Public Service Integrity Officer

2002-2003 Annual Report to Parliament

Edward W. Keyserlingk
Public Service Integrity Officer
Government of Canada

Government of Canada Gouvernement du Canada

Canada

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0-662-67564-9

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September 2003

The Honourable Stéphane Dion
President of the Privy Council
House of Commons
Ottawa, Ontario
K1A 0A4

Dear Minister:

Pursuant to the Treasury Board *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace*, I have the honour and the privilege to transmit the first Annual Report of the Public Service Integrity Officer for tabling in Parliament.

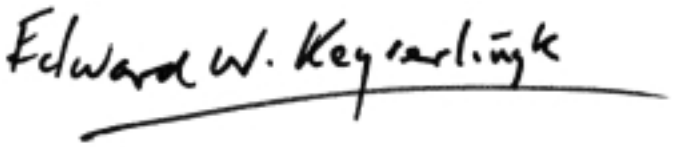
Part I of this Report provides an overview of the operations of my Office from November 30, 2001, the effective date of the policy, to March 31, 2003, the end of the fiscal year.

Parts II, III and IV contain a detailed evaluation and discussion of the effectiveness of this Office and the *Disclosure Policy*, as well as a number of specific recommendations. Some of these proposals are firm while others are more tentative in nature and will require more reflection, research, consultation and collaboration, all of which I am making priorities for 2003-2004.

As indicated in the Report, the analyses and recommendations in Parts II, III and IV have been influenced in part by events and developments subsequent to the year under review. I believe these events were simply too significant to ignore in this Report.

If the analyses and recommendations in this Report are acted upon, I believe it would remove or lessen a number of structural and attitudinal obstacles that now inhibit the reporting, investigation and correction of wrongdoing in the Public Service. As a result, the government's intent in formulating the *Disclosure Policy* and establishing this Office – namely to enable and promote the disclosure of wrongdoing as an essential activity of the government in the public interest – would, in my view, be better realized.

Yours sincerely,



Edward W. Keyserlingk
Public Service Integrity Officer
Government of Canada

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Our First Year

Part I

THE PUBLIC SERVICE INTEGRITY OFFICE

INTRODUCTION

Part I of this report is essentially descriptive in nature. It provides an account of the mandate of the Office, the steps and priorities involved in setting it up, how its existence and access to it was communicated, the kinds of alleged wrongdoing reported, and how those cases were managed and reported.

Parts II, III and IV evaluate the structure and mandate of the Office and the *Disclosure Policy* in light of experience gained during the first year of the Office's existence. They also contain analyses and recommendations. While many of these recommendations are firm, others are more tentative in nature.

1.1 The Mandate

The Public Service Integrity Office (PSIO) is policy-based, having been established by the Treasury Board's *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace* (hereafter identified as the *Disclosure Policy*). The Office started its operations in April 2002. That policy and my appointment both became effective on November 30, 2001. The *Disclosure Policy* details the mandate and procedures of this Office. In this Report, I will refer only to the relevant highlights of the *Disclosure Policy* and features of this Office. (Appendix A outlines the responsibilities of the Public Service Integrity Officer).

Edward Keyserlingk
Public Service Integrity Officer

The PSIO was created as an alternative to internal departmental mechanisms – also established by the *Disclosure Policy* – for the reporting, review and investigation of wrongdoing. One of those internal departmental mechanisms is that of managers. Another is that of designated Senior Officers who are appointed by, and report to, the Deputy Head of each department and agency.

The mandate and priorities of the PSIO are to:

- serve as an extra-departmental alternative to internal reporting mechanisms;
- function independently from departmental influence, or influence from any other source, in the management and disposition of the cases it investigates;
- accept and investigate any credible and good faith allegation by public servants of the specified kinds of wrongdoing in the Public Service;
- investigate allegations of wrongdoing in a manner that is neutral, comprehensive, confidential and fair to all parties, including the alleged wrongdoer;
- protect from job reprisal those who report wrongdoing to this Office;
- report findings and recommendations to Deputy Heads for remedial, corrective, and if necessary, disciplinary action; and
- report any inadequate or untimely departmental response to the Clerk of the Privy Council.

The *Disclosure Policy* defines wrongdoing as an act or omission concerning:

- **A violation of any law or regulation**
- **Misuse of public funds or assets**
- **Gross mismanagement**
- **A substantial and specific danger to the life, health and safety of Canadians or the environment**

Crucially important for this Office, and for public servants, is whether they can access this Office directly and without pre-conditions. Despite some ambiguity and inconsistency on this point in the *Disclosure Policy* (see Part II), I believe it is the Policy's intent to enable direct access, and my Office acts accordingly. The body of the *Disclosure Policy* states that this Office may assist employees who:

- believe their issue cannot be disclosed within their own department; or
- raised their disclosure issue(s) in good faith through departmental mechanisms but believe that the disclosure was not appropriately addressed.

Pierre Martel
Executive Director

A primary obligation of this Office is to protect anyone making a good faith allegation of wrongdoing from job reprisal. In any institution, the fear of job reprisal is probably the single most important obstacle to reporting wrongdoing, or as it is often referred to, whistleblowing. The Public Service is no exception. The *Disclosure Policy* states clearly that job reprisal is prohibited. It is, says the Policy, a fundamental commitment and statement of principle on the part of the government. Another question is whether the protections and incentives presently in place are adequate. These are examined and addressed in Part II.

Since this Office was established, it has been my priority to develop PSIO expertise in investigating and recognizing job reprisal. Reprisals can come in many forms, from ostracization to reprimand or worse. Nor is reprisal necessarily evident or immediate. For example, it is job reprisal even when the act of whistleblowing is only one of several reasons leading to the job action. A considerable amount of literature, and a large body of cases in many jurisdictions, have addressed all aspects of job reprisal. I recently commissioned a detailed study on the subject to help my staff and me be more effective in recognizing and remedying job reprisal. The final report will be available on the PSIO Web site.

An important obligation in the mandate of this Office is to ensure the confidentiality of both those who make disclosures of wrongdoing and of any other parties involved in the case. Clearly, the expectation of confidentiality is a high priority for all parties.

No employee shall be subject to any reprisal for having made a disclosure in accordance with the Disclosure Policy.

We do assure public servants who step forward that this Office will not voluntarily reveal confidential information. Only when we are required to do so by law or in accordance with the rules of natural justice will we do that. This Office, like most other such organizations, is subject to requests for information under the Access to Information and Privacy laws. On the other hand, we can protect confidential information, such as the identity of the parties, if releasing the information could cause harm. We are able to protect confidential information during the course of an investigation.

At the moment, this Office is not an investigative body established by legislation. Only if that was the case, and, furthermore, if this Office was an investigative body specified in the regulations, could it be immune from requests for information central to an investigation.

Martine Nantel
Lawyer / Investigator

It should be noted that in some cases, confidential aspects – such as the identity of the discloser of alleged wrongdoing – are already known in that person's department simply because it is a public and long-standing case. As well, despite efforts to maintain confidentiality, the identity of the person may become known simply by the nature of the questions that investigators put to department personnel and witnesses.

1.2 The Jurisdiction of the Office

The jurisdiction of, and access to, the Public Service Integrity Office extends only to Public Service employees working in departments and agencies listed in Schedule 1, Part 1 of the *Public Service Staff Relations Act*. These persons and institutions come under the purview of the Treasury Board as corporate employer. Access to the PSIO is not available to public sector employees who work for Crown Corporations and separate agencies. In effect, this means that less than half of all federal government employees are entitled to bring disclosures of wrongdoing to this Office and to be protected from job reprisal for doing so.

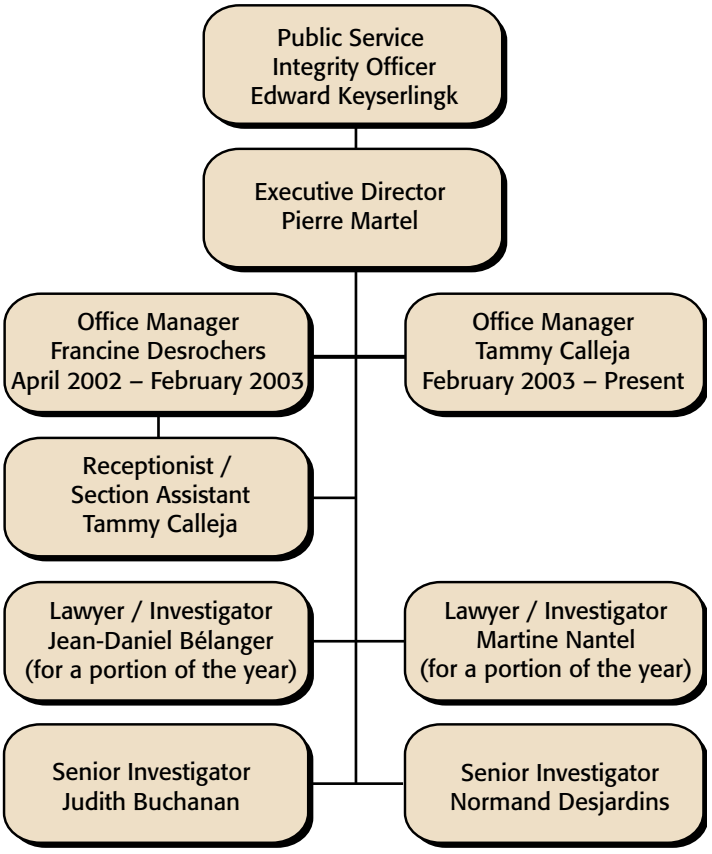
1.3 Establishing the Office

In the four months between my appointment on November 30, 2001 and April 1, 2002, when we began investigating reported cases of wrongdoing, many tasks had to be completed to establish this Office from scratch. In these tasks, I was fortunate to have the skilled assistance and full cooperation of people at all levels of the Treasury Board Secretariat. My first task was to hire an executive director. His hiring proved to be one of my most inspired decisions.

Together, we jumped bravely into the choppy waters involved in finding quarters, equipping the office for its special needs, hiring skilled and committed staff members, and taking the first steps to publicize the existence and mandate of the Office.

Initially, the Office comprised seven staff members – yours truly, an executive director, three investigators, an administrator and a receptionist. In view of the need for a legal counsel on staff, one of the investigator positions was combined into that of a senior legal counsel and investigator. In the initial staffing plan, it was assumed that all investigations would be conducted by outsiders that I would select and contract. Staff members would serve as analysts who would receive and process those investigations. Instead, I decided that staff members would normally conduct investigations. This not only keeps the investigations in-house, it helps develop our skills, team cohesiveness and collaboration, and better ensures confidentiality. From the perspectives of case collaboration and team morale, this approach has proven very beneficial. It also ensures consistency and equity in the consideration of cases.

Public Service Integrity Office Organisation Chart



Several priorities and principles guided us during these initial activities. One was the need to be up and running as soon as possible. That meant finding investigators, and an administrator, with established skills. A requirement for further training, we felt, would delay our opening. The positions were advertised nationally and attracted more than 60 applications. In less than two months, interviews were arranged and selections made. I am proud to note that staff members selected through this process have proven to be first class in every respect, individually and collectively.

Another guiding principle in the early stages was to ensure that we did everything that could be done to ensure, protect and manifest the independent function of this Office. For obvious reasons, this Office had to be – and seen to be – at arms-length from any government department, and especially from the employer, the Treasury Board and its Secretariat. As a result of that priority consideration:

- I was given a free hand, without pressure or interference of any kind, in the selection of staff.
- I selected office space in a non-government building.
- I provided public servants with direct and secure lines of communication to this Office – electronically, by phone and by mail.

Francine Desrochers
Office Manager
(April 2002 – February 2003)

Jean-Daniel Bélanger
Lawyer / Investigator

- I established, under a contractual service agreement with Public Works and Government Services Canada, a secure and separate informatics and communications network to support the Office.
- I established a position for our own legal counsel.
- I obtained delegated authority from the President of the Treasury Board to deal completely and on my own with access to information and privacy requests regarding information in our files.
- Most importantly, I made it clear that we would accept no direction or interference in the investigation and disposition of cases.

1.4 Publicizing and Reaching the Office

Since my appointment, staff members and I have devoted much time and effort to publicizing the existence and mandate of this Office, as well as how to access us. Given the central role and accountability they play in enabling the disclosure and investigation of wrongdoing – and acting upon recommendations to address it – Deputy Ministers have been a target group for information about this Office since its inception. I have met with Deputy Ministers, addressed them both collectively and individually, and sent them several updates regarding our progress. All those I have spoken to assure me of their cooperation.

From the time of my appointment, I have visited, and invited to our offices, the heads of many other government agencies and recourse mechanisms. I did so for two reasons. One was to inform them about what this Office is and what it does; the other was to learn more about their mandates and procedures. I have no interest in duplicating what other agencies were established to do. However, given their special focus and expertise, I do have considerable interest in collaborating with them on specific cases to identify and deal with particular instances of alleged wrongdoing. Also, it would serve everyone's interests if cases that came to us could be referred to an agency specializing in the specific activity in question.

One of several benefits provided through these meetings was the opportunity to learn more about the functioning and mechanisms of these agencies at the time this Office was developing and evolving its own procedures.

Another target group for communication and consultation has been the leadership of the Public Service Unions. From the outset, my staff and I have met with and addressed many of their executive and constituent groups and stewards. My staff and I have also been invited to speak at a number of their regional meetings across the country.

Union leadership has been uniformly welcoming, forthright and fully prepared to engage in dialogue. This is a welcome development, given the fact that many of these leaders support a legislated and independent-from-government whistleblowing agency for the Public Service and are generally skeptical about the potential for effectiveness of this policy-based government Office. Clearly, given their influence and leadership role, the support of the union leadership for this Office is crucial. I will return to this point in Part II.

