

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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CANADA

FINAL REPORT

(Adopted at the March 21, 2014 plenary session)

SUMMARY

This Report contains the comprehensive review of the implementation in Canada of Article III, paragraph 9, of the Inter-American Convention against Corruption, covering “oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts,” which was selected by the MESICIC Committee of Experts for the Fourth Round; and of the follow-up of the implementation of the recommendations formulated to Canada during the First Round.

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee’s Rules of Procedure, and the methodologies it has adopted for conducting on-site visits and for the Fourth Round, including the criteria set out therein for guiding the review based on equal treatment for all the States Parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the States Parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out taking into account Canada’s response to the questionnaire, information provided by a civil society organization, Transparency International Canada, information gathered by the Technical Secretariat, and, as a new and important source of information, the on-site visit conducted between October 16 and 18, 2013, by the members of the review subgroup for Canada, comprising of Bolivia and Saint Vincent and the Grenadines, with the support of the Technical Secretariat. During that visit, the information furnished by Canada was clarified and expanded and the opinions of Transparency International Canada were heard. This provided the Committee with objective and complete information on those topics, assisting with the gathering of information on best practices.

The review of the oversight bodies was intended, in accordance with the terms of the methodology for the Fourth Round, to determine whether they have a legal framework, whether that framework is suitable for the purposes of the Convention, and whether there are any objective results; then, taking those observations into account, the relevant recommendations were issued to the country under review.

The following oversight bodies in Canada are reviewed in this report: the Treasury Board Secretariat, the Public Prosecution Service of Canada, the Public Service Commission, and the Office of the Commissioner for Federal Judicial Affairs.

Some of the recommendations formulated to Canada for its consideration in connection with the aforementioned bodies are, among others, the following:

With regard to the Treasury Board Secretariat, consider exploring additional means to meet the training and information needs of personnel involved in internal disclosure of wrongdoing; utilize the Management Accountability Framework to monitor, evaluate and provide feedback on the manner in which organizations are implementing their internal disclosure procedures; and ensure that support is provided to chief executives with advice and assistance as needed and requested in relation to the creation and establishment of Codes of Conduct.

Regarding the Public Prosecution Service of Canada, consider updating their guides and manuals, in particular the Federal Prosecution Service Deskbook and the Proposed Best Practices for Prosecuting

Fraud against Governments; provide the Public Prosecution Service of Canada with the budgetary and human resources needed for adequate enforcement of the Corruption of Foreign Public Officials Act, within available resources; and make publicly available its statistical information with respect to relevant criminal code provisions on offences related to acts of corruption, in a manner that is more readily available to the general public.

Pertaining to the Public Service Commission, consider reviewing the control measures in place to ensure that it is effectively monitoring the delegated appointment process within the Public Service Commission; review the appointment process carried out by Public Service Commission to ensure that hiring is based on merit; and update its guides and manuals, in particular the Audit Manual and those relating to investigations.

With respect to the Office of the Commissioner for Federal Judicial Affairs, consider taking steps to report whether or not founded wrongdoings have occurred, as set out in the Public Servants Disclosure Protection Act, in the Proactive Disclosure section of its website; conclude with the implementation of the action plan that was developed to address the findings of the Public Service Commission audit; and ensure that completed internal audit reports, including management action plans, are made accessible to the public on its website, in a timely manner.

The first best practice that Canada provided information is an initiative by the Treasury Board Secretariat on developing on-line courses on the topic of values and ethics for public servants and managers, in conjunction with the Canada School of Public Service. The second best practice is on the awareness building efforts undertaken by the Office of the Commissioner for Federal Judicial Affairs to inform the public of its mandate.

With regard to follow-up on the recommendations formulated to Canada in the First Round and with respect to which the Committee, in the Second and Third Round reports, found required additional attention, based on the methodology for the Fourth Round and bearing in mind the information provided by Canada in its response to the questionnaire and during the on-site visit, a determination was made as to which of those recommendations had been satisfactorily implemented, which required additional attention, and which required reformulation. A list of those still pending was also prepared, and has been included in Annex I of the Report.

Among the progress related to the implementation of those recommendations, the following are noted: improving evaluation mechanisms to analyze the results of enforcement of conflict of interest provisions; and developing procedures to analyze the mechanisms mentioned in the report of the First Round of Review and the recommendations contained therein.

Some of the recommendations formulated to Canada in the First Round that are still pending or have been reformulated address issues such as: adopting measures to ensure that post-employment restrictions for public servants can be enforced; adopt provisions to establish the obligation on public servants to report to appropriate authorities those acts of corruption set out in the Inter-American Convention against Corruption, that they come across in the performance of public functions; and adopt measures to facilitate the timely review of Conflict of Interest Reports submitted in accordance with the Values and Ethics Code for the Public Sector and other policies on conflicts of interest and post-employment adopted throughout the public service.

**COMMITTEE OF EXPERTS OF THE MECHANISM FOR
FOLLOW-UP ON THE IMPLEMENTATION OF THE
INTER-AMERICAN CONVENTION AGAINST CORRUPTION**

**FINAL REPORT ON IMPLEMENTATION IN CANADA OF THE CONVENTION
PROVISION SELECTED FOR REVIEW IN THE FOURTH ROUND, AND ON FOLLOW-UP
TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN THE FIRST
ROUND¹**

INTRODUCTION

1. Content of the Report

[1] This Report presents, first, a comprehensive review of Canada's implementation of the provision of the Inter-American Convention against Corruption that was selected for review by the Committee of Experts of the Follow-up Mechanism (MESICIC) for the Fourth Round. That provision appears in Article III (9) of the Convention, pertaining to "Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts."

[2] Second, the report will examine the best practices that Canada has voluntarily expressed its wish to share in regard to the oversight bodies under review in this Report.

[3] Third, as agreed by the Committee of Experts of the MESICIC at its Eighteenth Meeting, in compliance with recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC, this report will address the follow-up of implementation of the recommendations that the Committee of Experts of MESICIC formulated to Canada in the First Round and that it deemed to require to require additional attention in the reports it adopted for that country in the Second and Third Rounds, which may be consulted at the following web page: www.oas.org/juridico/english/can.htm

2. Ratification of the Convention and adherence to the Mechanism

[4] According to the official records of the OAS General Secretariat, Canada ratified the Inter-American Convention against Corruption on June 1, 2000 and deposited the instrument of ratification on June 6, 2000.

[5] In addition, Canada signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001.

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of Canada

[6] The Committee wishes to acknowledge the cooperation that it received, throughout the review process from Canada and in particular from the Department of Justice and the Department of Foreign Affairs, Trade and Development, which was evidenced, inter alia, in the Response to the Questionnaire

¹ This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 21, 2014, at its Twenty-Third meeting, held at OAS Headquarters, March 18 – 21, 2013.

and in the constant willingness to clarify or complete its contents, and in the support for the on-site visit to which the following paragraph of this report refers. Together with its response, Canada sent the provisions and documents it considered pertinent. The Response as well as the provisions and documents may be consulted at the following webpage: www.oas.org/juridico/english/mesicic4_can.htm

[7] The Committee notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-Site Visits*.² As members of the preliminary review subgroup, the representatives of Bolivia and Saint Vincent and the Grenadines conducted the on-site visit from October 16 – 18, 2013, with the support of the MESICIC Technical Secretariat. The information obtained on that visit is included in the appropriate sections of this report, and its agenda of meetings is appended thereto, in keeping with provision 34 of the *Methodology for Conducting On-Site Visits*.

[8] For its review, the Committee took into account the information provided by Canada up to October 18, 2013, as well as that furnished and requested by the Secretariat and the members of the review subgroup to carry out its functions, in keeping with the *Rules of Procedure and Other Provisions*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*; and the *Methodology for Conducting On-Site Visits*.

2. Information received from civil society organizations and/or, *inter alia*, private sector organizations; professional associations; academics and researchers

[9] The Committee also received, within the time limit set in the schedule for the Fourth Round, a document from the civil society organization Transparency International Canada, which was presented by that organization in accordance with Article 34(b) of the Committee's Rules.³

[10] Furthermore, in the course of the on-site visit conducted in the country under review, information was collected from Transparency International Canada, in keeping with provision 26 of the *Methodology for Conducting On-site Visits*.

II. REVIEW, CONCLUSIONS, AND RECOMMENDATIONS ON THE IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISION SELECTED FOR THE FOURTH ROUND:

OVERSIGHT BODIES, WITH A VIEW TO IMPLEMENTING MODERN MECHANISMS FOR PREVENTING, DETECTING, PUNISHING, AND ERADICATING CORRUPT ACTS (ARTICLE III (9) OF THE CONVENTION)

[11] Canada has a set of oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts, among which the following are highlighted: the Treasury Board of Canada Secretariat, the Public Prosecution Service of Canada, the Public Service Commission, the Office of the Commissioner for Federal Judicial Affairs, the Canadian Judicial Council, the Office of the Auditor General of Canada, the Office of the Conflict of Interest and Ethics Commissioner, the Commission for Public Complaints against the Royal Canadian Mounted Police, the Royal Canadian Mounted Police External Review Committee, the Security Intelligence

² Document SG/MESICIC/doc.276/11 rev. 2, which may be consulted at the following webpage: http://www.oas.org/juridico/english/met_onsite.pdf

³ This document is available at: http://www.oas.org/juridico/PDFs/mesicic4_can_sc.pdf

Review Committee, and the Office of the Public Service Integrity Commissioner of Canada. In addition, similar oversight bodies may also be found in the provinces and the territories of Canada.

[12] The following is a brief description of the purposes and functions of the four bodies selected by Canada that are to be examined in this report:

[13] The Treasury Board of Canada Secretariat, which supports the Treasury Board in carrying out its responsibilities for accountability and ethics; financial, personnel and administrative management; comptrollership; approving regulations; and most Orders-in-Council. It is also responsible for promoting ethical practices in the public sector and a positive environment for disclosing wrongdoing.

[14] The Public Prosecution Service of Canada provides prosecutorial advice to law enforcement agencies, and acts as prosecutor in matters prosecuted by the Attorney General of Canada on behalf of the Crown. In addition, the mandate of the Public Prosecution Service of Canada includes initiating and conducting prosecutions on behalf of the Crown with respect to offences under the Canada Elections Act.

[15] The Public Service Commission, which is responsible for promoting and safeguarding merit-based appointments that are free from political influence and, in collaboration with other stakeholders, for protecting the non-partisan nature of the public service.

[16] The Office of the Commissioner for Federal Judicial Affairs, which was created to safeguard the independence of the judiciary and place federally appointed judges at arm's length from the Department of Justice.

