

Inform. Protect. Prevent.

Office of the Public Sector Integrity Commissioner

2007-2008 ANNUAL REPORT

Public Sector  
Integrity Canada



Intégrité du secteur  
public Canada

Canada


Building trust together.



Public Sector Integrity Canada  
60 Queen Street, 7<sup>th</sup> Floor  
Ottawa, ON K1P 5Y7  
Tel: 613-941-6400  
Toll-free: 1-866-941-6400  
Fax: 613-941-6535

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The Honourable Peter Milliken  
Speaker of the House of Commons  
328-N, Centre Block  
Parliament Buildings  
Ottawa, Ontario  
K1A 0A6


Mr. Speaker,

Pursuant to section 38 of the *Public Servants Disclosure Protection Act*, I have the honour to submit to Parliament, through your good offices, the first annual report of the Public Sector Integrity Commissioner.

This report covers the period April 15, 2007 to March 31, 2008.

Yours sincerely,

Christiane Ouimet,  
Commissioner



The Honourable Noël Kinsella  
Speaker of the Senate  
280-F, Centre Block  
Parliament Buildings  
Ottawa, Ontario  
K1A 0A4

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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, alternative dispute 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.



Building trust by  
promoting integrity is  
everyone's business.  
My office cannot do  
it alone...

## Message from the Commissioner

The *Public Servants Disclosure Protection Act* came into force on April 15, 2007. My appearance before both Houses of Parliament took place in June 2007 and my appointment as Public Sector Integrity Commissioner became effective on August 6, 2007. This report, my first as Commissioner, is an accounting to Parliament for my activities so far under the *Act*.

This report serves another goal as well. It aims to reach out to all employees of the federal public sector and to Canadians in order to start building trust in this Office as a positive instrument for enhancing integrity in the workplace.

In the pages of this report, I would like to describe the evolution of this newly created Agent of Parliament. I would also like to elaborate on how my Office and I have approached our mandate and report on our tangible initiatives to give life to the *Act*.

## Instilling Trust

The Canadian public sector is highly regarded around the world. It is made up of more than four hundred thousand skilled people who are committed to, and proud of, serving the Canadian public interest. At the same time, Canadians have questioned the integrity of their public institutions. Canadians are upset about past abuses; they still have the impression there is wrongdoing somewhere and remain unsure whether ethical problems in the public sector have been fixed.

Research has shown that trust in public institutions can be earned. People are willing to trust but only when they really believe that the institutions act with integrity, are motivated to take the public interest into account when making decisions, and are competent. One important way for the public sector to build trust is to create an environment where employees can raise any concerns over potential wrongdoing without fear or threat of reprisal.

## A Shared Responsibility

Building trust by promoting integrity is everyone's business. My Office cannot do it alone, nor indeed did the *Act* give us that responsibility.

Parliament legislated that this responsibility belongs to each Chief Executive in the public sector. It also charged the Minister responsible for the Canada Public Service Agency with promoting ethical practices and disseminating knowledge about the

*Act*. My Office is there to assist and provide guidance but in no way replace those to whom Parliament has given this new accountability.

Unions, professional associations and individual employees have a vital role to play as well. They must demonstrate high standards of ethics in their daily work. And when they encounter situations of possible wrongdoing, they must have the courage to talk about them and to correct problems within their sphere of responsibility.

## Taking a Balanced Approach

Parliament created the position of Public Sector Integrity Commissioner and gave me specific responsibilities and investigative powers to fill a gap: protection of public sector employees who report possible wrongdoing or who believe they are the victims of a reprisal for doing so.

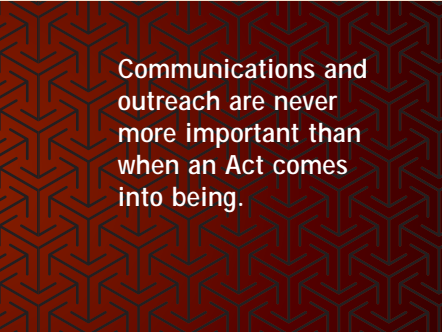
In the words of the *Act*, I am to "*establish a procedure for the disclosure of wrongdoing in the public sector, including the protection of persons who disclose the wrongdoings*". For the first time, individual public sector employees are guaranteed protection *by law* when they disclose wrongdoing and are enabled to do so either within their own organization or directly to an independent body.

It is my duty to investigate and protect. I will not shrink from pursuing the truth and following the law, whatever the consequences. In doing so, however, I will unequivocally ensure the principles of natural justice and



**If we have this Office,  
it's because we need it!**

— Farmers from  
St-Albert, Ontario —



Communications and outreach are never more important than when an Act comes into being.

procedural fairness are respected in dealing with all persons, both those who allege wrongdoing and those affected by an allegation. I will ensure the identity of individuals is protected. And I will put forward recommendations for follow-up action where I deem a situation requires them.

I will also do what I can to address the root causes of wrongdoing. When I appeared before Parliament in June 2007, I was asked what my priorities were. I spontaneously answered: "First, education, training, prevention and cooperation." And second: "Settling disputes more amicably, more quickly, more fairly and more simply."

I remain committed to those words almost a year later. An effective strategy against wrongdoing requires more than conducting investigations in response to complaints. It requires an emphasis upon prevention through education in values and ethics, staff training, sharing of knowledge about what constitutes wrongdoing and what does not, and how to address situations at the root of perceived problems. In a word, it means fostering a 'professional' ethic across the public sector.

### **Communications and Outreach**

The *Act* also sets as a part of my duty "to inform and advise." This means I carry a responsibility to educate and to communicate my role and to provide guidance to the public sector.