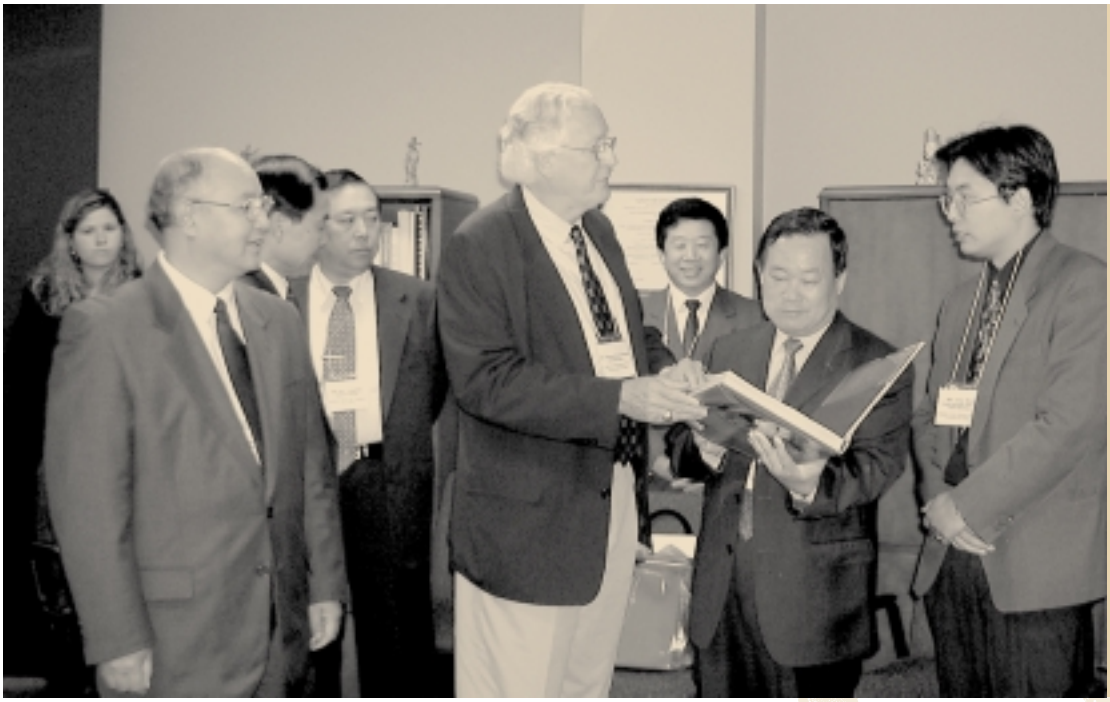
On a number of occasions, my staff and I met with Public Service managers and executives, including the Board of Directors of APEX (Association of Professional Executives of the Public Service of Canada). We accepted invitations from across Canada to address meetings of federal government regional councils. These meetings have proven to be excellent forums to discuss the opportunities and challenges

presented by the *Disclosure Policy* and this Office, as well as the real or perceived structural and attitudinal obstacles to whistleblowing in the Public Service.

Among those with whom my Executive Director and I met to promote the Office, and to canvass their views, were several Senators and Members of Parliament. Some have been instrumental in the formulation of Private Members or Senators Bills on the subject of whistleblowing. Others have made a significant contribution towards dealing with corruption in government in the context of national and international associations.

A variety of individuals and groups, academic and professional, from Canada and abroad, have expressed considerable interest in this Office. One notable example was a day-long visit and exchange to our Office from the heads of a roughly equivalent office in the Peoples' Republic of China in September 2002. It was a most interesting exchange for both sides, illustrating among other things the extent to which different cultures and histories shape such institutions. One common denominator emerged – a shared perception that all members of public institutions have a responsibility to contribute to the identification and correction of wrongdoing and corruption in their institutions.

My Executive Director had the privilege of participating as an official observer in the creation of GOPAC (Global Organization of Parliamentarians Against Corruption) in Ottawa in October 2002. This important initiative was the result of the unrelenting efforts and leadership of John Williams, Member of Parliament and Chair of the Parliamentary Committee on Public Accounts. My Office was invited by the Department of Foreign Affairs and International Trade to be part of the Canadian delegation to the May, 2003 International Anti-Corruption Conference in Seoul, Republic of Korea. Not only were we able to contribute to the conference itself, we also developed contacts with a wide range of international participants focused on issues directly relevant to the mandate of this Office.



Visit from members of the State Bureau for Letters and Calls, Peoples' Republic of China

I have no illusions about how well known this Office is in the Public Service. Despite all the publicity and consultation efforts to date, we have yet to overcome challenges such as the size and geographical spread of the Public Service, the different mandates of the many government departments, and the enormous amount of information and paperwork to which public servants are exposed. Clearly, our communication efforts must remain a priority.

Access to the PSIO has been a priority from the start. Our mailing address, telephone numbers – including a toll free number – fax numbers, e-mail addresses and Web site are all channels through which people can obtain information and seek advice, and public servants can initiate a disclosure of wrongdoing.

The Web site provides Public Service employees, members of the public and others with information about the Office, an explanation of our case management procedures, speeches, research documents and related policies. It also provides a "contact us" feature for general inquiries and communication with the Office.

1.5 Case Management

Our Approach

We responded to many calls and much correspondence, ranging from employees seeking advice to those wishing to make allegations of wrongdoing. Each disclosure was assigned to and reviewed by a senior investigator. The first step was to assess whether the institution involved in the allegation was covered by our jurisdiction. Each allegation was then screened to determine if there was a better recourse mechanism available to the employee, especially if the issue was a human resource or employment matter.

For cases within our jurisdiction, the Office adopted a dynamic case management approach. We incorporated traditional case management principles with broader alternative dispute resolution techniques such as fact-finding and mediation. After consulting with the employee to determine if the allegation was within our jurisdiction, we obtained additional information and documentation from the employee. This enabled us to better understand the area of alleged wrongdoing and determine the best course of action.

Normand Desjardins
Senior Investigator

Often, there is a need to research the subject area of the alleged wrongdoing. A thorough analysis may be required to determine the application of law, regulation or policy. This is followed by an assessment of the discretion allowed, a determination of what would constitute wrongdoing, and whether other remedies exist. Each case was presented, discussed and evaluated during our weekly case management meetings to determine the next steps. All staff members, me included, participate in these weekly meetings. Everyone present contributes to the discussion of cases in progress.

Early on in a full investigation, I will normally inform the Deputy Head and request the full collaboration of his or her department. In the course of an investigation, the senior investigator assigned to the case will contact the department to obtain its perspective. The investigator may also request further information and documentation. This information is reviewed and assessed to determine whether the activity in question constitutes wrongdoing. The time devoted to an individual case can range from several days to six months. When a case is concluded, a written report is provided to the relevant organization and to the employee who made the allegation.

This approach enables us to ensure that we meet policy requirements:

- **To establish if there are sufficient grounds for further action and review**
- **To initiate an investigation when required**
- **To review the results of investigations**
- **To prepare reports and make recommendations to Deputy Heads on how to address or correct the disclosure**
- **In some special cases, or in cases when the departmental responses are not adequate or timely, to make a report of findings to the Clerk of the Privy Council in his role as head of the Public Service.**

1.6 Case Statistics

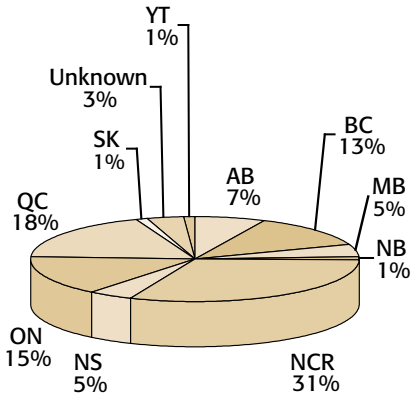
FILES OPENED FOR PERIOD ENDING MARCH 31, 2003	105
LESS:	
• Agencies not part of PSSRA* 1.1	18
• Investigation cases	87
• **Files closed after preliminary review**	**20**
• Referral	18
• No jurisdiction**	2
• **Files closed after review and investigation**	**62**
• Referral	47
• Allegation(s) not-substantiated	8
• No jurisdiction	7
• Investigations opened and not completed as of March 31, 2003	5

* *Public Service Staff Relations Act Schedule 1. Part 1*

** *"No jurisdiction" means cases where the person making the disclosure was not a Public Service employee; cases where the events took place before the Policy came into effect; or cases that had already been heard by another federal board, tribunal or court.*

Cases By Category Of Wrongdoing	
A Violation of any Law or Regulation	24
Misuse of Public Funds or Assets	6
Gross Mismanagement	17
A Substantial and Specific Danger to the Life, Health and Safety of Canadians or the Environment	0
Harassment, Abuse of Authority, Interpersonal Conflict	29
Others	11
TOTAL	**87**

Cases by Region



- AB – Alberta
- BC – British Columbia
- MB – Manitoba
- NB – New Brunswick
- NCR – National Capital Region
- NS – Nova Scotia
- ON – Ontario
- QC – Quebec
- SK – Saskatchewan
- Unknown
- YT – Yukon Territory

1.7 Case Studies (by category of wrongdoing)

A Violation of any Law or Regulation – 24 cases

Since its inception, the Office has received in 24 cases, allegations involving violations of laws or regulations. Among the 24 were allegations for which a review or recourse mechanism was embedded and therefore available to the employee. These included complaints related to the *Canadian Human Rights Act* or the *Public Service Employment Act*. In these cases, because a recourse mechanism was in place, employees were redirected to the appropriate organization if they had not already considered doing so.

We also dealt with allegations that a particular department or agency was not properly applying the regulatory framework within which it operates. One such case related to the application of the *Food and Drugs Act and Regulations*. This Office's investigation began with an extensive review of the legislation, policies and guidelines covering the subject area. We also sought to gain a greater understanding of the scientific issues raised and the actual management processes and practices. By learning how the regulator applies the legislation, and what was done in actual cases, we were able to determine whether the instrument of delegation and nature of discretion had been properly applied. After an extensive investigation, we concluded that the department did properly apply its regulations. However, we did suggest that the department make a continuing effort to modernize and update communications with employees, the businesses it regulates and the public it serves.

Other cases covered more than one category of wrongdoing. For instance, the allegation that there were violations of the *Surplus Crown Assets and Disposal Act* in a department also amounted to an allegation of misuse of public funds or assets. Before being able to determine whether the case actually constituted a misuse of public funds or assets, we reviewed the legislation and accompanying policies to determine the proper protocols. Learning about the operations of the department in question from documents, interviews and site visits allowed us to better evaluate the activities alleged to constitute wrongdoing. In this case, there were partnership arrangements with the voluntary sector that needed to be understood and assessed. In fact, the person alleging the wrongdoing was not aware of some aspects of these partnership arrangements. The conclusion of this lengthy investigation found that the practices applied by the department and its partners were exemplary. Indeed, the benefits of this national program extended well beyond the Public Service to all Canadians and the environment.

There were no findings of wrongdoing within this category.

Misuse of Public Funds or Assets – 6 cases

Six cases fell within this category, ranging from the review of business decisions and the application of the contracting policy to the use of cellular phones and travel by government employees.

Judith Buchanan
Senior Investigator

As the management of funds and assets is standard across the Public Service, the investigation of these cases was more straightforward. Although it was important that we become familiar with the appropriate policy or directive, we treated each case by reviewing the policy requirements, then assessing the allegation and evidence to determine if the alleged misuse had taken place.

The more complex cases brought to the PSIO related to the Contracting Policy. A number of questions were raised about the application of this policy. For instance, we received an allegation that the decision to contract a service was a misuse of public funds as public servants could provide a better service. It was also alleged that changing the scope of a contract to provide for a pan-regional strategy was not a proper use of funds. In this case, we found that by combining a number of regional contracts into one, the department had reduced inefficiencies, inconsistencies from providers, and the administrative burden of managing several contracts. Asked to determine if the service standards and outcomes were being met, we found this to be the case.

In one case, it was found that an employee was misusing public assets. Here, because the case was brought to the attention of the Office anonymously, our approach was somewhat different. After reviewing and analyzing the correspondence and supporting evidence, we determined that there was a basis for a more in-depth audit. After meeting with us to discuss the matter, the department agreed to undertake this audit and report its findings to the Office. In addition to providing this Office with its finding of wrongdoing, the department provided assurances that the losses would be recovered and that mechanisms had been introduced to prevent future occurrences. No criminal charges were laid.

Overall, our work within this category revealed that the managers and employees we dealt with are aware of the policies and authorities governing the use of public funds and assets. And, when presented with instances of wrongdoing, corrective action was promptly implemented.

Gross Mismanagement – 17 cases

There were 17 cases in this category. Because of its subjective nature, this category is more difficult to assess and investigate. Two questions must be posed when evaluating an allegation of gross mismanagement: Is it mismanagement? Is it gross?

Allegations in this category included submissions to review cases that had already been heard by another federal board, tribunal or court. Although we studied the proceedings of these hearings to learn more about the cases, we did not investigate further because a legislated authority had already reviewed the matter and made a finding within their jurisdiction.

As previously indicated, a number of employees contacted the Office with personal concerns regarding management of the workplace. To press the point, these employees often argued that the failure to adhere to policies regarding the prevention of harassment or staffing amounted to gross mismanagement. With the consent of the employees, these allegations were referred to more appropriate mechanisms.

Tammy Calleja
Receptionist / Section Assistant
Presently Office Manager

Somewhat related to allegations of mismanagement are the 29 separately accounted allegations of wrongdoing made in respect to the *Policy on the Prevention of Harassment in the Workplace*. Allegations included:

- failure to adhere to the policy requirements in the treatment of complaints;
- lack of proper investigations;
- bias of contract investigators who are remunerated by the department or agency;
- inadequate remedies when there is a finding in favour of the complainant; and
- reprisal for having made a complaint.

Given that there is a prescribed recourse for such allegations, we normally referred employees back to their departmental coordinator or union to file a grievance as may be appropriate. However, in view of the relatively high numbers, there are aspects of this category of allegation that raise concern and merit further consideration and monitoring. Indeed, there may be grounds for investigating the systemic factors that contribute to individual cases. I will pay attention to this particular matter in the coming year.

