

Tell us.  
You are protected.

Office of the Public Sector Integrity  
Commissioner of Canada

2011-2012 ANNUAL REPORT

Office of the Public Sector  
Integrity Commissioner  
of Canada



Commissariat à l'intégrité  
du secteur public  
du Canada

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Cat. No.: PG1-2012E-PDF  
ISSN: 1925-7732

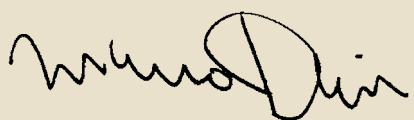
The Honourable Noël A. Kinsella  
Speaker of the Senate  
The Senate  
Ottawa, Ontario K1A 0A4

Dear Mr. Speaker:

I have the honour of presenting you with the Office of the Public Sector Integrity Commissioner's fifth annual report for tabling in the Senate, pursuant to section 38 of the *Public Servants Disclosure Protection Act*.

The report covers the fiscal year ending March 31, 2012.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mario Dion', with a stylized, flowing script.

Mario Dion  
Public Sector Integrity Commissioner


The Honourable Andrew Scheer, M. P.  
Speaker of the House of Commons  
House of Commons  
Ottawa, Ontario K1A 0A6

Dear Mr. Speaker:

I have the honour of presenting you with the Office of the Public Sector Integrity Commissioner's fifth annual report for tabling in the House of Commons, pursuant to section 38 of the *Public Servants Disclosure Protection Act*.

The report covers the fiscal year ending March 31, 2012.

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Mario Dion  
Public Sector Integrity 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 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 of Canada

## Our Vision

**As a trusted organization where anyone can disclose wrongdoing in the federal public sector confidentially and safely, the Office of the Public Sector Integrity Commissioner of Canada enhances public confidence in the integrity of public servants and public institutions.**

## Our Mission

The Office provides a confidential and independent response to:

- disclosures of wrongdoing in the federal public sector from public servants or members of the public; and
- complaints of reprisal from public servants and former public servants.

## Our Values

The Office operates under a set of values that defines who we are and how we interact with our clients and stakeholders:

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

## Our Guiding Principles

Given the sensitive and challenging nature of the situations faced by individuals who contact the Office, our work is guided by the following principles:

- **Accessibility** – We are visible, approachable, our processes are transparent and we are forthcoming about our results.
- **Independence** – We make our decisions impartially, independently and in accordance with the law.
- **Action-orientation** – We take action on every file in a fair, rigorous and timely manner respecting the rights of all parties.
- **Confidentiality** – We protect the confidentiality of the identity of disclosers and of information disclosed to the extent possible under the law.



## Commissioner's Message

The true test of an organization with a mandate defined in an act is, in my opinion, not only the respect of its provisions but also the knowledge its citizens have and the confidence it gives them.

My Office aims to build a solid reputation and works at this every day. It is through concrete actions that this image is built and therefore, for the past year, we have focused on concrete achievements.

First, we took aggressive measures to dispel the reservations that hung over decisions rendered to 2010.

Second, I am confident that through the reports to Parliament and timely applications to the Tribunal, public servants and Canadians will become aware of our ability to contribute to strengthening public sector integrity. This public consciousness began soon after the tabling of the first case report on March 8, 2012, and the filing of three applications to the Tribunal.

My Office now has sufficient qualified employees to carry out its mandate, which likely explains the unprecedented number of cases that were completed in 2011-2012. Moreover, based on the results of the 2011 Public Service Employee Survey, employees are satisfied with their work environment. In fact, our results were considerably more positive than the public service average for almost all the questions.

This year, we saw an increase of nearly 15% in the number of cases submitted and it is reasonable to believe that this trend will continue, considering the current context at the public service. The long-awaited implementation of the *Values and Ethics Code for the Public Sector*, a serious breach of which constitutes wrongdoing pursuant to the *Act*, could also have an impact on the volume of cases we will be managing in the coming years.

We are ready to face the challenge, as shown by the strategic plan we developed together. I would like to thank all the members of my team for their excellent work. It is with confidence that I begin the next six years as Public Sector Integrity Commissioner.

