Inform. Protect. Prevent.

Building trust together:
A shared responsibility

Office of the Public Sector Integrity Commissioner

2008–2009 ANNUAL REPORT

Office of the Public Sector Integrity Commissioner

Commissariat à l'intégrité du secteur public

Building trust together:
A shared responsibility

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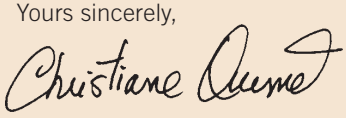
The Honourable Noël Kinsella
Speaker of the Senate
The Senate
Ottawa, Ontario K1A 0A4

Dear Mr. Speaker:

Pursuant to section 38 of the *Public Servants Disclosure Protection Act*, I have the honour of presenting to you the second annual report of the Public Sector Integrity Commissioner for tabling in the Senate.

The report covers the fiscal year ending March 31, 2009.

Yours sincerely,



Christiane Ouimet
Commissioner

The Honourable Peter Milliken, M.P.
Speaker of the House of Commons
Room 316-N, Centre Block
House of Commons
Ottawa, Ontario K1A 0A6

Dear Mr. Speaker:

Pursuant to section 38 of the *Public Servants Disclosure Protection Act*, I have the honour of presenting to you the second annual report of the Public Sector Integrity Commissioner for tabling in the House of Commons.

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Yours sincerely,

Christiane Ouimet
Commissioner

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Public Servants Disclosure Protection Act

The federal public administration is an important national institution and is part of the essential framework of Canadian parliamentary democracy;

It is in the public interest to maintain and enhance public confidence in the integrity of public servants;

Confidence in public institutions can be enhanced by establishing effective procedures for the disclosure of wrongdoings and for protecting public servants who disclose wrongdoings, and by establishing a code of conduct for the public sector;

Public servants owe a duty of loyalty to their employer and enjoy the right to freedom of expression as guaranteed by the *Canadian Charter of Rights and Freedoms* and that this Act strives to achieve an appropriate balance between those two important principles.

— Excerpt from the Preamble
Public Servants Disclosure Protection Act

Office of the Public Sector Integrity Commissioner

Our Vision

Our vision is to enhance confidence in our public institutions and in those who serve Canadians.

Our Mission

The Office of the Public Sector Integrity Commissioner will:

- Build an effective and credible organization where public servants and all citizens can, in good faith and in confidence, raise their concerns about wrongdoing.
- Assist federal government organizations in preventing wrongdoing in the workplace.
- Establish Canada as a world leader in the promotion of integrity in the workplace.

Our Values

- **Integrity** in our actions and processes
- **Respect** for our clients and employees
- **Fairness** in our procedures and our decisions
- **Professionalism** in the manner we conduct ourselves and in our work

Our Approach to Our Mandate

The Office of the Public Sector Integrity Commissioner has the mandate to establish a safe, confidential mechanism for public servants or members of the public to disclose potential wrongdoing in the public sector. The Office also protects public servants from reprisal for making such disclosures or participating in investigations.

The Office emphasizes prevention of wrongdoing, informal case resolution and education about values and ethics.

The Office is guided at all times by the public interest and ensures integrity, respect, fairness and professionalism in its procedures.

Trust is the life blood of good governance. Trust is the foundation of our public administration. And trust will be even more critical than ever in the times ahead.

Message from the Commissioner

Strong public institutions are always important to the well-being of Canadians but never more so than in times of economic uncertainty. This annual report, my second to Parliament, comes at a time of considerable unpredictability for Canadians.

We are living through one of those historical changes which force us collectively to go back to basics and focus on what is essential. In the current economic situation, the confidence of citizens in government to make the right decisions is fundamental to recovery. Equally, their level of trust in public institutions and public servants to carry out those decisions in an ethical way and in the public interest is crucial.

Last year, I chose the theme *Building Trust Together* for my report. This year's report builds upon that foundation and underscores our shared responsibility to enhance public trust through transparency and ethical behaviour. My mission remains the same: to inform; to protect; and to prevent. But the environment has changed.

Trust is the life blood of good governance. Trust is the foundation of our public administration. And trust will be even more critical than ever in the times ahead.

Validating our vision

In September 2008 I hosted a symposium attended by some 90 invitees. Given that my Office is still at an early stage in its development, I thought it essential to bring together senior leaders from Canada and abroad who are contributing to building trust in public institutions. I wanted to compare our visions and our practical experience at the national and provincial levels and in the public and private sectors. Most of all, I wanted to validate the path on which I have embarked since becoming Commissioner.

Participants confirmed that accountability for integrity is *shared*. They unanimously indicated that the key to building integrity in public sector organizations are leadership and organizational culture. They agreed that in their experience, it is the leaders and managers of public institutions who have the greatest influence on integrity.

The conclusions reached at the symposium on how best to promote integrity in the public sector have helped to lay the basis for this year's report. I therefore thought it important to share them with Parliament and Canadians. They are discussed in Chapter 6 of this report and a full report on the symposium is available on our website: http://www.psic-ispc.gc.ca.

Integrity challenges of federal agencies

I have devoted a chapter this year to the integrity challenges faced by small agencies, boards and commissions.

For some time I have been concerned about the vulnerability of small federal organizations. I was particularly pleased to note a reference to them in the November 2008 Speech from the Throne:

'Our Government will also strengthen and improve the management of Canada's federal agencies, boards, commissions and Crown corporations to achieve greater cost-effectiveness and accountability.'

This commitment was reiterated in the Budget 2009: *Canada's Economic Action Plan.*

I have worked closely with federal agencies over the last year. Ensuring that a small organization operates effectively and efficiently requires an enormous investment of energy and time. Small organizations operate in an environment of limited support and ever-increasing demands. Small size does not mean smaller challenges.

My personal experience over the past eighteen months in building a new small agency has confirmed that such organizations require support tailored to their needs, particularly in financial and human resource management. Most federal agencies, boards and commissions, unlike larger organizations, lack the resources, the authorities and often the human capacity to meet all the

Participants confirmed that *accountability* for integrity is *shared.*

requirements of the Treasury Board and other oversight bodies.

In the first chapter of this report, I have expanded upon some possible actions to reduce their vulnerability and prevent wrongdoing.

Integrity challenges of Crown corporations

I am particularly sensitive to the critical importance of Crown corporations because of my past professional experience. I have been a Board member, the Chief Executive of a special operating agency and the liaison for Crown corporations in a large department. I have also had responsibilities for reviewing mandates of Crown corporations.

Good governance is the foundation of prevention and of bringing a culture of trust in Crown corporations. It is a prerequisite for integrity.

Good governance is the foundation of prevention and of building a culture of trust in Crown corporations. It is a prerequisite for integrity. I have been approached this year by both Chairs and Chief Executives who have expressed concerns about governance. In the second chapter of this report, I have summarized the integrity challenges faced by these corporations and the tools we have developed to assist them.

Investigations and inquiries

We have dealt with four serious cases this year, which gave us an opportunity to better define our approach and guiding principles, and to explore the flexibilities that the *Public Servants Disclosure Protection Act (the Act)* provides. Further details on these cases are presented in the chapter on investigations and inquiries.

One of these was a particularly sensitive and complex case involving a Crown corporation. A result of that case was the development of a new investigative approach: Informal Case Resolution.

Prevention

Prevention was once again this year a major focus of my Office. We have continued to devote considerable attention to middle managers because they are the culture carriers of the present and the leaders of the future, and are central to prevention of wrongdoing. I am convinced that the best prevention strategy is to instil integrity in middle managers and in those entering the public service.

In June 2008, I wrote an open letter to middle managers, encouraging them to fulfil their role as champions for integrity by taking five key actions. This letter is posted on our website. Our work with this group will no doubt continue in the year ahead.

Fear of coming forward

A chapter in this year's annual report is devoted to the important question, *Why are public servants afraid to come forward?* While it may not be widely appreciated, there is indeed a fear of disclosing wrongdoing. This is not to suggest that there is a lack of motivation and sensitivity to defend the public interest. People's fears are

understandable and include fear of media coverage and of public reporting, fear of the consequences of a disclosure on their co-workers and their organization, and indeed, perhaps more immediately, on themselves and their careers.