A Substantial and Specific Danger to the Life, Health and Safety of Canadians or the Environment

No cases were reported by a public servant in this category.

Protection From Reprisal

The *Disclosure Policy* states that this Office is to protect from reprisal those employees who disclose information in good faith concerning wrongdoing.

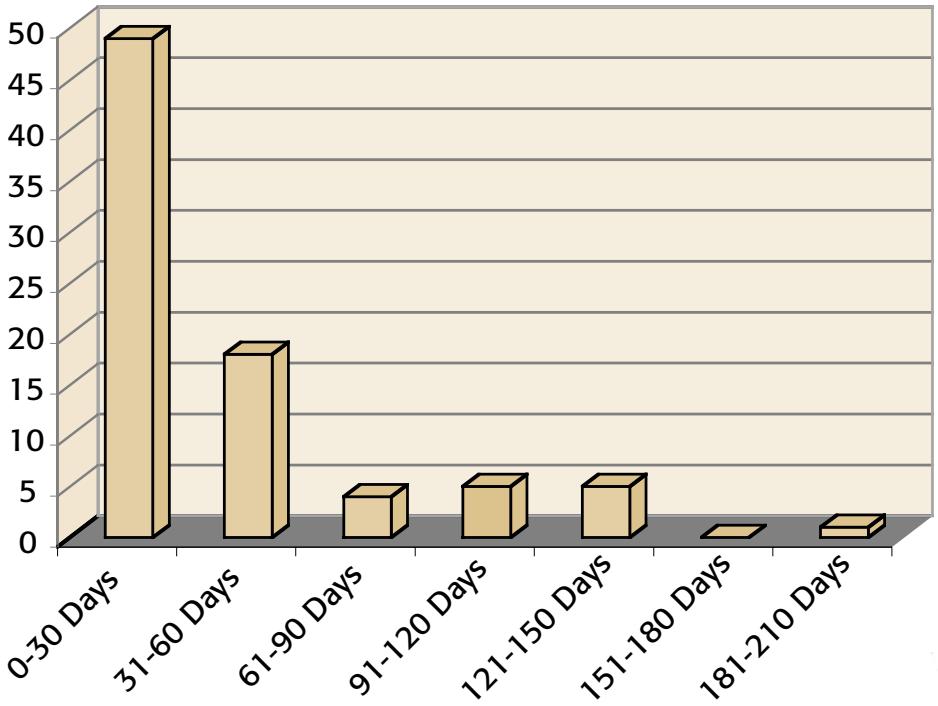
Although not formed as a specific allegation, my Office did uncover one instance of reprisal when investigating another matter. As the first case in this area, we had to determine what would constitute reprisal in this case in accordance with the *Disclosure Policy*. First, an employee must have made the original disclosure of wrongdoing to his or her superior, to the departmental Senior Officer, or to the Public Service Integrity Officer. Second, while the disclosure of wrongdoing need not be founded, it must be

made in good faith. Third, it would constitute reprisal if the original disclosure of wrongdoing is shown to be one of the reasons for the reprisal (notwithstanding other justifications made for the disciplinary action). In the case in question, it was largely the timing of the disciplinary action, and the fact that no documentary evidence existed to support any contention justifying the discipline, that led to the finding of reprisal.

This case further highlights the need for managers to be aware that a disclosure of wrongdoing may not be used as a reason for disciplinary action. Rather, if challenged, they will be required to demonstrate that the internal disclosure is not a factor in the disciplinary action. In this case, it was recommended that any losses suffered by the employee as a result of the disciplinary action be restored.

Genevieve Chiu
Law Student Researcher

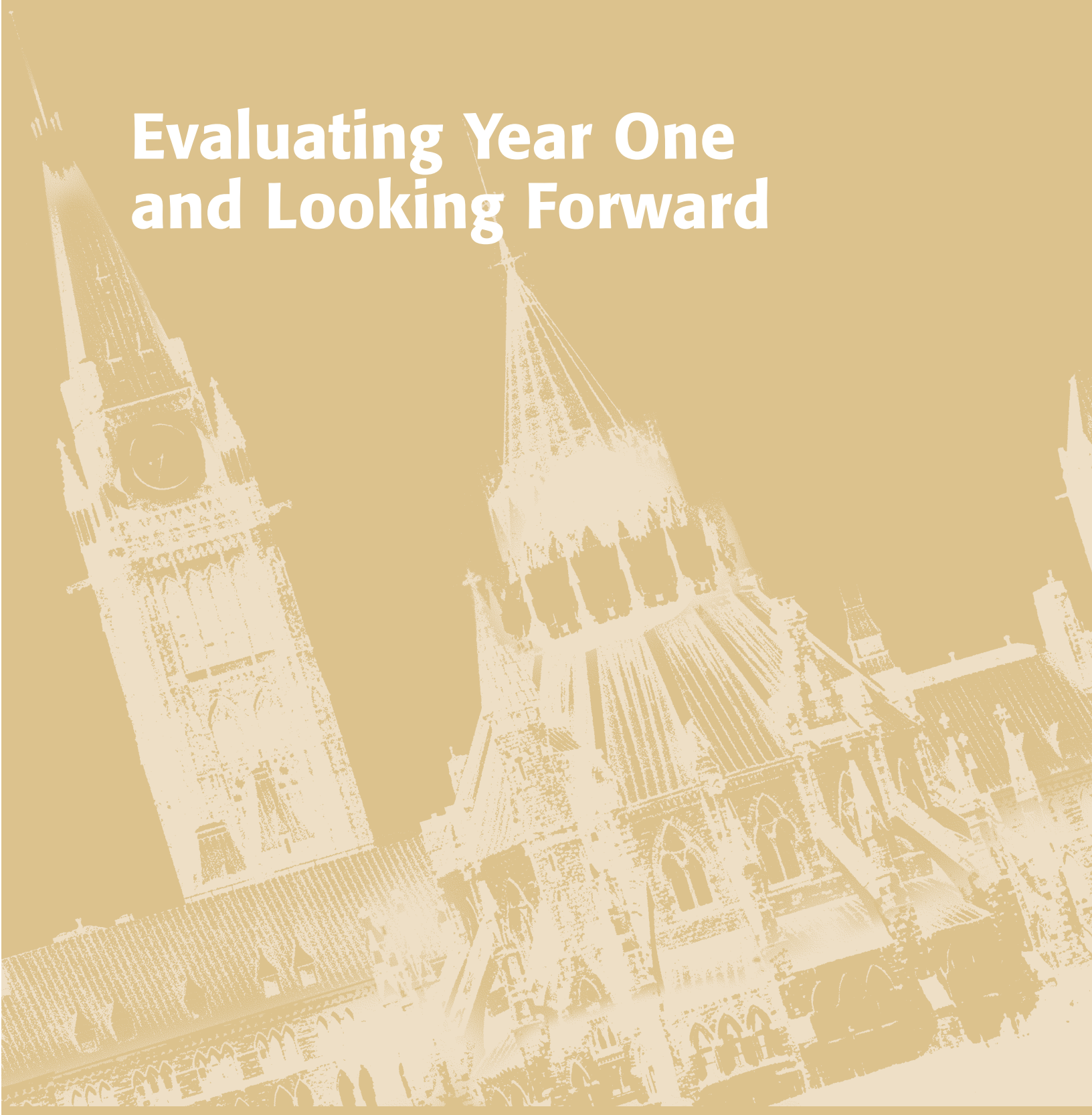
Elapsed Time to Dispose of Cases as of March 31, 2003



Cases by Department/Agency as of March 31, 2003:

Department/Agency:	Total:
Agriculture and Agri-Food Canada	5
Canadian Grain Commission	3
Canadian Heritage	1
Canadian Intergovernmental Conference Secretariat	1
Canadian International Development Agency	1
Citizenship and Immigration Canada	1
Correctional Service Canada	21
Department of National Defence	6
Department of Veterans' Affairs Canada	2
Environment Canada	2
Fisheries and Oceans Canada	6
Foreign Affairs and International Trade Canada	1
Health Canada	4
Human Resources Development Canada	4
Immigration and Refugee Board	1
Indian and Northern Affairs Canada	5
Industry Canada	2
Justice Canada	1
National Parole Board	1
Natural Resources Canada	2
Office of the Commissioner for Federal Judicial Affairs	1
Public Works and Government Services Canada	4
Royal Canadian Mounted Police	3
Statistics Canada	4
Supreme Court of Canada	1
Tax Court of Canada	1
Transport Canada	2
Western Economic Diversification Canada	1
Total:	**87**

Evaluating Year One and Looking Forward



EVALUATING YEAR ONE AND LOOKING FORWARD

INTRODUCTION

Parts II, III and IV of the Annual Report consist of my evaluation of the mandate and effectiveness of the Public Service Integrity Office as well as those aspects of the *Disclosure Policy* that define and apply to this Office. It concludes with a series of recommendations.

A need for fundamental reforms of the structure, mandate and powers of the PSIO.

I arrived at the evaluation and recommendations by applying 13 tests, or criteria, to the PSIO. These criteria are the result of much reflection by my staff and me over the past year as to what elements would be essential to the effectiveness and fairness of an ideal such institution. In other words, how should we, as well as others considering this Office and the *Disclosure Policy*, measure success? That reflection was done, and is still being done, in light of our own experience and with the benefit of views expressed by many others in Canada and elsewhere, including those involved with similar institutions.

The analyses and recommendations were influenced as well by a number of recent events and developments in government. While some of these occurred after the year under review, we felt they were too significant to ignore in this Report.

Some of the recommendations that follow are specific and firm. Others are more tentative and/or general in nature. The latter will require more time, reflection, research, consultation and collaboration before I am in a position to flesh them out. That will be one of my priorities during the present year.

Nevertheless, even at this stage (the PSIO was established in November 2001), we can point to some successes and failures, identify obstacles in need of attention, and propose various reforms for the consideration of Members of Parliament, Senators, government ministers, public servants, Public Service unions, members of the public, and interested persons and groups.

Clearly, a priority for all these parties is ensuring an accessible, credible and effective institution to investigate good faith allegations of wrongdoing in the Public Service – an organization that is empowered to see that corrective and, if required, disciplinary action is taken, and in a timely manner.

It is worth noting that evaluating the mandate of this Office, and recommending improvements to the way it functions, is explicitly anticipated in the *Disclosure Policy*. The *Disclosure Policy* specifies that the Annual Report of this Office could include recommendations to improve the process. Also, before accepting this position, I was

assured that the mandate and structure of this Office, and the *Disclosure Policy* that guides it, are not written in stone. If I concluded that revisions were indicated, I would be welcome to submit them and have them considered seriously.

Finally, it is worth mentioning that in testimony before a Parliamentary committee review of Bill C-25 in June of this year, the President of the Treasury Board, Minister Robillard, reiterated the government's willingness to review the *Disclosure Policy* based on any recommendations put forward in this Annual Report.

In terms of how much wrongdoing there is in the Public Service, I want to make two observations. One, I am enormously impressed with the number of dedicated, ethical and skilled public servants that I have met at all levels in the past year. Two, as the Public Service Integrity Officer, I am not necessarily in a position to know how much wrongdoing is taking place in the Public Service. There are two reasons for this.

The goal of the proposals in this report is to address the structural and attitudinal obstacles that inhibit the reporting, investigation and correction of wrongdoing in the public sector.

One, the PSIO is essentially reactive, not proactive. This Office is mandated to investigate only the wrongdoing that is reported in good faith, judged to be credible, and within the four types of wrongdoing set out in the *Disclosure Policy*. A second and related reason is that many, perhaps most, public servants are unlikely to make allegations of wrongdoing to the PSIO. There are a number of reasons for this, including:

- unawareness about the existence or mandate of the PSIO;
- uncertainty about what constitutes reportable wrongdoing;
- fears of reprisal;
- concerns about confidentiality;
- a perception that because the PSIO is within the ambit of Treasury Board as employer, and is policy-based rather than legislated, it is unlikely to be neutral and effective in correcting wrongdoing and disciplining wrongdoers; and
- a preference, in some instances, to use existing internal departmental routes to report wrongdoing.

Whatever the nature and scope of wrongdoing in the Public Service, everything possible and reasonable should be done to remove obstacles to the reporting and resolution of wrongdoing. At the same time, we must ensure that effective protections from reprisal are in place for those who report wrongdoing. Only when the existence and mandate of the PSIO (or whatever it may evolve into) is widely known, when it is readily accessible and fully equipped to fulfil its mandate, and when it can generate the confidence of public servants, should this Office be regarded as a barometer of wrongdoing in the Public Service.

As will become evident later in this Report, I am recommending fundamental reforms of the structure, mandate and powers of the PSIO as well as those aspects of the *Disclosure Policy* that guide it. The most foundational of these recommendations is that this Office be legislated, rather than policy-based. Furthermore, such legislation should ensure that this Office be made independent in function, placed outside the ambit of the government, and that it report to, and be overseen by, Parliament.

The basis for these and related proposals is twofold. One is the widespread and seemingly intractable perception that unless these things are done, this Office will not attract the credibility it needs to encourage public interest disclosures of wrongdoing.

The second is the considerable evidence that unless this or a successor agency is legislatively insulated from government, and provided with more robust tools, it is unlikely to achieve its desired results. Negative perceptions alone may not constitute sufficient grounds for these reforms. However, when combined with evidence that these perceptions are not entirely misplaced, it provides a basis and argument that merits serious attention.

The analyses and proposals in this report are intended to apply only to the PSIO or successor agency, not to the internal departmental avenues for disclosing wrongdoing.

Achieving those results would require two prior or related moves. One involves removing this Office and its supporting policy or legislation from its present human resource and employment context. That context is what accounts for, and justifies, the *Disclosure Policy* being a Treasury Board policy and responsibility. Once removed from that focus, the PSIO can be located outside the ambit of the employer. In addition to the reasons stated earlier for such a move, there is another – the *Disclosure Policy*'s inherent inconsistency in that the wrongdoing it envisages has little or nothing to do with human resource or employment matters. The wrongdoing it envisages is far more serious and of public interest in nature and implication.