Mario Dion  
Commissioner



# Operational Achievements

THE CASES WE DEAL WITH TOUCH UPON ISSUES OF FUNDAMENTAL IMPORTANCE TO PUBLIC SERVANTS AND TO CANADIANS. THE CONSEQUENCES OF OUR DECISIONS AFFECT THE LIVES AND CAREERS OF ALL THOSE INVOLVED. EVERY CASE STARTS WITH THE DIFFICULT DECISION ON AN INDIVIDUAL'S PART TO COME FORWARD; A DECISION THAT IS MOTIVATED BY GENUINE CONCERN FOR AND BELIEF IN THE IMPORTANCE AND INTEGRITY OF PUBLIC INSTITUTIONS.

This year, our Office achieved a number of significant milestones in the ongoing implementation of the *Public Servants Disclosure Protection Act* (the *Act*).

These achievements underscore the breadth and range of our mandate, and they speak to the importance and sensitivity of the responsibilities given to us by Parliament to deal with both disclosures of wrongdoing and complaints of reprisal.

## A Founded Case of Wrongdoing

In March of this year, we tabled in Parliament the [first report of a founded case of wrongdoing](#). This case report,

involving multiple allegations, found that wrongdoing had occurred based on several components of wrongdoing as defined in the *Act*. This case report was the product of a rigorous and thorough investigation, and our findings highlight key features of the federal disclosure regime:

- the importance of protecting confidentiality to deter reprisal cannot be overstated;
- the fact that wrongdoing is broadly defined and can be a single incident or an extended pattern of behaviour;
- disclosers continue to feel trepidation in coming forward, either internally or to our Office, and it takes courage to do so;

- it is important that disclosers have the choice of going internally or directly to our Office;
- organizations have a responsibility to cooperate with our Office during the investigative process;
- Chief Executives have an important role in taking action to put an end to wrongdoing once it is identified; and
- it is the role of organizations to establish effective accountability and review systems to deter or prevent wrongdoing from occurring in the first place or from recurring if they have already taken place.
- problematic oversight of travel claims resulting in contraventions of the Treasury Board Travel Directive;
- inconsistent cost recovery for personal use of mobile wireless devices;
- insufficient checks of regional accounting practices to ensure adherence to the *Financial Administration Act*;
- insufficient checks to ensure proper asset control procedures and inventory control policies were respected; and
- failure to ensure that regional staff complied with departmental security policies and procedures with respect to the handling and storage of sensitive information.

**“I strongly encourage all public sector employees to read this report and understand the importance of respecting all legislation, policies, procedures and guidelines in the course of their day-to-day work and to always conduct themselves in an ethical manner.” Commissioner Mario Dion – Findings of the Public Sector Integrity Commissioner in the Matter of an Investigation into a Disclosure of Wrongdoing – Human Resources and Skills Development Canada Case Report, March 2012.**

Most importantly, this case demonstrates that the *Act* works, that public servants get results when they come forward, and that their concerns will be treated seriously and responded to with action.

Chief Executives are strongly encouraged to familiarize themselves with the recommendations

made to the Department as a result of these findings of wrongdoing. These recommendations were made to address the deficiencies regarding the lack of oversight mechanisms to ensure that departmental and Treasury Board policies and procedures are respected. In particular:

## Three Cases before the Tribunal

In the past year, the [first three complaints of reprisal](#) were filed with the Public Servants Disclosure Protection Tribunal. This Tribunal is composed of three judges of the Federal Court. Under the *Act*, the Commissioner applies to the Tribunal after the Office investigates a complaint and determines that there were reasonable grounds to believe that a reprisal has occurred. If the Tribunal, after conducting its own hearing, finds that a reprisal has occurred, it has the power to order remedies, and may impose discipline if the Commissioner has requested an order for discipline against the person responsible for the reprisal. The distinction between the role of our Office and the Tribunal is an important one. We do not make a finding of reprisal; only the Tribunal can.