Dealing with these fears is of central importance to achieving the aims of our legislation. Our goal is to foster an environment in which potential disclosers can come forward in confidence.

Learning from others

This year's report also provides our preliminary findings on benchmarking Canada's disclosure regime against countries with similar systems. It is too soon to draw definitive conclusions; we believe a minimum of three years of experience will be needed. Next year, I will provide a more in-depth assessment of how Canada is performing in relation to other jurisdictions.

We want to learn and share best practices with others. We want to know whether Canada is a pioneer and leader in the field of disclosure. And we want to develop performance indicators whereby Parliament can evaluate how we have done in implementing and achieving the goals of its landmark 2007 legislation.

Reaching out

It remains a major challenge to inform all public sector employees of where they can go when wrongdoing is suspected.

I have carried out many visits across the country this year and have met with employees at all levels. I have also continued to assist senior managers, wherever possible, to help them understand their roles and responsibilities under the legislation. Progress is being made but much remains to be done to inform everyone about our *Act*.

A shared responsibility

During my many consultations with public servants this year, I have examined my mandate with them and discussed the numerous issues they have raised with me.

It is now clear that promoting integrity and protecting public servants who disclose wrongdoing is a *shared* responsibility and that success in implementing the *Act* will come from the efforts of a large number of people working together. It is only if everyone – my Office, the Minister responsible, Parliamentarians, the central agencies, leaders of organizations, unions, senior and middle managers, and indeed all public servants – play their parts that we will succeed.

The *Act* belongs to all of us and to all Canadians. My Office cannot do it alone.

Our goal is to foster an environment in which potential disclosers can come forward in confidence.

A final word

What I have heard again this year is that employees remain committed to serving the public interest, despite the complexity and pressures they face in their work. They are grateful for their employment at a time of economic uncertainty and they are proud of their work. The vast majority carry out their daily work in an ethical way and believe in the values that underlie the *Act*.

Our collective challenge is to build upon that ethical foundation. It is the 'capital' of the public sector, and all leaders have a responsibility to be stewards of that precious resource. To this end, my Office will continue to inform, to protect those who come forward, and to help foster a culture where wrongdoing is prevented and confidence in public institutions is enhanced.

Christiane Ouimet
Commissioner

‘Our Government will also strengthen and improve the management of Canada’s federal agencies, boards, commissions and Crown corporations to achieve greater cost-effectiveness and accountability.’

— November 2008 Speech from the Throne —

Access to training, ideally in a simplified version tailored to accommodate the organization's particular needs, is crucial.

1 Special Risks in Federal Agencies

Over the past year, our Office met and exchanged views with several Heads of federal agencies. We were presented with evidence that federal agencies as a group, and small organizations in particular, were especially vulnerable to serious mistakes. We have now come to believe that this risk is systemic and significant.

Federal agencies, boards and commissions: who are they?

Federal agencies, boards and commissions are important public sector organizations, with a specific statutory role and responsibilities. Their nature and mandate vary considerably. Most of these organizations are small in size and have an arm's length relationship to government. They have important functions, be it administrative, quasi-judicial, regulatory or advisory.

Heads of agencies, boards and commissions act as the Chief Executives of their organizations and are responsible for human resources, financial and program management and public affairs. As public office holders, they must conduct themselves and perform their duties in a manner beyond reproach.

Our focus in this Chapter is on **small** agencies, boards and commissions. For ease of reading, we will use the single word 'agencies' to refer to these organizations.

Sources of vulnerability

The very nature of agencies points to specific risks to which they are particularly vulnerable. These vulnerabilities, discussed below, have been known for some time and the lack of immediate and sufficient attention increases the risk of wrongdoing. The risks are significant and are likely to increase in the current economic context. Action is urgently needed. It is a matter of public interest.

In our view, their vulnerability comes from a **lack of internal capacity.**

Limited capacity to deal with all government requirements – Agencies must continuously struggle to deliver their core mandate while operating in an increasingly complex environment and responding to ever-changing priorities. Even the most dedicated staff with the best of intentions can be overwhelmed by the numerous demands on them. In such a context, in order to 'get the job done', an organization might find itself having to cut corners and rationalize a lower standard of behaviour.

Agencies are subject to the same onerous requirements for reporting to central agencies and other bodies, and to the human resources and financial processes in public administration, as are larger public sector organizations. For them, however, the burden is such that they can clearly no longer cope.

Limited in-house expertise – Given the size of these organizations, it is impossible for them to have all the required expertise in-house. Most corporate functions are vested in one individual who is constantly playing multiple roles – finance, human resources, contracting, official languages, security, information management, information technology, etc. It is obviously risky for an agency to put on the shoulders of one individual its key corporate responsibilities, but there are often no options.

In our view, their vulnerability comes from a lack of internal capacity.

High employee turnover – A serious shortage of qualified personnel in key functions has existed for a long time. There is a notably high turnover in staff and a continuing loss of corporate memory. We have heard from senior officials that they sometimes feel they have no choice but to promote employees simply to retain them. In other situations, higher classification levels might be appropriate, but incumbents do not always have the required skills nor could they acquire them without significant investment.

Agencies seem to be more vulnerable to staffing irregularities. In some cases, they do not have the support to staff jobs properly; in other cases, due to lack of training, they are not aware of all the staffing rules.

Complex set of rules, practices and procedures – New Agency Heads coming from outside the public service are not always familiar with the complex regulatory and legislative framework within which the federal public administration operates. In addition, they often do not have internal support to guide them properly. We have heard many stories about the challenge that this creates. Clearly, we should never assume that new arrivals know everything they need to know. For example, we should not take for granted that they know that sole-source contracting is permissible only under certain conditions, that they must report on staffing activities, or that they know how to manage their relationship with their portfolio Deputy Minister. Let us be clear: our Office is not questioning the expertise, good will and dedication of new arrivals from outside the public sector. Rather, we are pointing out that they are often not appropriately equipped to carry out the full range of their public responsibilities.

Isolation – Given their legislative mandate, agencies often operate in isolation, independent of one another. They need a degree of autonomy to carry out their functions, but they must also execute their duties as part of the larger public sector. Their independence involves some inherent risks. For example, at the extreme, some may come to believe that the rules do not apply to them. Others may become highly resistant to change and renewal initiatives simply because they are not part of the discussion about these initiatives. Others may lose sight of government-wide priorities that are important to take into account in managing their organizations.

In addition, public servants seem to be more hesitant to come forward to disclose wrongdoing because of the fear that it may be more difficult in a small organization to protect their identity.

Risk mitigation strategies

Some actions should be considered on an immediate and urgent basis to mitigate the key risks:

1. Working together – **Collaboration** is definitely the first step. We are pleased to note that over the past year, Agency Heads have invested considerable time and energy in developing a focused approach to resolving issues that are within their authority and power. We commend the excellent work done by the network of Heads of Federal Agencies, various committees and sub-committees, as well as initiatives by the Canada School of Public Service and central agencies.

2. Better briefing of Agency Heads and senior staff – Better orientation must be available so that they understand their complex working environment and their specific roles and responsibilities. We have raised the idea of a **roster of experts** with central agencies for their consideration. We believe that such a roster could be useful to agencies as well as to Crown corporations in quickly getting the proper support they need. Very soon after our Office was established, we identified and used such experts ourselves, without whom it would have been impossible to deliver on our mandate. Some technical expertise can also be leveraged and shared among agencies.

3. Ongoing training and coaching – Agencies must ensure that their staff is well aware of the regulatory environment in which they work and maintain up-to-date knowledge on all aspects of their organization's business. The people 'who don't know that they don't know' are the most vulnerable and put their organization and themselves at risk. Access to training, ideally in a simplified version tailored to accommodate the organization's particular needs, is crucial. Similarly, ongoing and significant investments should be made at the top so that Agency Heads regularly revisit their risk management strategies.

4. A community of practice for human resources management – Based on our many consultations with Agency Heads and senior officials over the past year, we believe that a community of practice for human resources management in agencies should be established. Options for common services tailored to their specific needs are being explored. Such services must also be delivered in a manner that conforms to the highest standards of excellence. As a new agency, we experienced first-hand the difficulties in establishing the basic infrastructure to deliver on our mandate. We developed a ***collaborative and informal approach*** with another small agency facing similar issues. To date, this cooperation has proven to be invaluable and has equipped us with the expertise and

The people 'who don't know that they don't know' are the most vulnerable and put their organization and themselves at risk.

tools we need. In addition, we are examining flexibilities under existing legislation, cross-checking high-risk files against the standards of other similar organizations and inviting third-party experts to play a challenge function. This gives us greater confidence and helps us build our internal capacity.