The other required move would see the PSIO escape from the restrictions imposed on it because we are internal to the government. As I suggest later in this Report, that reality explains a great deal about why this Office is as it is. It also explains why – if this Office is to be re-situated and re-constituted along the lines I am proposing – it cannot be done without the PSIO or subsequent institution becoming external to the government. At the moment, we are extra-departmental but not external to the government.

In that regard, the justifications that support internal departmental mechanisms for disclosing wrongdoing (primarily managers and senior officers designated for that purpose) obviously work for them. They are necessarily internal to departments. Using the same justifications to keep the extra-departmental PSIO internal to government is, in my view, not justified.

For that and similar reasons, I should emphasize that the analyses and proposals that follow apply only to the PSIO or successor agency and only to those aspects of the *Disclosure Policy* that apply to this Office. They do not apply to the internal departmental avenues for disclosing wrongdoing or aspects of the *Disclosure Policy* that govern those mechanisms. Some elements could also apply to those internal departmental avenues but it is for others to determine their relevance in those contexts.

Part II

APPLYING EFFECTIVENESS TESTS TO THE PSIO

2.1 Measure up to the best agencies in other jurisdictions

The mandate, powers, credibility and effectiveness of an agency such as the PSIO should compare favourably with similar agencies in other jurisdictions. When this is not the case, appropriate reforms should be seriously considered, including legislation to provide more robust powers.

The PSIO is completing a comprehensive comparison of agencies around the world that investigate and address disclosures of wrongdoing or whistleblowing. That study will be available on the PSIO Web site when completed.

We sought answers to the following questions about such agencies:

- Are they policy-based or legislated (and if legislated, are they more effective)?
- How are they structured?
- What are their powers?
- What sorts of wrongdoing are they meant to address (and what kind do they address)?
- Who has access to those mechanisms?
- Do those other systems impose threshold requirements?
- How do they function?
- Are their recommendations or orders enforceable?

When relevant in applying to the PSIO the various criteria that follow, that data was considered. However, it will be more extensively featured in the next Annual Report.

Most other agencies or mechanisms that were studied have been in existence longer than the PSIO. As a result, their track records can often be used to determine what does and what does not work. Some agencies are arguably deficient in one or more respects, in some cases much like the PSIO. There are seven prominent public interest disclosure regimes in other countries – the United Kingdom, the United States, Australia, New Zealand, South Africa, Korea and Israel. Each of these countries has legislation to deal with public interest disclosures. However, while a legislated basis may be necessary, it was clear that other basic elements must also be in place.

2.2 Function independently as a legislated, rather than policy-based, agency

Any such agency should be, and widely perceived to be, independent in function. It should not be influenced, or perceived to be influenced, by any person, department or different levels within the government in the acceptance and disposition of cases.

The *Disclosure Policy* does not explicitly state that the PSIO is independent. It does, however, make it extra-departmental and states that it is to act as a neutral entity, in effect insulating it from interference. To date, no one has attempted to inappropriately influence the case decisions of the PSIO. If anyone were to do so, my Office would reject his or her efforts.

No Minister or Deputy Minister, not the Clerk, nor any department is authorized to instruct or review the PSIO's investigations and case-related decisions. While the Treasury Board's Office of Values and Ethics plays an important role in the Treasury Board and Public Service, its mandate is to provide advice, policy support and interpretation to Deputy Heads and departmental Senior Officers. It has no decision-making, or even advisory, role vis a vis this Office. The PSIO submits an Annual Report to the President of the Privy Council, not for his or her approval, but for tabling in Parliament.

An enduring perception of weakness becomes a reality in need of attention.

Nevertheless, there is a widespread perception that because this Office is a governmental and policy-based institution established by Treasury Board, and we are able to make only unenforceable recommendations to Deputy Ministers, the PSIO cannot be sufficiently independent and effective to merit the confidence of public servants. The perception is that only a truly independent and legislated agency can function objectively, be free of interference, and ensure action on its findings and recommendations. This is the position of Public Service unions and a significant number of Members of Parliament and Senators. It is also the impetus behind a number of Private Members Bills and Private Senators Bills on the subject of whistleblowing. (For a brief description of these Bills, see *Bill S-6: Public Service Whistleblowing Act* prepared by David Johansen, Law and Government Division, Research Branch, Library of Parliament, October 8, 2002, LS-430E.)

As indicated earlier in this Report, my priority has been to make the existence and mandate of the PSIO widely known within the Public Service and government, and to make the best case possible for the present status and procedures of this Office. From the outset, it has been my view that the PSIO has a number of significant strengths.

Given that the membership of Public Service unions constitutes the largest group likely to make allegations of wrongdoing, the support of the union leadership is a key to ensuring the credibility and effectiveness of the PSIO. Yet, despite speeches to and discussions with union groups at all levels (at the invitation of their leadership), and despite cordial relations between us, it is evident that Public Service union leaders remain determined to promote a legislated agency independent of government. They have held and defended this position for some time before the PSIO was established. (See, for example, the 1994 position paper from the Professional Institute of the Public Service of Canada: Lifting the Silence, the Right to Know, the Right to Say, the Right to Hear).

Another indication of this continuing skepticism emerged in June 2003, while this Report was in progress. In response to an inquiry by the House of Commons Standing Committee on Government Operations and Estimates into the conduct of the Privacy Commissioner, the Public Service Alliance of Canada (PSAC) expressed concern for

the protection of Commission employees from reprisal if they disclosed wrongdoing. PSAC maintained that because the PSIO was policy based, it could not offer employees adequate protection. In effect, the union leadership was discouraging employees from seeking recourse at the PSIO because they felt we lacked the legal ability to protect their members against job reprisal.

The mere fact that an agency is legislated and able to extend legal protection confers credibility and stability even if the legal tools provided seldom have to be used.

It went on to urge the Senate, then studying the *Public Service Modernization Act*, to amend Bill C-25 to include "whistleblowing legislation with teeth." That view, it is worth noting, was shared by the Chair of the House of Commons Standing Committee on Government Operations and Estimates.

Whatever one may think of that position and advice, the event clearly illustrates a reality and perception that, in my view, is not likely to change. Rather, it is gathering strength, and must be seriously considered in evaluating this Office and in weighing any possible reforms.

A review of similar agencies in jurisdictions outside of Canada indicates that they are independent entities, appointed by, and accountable to, their respective governments, parliaments or executives. Their mandates and their protections for whistleblowers were established by legislation. Canada is an exception in all of those respects. Whatever the strength or weakness of the powers and enforcement mechanisms provided in other jurisdictions, the mere fact that they are empowered by legislation, and thereby able to extend legal protection, gives them significant credibility and authority.

A legislative basis also confers a degree of stability and continuity – not otherwise possible. A policy-based institution can be dissolved by a stroke of the pen. To establish it on the basis of legislation would be the clearest possible indication of the enduring commitment of the government and Parliament to the values of an honest and open government.

The fact that the PSIO is policy–based and internal to government leads to skepticism about its effectiveness and ability to protect from reprisal.

Given the strong likelihood that a legislated basis for the PSIO or a successor agency would enhance its credibility and effectiveness, it is difficult to justify not proceeding in that direction. Applying some of the specific criteria that follows appears to support that view.

In a significant development, subsequent to the year under review, the government effectively acknowledged that employees are entitled to legislated protection against reprisal for reporting unlawful conduct in the workplace. On June 12, 2003, the Minister of Justice tabled Bill C-46 which proposed an amendment to the *Criminal Code* making it an offence "to punish, threaten, intimidate or retaliate against an employee for providing information about an offence that the employee believes has been or is being committed by the employer, or an officer or director of the employer, contrary to any provincial or federal law or regulation."

Although introduced in the context of financial fraud and insider trading, it could be argued that the amendment has a much broader application, particularly in view of where it is to be located in the *Criminal Code*. Although it focuses on corporate employers and employees, it is possible that an employee – including a Public Service employee – could invoke the amendment if his or her employer commits an act contrary to provincial or federal law. Whether this proves to be the case, Bill C-46 represents an acknowledgement by the government that legislation is an appropriate vehicle to protect from reprisal those who disclose wrongdoing.

It should also be noted that ample precedent exists in the federal sector for statutory prohibitions of reprisal for disclosing wrongdoing. (See Section 2.4 of this Report).

It may be thought by some that a recent amendment to Bill C-25, the *Public Service Modernization Act*, provided a legislative basis for the PSIO. This was not the case. The amendment only acknowledged the right of Treasury Board, consistent with its policy-making power, to make policy about the disclosure of wrongdoing. The *Disclosure Policy* and the PSIO it created were in fact already in existence.

Obviously, whistleblowing legislation should not be seen as a cure for all ills. In fact, in jurisdictions that have legislated whistleblowing agencies, legislation alone is not always enough to overcome an employee's reluctance to disclose wrongdoing. While legislation may reduce the fear of reprisal, especially if the legislation provides robust investigative and enforcement tools, the fear does not altogether disappear. To varying degrees, other factors also play a role in an employee's decision to report wrongdoing. One such factor is the general reluctance of most people to step outside the security of their personal comfort zone for the greater public interest. This reluctance is magnified by the generally risk-aversive tendencies of employees and managers in large, highly structured and hierarchical institutions like the Public Service.

Widely publicized examples, in both government and corporate contexts, clearly illustrate that no matter what avenues are available to disclose wrongdoing, and no matter how impressive the tools and assurances in place to offer protection from reprisal, whistleblowing is not always a good career move.

Nevertheless, I believe two responses are in order.

First, the enduring realities just indicated argue for the removal of any structural contributors to those natural fears and hesitations. Furthermore, they argue for putting in place the most effective, reassuring and protective agency and procedures imaginable – if not to eliminate all reservations and apprehension – to at least reduce them.

The second response involves combining any legislated approach with the promotion of a "culture change." Rather than simply allowing the disclosure of wrongdoing, such a culture would encourage whistleblowing as a meritorious act by rewarding employees for their commitment to the public interest. Here, too, even modest gains would be an improvement. However, we should not assume that such a culture change is easily achieved. Nor should we expect vast numbers to convert to whistleblowing, or underestimate the reluctance of any institution to publicly acknowledge wrongdoing in the ranks (the pre-condition to any readiness to publicly reward employees who report wrongdoing).

Promoting culture change without devising effective structures is not sufficient or likely to succeed.

If whistleblowing legislation is desirable, the following questions will have to be considered about any agency created through such legislation:

- Would form should it take?
- What powers should it have?
- What kind of structure should it have?
- Where in the federal structure should it be located?

At this point in the Report, I will suggest only some general answers.

In my view, legislation should be more than a few additional clauses tacked on to another Bill. The matter is too important, sensitive and complicated to be an add-on,

whether to Bill C-25 as has been suggested, or to any other Bill. If legislation is deemed appropriate, and I believe it is, then it merits a single piece of legislation devoted entirely to this matter. That piece of legislation should fully cover aspects like the purpose, mandate, powers, procedures, sanctions, remedies and the reporting and overseeing channels available to that agency.

At least two general considerations are involved. One is to design a legislated mechanism that meets the tests in the Report and provides the tools and protections to get the job done most effectively while inspiring the greatest confidence. Another is to design and legislate an agency that fits into the unique Canadian federal framework, including legislative and executive branches and the various "Public Service" universes. Given the unique goals and needs of such an agency, something innovative may be required.

Most disclosures have been employment-related, not about wrongs against the public interest.

Assuming that the analysis and proposals in this Report are well received, I will make it a priority to continue working with my colleagues towards proposing a specific and detailed model, one incorporating the elements suggested by the criteria that follow. Hopefully, those efforts will be made in collaboration with other interested agencies, committees, groups and individuals, both inside and outside government.

2.3 Attract reports of serious wrongdoing against the public interest, rather than primarily employment-related grievances

Activities reported and investigated by the PSIO should involve serious wrongdoing (as specified in the Disclosure Policy), particularly conduct with significant public interest implications. As a general rule, conduct involving employment, human resource, human rights, harassment or discrimination complaints and grievances, falls more appropriately within the scope of other mechanisms or agencies. If appropriate cases of wrongdoing do not come forward – while less appropriate cases do – any mechanism designed to receive and respond to those appropriate cases will not serve its purpose.

Generally speaking, public servants could be inclined to report two kinds of activity to the PSIO. One has to do with employment-related disputes, in which the individual feels he or she is the victim, as well as the beneficiary if the dispute is settled. While these cases are important and deserve to be dealt with, many or most do not constitute wrongdoing, at least not as specified in the *Disclosure Policy*. Yet, most cases brought to the PSIO in the first year and subsequently fall into this category.

In most instances, theses cases are better addressed by agencies focused on the activity in question. With the consent of the reporter, we refer most of these cases to a more appropriate avenue for resolution. That does not mean that this Office rejects these cases out of hand. In some instances, my staff has been able to very quickly solve a long-standing employment-related problem by requesting and obtaining the full cooperation of the appropriate decision-maker.

Other cases may appear at first to be employment-related and single victim in nature. However, on further examination, it becomes clear that in some instances the activity alleged is really within the scope of one of the four types of wrongdoing.

A second kind of alleged activity falls clearly within the scope of what the *Disclosure Policy* considers wrongdoing. These activities have greater implications for the public interest because they are serious in nature, often have a detrimental effect on the interests and functions of a group of public servants or a whole department, and subvert the delivery of program or services to the public. Some cases brought to the

PSIO during the past year involved alleged conduct that was obviously within that category. All involved long and complicated investigations, whether or not wrongdoing was found. These cases most clearly fall within the mandate of the PSIO.

Yet, relatively few such disclosures were made to the PSIO. As was noted earlier, it is impossible to know how much serious wrongdoing actually takes place in the Public Service. We do know that serious instances have been uncovered by the police and the Auditor General. Also, serious instances of wrongdoing have been alleged by Parliamentary Committees. And many accounts of serious governmental wrongdoing have been widely reported and discussed in the media and other public forums. The question is: Why did the employees who presumably knew about these activities not come to the PSIO?