In the three cases currently before the Tribunal, retaliation actions were alleged to have been taken against public servants who had made disclosures of wrongdoing in their workplace. Regardless of whether wrongdoing had occurred, actions taken against a public servant for having made a disclosure of wrongdoing, or for participating in an investigation, are able to be investigated by our Office and ruled upon by the Tribunal. The definition of reprisal in the *Act* covers a wide range of possible actions. In the three cases currently before the Tribunal, the alleged reprisals are the termination of employment, the termination of an acting assignment and the withholding of a security clearance.

We will report on the progress and/or outcome of these cases in the next Annual Report, as all three were still in progress at the end of this fiscal year.

## Conciliation

The *Act* provides that at any time during a reprisal investigation, an investigator can recommend conciliation to attempt to bring about a settlement of the case.

This past year, conciliation was recommended in two cases where it was seen as an appropriate option for settlement. In one, it was rejected by one of the parties, and the investigation continues. In the other case, conciliation was agreed to, and was ongoing as of March 31, 2012.

The *Act* requires that in all cases in which a settlement is reached by the parties, the terms of that settlement must be referred to the Commissioner for approval or rejection. In this way, our Office retains an oversight function to ensure that the final results are fair and equitable. While the intentions of the parties are of central importance in accepting a settlement, matters such as fairness and inequality of bargaining power are essential, and these will be among the issues considered by the Commissioner in deciding whether to accept or reject a conciliated settlement.

We are hopeful that conciliation will succeed in appropriate cases in the future.

**This year saw the continuation of the trend from past years of increasing numbers of general inquiries, protected disclosures and complaints of reprisal. There was a 15% increase from last year in the number of disclosures and reprisals received by our Office.**

## Operations: Statistics

This year saw the continuation of the trend from past years of increasing numbers of general inquiries, protected disclosures and complaints of reprisal. There was a 15% increase from last year in the number of disclosures and reprisals received by our Office. We also closed the year with 39 ongoing investigations which is more than double the number of cases from the previous year. These, combined with our first three applications to the Tribunal and the first tabling of a founded case of wrongdoing in Parliament demonstrates that we are progressing well with the implementation of our mandate.

**Total number of general inquiries received and responded to in FY 2011-12****300****Disclosures**

Total number of disclosures of wrongdoing (2011-12)	170
Number of disclosures of wrongdoing carried over from previous years	*76
Number of disclosures of wrongdoing received in 2011-12	**94
Active disclosure files as of March 31, 2012	93
Currently under admissibility review	72
Currently under investigation	21
Closed disclosure files	77
After admissibility review	72
After investigation	4
Case Report to Parliament	1

**Reprisals**

Total number of reprisal complaints (2011-12)	60
Number of reprisals carried over from previous years	17
Number of reprisals received in 2011-12	***43
Active reprisal files as of March 31, 2012	27
Currently under admissibility review	6
Currently under investigation	18
<i>In conciliation as part of an ongoing investigation</i>	1
Currently before the Public Servants Disclosure Protection Tribunal	3
Closed reprisal files	33
After admissibility review	31
After investigation	2
After conciliation	0
Further to decisions of the Public Servants Disclosure Protection Tribunal	0

\* This number reflects 2 files that were received late in 2010-11.

\*\* Fifteen (15) files were created as a result of the file review as reported in Chapter 2 of this Report, and two (2) files represent a single alleged wrongdoing, disclosed to PSIC in two stages, one by an individual disclosure and the other made collectively by 166 disclosers.

\*\*\* Seven (7) files were created as a result of the file review as reported in Chapter 2 of this Report.

## Access to Legal Advice

Under the *Act*, the Public Sector Integrity Commissioner has the authority to approve access to independent legal advice to any person involved in a proceeding or considering a disclosure or complaint under the *Act*, up to a maximum of \$3,000. In 2011-12, \$15,438.00 was spent on legal advice on behalf of eligible recipients under this program.

# Review of Closed Files

## File Review Process

ONE OF THE KEY PRIORITIES I IDENTIFIED WHEN I WAS APPOINTED INTERIM COMMISSIONER ON DECEMBER 21, 2010, WAS A REVIEW OF THE 221 FILES THAT HAD BEEN COMPLETED SINCE THE INCEPTION OF THE OFFICE. AS REPORTED LAST YEAR, I FELT THAT THIS WAS AN IMPORTANT STEP IN BUILDING TRUST AND CONFIDENCE.