5. Common or shared services – Financial controls and related expertise could be common or shared with other small agencies. Agencies should be encouraged to enlarge their networks and work closely with others that can guide and assist them. Sharing services would help in breaking the isolation that too often defines the operating context within which they work. There is an outstanding issue of whether these organizations have the legal authority to share services, and this must be quickly addressed.

6. Guidance from the Deputy Minister – Increased support and strategic direction from the portfolio Deputy Minister would be of great help to agencies, and agencies should be encouraged to seek it. Deputy Ministers should continue to meet with Agency Heads in their portfolio regularly and exchange information on key policies and best practices.

7. Review of the heavy administrative and reporting burden – The issue is certainly not whether to eliminate the reporting requirements for agencies, but rather to apply them so as to take into account their size and internal capacity. Fortunately, central agencies have heard and recognized this fundamental and urgent issue, and a solution may be within reach.

The Auditor General examined governance of small federal agencies in Chapter 2 of a report tabled in early February 2009. Two of the recommendations deal with easing the reporting burden faced by small agencies as well as facilitating administrative shared services. We fully endorse these recommendations.

Risk management tool for agencies

With the support of an advisor with significant experience in the public sector, our Office has developed a guide, *Fifty Good Questions*, which Agency Heads can use as part of their risk management strategy. The questions, which are posted on our website, focus on four high-risk areas: structure, operations, reporting and audit/evaluation. This tool is offered to assist organizations in putting in place monitoring systems to identify and respond to their particular risks.

We are convinced that the costs of prevention are much less than the costs of addressing problems once they occur…

Why are we concerned about these small organizations?

Raising issues of pressing concern in agencies is an important part of a prevention response.

Unless steps are taken to address the special vulnerabilities of agencies, we fear it is only a matter of time before a major incident occurs. There is a pressing need to act. We made our concerns broadly known very early in our mandate, as we consider these issues to be of prime importance. We are convinced that the costs of prevention are much less than the costs of addressing problems once they occur, including the incalculable cost of the erosion of public trust. Federal agencies constitute an integral part of our public administration and are tasked with highly sensitive and complex mandates. We have a shared obligation to do all we can to ensure their continued success.

Raising issues of pressing concern in agencies is an important part of a prevention response.

We have found there are many myths and misconceptions that have an impact on the degree of vulnerability of Crown corporations to wrongdoing.

2 Governance and Integrity in Crown Corporations

Crown corporations are essential to Canadian public administration and are important instruments for the delivery of social and economic programs. This is never more evident than during an economic downturn. They operate in different sectors of the economy and range in size from very small to large organizations with tens of thousands of employees. Crown corporations share many similarities with other types of federal institutions but they have roles and governance structures that differ in fundamental ways. Close to fifty Crown corporations currently fall within the scope of the *Act*.

Many Crown corporations carry out their business in a commercial environment and may be subject to the same regulatory requirements as the private sector. In many instances, they function like their private sector counterparts, and at the same time, are subject to specific governmental requirements and must serve a public policy purpose at arm's length from government.

Soon after our Office was established, we invited all Crown corporations to attend two roundtables to discuss the application of the *Act* and to clarify our respective roles and duties in implementing it. In November 2008, the Commissioner addressed a forum of Chairs and Chief Executives of Crown corporations, organized by the Treasury Board Secretariat with the support of the Privy Council Office. We also held a series of bilateral meetings with Chairs and in some instances, with Chief Executives to discuss risks of potential wrongdoing in their organizations.

Risks

Here are a few examples of the vulnerabilities they identified and the concerns they raised.

One Chief Executive was concerned that the Board of Directors understood its role to be micro-management of the organization rather than strategic direction, oversight and quality control. Another was concerned by the lack of corporate memory in the Board because of high turnover. One Board member indicated that other members did not fully understand the complexity of their role and lacked the training to do so. And a Chair raised the challenges he faced because of performance problems on the part of a past Chief Executive.

The importance of the issues raised during these consultations was reinforced by a complex and sensitive case of alleged wrongdoing in a Crown corporation that came to the attention of our Office this year. This case is discussed in further detail in Chapter 3 of this report.

Our information on Crown corporation's vulnerabilities is not exhaustive, nor do we believe all Crown corporations share the same type or level of risk. From what we have observed to date, one constant emerges: the main source of risk in Crown corporations lies in governance.

Myths and realities

The Board of Directors plays a key role in ensuring integrity in Crown corporations. In cases of ethical breaches, the first question asked is always 'Where was the Board?' Crown corporations count on their Boards for oversight on the Crown's behalf, to protect the Crown and its resources, to monitor corporate performance and the achievement of objectives, and to act as a sounding board.

We have found there are many myths and misconceptions that have an impact on the degree of vulnerability of Crown corporations to wrongdoing.

1. The myth of the clear role of the shareholders

While the role of the shareholders may seem obvious to some, it is often difficult to delineate their respective roles (government, Ministers, parliamentarians, and ultimately Canadians). It is also necessary to establish the appropriate relationship with shareholders while taking into account the Crown corporation's enabling legislation and the various – and sometimes conflicting – interests of those shareholders.

2. The myth that the responsibilities of Board members of a Crown corporation are less demanding than those of private sector boards

The reality is that Board members of Crown corporations must be fully engaged and that they should be in a position to function in a complex environment with dual commercial and policy mandates. Understanding the corporation's connection to the Crown and its pursuit of public policy objectives constitute important challenges for

Ethical behavior starts at the top, and good governance depends on good leadership.

(Thomas d'Aquino, Chief Executive, Canadian Council of Chief Executives)

FIVE DANGEROUS MYTHS

1. **The shareholders' role is clear.**
2. **The responsibilities of Board members of a Crown corporation are less demanding that those of private sector Boards.**
3. **Board members already know all they need to know.**
4. **The mandate of Crown corporations is straightforward and unchanging.**
5. **Crown corporations operate independently, at complete arm's length from government.**

Board members. They should be prepared to invest time and effort to understand their responsibilities, carry out their duties and to make informed decisions, knowing that they will affect all Canadians.

3. The myth that Board members already know all they need to know

Despite the extensive experience and expertise that Board members may have, ongoing training and continuing education are absolute necessities. Board members must understand the core business of their Crown corporation, the corporation's public policy objectives and the framework within which the corporation operates. As well, they have to remain current with government-wide priorities, the public sector environment, their roles and responsibilities as Directors and the applicable legislation. Crown corporations contribute to our socio-economic well-being and to Canada's public policy objectives. This contribution can only be optimized if there is a continued investment in Board members' training.

4. The myth that the mandate of Crown corporations is straightforward and unchanging

It is essential that Board members recognize their responsibility in ensuring the usefulness and relevance of the corporation's mandate. They must also scrutinize their own service delivery, efficiency and value for money. Ultimately, the Prime Minister holds the prerogative to change the mandates of Crown corporations. But this does not mean that the Boards do not have an active role to play. They must contribute by bringing to the fore ideas to achieve public policy objectives effectively and bring value-added to Canadians.

It is crucial that new Board members, Chairs and Chief Executives question whether their governance structure adequately addresses all possible risks and whether it is aligned with their core mandate.

5. The myth of absolute independence

The majority of Crown corporations are subject to Part X of the *Financial Administration Act* and are guided by the Treasury Board, Privy Council Office, the responsible Minister and the Deputy Minister of the public sector 'portfolio' into which the corporation falls. Their rights and powers are defined in their enabling legislation or by the provisions of the *Financial Administration Act*. This is to say, Crown corporations occupy a unique territory that straddles both the private and public sectors. It is a reality which must be recognized by Board members if they are to fully understand their roles.

Supporting good governance

We encourage Board members and Chief Executives to continue to re-examine their operations and acknowledge the risks they face. In that context and with the assistance of a former Chair and Chief Executive with forty years' experience in the public and private

It is crucial that new Board members, Chairs and Chief Executives question whether their governance structure adequately addresses all possible risks and whether it is aligned with their core mandate.