While some may believe that such disclosures are being made via internal departmental channels, this does not always appear to be the case. In fact, departmental Senior Officers designated to review disclosures of wrongdoing say they seldom receive reports of serious wrongdoing.

2.4 Protect whistleblowers from reprisal – perceptions, motivations and risk-benefit calculations

Effective protection from reprisal for those who make disclosures or allegations of wrongdoing is an essential responsibility of any mechanism established to deal with such disclosures or allegations. Real and perceived risks are involved in whistleblowing. It is the responsibility of government to reduce such risks to the extent possible by clearly prohibiting reprisal and by putting in place effective protections against it. Motivations and risk-benefit calculations differ for the two categories of reportable cases – employment-related or public interest.

The *Disclosure Policy* clearly prohibits job reprisal related to good faith disclosures of wrongdoing. This Office takes this responsibility very seriously. Those who make inquiries or disclosures are told that protection against job reprisal applies to them and to witnesses. Furthermore, they are told that allegations of job reprisal will be investigated with the same thoroughness and rigor as the allegation of wrongdoing, that there is no time limit for this protection, and that it applies whether or not the wrongdoing is eventually found to be substantiated after review and investigation.

As indicated in Part I of this Report, this Office has had only one such case. Still, we have devoted considerable time and effort developing knowledge about the varieties and subtleties of job reprisal, the skills needed to detect it and the kind of institutions best able to deal with it.

As suggested earlier, it is legitimate and important to wonder why so many of the reports made to the PSIO in the past year were about activities in the first category – employment related, single victim in nature and not necessarily wrongdoing – and so few about activities in the second category – wrongdoing that typically victimizes someone other than the reporter, and ultimately, the public.

In my view, much of it has to do with balancing the likelihood of job reprisal with the hope of personal benefit. For example, if I believe I am the victim of an employment-related wrong, I may be willing to risk reprisal in the reasonable hope of personal benefit if the problem is addressed and fixed. But if I am not the victim of the actual wrongdoing, I am unlikely to benefit if the wrongdoing is fixed. Therefore, I may be less likely to risk job reprisal by reporting the wrongdoing. Also, many do not want to risk being labeled a squealer, a rat or a disloyal employee by superiors or colleagues.

Clearly, it requires greater courage and commitment to the public interest on the part of public servants to report serious wrongdoing, especially in light of the fact that they may risk real or perceived reprisal without chance of personal benefit. Surely, the institution concerned has a duty to provide incentives and recognition for the public service being rendered, including effective protection against job reprisal.

Especially for disclosures of wrongdoing that victimizes others and the public interest, the fear of reprisal needs to be reduced by enacting effective statutory protection.

It can be argued that adequate incentives and public recognition for whistle-blowers do not currently exist (see below in 3.5). Similarly, the widespread and not entirely unreasonable perception persists that policy-based protections against job reprisal are unlikely to be effective.

Clearly, skepticism about the ability of this Office to provide effective protection is directly related to doubts about the effectiveness of policy versus legislation, as well as uncertainty about the independence and powers of the PSIO. As such, the fears of reprisal – and doubts that a policy-based agency can withstand those determined to practise reprisal – may constitute yet another reason to recommend a legislatively supported agency.

There is ample precedent in the federal domain for statutory prohibitions of reprisal. Five Acts now specifically prohibit reprisal for the disclosure of wrongdoing: *Canadian Environmental Protection Act, Competition Act, Canada Labour Code, Canada Shipping Act* and the *Personal Information Protection and Electronic Documents Act*. Though not yet in force, the *Pest Control Products Act* also includes such prohibitions. The same is true for Bill C-46, proposing an amendment to the *Criminal Code*. (See above in Section 2.2 of this Report).

2.5 Extend protection from reprisal regardless of where the disclosure of wrongdoing is made

A government determined to identify and deal with wrongdoing in the Public Service wherever it is found, should normally provide a wide umbrella of protection against job reprisal. The narrower and more conditional the protection, the greater the risk of discouraging disclosures of wrongdoing. Therefore, restricting protection may not be justified.

Under the *Disclosure Policy*, a public servant alleging that he or she is the victim of reprisal must also have made to the PSIO the original disclosure of wrongdoing that prompted the alleged reprisal. In other words, if a public servant brings an allegation of wrongdoing to a departmental manager or Senior Officer, he or she cannot later bring a related allegation of reprisal to this Office. Equally, witnesses in an investigation of wrongdoing raised by someone else are presumably unable to complain if they experience job reprisal as a result.

Linking the original disclosure of wrongdoing to a subsequent complaint of reprisal is apparently designed to ensure that any investigation into the reprisal is limited to those instances when the original disclosure was judged to be in good faith. Separate the two and it becomes impossible to make the judgement about the good faith of the original disclosure apply to the complaint of job reprisal.

On the other hand, the initial "good faith" requirement is of limited practical application. First of all, it should always be assumed that every disclosure is being made in good faith. Not only are there no accurate tests to determine "good faith," it is already an ethical requirement in the disclosure of wrongdoing (with supporting disciplinary measures for "bad faith" disclosures). Second, in our experience, lack of

good faith has never been an issue. Rather than being in bad faith, frivolous or vexatious, there were instances when disclosures contained misinformation, partial information or misconceptions on the part of the complainant.

Consideration should be given to always presuming good faith as well as to providing wide protection against reprisal regardless of where the original disclosure was made. That way, complainants who make their original disclosure to a manager or a Senior Officer where the matter was investigated, could subsequently bring an allegation of reprisal to this Office. It would also allow a witness – who had no say as to where the original disclosure was filed and may have had little or no confidence in the original investigation – to report a reprisal to this Office. In the end, the allegation of reprisal would be investigated independently of the original disclosure.

What about public servants who make external disclosures of wrongdoing, to the media for instance? Should they be protected from reprisal? The *Disclosure Policy*, as well as the courts, acknowledge that there are exceptional circumstances in which an employee may be justified in making such a disclosure. The justification stated by the courts is that of public interest. The Policy refers to two such circumstances: when there is an immediate risk to the life, health or safety of the public, or when an employee has exhausted all internal procedures.

Allow the PSIO or successor agency to investigate allegations of reprisal even when the original disclosure of wrongdoing was made internally to a department, or made externally outside government channels, or made by witnesses to Parliamentary committees or other agencies.

However, the *Disclosure Policy* does not directly address the issue of whether the discloser is protected from reprisal in such cases. In effect, the Policy prohibits this Office from extending protection to anyone who does not bring the original disclosure to the PSIO. That is arguably an unjustified restriction, one likely to discourage the disclosure and correction of reprisal. Since disclosing externally – as a last resort or in exceptional circumstances – is legitimate in the public interest, then those doing so should be entitled to protection from reprisal.

Another challenge involves an important gap in the reprisal protection system. What if public servants are called as witnesses before a Parliamentary Committee and asked to testify about suspected wrongdoing in their departments? Or what if they make allegations of wrongdoing to some other agency or recourse mechanism such as the Auditor General?

At present, this Office could not protect them from reprisal because we can offer protection only to those who bring their allegations to this Office. To my knowledge, Parliamentary Committees or other agencies do not have a mandate to offer protection from reprisal.

Conceivably, the PSIO or a legislated successor agency could presently provide protection if we collaborated in some way with the committee or agency in the inquiry into the original disclosure. But that may be both impractical and an unnecessary duplication.

At this point, I am simply flagging this problem and inviting reflection. I am not yet in a position to propose a remedy. However, at least two options come to mind. One is to give bodies that undertake inquiries involving witnesses the power and resources to offer those witnesses protection from reprisal. A second option would mandate the PSIO or subsequent agency to protect from reprisal any witness who makes a disclosure of wrongdoing to another committee or agency. The PSIO would not be required to be involved in any way with the original inquiry. Such a reference would implicate this institution only to the extent that in the event of a subsequent allegation of reprisal it

would do the inquiry and make a finding, and if reprisal is found, an enforceable recommendation.

2.6 Focus on wrongdoing itself, not the source of the reports, and be proactive as well as reactive

Since the primary intent of any federal government disclosure of wrongdoing policy or law is to identify and address wrongdoing in the Public Service, consideration should be given to enabling the mechanism established to do just that, no matter what the source of those disclosures. For the same reason, circumstances can justify proactive investigations of wrongdoing.

A sharper focus on the public interest, as opposed to the largely human resource and employment-related context of the *Disclosure Policy*, suggests expanding the scope of those who can access the PSIO. As well as public servants, the PSIO or subsequent agency could accept and investigate reports of wrongdoing from Public Service unions, private citizens, public advocacy groups and others.

We must remember that the intent of any such policy or law is to uncover and deal effectively with wrongdoing in the Public Service. That intent is stated clearly in the *Disclosure Policy*. However, only Public Service employees are now entitled to bring reports of wrongdoing to the PSIO. That restriction, it appears, arises from an intent to maintain a disclosure system that is entirely internal to the Public Service. Not only is such a disclosure system internal in the channels and mechanisms used to investigate reports of wrongdoing, but only Public Service employees are entitled to make such reports.

Private citizens, advocacy groups and Public Service unions should be entitled to disclose public sector wrongdoing and receive protection from reprisal.

In the interest of finding and correcting instances of Public Service wrongdoing known only to an individual or group outside the Public Service, consideration should be given to removing the restriction whereby only public servants may disclose wrongdoing to the PSIO.

Since the PSIO was created, there have been several attempts by citizens outside the Public Service to make allegations of Public Service wrongdoing. These allegations may well have led to investigations and findings of serious wrongs. This Office, however, was unable to accept and investigate those reports because of the restriction to public servants as the only acceptable source of disclosures under the *Disclosure Policy*. While there was no clear and effective alternate channel or mechanism to look into these cases, we did attempt to refer each case to an appropriate department or agency.

It is conceivable that individuals outside the Public Service may possess significant and credible information about wrongful activity in the Public Service because of their own dealings with government. In some cases, they may be more willing to come forward than a public servant because they may not have reason to fear reprisal for their disclosure.

Members of advocacy groups and Public Service unions may also possess information about wrongful Public Service activities, whether they're public servants or not. Although these individuals may not be willing to come forward, the organization may choose to report allegations on their behalf.

It is conceivable in some cases that such private citizens or groups could fear being exposed to risks of reprisal for making such allegations. For example, a private citizen alleging Public Service wrongdoing involving contracting or taxation rules may fear reprisal from the relevant government department. He or she may worry about being

excluded from access to further contracts or being subjected to unjustified or otherwise unlikely audits. An advocacy group may fear that the government grant it applied for will be rejected if it alleges Public Service wrongdoing.

If accepting reports of Public Service wrongdoing from those sources is judged to be in the public interest, then the agency receiving and investigating them will have to provide protection from such potential reprisals. As in all cases of wrongdoing, reprisal would be prohibited and reports of it would be rigorously investigated.

There is yet another variation on this theme of the source of reports of wrongdoing. The *Disclosure Policy* assumes that Public Service wrongdoing will be investigated by the PSIO only if and when we receive a specific report. In other words, the PSIO (like internal departmental channels) is expected to be reactive, not proactive. While the *Disclosure Policy* does not expressly prohibit proactive investigations, it does assume that the normal "trigger" of such investigations will be an actual disclosure. On the other hand, it is not necessarily inconsistent with the Policy to maintain, as I do, that there are circumstances that justify and even mandate proactivity.

One such circumstance is an accumulation of similar allegations from public servants in one department or program, an accumulation that eventually indicates the strong likelihood of a different, systemic, department-wide form of wrongdoing. One such example is gross mismanagement by inattention. This Office is close to coming to that conclusion about one particular department and plans to arrange for a proactive review and investigation. Not doing so would risk leaving in place a potentially serious and expanding wrong, one that affects a large number of employees.

Consideration should be given to having the *Disclosure Policy* or any successive legislation explicitly acknowledge that proactive investigations in similar circumstances can be legitimate and worthwhile.

2.7 Ensure findings of wrongdoing will lead to appropriate, predictable and timely action

Findings of wrongdoing should lead to timely corrective and disciplinary action. Such an expectation must be justified and widely held by public servants if such an agency is to be effective. Normally, this would require the ability to make orders rather than recommendations, or the capacity to have those recommendations enforced. In the absence of a clear duty for relevant authorities to take appropriate action, the expectation of appropriate and timely action would not be justified or widely held.

Another major obstacle to more disclosures of public interest wrongdoing is the perception that even if reported, nothing is likely to come of it. Many public servants we have spoken to believe little if anything will change and wrongdoers are unlikely to be adequately disciplined and the conduct of wrongdoers will continue unaffected.

Given this Office's experience, it is difficult to measure how effective we can be, particularly in light of the limited tools we have if an investigation leads to a finding of wrongdoing. Essentially, those tools are recommendation, negotiation and persuasion. Our experience, however limited, is not encouraging. Although it is not clear how this Office would succeed with our present framework and tools, it has become clear to me that because we cannot make enforceable recommendations or orders, we cannot, will not – and probably should not – inspire the confidence we require.

There is some discordance between the kinds of serious wrongdoing this Office is meant to investigate and the relatively weak measures we have to secure action if wrongdoing is found. The wrongdoing that this Office is mandated to investigate – the violation of any law or regulation, the misuse of public funds or assets, gross mismanagement, and substantial dangers to human health, safety or the environment – are arguably too serious to lead only to recommendations for action, more or less voluntary compliance, unpredictable remedies and negotiated sanctions.

Serious wrongdoing cannot be effectively and credibly addressed by weak measures, inconsistency, voluntary action and tolerance for even the appearance of conflict of interest.

Illustrating the point further is the fact the *Disclosure Policy* does not provide even general guidelines or types of sanctions that can be applied to wrongdoers, at least those found to have committed one of the four types of serious wrongs specified in the Policy. It does state that managers and employees who practise retaliation, or disclose in a manner that does not conform with the Policy, are subject to administrative and disciplinary measures – up to and including termination of employment. But even those measures are not to be applied before consulting with departmental Human Resources Services and Legal Services. Surprisingly, however, nothing is explicitly said about measures applicable to the wrongdoers themselves.

