therefore, the Review Team recommends that:

4.1 The Public Service Commission engage more broadly with the Office of the Chief Human Resources Officer, deputy heads, managers and HR staff, using enhanced outreach mechanisms, to increase understanding of and compliance with the values-based approach to staffing.

Impact of Delegation, Oversight and Accountability

The new *Public Service Employment Act* vests authority to make appointments to and within the public service in the Public Service Commission. The preamble includes a clear expectation that this authority would be delegated to deputy heads. Deputy heads have primary responsibility for determining their HR requirements, including whether and how a position will be filled.

The President of the PSC meets with each incoming deputy head, when there is a change in leadership, to explain their authorities and accountabilities, which are confirmed in the Authority Delegation and Accountability Instrument (ADAI). According to the *Review of Public Service Commission Oversight*, the ADAI provides "a comprehensive summary of expectations with reference to additional detail"⁶⁰ Almost all deputy heads confirmed to the Review Team that the Commission's terms and conditions of delegation enable an appropriate exercise of the staffing authorities required to fulfil their organization's mandate.

Deputy heads, managers and HR staff spoke frequently during engagement sessions about the need for greater autonomy over the use of non-advertised appointments. The Commission's *Appointment Policy* appears to give deputy heads considerable discretion, subject to a limited number of requirements. However deputy heads, managers and HR staff have developed a very

60. Public Service Commission, [Review of Public Service Commission Oversight, Report of the Independent Review Committee](#), January 2009.

clear impression that non-advertised appointments should be used sparingly if the Commission is to rate the organization's staffing practices as acceptable. The Commission's public statements, the data it uses to measure staffing performance and the emphasis it places on monitoring and audit of non-advertised appointments all serve to reinforce their perceptions.

Although the delegated model appears to offer organizations considerable latitude to tailor staffing and use discretion, the reality is that it has important implications for the manner in which authorities are exercised, how monitoring and reporting activities are carried out, and how Commission audits are perceived by its delegates (notably deputy heads, managers and HR staff). There is widespread agreement that those making staffing decisions should be held to account. Consensus does not extend, however, to the measures used to assess performance, the nature and extent of oversight or the manner in which the Commission develops its policies related to appointments, revocation and corrective action. Not only does the Review Team support the conclusion of the *Review of Public Service Commission Oversight* that full implementation of the PSEA requires a "team effort" among key stakeholders,⁶¹ it believes that this applies equally to the Commission's policy function.

Audits of departmental staffing files are important sources of information for the Commission's reports to Parliament and for deputy heads. The audits not only provide assurance that merit and values are being respected, they also identify areas for improvement. At the same time, the manner in which audits are carried out and some of the Commission's audit findings have had an adverse effect on innovation, experimentation and use of the very flexibility the legislation allows. For the delegated model to be effective, the Commission must allow for a streamlined approach to audit and oversight that respects the interests of all and includes the common goal of ensuring the integrity of the staffing system. The approach must also recognize deputy heads' responsibilities for managing their operations, and requires an investment in collaboration, accompanied by a shared understanding of the risks and what constitutes an acceptable tolerance for not fulfilling requirements or non-compliance.

The documentation on staffing files — or more specifically the lack of it — was highlighted by the Commission and by departmental managers and HR staff. The Commission's auditors look for complete documentation in files to demonstrate that merit criteria are aligned with the work to be performed, that individuals are appointed based on merit and that staffing decisions are values-based.⁶² However, departmental stakeholders argue that, in accordance with the Commission's *Appointment Framework*, information may be in hard copy or electronic format

61. Ibid.

62. Public Service Commission of Canada, [2009-2010 Annual Report, Chapter 3 — Overall performance regarding merit and the guiding values](#).

and needs only to be accessible.⁶³ The language used in the *Appointment Framework* and the approach taken by some of the PSC's auditors were described by departmental stakeholders as inconsistent with each other.

Given the flexibility in the *Appointment Framework* and efforts to green the public service, departmental stakeholders are discomfited by the emphasis on hard copies and the Commission's statements that, in the absence of documentary evidence, it is not satisfied that appointments are based on merit. The PSC advised that it welcomes the use of electronic documents, which are an equally viable means to support and explain the decisions taken in the context of an appointment process, thereby contributing to fairness and transparency. This illustrates further the importance of a shared understanding about values-based staffing, delegated authorities, and the manner in which these are evaluated.

The Review Team found that the new PSEA gives managers greater discretion, but it also requires deliberate and articulated decision making. It imposes fewer rules, procedures or constraints than the former legislation, in exchange for which managers and their advisors must make choices based on values and be able to explain their decisions. The relative importance of competing values, and any other influences and considerations, such as operational requirements or organizational context, must be accessible not only to inform oversight activities, but also to build confidence in and support the credibility of this highly delegated staffing system. For its part, the Commission's oversight must continue to be principles- and risk-based, with an emphasis on system-wide integrity and outcomes as opposed to individual transactions.

Although individual departments are selected for audit based on risk, the manner in which audits are conducted and conclusions are drawn does not provide a sound foundation on which to form an assessment of the effective exercise of authority or the system-wide integrity of outcomes. The approach seems to be one that is focused on eliminating all errors rather than one in which there is a reasonable risk tolerance. This approach is likely to be costly and precludes agreement on an acceptable rate of non-compliance. For their part, deputy heads, managers and HR staff need to better understand what is expected of them and how values will be audited. This suggests, for example, using audit findings more broadly to inform policy, learning, performance assessment and service delivery decisions across the system.

63. Public Service Commission of Canada, [Source of Requirement — Staffing File Documentation](#).

Therefore, the Review Team recommends that:

4.2 To encourage a more innovative and responsive staffing system, the Commission’s approach to oversight be principles- and risk-based, focused on system-wide integrity and outcomes, and capable of providing Parliament with assurance that delegated authorities are being exercised effectively.

Members of the HR community emphasized that the Commission’s oversight activities and the potential for a deputy head’s delegation to be revoked or rescinded lead HR staff to be risk-averse. PSC staffing reports are public, which fosters greater transparency in appointment decisions. At the same time, the reports may reveal information that is negative or embarrassing, which appears to contribute to risk aversion among HR staff. The Commission also expects HR staff to perform a challenge function within their organizations, leading HR staff to see audits more as a report-card on their performance than on that of managers. Eventually, risk aversion permeates organizations and the advice given to managers and deputy heads becomes increasingly cautious and conservative. It leads to a proliferation of organizational policies, authorizations and other requirements designed to “audit proof” appointment processes, but which weigh down the staffing system.

A strong and productive relationship among the Commission, deputy heads and HR staff is crucial to ensuring an effective staffing system. For the delegated model to function effectively, trust, credibility and respect are essential and must be built on a mutual understanding of legislative and operational realities and an expectation that each, operating in their own sphere, can be counted on to act with integrity and fairness.

Therefore, the Review Team recommends that:

4.3 The Commission and deputy heads review their respective staffing policy and program frameworks with a view to increasing effectiveness, improving efficiency and encouraging responsible risk-taking. They should set meaningful performance objectives against which they, and those to whom authority is delegated, will be held to account. Existing forums, such as the Deputy Minister Advisory Committee on the Public Service Commission and departmental labour-management consultation committees, should be engaged in these efforts.

Flexibility, Efficiency and Effectiveness

The new Act was designed to give managers the flexibility needed to staff, manage and lead their personnel to achieve results for Canadians. This implied a more efficient and effective staffing system than had existed under the former legislation. New options for filling positions were created, including advertised and non-advertised appointment processes, while many of the requirements,⁶⁴ approval processes and restrictions created under the old statute were eliminated.

In 2005 expectations were high that the new staffing system would offer managers greater control over decisions, processes and outcomes and would lead to a more efficient and effective staffing system. Many people understood this to mean that it would take less effort and time to hire someone than ever before. In fact, messages and promotional material published around the time the legislation was being developed and coming into force emphasized greater flexibility for managers, and “faster, cheaper, simpler” became the catch phrase to describe the new staffing system.

Throughout this Review, deputy heads, managers, HR staff and even the Public Service Commission complained that it takes too long to fill positions. The Commission has reported that the speed of staffing has not improved significantly in five years. Stakeholders offered many explanations, including inadequate information, training and systems/tools; unclear roles, responsibilities and requirements; cumbersome departmental policies and approval processes; large numbers of candidates; fear of PSC audits; and apprehension of complaints. Managers pointed to excessive mobility within the HR community, and HR staff spoke about managers’ failure to embrace fully their roles and responsibilities.

Show Me the Flexibility!

Flexibility can best be described as the opportunity to exercise discretion, consistent with the values found in the PSEA. Managers exercise discretion when they choose the staffing process best suited to their requirements and organizational context. Flexibility is manifested when managers decide such things as essential and asset qualifications; current and future needs; language proficiency; area of selection; whether to hold an advertised or non-advertised, internal or external appointment process or to make a deployment; tenure; and when they select individuals based on “fit” rather than a rigid application of a numerical assessment.

64. Some requirements were retained, such as the obligation to consider individuals entitled to a priority for appointment and the preferences given to certain individuals in external appointment processes.

No doubt all of these explanations are true to some extent. What's more, there is little evidence of innovation or meaningful effort to deal with them. A number of departments have adopted "fast-track staffing" to reduce costs and improve turnaround times for routine actions such as casual employment and acting appointments, and some managers are using project management techniques for advertised appointment processes. These efforts are commendable, but they have not had a significant impact on improving the time it takes to hire. Most departmental stakeholders said they could reduce the time taken to fill a position if only they could make greater use of non-advertised appointments or if more transactions could be considered deployments; however, neither option addresses the underlying issues. Stakeholders were unable to point to a legislative requirement as the root cause for the slow speed of staffing. More importantly, although some managers indicated that they have taken steps to increase efficiency, others acknowledged that they could do more. The most recent polling results from the National Managers' Community forum suggest that there is a growing willingness to do so.

The Review Team found that deployments, which were introduced in 1993 as a means to increase efficiency for moving people at level, are often administered in the same manner as appointments. A single advertisement is used, which fails to differentiate between deployments and appointments. Candidates for deployments are being considered at the same time as other individuals who are seeking a promotion or a change in tenure. The same criteria, assessment methods and tools are being used. In effect, practically speaking, the process has become as cumbersome as the one it was designed to replace.

How Do *You* Measure Time to Staff?

According to the *Public Service Commission 2009-2010 Annual Report*, the average time to staff indeterminate, advertised positions was 23 weeks. It defined the measure of time to staff as the total elapsed time between when a staffing request was completed until the appointee reported to the new position. The Commission's *Staffing Management Accountability Framework*, which sets out the expectations of a well-managed staffing system, uses a different measure for time to staff. It assesses the length of appointment processes in calendar days, calculated from the job advertisement to the first recourse notice. Most managers measure time to staff from the point at which a need is first identified, which may be several months before a position is vacant or a staffing request is completed, until a person reports to work, which can be weeks after the recourse notice is issued.

Managers, HR staff, employees and new recruits overwhelmingly said that staffing is neither simple nor fast. Some fear that hiring processes that take many months may be equated with a slow-moving public service and that this will have a negative impact on an organization's ability to attract and retain good candidates. Lengthy hiring processes may also lead to options such as a reliance on temporary help agency personnel as managers try to meet their business and service delivery needs. They may also lead to problems in the workplace as existing employees shoulder the load during the period it takes to staff positions.

A 2010 Public Service Commission study⁶⁵ identified one of the most common reasons for using temporary help agency services as being to perform work while appointment processes are being carried out. Temporary help agency hiring is not subject to the PSEA, and the individuals engaged through temporary help contracts are not employees of the public service. Hiring from the temporary help agencies is seen to be faster and more flexible than any of the hiring mechanisms provided for in the PSEA, including casual workers, who are subject to a 90-day limit in the same department in any calendar year.

The Commission believes that the current provisions for casual employment do not provide departments with sufficient means to address their needs for a long enough duration, particularly in the event of an emergency situation or an urgent operational need. Casual employment is intended to be for short, temporary periods and, unlike term employment, is excluded from the requirement to select based on merit. Casual workers do not have the same rights, benefits or entitlements afforded to term employees, such as pensions, health insurance and union representation. Consideration should, therefore, be given to the desirability and appropriateness of using casual workers for extended periods and to the potential for creating a two-tier system in which individuals hired for the same periods of time are treated differently. Despite this caveat, term employment will never be fast enough to respond to emergency situations.

Therefore, the Review Team recommends that:

4.4 To equip departments to respond to emergency situations where term employment is not feasible, the PSEA be amended to allow for one extension for casual workers of up to 90 days, when it is in the interest of health, safety, security, the environment or an essential service to the public.

The length of time it takes to hire or promote an individual is an ongoing challenge — at least for some — but it is not the only measure of success or an absolute measure. If, as the Review Team heard, much of the time is spent waiting for a manager or HR staff to respond to questions, advise about their availability for interviews or complete an administrative requirement, then the time is not being used effectively or productively. In other words, what matters is not only how long it takes but how the time is being used.

65. Public Service Commission of Canada, *Use of Temporary Help Services in Public Service Organizations*, October 2010.

The situation needs to be examined more closely so that deputy heads, managers and heads of HR can ascertain whether, in fact, there is a problem that needs to be fixed. For example, only by measuring how long it takes to hire, examining the reasons for the amount of time it takes and assessing the implications, for the department and for Canadians, will decision makers be in a position to determine the appropriate investment required. Given the apparent importance of this issue to managers, deputy heads, HR staff and the central HR organizations, there has been surprisingly little in the way of concerted engagement or action to understand and address the time to hire. Operating in a values-based system necessitates finding a balance among competing objectives such as merit, access, efficiency and effectiveness. It is not a matter of finding the single best strategy; each organization must assess its situation and develop an approach and timeframes that are appropriate to its needs and are compliant with the legislation.

It is important to note that a number of issues that are outside of the scope of this Review may also have an impact on the time it takes to hire and promote individuals. Classification actions, security clearances and reliability checks create bottlenecks in some organizations. These will also need to be addressed as part of an overall strategy if the time that it takes to fill vacancies in the public service is to be reduced. Initiatives such as the Common Human Resources Business Process, for which the Office of the Chief Human Resources Officer is responsible, appear promising and should create a platform for departments to map existing practices, to benefit from standardization and to improve performance in staffing and related areas, such as classification.

As mentioned previously, collective appointment processes are used frequently. They may involve hundreds of candidates and a dozen or more managers across several organizations. This can pose some administrative challenges, notably with regard to the recourse system.⁶⁶ Informal discussion, which is an important mechanism that contributes to transparency and fairness, must be offered at any stage in an internal process where a candidate has been eliminated from consideration. Furthermore, the legislation requires that after the assessment of candidates is completed, but before an appointment may be made from an internal process, notification must be given of the names of the people being considered for appointment. This two-step notification can be particularly cumbersome for large, collective appointment processes, which result in many qualified candidates.

Large numbers of requests for informal discussion, combined with difficulties coordinating schedules among various hiring managers, have the potential to slow collective appointment processes significantly. The same can be said about the two-step notification process, particularly when only one appointment is being made at a time. Although this may be counterintuitive

66. For a more detailed discussion about the staffing recourse system, see Chapter 7, "Credible Recourse and Effective Conflict Management."

(because collective staffing was intended to increase efficiency and reduce the time it takes to fill vacant positions), trust in and the credibility of the staffing system are closely associated with the opportunity for meaningful feedback and recourse. Employees sometimes bring complaints to the Tribunal simply because they are unable to obtain timely information about the reason(s) for their elimination. In effect, these employees are protecting their right to complain in the event that they are dissatisfied with the outcome of the informal discussion. This has evident consequences for efficient recourse in staffing.

Therefore, the Review Team recommends that:

- 4.5 The *Public Service Employment Act* be amended to replace the two-step notification process for internal appointment processes with a single notification of proposed appointments, accompanied by a waiting period to afford employees eliminated from consideration an opportunity for informal discussion before appointments are finalized. The waiting period will also enable managers to correct any errors or omissions of which they may become aware before finalizing the appointment(s).**

Conclusion

It is apparent that in the minds of stakeholders the *Public Service Employment Act* is not operating or being administered as they believe it should be. On the one hand, deputy heads and managers are seeking greater speed and agility to recruit and promote individuals to meet business needs. On the other, bargaining agents and their members are concerned that the new staffing system is neither as transparent as, nor does it appear to be as fair as, it should be. Fairness is frequently being judged against a standard developed under the former Act, i.e., appointment of the best-qualified person as determined by a rigid and process-driven system, which was one of the principal motivations to change the legislation.

Forty years of jurisprudence had created cumbersome processes and procedures that seemed designed to ensure that everyone was treated in exactly the same way in all circumstances. The intent of the rules had been lost. The new legislation, on the other hand, emphasizes the importance of a values-based staffing system in which deliberate and articulated decision making prevails, which is adaptable to the public service's current and future circumstances, and which gives managers the flexibility necessary to staff, manage and lead their personnel.

Moreover, there are some inherent tensions in the system, often tied to scale or perspective. For example, an individual non-advertised appointment may be based on merit and demonstrate an appropriate use of discretion and flexibility given the business requirements and the HR plan. That appointment may look very different to the responsible manager or an employee interested

in advancement, than it does to the Commission, which has an interest in the aggregate of non-advertised appointments across an organization or the public service.

At its core, flexibility — or the use of discretion — requires that managers are trusted and exercise their delegated authority deliberately and consistently with the values enunciated in the preamble to the Act. They must receive competent HR advice and services, and both managers and HR staff must be accountable for the way in which they discharge their respective responsibilities. With greater discretion comes greater accountability, but that should not mean additional controls that reduce staffing processes to a crawl. Nor, for that matter, should it mean less timely and open communication among managers, HR staff and employees and their representatives.

The relationship between the Commission and its delegates is an important component of an efficient and effective staffing system. It has perhaps the biggest influence on the prospects for changing staffing practices and culture. A working, complementary relationship is essential if the public service is to harness the flexibility provided in the legislation to successfully search for talent in the coming years. Deputy heads, managers and HR staff can not afford to simply put new labels on old practices, or to be paralyzed by a fear of staffing audits. Instead, oversight should be used to inform, educate and improve staffing practices so that the public service and Canadians have confidence that their interests are being well served.

Chapter 5: Supporting Change in People Management

The Review Team's mandate, to look at the two statutes, their administration and their operation, recognizes that examining the legislation alone serves little purpose. Questions related to actions taken and whether the results of those actions are the ones intended by the architects of the legislation are equally important.

To assess those actions, the Review Team looked at the extent to which stakeholders are equipped to exercise their authorities and fulfil their responsibilities, supported by information and systems that enable results. This chapter touches on a range of issues, including supporting and enabling change, training and development, information and tools, to make the legislation function more efficiently and effectively.

Supporting and Enabling Change

The literature on change management contains many references to the importance of adequately supporting and sustaining major change if it is to be successful. The record shows this was also top of mind for the architects of the *Public Service Modernization Act*. Before Bill C-25 passed into law, members of the Standing Committee on Government Operations and Estimates asked about achieving meaningful culture change. One witness — a bargaining agent executive — noted that people would need to be trained if the culture was to change.⁶⁷ Another witness representing the management point of view, predicted that without culture change, in 30 years' time parliamentarians and senior officials would once again be having the same conversation about how to fix people management in the public service.⁶⁸ Recognizing the need for culture change is an important first step. As noted elsewhere in this report, achieving it is more difficult, requiring sustained attention, leadership, a shared vision, training and a range of tools, architecture and systems, all designed to support the change. It also requires ongoing assessment of current practices and mechanisms to incorporate feedback and make adjustments.

67. Nycole Turmel, former President, Public Service Alliance of Canada in [Transcripts of the Standing Committee on Government Operations and Estimates, House of Commons Committees OGGO \(37-2\), Evidence, Number 025, March 25, 2003](#).

68. George DaPont, former Vice-Chair, Human Resources Council, ADM(HR) Fisheries and Oceans Canada, in [Transcripts of the Standing Committee on Government Operations and Estimates, House of Commons Committees OGGO \(37-2\), Evidence, Number 019, March 19, 2003](#).

Training and Learning

Acquiring skills and knowledge, and developing managerial and leadership know-how are crucial to effective management. They are, as the Treasury Board's *Policy on Learning, Training and Development* says, "the foundation of a responsive, accountable and innovative government." They reflect a commitment to ensuring that Canadians are served by a skilled, well-trained and professional workforce.⁶⁹

To support the approach to people management envisioned by the *Public Service Modernization Act*, emphasis was placed on raising awareness among deputy heads and providing training to managers and HR staff. Formal training was a collaborative effort involving the former Public Service Human Resources Management Agency of Canada, the Public Service Commission and the Canada School of Public Service, which received additional funding for that purpose over a two-year period. Courses were aimed at managers and HR staff because it was thought they needed to know the most about the legislation. It was expected that employees would learn about the new legislation within their own organizations.

The training strategy for the new legislation appears to have underestimated the extent of training required and the need to address culture change. The strategy assumed that departments and agencies would educate their employees about the new staffing and labour relations regimes, but neither HR staff nor managers were experienced enough with the changes to do this effectively. Furthermore, little consideration seems to have been given to the need for a transition from the initial training effort to ensuring ongoing learning was in place and sustainable in departments and agencies. Except for the courses offered at the School and mandatory staffing delegation training in departments, a large portion of HR-related knowledge appears to be acquired informally. This can contribute to the survival of myths, misunderstandings and, in the worst cases, bad habits and errors.

In 2008, the School published an evaluation⁷⁰ of the training it had offered to support PSMA implementation between 2004 and 2006. The report describes tight timelines to make courses available, overlapping roles and responsibilities, and a failure to synchronize training with the availability of new legislation and policy instruments. The School concluded that these challenges had an adverse impact on the delivery of courses and their quality. Not surprisingly, enrolment in courses related to the PSMA fell off significantly after the initial push towards implementation.

69. Treasury Board of Canada, *Policy on Learning, Training and Development*, January 1, 2006.

70. Canada School of Public Service, *Formative Evaluation: First Two Years of Implementation: CSPS Responsibilities under the Public Service Modernization Act Learning Strategy*, 2008.

Now, six years after the legislation came into force, the School understandably no longer offers training specific to the PSMA. Instead, information about the legislation is integrated into a wide range of course offerings targeted at the learning needs of HR staff (e.g., “Staffing for Staffing Specialists”), employees (e.g., “Preparing for Selection Interviews”) and managers (e.g., “Essentials of Executive Management”). Not surprisingly, the extent to which a particular HR topic is covered depends on course objectives, participants, duration and instructors. For example, in the course “Essentials of Executive Management,” people management is only one of many topics aimed at increasing participants’ understanding of the range of their roles, responsibilities and accountabilities.