ESSENTIAL QUESTIONS FOR THE BOARD

1. **Does your governance structure enable early identification of possible wrongdoing?**
2. **Do you have an effective internal disclosure system that meets the requirements of the Act and one that creates trust and confidence?**
3. **Have you recently re-examined your risk identification and management strategies?**
4. **Do you have effective external review mechanisms, such as an Audit Committee, to identify and respond to emerging risks? Are they operational and independent?**
5. **Does your Board of Directors fully understand and carry out its oversight role?**
6. **Have you established and implemented contracting policies and procedures, including a review/vetting process?**
7. **Has there been an audit, for example by the Office of the Auditor General? If so, have you adequately responded to any recommendations?**
8. **Does your Board of Directors understand its 'duty of care', i.e. its obligation to exercise the care, diligence and skill required of them?**

sectors, we developed a short list of questions reflecting best practices. We have also had the opportunity to test these with a prominent Crown corporation. These are some of the questions that we would seek to have answered if we were called in to investigate an alleged wrongdoing in a Crown corporation. The list is not exhaustive or new but it is offered as a means of helping an organization establish its own framework for self-examination.

The Commissioner has had preliminary discussions with the Office of the Auditor General to explore how we can work together to better support good governance in Crown corporations.

Ethical lapses may result in:

- **Damage to reputation**
- **Loss of employee, investor, regulator or public confidence**
- **Prosecution**
- **Large fines and harsh collateral sanctions**
- **Loss of license/ability to operate**
- **Civil litigation**

Hugh L. Hooker
Chief Compliance Officer
Petro-Canada

Private sector corporations

The Commissioner also met informally with representatives from leading private sector corporations with extensive experience in implementing disclosure regimes. These included the Bank of Montreal, Petro-Canada, Mitel and Motorola.

It is striking: many large corporations in the Canadian private sector view encouraging employees to speak out, and protecting them when they do, as critical to business success.

Subsidiary Crown corporations

The *Act* currently applies only to parent Crown corporations; therefore, their subsidiaries do not fall under our jurisdiction. There is evidence suggesting the same kinds of risks exist in subsidiaries as in parent Crown corporations. Consideration should be given to bring subsidiary Crown corporations under the *Act* as soon as possible.

Conclusion

Much has been written about Board governance and accountability, and Board members have the benefit of the perspective of many experts in helping them understand their work and carry out their duties. Our aim is not to duplicate what already exists or to repeat what has already been discussed. What we do have, however, is a unique perspective, and indeed a unique role to play under the *Act,* in terms of both prevention and investigation of alleged wrongdoings. In our view, this obliges us to identify and focus discussion on the vulnerabilities and risks of Crown corporations. And the invitation from Crown corporations themselves for our input, and the strong, positive response we receive, underscore that we have a continuing role to play to help Crowns achieve their important goals in the service of all Canadians.

Fairness, consistency, rigour and transparency are essential.

3 Investigations and Inquiries

The *Act* creates a regime that has the potential to affect not only the lives and careers of those individuals who come forward to disclose wrongdoing or make a complaint of reprisal, but also those of the public servants whose actions are called into question and indeed the organizations in which they work. Reputations and careers are on the line. The efficient operation of organizations and their ability to fulfill their mandates are at stake.

Over the past year, we have devoted considerable effort to establishing procedures and approaches that respect the law and reflect the principles that guide us. Fairness, consistency, rigour and transparency are essential. So too is the need for us to be an "added value" to the functioning of the public sector in Canada. Parliament created our organization to result in a net benefit to Canadians.

Allegations of wrongdoing and complaints of reprisal are not always straightforward questions of right and wrong. Each case receives the careful, thorough attention it deserves, to ensure that our responses are not only sound from a legal perspective, but that they also reflect the purpose and intent of the *Act*. The issues that are brought to us are important, and each case requires an investment of resources that respects and reflects this. Four cases in particular illustrate the seriousness of the issues we dealt with this year and the guiding principles which emerged from them.

Our choice is not only between a full and formal investigation and doing nothing. There are actions that we can and must take in order to carry out our obligations under the *Act*.

Case 1: Systemic contracting mismanagement and procurement irregularities

Principle: *We will intervene to address serious, systemic problems, even when a full investigation is not warranted, if it is within our authority and in the public interest to do so.*

Our Office received allegations from a senior public figure, a member of the public and a public servant alleging gross mismanagement in the form of widespread and recurring contracting irregularities. Given the responsibilities of the organization, the allegations raised serious concerns about potential danger to public health and safety. The information we received was supplemented by corroborating information from other sources, and it strongly suggested the possibility of wrongdoing.

When formally interviewed by our Office, none of the disclosers would confirm their original allegations or agree to participate further in an investigation. We were faced with one of the most difficult and challenging realities of our work: people are afraid to come forward to disclose wrongdoing. (This is discussed in further detail in Chapter 4 of this Report.)

After determining that we had the statutory jurisdiction to take further action, and being motivated to do so by the importance of the issues at stake, we consulted expert legal and judicial authorities on corporate governance and administrative decision-making for further guidance. We decided as a first step to inform the Chair of the Board of Directors of the general allegations. In doing so, and throughout our involvement, we ensured that the identities of the disclosers were protected at all times. We then worked with the organization to clarify the allegations and verify the reliability of the information received. We reviewed with the organization their relevant contracting policies and procedures. The organization itself then conducted a more focused review of contracting procedures. Throughout this process, the organization was on notice about the perception of serious wrongdoing and had the opportunity to respond appropriately.

An essential and final step in our process was to formally bring the existence of this case to the attention of the Office of the Auditor General, recognizing the particular jurisdiction of that Office and respecting its ability to make an informed decision about whether and when to intervene. Supporting the appropriate involvement of specialized institutions in expeditiously responding to cases of potential wrongdoing is key to effectively resolving cases, regardless of whether a finding of wrongdoing is made.

This case clearly demonstrates a matter of fundamental importance: our choice is not only between a full and formal investigation and doing nothing. There are actions that we can and must take in order to carry out our obligations under the *Act*. We cannot fulfill the mandate

We will intervene to address serious, systemic problems, even when a full investigation is not warranted, if it is within our authority and in the public interest to do so.

conferred on us by Parliament if we act otherwise. Our actions in this case were also consistent with what Chief Executives themselves have repeatedly confirmed to us: they want to know of potential wrongdoings within their organization as soon as possible so they can respond immediately, regardless of our independent decision to launch a formal investigation or not.

This case also allowed us to test an approach that reflects our new and innovative Informal Case Resolution process. Further details on this process are provided later in this chapter.

Case 2: Occupational health and safety

Principle: *Even when a full investigation into an alleged wrongdoing or reprisal is not warranted, we will intervene when the public interest requires immediate action to deal with a danger to life, health or public safety.*

Our Office received allegations from an employee in a busy federal mechanical facility regarding actions of a colleague that, in the employee's opinion, posed a risk to the safety of that individual, co-workers and the public. The employee had raised these concerns internally in their organization, but no action was taken.

The employee was hesitant to proceed further for fear of reprisal.

With the permission of the employee, whose identity was protected at all times, we immediately notified the organization's senior officer of the information we received. We felt the senior officer was best placed to act quickly and directly, and that a full investigation on our part was not the most effective response at this time. The senior officer determined that the issue would be most appropriately addressed using a process established under the *Canada Labour Code*. We were in agreement with this approach.

We then followed up with the organization to assess whether our continued involvement, including conducting an investigation, was warranted. We confirmed that the situation was addressed within 48 hours, to the satisfaction of the discloser and of the organization. Most importantly, the individual in question ceased the potentially life-threatening behaviour. The discloser and the senior officer confirmed that our timely intervention was pivotal in avoiding a possible tragic accident. Also, in our view, taking further action was consistent with the *Act's* aim of protecting individuals from reprisals.

Each case receives the careful, thorough attention it deserves, to ensure that our responses are not only sound from a legal perspective, but that they also reflect the purpose and intent of the *Act*.