Communications and outreach are never more important than when an Act comes into being. From the day I received the full confidence of both Houses of Parliament, I started a thorough and pragmatic reflection on my mandate and on how I should go about it. I also began a concerted effort to reach out to Parliamentarians, the public sector, and all Canadians.

To date I have had more than 70 bilateral discussions, including meetings with all other agents of Parliament, with Parliamentarians, and with experts in Canada and around the world, including former and current Chief Executives in the private and public sectors. As well, my office and I have had approximately 80 group meetings and presentations in the National Capital Region and across the country, reaching a broad cross-section of departments and agencies, as well as academics and private sector entities involved in whistleblowing, ethics and integrity issues. Each consultation and presentation has provided an opportunity to educate and raise awareness about our mandate, and has provided me with further insights and ideas. I have also drawn on my own experience of more than twenty-five years as a public servant, including more than twenty years as a manager and executive.

### **What I Have Heard So Far**

I have found these consultations enlightening. I have been pleased by the openness of many Chief

Executives across the public sector. Already some Chief Executives have invited me into their organizations to share good practices regarding internal disclosure protection systems and to meet with their management teams. I have also been encouraged by the positive reaction of union leaders, the Association of Professional Executives (APEX), and federal regional councils.

Most of all, I have been inspired by people who genuinely care about and believe in our Canadian public institutions — people who want Canada to continue to be a world leader in governance, respected for its professional and highly ethical public servants. One of my roles will be to contribute in some small measure to the preservation of this reputation domestically and also internationally.

I have heard some concerns too, of course.

I have learned that while everyone in the public sector is in favour of integrity, there remains an undercurrent of apprehension at the very mention of whistleblowing. The *Act* challenges a past culture of not admitting publicly to mistakes and in some quarters, has provoked a ‘not in my backyard’ reaction to the possibility of an investigation of wrongdoing. I have also heard some concerns about the broad scope of my mandate and the considerable powers given to me by Parliament.

I can report that the rigour, fairness and pragmatic common sense we have demonstrated in our work to

date have started to build trust. People are also learning that our informality and rapid resolution of problems is consistent with rigour and fairness and with diligent handling of every case sent to us. Our approach has gone some way to reassuring many who had initial concerns.

We are committed to continued communications and outreach as we go forward.

### **Building a New Institution**

Building a new organization presents challenges for any government or business and the Office of the Public Sector Integrity Commissioner was no exception. The challenges in the early days were in fact much larger than anyone imagined.

The hard work and determination of Dr. Edward Keyserlingk, the former Public Service Integrity Officer, paved the way for the creation of my Office. When the *Act* came into force but prior to my taking up my duties, the staff remaining from Dr. Keyserlingk’s office faced a major challenge. They had the obligation to be open for business immediately but the infrastructure, people and processes to fulfill our obligations under the *Act* were not yet in place. They continued to process old cases and also began accepting and investigating disclosures of wrongdoing and complaints of reprisal under the new legislation.

When I took office, I recognized that a new Commissioner of a new agency has a unique opportunity to

**Remember that whatever you do, you are building an institution. Every element is important to your credibility.** — Head of a Parliamentary Agency —

shape it. Yet doing this quickly in the public sector is a challenge. In the course of starting up my own institution, I became aware of the lack of support available to small agencies. This remains a serious matter of concern. I intend to raise and examine this matter further in a future report.

There were also some challenges that are unique to our organization. The *Act* is very detailed; at the same time, it provides wide discretion to the Commissioner in a number of areas. We needed to have rigour and discipline in our procedures for dealing with disclosures and reprisal complaints. We needed to interpret the legislation and develop guidelines for dealing with disclosures and complaints of reprisal, while at the same time recruiting staff, setting up offices, and putting basic systems and processes into place.

We are pleased to report that we created a new organization, staffed it, defined its mission and values, put the management procedures into place and opened our doors for business in less than four months.

### **My Goals**

After these consultations and reflections, it is fair to ask, "What does my Office hope to accomplish over the course of my tenure?" My answer is simple: to assist in enhancing the confidence of Canadians in the federal public sector.

To this end, I will aim to do three things:

- Build a credible organization and a safe confidential mechanism for public servants and citizens to disclose potential wrongdoing in good faith and be protected from reprisal;
- Assist federal public sector organizations in preventing wrongdoing in the workplace and in resolving problems; and
- Establish Canada as a world leader in the promotion of integrity in the workplace.

I know I can succeed because of the exceptional team at the Office of the Public Sector Integrity Commissioner who support me, who care deeply about our mandate and who have helped me see the way forward. My heartfelt thanks to them.

It is a privilege for us to serve Parliament and Canadians in our new role. But with privilege comes responsibility, a huge responsibility.

I was asked when I appeared before Parliament, "What do you want to be remembered for at the end of your mandate?"

I answered simply, "To have done the right thing."

This is the wish of every member of our Office and my personal commitment to you as Canada's first Public Sector Integrity Commissioner.

Christiane Ouimet,  
Commissioner

We needed to have  
rigour and discipline  
in our procedures for  
dealing with disclosures  
and reprisal complaints.

In our world, proactive disclosure simply makes sense and protects the shareholder and the company officials. This is not a matter of choice — it is essential. — Private Sector Executive —

# 1

## A New Disclosure Protection Regime

### **A Brief History**

In 2000, the Auditor General published a wide-ranging report on ethics and values in the public service and concluded that a mechanism was required to allow employees to voice ethical issues with appropriate protection for all concerned. In 2001, Treasury Board adopted a policy on the internal disclosure of wrongdoing and established the position of Public Service Integrity Officer within its organization. In his first annual report (2002-03), that Officer concluded that to be credible and effective, he had to be independent of the government. In 2003, a working group of experts from outside government came to the same conclusion and endorsed a legislative approach to a disclosure regime.