Evaluations undertaken by the School in 2009 revealed that attendance was uneven. Participants did not perceive the HR components as particularly helpful; in some instances materials were out of date or failed to communicate adequately key concepts related to values-based people management, authority, accountability and responsible risk taking, or to set out a vision linked to either statute. During this Review, managers, HR staff and employees made similar comments and, particularly in the regions, criticized the availability and high cost of formal HR-related training offered by the School. The School’s ongoing evaluations also show that the success rate for assessments on HR delegation authority was lower than for similar tests to measure knowledge of financial management authority. The School has begun to review the training and development course content for HR staff and should be commended for undertaking to evaluate its offerings and acting on the results.

The current training strategy at the School emphasizes technical knowledge rather than supporting culture change with practical training on how to implement the PSEA and PSLRA in the workplace. Members of the Review Team attended several courses and found they provided little opportunity to capitalize on experiential learning. The availability of options, ways to calculate and mitigate risk, and opportunities for innovation and experimentation in people management were not featured. Findings from PSC audits, Public Service Labour Relations Board and Public Service Staffing Tribunal decisions, which could provide useful case studies and information on gaps in knowledge, have not consistently been used to update course content.

Therefore, the Review Team recommends that:

- 5.1 To enhance learning and, over time, improve staffing and labour relations policies, programs and practices, the key findings from audits, investigations and adjudication decisions should be incorporated into courses at the Canada School of Public Service, and course facilitators must stay abreast of the latest developments.**

In keeping with the Treasury Board's *Policy on Learning, Training and Development*, acquiring and developing HR-related skills, knowledge and competencies are essential in the public service. The public service cannot rely on traditional training alone; it must explore and exploit opportunities to use different approaches and to work with others, including bargaining agents, other levels of government, academia and the private sector. Such a learning strategy must be informed by current and emerging issues and be able to respond to the evolving demands of learners at all levels across the public service.

Therefore, the Review Team recommends that:

- 5.2 If the public service is to be a true learning organization, the central HR organizations and all stakeholders must develop a comprehensive strategy for career-long learning in the area of people management. This initiative could be led by the Canada School of Public Service, in collaboration with the Privy Council Office and the Office of the Chief Human Resources Officer.**

HR Staff and Managers

The architects of the new legislation envisaged new roles for HR staff and managers. Managers were to assume responsibility for decisions about people management; for example, they were given opportunities to exercise discretion and take the initiative to resolve issues in the workplace. They were to be aided by HR staff capable of providing high-quality and timely advice in support of individual managers and the organization's business priorities, based on their expert knowledge, broad experience and sound analysis. The legislation envisaged a close relationship between individual managers and staffing or labour relations advisors, based on clearly differentiated roles. Broadly speaking, and at the risk of generalizing, neither community has fully adopted their new roles, and more work needs to be done to build these relationships.

Some managers seem to view people management as a separate and discrete set of responsibilities; during engagement sessions with the Review Team, they often spoke of their wish that they had more time to devote to managing people. It is not surprising that knowledge among managers is uneven; there is considerable disparity among managers in terms of the frequency with which they deal with people management issues. It is very difficult to maintain knowledge and to become comfortable with innovation and experimentation in functions that are rarely or only periodically performed.

Therefore, the Review Team recommends that:

5.3 Deputy heads should consider, when deciding to whom they will sub-delegate their appointment authority, the frequency and extent to which managers have the opportunity to manage staff, as well as their competence and the support they require.

Although a majority of HR staff surveyed during the Review Team's engagement sessions believed that they have the right knowledge and skills, managers remained very critical of the quality of advice and support they receive. In fairness, the engagement sessions also indicated a discrepancy between the view managers have of their capacity and how their HR staff see them, although it was not as marked. There was a prevailing view that HR staff focuses (likely with one eye on the next PSC audit) on a literal adherence to rules and well-papered files, rather than on supporting the values-based approach foreseen by the PSEA and outcomes linked to their organization's priorities. A high degree of mobility among HR staff, inadequate and uneven training and expertise, and fear of PSC oversight were all cited as possible causes for shortcomings in HR support. Within the HR function, the staffing community received more criticism than those who support the labour relations function; however, neither group escaped comment.

No empirical information is available about the knowledge and capacity of HR staff across the public service. However, the experience and perceptions of deputy heads, managers and officials in the central HR organizations suggest that several issues require attention. There appear to be gaps in knowledge and understanding, an aversion to risk and a reluctance to innovate, experiment and act. Although the exact causes are unclear, apprehensions about upheld complaints and grievances or critical audits, as well as concern about the reputation of the organization and the deputy head, were mentioned frequently during this Review.

It is entirely reasonable to hold both managers and HR staff accountable for their people management skills, knowledge and performance. However, in fairness, they first need to understand their roles, how these fit into the broader vision for people management and the expectations they must meet. All three areas require attention, but a change in culture is more likely to be successful if the order in which they are addressed is right.

Therefore, the Review Team recommends that:

- 5.4 Setting clear performance expectations for people management should begin between deputy heads and their heads of HR, in consultation with the senior management team. This should be matched with honest and constructive performance feedback and assessment. A similar approach should then be observable as it cascades through the organization.**

The Public Service Commission, the Office of the Chief Human Resources Officer, and the Canada School of Public Service have begun working with the HR community to address the challenges that have been identified in relation to HR staff. Their work, which is focused on identifying and developing key competency requirements, appears promising but must go further to address the pressing needs of managers and HR staff.

Therefore, the Review Team recommends that:

- 5.5 To further enhance the availability of HR expertise in the public service, consideration be given to the desirability of amending the occupational group qualification standards and establishing mandatory learning requirements for HR staff.**

Credible and Reliable Information and Tools

Training and learning are essential for embedding new or different behaviours, taking different actions and achieving outcomes, but they must be reinforced by other instruments, such as policies, guidelines, tools or systems to which stakeholders have easy access.

Managers and HR staff spoke about the high expectations for the way in which managers would exercise their people management authorities when PSMA was introduced. With greater discretion and increased oversight came a demand for authoritative information, tools and guidance to direct informed decision making. These same stakeholders expressed frustration about their experience in attempting to obtain such information from the central HR organizations, including difficulties finding up-to-date policy instruments or obtaining guidance about and interpretations of the legislation. Many reported they were unable to obtain essential support and advice from the PSC and OCHRO, referring to dead Web links, out-of-date policy instruments, and reduced access to experts for advice and interpretation.

There is evidence that the central HR organizations have not consistently updated their PSMA-related policies and Web-based tools; advisory services from the central HR organizations are deliberately more limited since implementation of the horizontal HR strategic review. These factors are all the more challenging when the legislation, policies and guidelines appear to offer

conflicting or even contradictory information (for example, when making the choice between advertised and non-advertised appointment processes). In some instances, departmental HR staff resort to other sources of advice and interpretation, including consultants, the administrative tribunals and agents of Parliament. Consultants may or may not provide the best advice; providing interpretations and advice falls outside the mandates of the tribunals and agents of Parliament.

Some deputy heads mentioned two documents published by the Privy Council Office in 2009. One was intended to explain the changes that were being made in people management, linked to Public Service Renewal. The other, entitled “Taking Charge of Human Resources Management,” offered guidance to deputy heads about shaping people management within their organizations. Documents such as these can be especially useful when change initiatives are launched and should be reviewed periodically to ensure their ongoing relevance and revised as appropriate.

Managers and HR staff were equally dissatisfied with the guidance available within their own organizations, which, they reported, ranged from non-existent to more restrictive than the requirements of either the central HR organizations or the legislation itself. Many departments and agencies have more than the small number of mandatory policy instruments required by the Public Service Commission and the Treasury Board. It is ironic that, while the central HR organizations are well into an initiative to renew and rationalize policies, there seems to be a proliferation of new policies, guidelines or templates in departments and agencies.

Quick Fact

The Correctional Service of Canada examined its HR policies as part of its corporate risk profile exercise. Policies were assessed to see whether they created, exacerbated or mitigated identified risks. Depending on the findings, policies were revised or eliminated.

Source: Review Team interview

Few departments or agencies appear to have a process in place to review their staffing or labour relations policies periodically. Instead, they seem to add to their policy suites to fill perceived voids created when the central HR organizations make deliberate decisions to stop dictating processes or procedures. The public service has a propensity for rules and forms, perhaps because they are perceived to minimize risk. This undermines the objective of the PSMA to encourage the exercise of judgement, guided by values, when making decisions about people management.

Therefore, the Review Team recommends that:

5.6 To ensure stakeholders' current and evolving needs are met, the Commission, the Chief Human Resources Officer (on behalf of the Treasury Board) and deputy heads, while acting within their respective mandates, should review collaboratively their staffing and labour relations policies, tools and guidelines using the Common HR Business Process to ensure that they form an integrated, cohesive and necessary suite.

Many stakeholders mentioned the increased emphasis on HR planning and the demand for reliable data for labour relations purposes, for example, to support the designation of essential services. Input from stakeholders and the central HR organizations pointed to the wide range of HR information systems, requirements and methodologies that make the comparison and reconciliation of data difficult or, on occasion, lead to inconclusive or contradictory analyses. This was especially true for staffing-related data gathered from the Regional Pay System and from departments, which operate on a variety of systems.

Although there appears to be no shortage of data, it is unclear if it is the right information to meet stakeholders' needs. For example, one of the goals of the PSMA was to streamline the staffing process, but there are neither common indicators, nor measures to assess progress beyond the Commission's Survey of Staffing. This survey relies on assessments by managers and candidates after the fact. And, as demonstrated in Chapter 4 with regard to the time it takes to hire, there is more than one way to measure the same thing. If the goal is to streamline staffing processes, then shared metrics that allow stakeholders and HR organizations to accurately diagnose the challenges and measure performance and progress are crucial, both at the departmental and at the public service-wide level.

The Auditor General⁷¹ and the Standing Committee on Public Accounts⁷² both highlighted the need to monitor and report on progress linked to the changes introduced by the PSEA and the PSLRA. They have been critical of the fact that no PSMA-specific indicators or measures were established in 2005 in order to track progress on implementation. It is not too late to do so. Information already being collected could, at the very least, serve as a baseline against which to assess progress.

71. Office of the Auditor General of Canada, *2010 Spring Report of the Auditor General of Canada, Chapter 2—Modernizing Human Resource Management*, April 20, 2010.

72. Standing Committee on Public Accounts Committee, *26th Report, 40th Parliament, 3rd Session, in Spring 2010 Report of the Auditor General of Canada, Chapter 2 — Modernizing Human Resource Management*, February 2011.

Deputy heads are also grappling with determining what information they require to fulfil their responsibilities for people management in their organizations. There are some encouraging examples of organizations that are making good progress in identifying what information they need based on their business and operational requirements, collecting it and using it as a management tool.

While this Review was under way, OCHRO issued the Public Service Management Dashboard, which provides an overview of people management across the core public administration. It also launched the People Information Management Automated Request Tracker, which will streamline and centralize requests for system-wide HR-related data and will improve the integrity of data. Over the longer term, OCHRO's aim is to build a searchable database to support more efficient and reliable measurement. In addition, managers have access to a Web-based tool launched by the PSC that enables the analysis of large amounts of information to inform staffing plans. All of these are interesting and promising tools to improve HR-related data exchange, planning and decision making. However, they must be maintained — and evaluated periodically — to ensure their ongoing relevance.

Therefore, the Review Team recommends that:

- 5.7 To improve comprehensive and integrated HR planning and decision making, the Chief Human Resources Officer, the Public Service Commission, deputy heads and others must continue to seek opportunities to develop and maintain HR systems using the Common HR Business Process to capture relevant information, facilitate sharing and enable efficient analysis, using credible, timely and reliable data.**

Managing Performance

Managing employees' performance was one of the issues raised most frequently during this Review. For the most part, managing employees' performance falls outside the scope of this Review because it is an authority given directly to deputy heads under the *Financial Administration Act*. There are, however, two important aspects linked to the Review: probation, which is provided for in the PSEA, and the limit to an adjudicator's jurisdiction with respect to termination and demotion for unsatisfactory performance.

The probationary period, which applies only on entry to the public service, is intended to provide a time (currently 12 months for most employees) in which to orient new employees to the public service, to inform them of expected standards of work and conduct, and to assess the new employee's performance and suitability for ongoing employment in the public service. The latter

may be for a lengthy period: as of December 2010, more than half of all employees (51.6 per cent) had worked in the public service for periods ranging from 10 to 35 years.

Quick Fact

Probationary periods are established by Treasury Board regulation and apply to all appointments from outside the public service. For most classes of employees, the probationary period is 12 months, but it may be longer. For example, there is a 36-month probationary period for individuals recruited into a position in the University Teaching group and whose appointment is for a period of more than one year. Employees must complete the entire period of their probation; it is not terminated by appointment or deployment to another position. Furthermore, periods of leave without pay; leave with pay in excess of 30 days; full-time language training; non-work because of seasonal employment; and, in the case of a person with a disability who requires job accommodation, the period before an accommodation is made, do not form part of the probationary period.

Source: [*Regulations establishing periods of probation and periods of notice of termination of employment during probation*](#), November 24, 2005

Surprisingly, managers appear to have few incentives to assess performance during the probationary period. The legislation requires neither that there be a periodic assessment during the probationary period, nor that managers confirm that it has been successfully completed. Managers reported feeling ill-equipped to manage poor performance generally, and that they lack the support of senior management and HR staff when it comes to terminating an employee on probation or dealing with an indeterminate employee with unsatisfactory performance. When asked if they were able to manage the performance of employees, including poor performers, 65 percent of respondents who completed the Review questionnaire answered “not at all” or to a “moderate extent.” Their response is consistent with findings from the National Managers’ Community Professional Development forums held in 2010 and 2011, where delegates overwhelmingly identified performance management as an area in which they need more tools, training and support.

Managing performance is a critical component of values-based people management, serving Canadians and public service excellence. Failure to deal with poor performance has a negative impact not only on organizational effectiveness, but also on morale and employee engagement, as well as on the employee concerned. The probationary period is, therefore, an important opportunity for managers to ascertain if there is a good fit between the new employee and a specific job, as well as his or her suitability for what may be a long career in the public service and a significant investment on the part of the employer. The public service cannot afford to fail to manage performance issues fairly and effectively; it is essential to use the probationary period to set clear objectives and expectations, provide direction, support and feedback on performance and, where necessary, to document poor performance and terminate employment.

Many reports have recommended using probationary periods in the public service more effectively. As far back as 1962, the Glassco Commission said:

The most careful selection of new recruits to the public service, whether by a common recruiting agency such as the Civil Service Commission or by a user department, will not ensure perfect results. For this reason, proper use of the probationary period, now normally one year under the *Civil Service Act*, is, vitally important to good staffing. It should be a clearly understood responsibility of supervisors to assess the performance and general suitability of new employees throughout the probationary period. Well before the expiry of the probationary period, a definitive assessment should be made, as a basis for deciding whether the employee should be retained in the public service. In the final analysis, such an assessment is very much in the interests of both the department and the individual. Permanent status should be the result of conscious decision by the department immediately prior to the expiry of the probationary period. With properly qualified supervisors, authority for decision on this subject can and should be delegated throughout the supervisory structure.⁷³

During this Review, some stakeholders suggested re-introducing probationary periods at every promotion or at selected milestones, such as entry into the executive group. There may well be advantages to this suggestion, as well as some practical challenges in implementing it. Given how the existing probationary period is managed, it seems sensible to focus on using this provision fully before expanding the use of probationary periods.

Therefore, the Review Team recommends that:

5.8 Managers and senior officials, supported by HR staff, must equip themselves and be accountable for managing performance, including during the probationary period. The Chief Human Resources Officer should determine whether a policy on the effective use of probation is required to ensure a more rigorous use of probationary periods, including requiring mid-year reviews and written confirmation by a senior manager that an employee has successfully completed the probationary period and should be retained as an indeterminate employee in the public service.

73. J. Grant Glassco, *Royal Commission on Government Organization*, 1962.

The second aspect of managing performance that is relevant to this Review is tied to a deputy head's authority to terminate or to demote a person employed in the public service whose performance, in the deputy head's opinion, is unsatisfactory. The new PSLRA introduced a threshold to an adjudicator's jurisdiction with respect to termination or demotion in this circumstance. It requires that an adjudicator determine whether the deputy head's decision to deem the employee's performance unsatisfactory was reasonable, based on evidence.

The new provision has been tested in two separate cases before the PSLRB.⁷⁴ One dealt with a demotion and the other a termination. In both instances, the adjudicators concluded that they had no jurisdiction to review the merits of the decision to dismiss or demote an employee for unsatisfactory performance. The evidence showed that the employer was reasonable in ascertaining that the employee's performance was unsatisfactory. These decisions are a positive development and illustrate how a change introduced under the PSMA is operating as intended.

Conclusion

Among the witnesses that appeared before the Standing Committee on Government Operations and Estimates in 2003 were a leading academic, a former deputy head and a former Clerk of the Privy Council. They all emphasized that communication and training alone are not enough to achieve the changes necessary to realize the objectives they foresaw for the *Public Service Modernization Act*: behaviour would have to change and would take time. They also stated that greater ownership of people management responsibilities by managers at all levels, new and different relationships, and sound strategies for implementing and managing change were all needed to ensure the changes contemplated by the legislation would endure. They also appeared to expect that, to complement the new legislative framework, deputy heads, managers and HR staff would have the policies, programs, systems and services they needed to fulfil their responsibilities.

To repeat a point made elsewhere in this report (Chapter 3), legislation or structural change may be necessary but is not sufficient to achieve fundamental change in the way functions are performed or in achieving results. Much care and attention is devoted to ensuring that new legislation provides the right framework, authorities and constraints to achieve results. Similar care and attention needs to be taken to ensure stakeholders understand the new goals and have the capacity, as well as the robust relationships in place among individuals and organizations, to be able to fulfil their responsibilities.

74. *Raymond v. Treasury Board*, 2010 PSLRB 23; *Plamondon v. Deputy Head (Foreign Affairs and International Trade)*, 2011 PSLRB 90.

The public service will be best able to deliver its programs and services if it is made up of strong teams of employees and strong managers. To be able to recruit and retain strong performers, and train and develop capable leaders and managers, the public service must ensure that the necessary expertise, reliable data and support are available to those with responsibilities for people management. Numerous courses, policies, tools and systems have been introduced, but they do not yet form an integrated, cohesive and authoritative whole. While it is important to have these assets, it is more important to ensure that they are the best they can be, meet the needs of the people who use them, and make a lasting change to behaviour and organizational culture.

Chapter 6: Loyalty, Non-Partisanship and Political Activity

The *Public Service Modernization Act* introduced a requirement in the *Public Service Employment Act* that each entrant to the public service take an oath or solemn affirmation of office before commencing employment. The oath or solemn affirmation is an undertaking of duty and loyalty, and a commitment to the responsibilities and obligations of employment in the public service.

A professional, politically neutral public service is at the centre of Canada's Westminster model of government. It assures elected officials — and ultimately Canadians — that employees will provide sound advice, fulfil their responsibilities and exercise their authorities within the law and act in the public interest, rather than carrying out their duties on a partisan basis.⁷⁵ The new PSEA incorporates a series of requirements related to non-partisanship and political activity. While recognizing employees' rights to engage in political activity, the Act also requires that employees exercise those rights in a manner that is open to scrutiny and provides a framework for investigating and dealing with contraventions.

The Review Team considered new requirements related to loyalty, non-partisanship and political activity, challenges and opportunities associated with them and whether adjustments are necessary or desirable.

Oath or Solemn Affirmation of Office

The PSEA requires that a person take and subscribe to the oath or solemn affirmation of office before commencing his or her employment in the public service. Each new employee must commit to fulfil the duties of their employment faithfully and honestly and to not disclose, without due authorization, information that they become aware of because of that employment.

Little information was available to indicate how the oath or solemn affirmation is being administered or whether its purpose is understood by employees. Anecdotal information suggests that in many organizations the oath or solemn affirmation is merely an item on a new employee's checklist, on par with getting an e-mail account, and that it may be administered by a clerical employee. Some managers, however, accord taking the oath or solemn affirmation more significance. In one example, a manager administers the oath or solemn affirmation at team meetings and uses the event to remind existing employees of the important role they play in supporting the Government and serving Canadians. This approach has the added benefit of making the event more noteworthy for new employees.

75. See, for example, Public Service Commission of Canada *1995-96 Annual Report*.

Taking the oath or solemn affirmation is an important milestone that marks the beginning of a new employee's career in the public service. It offers managers and new employees a first occasion to talk about expectations, duties, rights and responsibilities, and acceptable standards of behaviour, including requirements related to non-partisanship and political activity.

Therefore, the Review Team recommends that:

6.1 To build awareness about public service values and culture, deputy heads and managers should seek opportunities to make the taking of the oath or solemn affirmation meaningful when an individual joins the public service.

Non-Partisanship and Political Activity

Part 7 of the PSEA recognizes the right of employees⁷⁶ to engage in political activity while maintaining the political impartiality of the public service. Under this Part, the Public Service Commission has a mandate to administer provisions related to the political activity of employees and deputy heads.

Although the Commission is mandated to investigate allegations that employees or deputy heads have contravened the legislation, it is not alone in safeguarding non-partisanship. Employees at all levels, managers and deputy heads, the Clerk of the Privy Council and even parliamentarians have a role to play, and their efforts must be ongoing. Furthermore, there are other important instruments at play, including the *Values and Ethics Code for the Public Service*, the *Public Servants Disclosure Protection Act* and *Accountable Government: A Guide for Ministers and Ministers of State, 2011*.⁷⁷ Along with the PSEA, each contributes to maintaining a public service that remains non-partisan and avoids the degree of politicization that has been experienced in other, comparable countries.⁷⁸

76. For purposes of Part 7, employees also include persons employed by five separate agencies and the Public Service Staffing Tribunal. This latter category encompasses approximately 47,000 people.

77. *Values and Ethics Code for the Public Service; Public Servants Disclosure Protection Act; Accountable Government: Guidelines for Ministers and Ministers of State, 2011*.

78. See, for example, Public Service Commission of Canada, *Special Report to Parliament: Merit and Non-Partisanship under the Public Service Employment Act (2003)*, Enhancing the approach for safeguarding the non-partisanship of the public service, March 22, 2011.

Did You Know?

For purposes of Part 7, “political activity” means:

- (a) carrying on any activity in support of, within or in opposition to a political party;
- (b) carrying on any activity in support of or in opposition to a candidate before or during an election period; or
- (c) seeking nomination as or being a candidate in an election before or during the election period.

Source: [Section 111, Public Service Employment Act \(2003\)](#)

Stakeholders and the central HR organizations provided input on political activity and the related policies and procedures put in place under the new PSEA. Based on information gathered during engagement sessions, stakeholders find that there are clear processes in place for obtaining permission to seek nomination, to be a candidate or to take leave to seek election in a federal, provincial, territorial or municipal election. Neither stakeholders nor bargaining agents raised concerns about the current definition of political activity in the PSEA, the processes associated with employees exercising their democratic rights or the avenues available to them to learn about their rights and obligations.