1. TREASURY BOARD OF CANADA SECRETARIAT

1.1. Existence of a legal framework and/or other measures

[17] The Treasury Board of Canada Secretariat (TBS) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[18] With respect to its objectives and functions, the TBS, as the administrative arm of the Treasury Board, has a dual mandate: to support the Treasury Board as a committee of ministers and to fulfill the statutory responsibilities of a central government agency.⁴

[19] The Treasury Board, a committee of Cabinet, is responsible for accountability and ethics, financial, personnel and administrative management, comptrollership and approving regulations and most Orders-in-Council.⁵ In this respect, under section 7 of the Financial Administration Act, the Treasury Board is responsible for, among other things: a) general administrative policy in the federal public administration; b) financial management; c) the review of annual and longer term expenditure plans and programs of departments, and the determination of priorities with respect thereto; d) human resources management in the federal public administration; and e) internal audit in the federal public

⁴ See About the Secretariat, <http://www.tbs-sct.gc.ca/tbs-sct/abu-ans/tbs-sct/abu-ans-eng.asp>

⁵ Orders in Council are a legal instrument made by the Governor in Council (i.e., the Governor General on the advice of Cabinet; see *infra* note 15) pursuant to a statutory authority or, less frequently, the royal prerogative. All orders in council are made on the recommendation of the responsible Minister of the Crown and take legal effect only when signed by the Governor General, see Orders in Council Glossary, <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=secretariats&sub=oi-c-ddc&doc=gloss-eng.htm>.

administration.⁶ With respect to its responsibilities for human resources management, the Treasury Board is to establish policies or issue directives respecting the disclosure by persons employed in the public service⁷ of information concerning wrongdoing in the public service and the protection from reprisal of persons who disclose such information in accordance with those policies or directives; and establish policies or issue directives respecting the prevention of harassment in the workplace and the resolution of disputes relating to such harassment.⁸

[20] Furthermore, under the Public Servants Disclosure Protection Act, the President of the Treasury Board is responsible for promoting ethical practices in the public sector and a positive environment for disclosing wrongdoings.⁹ In this respect, under section 5 of the Act, the Treasury Board is responsible for establishing a code of conduct applicable to the public sector, which was carried out with the adoption of the Values and Ethics Code for the Public Sector.¹⁰ This Act further provides that every chief executive¹¹ is responsible for establishing a code of conduct applicable to the portion of the public sector for which he or she is responsible, and which is to be consistent with the Values and Ethics Code for the Public Sector; establish internal procedures to manage disclosures made under the Act by public servants employed in the portion of the public sector for which the chief executive is responsible; and designate a senior officer to be responsible for receiving and dealing with, in accordance with the duties and powers of senior officers set out in the Values and Ethics Code for the Public Sector, disclosures of wrongdoings made by public servants employed in the portion of the public sector for which the chief executive is responsible.¹² With respect to these obligations by the chief executive, the TBS is responsible for providing advice to them with respect to the implementation of their duties under the Act.

[21] The TBS plays three central agency roles when working with federal departments, agencies and Crown corporations: a) a leadership role in driving and modeling excellence in the public sector; b) a challenge and oversight role that includes reporting on the government's management and budgetary performance and developing government-wide management policies and standards; and c) a community enabling role to help organizations improve management performance.

⁶ Financial Administration Act, <http://laws-lois.justice.gc.ca/eng/acts/F-11/FullText.html>

⁷ Public service means those positions in or under the departments named in Schedule I to the Financial Administration Act; the other portions of the federal public administration named in Schedule IV; the separate agencies named in Schedule V; and any other portion of the federal public administration that may be designated by the Governor in Council, see section 11 of the Financial Administration Act, *ibid*.

⁸ Section 11.1, *ibid*. The country under review clarifies that the responsibility of the Treasury Board under 11.1(1)(h) of the Financial Administration Act, to establish policies or issue directives respecting the disclosure by persons employed in the public service of information concerning wrongdoing in the public service and the protection from reprisal of persons who disclose such information in accordance with those policies or directives, was overtaken by the coming into force of the Public Servants Disclosure Protection Act in 2007.

⁹ Section 4 of the Public Servants Disclosure Protection Act, <http://laws-lois.justice.gc.ca/eng/acts/P-31.9/FullText.html>

¹⁰ Values and Ethics Code for the Public Sector, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049§ion=text>

¹¹ Chief executive means the deputy head or chief executive officer of any portion of the public sector, or the person who occupies any other similar position, however called, in the public sector, see section 2(1) of the Public Servants Disclosure Protection Act, *supra* note 9. Deputy head is defined under the Financial Administration Act as meaning: a) in relation to a department named in Schedule I of that Act, its deputy minister; b) in relation to any portion of the federal public administration named in Schedule IV of that Act, its chief executive officer or, if there is no chief executive officer, its statutory deputy head or, if there is neither, the person who occupies the position designated by the Governor in Council; c) in relation to a separate agency, its chief executive officer or, if there is no chief executive officer, its statutory deputy head or, if there is neither, the person who occupies the position designated by the Governor in Council in respect of that separate agency; and d) in relation to any portion of the federal public administration designated by the Governor in Council as part of the "public service", its chief executive officer or, if there is no chief executive officer, the person who occupies the position designated by the Governor in Council.

¹² Sections 6 and 10 of the Public Servants Disclosure Protection Act, *supra* note 9.

[22] In this respect, within the TBS, the Comptroller General of Canada provides government-wide leadership, direction, oversight and capacity building for financial management, internal audits and the management of acquired services and assets; the Chief Human Resources Officer leads people management across the core public administration by developing workplace and workforce policies and programs; by centrally managing labor relations, compensation, and pension and benefit plans; and by developing executive leadership; and the Chief Information Officer provides government-wide leadership, direction, oversight and capacity building for information management, information technology, government security (including identity management) and access to information, privacy, and internal and external service delivery.¹³

[23] With respect to the scope of their functions, the Financial Administration Act provides that the Treasury Board is responsible for the human resource management of those that form the core public administration. The Act, under section 11(1) defines ‘core public administration’ as meaning the departments named in Schedule I and the other portions of the federal public administration named in Schedule IV of the Act.

[24] In addition, the Public Servants Disclosure Protection Act provides that this law is applicable to the public sector, which is defined as: a) the departments named in Schedule I to the Financial Administration Act and the other portions of the federal public administration named in Schedules I.1 to V to that Act; and b) the Crown corporations and the other public bodies set out in Schedule 1. However, public sector does not include the Canadian Forces, the Canadian Security Intelligence Service or the Communications Security Establishment.¹⁴

[25] The Treasury Board is presided over by the President, a Ministerial position, who is appointed by Commission under the Great Seal. In addition to the President, the Board consists of the Minister of Finance and four other members of the Queen’s Privy Council for Canada to be nominated from time to time by the Governor in Council.¹⁵ The Governor in Council may also nominate such additional members of the Queen’s Privy Council as he or she sees fit to be alternates to serve in place of the members of the Treasury Board. The President holds office during pleasure, as do the members of the Treasury Board, meaning he or she can be replaced or removed at the discretion of the Governor in Council.¹⁶

[26] The TBS itself is headed by the Secretary, who is appointed by the Governor in Council and holds office during pleasure as well. The Secretary has the rank and powers of a deputy head and reports to the President.¹⁷ The President is responsible and accountable for the coordination of the activities of the Secretary of the Treasury Board.¹⁸

¹³ See the Presentation: Roles and Responsibilities of the Treasury Board Secretariat, http://www.oas.org/juridico/pdfs/mesicic4_can_roles.pdf, and Treasury Board of Canada Secretariat - 2013–14 Report on Plans and Priorities, <http://www.tbs-sct.gc.ca/rpp/2013-2014/tbd/tbdpr-eng.asp?format=print>

¹⁴ See section 2(1) of the Public Servants Disclosure Protection Act, *supra* note 9.

¹⁵ Section 5 of the Financial Administration Act, *supra* note 6. Governor in Council means the Governor General of Canada acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen’s Privy Council for Canada, see section 35 of the Interpretation Act, <http://laws-lois.justice.gc.ca/eng/acts/I-21/FullText.html>

¹⁶ See section 23, Interpretation Act, *ibid*, and Terms and Conditions of Employment for Full-Time Governor in Council Appointees: Appointment, Tenure and Related Matters, <http://www.pco-bcp.gc.ca/index.asp?lang=eng&Page=information&Sub=publications&Doc=terms-conditions/2009-eng.htm>.

¹⁷ Section 6(2) of the Financial Administration Act, *supra* note 6.

¹⁸ Section 6(4.2) of the Financial Administration Act, *ibid*.

[27] The members of the Treasury Board are subject to the Conflict of Interest Act,¹⁹ the Guide for Ministers and Ministers of State, the Ethical and Political Activity Guidelines for Public Office Holders²⁰ and the Terms and Conditions of Employment for Full-Time Governor in Council Appointees.²¹ The Secretary is subject to the aforementioned Act, Guidelines and Terms and Conditions as well as the prohibition to engage in political activities as set out under section 117 of the Public Service Employment Act, violation of which may lead to his or her dismissal by the Governor in Council.²²

[28] The public servants that form the TBS are selected by merit-based competition, as set out in section 30 of the Public Service Employment Act, which also states that appointment to or from the public service must be free from political influence.²³ As public servants, they are bound by the Values and Ethics Code for the Public Sector, the Policy on Conflict of Interest and Post-Employment, as well as the Departmental Code of Conduct of the Treasury Board Secretariat, adherence of which is a condition of employment.²⁴ As stated in the Response to the Questionnaire:

[29] “[A]ll TBS employees are subject to the TBS Departmental Code of Conduct. The TBS Departmental Code of Conduct is an important component of the values and ethics culture at the TBS and it complements the broader Values and Ethics Code for the Public Sector. All employees are required to adhere to the Values and Ethics Code for the Public Sector as well as the TBS Departmental Code of Conduct as a term and condition of employment, and the guidance contained in the Departmental Code will help TBS employees to do this. In addition to the two codes mentioned above, all TBS employees are also subject to the Policy on Conflict of Interest and Post-Employment.”²⁵

¹⁹ Conflict of Interest Act, <http://laws-lois.justice.gc.ca/eng/acts/C-36.65/FullText.html>

²⁰ See the Guide for Ministers and Ministers of State 2011 and its Annex A, http://www.pm.gc.ca/grfx/docs/guidemin_e.pdf. Public office holders are defined as meaning: a) a minister of the Crown, a minister of state or a parliamentary secretary; b) a member of ministerial staff; c) a ministerial adviser; d) a Governor in Council appointee, other than the following persons, namely, (i) a lieutenant governor, (ii) officers and staff of the Senate, House of Commons and Library of Parliament, (iii) a person appointed or employed under the Public Service Employment Act who is a head of mission as defined in subsection 15(1) of the Department of Foreign Affairs, Trade and Development Act, (iv) a judge who receives a salary under the Judges Act, (v) a military judge within the meaning of subsection 2(1) of the National Defence Act, and (vi) an officer of the Royal Canadian Mounted Police, not including the Commissioner; d.1) a ministerial appointee whose appointment is approved by the Governor in Council; and e) a full-time ministerial appointee designated by the appropriate minister of the Crown as a public office holder, see section 2(1) of the Conflict of Interest Act, *supra* note 19.

²¹ Terms and Conditions of Employment for Full-Time Governor in Council Appointees, *supra* note 16.

²² See sections 117 and 119 of the Public Service Employment Act, <http://laws-lois.justice.gc.ca/eng/acts/p-33.01/FullText.html>

²³ An appointment is based on merit when: a) the Public Service Commission is satisfied that the person to be appointed meets the essential qualifications for the work to be performed, as established by the deputy head, including official language proficiency; and b) the Public Service Commission has regard to (i) any additional qualifications that the deputy head may consider to be an asset for the work to be performed, or for the organization, currently or in the future, (ii) any current or future operational requirements of the organization that may be identified by the deputy head, and (iii) any current or future needs of the organization that may be identified by the deputy head, Section 30(2) of the Public Service Employment Act, *ibid*.