Two bills were put forward in March and October of 2004 respectively, but neither came into force. The current *Public Servants Disclosure Protection Act* came into force on April 15, 2007, after being amended by the *Federal Accountability Act*.

## Whistleblower Regimes are Controversial

The goal of any legislated disclosure protection regime is straightforward: to make sure those who come forward in good faith do not suffer by doing so, either in the short or long terms. Yet whistleblower regimes are always controversial.

Those in favour point to growth in the number of public sectors around the world — and indeed private corporations — that are adopting disclosure regimes in response to public demands for greater integrity and accountability.

A 2007 report by the Conference Board of Canada on the views of Canadian private sector chief executive officers found that while implementation plans differed, chief executive officers were unanimous that they now had to move their organizations beyond compliance and make ethical behaviour a fundamental trait of their companies' culture.

Proponents emphasize the tangible benefits when employees raise issues of concern long before senior officials are aware of them. Things do go wrong in large organizations from time to time, and a culture of silence can be dangerous. In their view, early

warning can prevent the growth of a problem to major proportions and irreparable damage to an institution.

They also point out that lack of a safe mechanism leaves whistleblowers only with the options to say nothing, to go public, or to leak information anonymously. Each of these brings its own ethical and legal issues. All these options ultimately have a negative impact on morale within the institution, which can have many consequences for the public service including decreased job satisfaction and problems with employee retention. As well, these can significantly affect public confidence in the institution.

At a more fundamental level, they argue that a properly designed disclosure protection regime is a positive means of supporting good governance and democracy. They note the public interest is compromised when the bond of trust between citizens and public servants is broken by wrongdoing that is not dealt with appropriately. They point out those who are charged with safeguarding the health and security of citizens — police, regulators, inspectors and others — simply cannot do their jobs if their institutions are suspected of serving private interests or of covering up corruption.

Those who oppose argue that such regimes risk poisoning the relationship of trust between employers and employees and between public servants and elected officials. They fear that frivolous allegations or unfounded disclosures aimed at

**Whistleblowing should be recognized as an honourable aspect of human behaviour and an effective means to promote and protect the public interest.** — Public Concern at Work (a UK charitable organization) —



settling personal disputes destroy the credibility of a regime and discourage those who otherwise might, in good faith, disclose wrongdoing.

Parliament has considered the arguments and decided in favour of a legislated disclosure protection regime. The *Public Servants Disclosure Protection Act* is the result.

### The Public Servants Disclosure Protection Act

The *Act* contains a wide range of new measures designed to create an environment within the public sector where employees can raise concerns without fear or threat of reprisal.

- It makes the Chief Executives of public sector organizations and Ministers accountable for integrity. Chief Executives are specifically required to:
  - establish internal procedures to manage disclosures
  - designate a senior officer responsible
  - ensure confidentiality of the identity of persons and information disclosed, subject to the law and the principles of procedural fairness and natural justice
  - make the facts public, when wrongdoing is found
  - take corrective action
- It creates two new *independent* institutions, the Public Sector Integrity Commissioner and Public Servants Disclosure Protection Tribunal.

- It makes the Commissioner an agent of Parliament (that is, a body reporting to Parliament, independent of the government) with a mandate wider than that of the previous Integrity Officer.
- It provides the Commissioner with investigative powers, including the power to issue subpoenas.
- It creates two completely different regimes:
  - the first, for allegations of wrongdoing, results in recommendations to the Chief Executive and a report to Parliament within 60 days of the date whenever an allegation is judged to be founded;
  - the second, for complaints of reprisal, gives the Commissioner the option of making a finding or referring the complaint to the Public Servants Disclosure Protection Tribunal which may in turn determine remedies or disciplinary measures.
- It gives the Commissioner the power to grant free legal advice up to a financial limit for employees or members of the public who are considering making a disclosure or are part of an investigation.
- It protects files from being accessible under the *Access to Information Act*, providing for greater confidentiality.
- It includes strong penalties for offences under the *Act* by

The *Act* contains a wide range of new measures designed to create an environment...where employees can raise concerns without fear or threat of reprisal.

those who willfully impede investigations, and prohibits the employer from taking measures against an employee because he or she made an allegation. These penalties may include imprisonment for up to two years and/or a \$10,000 fine.


## The Canadian Model Is Unique

The *Public Servants Disclosure Protection Act* and the Office of the Public Sector Integrity Commissioner have already attracted much interest from the international community. The uniqueness of the Canadian model and our approach to its implementation are innovative and ground-breaking in several respects.

- The Public Sector Integrity Commissioner is the only organization of its kind in the world with a mandate covering both the disclosure of wrongdoing *and* the exclusive protection of individuals who disclose it.
- The Commissioner's independence, investigative powers and direct reporting to Parliament provide us with the tools to detect and report wrongdoing.
- The Commissioner can provide access to free legal advice to those who disclose or are involved in the investigation of wrongdoing.

- The creation of a specialized tribunal with the power to decide whether a reprisal has occurred *and* the power to order remedial measures and disciplinary sanctions is without precedent in the world.

We take seriously the goal of being a world leader in our field. While raising awareness of our role and mandate within Canada is our priority, we cannot ignore international experience, interest and needs. The Office has already received visitors interested in our model from Australia, China, Mozambique, the United Kingdom, Mexico and the Organisation for Economic Co-operation and Development (OECD). The Commissioner has also visited the United Nations and Italy in relation to an OECD network. We have also been approached by a number of foreign governments seeking to learn from our experiences in establishing this office in Canada and asked to participate in a Transparency International Working Group in relation to the United Nations Convention Against Corruption. These exchanges provide Canada with access to international best practices and will help keep federal public sector policies and procedures on the leading edge.