A number of stakeholders referred to other pursuits that do not fall under the current definition of political activity but that give rise to apprehensions about an increasingly partisan public service. Some bargaining agents and employees spoke about employees’ personal interests and involvement in initiatives that might appear to have an advocacy dimension, for example, sitting on the board of a non-profit organization, attending meetings about environmental issues or commenting on a topical issue on the Internet. The apprehension is that having these types of interests or engaging in this type of advocacy may be interpreted as inappropriate, if not actually a violation of the public service’s obligation to impartiality, either because these issues or organizations may represent positions more closely aligned with one political party than another or because they advocate a position different from that set out by the Government.

The PSC believes that continued attention must be paid to how and when employees learn about their rights and obligations regarding political activity. The PSC typically sends messages to deputy heads to be shared with employees when an election is, or appears to be, imminent, whether at the municipal, provincial, territorial or federal level. These messages inform employees about their rights and obligations and the procedures to follow with respect to political activity. The Commission has also created a dedicated website⁷⁹ that includes guidance

79. For more information on political activities, consult the Public Service Commission’s [website](#).

and a tool⁸⁰ to help employees assess any planned activity and make reasonable decisions about whether it might impair their ability to perform their duties in a politically impartial manner.

A small number of allegations of improper political activity are filed with the Commission each year. Over a four-year period, 27 of 33 investigations were substantiated on the basis that employees failed to request the Commission's permission before becoming candidates. The investigations resulted in a range of consequences for the employees in question, including letters reminding them of their obligations and written reprimands. It is worth noting that if an allegation is substantiated, the PSEA authorizes the Commission to dismiss an employee or take corrective action. For matters other than improper political activity, the *Financial Administration Act* provides to deputy heads authority for discipline, ranging from a written reprimand to suspension. This is yet another example of the importance of the relationship between deputy heads and the Commission, who must collectively ensure that the system functions effectively to address non-partisanship and political activity in the public service.

The Commission believes that the Act does not completely address the range of issues that need to be addressed to safeguard the non-partisan nature of the public service. In a special report to Parliament,⁸¹ the Commission argued that the risks to non-partisanship are greater now than ever before because the external context has changed significantly since the new PSEA came into force. According to the Commission, there are now a greater number of advocacy initiatives, and social media and networking tools are in widespread use.

The Commission is also concerned about the potential for politicization of the public service. It believes that more needs to be done to safeguard the non-partisan nature of the public service by addressing gaps it believes exist in relation to Governor-in-Council appointments (which are not within the Commission's mandate), political activity by employees and deputy heads, and the relationship between the public service and the political sphere.⁸² The Commission provided little factual information about the nature and magnitude of the risk or the frequency with which this risk is manifested in relation to each of the gaps identified. In the absence of substantiating evidence, the Review Team is concerned about any doubt that may be cast on the non-partisan nature of the public service and whether appointments to it are based on merit.

80. For more information, consult the Public Service Commission's [Political Activity Self-Assessment Tool](#).

81. Public Service Commission of Canada, [Special Report to Parliament: Merit and Non-Partisanship under the Public Service Employment Act \(2003\)](#), The relationship between the public service and the political sphere, March 22, 2011.

82. Ibid., [paragraph 4.55](#).

The Commission's special report to Parliament advocated for independent assurance that GIC appointments to many senior positions in the CPA are based on merit and not subject to political influence. It suggested that one option is for the Public Appointments Commission, provided for under the *Federal Accountability Act*, to undertake this task; alternatively, the Commission proposed expanding its mandate under the PSEA. However, it offered no information to demonstrate the basis for its assertions related to GIC appointments to the CPA.

While it is true that the processes for selection of senior officials are not subject to independent oversight, the Commission's special report does not adequately reflect the work that the Privy Council Office has done to ensure that candidates for these appointments are selected for their competence, which is demonstrated through open and rigorous selection and assessment processes. For each leadership and full-time appointment, other than those of deputy ministers and associate deputy ministers, selection criteria are identified, a recruitment strategy developed and an assessment conducted for each candidate. Openings are posted on a publicly accessible website.

Appointees must comply with the requirements of the *Conflict of Interest Act*, as well as the ethical and political activity guidelines set out by the Government in *Accountable Government: A Guide for Ministers and Ministers of State, 2011*.⁸³ Order-in-Council appointments to most non-judicial positions are tabled in the House of Commons, which provides Parliament with a means to scrutinize the qualifications of appointees. Thus, although the appointments are made by the GIC, selection is based on competence as opposed to partisanship and is made in a fair and transparent manner.

The second gap the PSC identified relates to political activity on the part of employees and deputy heads. It notes an ongoing requirement to ensure that employees are sensitized to the potential impact of engaging in activities on the real or perceived political impartiality of the public service.⁸⁴ Deputy heads are responsible for guiding and addressing the behaviour of their employees. This includes establishing codes of conduct, defining standards for performance and dealing with shortcomings or breaches. In this context, the *Values and Ethics Code for the Public Service* (which is being updated) and a new policy on conflict of interest are important tools to guide deputy heads and employees with regard to the impartiality of the public service.

83. Privy Council Office of Canada, *Accountable Government: A Guide for Ministers and Ministers of State, 2011*, May 2011.

84. Public Service Commission of Canada, *Special Report to Parliament: Merit and Non-Partisanship under the Public Service Employment Act (2003)*, paragraph 4.68, March 22, 2011.

The legislation prohibits deputy heads from engaging in any political activity other than voting in an election. The Commission may only investigate whether a deputy head has contravened this requirement upon receipt of an allegation from a person who is or has been a candidate in an election. Up to now there have been no allegations that a deputy head has engaged in prohibited political activity. Nonetheless, the Commission contends that the PSEA should be amended to provide it with greater discretion to investigate whether a deputy head may have engaged in any political activity other than voting and, secondly, to apply Part 7 of the PSEA to any GIC appointments to the CPA that are made under legislation other than the PSEA.

With respect to giving the Commission additional investigative authority, the Review Team is of the opinion that — given that those most likely to complain are other candidates, the absence of substantiated cases to date and the remote likelihood that deputy heads would engage in overt political activity — there is little justification for expanding the Commission’s authority. The current instruments to deal with political activity are sufficient. In addition, should such a change be made, deputy heads would have legitimate concerns about their privacy.

Therefore, the Review Team recommends that:

6.2 The shared responsibility for public service impartiality is best maintained through effective communication and engagement, collaboration among the various authorities and clear guidance to employees, rather than through additional rules, restrictions or investigative authority.

With regard to the proposed application of political activities provisions under Part 7 of the PSEA to a broader segment of GIC appointees, it is worth noting that the conduct of public office holders is already subject to policies and guidelines overseen by PCO. These include specific requirements with respect to political activities and the ethical guidelines that form part of the office holders’ terms and conditions of office. Office holders are also subject to the requirements of the *Conflict of Interest Act*. Moreover, public office holders are not public service employees, and they are appointed under a wide range of other statutes. Given all of these safeguards and the nature of GIC appointments, the Review Team does not advocate amending the PSEA to guide the conduct of the broad range of public office holders.

The Commission believes that the most complex dimension of safeguarding a non-partisan public service lies in the relationship between employees and elected officials as represented by ministerial staff, over which the PSC has no jurisdiction. It is worth noting that ministerial staff members are appointed at the pleasure of ministers. By their very nature, they must be exempt from merit as defined in the PSEA. Despite this, the Commission recommended a code of conduct for ministerial staff and better guidance and training for them in order to address

its concerns. *Accountable Government 2011: A Guide for Ministers and Ministers of State* outlines standards of conduct expected of ministers and their staff, and addresses a range of administrative, procedural and institutional matters. The most recent version, issued in June 2011, incorporates essential information explicitly addressing the roles and responsibilities of exempt staff and important differences between the latter and those of public service employees.

Finally, the Commission pointed to a need for continued vigilance when former ministerial staff and former GIC appointees become public service employees. Although there have been only 31 such appointments in a four-year period,⁸⁵ the Commission notes that they “can have a significant impact on the real and perceived non-partisanship of the public service.”⁸⁶ The implication is a serious one. However, the Commission provided neither any details about the nature of the risk nor any evidence (for example, from audits and investigations) that these individuals are unable to perform their duties as public service employees in a non-partisan manner by virtue of their prior employment as either ministerial staff or GIC appointees.

In recent years, more public service employees have presented themselves as candidates for municipal elections than for provincial, territorial or federal elections. In 2009–10, the PSC received 99 new requests for permission to seek nomination as, or to be, a candidate in an election. Of these, 90 percent (89) were for municipal elections, of which 8 were for full-time elected office.⁸⁷

Although the Commission may impose leave without pay as a condition of permission for an employee who wishes to be a candidate in a municipal election, being elected to municipal government does not automatically result in the individual ceasing to be a public service employee. Each case is assessed individually based on such factors as the employee’s duties in the organization and the level and visibility of his or her position. Although many municipal offices are part-time some, particularly in larger municipalities, are full-time. This discrepancy raises issues with respect to the equitable treatment of individuals seeking and being elected to public office at all levels of government. Furthermore, it does not make the fundamental message about the balance that must be struck between rights and obligations as clear as it could be.

85. This reflects a very small percentage of the 160,463 appointments to the public service of all durations, excluding students. (Source: Public Service Commission of Canada, 2006–07, 2007–08, 2008–09 and 2009–10 annual reports, Overall Hiring To and Within the Public Service).

86. Public Service Commission of Canada, *Special Report to Parliament: Merit and Non-Partisanship under the Public Service Employment Act (2003)*, paragraph 4.79, March 22, 2011.

87. Public Service Commission of Canada, *Annual Report 2009–2010*, paragraph 4.23, October 2010.

Therefore, the Review Team recommends that:

- 6.3 The *Public Service Employment Act* be improved by harmonizing the conditions for seeking to be a candidate in a municipal election with those for federal, provincial and territorial elections and clarifying that an employee ceases to be employed if elected to a full-time office in a municipality.**

Finally, although employees may be required to take leave without pay from the public service when they are elected, there are no requirements or restrictions for individuals who already hold municipal office when they enter the public service. This does not provide for clear or equitable treatment of individuals in similar circumstances.

Therefore, the Review Team recommends that:

- 6.4 The *Public Service Employment Act* be amended so that a person would be required to seek the Commission's opinion on whether the municipal office they already hold might impair or be perceived as impairing their ability to perform their new public service duties in a politically impartial manner and that the same conditions or consequences would apply as for an employee elected to municipal office.**

Conclusion

The importance of loyalty, non-partisanship and respect for democratic values cannot be over-emphasized. Non-partisanship is a cornerstone of the Canadian federal public service. It is not only recognized in the preamble to the *Public Service Employment Act*, but it is also found in the *Conflict of Interest Act* and in the *Values and Ethics Code for the Public Service*, which clearly establishes that public service values guide deputy heads, managers and employees in their work and their professional conduct.

The duty to safeguard, uphold and apply public service values is shared among individuals and institutions, each with their own authority and responsibility to act. Employees must be provided with information and guidance about what is expected of them and where they may go to seek additional direction. They are then accountable for their actions and subject to oversight. The oath or solemn affirmation of office represents an opportunity to begin what should be an ongoing dialogue over the course of an employee's career.

In the Review Team's opinion, clear guidance for deputy heads, supported by strong relationships among the Commission, the Office of the Chief Human Resources Officer and deputy heads, are essential to enable each to act within their particular sphere of responsibility and contribute to safeguarding non-partisanship in the public service. On a practical level, for

example, HR staff or deputy heads should be able to engage with the Commission's representatives to seek advice or to discuss a situation without fear that doing so may lead to an investigation. Similarly, clear guidance for ministers and their staff is critical, and is available.

The legislative provisions related to political activity appear to be working well and are widely respected and broadly understood by all stakeholders. More challenging, particularly in a world transformed by social media, are the activities of media-savvy public servants legitimately interested in their community, their country and global issues. It is important that the public service continue to recruit from among these motivated and engaged individuals. It is equally important that the non-partisan nature of such an important public institution be maintained. However, reflecting the consensus among academics and practitioners convened by the Public Service Commission in 2010,⁸⁸ a regime of rules is an unwieldy instrument for that purpose. The education of public service employees (from the time that they are first appointed), readily available guidance and frequent discussions about how values and ethics are manifested in the workplace, and what the boundaries between personal and professional lives should be, are more likely to prove successful.

88. The PSC co-hosted a [symposium](#) in March 2010 with the University of Ottawa's Graduate School of Public and International Affairs.

Chapter 7: Credible Recourse and Effective Conflict Management

An important objective of the *Public Service Modernization Act* was to introduce simpler, timely options for addressing disputes related to people management by minimizing reliance on costly, time-consuming adjudication and increasing the opportunity to resolve issues closer to the workplace. The legislation was predicated on a significant culture change through which managing and resolving staffing and other disputes informally would become credible and effective components of the recourse system.

The PSMA allows for a range of options to resolve workplace issues, from formal to informal options. “Formal” involves a legislated procedure for hearing and deciding a dispute. The new legislation provides for a Public Service Staffing Tribunal and a Public Service Labour Relations Board with mandates to adjudicate disputes related to their respective areas of responsibility. Both may offer mediation services to assist the parties to resolve their disputes. The *Public Service Employment Act* and the *Public Service Labour Relations Act* also give deputy heads and their delegates the authority to address staffing and other people management disputes within their organizations. Deputy heads may, in consultation with bargaining agents, develop options best suited to their organizational needs and circumstances. The latter have come to be known as “informal” recourse options.

The Review Team explored the extent to which two new options — informal conflict management systems and informal discussion for internal staffing decisions — are helpful additions to formal measures for raising, addressing and resolving conflicts and disputes related to people management in the public service. The Review Team also looked at whether measures, such as mediation, contribute to timely and effective resolution of staffing and other workplace disputes.

Staffing Recourse

Staffing recourse under the PSEA is made up of a complex system of authorities and measures. Their application is determined by whether the appointment is internal or external, and the grounds or issues to be addressed (e.g., fraud, political influence or abuse of authority). The PSST, deputy heads and the Public Service Commission retain authority for various aspects of recourse for internal appointments as described on the following pages. The Commission alone has authority for recourse in relation to external appointments (which are open to persons employed in the public service and others, including the general public).

Positive inroads have been made since the new PSEA came into force. The PSC's Survey on Staffing and input from bargaining agents, employees, managers and HR staff all point to the fact that good use is being made of informal discussion. Unlike staffing appeals under the former PSEA, decisions by the Public Service Staffing Tribunal are not having the same negative impacts on the appointment process, such as imposing cumbersome requirements. However, some areas require continued attention: chief among them, the administrative challenges associated with repeated informal discussion in large appointment processes (described in Chapter 4), a lack of clarity surrounding deputy head investigations, and the length of time it takes for the Tribunal to render a decision.

Informal Discussion

The PSEA provides an opportunity to discuss informally, at any stage of an internal appointment process, the decision to eliminate a candidate from further consideration. Informal discussion represents a significant change in the PSEA, one designed to satisfy both employees' and managers' interests on a timely basis. Under the former Act, corrective action could only be taken following a decision by an appeal board, which sometimes delayed appointments by months or even years. Informal discussion was intended to contribute to transparency and to increase efficiency by explaining to candidates why they were not selected, on the one hand, and affording managers an opportunity to correct any errors or oversights that may have occurred, on the other.

Informal discussion is a bright spot in implementation of the new legislation. Across the country, employees, managers and HR staff report that informal discussions are taking place regularly, and many expressed satisfaction with how they are being carried out. The PSC reported that of unsuccessful candidates who responded to its Survey of Staffing, 47 percent had participated in informal discussion; 65 percent of these were satisfied with the outcome and 85 percent were satisfied with the timeliness in which informal discussion took place.⁸⁹ Furthermore, 13 percent of respondents who had participated in informal discussions were reintegrated into the staffing process, to be considered for appointment. However, managers and HR staff pointed out that in large, collective appointment processes, conducting informal discussions efficiently represents an administrative challenge and takes large amounts of time. Some individuals request informal discussion each time a decision is taken not to appoint them, which could be many times, depending on the number of appointments being made. Despite this, the Review Team's findings suggest that informal discussion is an important alternative to formal mechanisms which contributes to greater understanding about internal staffing decisions and affords an opportunity to correct errors or omissions on a timely basis.

89. Public Service Commission of Canada, [Annual Report 2009–2010, Table 7](#), October 2010.

Quick Fact

Two thirds of participants at engagement sessions in the National Capital Region and the regions responded that informal discussion was a standard practice a “great extent” or a “very great extent” of the time.

Source: PSMA Review Questionnaire

Deputy Head Investigations

In addition to exercising their delegated appointment authority, deputy heads may revoke an internal appointment and take corrective action, but only if, after investigation, they are satisfied that errors, omissions or improper conduct affected a selection decision for which they are responsible. The legislation does not define what constitutes an investigation or how one is triggered, although the Commission has established certain requirements, contained in its policy. Chief among these is that employees likely to be affected by an eventual decision must be afforded a meaningful opportunity to present relevant facts and to have their situation considered fully and fairly.

Some bargaining agents and the PSC have questioned whether employees’ concerns are being addressed other than by informal discussions and complaints to the PSST. They suggested that if unsuccessful candidates are dissatisfied with the outcome of informal discussions, there is no real forum for raising and addressing concerns other than a formal complaint to the Tribunal.

A small number of investigations have led to revocation or corrective action by a deputy head since 2006. The Commission sees this as indicative of the system’s ineffectiveness in responding to employees’ staffing concerns, other than through formal recourse to the Tribunal. Furthermore, the PSC said that it receives complaints from employees about internal appointment processes, despite deputy heads having authority to investigate employees’ staffing concerns. Finally, it reported that it took an average of 78 days after possible errors or omissions identified in an audit were brought to the responsible deputy head’s attention, for a decision about whether or not to launch an investigation.⁹⁰ The PSC argued that this is not timely recourse and leaves issues unresolved for too long. The Commission believes that investigation is a responsibility that deputy heads are not necessarily fulfilling, as opposed to a limitation on deputy heads taking corrective action or revoking an appointment,

90. Data collected from PSC Investigations Directorate between January 19, 2009, and April 30, 2010.

The manner in which concerns related to staffing come to a deputy head's attention and are addressed varies across the public service. Several deputy heads said that they had not conducted investigations per se, although some had met with employees about staffing concerns or ensured that they were heard through other means, including phone calls and face-to-face meetings to establish facts and explore possible actions. It was clear that for some deputy heads, "investigation" implies something formal and structured. Few characterized their actions or interventions as investigations, while a small number had little knowledge of whether or how employees' staffing concerns were addressed.

The PSC's accountability and reporting tools emphasize the number of investigations and the follow-up actions taken by deputy heads to deal with founded investigations.⁹¹ At the same time, its policy and accountability material provide inconsistent information. While the former specifies that deputy head investigations are discretionary and not complaint-driven, the latter emphasizes investigations and states that they may be triggered by complaints or grievances.

The options available for raising and addressing staffing concerns outside of informal discussions on one end of the spectrum, and complaints to the Tribunal on the other, appear to be unclear to many stakeholders. Furthermore, the PSC's emphasis on the number of departmental investigations is inconsistent with the intent of the legislation, which is a limitation on the deputy head's authority to revoke or take corrective action and not a discrete authority per se. The Commission's approach has so far failed to capture — or to reinforce — the essence of what was intended, which was to give deputy heads a means to resolve staffing concerns on a timely basis outside of the formal complaint process.

Ultimately, deputy heads are accountable for the manner in which staffing authority is exercised in their organizations. They should, therefore, be aware of concerns related to staffing in their departments or agencies. They should also ensure that employees know how and to whom they can bring their concerns if there has been an error, omission or improper conduct linked to an appointment decision that affects them. This is an area where additional effort and information could increase fairness and transparency and, ultimately, trust in appointment decisions. The new legislation intended the majority of concerns related to staffing to be addressed within departments: only the most serious complaints, which pertain to abuse of authority, should be brought to the Tribunal.

On a related point, the Commission raised an issue with the Review Team that was also reflected in its special report to Parliament. In a small number of instances, deputy heads may be directly

91. See, for example, the reporting requirements for [Element 6 — Merit \(Part B, In-house investigations\) in the Public Service Commission's 2010-2011 Departmental Staffing Accountability Report](#).

involved in an appointment process; for example, deputy heads occasionally sit as members of an assessment board or provide a references for a candidate, often — although not exclusively — at the senior executive level. The Commission contends that it is a conflict of interest for deputy heads to make determinations about complaints related to appointments in which they have been involved. The PSC proposed that authority under the Act to investigate and revoke or take corrective action with respect to an appointment in which a deputy head has played a part should therefore be given to the Commission.

It may be difficult for anyone involved in an appointment process to review his or her decision objectively, let alone revoke an appointment or take corrective action. However, just because doing something is unpleasant or difficult does not mean that the decision should be legislated away and given to someone else. That said, it is important to respect procedural fairness, which would imply asking someone other than the person who participated in the appointment process to investigate, report on their findings and make a recommendation. This could be another deputy head, an outside resource or the Commission — the PSEA is capable of accommodating different approaches. Furthermore, the Commission already has the means to rescind, revoke and/or impose terms and conditions on authorities delegated to deputy heads when there is reason to do so.

Therefore, the Review Team recommends that:

- 7.1 The Public Service Commission continue to seek opportunities to engage with deputy heads about the importance of fair and credible processes when deputy heads exercise their authority to revoke or to take corrective action with regards to appointments in which they may have been directly involved.**

Complaints to the Public Service Staffing Tribunal

The Public Service Staffing Tribunal was established to hear and decide staffing complaints on three grounds: abuse of authority in the application of merit; abuse of authority in the choice of appointment process; and failure to assess an individual in the official language of his or her choice. In coming to a decision, the Tribunal may interpret and apply certain provisions of the *Canadian Human Rights Act*. The Tribunal may also offer mediation services at any stage in order to resolve a staffing complaint.

Did You Know?

Under the former Act, the Public Service Commission established appeal boards to conduct inquiries into whether an appointment had been made according to merit. Once notified of an appeal board's decision, it was then up to the Commission to make, to confirm or to revoke the appointment. It was also the Commission that determined any corrective action that might be required.

The broad interpretation given to whether an appointment was made "according to merit" was less a direct product of the legislation and more a product of the case law that accumulated in the years leading up to the PSMA.

The Review Team heard relatively little about staffing complaints during its engagement sessions. This is not altogether surprising given the limited experience that most stakeholders have with formal staffing recourse. It is nonetheless telling because appeals under the former legislation were arguably the most criticized aspect of the staffing system. In fact, the cumbersome process, rigidity and delays that resulted from appeal decisions were among the key motivations to modernize the legislation, particularly because there were no options outside of appeals or investigations, which could take months or even years to be concluded and even then often failed to satisfy individuals' interests.