The [review](#) was conducted in two stages. First, an independent consulting firm, Deloitte, was retained to determine whether the decision rendered and supporting analysis on each of these files was complete and in accordance with the *Act*. Next, two independent Special Advisors, both lawyers, conducted a further in-depth review of the files identified by Deloitte as containing deficiencies to determine if there were also any other procedural or substantive shortcomings, and to provide me with recommendations as to how to best rectify the situation.

Before the Special Advisors proceeded with their review, they obtained the consent of disclosers and complainants in each file, to ensure that no further action was taken without their full understanding and agreement.

## Corrective Action

Seventy (70) files were identified by Deloitte as having one or more deficiencies. After the review and recommendations of the Special Advisors, I determined that some form of corrective action was required in 37 files. Of these 37 files, it was recommended that one file be referred to the Tribunal, six files be reopened for investigation and that a further seventeen files be reopened at the admissibility stage. Correction of administrative errors was also required in an additional thirteen files.

## Conclusions of the File Review Process

The file review process demonstrated that there were more procedural deficiencies in the early years of operations of the Office: almost half occurred in 2007-08, our first year. The deficiency rate decreased notably with time. Another issue identified was that in 32 of 70 files, there was a lack of documentation on file to fully support the decision rendered.

**The review highlighted the challenges of interpreting and applying the *Act*, particularly in the early days of the Office. This year, we began the process of developing operational decision-making policies that will guide our ongoing implementation of the *Act*.**

Following the conclusion of the file review project, a 'lessons learned' session was conducted with all staff. Operational recommendations such as improving file documentation processes, and ensuring consistent use of the file management system have been implemented. In

addition, significant upgrades to the Case Management System software were made.

The review highlighted the challenges of interpreting and applying the *Act*, particularly in the early days of the Office. This year, we began the process of developing operational decision-making policies that will guide our ongoing implementation of the *Act*. These policies will reflect our Office's experience to date, including the results of the file review process. They will provide structure and consistency to our operations, as well as clarity and transparency for our stakeholders, particularly those people who are considering making a disclosure or reprisal complaint.





# Listening to Stakeholders

REACHING OUT TO OUR STAKEHOLDERS, IN PARTICULAR FEDERAL PUBLIC SECTOR EMPLOYEES, MUST REMAIN A KEY PRIORITY. AS SUCH, WE ARE CONTINUOUSLY EXPLORING POSSIBILITIES TO INCREASE THE LEVEL OF TRUST IN OUR OFFICE. WE ALSO CONTINUED TO ENGAGE WITH OUR COUNTERPARTS IN OTHER CANADIAN JURISDICTIONS ON THE IMPLEMENTATION OF PUBLIC SECTOR DISCLOSURE REGIMES.

## Focus Group Study

In the fall, in order to gain a better understanding of the views, motivations and concerns surrounding the disclosure of wrongdoing by federal public servants and to evaluate the effectiveness of our communications messages, we retained the services of a firm to conduct a focus group study. This was the first such study conducted by our Office.

This focus group study consisted of ten focus groups with a cross-section of federal sector employees: two in each of Vancouver, Toronto, Ottawa, Montreal and Halifax. One group in each location was conducted with non-management employees and the other with executives and managers (EX and EX minus 1).

The Final Report: *Perceptions Related to the Disclosure of Wrongdoing in the Federal Public Sector*, was delivered in December 2011. The research was qualitative in nature, not quantitative. Therefore, the results provided an indication of the participant's views surrounding whistleblowing and the disclosure regime in Canada. They could not be generalized to the full population of the federal public sector. The results also provided valuable insight and feedback informing all aspects of our work.

**Of key interest was the perception of the term “whistleblowing” versus “disclosures of wrongdoing”: the former perceived as the disclosure of a “scandalous” issue while the latter perceived as dealing with more minor issues of less serious impact.**

Of key interest was the perception of the term “whistleblowing” versus “disclosures of wrongdoing”: the former perceived as the disclosure of a “scandalous” issue while the latter perceived as dealing with more minor issues of less serious impact.