²⁴ Departmental Code of Conduct of the Treasury Board Secretariat, <http://www.tbs-sct.gc.ca/reports-rapports/code/dcc-ccm-eng.asp>

²⁵ Response by Canada to the Questionnaire for the Fourth Round of Review, pg. 7, http://www.oas.org/juridico/PDFs/mesicic4_can_resp.pdf

[30] According to a document presented during the on-site visit, there are currently 1914 public servants working in the TBS for the year 2012 – 2013.²⁶ In the Response to the Questionnaire, the country under review indicates that there are written job descriptions for positions within the TBS.²⁷

[31] With respect to the organization of the TBS, it is made up of 11 branches and sectors: Office of the Chief Human Resources Officer; Office of the Comptroller General; Chief Information Officer Branch; Government Operations; Economic Sector; Corporate Services Sector; Priorities and Planning; Regulatory Affairs; Social and Cultural Sector; Strategic Communications and Ministerial Affairs and Expenditure Management.²⁸

[32] Regarding training, the TBS provides manuals and guides to orient public servants with respect to conflicts of interest, the Values and Ethics Code for the Public Sector as well as the provisions of the Public Servants Disclosure Protection Act.²⁹ In this respect, they have produced the Policy on Conflict of Interest and Post-Employment³⁰ and the Application Guide for Post-Employment under the Policy on Conflict of Interest and Post-Employment.³¹ It also provides resources for the Public Servants Disclosure Protection Act, which contains fact sheets, guides and annual reports with respect to the Act.³² Moreover, during the on-site visit, the representatives of the TBS stated that they also maintained internal social media platforms that helped spread the manuals and guides among public servants, such as GCConnects and GCPedia.³³

[33] During the on-site visit, the representatives of the TBS stated that online courses are available to all new public servants with respect to the Values and Ethics Code for the Public Sector. It also works with the Canada School of Public Service in order to provide courses to public service employees and managers on values and ethics. A list of the courses offered at the School throughout 2011 – 2013 is provided in the Response to the Questionnaire by the country under review.³⁴

²⁶ See Presentation: Roles and Responsibilities of the Treasury Board Secretariat, slide 10, *supra* note 13. The number in the presentation stated that there are currently 2121 public servants working for the TBS. The country under review subsequently clarified that this number is 1194.

²⁷ Response to the Questionnaire, pg. 6, *supra* note 25.

²⁸ See Presentation: Roles and Responsibilities of the Treasury Board Secretariat, slide 9, *supra* note 13, and TBS Organization, <http://www.tbs-sct.gc.ca/tbs-sct/organization-organisation-organization-organisation-eng.asp>

²⁹ Response to the Questionnaire, pg. 38, *supra* note 25.

³⁰ Available at: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25178§ion=text>

³¹ Available at: <http://www.tbs-sct.gc.ca/gui/agcipe-gaciam-eng.asp>

³² Resources on the Public Servants Disclosure Protection Act, <http://www.tbs-sct.gc.ca/ve/pda-eng.asp>

³³ The country under review notes that it is important to distinguish between the material the policy centre in the Treasury Board Secretariat provides for use by all government departments, which is described in the paragraph, and the material the Corporate Services sector provides internally for its own employees. The Treasury Board Secretariat provides its employees with an internal website on which procedures, tools, guides and manuals are posted, pertaining to the wide variety of subject areas and functions for which the Secretariat's public servants are responsible. These functions range from policy analysis, review, development and interpretation, to production and presentation of submissions to the Treasury Board for approval, to the collecting of information for and presentation of legislatively-required annual reports to Parliament. The internal website, known as Infosite, has the necessary reference material and guidance pertaining to these functions. The social media platforms available to Treasury Board Secretariat's federal public servants are GCPedia, GCForums and GCConnect. The Treasury Board Secretariat is currently participating in a government-wide initiative known as Workplace Renewal that will upgrade the information technology in use in the workplace. The policy centre in Treasury Board Secretariat does not intervene in the day-to-day operations or case management functions of individual departments, but performs both an oversight and support role to the departments and agencies of the federal public sector.

³⁴ Response to the Questionnaire, pgs. 38 – 39, *supra* note 25. See also the webpage by the Canada School of Public Service with respect to the Values and Ethics Code for the Public Sector, <http://www.cspsefpc.gc.ca/newsandfeatures/valuesandethics-eng.aspx>

[34] Additionally, the country under review notes that the policy center in the TBS works with departmental officials to identify course material needed to support the implementation of the Public Servants Disclosure Protection Act, including internal disclosure processes. Moreover, training sessions are regularly held with senior officers to assist them in implementation of the Act. For example, the Values and Ethics Directorate holds regular meetings of the Interdepartmental Working Group on Internal Disclosure and the Network of Senior Officials for Internal Disclosure. The Interdepartmental Working Group on Internal Disclosure meets on a monthly basis. The country under review also notes that given the reliance on the legislative framework for internal disclosure, the Values and Ethics Directorate also regularly partners with the Department of Justice to provide formal training to departmental legal counsel on the Public Servants Disclosure Protection Act.

[35] With respect to documented procedures for institutional strengthening or quality improvement of actions implemented, the TBS, as with other government organizations, submits a yearly Report on Plans and Priorities (RPP),³⁵ and an end of year Departmental Performance Report (DPR),³⁶ which provides an overview on how the goals in an RPP were met. These reports provide an overview of spending and performance by the TBS. Moreover, the TBS has instituted a Management Accountability Framework, which is a key performance management tool that the federal government uses to support the management accountability of deputy heads and improve management practices across departments and agencies.³⁷ The TBS underwent an assessment under this tool in 2011 – 2012.³⁸

[36] In addition, the country under review notes that it has put into place a Values and Ethics Plan to strengthen its culture of values and ethics in the TBS. This plan includes activities that address gaps identified in a Public Service Employee Survey³⁹ and in a TBS Ethical Climate Survey, both carried out in 2011, by focusing on leadership, communication, training, reporting and monitoring. Key priorities include, among others, increasing awareness and confidence in the process and mechanisms, such as formal recourse, which are available for resolving workplace issues and better inform employees of the Values and Ethics program, its importance, and the resources available.

[37] With respect to internal controls, the country under review, in its Response to the Questionnaire, states that regular audits are carried out by the TBS Internal Audit and Evaluation, and by the Auditor General of Canada.⁴⁰ The reports are available online.⁴¹ During the on-site visit, it was stated that a Departmental Audit Committee oversees the unit that carries out internal audits in the TBS. The Financial Administration Act requires that deputy heads of large departments establish

³⁵ The RPP are individual expenditure plans for each department and agency, which provide increased levels of detail over a three-year period on an organization's main priorities by strategic outcome, program activity and planned/expected results, including links to related resource requirements. The RPPs also provide details on human resource requirements, major capital projects, grants and contributions, and net program costs. Please see Reports on Plans and Priorities, <http://www.tbs-sct.gc.ca/rpp/index-eng.asp>. For the RPP of the TBS, see <http://www.tbs-sct.gc.ca/rpp/2013-2014/tbd/tbd00-eng.asp>

³⁶ DPRs are individual department and agency accounts of results achieved against planned performance expectations as set out in respective RPPs. These Reports cover the most recently completed fiscal year. Please see Departmental Performance Reports, <http://www.tbs-sct.gc.ca/dpr-rmr/index-eng.asp>. For the DPR of the TBS, see <http://www.tbs-sct.gc.ca/dpr-rmr/2012-2013/tbd/tbdtb-eng.asp>

³⁷ See Management Accountability Framework, <http://www.tbs-sct.gc.ca/maf-crg/index-eng.asp>

³⁸ 2011 – 2012 MAF Results - Treasury Board Secretariat, <http://www.tbs-sct.gc.ca/maf-crg/assessments-evaluations/2011/tbd/tbd-eng.asp>

³⁹ Public Service Employee Survey, <http://www.tbs-sct.gc.ca/pses-saff/index-eng.asp>. This survey provides an opportunity for employees to anonymously voice their opinions on their leadership, workforce and work environment.

⁴⁰ Response to the Questionnaire, pg. 7, *supra* note 25.

⁴¹ For the audits carried out by the TBS Internal Audit and Evaluation unit, see <http://www.tbs-sct.gc.ca/aedb-bdve/org-eng.aspx?Org=5>

these Committees. They are independent and composed of a majority of external members who have been recruited from outside the federal public administration. They provide objective advice and recommendations on the sufficiency, quality and results of assurance on the adequacy and functioning of the department's risk management, control and governance frameworks and processes. Deputy heads use this information to enhance accountability, transparency and the overall performance of their departments.⁴²

[38] With respect to the manner in which the general public is provided with information about its objectives and functions, the country under review, in its Response to the Questionnaire, states that information on the TBS is available online at <http://www.tbs-sct.gc.ca>. Moreover, contact information is available within the website at <http://www.tbs-sct.gc.ca/contact/contact-eng.aspx>. This page contains not only the manner to contact the TBS by phone, fax or postal mail, but the public also has access to a Comments and Questions form by which a person of the public may make an electronic inquiry, and receive a response by email, or by telephone if preferred. Specific webpages with information are also available depending on the person or institution (for example, federal employees, federal managers, parliamentarians, media, or Canadians).

[39] Regarding mechanisms for dealing with claims, complaints or allegations related to the pursuit of its objectives and to the performance of personnel, while the TBS does not have a specific area on its website for receiving complaints, it does have a link for submission of enquiries from the general public. The TBS also has a Departmental Code of Conduct which provides, on page 24, that *“Members of the public who have reason to believe that a public servant has not acted in accordance with this Code can bring the matter to the Senior Officer for Disclosure or to the Public Sector Integrity Commissioner to disclose a serious breach of this Code.”* In this respect, it is consistent with the Values and Ethics Code for the Public Sector that provides that members of the public may also bring a matter to an organizational point of contact if they have reason to believe that a public servant has not acted in accordance with the Code.⁴³

[40] In addition, with regard to allegations of wrongdoing, under the Public Servants Disclosure Protection Act, public sector employees may make use of a process for disclosure of a wrongdoing⁴⁴ in the workplace, through internal procedures that each chief executive must establish for managing disclosures. To this end, a public servant may make a protected disclosure of wrongdoing to their immediate supervisor or to a senior officer for Disclosure that is appointed in each respective

⁴² See Departmental Audit Committees, <http://www.tbs-sct.gc.ca/iac-cvi/index-eng.asp>; and About Departmental Audit Committees, <http://www.tbs-sct.gc.ca/iac-cvi/abu-ans/abu-ans-eng.asp>

⁴³ See TBS Departmental Code of Conduct, <http://www.tbs-sct.gc.ca/reports-rapports/code/dcc-ccm-eng.asp> and the Values and Ethics Code for the Public Sector, Avenues for Resolution, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049§ion=text>. In addition, the country under review notes that with respect to internal mechanisms, there are also a number of different disclosure, complaint and grievance mechanisms available to the public servants of the Treasury Board Secretariat on a number of different employment-related and workplace issues, including, but not limited to, staffing complaints, disclosures of wrongdoing, grievances under the collective agreement, complaints pertaining to harassment in the workplace, and complaints with respect to denial of rights under the Official Languages Act.