The average number of complaints brought to the Tribunal annually (772) is considerably lower than the average number of appeals during the last four years under the former Act (1259).⁹² An important difference is that, unlike appeals, which were made before an appointment process was finalized, complaints to the Tribunal are triggered by an actual or a proposed appointment. The effect of this change is that appointment processes are no longer paralyzed until a complaint is resolved. This is particularly important for collective or generic appointment processes, which take on average 23 weeks to complete and are increasingly being used to fill positions in one or more organizations.

Quick Facts

An average 772 complaints are made to the PSST each year. Of complaints referred to mediation, parties agree to mediate 55 per cent of the time and, of these, settlements are reached in 87 per cent of cases. Approximately 15 per cent of cases are closed because of lack of jurisdiction or because they were not timely. Roughly 53 per cent of cases set down for a hearing are withdrawn before the hearing. More than 65 per cent of requests to order that information be provided are granted; 98 per cent of these are originated by complainants.

Source: *PSST Annual Report 2009–2010*

92. Public Service Commission of Canada, *Annual Report, 2003–2004* and *Annual Report, 2005–2006*.

Although fewer than 5 percent of complaints go all the way up to and including a hearing and decision,⁹³ delays need to be addressed on a number of fronts and at several levels. Complaints left unresolved for lengthy periods may have an impact on the workplace and the workforce, not to mention creating uncertainty for the employee whose appointment is the subject of a complaint. Repeated requests for extensions may fuel perceptions of a lack of transparency, while the extensions themselves may lead to questions about fairness and efficiency by one or other of the parties.

Therefore, the Review Team recommends that:

7.2 More effort is needed on the part of deputy heads, managers, employees and their respective representatives to enable effective dialogue and recourse to resolve appointment issues. This implies, for example, being aware of and addressing staffing concerns at the earliest opportunity, using informal and internal mechanisms effectively, and resolving formal complaints on a timely basis.

Stakeholders complained that the time the Tribunal takes to hear and decide a complaint is unacceptably long. Surprisingly, some HR staff and managers were unaware that once a complaint has been brought to the Tribunal they may still work to resolve the issue within their organizations, for example by using their informal conflict management system (as described in the next section). The Tribunal acknowledges that it takes 10 to 15 months on average to deal with a complaint that goes to a hearing and for which a final decision must be rendered. This may be partly attributable to the relative newness of the Tribunal, which continues to develop its case law. More significantly, however, the parties to a complaint may request extensions for any number of reasons; this has resulted in an average of 6,400 days each year that are effectively lost.⁹⁴ The Tribunal intends to discuss this with stakeholders at an appropriate time, to amend certain of its procedures and to improve its case management system to facilitate decision making and enhance performance.

Therefore, the Review Team recommends that:

7.3 To minimize the impact of the significant delays in staffing recourse that are incurred as a result of repeated extensions, the Tribunal should immediately take action to improve its procedures and case management system, in consultation with its stakeholders.

93. Ibid.

94. Public Service Staffing Tribunal, *Annual Report 2009–2010*, “Overall summary and the way ahead,” April 2011.

Some bargaining agent representatives argued that the grounds for complaint to the Tribunal are too narrow and that the threshold for upholding a complaint is too high. They would prefer a return to the former system, which was less legalistic and intimidating. Overall, however, the Review Team believes that the new approach supports the objectives of giving deputy heads greater opportunity to resolve concerns related to staffing, close to the decision makers, leaving the Tribunal to hear and decide issues that constitute an abuse of authority and creating fewer delays when making appointments. Although the Review Team does not support returning to the former system, which set the bar lower for allowing appeals, there is room for improvement in the operation of the new recourse regime.

Informal Conflict Management Systems

The new *Public Service Labour Relations Act* requires that deputy heads in the CPA establish an informal conflict management system (ICMS) in their organization, in consultation with bargaining agents. ICMS is intended to support a culture of effective conflict management and resolution using a collaborative, problem-solving approach. The Review Team was interested in whether ICMS is used and understood in departments, and how effective it is in preventing, managing and resolving disputes.

All departments and agencies have fulfilled the legislative requirement to have an ICMS in place. The systems take many forms and cover conflict prevention, management and resolution through training, mediation, facilitation and other means. The services and resources available vary, and access is uneven, especially in small departments and agencies and in the regions. Bargaining agents commented that although their members used ICMS to good effect, there were challenges, particularly in smaller organizations. They were concerned that there is not a clear separation between HR and ICMS service providers in several organizations, which may compromise the real or perceived impartiality with which some disputes are addressed.

Did You Know?

ICMS refers to a whole-of-system approach to conflict management and not a computer program. ICMS offers options for preventing and addressing conflicts, including self-resolution, coaching, facilitation, mediation, conflict assessments and group intervention tools.

Source: *Office of the Chief Human Resources Officer*

The ICMS community network was established shortly before the new legislation came into force. Created as a community of practice, its growth has been organic, i.e., it has evolved without benefit of central direction or funding. Members conduct research and share best practices, develop and exchange tools to support their activities, and have developed a strong network to ensure ICMS thrives. Their efforts appear to have largely been successful, and the

ICMS community network should be commended for its initiative. Despite some access challenges, ICMS has become a positive and effective tool for managing conflict in the workplace.

Therefore, the Review Team recommends that:

- 7.4 To maximize access to ICMS for employees across the public service, to capitalize on economies of scale and to enable the sharing of best practices, deputy heads in the core public administration are encouraged to explore opportunities to share ICMS services, particularly in the regions and with small departments and agencies.**

Mediation

Among the options available to assist in dispute resolution, both the Public Service Staffing Tribunal and the Public Service Labour Relations Board may offer mediation services. The Tribunal offers mediation services after it is seized of a complaint, while the PSLRB offers preventative mediation services as well as mediation during adjudication and collective bargaining. Mediation may also be available within departments and agencies as part of an ICMS.

The PSLRB's and the PSST's mediation services are widely used and have assisted parties to reach settlements in more than 80 percent of mediated cases. Over and above the statistics, stakeholders provided feedback to the Review Team about these mediation services. For example, the Office of the Chief Human Resources Officer noted that mediation related to collective agreements has been productive and has contributed to a better understanding of the parties' interests. Bargaining agents, HR staff and managers also spoke highly of the services offered by both administrative tribunals' mediators.

Very little data was available about the influence of departmental mediation services on dispute resolution, whether formal or informal. Consequently it is not possible to assess the extent to which the legislation has succeeded in producing the intended result (i.e., that only the most serious cases will be brought forward to the PSLRB and the PSST). Anecdotal information suggests that departments resolve a significant portion of situations on their own; indeed, during this Review, employees and managers said that they were able to solve their problems without access to a third party to a large extent.

While mediation appears to be a useful means to resolve disputes, there are some concerns. Once a mediated settlement has been reached, the employee often withdraws the grievance or complaint and the file is closed. In a small number of documented cases, however, mediated settlements have not been honoured in departments. Furthermore, some management representatives enter mediation with a limited (or non-existent) mandate to reach a settlement. In effect, management representatives learn the employee's entire case and relay the information to a more senior departmental representative who, in the end, may or may not agree to a proposed settlement. Mediation is usually conducted in person and may mean incurring travel costs and time away from the office for all concerned. Failure to ensure that the right people are there, with the necessary authority and intention, puts the credibility of mediation at risk and may drive a greater number of employees to litigation.

Bargaining agents and the PSLRB suggested that the legislation be amended to clarify where jurisdiction rests for enforcement of mediated settlement agreements. Deputy heads, in whose name mediation and settlements are undertaken, were concerned to learn about the problems associated with mediation because it is an issue that they take seriously. OCHRO believes that, given the small number of cases in which agreements were not honoured, legislative change is premature and the problems experienced to date may reflect a failure on the part of a few individuals to understand the importance of safeguarding the integrity of the mediation process and respecting settlements.

If such situations become, or are perceived to have become, more prevalent, they have the potential to undermine the credibility and integrity of mediation and to discourage employees from using it. This is clearly at odds with the goals of the PSMA. As one bargaining agent noted, failure to respect mediated agreements may "lead to more litigation, either of the initial grievance(s) or new ones filed post-settlement."⁹⁵ Entering into mediation in good faith, having the authority to conclude it and implementing agreed settlements on a timely basis are crucial to maintaining the overall credibility of the alternative dispute resolution system.

Therefore, the Review Team recommends that:

- 7.5 To safeguard the credibility and integrity of the mediation process and recognizing that HR actions are taken in the name of the deputy head, managers must take full responsibility for their people management decisions, including with respect to mediation and the implementation of settlement agreements.**

95. In fact, this has proven to be the case. See for example, [Amos v. Canada \(Attorney General\)](#), 2011 FCA 38.

Adjudication

In light of the increased emphasis on informal conflict management, the Review Team was interested in whether the volume of cases referred to adjudication has changed and whether the adjudication process is functioning effectively for those cases that proceed to the Public Service Labour Relations Board.

The PSLRB offers adjudication services in the areas of grievances, complaints and applications. Only grievances and complaints are addressed in this chapter; applications are considered in Chapter 8.

The Public Service Labour Relations Board provides a wide range of adjudication services. These services fall into three main areas: grievances, complaints and applications.

Grievances (individual, group or policy)

- Interpretation of collective agreements and arbitral awards
- Disciplinary action resulting in termination, demotion, suspension or financial penalty
- Demotion or termination for unsatisfactory performance or for any other non-disciplinary reasons
- Deployment without an employee's consent.

Complaints and applications

- Unfair labour practices
- Reprisal actions taken for raising an issue under Part II of the *Canada Labour Code*
- Certification and revocation of certification
- Determination of successor rights
- Determination of managerial or confidential positions
- Determination of essential services agreements
- Review of prior PSLRB decisions
- Requests for extensions of time to present grievances or to refer grievances to adjudication

As stated previously, there is limited and incomplete data about the number and type of grievances resolved in departments. Although the volume of cases referred to adjudication has declined in recent years, it is difficult to draw firm conclusions about the impact of departmental ICMS or grievance processes on adjudication.

Feedback from a cross-section of users suggests that the adjudication process is not functioning efficiently. Policy grievances, which relate to the interpretation or application of a collective agreement or an arbitral award and affect employees generally, were a particular sore point. Policy grievances are being filed at more than one level (local and national) by a bargaining

agent or are duplicating issues raised through individual or group grievances. Moreover, the timelines for responding to policy grievances are so short that it is difficult to respond effectively.

Therefore, the Review Team recommends that:

7.6 The Chief Human Resources Officer and bargaining agents must together ensure that the process and procedure for filing policy grievances is clear, efficient and effective, particularly in terms of where responsibility rests for bringing policy grievances and for dealing with the same issues through more than one type of grievance.

Some stakeholders indicated that the PSLRB’s adjudicators do not routinely take advantage of the flexibility measures in the legislation to help manage the caseload. In particular, they suggested that the PSLRB should make greater use of pre-hearing conferences. A comparison was made with the PSST, which routinely conducts pre-hearing conferences. The Tribunal reports that 88 percent of cases set down for a hearing are withdrawn following a pre-hearing conference.

Quick Fact

The objective of pre-hearing conferences is to “reduce hearing time and the number of issues in dispute, to focus the parties on the issues that divide them and, finally, perhaps even to open avenues for mediation and settlement.”

Source: Public Service Labour Relations Board

For its part, the PSLRB expressed an apprehension that although its Board members can order or direct that pre-hearing conferences be held, adjudicators do not appear to have the same scope.

Therefore, the Review Team recommends that:

7.7 To enhance the efficiency and effectiveness of the adjudication process, for greater certainty, the PSLRA be amended to give PSLRB adjudicators explicit authority to direct that pre-hearing conferences be held on a routine basis.

Disclosure of information plays an important part in the efficiency of the adjudication process. Departments appear to be cautious about disclosure during the internal grievance process even when there is a strong likelihood that if the matter goes to adjudication, they will be obliged to disclose the information. In such cases employees and their representatives ultimately request that the Board make an order to facilitate the exchange of information between the parties.

Failure to disclose information during the internal grievance process can thus turn into a time-consuming and costly exercise for departments when a case goes to adjudication, in terms of both responding to the request for disclosure and complying with an order. More importantly, the lack of transparency and delays in disclosure erode trust and contribute to inefficiency.

Therefore, the Review Team recommends that:

7.8 To increase efficiency and transparency in resolving disputes, departments, agencies, employees and their respective representatives take a more open and active approach to exchanging relevant information in grievance and adjudication processes.

From time to time, questions arise about the validity of a claim that a document is protected by solicitor-client privilege. The PSLRB views the power to determine the existence of a proper foundation on which to claim solicitor-client privilege as important to ensuring a fair, full and comprehensive disposition of matters before the Board or an adjudicator. However, this raises a significant legal principle that goes well beyond the administration and operation of the statute and, potentially, the Board's powers, and for that reason, the Review Team has not responded to the Board's proposal.

Therefore, the Review Team recommends that:

7.9 The Office of the Chief Human Resources Officer consult the Department of Justice on the matter of solicitor-client privilege in HR-related adjudication. This will enable the issue to be examined more fully in a broader context and to assess what, if any, action might be required.

Increased Efficiency and Effectiveness

Issues related to adjudication that were raised during this Review include the burden of proof in complaints about unfair labour practices⁹⁶ and the means for ensuring efficient and effective adjudication services⁹⁷ at the PSLRB and the PSST.

96. The term "unfair labour practice" can be used in relation to the employer, as well as in relation to the bargaining agent, for example with respect to the duty of fair representation. For purposes of this Report, only the first meaning is considered.

97. This Review was the first opportunity for the PSLRB and the PSST to participate in an analysis of the legislative measures in place and to identify areas in which adjustments might be required that could not be achieved through their existing regulatory authorities.

In cases where a complaint about an unfair labour practice on the part of an employer is brought to the PSLRB, the onus is on the employer to prove that the breach did *not* occur. Put differently, there is an assumption that an unfair labour practice took place and the employer must demonstrate that this was not so. This frequently proves challenging because, typically, unfair labour practice complaints are vague, making it difficult to track the event or action(s). As a result, considerable time is lost and it is difficult to resolve the matter efficiently.

Therefore, the Review Team recommends that:

7.10 To enable an employer to respond fully and defend themselves appropriately, unfair labour practice complaints to the Public Service Labour Relations Board require full factual disclosure of the events, circumstances or actions that gave rise to the complaint.

Only the Chairperson or, if delegated, a Vice-Chairperson may grant an extension to the time limits for presenting a grievance or referring a grievance to adjudication. This may necessitate two separate hearings — one for the chairperson or Vice-Chairperson to deal with the application for extension and another for an adjudicator to hear the grievance. From an administrative standpoint, this places additional strain on the PSLRB's resources and affects the Chairperson's and Vice-Chairperson's ability to concentrate on other matters.

Therefore, the Review Team recommends that:

7.11 To achieve greater efficiency and improved administration of adjudication at the PSLRB, the PSLRA be amended so that the authority to grant an extension is given to adjudicators, in addition to the Chairperson and Vice-Chairperson.

Part 2 of the PSLRA gives the Board authority to make regulations in relation to the grievance and adjudication processes. At the present time, this regulation-making authority applies to nine issues, each of which is enumerated in the Act. The Board may not prescribe regulations about other matters, even if they would increase efficiency or improve administration for all concerned, without an amendment to the Act. Examples of matters where regulations might be desirable include such things as the form and modalities of application for extension of time limits, pre-hearing conferences, and requests for postponement or a change of location of a hearing. It would be neither practical nor efficient to amend the PSLRA each time a new issue is identified for which a regulation-making power is needed.

Therefore, the Review Team recommends that:

7.12 To enable greater efficiency and improved administration for the Public Service Labour Relations Board, the PSLRA be amended to give the Board a general head of regulation-making authority in relation to the grievance and adjudication process.

The Board may make regulations in relation to the grievance and adjudication processes. However, Part 2 also allows employers and bargaining agents to provide, in collective agreements, for their own (i.e., internal) grievance process, which may be different from the one established by the Board's regulations. The current text of the Act may be construed as authorizing bargaining agents and employers to derogate from the regulations that govern the adjudication process. With 26 employers, 88 bargaining units and 30 bargaining agents,⁹⁸ this has the potential to create an administrative nightmare.

Therefore, the Review Team recommends that:

7.13 To ensure greater certainty for the parties to adjudication, the PSLRA be amended to clarify the intended meaning that any rules agreed upon by employers and bargaining agents apply only to the internal grievance process, whereas the PSLRB's adjudication process remains subject to the Board's regulations.

Part 3 of the Act gives the PSLRB jurisdiction for the complaint adjudication process found in Part II of the *Canada Labour Code* as it applies to the public service. Although Part 3 generally provides that the Board's powers apply, with any necessary modifications that circumstances may require, this proviso does not extend to its regulation-making power. As such, the PSLRB does not have the authority to make regulations about such matters as the procedure for complaints brought before it, minimum information requirements and other procedural matters that could contribute to efficiency and effectiveness.

Therefore, the Review Team recommends that:

7.14 To allow the Public Service Labour Relations Board to provide an integrated and comprehensive approach to its adjudication services, the *Public Service Labour Relations Act* be amended to expand the PSLRB's regulation-making authority to include the procedure for complaints brought before it under Part 3 of the Act.

98. Public Service Labour Relations Board, [Annual Report 2009–2010, Appendix 1](#), April 2011.

Like the PSLRB, the Public Service Staffing Tribunal has authority to make regulations related to its mandate to hear and decide staffing complaints. This authority applies to five circumstances at the present time, each of which is specified in the PSEA. This limits the Tribunal's authority to make regulations to enable it to perform its functions better. Stakeholders have asked that the Tribunal amend its regulations to ensure smooth operation of the recourse process, but the PSST has been unable to do so because of the current legislative provisions.

Therefore, the Review Team recommends that:

7.15 To enable the Public Service Staffing Tribunal to better perform its functions, the *Public Service Employment Act* be revised to provide the PSST with a general head of regulation-making authority related to hearing and deciding staffing complaints.

The PSLRA provides that, at the Chairperson's request, a member whose term ceases may continue to carry out his or her functions or responsibilities for up to eight weeks. The same option exists for members of the PSST. Experience has shown that the eight-week limit is unrealistic given the unpredictable nature of adjudication already under way. A literal interpretation of the Act would require that if a case is not concluded within the eight-week period, adjudication would have to start anew before a different member, when witnesses may no longer be available, memories might not be as clear and costs would rise. In short, this restriction undermines the fairness, efficiency and effectiveness of the process.

Therefore, the Review Team recommends that:

7.16 To enhance fair, efficient and effective administration of labour relations and staffing recourse, the eight-week cap be removed from the *Public Service Employment Act* and the *Public Service Labour Relations Act*. This would enable the chairpersons of the Public Service Labour Relations Board and of the Public Service Staffing Tribunal to exercise discretion and extend members' terms to complete any function or responsibility already under way on the date that their term ends. This authority should be used judiciously to allow for existing work to be completed rather than to assign new work.

There has been some question about the discretion given to adjudicators with regard to remedies available to them under Part 2 of the PSLRA. Under the former statute, their limited discretion proved to be unsatisfactory in instances where an individual's employment had been terminated and the PSLRB allowed the grievance. The only remedy open to the Board in such cases was to order that the individual be reinstated in the workplace from which he or she was terminated. In a recent case, the Board recognized that reinstatement is not always in the best interests of the

parties, including the person who was terminated. An adjudicator concluded that a monetary award was the more appropriate remedy. There appears to be some continuing uncertainty, which could usefully be resolved.

Therefore, the Review Team recommends that:

7.17 To safeguard workplace well-being, for greater certainty the *Public Service Labour Relations Act* be amended to give the Public Service Labour Relations Board’s adjudicators explicit authority to order compensation (payment-in-lieu) as an alternative to reinstatement to the workplace in the event of an upheld grievance following termination of employment.

From time to time, a member of the Public Service Staffing Tribunal will provide mediation services at a hearing into a complaint. If the mediation leads to a settlement, the complaint is withdrawn, but if not, the hearing must resume. The Tribunal asked that the legislation be amended to enable a member who provides such services at a hearing to continue to hear the complaint as long as the immediate parties to the mediation do not object. Only the complainant and the respondent (i.e., the employee and the deputy head’s delegate) participate in mediation and, consequently they — as opposed to the Commission⁹⁹ — are the ones who have the most at stake if the member who mediates resumes hearing the complaint. Furthermore, the Tribunal’s proposal would contribute to safeguarding the confidentiality of the mediation process.

Therefore, the Review Team recommends that:

7.18 The *Public Service Employment Act* be amended so that a member who provides mediation services at a hearing is able to continue hearing the complaint as long as the complainant and the respondent agree.

The Public Service Labour Relations Board, the Public Service Staffing Tribunal and the Public Service Commission routinely post their decisions on their websites. This is an important means to support transparency and accountability in the administration of proceedings. It also contributes to greater consistency in decision making and facilitates access to relevant information for those who have, or may have, interests in the same or similar issues. Despite this, some people have questioned this practice on the basis that it is not consistent with obligations to protect personal information under the *Privacy Act*.

99. In the event that a complaint pertains to an appointment at the PSC, the deputy head concerned would be the PSC’s President and, in his or her capacity as the respondent, he/she would have the same discretion to agree or to object as any other deputy head.

Therefore, the Review Team recommends that:

- 7.19 For greater certainty, the *Public Service Labour Relations Act* and the *Public Service Employment Act* be amended to clarify that the Public Service Labour Relations Board and the Public Service Staffing Tribunal post on their websites the full text of formal decisions rendered under the *Public Service Labour Relations Act* and the *Public Service Employment Act*. The PSEA should be further amended to clarify that the PSC may, in making public its formal decisions about investigations and audit reports, disclose, at its discretion, any personal information pertaining to individuals and that this disclosure should be considered an appropriate use of personal information under the PSEA and the *Privacy Act*.**

On a related point, it is essential that draft notes, orders and decisions be protected until they are finalized by Tribunal members or mediators. There have been instances where parties have sought to obtain draft documents from members or mediators and to use these in the context of litigation. These should be protected in a manner similar to that in the PSLRA.

Therefore, the Review Team recommends that:

- 7.20 To maintain trust in and integrity of recourse processes and mediation services, the *Public Service Employment Act* be amended to protect notes, draft working papers, orders, settlement agreements and decisions unless disclosure is lawfully required.**

Since the legislation came into force the PSST has identified a need to be able to review, rescind or amend decisions because of defects in process. It does not currently have this authority. Without this, it is unable to revise a decision even when information comes to its attention that is materially relevant and warrants such action, as was the case when the PSST received documents only after it had dismissed a complaint based on written submissions.