Case 3: Reprisal

Principle: *Complaints of reprisal are the exclusive authority of our Office and demand the highest degree of rigour and transparency.*

An employee made a disclosure of wrongdoing to their senior officer. That senior officer determined that a full investigation was not required. We did not act on the matter, as the employee did not submit the disclosure to us.

The employee subsequently made a complaint of reprisal to our Office, alleging a number of specific actions on the part of their supervisor that adversely affected their working conditions. Under the *Act*, complaints of reprisal are made to our Office, and not to a senior officer or to a supervisor.

It is necessary in all cases to establish a direct link between the actions alleged to constitute reprisal and making a protected disclosure of wrongdoing or participating in an investigation. The fact that a disclosure is not investigated or that no wrongdoing is found has no bearing on whether a reprisal has occurred.

This case was accepted for investigation by our Office early in our mandate. Before a final decision was taken, we reviewed our actions to ensure that they were taken fairly, completed thoroughly under the *Act*, and that they fully responded to the interests of the parties and were clearly communicated to them.

After re-interviewing witnesses and examining extensive documentary evidence, we concluded that the actions complained of did not constitute a reprisal under the *Act*. The statutory test had not been met.

Before a final decision was taken, we reviewed our actions to ensure that they were taken fairly…

Having determined this, it was incumbent on us to ensure that the parties understood the importance of the link between a protected disclosure and a reprisal. It was also important to raise with the parties that perceptions of reprisal can and must be addressed as a matter of good management and good governance.

This case offered the opportunity to share observations to assist the organization in improving its internal disclosure regime, to review management practices, and to encourage and support open and frank dialogue between management and employees without creating a fear or misapprehension of reprisal.

Case 4: Review of a decision by the former Public Service Integrity Officer (PSIO) regarding a reprisal complaint

Principle: *In considering whether to make an application to the Tribunal, the Commissioner must take into account, having regard to all the circumstances relating to a complaint of reprisal, whether it is in the public interest to do so.*

This case concerned a disclosure made by four public servants to the Public Service Integrity Officer (PSIO) in 2002. In 2003, the Officer dismissed the allegations of wrongdoing but found that one of the complainants had suffered a reprisal under the former *Treasury Board Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace.* That Policy was repealed by the coming into force of our *Act* in 2007, and the PSIO was replaced by our Office. The disclosers applied to the Federal Court of Canada for a judicial review of the original decision, and in 2005, the Court ordered the PSIO to reconsider his findings. On April 15, 2007 when our Office was established, we continued this process in accordance with the specific transition provisions of the *Act*.

We faced the complex task of reviewing decisions that had been made under the former Policy and applying the *Act's* new reprisal regime to facts and circumstances that occurred before it came into force. The *Act* provides for the transition of disclosure investigations commenced under the former Policy, but it is silent with respect to reprisals. This is relevant, because the *Act* differs from the former Policy in how it deals with reprisal complaints. For example, the PSIO had the flexibility to decide whether reprisals were taken and to make recommendations to Chief Executives for corrective measures. Under the *Act*, only the Public Servants Disclosure Protection Tribunal can adjudicate a complaint, upon application by the Commissioner, and order corrective measures and disciplinary sanctions. Further, the Policy did not specify any particular standard of proof in determining whether reprisals were taken. Under the current regime, there must be reasonable grounds for believing that a reprisal occurred and that having regard to all the circumstances, it would be in the public interest to refer the matter to the Tribunal.

At the conclusion of the process, our choices under the *Act* were limited to referring the complaint to the Tribunal or dismissing it. We determined, having regard to all circumstances, that it was not in the public interest for the Tribunal to hear this reprisal complaint. We also determined that rights had previously accrued to the parties which could now be adversely affected if we referred this matter to the Tribunal. Further, there was a need for finality in this matter. We found that the reprisal complaint was appropriately and adequately dealt with under the former Policy by the PSIO. The only outstanding issue arising from the PSIO's findings was the implementation of recommendations on corrective measures. We encouraged the parties to consider mediation and offered our assistance to them in this regard.

Informal case resolution

As mentioned in the first case study above, this year we took another step toward ensuring the effectiveness of our procedures and processes in the pioneering of a new investigative approach which we refer to as Informal Case Resolution. Informal Case Resolution is premised on the principle that a formal investigation is not always the most effective or productive means of dealing with a case. Sufficient flexibility exists within the *Act* for us to respond to cases in a way that will complement our investigative powers and achieve the goals of our statutory regime. Essentially, this model adapts the concepts of alternative dispute resolution to the requirements of the *Act* in the course of investigation of disclosures.

This approach will not work in every case, of course. A decision to use Informal Case Resolution must be consensual and our Office must control the process to ensure the public interest and the provisions of

the *Act* are respected at all times. But it does expand the scope of tools available to our Office. It allows us to ensure that people who come to us for assistance will get a full range of responses to help resolve a case.

Statistics

The *Act* requires the Commissioner to report to Parliament on specific information about the Office's activities over the fiscal year. In presenting statistical information about our activities, it is important to ensure that our processes for handling disclosures of wrongdoing and reprisal complaints are clear.

Processes

Action is taken on all written disclosures of wrongdoing and reprisal complaints made to our Office.

Disclosures

Disclosures of wrongdoing are first reviewed by the Registrar. The discloser may be contacted to clarify allegations or to provide additional information necessary for full consideration of the disclosure. An analyst/investigator, in conjunction with legal counsel, is then assigned to conduct a thorough review of the information provided. The review process also involves research into relevant policy and legal issues and, if required, consultations with experts, while respecting confidentiality. At the conclusion of the review process, a detailed admissibility and analysis report, along with the disclosure file, are presented to the Commissioner for her review and decision on whether further action, including an investigation, is warranted.

The Commissioner's decision could be to close the file without further action, to launch a formal investigation or to conduct further examination into the allegations in cooperation with the parties. The latter does not exclude the possibility of a formal investigation. In all cases, the discloser is informed of the Commissioner's decision in writing. The process for carrying out a formal investigation is clearly laid out in the *Act*. Our Informal Case Resolution process may be used at any time, including during an investigation, in collaboration with the parties. As part of Informal Case Resolution or after formal investigations, the Commissioner may make recommendations to Chief Executives.

Complaints of reprisal are dealt with on a high-priority basis. The Commissioner is made aware of every reprisal complaint as soon as it is received.

Reprisals

Complaints of reprisal are dealt with on a high-priority basis. The Commissioner is made aware of every reprisal complaint as soon as it is received and files are acted on immediately. The Commissioner must decide whether or not to conduct an investigation within 15 days after the complaint is filed in an acceptable form. The Commissioner's decision is provided in writing to the complainant. If an investigation is undertaken, the Commissioner, on the recommendation of the investigator, may appoint a conciliator to assist in resolving a complaint. The parameters governing conciliation and settlements are laid out in the *Act*.

Following a formal investigation into a reprisal complaint, and if the matter has not been resolved through conciliation, the Commissioner may dismiss the reprisal complaint or decide that an application to the Public Servants Disclosure Protection Tribunal is warranted. The Tribunal will determine if a reprisal was taken and it can order appropriate remedies and disciplinary action.

26. (1) Investigations into disclosures and investigations commenced under section 33 are for the purpose of bringing the existence of wrongdoings to the attention of chief executives and making recommendations concerning corrective measures to be taken by them.

(2) The investigations are to be conducted as informally and expeditiously as possible.

— Public Servants Disclosure Protection Act —

General Inquiries

Total number of general inquiries received and responded to in FY 2008-09 [1]	**151**

Disclosures

Total number of disclosures of wrongdoing (2008-09)		**76**
Number of disclosures of wrongdoing carried over from previous years	21	
Number of disclosures of wrongdoing received in 2008–09	55	
Active Disclosure Files		**15**
Currently under review [2]	14	
Currently under investigation	1	
Closed Disclosure Files [3]		**61**
After review	59	
After extended examination, informal case resolution/corrective measures as part of an investigative process	2	
After formal investigation [4]	0	
Number of recommendations made after an investigative process, including a formal investigation	2	

Reprisals

Total number of reprisal complaints (2008–09)		**23**
Number of reprisals carried over from previous years	3	
Number of reprisals received in 2008–09	20	
Active Reprisal Files		**2**
Currently under admissibility review [5]	2	
Currently under formal investigation	0	
Currently under conciliation	0	
Currently before the Public Servants Disclosure Protection Tribunal	0	
Closed Reprisal Files [6]		**21**
After admissibility review	20	
After investigation	1	
After conciliation	0	
Further to decisions of the Public Servants Disclosure Protection Tribunal	0	

It should be noted that the statistics provided do not include internal disclosures within public sector organizations, which are reported through the former Canada Public Service Agency (now the Office of the Chief of Human Resources at the Treasury Board Secretariat).