⁴⁴ Public Servants Disclosure Protection Act, under section 8, defines wrongdoing as: a) a contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act; b) a misuse of public funds or a public asset; c) a gross mismanagement in the public sector; d) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of a public servant; e) a serious breach of a code of conduct; and f) knowingly directing or counseling a person to commit a wrongdoing.

organization. The TBS maintains a list of the identification and contact information of those officers on its website for each organization, including its own.⁴⁵

[41] Another avenue for disclosing a wrongdoing is through the Office of the Public Sector Integrity Commissioner. Under the Public Servants Disclosure Protection Act, a public servant may choose to make a disclosure to the Commissioner, rather than to the senior officer appointed for this purpose for internal disclosures in a given organization,⁴⁶ an avenue that is also available to the public.⁴⁷ In addition, public servants may also file a complaint with the Commissioner if he or she has a reasonable ground for believing that a reprisal has been taken against him or her for a disclosure.⁴⁸ Finally, there exists a Public Servants Disclosure Protection Tribunal, an independent quasi-judicial body established under section 20.7 of the Public Servants Disclosure Protection Act, which can grant remedies in favor of reprisal complainants referred by the Public Sector Integrity Commissioner and that can order disciplinary action against persons who take reprisals. The members of this Tribunal are Federal Court judges.⁴⁹

[42] With respect to the manner in which budgetary resources needed for its operations are ensured, the TBS submits its Main Estimates for a year, which provides the financial resources that are required for a fiscal year.⁵⁰ With this submission, the TBS is to also provide the aforementioned Report on Plans and Priorities, which supplements the information contained in the Main Estimates and describes departmental priorities, expected results and associated resource requirements covering three fiscal years.⁵¹ For the past five years, with respect to resources, the TBS provided the following during the on-site visit:⁵²

Year	Funding (\$000)	Personnel – Full time equivalents
2013 – 2014	5 662 899	1847
2012 – 2013	5 685 174	1914

⁴⁵ Senior Officers for Disclosure of Wrongdoing, <http://www.tbs-sct.gc.ca/ve/snrs2-eng.asp#T>

⁴⁶ Public Servants Disclosure Protection Act, section 12, *supra* note 9.

⁴⁷ *Ibid*, section 33(1).

⁴⁸ *Ibid*, section 19.1. Section 2 of the Act defines ‘reprisal’ as: “any of the following measures taken against a public servant because the public servant has made a protected disclosure or has, in good faith, cooperated in an investigation into a disclosure or an investigation commenced under section 33:

(a) a disciplinary measure;

(b) the demotion of the public servant;

(c) the termination of employment of the public servant, including, in the case of a member of the Royal Canadian Mounted Police, a discharge or dismissal;

(d) any measure that adversely affects the employment or working conditions of the public servant; and

(e) a threat to take any of the measures referred to in any of paragraphs (a) to (d).”

⁴⁹ See Public Servants Disclosure Protection Tribunal, <http://www.psdpt-tpfd.gc.ca/Home-eng.html>

⁵⁰ The Canada fiscal year begins April 1, see section 2 of the Financial Administration Act, *supra* note 6.

⁵¹ See, generally, Reports on Plans and Priorities (Part III), <http://www.tbs-sct.gc.ca/ems-sgd/esp-pbc/rpp-eng.asp>. For the 2013 – 2014 Report on Plans and Priorities of the TBS, see <http://www.tbs-sct.gc.ca/rpp/2013-2014/tbd/tbd00-eng.asp>

⁵² See slide 10 of the Presentation: Roles and Responsibilities of the Treasury Board Secretariat, *supra* note 13. The country under review provided updated information to the table with respect to the number of personnel employed by the TBS.

2011 – 2012	5 878 117	2121
2010 – 2011	7 757 177	2160
2009 – 2010	7 757 177	2179

[43] Of the totals represented in the above table, the budget for the operations of the TBS is a smaller percentage. For example, for the fiscal year 2013 – 2014, while the total planned spending is approximately \$5.66 billion, approximately 4.29% of that total (\$0.24 billion) is for operations of the TBS and its five programs, Management Frameworks, People Management, Expenditure Management, Financial Management and Internal Services. The remaining balance are centrally managed funds used to supplement other appropriations (\$3.1 billion) and for government-wide funds and public service employer payments for the Treasury Board's role as employer of the core public administration (\$2.27 billion).⁵³ Taking this into account, the budget for the operations of the TBS and its programs is the following:

Year	Funding (\$000)
2013 – 2014 ⁵⁴	242 425
2012 – 2013	254 742
2011 – 2012	267 381
2010 – 2011	266 261
2009 – 2010	197 477

[44] With respect to the manner in which the TBS coordinates with other agencies or public authorities and secures the support of other authorities, the country under review, in its Response to the Questionnaire, states that this oversight body coordinates with networks of officials responsible for

⁵³ Taken from the Expenditure Profile section of the 2013 – 2014 Report on Plans and Priorities of the TBS, *supra* note 48. The centrally managed funds and government-wide funds used to supplement other appropriations are used for the public service pension, benefits, and insurance, including payment of the employer's share of health, income maintenance, and life insurance premiums; payments to, or in respect of, provincial health insurance; payments of provincial payroll taxes and Quebec sales tax on insurance premiums; and the return to certain employees of their share of the employment insurance premium reduction.

⁵⁴ The numbers for 2013 – 2014 represent the planned spending for that fiscal year, see the Planning Summary section of the 2013 – 2014 Report on Plans and Priorities of the TBS, *supra* note 49. The country under review provided updated information with respect to the operational budget for the years 2009 – 2010 to 2012 – 2013.

values and ethics in other government departments and agencies. In this respect, regarding values and ethics and anti-corruption, the country under review notes that:

[45] “[T]he formal networks include senior officers responsible for disclosure of wrongdoing, senior officials for values and ethics, and officers responsible for conflict of interest and post-employment measures. Meetings are held with the network members to convey information and new developments, and to permit exchange of best practices. The most recent meeting with the senior officers for disclosure of wrongdoing was Feb. 13, 2013, and the most recent meeting with senior officials for values and ethics was held May 16, 2013. Treasury Board Secretariat also hosts informal networks such as the Internal Disclosure Working Group and the Interdepartmental Network of Values and Ethics Advisors.”⁵⁵

[46] Moreover, the country under review states that the TBS regularly meets with colleagues from other departments to coordinate roles and responsibilities, such as with the Public Service Commission, the Privy Council Office, the Department of Justice and the Department of Foreign Affairs, Trade and Development.⁵⁶

[47] With respect to accountability mechanisms for the performance of its duties, the TBS reports annually to Parliament on the results achieved, through the Departmental Performance Reports.⁵⁷ These reports are described as “*individual department and agency accounts of results achieved against planned performance expectations as set out in respective RPPs [Report on Plans and Priorities]*.”⁵⁸ These Performance Reports, which cover the most recently completed fiscal year, are tabled in Parliament in the fall by the President of the Treasury Board.⁵⁹

[48] In addition, the TBS maintains on its website a section on Proactive Disclosure, a measure implemented by Canada to strengthen public sector management by enhancing transparency and oversight of public resources in the federal government. This section contains financial and human resources related information with respect to the TBS. It is mandatory for all departmental websites to publish travel and hospitality expenses for selected government officials; contracts entered into by the Government of Canada for amounts over \$10 000 (with only limited exceptions such as national security); and the reclassification of positions. This section also includes information on the awarding of grants and contributions of over \$25 000; information on founded wrongdoing as set out under the Public Servants Disclosure Protection Act, describing the wrongdoing, including the identity of the person found to have committed it if necessary in order to describe the wrongdoing adequately; the recommendations, if any, set out in any report made to the chief executive; and any corrective action taken by the chief executive or the reasons why no corrective action was taken; and annual reports of expenditures on travel, hospitality and conferences for the Treasury Board Secretariat.⁶⁰ As described in the TBS section on Proactive Disclosure, “[b]y making this information readily available on departmental web sites, Canadians and Parliament are better able to hold the Government and public sector officials to account.”⁶¹

1.2. Adequacy of the legal framework and/or other measures

⁵⁵ Response to the Questionnaire, pg. 8, *supra* note 25. Also see Values and Ethics Network, <http://www.tbs-sct.gc.ca/ve/snrs-eng.asp>

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ See Departmental Performance Reports (DPR), <http://www.tbs-sct.gc.ca/dpr-rmr/index-eng.asp>

⁵⁹ The latest TBS Departmental Performance Report for the year 2012 – 2013 is found here: <http://www.tbs-sct.gc.ca/dpr-rmr/2012-2013/tbd/tbdtb-eng.asp>

⁶⁰ See TBS Proactive Disclosure, <http://www.tbs-sct.gc.ca/pd-dp/index-eng.asp>

⁶¹ *Ibid.*

[49] The TBS has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 1.1 of this report. However, the Committee believes it timely to make a number of observations in relation thereto:

[50] First, with respect to training, the Committee notes that the TBS works with chief executives and their officials to identify, with the Canada Public School of Public Service, course material needed to support the Values and Ethics Code for the Public Sector,⁶² and as noted by the Committee under section 1.1 of Chapter II of this Report, the TBS works with departmental officials to identify course material needed to support the implementation of the Public Servants Disclosure Protection Act, including internal disclosure processes. Training sessions are also regularly held with senior officers to assist them in implementation of the Act and the Values and Ethics Directorate holds regular meetings of the Interdepartmental Working Group on Internal Disclosure and the Network of Senior Officials for Internal Disclosure. The Values and Ethics Directorate also regularly partners with the Department of Justice to provide formal training to departmental legal counsel on the Public Servants Disclosure Protection Act.

[51] The TBS also provides guidance, producing documents such as information on organizational disclosure regimes; information on organizational public reporting obligations; information on handling sensitive information; information on conducting an internal investigation; and guides on determining protected disclosures under the Act.⁶³ The Committee observes that under the document on Information on Organizational Disclosure Regimes, it is noted that supervisors within an organization should receive training in dealing with disclosures, and in particular, are to be fully aware of: the definition of wrongdoing under the Act; that provision of information by an employee regarding a possible wrongdoing should be treated as a disclosure under the Act, which entails the protection of information related to the disclosure and triggers protection from reprisal for the person making the disclosure; that they must know the identity and role of their organization's Senior Officer; and that they must collect statistics and other information as may be required with respect to disclosures to satisfy their chief executive's obligation to report annually to the Canada Public Service Agency regarding disclosures made within the organization under the Act.⁶⁴

[52] The Committee observes that the country under review should consider exploring additional means to meet the training and information needs of personnel involved in internal disclosure of wrongdoing, so that public servants across government will have a common understanding of internal disclosure mechanisms. The Committee will formulate a recommendation. (see Recommendation 1.4.1 in Section 1.4 of Chapter II of this Report)

[53] Second, the Committee observes that the Management Accountability Framework has been used as a tool to measure the implementation of values and ethics within the TBS and the public service as a whole. In the previous Values and Ethics Code for the Public Service, the TBS was responsible for monitoring its implementation in departments and agencies, and that on a regular basis; a review of the performance of departments in the implementation of the Code would be

⁶² See Values Alive: A Discussion Guide to the “Values and Ethics Code for the Public Sector,” pg. 22, <https://www.tbs-sct.gc.ca/ve/va-vaq-eng.asp>.

⁶³ See Guides, <http://www.tbs-sct.gc.ca/chro-dprh/gui-eng.asp>

⁶⁴ Public Servants Disclosure Protection Act, Information on Organizational Disclosure Regimes, <http://www.tbs-sct.gc.ca/gui/odrpr-eng.asp?format=print>. The country under review notes that subsection 38(1) of the Public Servants Disclosure Protection Act quoted in the guidance paper was amended, in 2011, to reflect the fact that chief executives submit their annual report on disclosures made within their organizations to the Chief Human Resources Officer, Treasury Board Secretariat. The guidance paper will be amended accordingly.

carried out through the Framework.⁶⁵ For the current Values and Ethics Code for the Public Sector, the Framework is also to be used in monitoring and providing feedback for organizations in evaluating their values and ethics programming.⁶⁶ The Committee believes that the country under review should also consider using the Management Accountability Framework for evaluating internal disclosure procedures.