**Governance is the default factor in Canada's success in the next decade. Without good governance, nothing will go right.** — Conference Board of Canada —

Any allegation of wrongdoing has to be made in good faith and we will investigate on the basis of the public interest.

## 2 Our Role and Mandate

The Office of the Public Sector Integrity Commissioner is an independent body created to fulfill two important roles: to receive, review and investigate allegations of wrongdoing within the federal public sector, and to protect public sector employees from reprisal.

## What is Wrongdoing?

In conducting investigations, we interpret what is or is not 'wrongdoing' according to the definitions set out in the *Act*. The *Act* defines the following as 'wrongdoing':

- A violation of any federal or provincial law or regulation;
- A misuse of public funds or assets;
- Gross mismanagement;
- A serious breach of a code of conduct;
- An act or omission that creates a substantial and specific danger to the life, health and safety of persons or the environment; or
- Knowingly directing or counselling a person to commit a wrongdoing.

We will not investigate a case which is insufficiently serious or a case which has been or could be more appropriately dealt with by another body created by Parliament, for example, the Canadian Human Rights Commission or the Public Service Labour Relations Board.

Any allegation of wrongdoing has to be made in good faith and we will investigate on the basis of the public interest. The key words are 'in good faith' and 'public interest'; we will dismiss allegations that are made in bad faith or are lodged for only a personal reason.

### 1. Dealing with Allegations of Wrongdoing

Public servants may raise allegations of wrongdoing in the public sector

internally, either with their supervisors or with the senior officers designated for that purpose within their organizations. We are mandated to be an independent, external alternative where employees of the federal public sector can come to discuss such allegations if they prefer. We may also take information about wrongdoing from members of the public.

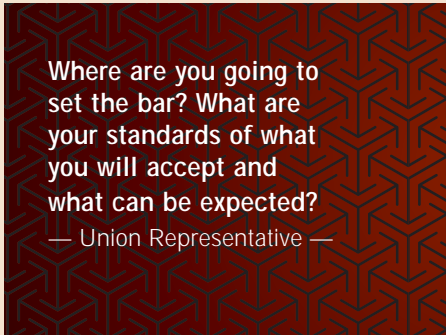
We have been given significant powers to do our job. The Commissioner has the power to subpoena witnesses, the power to determine whether an allegation is well founded and the power to make recommendations to Chief Executives.

When appropriate, the Commissioner may refer matters to law enforcement agencies. The Commissioner may also follow up with organizations to ensure the appropriate action has been taken.

Under the *Act*, the Commissioner must report to Parliament on all founded cases of wrongdoing. Reports would include the nature of the wrongdoing, any corrective actions recommended, and the response of the Chief Executive of the organization involved. The report would respect the confidentiality of the person who brought the information forward.

### 2. Protecting Public Servants from Reprisals

One of the key features of the *Act* is that it absolutely prohibits reprisals against any person who makes an allegation of wrongdoing in good faith



Where are you going to set the bar? What are your standards of what you will accept and what can be expected?

— Union Representative —

We have the exclusive jurisdiction to investigate complaints from employees who believe they have been victims of reprisal because they made a disclosure or participated in an investigation.

or anyone who has cooperated in an investigation. We have the exclusive jurisdiction to investigate complaints from employees who believe they have been victims of reprisal because they made a disclosure or participated in an investigation.

### What Is a Reprisal?

A 'reprisal' is defined in the *Act* as any of the following measures taken against a public servant who has made a disclosure or participated in an investigation:

- A disciplinary measure
- A demotion
- A termination
- Any measure that affects the employment or working conditions of a public servant
- Any threat to take any of the measures above

When a complaint of reprisal is presented to us, we must decide within 15 days whether or not to deal with it. The Commissioner may decide an investigation is warranted, send the complaint to conciliation or dismiss it. Any complaint made in bad faith may be dismissed. The Office cannot deal with a complaint if it is already being dealt with by another body created by Parliament or under a collective agreement.

The Commissioner may also choose to refer a complaint to the new Public Servants Disclosure Protection Tribunal, also created by the *Act*. The Tribunal's mandate is to determine, on application by the Commissioner, specifically if a reprisal has taken place as the

result of a disclosure. It has broad powers, again on application of the Commissioner, to order remedial measures for victims of reprisal and disciplinary sanctions against public servants who committed acts of reprisal. In this case, our role is to ensure the Tribunal's orders are carried out.

The first members of the Tribunal were appointed in July 2007. The Tribunal consisted of the Honourable Pierre Blais PC, (Chair), and the Honourable Luc Martineau, the Honourable Richard Mosley and the Honourable Judith A. Snider (Members). All were Federal Court judges. The Honourable Pierre Blais PC has since been appointed to the Federal Court of Appeal.

### How Will We Play Our Roles?

Jean-François Malherbe, Professor of Ethics and Philosophy at the University of Sherbrooke has written:

« *Dans l'administration publique on s'aperçoit que de nombreuses décisions doivent être prises, qui ne consistent pas seulement à appliquer la Règle: ce sont des décisions prudentielles qui demandent de la sagacité, c'est-à-dire d'une part une connaissance approfondie des raisons d'être des règles à appliquer (ce qui relève d'une connaissance technique) et d'autre part, une véritable capacité de jugement, c'est-à-dire, de discerner subjectivement comment être équitable en dépit de la lettre de la loi.* »

**Loose translation:** *It is clear that in public administration, making decisions often requires going beyond the straightforward application of Rules: these decisions are important ones that must be made with care and prudence and, as such, they require wisdom on the part of the decision-maker, which is to say balancing on the one hand, a clear understanding of the reasons behind the applicable rules (a technical understanding) with, on the other hand, true judgment, which is to say, distinguishing subjectively how to be fair notwithstanding the technical wording of the law.*

Our Office will aim to follow this approach. We do not wish to be heavy-handed, either in our approach or in our operating methods. We want first and foremost to find solutions to the issues brought to our attention. We see our role as working with the person making an allegation, the person who is the subject of an allegation of wrongdoing and the Chief Executive in a joint search for facts and evidence to point us to the most appropriate solution.