Therefore, the Review Team recommends that:

- 7.21 The *Public Service Employment Act* be amended to enable the Tribunal to review, rescind or amend its decisions in the event that it receives information that would substantively affect the outcome and the reasons for its decision and that could not have otherwise been made available to it.**

The legislated default for proceedings before the Public Service Labour Relations Board is that they are heard by a panel of no fewer than three members. The Chairperson has discretion to

determine if it is appropriate for a case to be heard by a single-member panel. In practice, the vast majority of cases are heard by a single person. The current text of the *Public Service Labour Relations Act* creates confusion for the parties, especially for those who are unrepresented or who are represented by counsel with limited experience in public service adjudication proceedings.

Therefore, the Review Team recommends that:

7.22 To optimize efficiency and increase clarity, the *Public Service Labour Relations Act* be amended so that a single-person adjudication panel becomes the default, while allowing the Chairperson to determine if a panel of three members is required.

Finally, it was observed that current provisions in the PSLRA provide for recovery of adjudication expenses from bargaining agents only. The PSLRB has never applied this provision because it would create inequities among the parties. Furthermore, the Board's costs are covered through appropriations. It was suggested that the provision be repealed, or at the very least amended, to enable the Board to recover any part of the costs of adjudication equally from all parties.

Therefore, the Review Team recommends that:

7.23 Since there is no apparent reason for retaining the provision pertaining to recovering adjudication expenses from only one of the parties to adjudication, that it be rescinded from the *Public Service Labour Relations Act* at an appropriate opportunity.

Conclusion

There are many options for raising, addressing and adjudicating people management conflicts and disputes in the public service, as can be seen on the next page. Although it needs improvements in some areas, the system appears to function reasonably well. Without data, it is not possible to assess the exact impact of the new measures and to draw firm conclusions about how effective they have been since the legislation came into force.

New processes in place offer considerable promise for responding to concerns related to staffing on a timely basis. The number of complaints to the Tribunal is lower than the number of appeals under the former statute, and they are not having the same deleterious effects. More needs to be done, however, to ensure that deputy heads, managers, HR staff and the Public Service Commission actively exercise their respective roles and responsibilities with regard to complaints, revocations and corrective actions. The Public Service Staffing Tribunal must also

move quickly to address the delays in the complaint process because of the potential impact on individuals, notably the person against whose appointment a complaint has been brought.

The new mechanisms introduced in both statutes continue to prove that many issues can be resolved among the parties as long as there is a willingness to do so. Informal conflict management systems and informal discussion appear to be used to good effect and offer employees and managers an opportunity to resolve issues without third-party intervention. Nonetheless, adjudication remains an important option for serious issues such as abuse of authority or where there is loss of employment.

Managers and deputy heads must actively exercise their authority and be prepared to explain their decisions to third-party decision makers. In some instances, new remedies are needed where traditional options may not be adequate or appropriate, such as the capacity for the PSLRB to order payment in lieu of reinstatement following termination of employment. These are important new ways of dealing with difficult situations.

Mediation and other options, such as pre-hearing conferences, are valuable additions to the conflict management and recourse toolkit. Their effectiveness, however, depends on individuals using them competently and to the right end — having the right people at the table and respecting agreed settlements. It also requires that employees, managers and their representatives make a concerted effort to resolve disputes as openly and as expeditiously as possible. Failure to do so will erode trust and credibility in the recourse system and potentially lead to further problems in the workplace.

Public Service People Management Dispute Resolution Options

Deputy heads

Informal

- ▶ Discussion/consultation
- ▶ Coaching
- ▶ Informal discussion
- ▶ Informal conflict management system
- ▶ Mediation

Formal

- ▶ Staffing investigations (prior to corrective action or revocation of an appointment)
- ▶ Grievances (e.g., discipline, hours of work, classification)
- ▶ Harassment investigations

Third-party dispute resolution

Informal

- ▶ Discussion/consultation
- ▶ Negotiation
- ▶ Mediation
- ▶ Settlement conference
- ▶ Conciliation

Formal

- ▶ Staffing complaint (PSST)
- ▶ Adjudication and arbitration (PSLRB)
- ▶ Harassment complaint (CHRC)
- ▶ Discrimination complaint (CHRC)
- ▶ Disclosure of wrongdoing (PSIC)
- ▶ Disclosure reprisal complaint (PSDPT)
- ▶ Official languages complaint (OCOL)
- ▶ Political activity breaches (PSC)
- ▶ Political influence in staffing (PSC)
- ▶ Fraud (in staffing) (PSC)
- ▶ Grievance re NJC directives (NJC)
- ▶ Part II, Canada Labour Code (PSLRB)
- ▶ Pay equity (PSLRB)

Key

CHRC: Canadian Human Rights Commission

NJC: National Joint Council

OCOL: Office of the Commissioner of Official Languages

PSC: Public Service Commission

PSDPT: Public Servants Disclosure Protection Tribunal

PSIC: Public Sector Integrity Commission

PSLRB: Public Service Labour Relations Board

PSST: Public Service Staffing Tribunal

Chapter 8: Collaborative Labour-Management Relations

One of the goals of the *Public Service Modernization Act* was to improve labour-management relations in the public service by creating new forums and opportunities for consultation and collaboration between labour and management, by putting in place new measures to assist parties in the collective bargaining process, and by introducing mechanisms to continue to serve and protect the public interest in the event of collective bargaining disputes. In the minds of the architects of the legislation, moving successfully from adversarial to collaborative problem solving was predicated on a cultural shift on the part of bargaining agents and management.

It should be noted that although the *Public Service Labour Relations Act* has been in force since 2005, a number of provisions, such as those related to strikes, have yet to be tested. It is therefore premature to comment on those provisions, their administration and their operation.

Despite this, the Review Team wanted to know how successful the public service has been in shifting labour relations culture, and it explored whether the new measures have taken hold and are working effectively.

Labour-Management Consultation Committees and Co-development

Labour-management consultation committees (LMCCs) and co-development are formally recognized in the *Public Service Labour Relations Act* and were intended to support effective and harmonious labour-management relations. The Act requires that each deputy head establish a committee in consultation with the bargaining agent(s) to exchange information, to identify problems, to obtain views and advice on workplace issues that affect employees and to develop mutually agreed solutions. Labour-management consultation committees might, among other things, discuss workplace conflicts, harassment or disclosure of wrongdoing, but not individual cases.

Labour-management consultation committees are a relatively bright spot in the implementation of the legislation. They have been established in all departments. There was widespread acknowledgement from all quarters that they are helping to ensure a better, more collaborative labour-management relationship, particularly at the local level. The Office of the Chief Human Resources Officer has co-developed a tool with bargaining agents to enable LMCCs to conduct a self-assessment of their effectiveness.

Quick Fact

Two thirds of participants at engagement sessions felt that labour relations are cooperative a “great extent” or a “very great extent” of the time.

Source: PSMA Review Questionnaire

Although mechanisms are in place to facilitate dialogue and collaborative problem solving, bargaining agents expressed doubts about the degree to which understanding about, and commitment to, meaningful dialogue is shared. They raised several issues, including using LMCCs primarily for information sharing and the demands on bargaining agents’ financial and human resources in order to participate in meetings across departments from coast to coast. In addition, there was a change in context as a result of the introduction of the *Public Sector Equitable Compensation Act* and the *Expenditure Restraint Act* in 2009.

Bargaining agents were not alone in noting that there is a need for a common understanding of what consultation and co-development really entail. Managers and HR staff across the country had different interpretations about when, where and how co-development might serve an organization’s needs. Furthermore, there was an apprehension on the part of some stakeholders that co-development implied co-management, which neither bargaining agents nor management desired. For some, the misunderstandings appear to have translated into a reluctance to explore the possibilities that co-development might offer.

Did You Know?

The Correctional Service of Canada and the Union of Correctional Service Officers used co-development to address harassment in the workplace by identifying a workplace problem and developing a mutually agreed solution to it.

Source: National Joint Council Conference

Although progress has been achieved since the new Act came into force, more work remains to be done by both labour and management.

Therefore, the Review Team recommends that:

8.1 To develop a culture of improved cooperation forged through consultation, co-development and collaboration, the Office of the Chief Human Resources Officer, bargaining agents and deputy heads work together to:

- **develop a shared understanding of what these concepts mean so that they can be put into action more deliberately;**
- **discuss their respective expectations of labour-management consultation committees and ensure that they become a forum for meaningful engagement;**
- **work with the National Joint Council to support and facilitate a clear understanding about the concepts; and**
- **demonstrate their commitment and support by engaging more deliberately and meaningfully at the most senior levels to discuss issues, interests, concerns and possible solutions.**

Quick Fact

Parks Canada and the Public Service Alliance of Canada collaborated on a strategy to manage a very large volume of grievances accumulated over a period of several years. Working together, the parties agreed to an approach that addressed their shared interests. This collaborative initiative is enabling them to resolve the issues efficiently and effectively.

The training material available to managers and senior officials through the Canada School of Public Service does not send an accurate or positive message about the importance of consultation and co-development. Training offered through the School may be the first, or only, exposure managers and senior officials have on this topic.

Therefore, the Review Team recommends that:

8.2 To improve and promote a shared understanding of consultation and co-development, the Canada School of Public Service, working with the Office of the Chief Human Resources Officer, develop a new and comprehensive approach to labour relations training to be included in Authority Delegation Training course offerings, and the Assistant Deputy Minister and Deputy Minister Orientation programs.

National Joint Council

The National Joint Council (NJC) has been operating since 1944. The NJC was formally recognized for the first time in the *Public Service Labour Relations Act*, which has given it greater financial stability and achieved sustainability for its secretariat. The NJC is a forum whereby public service bargaining agents and the employer¹⁰⁰ share information, consult on workplace policies, and co-develop directives on 27 different issues that affect employees throughout the public service. Its members also deal with grievances arising from these directives. The work performed through the NJC complements collective bargaining between individual unions and employers by offering the means to address issues that cut across the public service (e.g., travel and relocation, public service health and dental plans).

The NJC received relatively positive reviews from OCHRO and from bargaining agents. Although the appropriate decision makers participate at the NJC, bargaining agents expressed an apprehension that the employer is reluctant to discuss major issues. They would like to be involved at an early opportunity and to participate in identifying interests, constraints and options before recommendations are finalized and policies or directives are drafted. Continued effort and investment are required to ensure that there is a shared understanding of what consultation entails, to manage expectations and to build strong organizational and personal relationships.

Therefore, the Review Team recommends that:

8.3 The National Joint Council is, and should remain, the forum of choice for effective dialogue and collaborative problem solving, among the parties, for broad labour relations issues and public service-wide matters.

Two-Tier Bargaining

The *Public Service Labour Relations Act* formally recognized two-tier collective bargaining for the first time, which enables the employer, deputy heads and bargaining agents to focus on, and tailor the terms and conditions of a collective agreement to issues or situations specific to, one or more departments. Before entering into such negotiations, the parties must establish a protocol that sets out roles, responsibilities and authorities for two-tier bargaining.

The only example of two-tier bargaining the Review Team identified involved the Correctional Service of Canada and the Union of Canadian Correctional Officers, and the work was undertaken before the PSLRA came into force. Although the Union of Canadian Correctional

100. In this chapter references to “employer(s)” has the same meaning as in the *Public Service Labour Relations Act*. The “employer” is the Treasury Board in the case of organizations named in Schedules I and IV of the *Financial Administration Act*, and the separate agency in the case of any organization named in Schedule V of the Act.

Officers rated the experience as positive, one example does not allow a comprehensive assessment.

Other bargaining agents were less enthusiastic about the utility of two-tier bargaining, deeming it to be of little use if their members are dispersed across many departments. Departmental stakeholders also expressed little appetite to explore two-tier bargaining because it is not well understood and appears procedurally complex and resource-intensive.

It is interesting to note that although the option of two-tier bargaining exists, it has not been used beyond the initial pilot. Rather, bargaining agents and employers successfully use other means to tailor agreements to their needs and interests, including in individual organizations. Tailored terms and conditions can be found in the appendices to a number of current collective agreements. For example, the Public Service Alliance of Canada has successfully negotiated parameters for selecting firearm training participants as part of the Canada Border Service Agency's arming initiative, and as a means of ensuring consistent application of a memorandum of settlement for employees performing certain functions at Human Resources Development Canada. Two-tier bargaining *may* offer potential, but more experience and greater understanding about its application and appropriate use are needed before any conclusions can be drawn.

Collective Bargaining Dispute Resolution

The *Public Service Labour Relations Act* provides two means by which to resolve collective bargaining disputes: binding arbitration and conciliation. One change to the conciliation process is the potential for the Minister¹⁰¹ to appoint a public interest commission to assist the parties in resolving a dispute. Public interest commissions¹⁰² are intended to assist the parties to enter into or to revise a collective agreement and to bring a public interest focus to collective bargaining dispute resolution.

Since the PSLRA came into force, few collective bargaining disputes have gone to binding arbitration and only one has gone to a public interest commission. Even with this limited experience, the Public Service Labour Relations Board, the Office of the Chief Human Resources Officer and bargaining agents have identified challenges associated with the process for establishing an arbitration board or a public interest commission.

101. The Minister of Canadian Heritage is the designated minister for the Public Service Labour Relations Board, and is responsible for appointing individuals to a public interest commission.

102. Public interest commissions replaced conciliation boards, which existed under the former *Public Service Staff Relations Act*.

Quick Fact

The PSLRA requires arbitration boards and public interest commissions to consider, among other things, the state of the Canadian economy and the Government's fiscal circumstances when compensation and other terms and conditions of employment for public service employees are being considered.

Source: [Sections 148 and 175, *Public Service Labour Relations Act*](#)

Referring to their single experience with a public interest commission, the PSLRB, OCHRO, and some bargaining agents spoke of “an unnecessary administrative burden” and delays in establishing public interest commissions. Stakeholders suggested that the process could be expedited if the authority to establish a public interest commission were shifted to the Chairperson of the Public Service Labour Relations Board. Although this might accelerate the process, it would also shift responsibility from a Minister to a non-elected office holder. This ministerial responsibility appears to reflect Parliament's intention that a public interest focus be brought to collective bargaining dispute resolution.

The time limits within which a public interest commission or an arbitration board must be established are strict and proved to be difficult despite the parties' best efforts in their first experience. As a result, it was suggested that the Chairperson should have discretion to extend the time limits when necessary. There needs to be an appropriate balance between adhering to Parliament's intent that the resolution process be expeditious and maintaining the integrity of the resolution process by ensuring all parties have adequate time to prepare.

Therefore, the Review Team recommends that:

8.4 To achieve a balance between efficiency and effectiveness, the *Public Service Labour Relations Act* be amended to enable the Public Service Labour Relations Board's Chairperson to grant a one-time extension to the time limits within which a public interest commission or an arbitration board may be established upon request of either party, with any additional extensions requiring the consent of both parties.

The limitations on eligibility to be a member of an arbitration board or a public interest commission are not as clear as they could be. The PSLRB sought to resolve the apparent inconsistency in eligibility requirements for the employers' and bargaining agents' representatives.

Therefore, the Review Team recommends that:

- 8.5 To clarify the eligibility requirements for employers ' and bargaining agents ' representatives as members of arbitration boards or public interest commissions, the *Public Service Labour Relations Act* be amended by substituting “any” for “the” employer in sections 141, 168 and subsection 182(6), which would be more consistent and avoid any potential conflict of interest.**

Despite the fact that the legislation does not indicate that the PSLRB’s full-time members are ineligible for appointment or nomination to sit as an arbitration board or a public interest commission or act in connection with an alternative dispute resolution process for either one, it would be inappropriate for a full-time member to fulfil any of these roles. It is the Chairperson’s responsibility to assign cases to Board members and full-time members are required to devote their time exclusively to matters under the Board’s jurisdiction.

Therefore the Review Team recommends that:

- 8.6 To avoid a potential or real conflict of interest, the *Public Service Labour Relations Act* be amended to clarify that full-time members are ineligible to be nominated or be considered for appointment as a member of an arbitration board or a public interest commission, or act in any other capacity with either one.**

Finally, several stakeholders and central HR organizations highlighted the importance of clear and unambiguous language in the Act. In particular, the PSLRB noted that the requirement to have “bargained in good faith” before a matter can be referred for arbitration or conciliation has resulted in confusion between the Board’s jurisdiction over bad faith bargaining complaints, and the criteria that must be met before an arbitration board or a public interest commission is established. This could be construed as requiring the Chairperson to embark on an inquiry into whether the parties have indeed bargained in good faith before lawfully establishing an arbitration board or a public interest commission. Not only would this create additional work and delays in the dispute resolution process, it does not reflect the intent of the change introduced in 2005 to ensure that parties must make an effort to come to an agreement through collective bargaining before seeking arbitration or conciliation. The wording found in paragraph 71(1)(b) of the *Canada Labour Code* is clearer and could serve as a model for the PSLRA.

Therefore, the Review Team recommends that:

- 8.7 To ensure that the process for establishing an arbitration board or a public interest commission is as effective and efficient as possible, the *Public Service Labour Relations Act* be amended to clarify the requirement for the parties to have made an effort to bargain collectively before requesting an arbitration board or a public interest commission be established.**

The Exclusion Process

Under the Act, the employer may apply to the PSLRB for an order declaring any employee's position to be a managerial or confidential position and thus excluded from the bargaining unit. Once a position is excluded, union dues are no longer deducted from an employee's salary and remitted to the bargaining agent. Legislative changes in 2005 were intended to improve the efficiency and effectiveness of the exclusion process by clarifying where the burden of proof lies and directing that union dues be held in suspense while any objection to a proposed exclusion is considered by the PSLRB.

Generally speaking, the criteria for exclusions are seen as the right ones, although there is room for improvement in the administration and operation of the legislation. Bargaining agents expressed the view that while the criteria for exclusion are better than those under the former *Public Service Staff Relations Act*, reasonable limitations are necessary. Several bargaining agents opposed the fact that positions designated as the first step in the grievance process are automatically proposed for exclusion. They argued that incumbents of these positions will rarely hear grievances and often have no true managerial function or real authority. They suggested narrowing the grounds for exclusion and relying routinely on an adjudicative process to determine if a position should be excluded.

Quick Fact

Since 2005 the Public Service Labour Relations Board has received 1,896 objections to exclusions, of which 1,410 have been resolved. It can take from less than a month to over a year for an exclusion request to be resolved, depending on the parties' availability.

Source: Public Service Labour Relations Board

The burden of proof is already on the employer in the event of a dispute about proposed exclusions except in a small number of situations, e.g., executive positions. Positions are excluded only after the PSLRB has made an order declaring a position to be one that is managerial or confidential. The process is complex and long and contributes to employee dissatisfaction; there is little to be gained by routinely subjecting every proposal to an adjudicative process.

Therefore, the Review Team recommends that:

8.8 To increase efficiency and contribute to better workplace relations, bargaining agents and the employer should make a deliberate effort to discuss and resolve differences with regard to positions being proposed for exclusion prior to filing a formal objection.

Currently, when an exclusion request is made by the employer, bargaining agents have 20 days in which to file an objection with the PSLRB. If no objection is filed or if the Board concludes that the exclusion proposed by the employer is warranted, the Board will issue an order declaring the position a managerial or confidential position.

Until the Board renders its decision, union dues continue to be deducted from the employee's pay. The dues are held in a suspense account until the Board makes a decision. The employee must nevertheless perform his or her duties as if the position were already declared to be excluded. Furthermore, the employee will not be reimbursed the union dues already paid until after the Board formally issues the order declaring the position excluded. Even in cases where the bargaining agent does not file an objection, this can take weeks or sometimes months.

There is a heavy administrative burden associated with holding union dues in suspense, including the manual calculation of any refunds owed to an employee if he or she leaves the department before an objection is resolved. There may be several incumbents over the period that it takes to resolve a proposal for exclusion and any refunds must be calculated manually.

Therefore, the Review Team recommends that:

8.9 To facilitate the calculation of refunds due to employees when a position is declared excluded, the Office of the Chief Human Resources Officer should liaise with Public Works and Government Services Canada to ensure that improvements are made to the regional pay system.

There were many criticisms about the lengthy exclusion process and the point at which exclusions take effect. It was suggested that the process could be streamlined and simplified by stipulating that exclusions take effect on the day following the period for filing objections, regardless of the date on which the Board eventually processes the application or issues its decision. This appears to be a fair and transparent approach because the parties would be aware from the outset that the dues would be remitted to the bargaining agent or returned to the employee as of a particular date, regardless of whether there is an objection and whether it is upheld or dismissed.

Therefore, the Review Team recommends that:

8.10 To streamline and simplify the process of remitting or refunding dues, and treat employees and bargaining agents fairly, the *Public Service Labour Relations Act* be amended to provide (a) that in the event of an objection, union dues be held in suspense from the day following the period for filing an objection and (b) that where the Board determines that a position is excluded or upholds the objection, all dues held in the suspense account be remitted to the bargaining agent or reimbursed to the employee as appropriate, regardless of the date on which the Board processes the application or issues its decision.

Essential Services Agreements

The PSLRA included a new approach to essential services agreements,¹⁰³ designed to improve cooperation between employers and bargaining agents, while preserving the right of the employer to determine the level of service needed to maintain safety and security during a strike. In particular, it was expected that employers, departments and bargaining agents would identify the type and number of positions necessary to provide essential services¹⁰⁴ and the specific positions required for that purpose well before a strike seemed likely so that fewer disagreements would occur immediately before or during a strike.

The Review Team heard mixed views from stakeholders about the process for negotiating essential services agreements. The majority described the process as administratively cumbersome and lengthy, which results in a loss of trust. A few were more positive and noted that meaningful dialogue has enabled the successful negotiation of agreements in their organizations. Nonetheless there are still no signed agreements with the main bargaining agents representing the bulk of employees in the CPA.

Bargaining agents were similarly divided between those with no concerns and those who expressed frustration with the employer. Sometimes a considerable period of time elapses between serving the other party with the notice to negotiate an essential services agreement and the point at which a tangible result is achieved. One bargaining agent recommended that the PSLRA be amended to empower the Public Service Labour Relations Board to intervene at the

103. “Essential services agreement” means an agreement between the employer and the bargaining agent for a bargaining unit that identifies (a) the types of positions in the bargaining unit that are necessary for the employer to provide essential services; (b) the number of those positions that are necessary for that purpose; and (c) the specific positions that are necessary for that purpose. Ref. [Public Service Labour Relations Act, 2003, section 4](#).

104. “Essential service” means a service, facility or activity of the Government of Canada that is or will be, at any time, necessary for the safety or security of the public or a segment of the public. Ref. [Public Service Labour Relations Act, 2003, section 4](#).

request of either party to settle disputes rapidly; to include a mandatory timetable within which essential services agreements are to be negotiated; and to encourage the PSLRB to order disclosure in disputes about essential services.