[54] In this respect, the Committee notes that in 2011, a Public Service Employee Survey was undertaken, which provided employees an opportunity to anonymously voice their opinions on their leadership, workforce and work environment.⁶⁷ One of the questions asked was on trusted, effective recourses.⁶⁸ In that respect, the Committee notes that overall, in the Public Service of Canada, 38% of employees strongly agreed or somewhat agreed that they could initiate a formal recourse process (grievance, complaint, appeal, etc.) without fear of reprisal.⁶⁹ A total of 31% strongly disagreed or somewhat disagreed, with a further 29% either not agreeing or disagreeing or not knowing.

[55] By using the Management Accountability Framework to monitor, evaluate and provide feedback on the manner organizations are implementing their internal disclosure procedures in accordance with the Public Servants Disclosure Protection Act, it might help ensure that department heads are implementing an effective system, and improve perception by public servants that they may initiate a formal recourse process without fear of reprisal. The Committee will formulate a recommendation. (see Recommendation 1.4.2 in Section 1.4 of Chapter II of this Report)

[56] Fourth, the Committee notes that in the 2010 – 2011 Management Accountability Framework exercise, with respect to values based leadership and organizational culture, it was stated that the TBS “*could benefit from having mechanisms in place to measure awareness and understanding of values and ethics and conflict of interest, as well as outcomes of values and ethics activities and mechanisms in place to measure if their infrastructure helps public servants raise, discuss and resolve issues.*”⁷⁰ The TBS responded by carrying out its first Ethical Climate Survey in August 2011. Based on this survey, in the 2011 – 2012 Management Accountability Framework assessment, the last one available online, it was observed that the TBS:

[57] “*[C]an strengthen its Values and Ethics results by addressing the gaps identified in the recent Ethical Climate Survey, including opportunities for improvement in leaders’ involvement in values and ethics, gaps between sectors in training and awareness, and gaps between supervisors’ self-assessment and employees’ views. Continuous progress can be made by continuing to survey the*

⁶⁵ Values and Ethics Code for the Public Service, http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tb_851/vec-cvepr-eng.asp?format=print

⁶⁶ Values Alive: A Discussion Guide to the “Values and Ethics Code for the Public Sector,” pg. 22, *supra* note 62.

⁶⁷ Public Service Employee Survey, <http://www.tbs-sct.gc.ca/ps-es-saff/index-eng.asp>

⁶⁸ The country under review notes that with respect to the scope and intention of the question referred to in the Public Service Employee Survey, this question covers a wide range of recourse, complaint and redress mechanisms under a variety of Acts and policies, including complaints of harassment in the workplace, grievances under the collective agreement, complaints pertaining to official languages or occupational health and safety, and so on. The results of this question were included in the Management Accountability Framework as one indicator to assess an organization’s ethical climate.

⁶⁹ See Question 43 of the 2011 Public Service Employee Survey Organizational Results: Public Service of Canada, <http://www.tbs-sct.gc.ca/ps-es-saff/2011/results-resultats/bd-pm/00/org-eng.aspx>

⁷⁰ 2010 – 2011 MAF Results – Treasury Board Secretariat, <http://www.tbs-sct.gc.ca/maf-crg/assessments-evaluations/2010/tbd/tbd-eng.asp>

ethical climate, assess the ethical risks and effectiveness of new measures, and by integrating this information into its corporate plans and activities.”⁷¹

[58] The Committee considers that the TBS should make publicly available its efforts to address the gaps identified in the survey. The Committee will formulate a recommendation. (see Recommendation 1.4.3 in Section 1.4 of Chapter II of this Report)

[59] Finally, the Committee notes that an important provision of the Public Servants Disclosure Protection Act is the obligation on chief executives to establish organizational codes of conduct that are consistent with the Values and Ethics Code for the Public Sector.⁷² The TBS has complied with this requirement and established its own organizational code of conduct.⁷³ Among other things, it touches on important matter such as standards of conduct, disclosures of wrongdoing, application and compliance, and avenues of resolution and outlines the duties and responsibilities of TBS employees, the Secretary and the Senior Officer for Disclosure. The TBS has also prepared a Guide for Developing Organizational Codes of Conduct⁷⁴ and a Model Organizational Code for Public Sector Organizations⁷⁵ to assist chief executives with this task.

[60] During the on-site visit, the representatives of the TBS stated that the Secretariat does not maintain a list of those departments that have met the requirement under the Act to establish a code of conduct, nor are there legislated deadlines for establishing such codes. In this respect, it is the responsibility of each deputy head to for establishing an organizational code of conduct, and the country under review notes that the TBS has reminded these deputy heads of their responsibility in this respect. The Committee observes that the TBS has an essential role under section 4 of the Act in promoting ethical practices in the public sector and a positive environment for disclosing wrongdoing by not only disseminating knowledge of the Act, but also by any other means considered appropriate. In this regard, the Committee believes that the TBS should ensure that support is provided to chief executives who are responsible complying with the Public Servants Disclosure Act and that they are provided with advice and assistance as needed and requested in relation to the creation and establishment of Codes of Conduct. The Committee will formulate a recommendation. (see Recommendation 1.4.4 in Section 1.4 of Chapter II of this Report)

1.3. Results of the legal framework and/or other measures.

[61] In its Response to the Questionnaire, the country under review states that it has produced manuals and guides to orient public servants regarding ethical behavior around conflict of interest, the Values and

⁷¹ 2011 – 2012 MAF Results – Treasury Board Secretariat, <http://www.tbs-sct.gc.ca/maf-crg/assessments-evaluations/2011/tbd/tbd-eng.asp>. The country under review notes that the TBS has addressed the gaps identified in the Ethical Climate Survey, as determined in the assessment of the Management Accountability Framework for 2012 – 2013, which is not yet publicly available.

⁷² Public Servants Disclosure Protection Act, section 6, *supra* note 9.

⁷³ TBS Departmental Code of Conduct, <http://www.tbs-sct.gc.ca/reports-rapports/code/dcc-ccm-eng.asp>

⁷⁴ Guide for Developing Organizational Codes of Conduct, <http://www.tbs-sct.gc.ca/ve/code/gdocc-grccotb-eng.asp>

⁷⁵ Model Organizational Code for Public Sector Organizations, <http://www.tbs-sct.gc.ca/ve/code/moc-mcotb-eng.asp>. The country under review notes that that the TBS also provides support to chief executives through advice and assistance activities such as outreach by the Chief Human Resources Officer on codes and values and ethics at learning events for chief executives; provision of tools and interpretive guides to support departments in code drafting and implementation; advisory services for interpretation of specific questions related to the development and enactment of organizational codes; support to networks of values and ethics practitioners throughout the public sector by means of regular network meetings and interdepartmental working groups for the sharing of information and leading practices; and maintenance of a social media discussion group on an intranet platform to facilitate information sharing on code development and implementation issues.

Ethics Code for the Public Sector and the Public Servants Disclosure Protection Act.⁷⁶ For example, the Policy on Conflict of Interest and Post-Employment, the Application Guide for Post-Employment under the Policy on Conflict of Interest and Post-Employment, the Values and Ethics Code for the Public Sector and resources on the Public Servants Disclosure Protection Act are cited in the Response.⁷⁷

[62] Moreover, the TBS cites its work with the Canada School of Public service in developing and providing training to public service employees and managers on values and ethics. For example, in collaboration with this School, the Treasury Board of Canada Secretariat has developed on-line courses specifically on the topic of values and ethics for public servants. The first, entitled Paving the Way: Values and Ethics Foundations for New Employees, has been made available since 2008, and was recently updated to reflect the new Values and Ethics Code for the Public Sector. As it is free and self-paced, learners can incorporate the course easily into their learning plans, and since 2010, more than 22 783 employees have registered for this course, as either as a stand-alone course or as part of their orientation to the public service. Additionally, the country under review provides the following table to highlight attendance and enrollment statistics for currently available classroom and online courses related to values and ethics for the years 2011 - 2013:⁷⁸

Number of Participants for Values and Ethics-related courses offered at the Canada School of Public Service

Classroom Course	Course Code	Number of Participants		
		2010-11	2011-12	2012-13
Courage to Lead in the Public Service	L109	66	51	79
Financial Knowledge in a Government Environment - Crown Corporations	Z116	16	12	1
Financial Management Control Frameworks	F111	1,538	1,159	770
Information Management: Environment and Vision in the Government of Canada	I110	417	296	304
Information Management: Legal and Policy Framework	I120	364	253	226
Internal Audit Orientation Workshop	A705	108	110	150
Internal Policy Development	T724	242	210	368
Leadership Through Values and Ethics	D102	91	38	95
Leadership: Reflection and Action	G305	238	210	218
Leading for Results: Exploring Servant Leadership	G306	152	115	125
Managing Public Funds	G243	111	73	54
Orientation to Contracting and Acquisition for the Non-Specialist	M712	155	122	252

⁷⁶ Response to the Questionnaire, pg. 38, *supra* note 25.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, pgs. 38 – 39. The country under review notes that online course I004 was first available in 2011-12, whereas courses C255-2 and C355 became available in 2012-13. With respect to course F111, financial management officers with less than five years of experience are required to complete this course as of April 1, 2010, within 3 years. The country under review notes that the decrease reflected in the number of participants in 2012-13 might be a result of a decrease in the number of officers having to take this course. Course C255-2 is a revision of a previous version of course C255, as it reflects the requirements of the new Values and Ethics Code for the Public Sector and the Treasury Board Policy on Conflict of Interest and Post-Employment, both of which have been in effect since April 2, 2012. As a result, course C255 is no longer offered and has been replaced by C255-2.

Orientation to the Public Service	E131	6,467	4,576	3285
Staffing for Staffing Specialists - Part I	P801	222	193	206
Staffing for Staffing Specialists - Part II	P802	219	162	112
Social Media in the Government of Canada	B334	81
Annual Total		10,406	7,580	6,326
Online Course	Course Code	2010-11	2011-12	2012-13
Information Management - Personal Awareness and Capacity Test	I004	...	187	1627
Paving the Way: Values and Ethics Foundations for New Employees	C255-2	1791
Paving the Way: Values and Ethics Foundations for Employees	C-255	1640	393	...
Orientation to the Public Service Program: Paving the Way: Values and Ethics Foundations for Employees	C-255 V2	7789	7126	4047
Active Leadership in Values and Ethics	C100	32	681	41
Modern Comptrollership: Values and Ethics	C328	5	12	
Values and Ethics Foundations for Managers	C355	20
Annual Total		9,466	8,399	7,526

[63] In addition, the TBS publishes an Annual Report on the Public Servants Disclosure Protection Act. Under section 38.1 of the Act, the Chief Human Resources Officer is to prepare an annual report for the President of the Treasury Board to table in Parliament, which must provide information on activities related to the disclosures made in public sector organizations subject to the Act. The report is to set out the number of general inquiries relating to the Act; the number of disclosures received; the number of those that were acted on and the number of those that were not; the number of investigations commenced as a result of a disclosure; identify any systemic problems that gave rise to wrongdoings; and any other matter that the Chief Human Resources Officer considers necessary.