A system or agency mandated to identify and remedy wrongdoing, as well as discipline the wrongdoer, is likely to gain needed respect only if the processes and outcomes are consistent, fair, predictable and insulated from real or apparent conflicts of interest. This is true whether the discipline is to be applied by the agency itself or, as regards the PSIO, by the Deputy Heads. Normally, a fair and predictable outcome requires that sanctions for particular activities be established, known in advance, applicable within general parameters, and evenly applied.

Of course, the governmental discipline policy already provides general guidance for a mechanism to deal with the misconduct of employees. A mechanism that effectively depends upon managers and Deputy Ministers to accept findings of misconduct, then take whatever action they deem appropriate, admirably highlights the responsibility and accountability of managers and Deputy Ministers. It also respects the fact that circumstances vary and that there is need for adaptability. But with little by way of disciplinary and remedial guidelines to facilitate consistency and appropriateness of sanctions in the context of the serious wrongdoing envisaged by the *Disclosure Policy*, the potential for inconsistency and inadequate measures is greatly increased.

Too much informality and too little guidance in a system designed to address wrongdoing also increases the potential for conflict of interest, or at least the appearance of such conflict. However unlikely, allowing departments wide variations in discipline when responding to similar wrongdoing could hide instances where a manager or Deputy Head applies a lenient sanction because he or she is implicated in the wrongdoing. For example, a manager may have had an opportunity to address the wrongdoing sooner but did not. Or a senior official may have wanted to make the department look better than it is.

The potential for real or apparent conflict of interest affects this Office, as well. The *Disclosure Policy* that created the PSIO was formulated and is controlled by the Treasury Board, the employer. Certainly, the intention was admirable – by providing for the internal disclosure and correction of wrongdoing, the *Disclosure Policy* reflects a commitment to contribute to an honest and open and accountable Public Service. Nonetheless, the suspicion will persist that like other internal policing systems, this one too will be subject to discretion, leniency and inconsistency. This Office, many

feel, is too subject to the tendency of a large institution to downplay its deficiencies, keep them in-house, and resist rigorous and formal procedures – inadvertently or not.

As the employer, Treasury Board may well be the appropriate context for those parts of the Policy that focus on the internal reporting mechanisms of Senior Officers and managers. Nevertheless, because the focus is on serious wrongdoing, these activities should be subject to more rigorous procedures and outcomes than are normally addressed in the human resource or employment context.

I believe that the factors cited above provide yet another reason to consider situating and structuring this Office, or another version of it, very differently. Only a legislated agency, outside or at arms-length from the Public Service or the government, can best possess the authority and tools needed to achieve appropriate remedial and disciplinary action in the event of wrongdoing. It would seem that only such an agency could best ensure enforceable recommendations, whether enforced by the agency itself or by another related agency at a legally designated stage in the process. Only such a legislated and independent agency could best be insulated from real or apparent conflicts of interest, and thereby most likely to earn the confidence of those reluctant to disclose wrongdoing.

Part III

APPLYING FAIRNESS TESTS TO THE PSIO

3.1 Clarify the meaning and scope of targeted wrongdoing

In the interest of fairness, the meaning and scope of the kinds of wrongdoing targeted by such an agency should be as precise and predictable as possible. This would avoid the excessive vagueness and ambiguity that could leave public servants uncertain as to the line between acceptable conduct and wrongdoing, and the difference between situations allowing individual ethical judgment and those that require strict adherence to rules.

Values and rules need not be mutually exclusive – good rules articulate values and provide needed guidance for morally and legally complex activities.

Obviously, the tasks involved in this regard cannot be the sole responsibility of the PSIO or any such agency. As much clarity as possible must be provided in the supporting policy or legislation.

To provide even further clarification, related guidelines, policies and principles must be formulated and distributed. Treasury Board and other Public Service organizations have made important contributions in that regard, including the *Disclosure Policy*, as well as the current focus on accountability, managerial skills and leadership, and the recently released *Values and Ethics Code for the Public Service* (effective September 1 of this year). By developing case studies and training sessions, the Treasury Board's Office of Values and Ethics, as well as Senior Officers and others in various departments, have further clarified the meaning and scope of wrongdoing.

When speaking about this Office, I am frequently asked how I balance, or would balance, values and rules in determining wrongdoing in specific cases. A recurring and related question addresses the role that values and rules play in guiding moral and legal choices.

Though necessary, general values, ethical principles and maxims are not a complete moral guide or indicator of wrongdoing. For the most part, they are not contentious, are widely known and are accepted by reasonably informed and moral persons. Values that apply in the Public Service do not differ markedly from those in professional life. For public servants, the key difference is that their ultimate duty is to serve the public rather than corporate shareholders. The challenge is how to apply general values and principles in specific dilemmas when they conflict, or when the activity in question is morally or legally complex.

Those dilemmas and complexities illustrate the need to balance values and rules. The trend in the Public Service today is to replace rules with values. However, there is the danger of going too far in that direction, just as the opposite and earlier trend may have been too rule-based. The result could leave public servants without sufficient

guidance, thereby shortchanging them. Values and rules need not be mutually exclusive. Good rules articulate and apply discernible values in complicated situations and evolve as values evolve.

In an ideal world, everyone would be a model of ethical reasoning and integrity. In reality, any institution, including the Public Service, has some people who need to be guided more by rules than values or ethical reasoning alone. This will inevitably include managers and executives as well as those at other levels; to think otherwise would be naïve and utopian.

The other side of "speak truth to power", is, "power should listen to truth and act accordingly".

A conflict of two legitimate values or duties can create a difficult dilemma. For example, there are instances when a public servant may be faced with a choice between one's duty to serve the public interest and one's duty of loyalty to his or her government employer. Ideally and normally they are consistent, even one and the same duty, although not always. While the issue is complicated, and the choice not always obvious or easy, court rulings have defined specific circumstances when the public interest choice prevails.

One example of a morally and legally complicated issue that requires detailed rules is that of conflict of interest. It was rightly judged that to be helpful as a guide to conduct, the general values and principles involved, those of honesty and integrity, had to be expressed in specific rules applied to a variety of situations.

Too often, values, principles and maxims are launched as if they are self-explanatory and easily practised. In reality, they are neither. They need accompanying elaboration about their application and implications. Sometimes their formulation suggests they apply only to low and mid-level employees, with no related and consequent duties for those at more senior levels. An example is the laudable but somewhat facile maxim, "speak truth to power." The problem is, "power" is not always prepared to hear the truth, even less prepared to act upon it, and unhappy with the one who spoke it. In such cases, speaking the truth can be a career limiting activity. There is a corresponding duty on the part of managers, executives and Deputy Ministers to listen to the truth, act upon it when indicated, and commend those who speak it – not subject them to reprisal.

I raise these issues to illustrate the commitment on the part of this Office to clarify what wrongdoing means. In part, we've done that by exploring and proposing what "rightdoing" means. That, in turn, includes the related issue of what kind of guidance is required.

With my colleagues and others, I have taken a particular interest in exploring and shedding light on the meaning and application of "gross mismanagement," arguably the most ambiguous form of wrongdoing specified in the *Disclosure Policy*. Though in need of clarifying applications and examples, the other kinds of wrongdoing (violation of any law or regulation, misuse of public funds or assets, substantial and specific dangers to human health or safety or that of the environment) are relatively transparent.

To date, only 17 allegations of wrongdoing brought to this office have been primarily identified and recorded as mismanagement (although it occasionally emerges as a sub-theme in the background of other forms of wrongdoing). I am, however, frequently asked how this Office defines gross mismanagement and what criteria we apply when investigating an allegation of mismanagement.

My response that follows is a product of reflection during the past year as well as my experience in other contexts. It is not based on actual allegations to the PSIO.

"Gross mismanagement" was rightly included in the *Disclosure Policy* as a serious wrongdoing. Few, if any, would claim that it is not a serious and destructive form of wrongdoing. At the same time, there should be some latitude allowed for different management "styles and contexts," and the fact that there are degrees of mismanagement. But when does mismanagement become "gross" and therefore a form of serious wrongdoing? It may be easier to recognize than define, but at least three kinds of gross mismanagement merit attention. In all three, a fundamental test of whether it is gross is the nature and extent of the harm done.

- One type of gross mismanagement is by action or conduct, rather than by omission. For example, the manager, executive or head of a department may be a rule breaker. If that manager also threatens staff, to the extent that his or her rule breaking continues unchecked and unreported, initiative is lost, the working environment is poisoned and the public is not being properly served as a result, then both the members of that unit and the public are victimized. Few would or should claim that this does not constitute gross mismanagement. Almost everyone would see it as a total distortion of expected good leadership: leading by example, respecting the rights and needs of staff members, earning their confidence, encouraging enthusiasm in the workplace, and ensuring service delivery and accountability for positive results.

Gross mismanagement can take many forms – some by commission, others by omission – but in all cases the public service and the public are seriously harmed.

- A second form of gross mismanagement, less frequently recognized, is mismanagement by omission. In such cases, a manager, executive or department head simply abrogates his or her responsibility to lead, supervise and hold staff members accountable. As a result, rules are broken, teamwork breaks down, dissension is rampant, and important work with public interest implications is left undone or badly done. Nor are any of these ongoing destructive realities addressed.

  Systemic problems and institutional policies can contribute to mismanagement by omission. For example, while the practice of posting managers in departments or on projects for brief periods may benefit the careers of the managers – by exposing them to a variety of work contexts – it can harm the departments and projects involved. It takes time, up to three years in larger departments, to become familiar enough with mandate and staff to be an effective leader, earn the confidence of staff members, and identify and address instances of mismanagement.

- Yet another form of gross mismanagement occurs when the middle manager chooses to remain silent, although fully aware of serious rule breaking and mismanagement at higher levels and the harmful effects of that mismanagement on those under his or her direction and the public served. While that silence may be due to fear of reprisal or simply passivity, it can make the middle manager an accomplice in the wrongdoing. It also violates a managerial responsibility to protect and represent those under his or her direction and may violate a professional code as well. In any institution, managers may be inclined and trained to define their duties more or less exclusively towards their superiors. This can create drastic results for staff members exposed to the wrath of the errant department head as well as for the public being served by the misdirected department. In such cases, it can be argued that the silent manager does not have the option to remain silent, that he or she should disclose the wrongdoing, either internally or externally.

Assuming effective mechanisms are in place to investigate and correct such conduct, and provide protection against reprisal, then a manager's silence may constitute gross mismanagement.

3.2 Meet high investigational standards, including respect for the principles of natural justice

Investigations of allegations of wrongdoing by any such agency should be comprehensive, objective, confidential and fair to all parties involved, including the alleged wrongdoer. Given the focus on wrongdoing, and the potentially serious implications for all parties following an investigation, flexibility in procedures should take second place to formality and fairness. This standard includes a duty to assign responsibility for wrongdoing fairly if shared by a number of individuals or groups, including those at different levels of government.

Meeting this test obviously requires a staff with appropriate investigational skills. I have been extremely fortunate in that regard. The three staff members who review and investigate allegations of wrongdoing, and the Executive Director who assigns and supervises the case investigations and analyses, came to the PSIO with proven investigational, managerial and interpersonal abilities in a variety of relevant areas. Furthermore, during the year under review, staff members participated in a number of courses and workshops to further develop their skills.

A major strength of the PSIO is the fact that it is an extra-departmental unit established with the mandate, resources and budget to do primarily one thing – investigate allegations of wrongdoing, recommend action to correct the wrong and, if necessary, to discipline the wrongdoer. That single, undivided focus and extra-departmental nature can contribute significantly to making such an institution effective and shielding it from influence to a greater extent than if such investigations and correctives were left exclusively to departments. In my view, a weakness of some mechanisms in other jurisdictions, and in some proposals for whistleblower legislation, is the fact that they do not provide for an extra departmental unit that does its own investigations and reports. Internal departmental investigations will always be subject to suspicions, justified or not in individual cases, of conflict of interest. The employer or department is, after all, investigating itself.

A second requirement is the development and use of appropriate investigational procedures. Developing such a process was a first priority for this Office. We wanted to be in a position to ensure the reliability and accuracy of our findings and supporting evidence. We also wanted to ensure that the rights of the various parties, including the alleged wrongdoer, were respected during all stages of an investigation. To achieve this goal, our procedures have gradually become more formalized and less flexible. For instance, we now normally tape interviews and (with due care) share allegations and evidence with alleged wrongdoers to enable informed responses and explanations. All "disclosures" or "reports" of wrongdoing received by this Office are treated as allegations of wrongdoing, not as established wrongdoing.

In defending the status quo, some have claimed that not being the product of legislation allows the PSIO to be more flexible in the way it handles and investigates disclosures of wrongdoing. For example, goes the argument, the PSIO is not as strictly bound by the rules of evidence. Also, conducting essentially administrative inquiries can make procedures less adversarial in nature and result. The "flexibility" argument is not without merit, and was clearly a consideration when establishing the PSIO.

On the other hand, less flexibility and more formality in procedures as a result of legislation could be beneficial. The disclosures in question are about "wrongdoing," including violations of laws and regulations. The findings and recommendations of this Office can have serious legal and other implications for wrongdoers and for those reporting wrongdoing. That being the case, values such as certainty, reliability, procedural fairness, respect for rules of evidence and principles of natural justice seem so central that, in exchange, less flexibility is justified and perhaps even mandatory. Determining the presence or absence of wrongdoing is normally thought to require predictable and fair rules and procedures.

Ordering wrongdoing is a wrong, but "I was told to do it" cannot excuse the public servant who obeyed the order or request. Both wrongs need to be addressed.

While that does not exclude flexibility, it reserves it for stages other than the investigation and findings. For example, there is often a role for negotiation. However, wrongdoing itself cannot be negotiated away. It either took place or it did not. As in any legal process, including criminal investigations, negotiation can be legitimate and relevant in determining appropriate sanctions and remedies.