Explanatory Notes

1 All requests for information about the *Act* and procedures used by our Office concerning disclosures of wrongdoing and reprisal complaints from public servants and members of the public.

2 The review process, in many cases, involves review of extensive documentation, significant and complex factual and legal analysis work to determine admissibility/ further action.

3 Of the 61 disclosure cases closed this fiscal year,

- 23 were closed on the basis that there was a valid reason for not dealing with the subject-matter of the disclosure:
  - 13 were closed because the subject-matter of the disclosure did not meet the definition of wrongdoing;
  - 4 were closed because insufficient information was provided by the discloser;
  - 3 were withdrawn by the discloser;
  - 2 were closed because the subject-matter was investigated internally by the organization;
  - 1 was closed because it was combined with another disclosure file.
- 22 were closed on the basis that the subject-matter of the disclosure has been adequately dealt with, or could more appropriately be dealt with, according to a procedure provided for under another Act of Parliament;
- 9 were closed as follows, on the basis that the Commissioner did not have jurisdiction:
  - 5 were closed because another person or body acting another Act of Parliament was dealing with the subject-matter of the disclosure other than as a law enforcement authority;
  - 2 were closed because the subject-matter of the disclosure was outside the public sector;
  - 2 were closed because the subject-matter of the disclosure related solely to a decision that was made in the exercise of an adjudicative function under an Act of Parliament.
- 2 were closed following an Informal Case Resolution process;
- 2 were closed on the basis that the length of time that had elapsed since the date when the subject-matter of disclosure arose was such that dealing with it would serve no useful purpose;
- 2 were closed on the basis that the subject-matter of the disclosure was not sufficiently important;
- 1 was closed on the basis that the subject-matter related to a matter that resulted from a balanced and informed decision-making process on a public policy issue.

4	The commencement of a formal investigation requires a notice to the Chief Executive and others, as required, pursuant to section 27 of the *Act*.
5	A reprisal complaint is considered to be filed in a form acceptable to the Commissioner when it is submitted in writing and includes all necessary contact information about the complainant, a clear description of the alleged acts of reprisal, details concerning a related protected disclosure of wrongdoing and supporting documentation.
6	Of the 21 reprisal complaints that were closed this fiscal year, - 9 were closed on the basis that the complaint did not stem from a protected disclosure; - 4 were closed on the basis that the measures complained of did not meet the definition of reprisal; - 3 were closed on the basis that the subject-matter of the complaint had been adequately dealt with, or could more appropriately be dealt with, according to a procedure provided for under another Act of Parliament, or a collective agreement; - 3 were closed because the complaint was not filed within the 60 days after the day on which the complainant knew, of ought to have known, that the reprisal was taken; - 2 were closed because of other reasons (including complaint withdrawn by complainant; insufficient information provided by the complainant).

"There is no such thing as being fearless. Courage is action in spite of fear and not absence of fear. It is normal and human to feel scared and nervous when considering raising an issue or a disclosure." — Departmental Senior Officer—

4 Fear of Coming Forward

Are people afraid to disclose wrongdoing? The answer is clear: "Absolutely". Most people believe they face serious risks, even with the protection offered by the *Act*.

The risks of disclosing

Mr. Paul Thomas of the University of Manitoba examined the experience of four countries with disclosure legislation: Australia, New Zealand, the United Kingdom and the United States. He found that despite the existence of protective laws in those countries to prevent reprisals, it was only a small minority of public servants who were prepared to disclose wrongdoing. Further, his research also revealed substantial evidence that even with such laws, it was impossible to protect these persons against the more subtle forms of damage to their careers. He cited academic studies dating from the 1980s and 1990s that concluded that in various countries, the majority of employees who came forward did indeed suffer long-term negative consequences such as ostracism, job loss, financial loss, health problems and breakdowns in personal relationships.

The Honourable Patrick Ryan, Conflict of Interest Commissioner of New Brunswick, has stated that laws offer at best only a *'qualified'* protection against reprisal. He said an Integrity Commissioner must act fairly, in good faith, without bias and with a judicial temper, but this does not mean that he or she can offer those who come forward an unqualified guarantee of protection.

Canadians who have disclosed wrongdoing and their support organizations, such as the Federal Accountability Initiative for Reform (FAIR) and Canadians for Accountability, have also spoken to us about the negative impacts on their lives and careers. They said that when initial media interest faded, the disclosers were left jobless and friendless. They believe the *Act* is a step in the right direction, but what is needed is a cultural change in the federal public sector.

Most employees just want the wrongdoing to stop. […] They want the problem to be fixed, quickly and informally.

Making the decision to come forward

Fear of reprisal is very real. The explanations are many and complex.

Some are afraid of damaging their professional reputation. They fear that if they speak out, they will be labelled as troublemakers or that they will be perceived as obsessive or as foolhardy, and if so, they are on a fast road to a career dead-end. Some others have expressed concern about their personal relationships in the workplace and with family and friends. Others are afraid that the process will be long and costly or that their identity would become public.

Most employees just want the wrongdoing to stop. They do not want a long and formal investigation involving a commitment of time, resources and energy that they may not have to spare. They want the problem to be fixed, quickly and informally. The simple fact that they are considering disclosing unethical behaviour speaks to their loyalty to their organization and to their concern for the public interest.

The strong influence of organizational culture

Organizational culture plays a fundamental role in influencing whether and how a person discloses suspected wrongdoing.

In a hierarchical working environment, employees at lower levels might believe that they would not be seen as credible if they come forward or that their views would not be valued. In such an environment, bringing 'bad news' to management is not welcomed nor is it encouraged. In an organization that rewards managers for achieving results at all costs, it is difficult to raise issues about perceived inappropriate behaviour.

Mixed messages can also discourage disclosure. For example, if a Deputy Minister says 'come forward' and a supervisor says 'keep quiet', contradictory messages can have a chilling effect. And managers may be unprepared, and as result, unsure of how to respond to a disclosure. Support to managers is essential.

The solution is clear: an open culture in which employees feel free and are encouraged to raise their concerns.

Support and informal advice

In our experience, we have found that most potential disclosers need objective, neutral advice when considering making a disclosure. We are in the final stages of developing a disclosure decision-making model to guide people in their thinking about whether or not to come forward. This tool will be available on our website.

We also look to those organizations from outside the public sector that support employees who disclose wrongdoing. They have a unique role and responsibility. Our roles and perspectives are different, but both are essential in responding to the range of needs and interests of potential disclosers, and indeed to all Canadians who value and benefit from a healthy and well-functioning public sector.

Conclusion

We are still in the early days of our mandate. Many employees are not fully aware of the regime created by the *Act* or the role of our Office. Many do not yet understand the options available to them when they are considering making a disclosure. It may take several years before our *Act* is accepted as part of the operational framework of the public sector.

The *Act* provides significant and meaningful protection to employees who disclose wrongdoing, but organizational change is equally important if people are to come forward confidently.

It is important for us to recognize that disclosure of wrongdoing in the public sector is a courageous and commendable act of service, and that reprisal against anyone brave enough to come forward will not be tolerated. Equally important is establishing a work culture in which all employees can raise concerns as part of everyday dialogue. The new generation of public servants expects this kind of workplace. We will do our best to fulfil these expectations.

Our assurance is like the terms in an insurance policy. Both have a deductible. […] The deductible in the case of disclosers may be too costly, thus inhibiting or even prohibiting further cooperation.

— The Honourable Patrick Ryan, Conflict of Interest Commissioner New Brunswick—

Integrity is a shared responsibility. Politicians, Parliament, Parliamentary agencies, and public sector organizations all have roles to play. But the major responsibility lies with leaders of individual public sector organizations. — Symposium 2008 Report —

5 Prevention

In last year's Annual Report, we signalled our commitment to be proactive in our prevention role. Our reason for continuing to focus on prevention is simple: a pure enforcement model does not work.