[64] The report for 2012 – 2013 provides further detail, such as the number of organizations in the federal public sector subject to the Act, the number of organizations that have declared that they would not establish internal disclosure procedures or appoint a senior officer for disclosure because the size of the organization made it impractical to do so, a summary of organizational activity related to disclosure under the Act, by organization, and a list of those organizations that reported no activities related to disclosure in the reporting period.⁷⁹

[65] The Committee notes that the 2012 – 2013 report also provides a summary of disclosure activity for the years 2007 – 2013, which is the following table:

Disclosure Activity 2007–13						
Disclosure Activity	2012–13	2011–12	2010–11	2009–10	2008–09	2007–08

⁷⁹ Annual Report on the Public Servants Disclosure Protection Act, 2012 – 2013, <http://www.tbs-sct.gc.ca/reports-rapports/psdpa-pfdar/2012-2013/psdpa-pfdar-eng.pdf>. Past reports are available at <http://www.tbs-sct.gc.ca/reports-rapports/psdpa-pfdar/index-eng.asp>

Number of active organizations	149	155	154	155	153	153
Number of general inquiries related to the Act	198	225	277	281	186	259
Number of organizations that reported inquiries	37	32	33	29	28	35
Number of disclosures received under the Act	213	197	291	213	181	234
Number of organizations that reported disclosures	31	28	33	32	27	30
Number of referrals resulting from a disclosure made in another public sector organization	9	4	3	4	2	1
Number of cases carried over on the basis of disclosures made the previous year	100	118	75	31	25	N/A
Total number of disclosures handled (new disclosures + referrals + cases carried over)	322	319	369	248	208	N/A
Number of disclosures received that were acted upon	130	186	350	218	162	179
Number of disclosures received that were not acted upon	91	47	19	30	45	50
Number of investigations commenced as a result of disclosures received	80	78	111	75	60	87
Number of disclosures received that led to a finding of wrongdoing	18	24	9	7	6	7
Number of organizations that reported findings of wrongdoing	6	10	7	4	3	6
Number of disclosures received that led to corrective measures	40	74	31	36	38	26
Number of organizations that reported corrective measures	13	15	16	14	13	14
Number of organizations that reported finding systemic problems that gave rise to wrongdoing	2	1	2	4	1	2
Number of organizations that did not disclose information about findings of wrongdoing within 60 days	5	3	7	N/A	N/A	N/A

[66] Finally, the Committee notes that an important activity that the TBS carries out each year that assists in promoting accountability in the public service is the annual assessment under the Management Accountability Framework, which provides key performance information on management conditions deputy heads are expected to create within their departments. One of the key components evaluated is values and ethics. The results of this assessment are found in the website of the TBS, including the methodology utilized.⁸⁰ This assessment represents an important tool to support management accountability and improve management practices across departments and agencies.⁸¹

1.4. Conclusions and recommendations.

[67] Based on the comprehensive review conducted with respect to the Treasury Board Secretariat in the foregoing sections, the Committee offers the following conclusions and recommendations:

[68] Canada has considered and adopted measures intended to maintain and strengthen the Treasury Board Secretariat as an oversight body, as described in Chapter II, Section 1 of this Report.

[69] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 1.4.1. Explore additional means to meet the training and information needs of personnel involved in internal disclosure of wrongdoing. (See section 1.2 of Chapter II of this Report)

⁸⁰ See MAF Methodology and Results, <http://www.tbs-sct.gc.ca/maf-crg/methodology-methodologie-eng.asp>

⁸¹ See slide 16 of the Presentation: Roles and Responsibilities of the Treasury Board Secretariat, *supra* note 13.

- 1.4.2. Utilize the Management Accountability Framework to monitor, evaluate and provide feedback on the manner in which organizations are implementing their internal disclosure procedures. (See section 1.2 of Chapter II of this Report)
- 1.4.3. Make publicly available the steps taken to address gaps identified in the Ethical Climate Survey of the Treasury Board Secretariat, as set out in the 2011 – 2012 Management Accountability Framework Results for the Treasury Board Secretariat. (See section 1.2 of Chapter II of this Report)
- 1.4.4. Ensure that support is provided to chief executives with advice and assistance as needed and requested in relation to the creation and establishment of Codes of Conduct. (See section 1.2 of Chapter II of this Report)

2. PUBLIC PROSECUTION SERVICE OF CANADA

2.1 Existence of a legal framework and/or other measures

[70] The Public Prosecution Service of Canada (PPSC) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[71] The PPSC was created in 2006 with the enactment of the Director of Public Prosecutions Act.⁸² This Act created the Office of the Director of Public Prosecutions, which is known as the PPSC.⁸³ Under section 3(3) of the Act, the duties and functions of the Director of Public Prosecutions, under and on behalf of the Attorney General, is the following: initiating and conducting federal prosecutions; intervening in proceedings that raise a question of public interest that may affect the conduct of prosecutions or related investigations; issuing guidelines to federal prosecutors; advising law enforcement agencies or investigative bodies on general matters relating to prosecutions and on particular investigations that may lead to prosecution; communicating with the media and the public on all matters respecting the initiation and conduct of prosecutions; exercising the authority of the Attorney General of Canada in respect of private prosecutions; and exercising any other power or carrying out any other duty or function assigned by the Attorney General that is compatible with the office of the Director.

[72] As such, the PPSC fulfills the responsibilities of the Attorney General of Canada in the discharge of his or her criminal mandate by prosecuting criminal offences under federal jurisdiction and by contributing to strengthening the criminal justice system.⁸⁴ The country under review notes, though, in its Response to the Questionnaire that the Attorney General remains the chief law officer of the Crown and is ultimately accountable to Parliament, the courts and the public for federal prosecution functions. The role of the Director of Public Prosecutions is distinct from the Attorney General, as it entails closer oversight and more frequent involvement in files.⁸⁵ As noted during the on-site visit, the

⁸² Director of Public Prosecutions Act, <http://laws-lois.justice.gc.ca/eng/acts/D-2.5/FullText.html>

⁸³ See the Public Prosecution Service of Canada Annual Report, 2006 – 2007, pg. vii, http://www.ppsc-sppc.gc.ca/eng/pub/ar-ra/2006_2007/ar07-ra07.pdf

⁸⁴ See Response to the Questionnaire, pg. 18, supra note 25, and About the Public Prosecution Service of Canada, <http://www.ppsc-sppc.gc.ca/eng/bas/index.html#intro>

⁸⁵ Response to the Questionnaire, pg. 21, *ibid.*

Director of Public Prosecutions acts on behalf of the Attorney General and makes decisions independently and has the power to make final and binding decisions.⁸⁶

[73] With respect to the autonomy for pursuing its mandate, the PPSC was also created in order to make transparent the principle of prosecutorial independence, free from any improper influence.⁸⁷ In this respect, during the on-site visit, the representatives from the PPSC highlighted the legislative steps taken in 2006 to make the Service independent, such as taking it out of the Department of Justice. Moreover, the principle of independence means that the Director of Public Prosecutions does not take instructions as to how to exercise discretion in prosecution matters.⁸⁸ The Director only informs the Attorney General if there is a case that raises important questions of general interest.⁸⁹ In this instance, the Attorney General may take over a prosecution, and it must notify the Director in writing and publish this record to intervene in the Canada Gazette.⁹⁰ The representatives of the PPSC stated during the on-site visit that in the 7 years of its existence, the Attorney General has never chosen to exercise this discretion.⁹¹

[74] With respect to individual prosecutors, in the Response to the Questionnaire, the country under review notes that they exercise prosecutorial independence as representatives of the Director of Public Prosecutions.⁹² As such, it is a delegated independence that is institutional, rather than personal and is aimed at safeguarding the independence of the PPSC. In this respect, “*PPSC counsel are obliged to make decisions in accordance with the directives of the Attorney General and the guidelines of the DPP [Director of Public Prosecutions]. That said, PPSC counsel also retain a degree of discretion in individual cases.*”⁹³ Moreover, as the Director of Public Prosecutions does not take instructions on how to exercise discretion in prosecution matters, so too PPSC counsel do not take instructions on how to proceed given their delegated independence, except from those in line of authority leading ultimately to the Attorney General, including the Chief Federal Prosecutors, the Deputy Directors of Public Prosecutions and the Director of Public Prosecutions.⁹⁴ This would take the form of the aforementioned directives of the Attorney General and guidelines of the Director of Public Prosecutions.⁹⁵

[75] In exercising their prosecutorial independence, prosecutors are expected to discharge their duties with fairness, objectivity and integrity. As stated in the Response to the Questionnaire by the country under review, their role is not to win convictions at any cost but to put before the court all

⁸⁶ About the Public Prosecution Service of Canada, Role of the Director, <http://www.ppsc-sppc.gc.ca/eng/bas/index.html#rotp>

⁸⁷ See About the Public Prosecution Service of Canada, <http://www.ppsc-sppc.gc.ca/eng/bas/index.html#mandate>

⁸⁸ Response to the Questionnaire, pg. 21, *supra* note 25.

⁸⁹ Director of Public Prosecutions Act, section 13, *supra* note 82.

⁹⁰ Section 14, *ibid.*

⁹¹ It should be noted that an important constitutional principle in Canada is the absolute independence of the Attorney General in deciding whether to prosecute and in making prosecution, see Federal Prosecution Service Deskbook, Part I: Understanding Criminal Law in Canada, Chapter 4: The Independence of the Attorney General, <http://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/fpd/ch04.html>. This was affirmed by the Supreme Court of Canada in *Law Society of Alberta v. Krieger*, [2002] 3 S.C.R. 372, at 388, where it noted “*It is a constitutional principle in this country that the Attorney General must act independently of partisan concerns when supervising prosecutorial decisions,*” <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/2007/1/document.do>

⁹² Response to the Questionnaire, pg. 21, *supra* note 25.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ For examples of directives, please see Directives and Assignments, <http://www.ppsc-sppc.gc.ca/eng/dia-dia/index.html>. For examples of guidelines, please see Deskbook and Director’s Guidelines, <http://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/index.html>

available, relevant and admissible evidence necessary to enable the court to determine the guilt or innocence of the accused.⁹⁶ In this respect, the Supreme Court of Canada in *Boucher v. The Queen*, noted:

[76] “It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.”⁹⁷

[77] Regarding a decision to conduct a prosecution, the representatives of the PPSC stated during the on-site visit that there is a two pronged test that prosecutors must consider: 1) whether the evidence is sufficient to demonstrate a reasonable prospect of conviction and 2) whether the public interest requires a prosecution.⁹⁸ The actions of the prosecutor may be judicially reviewed, for example, through the abuse of process doctrine or judicial control of actions, which may prejudice fair trial interests, such as inflammatory jury addresses.⁹⁹

[78] With respect to the scope of their functions, the country under review noted that depending on the province and territory, the prosecutorial responsibility of the PPSC varies. They are described as follows:¹⁰⁰

[79] “In all provinces and territories, except Quebec and New Brunswick, the PPSC is responsible for prosecuting all drug offences under the Controlled Drugs and Substances Act, regardless of which police agency investigated the alleged offences. In Quebec and New Brunswick, the only drug offences prosecuted by the PPSC are those investigated by the RCMP.

[80] In all provinces and territories, the PPSC prosecutes violations of federal statutes such as the Fisheries Act, the Income Tax Act, the Excise Act, the Customs Act, the Canadian Environmental Protection Act, and the Canada Shipping Act, as well as conspiracies and attempts to violate these statutes. The PPSC also prosecutes terrorism and certain criminal organization offences under the Criminal Code, as well as money laundering and proceeds of crime charges. Under arrangements with the provinces, the PPSC may also prosecute Criminal Code offences related to drug charges.

[81] In all three territories, the PPSC is responsible for prosecuting all Criminal Code offences and offences under other federal statutes.”¹⁰¹

⁹⁶ Response to the Questionnaire, pg. 19, *supra* note 25.