Additional preoccupations were expressed in light of a decision¹⁰⁵ by the PSLRB that essential services agreements must include a description of the specific essential service(s) to be performed. This is likely to result in an unworkable situation and the process risks becoming increasingly onerous because it implies parsing the activities and tasks in each position description to determine the specific components that make up the essential service(s).

Therefore, the Review Team recommends that:

8.11 To clarify and improve the process to establish essential services agreements, the *Public Service Labour Relations Act* be amended to clarify (a) the definition of essential services and (b) that an employee who occupies a position identified to provide essential services is required to perform all of the duties of that position.

In general, the essential services agreement process is not working as intended. Contrary to what was envisaged at the time the legislation was amended, there appear to be few, if any, incentives for the parties to conclude agreements except a potential strike. Furthermore, it seems that stakeholders do not share either an understanding about what essential services agreements are intended to achieve or a commitment to make the process work.

Therefore, the Review Team recommends that:

8.12 With the next round of collective bargaining fast approaching, the employer and the bargaining agents come to agreement about the meaning of an essential service and make concrete progress to conclude essential services agreements according to a mutually acceptable schedule.

Conclusion

Although large parts of the *Public Service Labour Relations Act* related to collaborative labour-management relations have yet to be tested, the Review Team found that the provisions that pertain to labour-management consultation committees, co-development, the National Joint Council and two-tier bargaining are, for the most part, sufficient to achieve what was intended. Some legislative changes could improve procedures related to collective bargaining dispute

105. [Treasury Board v. Professional Institute of the Public Service of Canada, \[2010 PSLRB 60\]](#) May 7, 2010.

resolution mechanisms, the exclusion process and essential services agreements, but generally speaking the legislation adequately supports collaborative labour-management relations.

There is no doubt, however, that non-legislative actions could enhance labour-management relations. Real changes in labour-management relations must be built on a shared vision, sound infrastructure and strong relationships, and on the parties being accountable for fulfilling their roles and carrying out their responsibilities effectively on an ongoing basis.

Chapter 9: Technical Amendments

The Review Team recommends the following amendments to enhance understanding and application of the statutes. In some cases the recommended changes concern form or language, while others are intended to make the legislation operate more efficiently and effectively.

- 9.1** The term “wrongdoing” is used in paragraph 11.1(1)(g) of the FAA and subsection 8(b) of the *Public Service Labour Relations Act*. The French language versions of these statutes use the term “actes fautifs” instead of “actes répréhensibles,” which is the terminology used in the *Public Servants Disclosure Protection Act*. The PSDPA defines “actes répréhensibles” for purposes of that Act to include contraventions of provincial and federal statutes and regulations; misuse of public funds or a public asset; and gross mismanagement in the public sector. Amending the French-language version of the PSLRA provision would bring it in line with the PSDPA, but would distinguish it from language used in the French-language version of the *Financial Administration Act*; therefore, it may be preferable to amend both statutes at the same time.
- 9.2** The phrase “solicitor, counsel or agent” is used only in the English language version of subsection 182(6) of the *Public Service Labour Relations Act*, although other provisions refer only to “counsel or agent.” The French language version reads “conseiller juridique ou de mandataire.” It is recommended that the *Public Service Labour Relations Act* be amended to change “counsel or agent” to “counsel, agent or mandatary” and to delete the word “solicitor” in subsection 182(6).
- 9.3** There appears to be a drafting error in subsections 186(1) and (2) of the *Public Service Labour Relations Act*, which refer to a person who “occupies a managerial or confidential position.” This formulation does not appear in the subsequent provisions in the English text, only in the French. Subsections 186(3) to (6) should be amended to ensure that the text corresponds in both official languages.
- 9.4** Subsection 241(1) of the French version of the *Public Service Labour Relations Act* refers to “la présente partie” (“this Part”), whereas the English text reads “the proceedings envisaged by the present Act.” This is an apparent drafting error and should be revised.

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- 9.5 There appears to be a discrepancy in the language used in the English and French versions of section 234 of the *Public Service Labour Relations Act*. Although the same terms are used in subsection 52(1) and section 234 in the French version (“dispositif de l’ordonnance”), different language is used in the English version (“order, exclusive of the reasons for the order” in the first instance, versus “order” in the second). In both instances the purpose is the same, i.e., enforcing the order, by making it an order of the Federal Court. To be consistent, the text in the English version of section 234 should be amended.
- 9.6 Subsection 2(1) of the *Public Service Labour Relations Act* defines “Minister” as meaning “the member of the Queen’s Privy Council for Canada, other than a member of the Treasury Board, designated by the Governor in Council as the Minister for the purposes of this Act.” This is no longer in keeping with the Department of Justice’s legislative drafting policy that provides the GIC with the authority to designate the responsible Minister. Consequently, the PSLRA should be amended to bring it in line with the current drafting conventions.
- 9.7 The *Public Service Employment Act* provides a preference for employment in advertised external appointment processes to veterans and their surviving spouse or common-law partner. Veterans Affairs Canada has confirmed that there no longer are any World War I veterans, surviving spouses or common-law partners who would benefit from the preference for employment, and it is therefore recommended that the Schedule for purposes of 39(1) of the PSEA be amended accordingly.
- 9.8 The current Department of Justice drafting policy requires legislative provisions to be amended to “a person must” rather than “a person shall,” and “a person must not” or “it is prohibited” rather than “no person shall.” The *Public Service Labour Relations Act* uses “must” for the most part; however, there are some instances of “shall” in provisions, which may need to be changed to “must” or “it is prohibited,” depending on what is most appropriate.
- 9.9 Every effort should be made to avoid the use of “may not” and “no person may,” because it can give rise to an ambiguity. There are a number of occurrences of one or the other of these expressions in the provisions of the *Public Service Labour Relations Act*, which should be reviewed and amended, where appropriate.

9.10 Subsection 208(2) of the French version of the *Public Service Labour Relations Act* prevents an employee from presenting an individual grievance in respect of which an administrative procedure for redress is provided under “une autre loi, à l’exception de la *Loi Canadienne des droits de la personne*.” The English text reads “any Act of Parliament, other than the *Canadian Human Rights Act*.” The English version should be revised to be made more consistent with the French language version to ensure that the original purpose of the provision is attained, which is to prohibit the use of individual grievances to deal with disputes for which recourse is available under a federal statute other than the PSLRA — with the exception of the CHRA.

Chapter 10: Conclusions and a Proposition for Change

The preceding chapters contain a description of the legislative review and the approach taken by the Review Team. They also outline what the Review Team heard during its engagement with public servants and others, proposals for legislative change made by the central HR organizations and other stakeholders, and the results of the Team's own research and analysis. In each of the chapters, the Review Team set forth their assessment of the extent to which the objectives of the *Public Service Employment Act* and the *Public Service Labour Relations Act* have been met and offered recommendations to close the remaining gaps. The purpose of this chapter is to offer a consolidated view of the administration and operation of the legislation after five years and to present a "proposition for change," which the Review Team believes would allow the intentions and the promise of the *Public Service Modernization Act* to be realized.

Where Are We Five Years Later?

The Review Team concludes that in a technical sense, the PSMA has been successfully implemented: like the Auditor General,¹⁰⁶ the Review Team considers that, with one exception, all the requirements set out in the legislation have been met. For example, the tribunals are established and running, every department and agency has an ICMS and an LMCC in place, and the Public Service Commission has signed delegation instruments with all deputy heads who have, in turn, sub-delegated appointment authorities within their organizations.

The legislation seems sound and creates a framework that is adequate to meet the public service's needs. There are three important caveats to this conclusion. Firstly, portions of the legislation (the PSLRA for the most part) remain untested and unused, and for these parts, it is impossible to draw a definitive conclusion about the adequacy of the legislation. Secondly, the PSEA and the PSLRA are key pieces of HR legislation, but they do not cover the full range of HR domains. It is important to recognize this in order to understand what is and isn't working well in people management in the public service. Finally, the legislation anticipated significant changes in behaviour and culture, and it is widely accepted that such change can take a considerable time to realize. The Review Team began its work less than five years after the PSEA came into force.

The Review Team did receive proposals for amending the legislation. They came almost entirely from the Public Service Commission, the Public Service Labour Relations Board and the Public Service Staffing Tribunal. The majority relate to the internal operation of these organizations, based on useful lessons that have been learned during the early years of operating under the

106. Auditor General of Canada, [2010 Spring Report, Chapter 2: Modernizing Human Resources Management, paragraph 2.33](#), April 2010.

PSEA and PSLRA. A small number originated with bargaining agents. When the Review Team believed the proposed changes would enhance the effectiveness of the legislation and/or the organization, it supported them. However, consistent with the principles established at the outset, the Review Team did not accept a number of proposals to amend the legislation when proposals would limit flexibility under the legislation, or blur or complicate roles and responsibilities; when results could be achieved more effectively through non-legislative means; and when the legislative change was disproportionate to the identified challenge and the perceived risk that it presents. Because few of the proposals for legislative change will make a tangible difference to managers, HR staff and employees in their daily work serving Canadians, the Review Team does not believe they are urgent.

Chapter 1 of this Report recognized the dangers of generalizations and drawing conclusions about the performance of an enterprise as large as the public service. It is important to recognize that changes have been made in some areas since 2005; in addition, the contribution and strong performance of individuals should not be overlooked. However, as noted elsewhere in this Report, the changes are not yet sufficiently widespread or consistent; as a result, they are not yet having a significant impact on the realities of people management in the public service, attitudes to people management, outcomes for employees and, ultimately, results for the Canadians they serve.

It is also important to recognize the investment, energy and time that were devoted to implementation when the legislation first came into force. That was laudable, and it is unlikely that the extent of change that has been made would have been achieved without such a commitment. However, some of that value has been lost because of the lack of sustained attention to the culture change required to realize the goals of the legislation, the absence of a clear vision of the end-state the new legislation intended, and specific indicators by which to measure progress.

Legislation has its limitations, and the Review Team found widespread agreement that what really matters is what is actually done with a legislative framework. Clearly, the drafters of the legislation had anticipated this because both the PSEA and the PSLRA require a review, not only of the legislation, but also of its administration and operation — how it is working and how it is being used to achieve the goals of the legislation. It is in these areas that in the Review Team's opinion, the most significant gaps between current practice and what was intended by the legislation's architects occur.

The input and feedback to the Review Team and the literature on change management are consistent in noting the importance of a strong and sustained effort by individuals, groups and organizations in making change initiatives successful. Other key ingredients include a clear vision of the destination as a significant factor in overcoming the natural tendency to favour the known and the familiar. Frequent and consistent communication is important, but leaders must do more than speak about the vision; they must model it. Once managers and HR staff are equipped to play new or different roles, the assessment of their performance must reinforce the vision and not the status quo. New tools, processes, technology and organizations may also be required, but they play a supporting and enabling role; they cannot be a substitute for, nor should they be mistaken for, a change in behaviour and culture.

Documents that date from the time the legislation came into force call for sustained attention in order to change behaviour. However, efforts seem to have been diverted not long after, possibly based on a misplaced confidence that work to bring about change would simply continue. The Clerk's annual report in 2006¹⁰⁷ declared that the PSMA was implemented; the 2007 report¹⁰⁸ launched a new initiative, Public Service Renewal. The Review Team was interested to see that in the launch of Public Service Renewal much of the right language about change was used: "Changes to organizational culture and to larger systems will take longer [and] if we want to make an impact we will have to start now and sustain our course over time." The report also highlighted the need for engagement of employees at all levels; ambitious but realistic goals and priorities; performance benchmarks and readiness to be measured against them; doing only what will make a practical difference to effectiveness; being a learning organization that is ready to adjust its course. It is not enough to acknowledge the need for a deliberate and determined approach to behaviour and culture change. Without active leadership and persistence, the full potential of the PSEA and the PSLRA is unlikely to be achieved.

107. Privy Council Office of Canada, *Thirteenth Annual Report to the Prime Minister on the Public Service*, March 31, 2006.

108. Privy Council Office Canada, *Fourteenth Annual Report to the Prime Minister on the Public Service*, March 31, 2007.

What Gaps Remain?

In examining a shared vision and clear roles, responsibilities and accountabilities, the Review Team observed a number of gaps. The absence of a clearly stated and frequently communicated vision of the end-state intended by the legislation has impeded the change in behaviour and culture in people management. There is still a need to iron out roles, responsibilities and accountabilities, especially among the Public Service Commission, deputy heads and the Public Service Staffing Tribunal. The deficiency relates less to the delineation of roles, responsibilities and accountabilities on paper than to how they are manifested in the actions of individuals and organizations.

The entire array of individuals and organizations with people management authorities and responsibilities in the public service must reflect the goals of the PSMA — in the way in which they exercise their mandates, in the way they communicate and in their willingness to act in concert with those who have related responsibilities and authorities. They must also make every effort to understand how their actions influence behaviour and avoid unintended and undesirable responses to those actions. This is particularly important with respect to the PSC, which plays a direct role in the appointment process, including recruitment of public servants, and exerts considerable influence on behaviour through its oversight role. The delegation of appointment authority to deputy heads implies a degree of trust between the holder of the authority and its agents. When the holder of the authority is also a service provider and the oversight body, stronger relationships and clear communication are needed. Furthermore, all parties need to make concerted efforts and a strong commitment to reach a shared vision.

The complexity that characterizes the people management regime in the public service presents a number of challenges and contributes to a diluted sense of ownership and a more tenuous sense of responsibility and accountability. For many employees and managers, this complexity has been compounded by a tendency to move from one HR-related initiative to another and to spend insufficient time and effort explaining how these efforts are related, what concrete results they will deliver, and where busy managers and HR staff should focus their efforts. A more deliberate transition from implementation of the PSMA — or modernization — to Public Service Renewal would perhaps have provided greater impetus for continued change. Many public servants and their representatives wonder how Public Service Renewal, the Administrative Services Review, cyclical strategic reviews and the deficit reduction action plan will be linked with changes in people management.

A period of organizational stability would offer an opportunity to improve understanding of roles and responsibilities and to develop policies and guidelines that are cohesive and flow from statutory mandates. Stability should not, however, be confused with inaction. Decision makers require support and clarification, about where to go for advice and guidance, in the central HR

organizations and in departments. It is also important to make sure the advice and guidance are consistent and are aligned with legislation, policies and regulations. Individuals and organizations could use this period to clarify and communicate their roles and responsibilities, as well as establish and strengthen relationships, in part so that responsibilities can be discharged consistently and collaboratively. Likewise, the PSC in collaboration with deputy heads could examine oversight to ensure that it is principles- and risk-based and contributing to improved performance — in people management, in the work of departments and in the delivery of service to Canadians.

When considering values-based, flexible and efficient hiring, the Review Team concluded that the new approach to merit is working, but is neither well enough, nor broadly enough, understood; as a result, there is a tendency to play it safe. The combination of accountability and oversight in the delegated model also contributes to risk aversion. The much-heralded flexibility in the legislation is not well articulated (for example, it includes more than non-advertised appointments), and as a consequence, there is reluctance to embrace it, and little evidence of innovation and experimentation on the one hand or sensible standardization on the other. The time it takes to hire has not been significantly reduced since the PSEA came into force. Organizations need to assess their own situation with respect to time to hire, determine whether this presents a risk to them, and if it does, establish why it takes as long as it does and what solutions are most appropriate for them.

Stakeholders are still hoping for a legislative change that will transform people management and make staffing and managing simple and fast. The Review Team encountered many individuals and groups that are waiting for someone or something to resolve the issues they face. It is not difficult to imagine the debilitating effect this hesitation can have on a change initiative. The magnitude of the change inherent in PSMA might seem overwhelming, but it cannot be an excuse for failing to take action or a reason to wait for help to arrive. Rather than be intimidated, individuals and organizations need to select a place to start, make sure they understand the real source and nature of the problem, take action, learn from experience and adjust their course before moving on to the next challenge.

Given the frequency with which stakeholders raised some issues with the Review Team (for example, time to hire and managing poor performers), the sense of powerlessness to change is surprising: these are areas that need to be addressed in an initiative that seeks to change behaviour.

Another very real issue relates to scale. With over 250,000 employees, the federal government is the largest employer in Canada. There are serious risks to attempting enterprise-wide change on such a scale. Instead, the Review Team advocates a more organic approach, which implies an acceptance of some degree of unevenness until the aggregated change is, effectively, enterprise-wide. Not all organizations face the same challenges, and an appropriate solution for one might not be desirable for another. Organizations should not, however, overlook the importance of certain enterprise-wide requirements, such as non-partisanship, which preserve the character of the federal public service and the values on which it is based.

Bureaucratic organizations are particularly difficult ones in which to bring about change.¹⁰⁹ They require extra effort to overcome risk aversion and encourage innovation and experimentation, including on the part of those responsible for oversight.

The examination of effective people management in Chapter 5 revealed that training needs may have been underestimated at the time the PSMA came into force and that training would still benefit from sustained attention, including using experiential learning to build competence and confidence. There is room for greater clarity in performance expectations and assessments with respect to people management. Tools are available, but their availability should be better known and their design user-driven so that they are well used. They should be refined on the basis of the experience of users, and their utility and effectiveness monitored.

Managers are still working to integrate people management fully into their business; many expressed frustration at having insufficient time to perform as well as they would like to in people management. It would be helpful to streamline processes and requirements as much as possible to increase efficiency. Making expectations of managers clear, supporting them and holding them to account for their performance is also important. Managers are looking to see whether their leaders value their performance in managing people as highly as performance in program delivery, policy development and financial management. The principles underpinning integrated planning are widely accepted, and organizations report having made progress on this front. The same logic needs to be carried through to the jobs of managers: the delivery of business objectives and the capacity to serve Canadians is directly and inextricably linked to the management of their people.

109. Kotter, John, *Leading Change*, Harvard Business School Press, 1996.

There does not appear to be a shortage of information and data on people management in the public service. However, there should be an ongoing discussion among key players to ensure that the right information and data are being collected in the most effective manner possible and that this material is being used to enable meaningful and useful performance measurement, planning and reporting. It is also important that this is being done at the right level — enterprise-wide or organization-based. There is room for both, but duplication should be avoided and the power of systems, software and standardization should be harnessed, for example by using the Common HR Business Process. Those collecting the information and data must also be aware that their work sends messages and influences behaviour. The old adage that “what you measure is what matters” is a salutary reminder.

In the area of political activity and non-partisanship, there is an opportunity to make oath taking on entry into the public service more meaningful, and to take a consistent approach to elections at all three levels of government. Non-partisanship is a shared and ongoing responsibility at the heart of public service values and ethics.

When considering credible and effective recourse and the resolution of conflict, the Review Team concluded that many of the requisite pieces are in place; the gaps are related to improving performance. Maximizing the opportunities to resolve issues informally, and as close to the workplace as possible, would bring benefits to both managers and employees. Greater efficiency in the recourse process would result in more timely resolution of issues.

And finally, there remains a great deal in the area of collaborative labour relations that is untested. A better understanding of co-development and consultation would assist unions and management to exploit the options available to them.

A Proposition for Change

As the review process neared its conclusion, the Review Team observed that its recommendations called for a number of the same actions over and over again. Moreover, despite 50 years of countless reports, recommendations and changes, the public service still faces some of the same challenges in people management that it has always had. Has the pursuit of change been aimed at the wrong issues? What has been missing and why has more progress not been made? The Review Team believes that the answers lie less in what is being changed, but in how change is being pursued. Without a new approach, there is a risk that in several years’ time another review will lead to the same conclusions.

There is a way in which the goals of the PSMA can be met, which does not involve changing tangible things as much as changing behaviour and culture. The Review Team makes recommendations for changes to the legislation that will improve the statutes and enhance the operation of a number of the entities and stakeholders to which the acts apply. Although some of the recommendations can only be achieved through legislative change, the Review Team does not believe that amending the PSLRA and PSEA is urgent because the proposed changes will not have a tangible impact on public servants as they serve Canadians. Non-legislative changes offer considerably greater promise for bringing about discernible change, even though they will often be difficult and will demand sustained commitment and effort.

These changes fall into four themes or areas and constitute the “proposition for change” to which this chapter refers. Action in each of these areas will position the federal public service to continue to improve the way in which it serves Canada and Canadians. The complexity of people management is reflected in the interrelated nature of the Review Team’s recommendations, but all of the recommendations can be situated within this change proposition.

The four areas that the Review Team concluded are essential are: the foundational and shared *values* of an organization, which includes a shared vision of goals to be pursued; the *wiring*, or institutional processes and structures that are found in an organization; the *relationships* among individuals and among institutions; and the *competence*, or capacity and confidence of individuals and organizations to fulfil their roles and responsibilities and to be accountable. The Review Team believes that reliance on action in any one of these areas or failing to act in all four of them will undermine efforts to bring about change that is widespread and durable. Similarly, ignoring the fact that the areas are interconnected and failing to understand the whole can also imperil change.

Values

Values form the foundation of an organization’s culture and shape the behaviour and beliefs of its members, the way they work together, and the rules and procedures they put in place to guide them. Values endure beyond budgetary and planning cycles, and if they are clear and understood, help decision makers make choices and navigate the operational complexities they encounter daily in the workplace. Values need to be translated into concrete examples and given practical meaning so that they take firm root, are seen as relevant and are fully integrated into decision making. Although values guide actions and decisions, they are not as prescriptive and clear-cut as rules can be, and they can rarely all be respected in equal measure in a given situation.

In organizations that promote a values-based approach, leaders must model the values, while recognizing the tension among them. Trade-offs must and will be made, and leaders must be able to articulate and be accountable for their decisions. The Review Team found an appetite for discussion, guidance and training on how to do just this.

Flowing from an organization's values are the goals it sets for itself. Success in reaching those goals is strongly influenced by how broadly the vision, goal or end-state is shared in the organization, how effectively it is communicated, and how committed and unwavering leaders in the organization are to reaching that destination. A clear and comprehensible vision is crucial to the success of change initiatives.

Relationships

Relationships are the means by which organizations and individuals interact and collaborate to achieve shared objectives. Relationships naturally take many shapes and forms, and can vary in character and balance. Relationships may exist because they are required by law or policy, but that does not mean that they are meaningful, active or delivering results. The quality of a relationship cannot be legislated. Good, productive relationships do not just happen, nor are they just the result of "chemistry." Relationships require effort; they take work to establish and maintain. They are typically built on trust, which must be earned, and credibility, which must be demonstrated.

Wiring will not produce effective, working relationships, but it can facilitate their development. Although the PSMA recognized and created certain institutional fora, trust and genuine engagement are required to render them effective. For example, the requirement for all departments and agencies to establish labour-management consultative committees was a wiring change. But it is the relationships among the members of that committee that can make the difference between an LMCC that attains results and one that does not.