We are not an ombudsman advocating the case for one of the parties. We are an impartial and independent body. The *Act* specifically addresses the duty of the Commissioner to respect the right to procedural fairness and natural justice of all parties involved in an investigation. It also addresses the duty to protect the confidentiality of people involved in the

disclosure process. We will always act fairly, without bias and in furtherance of the objectives of the *Act*.

## Our relationship to other organizations

With the creation of any new institution, questions will arise about how it fits in — how it differs from those institutions that already exist, and how it interacts with other organizations.

Our roles are *different* from those of the Conflict of Interest and Ethics Commissioner and Senate Ethics Officer. The former deals with conflicts of interest for public office holders and Members of Parliament, while the latter deals with conflicts of interest for Senators.

Our roles are also *complementary* to those of other agents of Parliament and oversight bodies, such as the Auditor General and the Public Service Commission.

In addition to our office, *three functions play key roles* relating to the *Public Servants Disclosure Protection Act* and the governance of the public sector.

- The Public Service Agency promotes ethical practices and a positive environment for disclosing wrongdoings in the public sector. The Agency establishes policies to guide organizations in establishing their internal disclosure regimes and is responsible for developing the new Treasury Board Code of Conduct for all of the federal public sector.

## OUR VALUES

- Integrity
- Respect
- Fairness
- Professionalism

- The Treasury Board and Treasury Board Secretariat, as the management board of government and employer of the public service, are responsible for policy coordination in promoting good management practices across government, including the integration of an effective disclosure regime in the public sector.
- The Head of the Public Service has stewardship over the public service and is responsible for the quality of expert, professional and non-partisan advice and service provided by the public service to the Prime Minister, Cabinet and to all Canadians.

Responsibility for promoting ethics and integrity in the public service is not limited to the offices listed above. The *Public Servants Disclosure Protection Act* specifically shares responsibility among federal institutions and Chief Executives. In our view, responsibility falls also to unions, associations, Parliamentarians, the media and, indeed, all Canadians. The public sector belongs to each and every one of us; it affects our daily lives and influences how we are seen in the world. We all have a stake in seeing that it is of the highest integrity.

The public sector belongs to each and every one of us; it affects our daily lives and influences how we are seen in the world. We all have a stake in seeing that it is of the highest integrity.

In serving the public interest and fulfilling its statutory mandate...the Commissioner's Office is fully equipped and prepared to pursue investigations where it is warranted...

## 3 Investigations and Inquiries

### **Investigations and Inquiries**

Investigations are logically a key feature of any integrity regime. But what is the purpose of these investigations? The *Act* expressly states that investigations into disclosures of wrongdoing are "*for the purpose of bringing the existence of wrongdoing to the attention of Chief Executives and making recommendations concerning corrective measures to be taken by them.*" This is a recognition of the primary role played by Chief Executives in instilling and enhancing integrity in their organizations.



**As a new organization, it is vitally important that people know who we are, what we do and how we do it, in order to ensure that our services are accessible and understood by those who need them.**

To support achieving this clear purpose, the *Act* confers a strong investigative authority on the Commissioner's Office. Equally clear is the value of solution-oriented, collaborative approaches to problem solving. In serving the public interest and fulfilling its statutory mandate as effectively and meaningfully as possible, the Commissioner's Office is fully equipped and prepared to pursue investigations where it is warranted to do so, as well as to work diligently to identify appropriate opportunities for resolution. Our success will be measured by how well we do both within the legal and policy framework that governs and guides our actions.

### **Inquiries**

Inquiries about our role, our jurisdiction and our processes are encouraged. Our Registrar is the point of entry for inquiries, whether by phone, mail or in person. This Office provides information and guidance about the disclosure and reprisal complaint process, as well as direction regarding other possible options to deal with a particular situation, should it fall outside our jurisdiction. This role is key to ensuring that individuals considering or making a disclosure are doing so on a fully informed basis.

The Registrar also plays a role of central importance in ensuring that the identity of a disclosing party is protected and that all necessary steps are taken to ensure that an individual's name will not be revealed.

We have received approximately 200 inquiries, with the majority of these not falling within our jurisdiction or meeting the criteria identified under the *Act* for the Commissioner to take further action. For example, many inquiries involved matters that were already under review through another mechanism or that did not meet the definition of wrongdoing set out in the *Act*. This clearly suggests that our ongoing work in outreach and communication should remain a priority. As a new organization, it is vitally important that people know who we are, what we do and how we do it, in order to ensure that our services are accessible and understood by those who need them. It also highlights the importance of verifying information disclosed to us, as part of determining whether an investigation is warranted. Verification may involve contacting the organization to establish the reliability of the information while protecting the identity of those involved.

An organization such as ours will undoubtedly receive anonymous allegations. We do not act officially on these, as there is no way to verify anonymous information or to determine if an anonymous person is acting in good faith. What we do in such a case, if the information is sufficiently specific, is to contact the organization that could be potentially affected by the disclosure and offer to share the information with them. The organization would then determine whether and how it deals with that information.

Our approach is one that encourages collaborative problem-solving, as well as problem prevention.