⁹⁷ *Boucher v. The Queen*, [1955] S.C.R. 16, at 23 – 24, <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/2741/1/document.do>

⁹⁸ See Federal Prosecution Service Deskbook, Part V: Proceedings at Trial and on Appeal, Chapter 15: The Decision to Prosecute, <http://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/fpd/ch15.html>

⁹⁹ See Federal Prosecution Service Deskbook, Part III: Principles Governing Crown Counsel’s Conduct, Chapter 8: Accountability, http://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/fpd/ch08.html#section8_3, and Response to the Questionnaire, pg. 21, *supra* note 25.

¹⁰⁰ Response to the Questionnaire, pg. 20, *ibid*.

¹⁰¹ See also pg. 14 of the Response to the Questionnaire for the Third Round, where the country under review noted the following: “Violations of Criminal Code provisions are investigated by the municipal police, provincial police and by the Royal Canadian Mounted Police (RCMP). The prosecution of Criminal Code offences has traditionally been the role of the provinces, but there are exceptions to this general rule. For example, the Public Prosecution Service of Canada (PPSC) is

[82] The PPSC is also responsible for prosecuting fraud offences under the Financial Administration Act,¹⁰² offences under the Canada Elections Act, as well as prosecuting offences under the Corruption of Foreign Public Officials Act.¹⁰³ In all, it is responsible for prosecuting offences under more than 50 federal statutes.¹⁰⁴

[83] During the on-site visit, the representatives of the PPSC stated that in general, the provinces conduct prosecutions that fall under the Criminal Code, and that the PPSC is responsible for violations of federal statutes, such as the Corruption of Foreign Public Officials Act. In addition, there is no hierarchy in terms of prosecutions between the provincial and the federal levels. The PPSC may also conduct prosecutions for acts of corruption found in the Criminal Code. Therefore, fraud and corruption offences may be prosecuted at either the provincial or federal level. As set out in the Public Prosecution Service of Canada Annual Report, 2012 – 2013:¹⁰⁵

[84] *“The federal and provincial governments share jurisdiction over prosecutions. This shared jurisdiction means cooperation and coordination are essential to the effective enforcement of the law. The PPSC and provincial prosecution services have standing and ad hoc arrangements that allow the prosecution service prosecuting an offence within its jurisdiction to also prosecute related “minor” offences that would normally fall under the jurisdiction of the other prosecution service. For example, the PPSC may prosecute a Criminal Code offence that is within provincial jurisdiction with the consent and on behalf of a provincial attorney general where it is related to a more serious federal charge. Similarly, provincial prosecution services may prosecute federal offences when they come about in relation to a more serious offence under the Criminal Code. The delegation relates only to the conduct of the prosecution. The jurisdiction delegating the conduct of the prosecution retains ultimate control over the prosecution and over major decisions regarding the case.”*

[85] With respect to the manner the Director of Public Prosecutions is appointed, section 4 of the Director of Public Prosecutions Act provides that the Attorney General is to establish a selection committee consisting of a person named by the Federation of Law Societies of Canada; a person named by each recognized political party in the House of Commons; the Deputy Minister of Justice; the Deputy Minister of the Department of Public Safety and Emergency Preparedness; and a person selected by the Attorney General. The Attorney General submits to this committee a list of not more than 10 candidates whom he or she considers suitable to be appointed Director. These candidates must be a member of at least 10 years standing at the bar of any province. The Committee assesses the candidates and recommends three of them to the Attorney General, who will then select one whom he or she considers most suitable for the Office. This selection is then referred for approval to a parliamentary committee. If approval is not given, the Attorney General is to refer to the committee the appointment of another candidate recommended on the 10 candidates list. If approval is given by this parliamentary committee, it is recommended to the Governor in Council that the selected candidate be appointed Director of Public Prosecutions.¹⁰⁶

responsible for prosecuting all Criminal Code offences in the Territories and can generally prosecute offences under other Acts of Parliament throughout Canada. In addition, both the provinces and the PPSC can prosecute the Criminal Code violations of sections 380 (fraud) and 400 (false prospectus),” http://www.oas.org/juridico/english/mesicic3_can_resp.pdf

¹⁰² For example, see sections 80, 81 and 154.1 of the Financial Administration Act, *supra* note 6.

¹⁰³ Corruption of Foreign Public Officials Act, <http://laws-lois.justice.gc.ca/eng/acts/C-45.2/FullText.html>

¹⁰⁴ Response to the Questionnaire, pg. 18, *supra* note 25.

¹⁰⁵ Public Prosecution Service of Canada Annual Report, 2012 – 2013, pg. 5, http://www.ppsc-sppc.gc.ca/eng/pub/ar-ra/2012_2013/ar13-ra13.pdf

¹⁰⁶ See generally the Response to the Questionnaire, pg. 22, *supra* note 25.

[86] Section 5 of the Act further provides that the Director holds office, during good behavior, for a term of seven years and may be removed at any time by the Governor in Council for cause, with the support of a resolution of the House of Commons to that effect. The Director is not eligible to be reappointed for another term.

[87] Regarding the appointment of Deputy Directors of Public Prosecutions, the Attorney General is to consult a selection committee consisting of the Director, a person representing the Federation of Law Societies of Canada and the Deputy Ministers, before making a recommendation to the Governor in Council. This person must be a member of at least 10 years standing at the bar of any province.¹⁰⁷

[88] Federal prosecutors as well as any other officers and employees that are necessary to enable the Director to perform any of the duties and functions of the Office are appointed in accordance with the Public Service Employment Act.¹⁰⁸ As such, they are selected by merit-based selection process, as set out in section 30 of that Act, which also states that appointment to or from the public service must be free from political influence.¹⁰⁹ In addition, any federal prosecutor appointed must be a member of the bar of a province or territory.¹¹⁰

[89] As public servants, the prosecutors and other officers and employees are subject to the Values and Ethics Code for the Public Sector and the Policy on Conflict of Interest and Post-Employment, adherence to which is a condition of employment. Failure to observe the Code and Policy may result in disciplinary measures, up to and including termination of employment. Moreover, prosecutors are subject to the rules and guidelines contained in the Federal Prosecution Service Deskbook, a publication created by the former Prosecution Service of the Department of Justice Canada that deals with matters of prosecution policy, including conflicts of interest.¹¹¹

[90] The Director of Public Prosecutions Act may also retain the services of barristers, and in the Province of Quebec, advocates, to act as federal prosecutors, and with the approval of the Treasury Board, may fix and pay their fees, expenses and other remuneration.¹¹² During the on-site visit, the representatives of the PPSC clarified that these prosecutors, known as legal agents, work on low complex matters in small communities, predominantly on drug convictions.¹¹³ Currently, the representatives

¹⁰⁷ Section 6 of the Director of Public Prosecutions Act, *supra* note 82.

¹⁰⁸ Sections 7 and 8, *ibid*.

¹⁰⁹ Public Service Employment Act, *supra* note 22.

¹¹⁰ In this respect, the country under review, on footnote 45 of page 22 of its Response to the Questionnaire, notes that: “*In Canada, each province has its own Law Society and therefore, each Canadian province has an Act providing their law societies the authority to license and regulate lawyers in the public interest. These Acts regulate the administration all persons who practice law in a given province, and they ensure that they meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide.*”

¹¹¹ Federal Prosecution Service Deskbook, <http://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/fpd/index.html>. In the webpage of the PPSC, Deskbook and Director’s Guidelines, the following is noted: “*On February 21, 2007 the Attorney General of Canada issued a directive under section 10(2) of the Director of Public Prosecutions Act directing that all federal prosecutors and persons acting as federal prosecutors continue to be guided by the policies and guidelines set out in the Federal Prosecution Service Deskbook, with any modifications that circumstances may require, subject to any guidelines issued by the Director under paragraph 3(3)(c) of the Director of Public Prosecutions Act.*”

¹¹² Director of Public Prosecutions Act, section 7(2), *supra* note 82.

¹¹³ During the on-site visit, the representatives further clarified that are contracted based on a test of their knowledge of criminal law. In addition, other things that they look for in a legal agent is their ability to discharge their duties in a professional manner, as well ensure that their area of work has proper security in place. They are bound by the rules of their respective Law Society, and the terms and condition of employment, which also contain conflict of interest provisions. Every region in the country has an agent supervisor, which ensures that they are abiding by the terms and condition of

stated that they have around 500 legal agents working for the PPSC. These agents are subject to the Terms and Conditions of Fixed-Term Agreements of Agents, which contain important provisions on the terms and conditions of employment of the legal agents, as well as on conflicts of interests.¹¹⁴ Failure to comply with the Terms and Conditions or instructions from an Agent Supervisor may result in reduction or disallowance of accounts; initiation of a complaint before the appropriate professional disciplinary body; initiation of a civil action against the Agent; suspension or termination as Agent or *Ad Hoc* Agent; and suspension or termination of the Agreement as an Agent Firm of the Director.¹¹⁵ They are also subject to the rules and guidelines contained in the aforementioned Federal Prosecution Service Deskbook.

[91] With respect to manuals and other documents that describe the functions of its personnel, the PPSC follows the Federal Prosecution Deskbook. As stated earlier, it provides guidance on matters of prosecution policy. This also includes principles governing Crown counsel's conduct, and provides information related to employment issues and resources available to Crown counsel (lawyers employed by the government of Canada).¹¹⁶

[92] With respect to documented procedures for institutional strengthening or quality improvement of actions implemented, the PPSC, as with other government organizations, submits a yearly Report on Plans and Priorities (RPP), and an end of year Departmental Performance Report (DPR),¹¹⁷ which provides an overview on how the goals in an RPP were met. These reports provide an overview of spending and performance by the PPSC. Moreover, the PPSC is assessed in the Management Accountability Framework, which is a key performance management tool that the federal government uses to support the management accountability of deputy heads and improves management practices across departments and agencies. The PPSC underwent an assessment under this tool in 2011 – 2012.¹¹⁸

[93] With respect to training, there exists a School for Prosecutors, which is an in-house legal training program for federal prosecutors administered by the Law Practice Management Division of the PPSC.¹¹⁹ As noted in the website for the School for Prosecutors:¹²⁰

[94] *“A number of courses are offered annually in which a combination of lectures, seminars, panel discussions, and small group and workshop sessions (supported with written training materials) are used to enhance course participants’ understanding of the practice of criminal law. Attention is given to operational policies and guidelines, such as those contained in the Federal Prosecution Service Deskbook, that address important issues in prosecution practice. In addition to providing formal legal*

employments. The Terms and Conditions of Fixed-Term Agreements of Agents are available on the PPSC website at the following link: <http://www.ppsc-sppc.gc.ca/eng/pub/tcfa-cetf/index.html>

¹¹⁴ The Terms and Conditions of Fixed-Term Agreements of Agents, *ibid.* See also Agent Affairs, <http://www.ppsc.gc.ca/eng/aaf-man/index.html>

¹¹⁵ The Terms and Conditions of Fixed-Term Agreements of Agents, Sanctions, http://www.ppsc-sppc.gc.ca/eng/pub/tcfa-cetf/part1.html#part1_9

¹¹⁶ See for example, Federal Prosecution Service Deskbook, Part III: Principles Governing Crown Counsel's Conduct, <http://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/fpd/toc.html>, and Response to the Questionnaire, pg. 23, *supra* note 25.

¹¹⁷ These reports are available here: <http://www.ppsc-sppc.gc.ca/eng/pub/index.html>

¹¹⁸ 2011 – 2012 MAF Results – Public Prosecution Service of Canada, <http://www.tbs-sct.gc.ca/maf-crg/assessments-evaluations/2011/ppd/ppd-eng.asp>

¹¹⁹ See Response to the Questionnaire, pg. 24, *supra* note 25 and School for Prosecutors, <http://www.ppsc-sppc.gc.ca/eng/spr-epo/index.html>

¹²⁰ School for Prosecutors, *ibid.*

training, the School is also a forum for participants to meet, network, develop mentoring relationships, and enhance their sense of identity as federal prosecutors.