When more than one person or more than one level within the government is involved in a wrongful activity, the investigational procedure should accurately

assign and distribute responsibility. It would be unfair, for example, to find one or more public servants exclusively responsible for breaking rules if credible testimony reveals that the wrongdoing resulted from an order or request from a Minister's office.

Having said that, even if such an order or request was made and could be substantiated, that would not in itself excuse a public servant who broke rules. Since Nuremburg, claims that "I was told to do it" do not allow a person to escape responsibility for breaking laws or rules he or she knew about or should have known about. We are rightly expected to refuse such requests and report them to our superiors or Deputy Minister. They, in turn, are rightly expected to deal with the alleged wrongdoing and not allow or practise any form of reprisal. If the public servant nevertheless breaks the rules in this situation, while it would not excuse the conduct, it could reduce his or her responsibility.

This Office is not mandated or authorized to follow credible trails of responsibility that lead beyond the Public Service. However, in fairness to public servants who may be caught up in wrongdoing originating elsewhere, such leads should be followed up by those authorized to do so.

Although such an eventuality has not yet been presented to this Office, we would probably be inclined to do two things if it did. First, any credible information would be passed on to an appropriate body – such as the Ethics Commissioner, police, Auditor General or Parliamentary Committee – for investigation. Second, I would flag in the report about the public servant's responsibility, any such credible testimony about orders from higher authority as an explanation for why a finding of responsibility in the public servant's case cannot be made until any potential involvement of the Minister's office is investigated, or why that responsibility is reduced as a result.

A real alternative to internal departmental disclosures needs to provide free, direct and uncomplicated access without passing tests or meeting prior conditions.

A last issue to include under the rubric of fairness is the widespread perception among public servants that there is a double moral and legal standard in government – a strict standard for public servants, a far more lenient one for politicians and Ministers. This perception may well be exaggerated but it is understandable, given the serious mismanagement and wrongdoing identified by the Auditor General, or alleged and reported by Parliamentary committees and the media over the past year and before.

For any investigative process in the Public Service to be seen as rigorous but fair, the same standards and investigative rigor must apply and be visible beyond the Public Service. The failure to correct double standards promotes cynicism about Public Service investigative bodies such as the PSIO. They can too easily be seen as vehicles of repression by a government determined to eradicate and punish Public Service wrongdoing but ready to explain away wrongdoing at higher levels as the acceptable and inevitable byproduct of doing politics. Hopefully, recent and forthcoming initiatives such as those in the "Ethics Package" will help to establish a single standard.

3.3 Enable direct access to the agency without first exhausting departmental mechanisms

Access to such a neutral and extra-departmental agency by those wishing to make credible and good faith allegations of wrongdoing should be as direct and uncomplicated as possible. To ensure that the agency is, and is widely perceived to be, an extra-departmental alternative to internal departmental avenues, there should be no threshold requirement to first direct reports of wrongdoing to the department and to exhaust departmental measures.

Placing obstacles in the path to an extra-departmental agency in the form of threshold requirements, restrictions, or an expressed preference for other routes, would inevitably discourage recourse to that agency. It would compromise its role as an alternative to internal departmental channels for reporting wrongdoing. The *Disclosure Policy* is at best ambiguous in this regard.

In the preamble, after referring to internal mechanisms for disclosing wrongdoing such as Senior Officers designated for that role, it refers to this Office as follows:

> "The policy also establishes a government-wide review mechanism outside the departmental processes where employees, who, *having unsuccessfully exhausted departmental mechanisms*, may turn to disclose information concerning wrongdoing (emphasis added)."

In the body of the Policy, the preference for internal reporting mechanisms is less evident, and the requirement to first exhaust departmental mechanisms is less restrictive. As a result, the two texts are arguably inconsistent. Under the heading of *Responsibilities of the Public Service Integrity Officer*, the Policy states:

"The mandate of the Public Service Integrity Officer is to act as a neutral entity on matters of internal disclosure of wrongdoing. In particular, he or she assists employees who:

- believe that their issue cannot be disclosed within their own department; or
- raised their disclosure issue(s) in good faith through the departmental mechanisms but believe that the disclosure was not appropriately addressed."

Because the "first exhaust departmental mechanisms" restriction expressed in the first paragraph is in the preamble, and because it appears to conflict with the body of the Policy, I do not consider it to be of any real effect. Some departments, however, have a different interpretation, preferring to emphasize the need to exhaust departmental mechanisms. That also appears to be the case with the Treasury Board's Office of Values and Ethics when it advises Senior Officers and others.

As for the two circumstances that allow access to the PSIO (as indicated in the second paragraph above), only the first permits direct access and only when employees, "believe that their issue cannot be disclosed within their own department." At face value, that appears to be very restrictive.

Recourse to the extra-departmental PSIO should not be represented as a failure of the internal departmental mechanisms, but as a personal choice for a variety of legitimate reasons.

However, consistent with the *Disclosure Policy*'s stated intent to establish this Office as an alternative mechanism, and consistent with the desire to allow public servants to come to this Office without applying a litmus test to their reasons for doing so, I take that condition to mean that anyone may bring a disclosure directly to this Office and for their own reasons.

Presumably, there are a wide variety of possible reasons to choose to come to the PSIO, many of which we have already heard from those who come to this Office:

- A desire for more confidentiality and anonymity
- Lack of confidence in a particular Senior Officer
- The alleged wrongdoer is thought to be allied with, or a close colleague of, the manager or Senior Officer
- The relatively small size of an organization may make it difficult to raise internally a particularly serious or sensitive allegation
- The extra-departmental aspect of the PSIO is more likely to avoid conflicts of interest
- The investigative resources of the PSIO are more likely to provide a comprehensive investigation.

I should add, however, that even though we do not inform or involve Senior Officers in our cases, or refer cases to them unless expressly requested or allowed by the complainant, we have excellent relations with many Senior Officers. They have been helpful and collaborative. In a number of cases, we have suggested to complainants that their particular problem may be better resolved internally by a Senior Officer.

It is worth noting that the *Disclosure Policy*'s requirement to exhaust internal mechanisms, and the preference for those internal routes, is similar to disclosure mechanisms in the UK, Australia and New Zealand. In fact, in some respects the conditions in those mechanisms are considerably more stringent than in our *Disclosure Policy*. In the UK, for example, individuals must not only exhaust internal procedures, they must also

provide documentation that they did so, before they can move on to the next stage. On the other hand, the US federal government mechanism for disclosures requires no prior internal reporting.

If disclosures of wrongdoing could be received from any source then all federal public sector institutions would have access to the PSIO or successor agency.

At the very least, the confusion and restrictions engendered by the *Disclosure Policy* point to a need to clarify and remove the ambiguities, both in the Policy itself and in any future legislation. First, direct access to the PSIO – without prior reference to internal departmental mechanisms – should be clearly allowed and for whatever reasons individual public servants choose. Second, no preference should be expressed in the *Disclosure Policy* or any eventual legislation for using internal departmental mechanisms rather than going to the PSIO, or vice versa. They should be seen as alternate, not competing, avenues. Otherwise, the choice of routes available to public servants is unjustifiably restricted.

Unless both of these obstacles are clearly removed, there will be a bias against using the extra-departmental route provided by the PSIO and its role as an alternative will be compromised. It is not our intention to denigrate those internal departmental routes. Rather, we suggest that they be promoted for the important opportunities they provide, not by claiming their superiority. This only discourages access to the PSIO.

Internal departmental mechanisms, because they are internal to departments, have a very different set of characteristics, including accountabilities, reporting channels, means of access, and degree of transparency or lack thereof. Having both the PSIO and Senior Officers/Managers as mechanisms guided by the same Treasury Board policy with a human resource and management orientation, and therefore an inevitable bias towards internal regulation, may invite a certain reluctance and restriction in providing for access to the extra-departmental avenue.

As long as both routes co-exist in the same policy, recourse to the extra-departmental channel may be represented by some as a failure of the means of internal departmental resolution, rather than an opportunity to freely avail oneself of an equally justifiable alternative channel with its own strengths and characteristics. A divorce of the two approaches, and the reformulation of the extra-departmental option in legislation, may well remove the competitive element.

3.4 Provide access to the agency by all federal public servants regardless of where they work

To deny a significant number of public servants access to such an extra-departmental and neutral agency for the disclosure of wrongdoing – and to do so only because of the particular nature of their government institution – would be unfair. It would deny them an avenue and advantages that are available to other public servants. The only criterion that should matter is that they work in federal public sector institutions, not that they must fall within the strict definition of employees within the ambit of the Treasury Board.

Treasury Board's *Disclosure Policy*, and hence access to the PSIO, applies only to those departments and agencies, and the persons employed therein, listed in Schedule 1, Part 1 of the *Public Service Staff Relations Act*. This is considered the "core" Public Service, the universe that Treasury Board generally manages pursuant to the *Financial Administration Act* and where it is the corporate employer as per the *Public Service Staff Relations Act*.

Despite the legal, jurisdictional and structural arguments for such a situation, the fact remains that only about 168,000 employees – fewer than half those who have an

employment relationship with the federal government – are under the purview of the *Disclosure Policy* and therefore able to access the PSIO

That restriction is arguably unfair and questionable. Of course, those other institutions have been encouraged to develop their own internal channels to deal with allegations of wrongdoing. But they cannot access an extra-organizational mechanism like the PSIO. As the Public Service Integrity Officer, I would be prepared, on grounds of fairness and equal access, to include those institutions within the scope of my mandate. This assumes, of course, that needed additional resources and authority would be forthcoming.

The decision, however, is not one to be made by this Office. Presumably, such a decision will be made by the Cabinet, and Parliament if legislation is contemplated, following further reflection and consultation with the Treasury Board and the heads of those other institutions. This is the answer I have had to give to the small but significant number of persons employed by these other federal institutions who contacted my Office to bring allegations of wrongdoing.

Of course, if my recommendation in Section 2.6 of this report is accepted, namely that the PSIO or any successor agency be authorized to receive and act on allegations of wrongdoing from any source, my argumentation here for increased coverage and access would be largely satisfied.

A reality to be addressed if disclosures of wrongdoing are to be publicly encouraged and rewarded, is the reluctance of any large institution with an internal disclosure system, to publicly acknowledge that wrongdoing took place.

3.5 Encourage and reward disclosures of wrongdoing

Consistent with the commitment of governments to the centrality of integrity and openness in the Public Service, disclosures of wrongdoing should not only be enabled but also encouraged and rewarded. Doing so may result in the identification and correction of more wrongdoing and reduce fears of job reprisal.

Given the service to the public provided by those who disclose wrongdoing, sometimes at considerable personal risk, it would be patently unfair not to publicly encourage and reward them.

The *Disclosure Policy*, through the mechanisms it establishes, does enable such disclosures. This is a laudable first step. However, the Policy and the government could do more to encourage and publicly recognize and reward those who come forward with allegations of wrongdoing. The impression created by enveloping the disclosure of wrongdoing with limitations, conditions and qualifications – some more justified than others – is hardly one of encouragement. The application to the PSIO and the *Disclosure Policy* of some of the above criteria led me to make a number of recommendations to make such disclosures less encumbered and remedy some deficiencies.

It would also help if senior levels of government made regular and public appeals to public servants, stressing that disclosure of wrongdoing demonstrates a valuable and even indispensable commitment to an open, honest and accountable Public Service.

To make that point, and to mitigate fears of job reprisal, it would be appropriate for senior levels of government, perhaps the Clerk of the Privy Council, to include those who report wrongdoing among those being publicly given merit awards for exemplary service to the public and the Public Service. Appropriate awards for such disclosures could include citations on one's employment file. This, too, would demonstrate that the reporting of wrongdoing is a meritorious act.

Since the PSIO or successor agency makes decisions with significant legal and other implications for the parties involved, acts in the public interest and spends public funds, it should be subject to court reviews and Parliamentary oversight.

A major obstacle to the realization of such a policy is the natural reluctance of the heads and managers of a large institution to publicly acknowledge that wrongdoing took place. Each level of authority has an instinctive vested interest in keeping wrongdoing quiet, often preferring to deal with it privately and in-house. This is especially true for institutions like the Public Service in which the government has established an entirely internal system for the disclosure and handling of wrongdoing.

Such public acknowledgements would be more forthcoming, and less likely to be kept internal and private, in the context of a disclosure system that is itself more public. This is perhaps another reason to seriously consider a transformation of the present internal disclosure system and the PSIO. A disclosure system that is publicly accountable would help open the window more widely on instances of wrongdoing. This in turn, would make it increasingly normal to recognize and award those with the courage and commitment to step forward as a service to the public.

3.6 Findings and recommendations should be subject to challenges, appeals and court reviews. An appropriate Parliamentary committee should review the operations and expenditures of such an agency.

For the credibility of such an agency, and to protect the rights of the parties involved, analyses, conclusions, procedures and recommendations must be subject to normally available challenges up to and including reviews by relevant courts. It is equally essential that such an agency be publicly accountable for its operations and expenditures.

If PSIO findings and recommendations are not subject to challenges and reviews, rights normally available to parties involved in investigations may be unduly restricted. This could have serious legal implications. It would also seriously weaken PSIO claims of independence, compromise its credibility and constitute another justification to make it subject to such challenges and reviews.

The primary criterion in determining if an investigational body is subject to Federal Court review is if it makes decisions, recommendations or orders that have significant legal implications for the parties involved. By that standard, it would seem the PSIO is now subject to such reviews. A finding of this Office is now being challenged before the Federal Court and a decision as to the reviewability of the PSIO is expected shortly. For the reasons cited above, I hope the Court rules in the affirmative.

As for the accountability of the PSIO for its operations and expenditures, this Office or a successor agency has every reason to welcome being publicly accountable. Given that the PSIO's mandate is ultimately a public interest one, involving the integrity of the Public Service, it is appropriate that we be as public and transparent as possible regarding our management, operations and expenditures. Ideally, the PSIO or subsequent agency should be placed formally within the ambit of an appropriate Parliamentary Committee for reporting purposes. A Minister could be designated to answer questions in the House.