Most participants saw reprisals as a real possibility because of the subtle form they can take, such as lack of advancement, being sidelined or getting poor performance evaluations. They also noted that the best way to alleviate these concerns and to increase the feeling of being protected is to foster confidence in the outcomes by providing testimonials and good news stories, and to guarantee anonymity of disclosers.

**We continue to believe that in order to develop a public sector culture that encourages and supports those who have the courage to disclose wrongdoing, this Office and every Chief Executive must continue to implement the *Act* and send a strong message to public sector employees that it fosters an environment that promotes ethical practices and will not tolerate reprisals.**

continue to believe that in order to develop a public sector culture that encourages and supports those who have the courage to disclose wrongdoing, this Office and every Chief Executive must continue to implement the *Act* and send a strong message to public sector employees that it fosters an

environment that promotes ethical practices and will not tolerate reprisals. As stated in Chapter 1, the *Act* is working. It is expected that there will be a culture shift as more and more concrete actions are taken. This shift will take time.

The Office will continue to seek feedback and evaluate its communication tools and strategies to better support federal public sector employees and all Canadian in providing an effective disclosure regime that is as responsive to their needs as possible.

## Tell us. You are protected.

In an effort to increase federal public sector employees’ awareness of the Office, we updated the Office’s catchphrase that we feel best communicates the mandate and function of the Office. We have used these words as the title of this year’s Annual Report.

This catchphrase also aims to address one of the main concerns people have about disclosing wrongdoing: the protection of confidentiality and the risks associated with being known to have disclosed a wrongdoing. We want to reassure potential disclosers that the *Act* and our Office protects them by protecting their confidentiality while ensuring fairness to everyone involved, thus preventing reprisal. We understand that the decision to disclose a wrongdoing is not made lightly and we want to make it known that our Office is safe and trusted.



## Office of the Public Sector Integrity Commissioner Advisory Committee

In 2011, an [Advisory Committee](#) was established to provide us with a structured framework for stakeholder consultation. Representatives from our Office, non-government organization advocacy groups, two public sector unions (Public Service Alliance of Canada & Professional Institute of the Public Service of Canada), the Association of Professional Executives of the Public Service of Canada (APEX), the Public Servants Disclosure Protection Tribunal, the Treasury Board Secretariat and the Senior Officers' community are all members of this Committee.

The Advisory Committee provides a valuable opportunity to discuss issues of shared concern among key stakeholders, and it provides our Office with a variety of perspectives that assist us in making informed decisions on our policy and operational activities. It met four times during the year and will continue to meet on a regular basis.

The Advisory Committee was asked for feedback on decision-making policies being developed. These policies will:

- a) provide internal guidance to operational staff;
- b) bring greater transparency, predictability and consistency to decision-making;

c) provide people with relevant and practical information about our Office; and

d) provide greater accountability for decisions made by the Public Sector Integrity Commissioner.

The development of these policies is ongoing, and we will report on our continuing progress in next year's Annual Report and on our website.

## 2011 Senior Officer Fall Workshop

On October 26 and 27 we hosted a government-wide workshop for Senior Officers responsible for internal disclosure within their departments or other federal institutions. This two-day event involving some 85 public sector employees from 60 Departments and Agencies, was centered on a case study and provided a platform for the sharing of best practices and the development of a support network for Senior Officers.

**The Advisory Committee provides a valuable opportunity to discuss issues of shared concern among key stakeholders, and it provides our Office with a variety of perspectives that assist us in making informed decisions on our policy and operational activities.**

# Updating our Strategic Direction

IN ORDER TO ENSURE THAT OUR LONG-TERM FUTURE IS ADEQUATELY PLANNED AND IMPLEMENTED, WE REVIEWED OUR STRATEGIC PLAN TO LAY THE GROUNDWORK FOR OUR ACTIVITIES OVER THE NEXT THREE YEARS. THIS WAS A CONCERTED ALL-STAFF EFFORT TO REVIEW AND RE-ALIGN OUR OFFICE'S VISION, MISSION AND GUIDING PRINCIPLES, AND TO IDENTIFY THE HIGH-LEVEL ACTIVITIES THAT WE WILL UNDERTAKE IN ACHIEVING OUR STRATEGIC GOALS.