Prevention is the foundation of our work to build confidence in public institutions.

Our approach

As a starting point, we believe that the very nature of our work, and in fact, our very existence should act as a deterrent to wrongdoing.

Prevention is at the heart of our approach to our mandate, and our work takes different shapes.

- We raise our concerns with central agencies about particular vulnerabilities and areas of risk in the public sector.
- We are attentive to systemic risks. We want to sensitize public sector leaders and better equip them to address these risks. These prevention efforts are necessary to maintain and increase the confidence of citizens in their public institutions.
- Private sector firms have long encouraged disclosure throughout their organizations in order to discourage wrongdoings, to respond to them quickly and limit their repercussions when they do occur. It is critical to the success of their business. In the same way, we encourage the continuing efforts in the public sector to facilitate organizational change, and support a workplace in which the disclosure of wrongdoing is perceived as a positive act, a sign of loyalty and commitment to the public interest.
- Prevention also influences how we approach and respond to alleged wrongdoing. We try to find solutions informally and quickly. As we have stated, Chief Executives want to be informed as early as possible in order to allow them to take immediate corrective measures. We will work with them as well to address any vulnerabilities that would impede the achievement of their mandates and corporate objectives.

Our strategy

Over the past year, our prevention efforts focused on three main target groups: *small agencies and Crown corporations; senior leaders; and middle managers.*

Small agencies and Crown corporations – Chapters 1 and 2 reflect our key observations on the unique challenges faced by small agencies and Crown corporations, their specific vulnerabilities and risk areas. With these in mind, the Commissioner wrote to the Clerk of the Privy Council and to the Treasury Board Secretary, sharing her concerns about these challenges. Raising concerns is a fundamental aspect of our prevention work.

Senior leaders – Under section 10 of the *Act*, Chief Executives must establish internal procedures to manage disclosures made under the legislation. Effective internal disclosure regimes are essential to ensure an open, healthy workplace. As part of our prevention work, we are assisting public sector organizations in this regard.

The Office of the Chief of Human Resources at the Treasury Board Secretariat has done notable work to inform departments and agencies about the *Act*. We will continue to cooperate with this Office and with the Minister of the Treasury Board, who is responsible for promoting ethical practices in the public sector and a positive environment for disclosing wrongdoings.

We have also continued the consultations with Deputy Ministers and Heads of public sector organizations that we began last year. We have spoken with their Assistant Deputy Ministers and management teams to explain the legislation and their responsibilities under it. These consultations have been very effective in enabling our Office to build relationships of trust and share best practices. One of our goals in speaking to groups such as new Executives, Assistant Deputy Ministers and Deputy Ministers, and Executive Committees, is to stress their role in setting the tone at the top and to express our willingness to meet with their staff to discuss the legislation.

At the request of the Privy Council Office, our Office has also undertaken to provide every new Agency Head, upon appointment, with a briefing on the *Act* and our role.

Middle managers – As we indicated in our first annual report, middle managers are key to prevention. They are barometers of an organization's integrity and are uniquely placed to affect real change.

We have consulted and sought opportunities to reach out to this community across the country in collaboration with Regional Federal Councils and the National Managers' Community.

We have listened carefully to what middle managers have to say. Some fear that the *Act* could paralyze their operations. Others indicate that they

do not need more rules, but more support in their service delivery. Some others question the chances of success of the *Act* and the ability of our Office to make a difference. But stronger than any of these concerns is a desire to work with us toward positive change. The over-riding message was a sense of responsibility and commitment to build trust in their work environment.

In June 2008, the Commissioner wrote an open letter to middle managers, which was published on our website. She called upon them to fulfil their leadership role and responsibilities for integrity in their workplace. She encouraged them to do the following:

- Act as champions of the cause of building integrity and public confidence in their institutions
- Be proactive in talking with employees about integrity
- Encourage professionalism (through training and other means such as rewards, mentoring, etc.)
- Set standards of accountability in their own behaviour as a model for other employees
- Act as mentors to employees in matters of ethical and professional conduct

And more recently, we reached out to managers across the public sector through an Armchair Discussion hosted and webcast by the Canada School of Public Service.

Outreach

We are also meeting with every departmental senior officer in order to build effective partnerships to enable us to fulfill our respective responsibilities under the *Act* and learn from each other's experience. Mutual support is essential in achieving both our individual and shared goals under the *Act*.

Section 10 (4) of the *Act* allows organizations to exempt themselves from the requirement to establish internal disclosure procedures, including the appointment of a senior officer, if it is not practical for them to do so because of their size. To date, 34 organizations are exempt. Our Office has begun meeting with these organizations to explain the *Act* and the services we can provide to them. Our goal is to ensure that all federal sector employees have access to internal disclosure services and receive the same protection under the *Act*.

Our outreach activities are also aimed at communities of practice within the public sector, unions, professional associations, and the public. We are also partnering with leading scholars and practitioners from Canada and around the world, and have met with discloser advocacy groups such as Canadians for Accountability, FAIR and Democracy Watch.

We are also strengthening our partnership with the Canada School of the Public Service to ensure that information about the *Act* and our Office is part of core public service training.

Results to date

It is too soon to draw any definitive conclusions about the impact of our prevention efforts. The process of embedding the principles of the *Act* in each department's operations and culture will undoubtedly take time.

We can, however, report on what we have observed this year: many departments and agencies are actively engaged in informing their employees and encouraging dialogue throughout their organizations, which are key to prevention of wrongdoing.

The following are among the best practices we have observed:

- The use of the Interdepartmental Values and Ethics Network for discussion about the *Act*
- Creation of a best practices webpage on GCpedia and links to our website on departmental intranet sites
- Creation of departmental steering committees of Directors General to guide implementation of the *Act*
- Creation of tools to guide employees to various sources of assistance available to them
- Requests by Deputy Ministers for systematic reports on current investigations
- Monthly information sessions and in-house learning workshops on the *Act*
- Mandatory training on the *Act* for all new employees

The process of embedding the principles of the *Act* in each department's operations and culture will undoubtedly take time.

Performance assessment

We will have succeeded in achieving greater integrity in the workplace if wrongdoing is prevented or resolved as early as possible, and if public servants are protected from reprisal.

We are committed to developing performance indicators so that we can accurately assess our work and our progress toward achieving our goals. This important task is underway. Time and experience will bring the development of indicators. However, as the disclosure regime is a shared responsibility among all Chief Executives, the Office of the Chief of Human Resources Officer at the Treasury Board Secretariat and our Office, we are not alone in measuring the overall success of the disclosure regime.

We have discussed performance indicators with our counterparts at the provincial and international levels. What is clear is that we are all focused on the same goal: developing useful performance indicators.

It is also clear that quantitative indicators such as the number of inquiries, the number of investigations launched or the number of findings of wrongdoing and reprisal are important. However, they are likely insufficient to fully capture our progress toward our stated goals or the depth and breadth of the activities that we have undertaken under the *Act*.

We have also begun the process of reviewing our own procedures. In addition, immediately upon his arrival this year, our new Deputy Commissioner began an internal review of our work to ensure that our standards remain high. We think that it is never too early for this type of self-assessment, which is central to improving our own performance in serving Canadians. We also have an ongoing responsibility to review and, when necessary, to amend our own processes to ensure our stakeholders' interests are protected to the fullest extent of our abilities.

Conclusion

The costs of prevention are much less than the costs of addressing problems once they occur. Prevention is thus the foundation of our work to build confidence in public institutions.

It will never be the number of files that we receive that matters but rather the complex and delicate nature of these files. — Dwight L. Bishop, Ombudsman, Province of Nova Scotia —

…professionalism is 'about being proud members of a proud team whose members willingly adopt high standards and expect the same from their colleagues.'

— Gary Crooke, Integrity Commissioner of Queensland, Australia —

6 Learning From Others

One of our priorities this year has been to test our strategies and approaches with leading experts and practioners within Canada.