In addition to inquiries from individuals considering making disclosures or complaints of reprisal, we have also been approached by Chief Executives who have expressed an interest in obtaining investigative assistance when wrongdoing is suspected in their organizations. This is a sign of confidence in our independence and expertise and of willingness to address wrongdoing in an organization using the tools that are now available under the *Act* to find solutions.

## Investigations

The investigation process is guided by the specific provisions of the *Act*.

The Commissioner decides when an investigation is warranted, based on the review and analysis of our investigatory and legal units. Before starting an investigation, we advise the Chief Executive of the organization against whom the allegations are made. Respect for the principles of procedural fairness, natural justice and confidentiality of the investigation process are paramount.

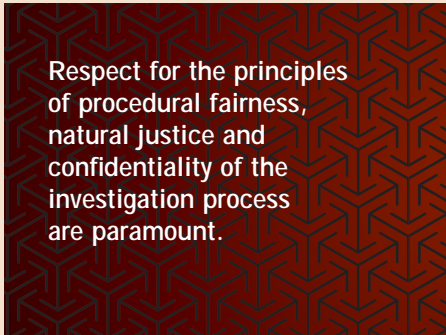
Allegations of wrongdoing and complaints of reprisal are not always straightforward questions of right and wrong. The *Act* provides us with considerable discretion during an investigation to decide what the appropriate resolution of a problem should be. In some cases, for example, we may determine that a mistake was made rather than a wrongdoing, or

that an allegation of wrongdoing was the result of a misunderstanding between the parties concerned. In such cases, we may determine that there was no wrongdoing but still make recommendations to the Chief Executive to avoid future mistakes.

However, in other cases, we may indeed find that wrongdoing occurred. We would then report our finding to the Chief Executive, to the person making the allegation and the person(s) accused, together with our recommendations for corrective action. The *Act* also requires, in the case of findings of wrongdoing, that a report be tabled in Parliament.

The *Act* provides the Commissioner with all the powers of a commissioner under Part II of the *Inquiries Act*, meaning that we may enter any public office or institution, that we may examine all papers, documents, vouchers, records and books of a public office or institution, that we may summon people to give evidence, that we may administer oaths and that we may issue subpoenas.

The *Public Servants Disclosure Protection Act* also establishes as a basic operating principle that investigations should be conducted as informally and expeditiously as possible. It specifically authorizes the use of conciliation in reprisal investigations. We are considering the use of other alternative dispute resolution methods to arrive at a solution to the problem which gave rise to an allegation or complaint. We are studying the experience of



Respect for the principles of procedural fairness, natural justice and confidentiality of the investigation process are paramount.

organizations such as the Canadian Human Rights Commission and the Public Service Labour Relations Board which have already implemented alternative dispute resolution with some success.

### **Performance Assessment**

Managing and assessing our performance as we implement our new mandate is an important and challenging task. The guiding principles in measuring success are based on our legislated mandate and how we work within the parameters of that mandate. We must ask ourselves if we are fulfilling both the specific requirements of the law as well as the intent and spirit of the law. Are we serving the public interest? Are we enhancing confidence in public institutions? Are we enhancing systems of public governance? Are we ensuring that people understand our role and have access to our services? Are we adding value?

More detailed work will be required to develop appropriate performance indicators. The key is giving each case that comes before us rigorous attention and evaluating it on its merit.

### ***Investigations completed***

Two recent cases serve as illustrations of how we are implementing our complex mandate and how we measure the value of our work.

The first raised an important issue of public health and safety, with the risk of imminent danger resulting from alleged regulatory shortcomings.

Responding immediately to the potential threat, our investigation was wide-ranging and extensive, and included the analysis of legislative obligations, expert scientific evidence, industry practices and standards of protecting public health. No evidence of wrongdoing was found and no threat to public health and safety was demonstrated. Our conclusion was based on the analysis and assessment of all existing information in order to clarify that practices and procedures were in keeping with acceptable standards. This case demonstrated the importance of improving internal communications, by explaining how decisions are made within an organization to address possible misunderstandings that could give rise to allegations of wrongdoing. It also highlighted the very important fact that our Office's role in conducting an investigation is not to substitute our own opinion for that of substantive experts in specialized fields, but rather to work with the information that these experts provide in the course of investigating whether a potential wrongdoing has occurred.

The second involved the government procurement process, which is of fundamental importance to orderly and fair government operations and administration. The issue was the adequacy of practices in one organization to ensure compliance with the law and existing policies, as well as with values of transparency and fairness. Our approach was to analyze all technical questions and clarify,

**More detailed work will be required to develop appropriate performance indicators. The key is giving each case that comes before us rigorous attention and evaluating it on its merit.**

...our investigation resulted in clarification and improved understanding of roles and responsibilities in this organization.

through consultation with leading industry experts, the framework for decision-making and oversight, standards of practice in this specialized field, the sufficiency of existing safeguard practices, and the assessment of acceptable levels of risk. We resolved the matter, with no finding of wrongdoing, by clarifying the proper application of relevant policies and procedures. Key in this regard was the identification of the authorities with the actual accountability and knowledge within this organization. We regard as an achievement the fact that our investigation resulted in clarification and improved understanding of roles and responsibilities in this organization.

In both these cases, our aim was to respond to an alleged wrongdoing promptly and diligently. Our goals were: to bring the full benefit of our expertise to investigating these allegations; to identify and assess all sources of relevant information; to ensure decisions were based on the highest levels of substantive expertise and evidence; to provide contextual analysis of the problem in order to address systemic causes of concern; and to ensure that the business of both these organizations was disrupted as minimally as possible while at the same time recognizing our obligation to be guided by the public interest.