The result is an updated [three-year plan](#) that is intended to be a flexible and adaptable tool to guide us towards our goals in an ever-changing environment. The plan builds on the successes and lessons learned by our Office to date.

In short, the four key result areas of the plan, their objectives and related high level activities are:

***1. Disclosure and reprisal management function that is timely, rigorous, independent and accessible***

## *Objective:*

Ensure that the operations of the program are well managed and firmly rooted in the Office's values and guiding principles.

## *High Level Activities:*

- Complete the standardization, documentation and implementation of operational processes to ensure rigour, timeliness and accessibility, including ongoing training in substantive investigative skills and techniques.
- Identify, develop and implement key operational policies on matters such as accessibility, information management, decision-making and client communications.

- Ensure that the Office's security, privacy and confidentiality standards and protocols meet or exceed current Government policies.

## **2. Engagement of key stakeholders**

### *Objective:*

Increase awareness of and trust in the Office as a safe place to disclose wrongdoing, to discourage reprisals and to provide a deterrent for wrongdoing.

### *High Level Activities:*

- Develop and implement an outreach and engagement strategy.
- Continue engagement of key stakeholders through the Advisory Committee
- Clearly communicate the rationale for our decisions and operational outcomes to key stakeholders in a relevant, accurate, clear and transparent way.
- Modernize and maximize communication approaches.

## **3. Meaningful performance information**

### *Objective:*

Implement a performance measurement strategy to assess, support and communicate our effectiveness.

### *High Level Activities:*

- Improve, implement and communicate our performance management results to ensure that the Office invests its efforts efficiently and demonstrates value.
- Support the preparation of the five-year review.

## **4. Human resource capacity that meets organizational needs**

### *Objectives:*

Recruit, retain, train and engage individuals with the necessary competencies to fulfill the Office's mandate.

### *High Level Activities:*

- Identify and assess the competencies the organization needs to succeed.
- Develop and implement an engagement and retention strategy (including strategies to address issues such as career progression, employee engagement, mentorship, leveraging internal capacity, seeking external capacity when necessary and ensuring the organization is an employer of choice.)
- Develop and implement an internal code of values and ethics.

I look forward to guiding the Office in the implementation of this new plan over the next three years.

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# A Look Ahead

## Ready for the 5-year Review

April 2012 marks the fifth anniversary of the coming into force of the *Act*. Under the *Act*, five years after its coming into force in 2007, an independent review of the *Act* and its application will be conducted, and a report tabled in Parliament. The Treasury Board Secretariat is responsible for leading this review. The Office plays a key role in the application of the *Act* and expects to be asked to contribute to the review exercise.

**While there are many aspects of the system created by the *Act* that we have yet to fully implement or explore, we will continue to do so through the cases that come to us, dealing with each one seriously, sensitively and on its own merits.**

In the past year, the Office has therefore prepared for its participation in this review. To this end, data and documents were reviewed, interviews with a variety of stakeholders were held and meetings allowed for discussions about legislative or operational amendments

the Office could recommend during the review. At the right moment, we will be able to share certain recommendations based on actual implementation experience with the *Act*. For example, section 34 does not allow for information to be obtained from retired public servants during an investigation. Moreover, confidentiality of disclosures being at the heart of the public servants disclosure protection regime established by the *Act*, the experience of the first years leads to the conclusion that it is necessary to strengthen the confidentiality of certain provisions.

The Office is committed to collaborating closely with the group responsible for leading the independent review of the *Act* and to sharing concrete experiences for the purpose of fully carrying out its role.

## In Closing

This has been a year of milestones and notable achievements such as the tabling of the first Case Report to Parliament and three applications to the Tribunal. While there are many aspects of the system created by the *Act* that we have yet to fully implement or explore, we will continue to do so through the cases that come to us, dealing with each one seriously, sensitively and on its own merits. Our focus remains on delivering on our mandate and in supporting the effectiveness of the disclosure regime that is now a central feature of the public sector accountability framework in Canada.

In concluding this year's Annual Report, I look forward to continuing to serve Canadians, Members of Parliament and federal public sector employees in the delivery of a trusted and confidential disclosure protection regime in Canada.