Symposium 2008

In September 2008, we brought together in Ottawa approximately 90 key players in the integrity field, including Agents of Parliament, jurists, scholars, senior and middle managers, union representatives, senior officials from provincial and foreign jurisdictions, and private sector practitioners. Discussion focused on three topics central to our mission: the role of disclosure legislation in building public trust in public institutions; key success factors in fostering integrity in the public sector; and the experience of other jurisdictions in implementing disclosure legislation.

This symposium was the first hosted by our Office and the first of its kind in Canada. The keynote speaker was the Honourable Mr. Justice Peter Cory, former Justice of the Supreme Court of Canada. Our other speakers were Sheila Fraser, Auditor General of Canada; Denis Desautels, former Auditor General of Canada; Dr. Paul Thomas, University of Manitoba; the Honourable Patrick Ryan, Dwight L. Bishop, Lynn Morrison, and Irene Hamilton, the senior officials responsible for integrity in the governments of New Brunswick, Nova Scotia, Ontario and Manitoba respectively; Hugh Hooker, Chief Compliance Officer, Petro-Canada; and Gary Crooke, Integrity Commissioner, Queensland, Australia.

Several conclusions emerged that validated the approach to our work we proposed in last year's annual report.

First, participants were unanimous that the key to public sector integrity is leadership – the tone set at the top. Leaders must create an ethic of public service professionalism among employees which is integrated into the daily actions of managers and employees. In simple terms, "professionalism" means a corporate culture that inspires employees to do the right thing voluntarily, in accordance with the organization's core values. Symposium speakers unanimously confirmed that the responsibility to foster professionalism lies with the senior leaders of individual organizations. As indicated by Gary Crooke, Integrity Commissioner of Queensland, Australia, professionalism is 'about being proud members of a proud team whose members willingly adopt high standards and expect the same from their colleagues.'

Second, prevention is critical to success. Participants stated that in their experience, a purely reactive, complaints-driven regime is unlikely to advance integrity in the public sector. Organizations such as ours must therefore focus efforts on prevention, to complement investigation activities. Success should not be measured by the number of investigations we carry out, but by the degree to which senior leaders, middle managers and front-line employees are engaged and motivated to build integrity into their daily work.

The key to public sector integrity is leadership – the tone set at the top.

Third, in all jurisdictions with disclosure regimes, the experience is that public servants are reluctant to come forward to disclose wrongdoing. The reasons most commonly cited were: fear of professional and financial risks and of the impact on personal health; concern that there can be no absolute guarantee of confidentiality or protection from reprisal; and the difficulty of coming forward in the current organizational culture.

Fourth, there is a need for ongoing sharing of experience and best practices among jurisdictions with disclosure regime. While our legislation is still relatively new, the time is right to create a network of our provincial and international counterparts.

Finally, it was the Honourable Mr. Justice Peter Cory who perhaps best summed up the principles underlying integrity regimes such as ours:

> *"The Commissioner must remain impartial, unbiased and fair in all the steps of the proceedings and in the decision itself. There must be fairness in the process and fairness in the decision. Every step in the process must be fair to all concerned and must be as open as possible. And this can be done while still respecting that investigations are confidential in nature and that the identity of persons involved in the disclosure process are protected, as the Act expressly requires.*
> *It is only in that way that the actions of the Commissioner and the subsequent inquiry will satisfy the public's desire to know the facts, the steps taken to remedy any unfortunate situation and the results themselves. If those key concepts of fairness and openness are followed to the largest extent possible, the public's faith in the Canadian government will be restored and maintained."*

While our legislation is still relatively new, the time is right to create a network of our provincial and international counterparts.

Comparing Canada to the world

Canada is among only a small number of countries in the world that have enacted or are in the process of enacting *comprehensive* disclosure protection regimes. The United States *Whistleblower Protection Act* is the oldest (1989), followed by the United Kingdom *Public Interest Disclosure Act* (1999) and the New Zealand *Protected Disclosures Act* (2000). Some individual Australian states have had such legislation since the 1990s. Japan and South Africa have also enacted disclosure protection legislation.

In the past two decades, there has been growth in disclosure protection regimes in the international, public and private sectors. International financial institutions such as the World Bank and the International Monetary Fund have put in place internal disclosure protection policies, as have the United Nations and its specialized agencies. The International Chamber of Commerce was the first international business organization to issue guidelines on disclosure

protection (in July 2008) to assist private sector organizations.

Non-governmental organizations have also been pro-active in promoting disclosure protection in many countries. These include the United States-based *Government Accountability Project, Public Concern at Work* in the United Kingdom, *Whistleblowers Australia*, and *South Africa Open Democracy Advice Centre*. Disclosure protection is gaining momentum.

It will be very important for Parliament to understand what is happening elsewhere in the world when it conducts its five-year review of the *Act* in 2012. Situating our Office internationally will assist Parliament in determining whether the intentions of the legislation have been fulfilled.

We have begun to conduct research on the legislation and delivery models of four countries in particular: the United States, the United Kingdom, Australia and New Zealand. We chose countries with similar political systems, cultures and values. From the outset, it was essential to distinguish between disclosure mechanisms and 'anti-corruption initiatives'. It is also important to position ourselves against other advanced democracies and nations that have had disclosure regimes in place for a number of years.

At an early stage in this research, Canada's model appears to most closely resemble that of the Office of Special Counsel in the United States. In the United Kingdom, disclosures and allegations of reprisal are strongly supported by a non-governmental organization, *Public Concern at Work*, and internal reporting plays a fundamental role in both the public and private sectors. Similarly, in New Zealand, the private sector has been active in promoting internal disclosure. All Australian states have adopted some form of public sector disclosure legislation, but no comprehensive federal legislation has been enacted at this time.

Finally, we are planning an international symposium in 2010. We have consulted with the Department of Foreign Affairs and International Trade and the Department of Justice to ensure it fits well within Canada's larger foreign policy goals. We are confident that our Office can play a role in enhancing the excellent international reputation Canada enjoys as a model of transparency and good governance.

It will be very important for Parliament to understand what is happening elsewhere in the world when it conducts its five-year review of the *Act* in 2012.

It is my view that in establishing high standards of ethics and integrity, sound public administration cannot simply rely upon a reactive based approach to investigating complaints of corruption or maladministration. […] The aspirational goal must be to create and maintain an internal ethic in an organization whereby its members, as an incident of membership, instinctively abhor and repel corrupt or inappropriate behaviour.

— Gary Crooke, Integrity Commissioner of Queensland, Australia —

We are inspired and motivated by the importance of the task that Parliament has given us.

7 Looking Ahead

Much has been accomplished since the creation of our Office in 2007. At the same time, we are conscious of the fact that our mission has only just begun. We recognize that a cultural shift is essential if the *Act* is to be a success.

Looking ahead to 2009–10, we will, among other things, expand our outreach to all employees and to Canadians; address and report on systemic issues that put the public sector at risk; continue to refine our investigative strategies and processes, including Informal Case Resolution; strengthen our partnerships with our various stakeholders; and continue our work to benchmark Canada's disclosure regime against countries with similar regimes.

We are inspired and motivated by the importance of the task that Parliament has given us. We recognize and respect our public institutions and the essential role they play in the lives of Canadians. Our ultimate goal is to maintain and enhance public confidence in those institutions.

Building trust together: A shared responsibility

Top row (left to right): Gary Crooke, Integrity Commissioner, Queensland, Australia; Dwight L. Bishop, Ombudsman, Province of Nova Scotia; Professor Paul Thomas, University of Manitoba; Jean T. Fournier, Senate Ethics Officer; James R. Mitchell, Partner, Sussex Circle; The Honourable Patrick A. A. Ryan, Conflict of Interest Commissioner, New Brunswick; L. Denis Desautels, Former Auditor General of Canada; Graham Fraser, Commissioner of Official Languages; Hugh L. Hooker, Chief Compliance Officer, Petro Canada; The Honourable Mr. Justice Peter deCarteret Cory, Former Justice of the Supreme Court of Canada.

Middle row (left to right): Karen E. Shepherd, Interim Commissioner of Lobbying of Canada; and Sheila Fraser, Auditor General of Canada.

First row (left to right): Lynn Morrison, Integrity Commissioner, Ontario; Christiane Ouimet, Public Sector Integrity Commissioner; and Irene Hamilton, Ombudsman, Province of Manitoba.