## Statistics

The *Act* requires the Commissioner to provide specific information about the Office's activities over the fiscal year.

It should be noted that the statistics provided do not include internal disclosures within federal departments and agencies, which are reported through the Canada Public Service Agency.

### INQUIRIES

Number of general inquiries	206
<i>Inquiries seeking information about making disclosures or lodging complaints of reprisal, as well as those seeking legal information.</i>	

### DISCLOSURES

Number of disclosures received	59
<i>Note: this includes disclosures from public sector employees and information received from the members of the public.</i>	
Number of disclosures reviewed to determine jurisdiction under the <i>Act</i> .	49
<i>Note: for some disclosures it is possible to determine quickly that they do not fall under the provisions of the Act. These are not included in this figure.</i>	
Number of files closed after preliminary review and analysis (not acted on)	25
Number of files still in process as of March 31, 2008	19
Number of files carried forward for further analysis and verification (acted on)	2
Number of investigations of disclosures commenced under this Act	3
<i>Note: one investigation was carried over from the previous Public Service Integrity Office</i>	

### REPRISALS

Number of complaints made in relation to reprisals	22
Number of complaints of reprisals that were reviewed and analyzed to determine jurisdiction and admissibility under the <i>Act</i>	22
Number of files closed after preliminary review (not acted on)	18
Number of files carried forward for further analysis and verification (acted on)	0
Number of files still in process as of March 31, 2008	2
Number of investigations of reprisals commenced under this Act	2
<i>Note: one case was carried over from the previous Public Service Integrity Office</i>	

*Note: There were no settlements or applications to the Tribunal. There were no findings of wrongdoing, and therefore no recommendations from the Commissioner.*

Enforcement is very often the result of failed prevention initiatives.

## 4 Prevention


Our Office is about integrity, not just breaches of integrity. We have a bias in favour of prevention over investigation. We intend to be proactive in our communications and in our educational role to help the public sector avoid wrongdoing in the future. To promote prevention, we want to build on existing ethics foundation work in partnership with Parliamentarians, Chief Executives, unions, managers and employees.

Starting with the landmark report of the late John Tait, former Deputy Minister of Justice, on public service values and ethics in 1996<sup>1</sup>, the federal public sector has devoted increasing attention to ethics. Many individual organizations have found innovative ways to integrate ethics and values into the fabric of the workplace and organizational culture. All these initiatives have helped to lay the foundation for prevention of wrongdoing.

Why is prevention so important? The answer is simple: experience has shown that a pure enforcement model will not work. Moreover, the costs associated with wrongdoing within an organization are so much higher than the costs of preventing it. Enforcement is very often the result of failed prevention initiatives.

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<sup>1</sup> *A Strong Foundation*, Report of the Task Force on Ethics and Values, December 1996



**A good ethics framework has value and meaning if management walks the talk, but not if there is all talk and no walk.**

— Participant in Calgary Roundtable —

Prevention starts at the entry level or even before in the selection process, when evaluating candidates against an organization's values. It involves a series of measures and needs to be regularly revisited through reminders from managers at all levels about standards of conduct and respect for values. Most of all, prevention succeeds when managers promote openness by encouraging employees to question situations that make them uneasy. In this optic, good faith disclosures become a part of 'right doing' within organizations.

Prevention not only protects an organization, its employees and the people it serves but often results in a 'sober second thought' on the part of a potential wrongdoer.

We see middle managers in particular — the culture carriers of the present and leaders of the future — as the key to prevention. Our discussions with them to date have convinced us that middle managers will be important partners in our efforts in prevention, education and cultural change.

Middle managers are constantly under the microscope by employees and are, for most public servants, their sole contact with management. The ethical standards of middle managers will reflect on the whole team and guide the actions of employees on a daily basis. They are barometers of an organization's integrity. Their intolerance for wrongdoing and their willingness to promote 'right doing'

will go a long way in enhancing the confidence of Canadians in their organizations. We intend to open up a dialogue about integrity with this community.

What can Chief Executives do?  
A great deal.

They can ensure that they and their executive teams model public sector ethical standards in their daily work and in corporate decision-making. They can discuss public sector ethics and values with their employees at the entry level, in training programs and at special events involving large numbers of staff. They can work cooperatively with our office and other offices mandated to promote ethical behaviour in the workplace.

They can also educate their staff about the new provisions of the *Act* and create a climate where employees will feel secure in coming forward. And they can warn managers at all levels of the serious penalties for anyone who engages in a reprisal against an employee who makes a good faith allegation or participates in an investigation.

Prevention is a shared responsibility. We will do our part to continue to educate and communicate with public servants at all levels. We will help create an environment where wrongdoing is actively discouraged and directly addressed, prevention and investigations do not hamper the work of organizations, and individuals who disclose wrongdoing are supported.

The impression I have gained from my experience is that corruption will never be effectively combated by a complaint driven process. Matters going to the root cause must be addressed. If there is one single term that encapsulates what is the most effective way of combating corruption, it is the term 'professionalism'.

— Mr. Justice G.W. Crooke, QC, Ethics Commissioner, Queensland, Australia —



We believe that giving recognition...influences others by showing how values and ethics can be reinforced in the real life of organizations.

## 5 Best Practices

We believe that giving recognition to organizations that demonstrate best practices encourages them to continue their prevention efforts and influences others by showing how values and ethics can be reinforced in the real life of organizations. We also want to promote integrity by becoming a clearing house for sharing best practices across the public sector.

In this first Annual Report, we would like to cite just a few examples of organizations that, in our initial contacts with them, have demonstrated leadership in promoting integrity through prevention.