The drafters of the PSMA chose to maintain a delegated model for staffing. Although deputy heads are described as being responsible for people management in their organizations, the delegated model contributes to a feeling on the part of many deputy heads that they are not, in fact, fully in charge. This mix of direct and delegated authority means that relationships among individuals and among organizations can vary depending on the issue, which makes their quality and vigour more important. In the field of labour relations, there is a similar mix of authority and responsibility, with deputy heads being responsible for labour relations in their organizations, while the management of collective bargaining, equitable compensation and National Joint Council directives, for example, remains largely centralized in the Office of the Chief Human Resources Officer (on behalf of the Treasury Board).

A delegated system ought logically to be based on trust, and so the relationship between the President of the Public Service Commission and his or her delegates (deputy heads), and between the deputy heads and *their* delegated managers, has a pivotal impact on staffing across the public service. Similarly, the relationship between unions and public service leaders sends a strong message about the nature of labour relations in individual organizations as well as across the public service. Cooperation among central human resources organizations is equally important in order to create a productive environment where roles and responsibilities are understood and respected and messages to stakeholders are clear and consistent.

The creation of OCHRO in 2009 certainly streamlined the relationship between the central HR organizations and deputy heads. But the Review Team found that questions and uncertainty remain, which should be answered by the continued efforts of the Chief Human Resources Officer and employees of the organization to define and communicate their role. In addition, the hybrid nature of the PSC, combining as it does the roles of delegator, policy maker and service provider, with independent oversight and reporting responsibilities, poses particular challenges to relationships, as well as underlining the need for them to be active and constructive. Added to all this, there are a number of areas in which deputy heads, OCHRO, PCO and the PSC have a collective interest, based on their individual responsibilities, such as employment equity, HR planning, workforce adjustment and the overall state of the public service. It may seem self-evident to state that shared interests are best served by strong relationships.

The complexity of public service HR governance, as well as shared interests and the need for concerted action by several players in many instances, means that strong and active relationships are crucial to realizing the full potential of the PSMA. But strong relationships are not enough. Everyone may be collegial and meet regularly, but without a shared understanding of why relationships are needed (and sometimes they are uncomfortable), the right infrastructure to support them and players who each fulfil their responsibilities, the goal will remain beyond reach.

Competence

Competence is the term the Review Team chose to indicate that an individual or organization understands their role and is ready to play it confidently and capably. It means that individuals and organizations not only understand their responsibilities and the expectations of them, but also are ready to be held accountable for their actions. It is more than knowledge; it is knowledge plus experience, an openness and commitment to learning, a willingness and capacity to innovate and experiment and, perhaps most importantly, a readiness to act. Competence is respected and it can solidify credibility and underpin successful relationships.

Manifesting values in a clear and shared vision, using appropriate wiring effectively, and establishing and maintaining strong and productive relationships all rely upon determined activity in the area of competence. Competence must be visible in the upholding of shared values and the clear and concise articulation of people management decisions. Competence builds confidence and is the bedrock of relationships based on trust and credibility among and between stakeholders at all levels. It has a sizeable impact on both individual achievements in people management and on the public service's ability to realize the goals of the PSMA. Conversely, where competence is lacking or absent, at either the individual or organizational level, results are likely to be disappointing and change is easily undermined. Competence and what it brings with it should be expected and rewarded.

Learning and development must aim for more than acquiring and transferring knowledge because competence is about more than knowledge. Knowledge needs to be augmented by understanding, experience and knowing how to put acquired skills and information into practice. The quality of instructors, the content of courses, the materials used, evaluating what participants learn (as opposed to what they were taught), and integrating learning throughout the careers of public servants are the things that will make a difference.

At the time the PSMA came into force, training emphasized new roles, responsibilities and standards and described HR staff as becoming more “strategic” (without being clear that individual transactions would continue to be a big part of their work), and managers as “owning” their people management decisions. Deputy heads gained primary responsibility for managing their organization's workforce and workplace. Labour and management were expected to co-develop solutions to workplace challenges. The Public Service Commission was to balance greater delegated authority with enhanced oversight to maintain the confidence of Parliament and Canadians in the merit-based and non-partisan character of the public service. Employees and managers were expected to manage and resolve conflict in the workplace, and recourse was to be timely and efficient. These changes all demanded new and different competencies, which individuals were expected to acquire — knowledge and learning at first, augmented by experience and development. There is no question that individuals have a responsibility to acquire the competence needed to fulfil their roles. But organizations also have a responsibility to offer them opportunities to do so and to reinforce the importance of competence by setting clear performance expectations and assessing progress.

Behaviour is the manifestation of culture in an organization, and it is in behaviour that competence is on display. In other words, whether action is taken, what is done, by whom and how are all influenced by individual and organizational competence. All the vision, values, wiring and relationships conceivable are of little use without competent individuals and

organizations. If the presence or absence of competence could be measured, it would be a good indicator of whether or not the goals of the PSMA have been reached.

Wiring

Wiring refers to the skeleton of the people management regime, which connects and supports individuals and organizations. Wiring can include anything from physical infrastructure and organizational structures, to legislation, policies, templates, training courses or information technology systems, to reporting requirements and measurement frameworks. All of these can be used to enable action consistent with values, and can enable individuals and organizations to navigate and participate effectively.

The public service has a love affair with wiring, and this is very much the case with people management. When it comes to change, the first suggestion is usually to alter the wiring: reorganizing institutions, putting in place new legislation, introducing mandatory training or developing a new reporting requirement. Part of the attraction is that such change is tangible, is immediately observable and often measurable. But there are few instances where the system loops back to see whether the wiring change delivered the behaviour change — or even the outcomes — that were sought in the first place, something which the Prime Minister’s Advisory Committee has noted. This does not mean that changes to wiring should be dismissed. They are often necessary in order to achieve objectives or goals, but on their own, they are insufficient and can sometimes be counterproductive.

The PSMA constituted a significant wiring change that was intended to bring about changes in behaviour and culture in both labour-management relations and other elements of people management. But, on its own it was not enough to reach the goals of a modernized people management regime. Although this Report recommends some additional wiring changes, the public service already has in place much of the wiring it requires. The need for more or different wiring must not be determined on its own. It must be assessed in relation to the vision and efforts that will be made in the other three areas.

Putting the Proposition to Work

The Review Team also believes that it makes a difference how individuals and organizations work in the four areas described above. Five years after the PSEA and PSLRA came into force and with the benefit of hindsight, experience and the information garnered during this Review what was, and still is, needed to reach the modernizing goals of the legislation is an approach based on:

- ▶ a more integrated and sustained approach to change, for which there is a “business case” (i.e., a “real” reason for doing something difficult);

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- ▶ strong and unwavering leadership (a responsibility that deputy heads cannot be expected to bear alone — every public servant has a stake in improved people management and a role to play, as do central HR organizations, parliamentarians, and unions);
 - ▶ clear and frequent communication of the end-state or vision, even if the precise route to get there is unknown (so that employees at all levels are more likely to abandon the safety and comfort of the familiar);
 - ▶ a willingness to experiment and innovate, engage in responsible risk-taking and, on occasion, fail (which should be supported by the oversight regime and the process of individual and organizational performance assessment); and
 - ▶ a limited number of indicators by which progress can be assessed before course corrections are made (offering an opportunity to renew the resolve to become a true learning organization).

Conclusions

During the course of the legislative review, the Review Team encountered almost no one who was unequivocally positive about people management in the public service, although some did identify areas in which it was better than it had been in the past. There was no consistency in the intensity of their feelings, the source of their frustration or the objects of their criticism. New employees felt that the recruitment process was too slow, that position descriptions were obscure, and that the application and assessment process cumbersome and unclear. Managers said it takes too long for them to fill vacancies and deal with poor performers. HR staff sensed they were not meeting expectations but were not sure what those expectations really were. Deputy heads believed that the PSC with its hybrid role and an oversight function that reinforces risk aversion was problematic. The unions felt co-development and consultation have fallen far short of their expectations.

This, surely, presents an unprecedented opening for change. But first, there is a need to banish the sense that change is impossible. Change is always possible; it is also usually very difficult. The second issue is what should be changed. If change is difficult and requires considerable effort, it seems wise to make sure that efforts are directed at the right things. The Review Team found that it was easy to engage people on changing legislation or organizations but much more difficult to get them to talk about changing themselves.

No matter where the Review Team looked, issues related to hiring or staffing dominated; the engagement sessions, written comments and input, discussion among deputy heads and even this Report, all reinforced the message. Perhaps that means that hiring is a logical place to start — what a sense of achievement if change actually happened there. The Review Team sensed an appetite for doing things differently, especially among members of the managers' community,

where there is recognition that the legislation is not being used as it might be, and that they need support and training to improve. This readiness is something on which to build.

It is critically important not to lose sight of the reason for the public service in the first place: to provide objective advice to, deliver programs for and otherwise serve the Government and thus Canadians. Everything that supports meeting this objective must be integrated and aligned. This is the unimpeachable argument for integrated planning: bringing together program, policy, HR and financial planning to ensure that the latter two are oriented towards maximizing performance in the first two. The Canadian public service aspires to excellence, including management excellence. The way in which the public service manages its most important asset, its people, should meet those standards of excellence and should not be seen as somehow separate from excellence in policy and program delivery. In one sense, there is nothing “special” about people management; it is hard to see how services to Canadians can be excellent if people management is not. As with every element of a public servant’s role, people management should be characterized by making informed decisions, engaging in responsible risk-taking, being able to articulate how and why decisions are made, and being accountable through constructive oversight.

The current period of fiscal restraint and the strategic and operating review present an ideal opportunity that should be harnessed to seek excellence in people management in the public service. It is a chance for the public service, and key organizations within it such as the PSC, the tribunals and OCHRO, to bring their determination, creativity, dedication and professionalism to bear to meet the challenge of doing business differently. It is a chance to realize the potential both of the PSMA and of the men and women who make up an institution of which they can be rightly proud.

The President of the Treasury Board addressed public service executives in June 2011:

Our government, together with the Clerk of the Privy Council, has embarked on an agenda of public service renewal, in order to capitalize on the tremendous strengths of the public service of Canada. This will ensure that Canada's public institutions will continue to respond effectively to Canadians' needs and expectations.... The bottom line is that this is a great opportunity to rethink our workplaces, our tools and competencies. This is not just a cost-cutting exercise. This is an exciting chance to bring about transformative change in the way we serve Canadians.¹¹⁰

110. [Address by the Honourable Tony Clement](#), President of the Treasury Board of Canada and Minister for the Federal Economic Development Initiative for Northern Ontario, APEX Symposium, June 8, 2011.

The message from the CHRO to an earlier gathering of HR staff was just as eloquent: “This is our moment!”¹¹¹

The Review Team agrees. This *is* the moment to make the changes for which everyone seems to yearn, and to commit to the sustained effort, persistence and plain hard work it will require. The public service can develop a shared vision for people management, measure progress towards that goal, develop relationships and competence to change the way it does things, and take decisive action to make full use of the legislation.

111. Address by Daphne Meredith, Chief Human Resources Officer, Opening Remarks at Michelle C. Comeau Awards, Gatineau, Quebec, May 10, 2011.

Appendices

Appendix A: Summary of Recommendations

Appendix B: Members of the PSMA Legislative Review Team

Appendix C: *Public Service Modernization Act* Legislative Review Questionnaire

Appendix D: Notable Findings — Responses to the *Public Service Modernization Act* Legislative Review Questionnaire

Appendix E: Acknowledgements

- ▶ Members of the PSMA Legislative Review Committee
- ▶ Members of the Public Service Management Advisory Committee — PSMA Legislative Review Sub-committee
- ▶ Stakeholders, Officials and Other Resources

Appendix F: Glossaries and Other Links

Appendix G: Acronyms Used in the Report

Appendix A: Summary of Recommendations

The recommendations on the following pages appear in the same order as in the Report. It should be noted that the first two chapters contain no recommendations.

Chapter 3: Clear Roles, Shared Vision and Effective Organizations

The Review Team recommends that:

- 3.1 Where the Commission, as a result of an audit or an investigation, has evidence of errors, omissions, fraud or other improper conduct on the part of an individual other than the appointee, it should engage with deputy heads who are responsible for taking appropriate action, including discipline.
- 3.2 In order for the Commission, deputy heads and their respective representatives to be able to fulfil their responsibilities effectively, they reach a written agreement on the means for sharing information (i.e., facts) prior to and at hearings before the Tribunal, and on the roles that each will play before the Tribunal.
- 3.3 In order to provide the best support to decision makers among managers, HR staff and deputy heads, the central HR organizations, departments and agencies must work together to ensure that their policies, tools and guidelines are accurate, up-to-date, integrated and accessible to support effective decision making, compliance and streamlined oversight across the public service. Each must be accountable within his or her own area of responsibility or organization, and the Clerk should be informed by the Chief Human Resources Officer about progress as part of the overall assessment of people management in the federal public service.
- 3.4 The CHRO, in consultation with the Privy Council Office, deputy heads, and the Public Service Commission President, should undertake the development of a description of the shared vision or end-state for a modern people management framework based on the *Public Service Modernization Act*.
- 3.5 The insight and experience of commissioners in office could facilitate transition for the Commission and be useful advice for the GIC where there are changes to the roster of commissioners. As there is nothing in the legislation that precludes sitting commissioners or the President from offering recommendations or suggestions to the GIC, therefore, there is no need to amend the legislation.

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- 3.6 To enhance the operation of the Commission, the terms of the commissioners should be staggered to allow for effective transitions and appropriate succession planning. Although this might be achieved without legislative change, consideration should be given to amending the *Public Service Employment Act* to provide that part-time commissioners hold office for a period of five or seven years, at the GIC's discretion.
- 3.7 To achieve timely tabling of the Public Service Commission's annual reports and allow for efficient and effective administration, collaborative engagement between the PSC and the responsible Minister and his or her staff would be useful.
- 3.8 Subsection 4(4) be deleted because the President and commissioners of the Public Service Commission are now subject to the *Conflict of Interest Act*, which was not in place when the PSEA was drafted and has the same purpose.
- 3.9 The Public Service Commission and the Treasury Board of Canada Secretariat continue to work together to resolve any remaining issues in order that the PSC has the contracting, revenue collection and re-spending authorities needed to discharge its core legislated mandate.
- 3.10 The Public Service Commission and the Treasury Board of Canada Secretariat (the Chief Human Resources Officer, the Comptroller General and the Chief Information Officer) determine the best means to afford protection to audit and investigation records such as working papers of those acting on behalf of the Commission in the discharge of their duties, whether this is by the same means used for internal audit across the public service or by some other means, such as amending the *Public Service Employment Act*. The Review Team recommends similar protection for individuals as that afforded those acting on behalf of the Public Service Staffing Tribunal and the Public Service Labour Relations Board.
- 3.11 The Chairperson of the Public Service Labour Relations Board take advantage of the opportunity offered by the *Public Service Labour Relations Act* and work with the designated Minister¹¹² to ensure that compensation research is supported by an expert, impartial and appropriately remunerated advisory board. The membership of this advisory board, which may number as few as three members, should comprise individuals other than those representing only the interests of the implicated parties.

112. The designated minister is the Minister of Canadian Heritage.

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- 3.12 Although the majority of compensation research by the Public Service Labour Relations Board has so far been conducted on a wage-only basis, consideration should be given to conducting research and analysis on a total compensation basis.
- 3.13 In order to attract well-qualified candidates and to reinforce the independent, quasi-judicial nature of the organizations, the *Public Service Employment Act* be amended to reconcile the security of tenure for the Chairperson and Vice-Chairpersons of the Public Service Staffing Tribunal and the Public Service Labour Relations Board (i.e., term of office of not more than five years) and extending the length of terms (from two to three years) for temporary PSST members.
- 3.14 Extending to employees of the Public Service Staffing Tribunal the benefit of deployment to and within the core public administration in order to offer reasonable career opportunities to individuals who accept positions at the Tribunal, so that the PSST can attract the expertise and quality necessary for the organization to fulfil its roles and responsibilities effectively.
- 3.15 Legislative amendments to the *Public Service Employment Act* that enable the delegation of certain actions to staff by the Chairperson of the Public Service Staffing Tribunal would help it to better manage its workload, particularly if the Tribunal is not operating with a full complement of members.
- 3.16 Given that the Public Service Staffing Tribunal, the Public Service Labour Relations Board and the Public Service Commission all raised issues concerning remuneration, and that the Privy Council Office is responsible for Governor-in-Council appointments and remuneration, the three organizations should each meet with the Privy Council Office to discuss the full range of GIC appointment-related issues they face. These include, but are not limited to, succession planning, expertise and qualifications, remuneration and rates of pay for tribunal members and adjudicators, commissioners and members of advisory boards. Remuneration, in particular, should be resolved in consultation with the Privy Council Office in a manner that respects the economic priorities of the Government, supports the effective functioning of the bodies concerned and responds to the individual circumstances of each appointment.
- 3.17 Treasury Board's people management policies should be reviewed and revised or rescinded on a priority basis so that deputy heads, managers, HR staff, employees and bargaining agents have access to comprehensive and accurate policy information to guide their actions and decisions.

Chapter 4: Values-Based, Flexible and Effective Hiring

The Review Team recommends that:

- 4.1 The Public Service Commission engage more broadly with the Office of the Chief Human Resources Officer, deputy heads, managers and HR staff, using enhanced outreach mechanisms, to increase understanding of and compliance with the values-based approach to staffing.
- 4.2 To encourage a more innovative and responsive staffing system, the Commission's approach to oversight be principles- and risk-based, focused on system-wide integrity and outcomes, and capable of providing Parliament with assurance that delegated authorities are being exercised effectively.
- 4.3 The Commission and deputy heads review their respective staffing policy and program frameworks with a view to increasing effectiveness, improving efficiency and encouraging responsible risk-taking. They should set meaningful performance objectives against which they, and those to whom authority is delegated, will be held to account. Existing forums, such as the Deputy Minister Advisory Committee on the Public Service Commission and departmental labour-management consultation committees, should be engaged in these efforts.
- 4.4 To equip departments to respond to emergency situations where term employment is not feasible, the PSEA be amended to allow for one extension for casual workers of up to 90 days, when it is in the interest of health, safety, security, the environment or an essential service to the public.
- 4.5 The *Public Service Employment Act* be amended to replace the two-step notification process for internal appointment processes with a single notification of proposed appointments, accompanied by a waiting period to afford employees eliminated from consideration an opportunity for informal discussion before appointments are finalized. The waiting period will also enable managers to correct any errors or omissions of which they may become aware before finalizing the appointment(s).

Chapter 5: Supporting Change in People Management

The Review Team recommends that:

- 5.1 To enhance learning and, over time, improve staffing and labour relations policies, programs and practices, the key findings from audits, investigations and adjudication decisions should be incorporated into courses at the Canada School of Public Service, and course facilitators must stay abreast of the latest developments.
- 5.2 If the public service is to be a true learning organization, the central HR organizations and all stakeholders must develop a comprehensive strategy for career-long learning in the area of people management. This initiative could be led by the Canada School of Public Service, in collaboration with the Privy Council Office and the Office of the Chief Human Resources Officer.
- 5.3 Deputy heads should consider, when deciding to whom they will sub-delegate their appointment authority, the frequency and extent to which managers have the opportunity to manage staff, as well as their competence and the support they require.
- 5.4 Setting clear performance expectations for people management should begin between deputy heads and their heads of HR, in consultation with the senior management team. This should be matched with honest and constructive performance feedback and assessment. A similar approach should then be observable as it cascades through the organization.
- 5.5 To further enhance the availability of HR expertise in the public service, consideration be given to the desirability of amending the occupational group qualification standards and establishing mandatory learning requirements for HR staff.
- 5.6 To ensure stakeholders' current and evolving needs are met, the Commission, the Chief Human Resources Officer (on behalf of the Treasury Board) and deputy heads, while acting within their respective mandates, should review collaboratively their staffing and labour relations policies, tools and guidelines using the Common HR Business Process to ensure that they form an integrated, cohesive and necessary suite.
- 5.7 To improve comprehensive and integrated HR planning and decision making, the Chief Human Resources Officer, the Public Service Commission, deputy heads and others must continue to seek opportunities to develop and maintain HR systems using the Common HR Business Process to capture relevant information, facilitate sharing and enable efficient analysis, using credible, timely and reliable data.

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- 5.8 Managers and senior officials, supported by HR staff, must equip themselves and be accountable for managing performance, including during the probationary period. The Chief Human Resources Officer should determine whether a policy on the effective use of probation is required to ensure a more rigorous use of probationary periods, including requiring mid-year reviews and written confirmation by a senior manager that an employee has successfully completed the probationary period and should be retained as an indeterminate employee in the public service.

Chapter 6: Loyalty, Non-Partisanship and Political Activity

The Review Team recommends that:

- 6.1 To build awareness about public service values and culture, deputy heads and managers should seek opportunities to make the taking of the oath or solemn affirmation meaningful when an individual first joins the public service.
- 6.2 The current instruments to deal with political activity are sufficient. The shared responsibility for public service impartiality is best maintained through effective communication and engagement, collaboration among the various authorities and clear guidance to employees, rather than through additional rules, restrictions or investigative authority.
- 6.3 The *Public Service Employment Act* be improved by harmonizing the conditions for seeking to be a candidate in a municipal election with those for federal, provincial and territorial elections and clarifying that an employee ceases to be employed if elected to a full-time office in a municipality.
- 6.4 The *Public Service Employment Act* be amended so that a person would be required to seek the Commission's opinion on whether the municipal office they already hold might impair or be perceived as impairing their ability to perform their new public service duties in a politically impartial manner and that the same conditions or consequences would apply as for an employee elected to municipal office.

Chapter 7: Credible Recourse and Effective Conflict Management

The Review Team recommends that:

- 7.1 The Public Service Commission continue to seek opportunities to engage with deputy heads about the importance of fair and credible processes when deputy heads exercise their authority to revoke or to take corrective action with regards to appointments in which they may have been directly involved .
- 7.2 More effort is needed on the part of deputy heads, managers, employees and their respective representatives to enable effective dialogue and recourse to resolve appointment issues. This implies, for example, being aware of and addressing staffing concerns at the earliest opportunity, using informal and internal mechanisms effectively, and resolving formal complaints on a timely basis.
- 7.3 To minimize the impact of the significant delays in staffing recourse that are incurred as a result of repeated extensions, the Tribunal should immediately take action to improve its procedures and case management system, in consultation with its stakeholders.
- 7.4 To maximize access to ICMS for employees across the public service, to capitalize on economies of scale and to enable the sharing of best practices, deputy heads in the core public administration are encouraged to explore opportunities to share ICMS services, particularly in the regions and with small departments and agencies.
- 7.5 To safeguard the credibility and integrity of the mediation process and recognizing that HR actions are taken in the name of the deputy head, managers must take full responsibility for their people management decisions, including with respect to mediation and the implementation of settlement agreements.
- 7.6 The Chief Human Resources Officer and bargaining agents must together ensure that the process and procedure for filing policy grievances is clear, efficient and effective, particularly in terms of where responsibility rests for bringing policy grievances and for dealing with the same issues through more than one type of grievance.
- 7.7 To enhance the efficiency and effectiveness of the adjudication process, for greater certainty, the PSLRA be amended to give PSLRB adjudicators explicit authority to direct that pre-hearing conferences be held on a routine basis.
- 7.8 To increase efficiency and transparency in resolving disputes, departments, agencies, employees and their respective representatives take a more open and active approach to exchanging relevant information in grievance and adjudication processes.