Since it is essential that the PSIO preserve its independence in the investigation and disposition of cases, no matter what structure and reporting or overseeing route is adopted, it should leave the PSIO or successor agency to function at arms-length in handling cases of wrongdoing.

Part IV

CONCLUSIONS AND RECOMMENDATIONS

- The Treasury Board's *Disclosure Policy*, and specifically the creation of the of the position Public Service Integrity Officer, was a worthwhile initiative. Provisions in the Disclosure Policy and the mandate of the PSIO have enabled this Office to take some important steps toward the eventual establishment of an effective and credible extra-departmental system for the disclosure and correction of wrongdoing in the Public Service.

- My experience as Public Service Integrity Officer has provided a rare and needed opportunity to test (rather than simply speculate about) the credibility and effectiveness of a disclosure of wrongdoing system and mechanism that is policy based, within the ambit of the Treasury Board, extra-departmental but still internal within the Public Service, and armed with the ability to make essentially unenforceable recommendations. My experience has made it clear there is an urgent need for a more robust institution.

- The past year and more has made it clear that in its present form and context, and with its current mandate and tools, this Office does not have sufficient support and confidence of the public sector employees for whom it was established. By and large, disclosures of wrongdoing reported to the PSIO are not about serious wrongdoing against the public interest – the kind this Office was established to address – but about human resource and employment disputes for which other recourse mechanisms are available.

- Despite considerable efforts to show that this Office is functionally independent in the investigation and disposition of cases, and despite a degree of success in the outcome of the cases it has taken on, skepticism persists. In my view, this skepticism is not unreasonable, and I would expect it to continue.

- Events during and subsequent to the year under review, as well as views expressed by influential leaders in many quarters, indicate that such skepticism is increasing, not abating. This indicates the need for significant reforms is becoming more urgent.

- Serious consideration should be given to making this Office or a successor agency legislatively-based instead of policy-based. Such legislation should not be added to existing or new statutes. Instead, it should focus exclusively on providing a legal framework to enable the disclosure of wrongdoing and to provide legal protection for disclosers.

- Such legislation should also remove this Office or a successor agency from the ambit of the Treasury Board, the employer of at least the "core" public servants. This Office or a successor agency would thereby also be removed from the human resource, employment and management context.

- Rather than simply make recommendations, this Office or a successor agency should be able to make orders or enforceable recommendations. Such recommendations would be enforced by the agency, or by another related agency, at a legally designated stage in the process.

- The head of this Office or successor agency should be appointed or approved by Parliament. The Office or agency should report to Parliament. Also, while its operations and expenditures should be overseen by a designated Parliamentary committee, the Office or successor agency should remain at arms-length regarding the investigation and disposition of cases.

- There should be a reporting channel to a Minister who would then be able to answer questions about the Office or agency in the House. However, when it comes to the investigation and disposition of cases, the Office or agency would function at arms-length from that Minister.

- The protection from reprisal umbrella should be widened by allowing this Office or successor agency to investigate allegations of reprisal even when the original disclosure of wrongdoing was made internally to a department, or when justified made externally outside the government, or made by witnesses to Parliamentary committees or other agencies.

- This Office or successor agency should be able to receive and investigate allegations of wrongdoing in the public sector regardless of the source of the allegation. It should be able to extend protection against reprisal accordingly. Such sources could include private citizens, advocacy groups or Public Service unions.

- All public sector employees who have an employment relationship with the federal government should have access to the revised office or agency. This includes Public Service employees in the strict sense, employees of crown corporations and other agencies, and people who work in government institutions classified as separate employers.

- Public servants should have direct access to this Office or successor agency without first being required to exhaust departmental mechanisms. Those who elect to make disclosures should be able to choose the mechanism they wish.

- The disclosure of wrongdoing in the public sector should be encouraged and rewarded from the highest levels. It should be publicly acknowledged to be a courageous act of service to the public sector and the public.

- Findings and directives by this Office or successor agency should be subject to all normal challenges, appeals and court reviews.

If the above recommendations are well received by the government and others, this Office will, over the coming year, propose more detailed models, structures and statutes for consideration. I intend to consult widely and would welcome the opportunity to work in collaboration with organizations, committees and individuals who share our interest in these matters.

Appendices

Appendix A

RESPONSIBILITIES OF THE PUBLIC SERVICE INTEGRITY OFFICER*

The mandate of the Public Service Integrity Officer is to act as a neutral entity on matters of internal disclosure of wrongdoing. In particular, he or she assists employees who:

- believe that their issue cannot be disclosed within their own department; or
- raised their disclosure issue(s) in good faith through the departmental mechanisms but believe that the disclosure was not appropriately addressed.

As such, the responsibilities of the Public Service Integrity Officer are:

1. to provide advice to employees who are considering making a disclosure;
2. to receive, record and review the disclosures of wrongdoing received from departmental employees and/or the requests for review submitted from departmental employees;
3. to establish if there are sufficient grounds for further action and review;
4. to ensure procedures are in place to manage instances of wrongdoing that require immediate or urgent action;
5. to initiate investigation when required, to review the results of investigations and to prepare reports, and to make recommendations to Deputy Heads on how to address or correct the disclosure;
6. in special cases, or in cases when the departmental responses are not adequate or timely, to make a report of findings to the Clerk of the Privy Council in his or her role as head of the Public Service;
7. to establish adequate procedures to ensure that the protection of the information and the treatment of the files are in accordance with the *Privacy Act* and the *Access to Information Act*;
8. to protect from reprisal employees who disclose information concerning wrongdoing in good faith;
9. to monitor the type and disposition of cases brought to the attention of the Public Service Integrity Officer; and
10. to prepare an Annual Report on his or her activities to the President of the Privy Council for tabling in Parliament.

As a minimum, the Annual Report should cover the number of general inquiries and advice; the number of disclosures received directly from departmental employees and their status (e.g. rejected, accepted, completed without investigation, still under consideration); the number of disclosures investigated, completed, still under consideration. The same data would be provided in relation to requests for review. The Report could include an analysis of the categories of disclosures and recommendations to improve the processes.

*An excerpt from the *Policy on the Internal Disclosure of Information Concerning Wrongdoing*

Appendix B

2002-2003 Expenditures

Description		
Personnel		
Number of employees		7
Personnel Costs		('000s)
Salaries	$	710
Employee Benefits	$	142
Total	**$**	**852**
Other Operating Expenditures		
Travel	$	44
Postage	$	2
Telephone	$	6
Communications	$	59
Printing	$	12
Training	$	12
Computer Services	$	7
Temporary Help Services	$	3
Other Professional / Specialised Services	$	21
Rental	$	5
Tenant Services	$	48
Material / Supplies	$	27
Other	$	2
Levy for administrative services provided by Treasury Board Secretariat (TBS)	$	54
Total	**$**	**302**
Total 2002-2003 Expenditures	**$**	**1,154**

Total 2001-2002 Expenditures *(Note 1)*	**$**	**335**

Note 1: Four-month period from November 30, 2001 to March 31, 2002 – $147K for salaries and employee benefits; $188K for other operating expenditures.

Source: TBS, Financial Reporting System.

Appendix C

Speeches and Presentations

The following lists key presentations and speeches by the Public Service Integrity Officer and his staff to promote the Office and its services. In addition, many articles were written by the general media. Departmental and union newsletters and other means of communicating with employees were also used.

EVENT	DATE	PSIO OFFICIAL	LOCATION
Network of Departmental Senior (Disclosure) Officers	January 16, 2002	Dr. Keyserlingk and Executive Director	National Capital Region
Deputy Ministers Breakfast	January 17, 2002	Dr. Keyserlingk	National Capital Region
Annual National Defence Staff Relations Conference	February 25, 2002	Dr. Keyserlingk and Executive Director	National Capital Region
National Joint Council	March 6, 2002	Dr. Keyserlingk	National Capital Region
Ethics Practitioners Association of Canada (EPAC) – Round Table	March 6, 2002	Dr. Keyserlingk	National Capital Region
Health Canada – Ethics Advisory Group	March 27, 2003	Executive Director	National Capital Region
Ethical Leadership Lecture	April 4, 2002	Dr. Keyserlingk	National Capital Region
Health Canada – Executive Committee	April 14, 2002	Dr. Keyserlingk and Executive Director	National Capital Region
Carleton University Seminar: Government Scientists and the Public Good	April 25, 2002	Dr. Keyserlingk	National Capital Region
Network of Departmental Senior (Disclosure) Officers	May 7, 2002	Executive Director	National Capital Region
EPAC Round Table	May 22, 2002	Dr. Keyserlingk	National Capital Region
National Joint Council – Bargaining Agents	September 11, 2002	Executive Director and Staff Member	Toronto, ON
Professional Institute of the Public Service of Canada (PIPSC) – NCR Council	September 14, 2002	Dr. Keyserlingk	National Capital Region
Network of Departmental Senior (Disclosure) Officers	September 16, 2002	Dr. Keyserlingk and Executive Director	National Capital Region
Association of Professional Executives of the Public Service of Canada (APEX)	September 26, 2002	Dr. Keyserlingk and Executive Director	National Capital Region

EVENT	DATE	PSIO OFFICIAL	LOCATION
Fisheries and Oceans – Group of Executives	September 26, 2002	Dr. Keyserlingk	Cornwall, ON
Delegation from The People's Republic of China	September 27, 2002	Dr. Keyserlingk and all	National Capital Region
Council on Governmental Ethics Laws (COGEL) International Conference	September 30, 2002	Dr. Keyserlingk	National Capital Region
Environment Canada – Procurement and Supply Managers Conference	October 1, 2002	Staff member	Toronto, ON
Joint COGEL/EPAC Luncheon Address	October 2, 2002	Dr. Keyserlingk	National Capital Region
EPAC – Ottawa Chapter	October 3, 2002	Dr. Keyserlingk	National Capital Region
PIPSC – Ontario Stewards Council	October 5, 2002	Staff member	Toronto, ON
Competition Bureau – Executive Committee	October 10, 2002	Dr. Keyserlingk	National Capital Region
Staff of the House of Commons and the Senate of Canada	October 11, 2002	Dr. Keyserlingk	National Capital Region
Heads of Small Agencies	October 15, 2002	Executive Director	National Capital Region
Pacific Council of Senior Federal Officials	October 17, 2002	Dr. Keyserlingk	Vancouver, BC
PIPSC – British Columbia/ Yukon Stewards Council	October 18, 2002	Dr. Keyserlingk	Whistler, BC
PIPSC – Atlantic Canada Stewards Council	October 19, 2002	Executive Director	Halifax, NS
Annual Staff Relations Officers Symposium	October 23-24, 2002	Staff member	St-Jovite, QC
Indian and Northern Affairs – Executive Committee	October 30, 2002	Dr. Keyserlingk and Executive Director	National Capital Region
Interdepartmental Access to Information Community	November 13, 2002	Executive Director	National Capital Region
Association of Certified Fraud Examiners – Ottawa Chapter	November 20, 2002	Dr. Keyserlingk	National Capital Region
Canadian Human Rights Commission – Operations Branch Staff	December 3, 2002	Executive Director and Staff Members	National Capital Region
Interdepartmental Security Network	December 18, 2002	Dr. Keyserlingk	National Capital Region

EVENT	DATE	PSIO OFFICIAL	LOCATION
Canadian Food Inspection Agency – Science Symposium	January 23, 2003	Dr. Keyserlingk	National Capital Region
Network of Departmental Senior (Disclosure) Officers	January 24, 2003	Dr. Keyserlingk and Executive Director	National Capital Region
St. Paul's University Panel Discussion	January 29, 2003	Dr. Keyserlingk	National Capital Region
Treasury Board Secretariat Comptrollership Branch – Executive Committee	February 10, 2003	Executive Director and Staff Member	National Capital Region
Financial Management Institute Seminar on Risk Management	February 12, 2003	Dr. Keyserlingk	National Capital Region
Investigations in the Work Place Conference	February 26-28, 2003	Dr. Keyserlingk	Toronto, ON
Office of the Auditor General – Legal Services and Forensic Audit Staff Seminar	February 28, 2003	Executive Director and Staff Member	National Capital Region
Alberta Council of Senior Federal Officials	March 21, 2003	Dr. Keyserlingk	Edmonton, AB
Quebec Council of Senior Federal Officials	March 28, 2003	Dr. Keyserlingk	Montreal, QC
Interdepartmental preparatory meeting for the Canadian delegation to the International Anti-Corruption Conference (May 2003 in Seoul, Republic of Korea)	March 28, 2003	Executive Director	National Capital Region

Appendix D

Contacts and Consultations

Discussions were held with individual experts and organizational representatives to receive views and advice on the mandate and operations of the Public Service Integrity Office. The following is a non-exhaustive list of such key exchanges. More than one contact may have taken place with some groups and individuals.

- Some Members of Parliament and Senators
- President of the Privy Council
- Clerk of the Privy Council
  - Legislation and House Planning Secretariat
  - Senior Personnel and Special Projects Secretariat
- President of the Treasury Board
- Secretary and Associate Secretary of the Treasury Board
- Treasury Board Secretariat
  - Chief Human Resource Officer
  - Labour Relations and Compensation Operations
  - Office of Values and Ethics
  - Corporate Services Branch
  - Legal Services Branch
  - Comptrollership Branch
  - Expenditures and Management Strategies Sector
- Public Service Commission: President and Vice-President
- National Joint Council
- Public Service Alliance of Canada: National President, National Executive Vice-President and advisors
- Professional Institute of the Public Service of Canada
  - President and advisor
  - Regional Steward Councils
- Social Science Employees Association: President and advisor
- Deputy Ministers: individually and collectively
- Heads of Small Agencies
- Executive committees of some departments and other management representatives
- Association of Professional Executives of the Public Service of Canada
- Task Force on Modernizing Human Resources Management
- Federal Regional Councils
- Information Commissioner and staff
- Privacy Commissioner and staff
- Auditor General of Canada
- Canadian Human Rights Commission: President and Secretary General
- National Defence Ombudsman
- Ethics Practitioners Association of Canada
- Individuals interested in the subject matter
- National and regional media (print and radio)