Each year, as part of its strategic planning exercise, the **National Energy Board** revisits its mission, vision and core values, including integrity, and sets out its strategic goals. Its Chair/CEO has also emphasized to managers he expects them to encourage people to talk in confidence about any incidents of possible wrongdoing.

The **Canada School of Public Service** accepted without hesitation our request that integrity education and awareness of our role be included within their core curriculum.

The **Public Service Alliance of Canada** has endorsed the idea that fighting wrongdoing is a joint responsibility of unions and employers and demonstrated openness to a dialogue with us on our role and our approach to integrity.

The **Association of Professional Executives (APEX)** has shown a willingness to work with us and to help us reach public sector executives.

**Public Works and Government Services Canada** has invested heavily in training in ethics and values for more than 12,000 employees over the past two years.

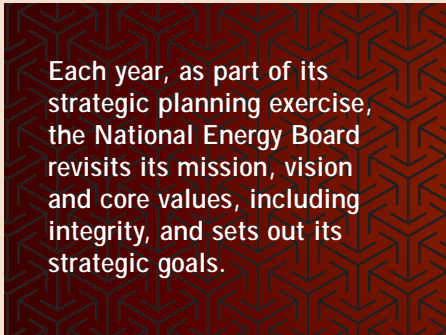
The **Regional Federal Councils** have helped us reach out to public sector employees across Canada. As well, individual regional federal councils have instituted their own practices. For example, in May 2007 the **Manitoba Federal Council** in collaboration with the Canada School of the Public Service, offered a course to its members entitled "Values and Ethics/Valeurs et Ethiques". The course was conducted in French, allowing the council to fulfill two of its objectives: supporting the use of both official languages and helping to ensure that employees in the region have a good understanding of values and ethics in a Public Service context.

**Canada Post** has had an internal policy on disclosure since 2005, including an external hotline for employees. The organization has continued to focus on issues of ethics and integrity and has recently established a Compliance department.

The **RCMP** has taken the notion of educating employees about the *Act* seriously and has modified a number of in service training courses accordingly. Furthermore, they have conducted an internal survey to tailor future education strategies, to set a benchmark for employee awareness of the *Act* and to provide additional relevant information to recipients. The RCMP has also proactively sought to work with our Office.

The **Department of Foreign Affairs and International Trade** has an internal disclosure regime that has been fully operational for several years and that is well known and highly credible. As well, some individual embassies have undertaken their own work on values and ethics. For instance, one ambassador has met individually with each employee in the embassy to discuss values and ethics and their responsibilities under the *Act*.

Many other departments, agencies and tribunals have already been open to and proactive in working with our Office on prevention. Among these, we can cite the **Canadian Forces Grievance Board, Public Health Agency of Canada, Canada Revenue Agency,** and the **National Research Council.**



Each year, as part of its strategic planning exercise, the National Energy Board revisits its mission, vision and core values, including integrity, and sets out its strategic goals.

...we will continue to pursue the application of alternative dispute resolution techniques to our work.

## 6 Looking Ahead

As we look ahead to 2008-09, it is clear we still have much work to do.

We will, first of all, continue to build our institutional knowledge and further develop the tools and procedures we will need to deal effectively with a potential variety of new allegations and complaints. To this end, we will continue to pursue the application of alternative dispute resolution techniques to our work.

We will continue and expand our consultations and outreach with the public sector.

We will share experience and techniques with other countries that have disclosure protection regimes, and, where possible, provide guidance to those countries just beginning to put a disclosure protection regime in place.

I have learned from experts such as Professor Paul Thomas of the University of Manitoba that most countries' experience is too recent to enable us to draw definitive conclusions as to whether whistleblowing laws have succeeded fully in achieving their goals. His initial conclusion is that they have not; despite legislated regimes, most public servants who made disclosures were not ultimately protected from more subtle forms of damage to their careers.

Nonetheless, in his view, the laws did have a positive impact: they fostered development of internal disclosure policies and more open cultures.


We need to learn what has worked in other countries, what has not, and why. We need to demonstrate Canada's strength and leadership in the areas of governance and accountability,

to examine the relative strengths of our model versus other models, and to share lessons learned with other nations. While our first priority is and will remain fulfilling our role domestically, next year we will place greater emphasis on the international front.

We will also continue to examine areas of special vulnerability. By 2009-10, our third year, we hope to have had enough experience to report on any systemic problems within the public sector and to suggest possible strategies for dealing with them.

We will do this work in the belief that Canadians trust their public institutions when they see them acting with the highest standards of integrity and in the public interest.

We look forward to playing our part to achieve that goal.



While our first priority is and will remain fulfilling our role domestically, next year we will place greater emphasis on the international front.

...I have been inspired by people who genuinely care about and believe in our Canadian public institutions...

## About the Commissioner

Christiane Ouimet was appointed as Canada's first Public Sector Integrity Commissioner by joint resolution of the Senate and House of Commons and took office in August 2007. In this capacity, she is responsible for the administration of the *Public Servants Disclosure Protection Act*, which came into force on April 15, 2007.

M<sup>e</sup> Ouimet brings the benefit of twenty-five years of public sector experience to this position. She served as Associate Deputy Minister at Public Works and Government Services Canada and at Agriculture and Agri-food Canada. Prior to that, she held the position of Executive Director of the Immigration and Refugee Board, the largest administrative tribunal in the country. She has worked in eight different departments

and agencies, primarily in the area of audit, regulatory affairs, policing and enforcement, quasi-judicial functions and machinery of government.

A graduate of the University of Ottawa, M<sup>e</sup> Ouimet has an Honours undergraduate degree and two degrees in law; one from the Faculty of Civil Law, where she taught part-time early in her career, and the other from the Faculty of Common Law. She is a member of the Ontario Bar.