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- 7.9 The Office of the Chief Human Resources Officer consult the Department of Justice on the matter of solicitor-client privilege in HR-related adjudication. This will enable the issue to be examined more fully in a broader context and to assess what, if any, action might be required.
- 7.10 To enable an employer to respond fully and defend themselves appropriately, unfair labour practice complaints to the Public Service Labour Relations Board require full factual disclosure of the events, circumstances or actions that gave rise to the complaint.
- 7.11 To achieve greater efficiency and improved administration of adjudication at the PSLRB, the PSLRA be amended so that the authority to grant an extension is given to adjudicators, in addition to the Chairperson and Vice-Chairperson.
- 7.12 To enable greater efficiency and improved administration for the Public Service Labour Relations Board, the PSLRA be amended to give the Board a general head of regulation-making authority in relation to the grievance and adjudication process.
- 7.13 To ensure greater certainty for the parties to adjudication, the PSLRA be amended to clarify the intended meaning that any rules agreed upon by employers and bargaining agents apply only to the internal grievance process, whereas the PSLRB's adjudication process remains subject to the Board's regulations.
- 7.14 To allow the Public Service Labour Relations Board to provide an integrated and comprehensive approach to its adjudication services, the *Public Service Labour Relations Act* be amended to expand the PSLRB's regulation-making authority to include the procedure for complaints brought before it under Part 3 of the Act.
- 7.15 To enable the Public Service Staffing Tribunal to better perform its functions, the *Public Service Employment Act* be revised to provide the PSST with a general head of regulation-making authority related to hearing and deciding staffing complaints.
- 7.16 To enhance fair, efficient and effective administration of labour relations and staffing recourse, the eight-week cap be removed from the *Public Service Employment Act* and the *Public Service Labour Relations Act*. This would enable the chairpersons of the Public Service Labour Relations Board and of the Public Service Staffing Tribunal to exercise discretion and extend members' terms to complete any function or responsibility already under way on the date that their term ends. This authority should be used judiciously to allow for existing work to be completed rather than to assign new work.

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- 7.17 To safeguard workplace well-being, for greater certainty the *Public Service Labour Relations Act* be amended to give the Public Service Labour Relations Board's adjudicators explicit authority to order compensation (payment-in-lieu) as an alternative to reinstatement to the workplace in the event of an upheld grievance following termination of employment.
- 7.18 The *Public Service Employment Act* be amended so that a member who provides mediation services at a hearing is able to continue hearing the complaint as long as the complainant and the respondent agree.
- 7.19 For greater certainty, the *Public Service Labour Relations Act* and the *Public Service Employment Act* be amended to clarify that the Public Service Labour Relations Board and the Public Service Staffing Tribunal post on their websites the full text of formal decisions rendered under the *Public Service Labour Relations Act* and the *Public Service Employment Act*. The PSEA should be further amended to clarify that the PSC may, in making public its formal decisions about investigations and audit reports, disclose, at its discretion, any personal information pertaining to individuals, and this disclosure should be considered an appropriate use of personal information under the PSEA and the *Privacy Act*.
- 7.20 To maintain trust in and integrity of recourse processes and mediation services, the *Public Service Employment Act* be amended to protect notes, draft working papers, orders, settlement agreements and decisions unless disclosure is lawfully required.
- 7.21 The *Public Service Employment Act* be amended to enable the Tribunal to review, rescind or amend its decisions in the event that it receives information that would substantively affect the outcome and the reasons for its decision and that could not have otherwise been made available to it.
- 7.22 To optimize efficiency and increase clarity, the *Public Service Labour Relations Act* be amended so that a single-person adjudication panel becomes the default, while allowing the Chairperson to determine if a panel of three members is required.
- 7.23 Since there is no apparent reason for retaining the provision pertaining to recovering adjudication expenses from only one of the parties to adjudication, that it be rescinded from the *Public Service Labour Relations Act* at an appropriate opportunity.

Chapter 8: Collaborative Labour-Management Relations

The Review Team recommends that:

- 8.1 To develop a culture of improved cooperation forged through consultation, co-development and collaboration, the Office of the Chief Human Resources Officer, bargaining agents and deputy heads work together to:
 - ▶ develop a shared understanding of what these concepts mean so that they can be put into action more deliberately;
 - ▶ discuss their respective expectations of labour-management consultation committees and ensure that they become a forum for meaningful engagement;
 - ▶ work with the National Joint Council to support and facilitate a clear understanding about the concepts; and
 - ▶ demonstrate their commitment and support by engaging more deliberately and meaningfully at the most senior levels to discuss issues, interests, concerns and possible solutions.
- 8.2 To improve and promote a shared understanding of consultation and co-development, the Canada School of Public Service, working with the Office of the Chief Human Resources Officer, develop a new and comprehensive approach to labour relations training to be included in Authority Delegation Training course offerings, and the Assistant Deputy Minister and Deputy Minister Orientation programs.
- 8.3 The National Joint Council is, and should remain, the forum of choice for effective dialogue and collaborative problem solving, among the parties, for broad labour relations issues and public service-wide matters.
- 8.4 To achieve a balance between efficiency and effectiveness, the *Public Service Labour Relations Act* be amended to enable the Public Service Labour Relations Board's Chairperson to grant a one-time extension to the time limits within which a public interest commission or an arbitration board may be established upon request of either party, with any additional extensions requiring the consent of both parties.
- 8.5 To clarify the eligibility requirements for employers' and bargaining agents' representatives as members of arbitration boards or public interest commissions, the *Public Service Labour Relations Act* be amended by substituting "any" for "the" employer in sections 141, 168 and subsection 182(6), which would be more consistent and avoid any potential conflict of interest.

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- 8.6 To avoid a potential or real conflict of interest, the *Public Service Labour Relations Act* be amended to clarify that full-time members are ineligible to be nominated or be considered for appointment as a member of an arbitration board or a public interest commission, or act in any other capacity with either one.
- 8.7 To ensure that the process for establishing an arbitration board or a public interest commission is as effective and efficient as possible, the *Public Service Labour Relations Act* be amended to clarify the requirement for the parties to have made an effort to bargain collectively before requesting an arbitration board or a public interest commission be established.
- 8.8 To increase efficiency and contribute to better workplace relations, bargaining agents and the employer should make a deliberate effort to discuss and resolve differences with regard to positions being proposed for exclusion prior to filing a formal objection.
- 8.9 To facilitate the calculation of refunds due to employees when a position is declared excluded, the Office of the Chief Human Resources Officer should liaise with Public Works and Government Services Canada to ensure that improvements are made to the regional pay system.
- 8.10 To streamline and simplify the process of remitting or refunding dues, and treat employees and bargaining agents fairly, the *Public Service Labour Relations Act* be amended to provide (a) that in the event of an objection, union dues be held in suspense from the day following the period for filing an objection and (b) that where the Board determines that a position is excluded or upholds the objection, all dues held in the suspense account be remitted to the bargaining agent or reimbursed to the employee as appropriate, regardless of the date on which the Board processes the application or issues its decision.
- 8.11 To clarify and improve the process to establish essential services agreements, the *Public Service Labour Relations Act* be amended to clarify (a) the definition of essential services and (b) that an employee who occupies a position identified to provide essential services is required to perform all of the duties of that position.
- 8.12 With the next round of collective bargaining fast approaching, the employer and the bargaining agents come to agreement about the meaning of an essential service and make concrete progress to conclude essential services agreements according to a mutually acceptable schedule.

Chapter 9: Technical Amendments

The Review Team recommends that:

- 9.1 The term “wrongdoing” is used in paragraph 11.1(1)(g) of the FAA and subsection 8(b) of the *Public Service Labour Relations Act*. The French language versions of these statutes use the term “actes fautifs” instead of “actes répréhensibles,” which is the terminology used in the *Public Service Disclosure Protection Act*. The PSDPA defines “actes répréhensibles” for purposes of that Act to include contraventions of provincial and federal statutes and regulations; misuse of public funds or a public asset; and gross mismanagement in the public sector. Amending the French-language version of the PSLRA provision would bring it in line with the PSDPA, but would distinguish it from language used in the French-language version of the *Financial Administration Act*; therefore, it may be preferable to amend both statutes at the same time.
- 9.2 The phrase “solicitor, counsel or agent” is used only in the English language version of subsection 182(6) of the *Public Service Labour Relations Act*, although other provisions refer only to “counsel or agent.” The French language version reads “conseiller juridique ou de mandataire.” It is recommended that the *Public Service Labour Relations Act* be amended to change “counsel or agent” to “counsel, agent or mandatary” and to delete the word “solicitor” in subsection 182(6).
- 9.3 There appears to be a drafting error in subsections 186(1) and (2) of the *Public Service Labour Relations Act*, which refer to a person who “occupies a managerial or confidential position.” This formulation does not appear in the subsequent provisions in the English text, only in the French. Subsections 186(3) to (6) should be amended to ensure that the text corresponds in both official languages.
- 9.4 Subsection 241(1) of the French version of the *Public Service Labour Relations Act* refers to “la présente partie” (“this Part”), whereas the English text reads “the proceedings envisaged by the present Act.” This is an apparent drafting error and should be revised.
- 9.5 There appears to be a discrepancy in the language used in the English and French versions of section 234 of the *Public Service Labour Relations Act*. Although the same terms are used in subsection 52(1) and section 234 in the French version (“dispositif de l’ordonnance”), different language is used in the English version (“order, exclusive of the reasons for the order” in the first instance, versus “order” in the second). In both instances the purpose is the same, i.e., enforcing the order, by making it an order of the Federal Court. To be consistent, the text in the English version of section 234 should be amended.

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- 9.6. Subsection 2(1) of the *Public Service Labour Relations Act* defines “Minister” as meaning “the member of the Queen’s Privy Council for Canada, other than a member of the Treasury Board, designated by the Governor in Council as the Minister for the purposes of this Act.” This is no longer in keeping with the Department of Justice’s legislative drafting policy that provides the GIC with the authority to designate the responsible Minister. Consequently, the PSLRA should be amended to bring it in line with the current drafting conventions.
- 9.7 The *Public Service Employment Act* provides a preference for employment in advertised external appointment processes to veterans and their surviving spouse or common-law partner. Veterans Affairs Canada has confirmed that there no longer are any World War I veterans, surviving spouses or common-law partners who would benefit from the preference for employment, and it is therefore recommended that the Schedule for purposes of 39(1) of the PSEA be amended accordingly.
- 9.8 The current Department of Justice drafting policy requires legislative provisions to be amended to “a person must” rather than “a person shall,” and “a person must not” or “it is prohibited” rather than “no person shall.” The *Public Service Labour Relations Act* uses “must” for the most part; however, there are some instances of “shall” in provisions, which may need to be changed to “must” or “it is prohibited,” depending on what is most appropriate.
- 9.9 Every effort should be made to avoid the use of “may not” and “no person may” because it can give rise to an ambiguity. There are a number of occurrences of one or the other of these expressions in the provisions of the *Public Service Labour Relations Act*, which should be reviewed and amended, where appropriate.
- 9.10 Subsection 208(2) of the French version of the *Public Service Labour Relations Act* prevents an employee from presenting an individual grievance in respect of which an administrative procedure for redress is provided under “une autre loi, à l’exception de la *Loi Canadienne des droits de la personne*.” The English text reads “any Act of Parliament, other than the *Canadian Human Rights Act*.” The English version should be revised to be made more consistent with the French language version to ensure that the original purpose of the provision is attained, which is to prohibit the use of individual grievances to deal with disputes for which recourse is available under a federal statute other than the PSLRA — with the exception of the CHRA.

Appendix B: Members of the PSMA Legislative Review Team

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Appendix C: *Public Service Modernization Act* Legislative Review Questionnaire

Using the scale in the chart below, please answer the following questions:

To what extent:	Don't Know	Not at All	Moderate Extent	Great Extent	Very Great Extent
1. Is staffing simple?					
2. Is staffing fast?					
3. Is staffing efficient?					
4. Do your staffing processes result in high-quality candidates?					
5. Is informal discussion a standard practice?					
6. Does mediation contribute to the faster resolution of staffing disputes?					
7. Are you able to resolve staffing disputes inside your department and without third-party recourse?					
8. Are you able to manage the performance of your employees, including poor performers?					
9. Do you feel you have sufficient knowledge to exercise your delegated human resource authorities?					
10. Do you feel you are provided with adequate tools and systems to exercise your delegated human resource authorities?					
11. Are you knowledgeable about the <i>Public Service Employment Act</i> ?					
12. Are you knowledgeable about the <i>Public Service Labour Relations Act</i> ?					
13. Are labour relations cooperative?					
14. Does mediation contribute to the faster resolution of labour relations disputes?					
15. Has an Informal Conflict Management System helped you manage conflict in the workplace?					
16. Is the grievance process streamlined?					
17. Are you able to meet organizational needs through integrated HR and business planning?					

To what extent:	Don't Know	Not at All	Moderate Extent	Great Extent	Very Great Extent
18. Have hiring managers embraced their "new" human resource roles and responsibilities?					
19. Have human resource professionals embraced their "new" roles and responsibilities (i.e., as strategic advisors)?					
20. Is people management rules-based?					
21. Is people management values-based?					
22. Have recent changes to human resource governance (e.g., the creation of the Office of the Chief Human Resources Officer) helped clarify roles and responsibilities?					
23. Can you attribute success in people management to the <i>Public Service Modernization Act</i> ?					
24. Would further legislative change improve people management in the public service?					

General Information

Responses to the following questions will allow us to stratify results.

Please indicate (✓) which describes you. (You may choose more than one descriptor.)

Executive_____

Manager/Supervisor_____

HR Director/Practitioner_____

Recent recruit (less than 5 years' experience)_____

Young professional_____

Other_____

I have received delegated HR authorities from my deputy head_____

I have not received delegated HR authorities from my deputy head_____

I don't know whether I have delegated HR authorities_____

Department/Agency_____

Region_____

Appendix D: Notable Findings — Responses to the *Public Service Modernization Act* Legislative Review Questionnaire

The findings reflect input from all stakeholders who completed the questionnaire in 2010.

- ▶ **Question 1:** When asked whether staffing is simple, 92% responded “not at all” or to a “moderate extent,” with 43% indicating that it is not at all simple.
- ▶ **Question 2:** When asked whether staffing is fast, 96% responded “not at all” or to a “moderate extent,” with 62% indicating that it is not at all fast.
- ▶ **Question 4:** When asked whether staffing processes result in high-quality candidates, 55% responded that they do to a “great extent” and to a “very great extent,” while 45% responded “not at all” or to a “moderate extent.”
- ▶ **Question 5:** When asked whether informal discussion is a standard practice, 67% responded that it was to a “great extent” or to a “very great extent,” with 39% responding that it was to a “great extent.”
- ▶ **Question 7:** When asked whether they were able to resolve staffing disputes inside their department without third-party recourse, 59% responded that they could to a “great extent” or to a “very great extent.”
- ▶ **Question 8:** When asked whether they were able to manage the performance of employees, including poor performers, 65% responded “not at all” or to a “moderate extent.”
- ▶ **Question 9:** When asked whether they have sufficient knowledge to exercise their delegated human resource authorities, 67% responded to a “great extent” or to a “very great extent.”
- ▶ **Question 10:** When asked whether they are provided with adequate tools and systems to exercise their delegated human resource authorities, 59% responded “not at all” or to a “moderate extent.”
- ▶ **Question 11:** When asked whether they are knowledgeable about the PSEA, 52% indicated that they are to a “great extent” or to a “very great extent.”
- ▶ **Question 12:** When asked whether they are knowledgeable about the PSLRA, 66% responded “not at all” or to a “moderate extent.”
- ▶ **Question 13:** When asked whether labour relations are cooperative, 63% responded that they are to a “great extent” or to a “very great extent.”
- ▶ **Question 15:** When asked whether an ICMS has helped them manage conflict in the workplace, 61% responded “not at all” or to a “moderate extent.”
- ▶ **Question 16:** When asked whether the grievance process is streamlined, 73% responded “not at all” or to a “moderate extent.”

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- ▶ **Question 17:** When asked whether they are able to meet organizational needs through integrated HR and business planning, 73% responded “not at all” or to a “moderate extent.”
 - ▶ **Question 18:** When asked whether hiring managers have embraced their ‘new’ human resource roles and responsibilities, 77% responded “not at all” or to a “moderate extent.”
 - ▶ **Question 19:** When asked whether human resources professionals have embraced their new human resource roles and responsibilities, 67% responded “not at all” or to a “moderate extent.”
 - ▶ **Question 20:** When asked whether people management is rules-based, 55% responded “not at all” or to a “moderate extent.”
 - ▶ **Question 21:** When asked whether people management is values-based, 58% responded “not at all” or to a “moderate extent.”
 - ▶ **Question 22:** When asked whether recent changes to human resource governance (e.g., the creation of OCHRO) have helped clarify roles and responsibilities, 91% indicated “not at all” or to a “moderate extent.”
 - ▶ **Question 23:** When asked whether success in people management can be attributed to the PSMA, 81% indicated “not at all” or to a “moderate extent.”
 - ▶ **Question 24:** When asked whether further legislative change would improve people management in the public service, 45% responded “not at all” or to a “moderate extent,” while 55% responded that it would to a “great extent” or to a “very great extent.”

Appendix E: Acknowledgements

The PSMA Review Team gratefully acknowledges the following individuals and organizations, without whose engagement and contributions this Review would not have been possible.

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Association of Canadian Financial Officers	Diane Lorenzato
Association of Justice Counsel	Jennifer Lynch
Association of Professional Executives	Kevin Lynch
Gaston Arseneault	Management Trainee Program Community
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Gérald Cossette	Public Service Commission Legal Services Unit
Ian Creary	Public Service Renewal Committee
Bert Crossman	

Ian Cullwick
CSPS DM Advisory Committee on Learning
Michelle d'Auray
George Da Pont
Claire Dansereau
Jamie Deacon
Denis Desautels
Richard Dicteri
Richard Dixon
Michel Dorais
Cassie Doyle
Ivan Fellegi
Rob Fonberg
Cheryl Fraser
Sheila Fraser
Nicholas Gammer
Guy Giguère
Annwyn Godwin
Bobbi Grant
François Guimont
Mary Gusella
Geoffrey Hare
Natalie Harrington
Don Head
Joyce Henry
Steve Hindle
Human Resources Council
IM/IT Community
Daniel Jean
Alain Jolicoeur
Mike Joyce
Mary Karamanos
Bill Krause
Labour Relations Council
Paul Labrosse
Ginette Laflamme
James Lahey
Judith Larocque
Jill Larose
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William Pullen
Quebec Federal Council
Gina Rallis
Jim Ralston
PEI Federal Council
Cheryl Read
Gregory Richards
Stephen Rigby
Morris Rosenberg
Saskatchewan Federal Council
Science and Technology Community
Robin Sears
Scott Serson
Munir Sheikh
John Sims
Carol Stephenson
Jennifer Stoddart
Ezra Suleiman
David Swayze
Peter Sylvester
Bob Taylor
Hanny Toxopeus
Camille Therriault-Power
Steve Tierney
Treasury Board Portfolio Legal Services Unit
Union of Canadian Correctional Officers
Jim Van Adel
Manon Venat
Barbara Wackid
Daniel Watson
Sharon Watts
Michael Wernick
Western Economic Development HR Team
Joe Wild
Howard Windsor
Wayne Wouters
Neil Yeates
Yukon Federal Council
David Zussman

Appendix F: Glossaries and Other Links

The following links may be useful to anyone seeking additional information about the legislation, programs, policies and services mentioned in this Report.

Canada School of Public Service Act, <http://laws-lois.justice.gc.ca/eng/acts/C-10.13/index.html>

Common Human Resources Business Process, <http://chrhp-pocrh.tbs-sct.gc.ca/home-eng.aspx>
(available via Publiservice only)

Competencies, competency profiles, leadership competencies,
<http://www.tbs-sct.gc.ca/tal/comp-eng.asp>

Financial Administration Act, <http://laws-lois.justice.gc.ca/eng/acts/F-11/index.html>

Human Resources Planning Guide: Lexicon,
<http://www.tbs-sct.gc.ca/gui/hrpg/hrpg-prh-02-eng.asp?for=mngsrlexaccount>

Human Resources Planning Guide for Executives, Lexicon,
<http://www.tbs-sct.gc.ca/gui/ipg-ex15-eng.asp>

Management Accountability Framework, <http://www.tbs-sct.gc.ca/maf-crg/index-eng.asp>

Public Service Commission Appointment Framework, <http://www.psc-cfp.gc.ca/plcy-pltq/index-eng.htm>

Public Service Commission Glossary, <http://www.psc-cfp.gc.ca/abt-aps/gls/index-eng.htm>

Public Service Employee Survey, <http://www.tbs-sct.gc.ca/ps-es-saff/index-eng.asp>

Public Service Employment Act, <http://laws-lois.justice.gc.ca/eng/acts/P-33.01/index.html>

Public Service Labour Relations Act, <http://laws-lois.justice.gc.ca/eng/acts/P-33.3/index.html>

Public Service Modernization Act, <http://laws-lois.justice.gc.ca/eng/acts/P-33.4/index.html>

Appendix G: Acronyms Used in the Report

ADAI	Authority Delegation and Accountability Instrument
CHRO	Chief Human Resources Officer
CPSA	Canada Public Service Agency
CSPS	Canada School of Public Service
CSPSA	<i>Canada School of Public Service Act</i>
CHRA	<i>Canadian Human Rights Act</i>
CPA	Core public administration
FedAA	<i>Federal Accountability Act</i>
FAA	<i>Financial Administration Act</i>
ICMS	Informal conflict management system
LMCC	Labour-management consultation committee
NJC	National Joint Council
NCR	National Capital Region
OCHRO	Office of the Chief Human Resources Officer
PCO	Privy Council Office
PSC	Public Service Commission
PSEA	<i>Public Service Employment Act</i>
PSECA	<i>Public Service Equitable Compensation Act</i>
PSHRMAC	Public Service Human Resources Management Agency of Canada
PSLRA	<i>Public Service Labour Relations Act</i>
PSLRB	Public Service Labour Relations Board
PSMAC	Public Service Management Advisory Committee
PSMA	<i>Public Service Modernization Act</i>
PSST	Public Service Staffing Tribunal
TBS	Treasury Board of Canada Secretariat