[95] *The core faculty of the School is made up of experts in criminal law, and is mostly drawn from the ranks of senior PPSC prosecutors from across the country. A number of guest speakers from outside the PPSC, including members of the judiciary, university professors, senior defence counsel, and experienced police investigators, also regularly instruct at the School's courses."*

[96] In the Response to the Questionnaire, the country under review states that the School is currently offering annually two different intensive one-week courses to approximately 70 prosecutors, which include legal agents, as well as some provincial prosecutors and senior law enforcement investigators. A combination of lectures, seminars, panel discussions and papers are used to teach the students and to enhance their understanding of the modern practice of criminal law. These courses also focus on operational policies and guidelines, such as those contained in the Deskbook.¹²¹

[97] Training is also offered internally with respect to the Corruption of Foreign Public Officials Act, to designated contacts in each of the PPSC's regional offices. As noted in the Thirteenth Annual Report to Parliament on the Implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the Enforcement of the Corruption of Foreign Public Officials Act (September 2011 – August 2012):¹²²

[98] *"These contacts, who are generally senior prosecutors, will act as local points of contact and coordinators in relation to CFPOA matters as they arise for prosecution. In addition, presentations have been made to the PPSC's Regional Directors in order to increase awareness of the OECD Convention, the CFPOA and the current activities of the RCMP [Royal Canadian Mounted Police] and the PPSC in this area."*

[99] With respect to the existence of documented procedures for performing their tasks, or of manuals or guides dealing with those duties, federal prosecutors, whether employees of the PPSC or legal agents, are guided by the rules and guidelines in the Federal Prosecution Deskbook.¹²³ Moreover, federal prosecutors are also subject to guidelines issued by the Director of Public Prosecutions with respect to the conduct of prosecutions. These directives touch on issues such as jury selection, the testimony of police officers and police civilian agents, drug treatment courts, as well as provide guidelines on amendments to legislation that may impact their work.¹²⁴ Finally, another guide is the Proposed Best Practices for Prosecuting Fraud against Governments, which deals with acts of fraud against the government committed by those having access to funds or other valuable public assets by virtue of their employment within a federal agency, or of a contractual relationship for the provision of required goods or services.¹²⁵

¹²¹ Response to the Questionnaire, pg. 24, *supra* note 25.

¹²² Thirteenth Annual Report to Parliament on the Implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the Enforcement of the Corruption of Foreign Public Officials Act (September 2011 – August 2012), <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corr-13.aspx?lang=eng>

¹²³ Directive 1 issued by the Attorney General in February 2007 directed all federal prosecutors to be guided by this manual, see Directive 1, <http://www.ppsc-sppc.gc.ca/eng/dia-dia/d01.html> and Response to the Questionnaire, pg. 24, *supra* note 25.

¹²⁴ Deskbook and Director's Guidelines, *supra* note 95.

¹²⁵ Proposed Best Practices for Prosecuting Fraud against Governments, <http://www.ppsc-sppc.gc.ca/eng/pub/pbp-mep/index.html>

[100] With respect to actions taken for institutional strengthening regarding transparency, the country under review notes that the PPSC issued to all employees a PPSC Values and Ethics Action Plan, has provided to all PPSC staff the TBS Policy on Harassment Prevention and Resolution and the Directive on the Harassment Complaint Process and has implemented a PPSC Code of Conduct, which is available to all PPSC employees on its intranet.

[101] With respect to this code, the Committee notes that in the 2012 - 2013 annual report of the PPSC, it states:

[102] *The PPSC Code of Conduct came into effect May 1st, 2013. The Code, which applies to all PPSC employees, complements the Values and Ethics Code for the Public Sector and is based on the PPSC's core values of respect, integrity, excellence, and leadership. The codes describe the behavioural expectations that must be met by employees during and after their employment.*¹²⁶

[103] Regarding the manner in which the general public is provided with information about their objectives and functions, the PPSC has a website which is located at <http://www.ppsc-sppc.gc.ca/eng/index.html>. In this respect, the public is informed of the procedures established for the performance of its functions, and is given guidance about how to carry out proceedings before the PPSC.¹²⁷ The webpage of the PPSC also contains contact information for public enquiries, as well as contact information for its headquarters in Ottawa, Canada, and that of the Chief Federal Prosecutor in the regional offices located throughout the country.¹²⁸

[104] With respect to internal controls, the PPSC has an Internal Audit Division, which assesses the effectiveness of the PPSC's processes and works with the Departmental Audit Committee to provide objective advice and recommendations to the DPP regarding the sufficiency, quality and results of the organization's risk management, control, and governance frameworks and processes.¹²⁹ The reports of this Division are available online.¹³⁰ In addition, during the on-site visit, the representatives of the PPSC stated that the PPSC has a multiyear risk based plan, where areas of high risk are identified. A risk assessment is carried out with respect to the operations in the regional offices of the PPSC. In this respect, audits of regional offices are done on a cyclical basis and they look at issues such as compliance of the prosecution operations with the PPSC's policies and procedures, compliance of administrative and financial practices with applicable laws, regulations, policies and procedures; and governance processes within a regional office.¹³¹

[105] Regarding mechanisms for dealing with claims, complaints, or allegations related to the pursuit of their objectives and the performance of their personnel, the country under review, in its Response to the Questionnaire, notes that the PPSC has instituted a Complaints Policy, which outlines the procedure for submission of complaints in respect of the work of the PPSC and for consideration by the PPSC.¹³² With this Policy, the PPSC seeks to “ensure that complaints are dealt with in a timely and clear manner and thereby help maintain public confidence in the administration of justice.”¹³³ A

¹²⁶ Public Prosecution Service of Canada Annual Report, 2012 – 2013, pg. 23, *supra* note 105.

¹²⁷ Response to the Questionnaire, pg. 25, *supra* note 25.

¹²⁸ Public Prosecution Service of Canada, Contact Us, <http://www.ppsc-sppc.gc.ca/eng/cct/index.html>

¹²⁹ Public Prosecution Service of Canada Annual Report, 2012 – 2013, pg. 24, *supra* note 105.

¹³⁰ Public Prosecution Service of Canada, Publications, <http://www.ppsc-sppc.gc.ca/eng/pub/index.html>

¹³¹ See for example, Audit of the Atlantic Regional Office Audit Report March 13, 2013, <http://www.ppsc-sppc.gc.ca/eng/pub/aatro-vbrat/2013/index.html>

¹³² See Response to the Questionnaire, pgs. 25 – 26, *supra* note 25 and PPSC Complaints Policy, <http://www.ppsc-sppc.gc.ca/eng/cmp-pln/index.html>

¹³³ PPSC Complaints Policy, *ibid.*

complaint may be made in respect of the conduct of a PPSC employee or legal agent, a PPSC service, procedure, practice or policy. Moreover, the Values and Ethics Code for the Public Sector provides that members of the public may also bring a matter to an organizational point of contact if they have reason to believe that a public servant has not acted in accordance with the Code.¹³⁴

[106] Moreover, during the on-site visit, the representatives from the PPSC stated that the Public Servants Disclosure Protection Act is in place for the PPSC. There are senior officers who receive disclosures, and the PPSC is required to track them. There are also corporate counsels for matters of conflicts of interest. Prosecutors are required to bring up any conflict of interest in their personal life, make a declaration on it, have it assessed and given conditions. The representatives stated that this mechanism is used extensively. There are also reprisal protection mechanisms in place.

[107] With respect to the manner in which the budgetary resources needed for their operations are ensured, the PPSC submits its Main Estimates for a year, which provides the financial resources that are required for a fiscal year.¹³⁵ With this submission, the PPSC is to also provide the Report on Plans and Priorities, which supplements the information, contained in the Main Estimates and describes departmental priorities, expected results and associated resource requirements covering three fiscal years.¹³⁶ The country under review, in its Response to the Questionnaire, notes that the PPSC's entire budget is dedicated to operations, that is, to provide prosecution services.¹³⁷ The budget for the operation of the PPSC is the following:

Year	Funding (\$ millions)
2013 – 2014 ¹³⁸	169.4
2012 – 2013 ¹³⁹	183
2011 – 2012	186.6
2010 – 2011	172.9
2009 – 2010	181.4

¹³⁴ Values and Ethics Code for the Public Sector, Avenues for Resolution, *supra* note 43.

¹³⁵ For example, the 2013 – 2014 Main Estimates for the PPSC is found here: <http://www.tbs-sct.gc.ca/ems-sgd/20132014/me-bpd/me-bpd02-eng.asp#toc2-96>

¹³⁶ The Reports on Plans and Priorities of the PPSC are found on its Publications website: <http://www.ppsc.gc.ca/Eng/pub/index.html>

¹³⁷ Response to the Questionnaire, pg. 26, *supra* note 25 and Public Prosecution Service of Canada Annual Report, 2012 – 2013, pg. 39, *supra* note 105.

¹³⁸ The numbers for 2013 – 2014 represent the planned spending for that fiscal year, taken from the Planning Summary section of the 2013 – 2014 Report on Plans and Priorities of the PPSC, http://www.ppsc.gc.ca/Eng/pub/rpp/2013_2014/index.html

¹³⁹ The budget numbers for the years 2009 – 2013 are taken from the Annual Reports of the PPSC, which are available on the Publications webpage of the PPSC, at <http://www.ppsc.gc.ca/Eng/pub/index.html>

[108] Regarding the manner in which the PPSC coordinates with other agencies or public authorities and secures the support of other authorities, as noted earlier, the PPSC enters into agreements with the provinces. Since they share jurisdiction, cooperation and coordination measures, such as standing and ad hoc arrangements between the PPSC and the provinces are essential for the effective enforcement of the law.¹⁴⁰ Moreover, the PPSC also works with the Department of Justice Canada, whereby prosecutors consult Justice counsel in areas such as human rights law, constitutional law, Aboriginal law and public law. Both organizations have also entered into memoranda of understanding to govern the corporate and legal services provided to each other and on each other's behalf.¹⁴¹ Finally, since the PPSC is not an investigative agency and prosecutes when a charge has been laid pursuant to an investigation by the Royal Canadian Mounted Police or some other police or investigative agency, it provides advice and assistance to investigators at the investigative stage and works closely with them, particularly in terrorism, criminal organization, proceeds of crime, money laundering, market fraud and mega cases.¹⁴² As noted in the Public Prosecution Service of Canada Annual Report, 2012 – 2013:¹⁴³

[109] *“The PPSC provides advice to law enforcement agencies during their investigations to ensure they are handled in a way that permits a prosecution on the merits of the case. The early and continual involvement of prosecutors during major investigations and in the implementation of national enforcement programs allows the police and other investigative agencies to benefit from legal advice as they decide how best to enforce the law.*

[110] *PPSC counsel provide advice on such issues as the disclosure of evidence required by law, and assist in obtaining key evidence-gathering orders, such as wiretap authorizations and orders to produce evidence.”*

[111] With respect to accountability mechanisms applicable to the performance of their duties, the country under review, in its Response to the Questionnaire, notes that as a federal government organization, the PPSC is accountable for reporting on its performance.¹⁴⁴ In this respect, it reports annually to Parliament on the results achieved and in meeting its organizational priorities through Departmental Performance Reports, which are available on the website of the PPSC.¹⁴⁵ They also set out some of the challenges the PPSC faces and the measures it has taken to respond to these challenges.¹⁴⁶

[112] The PPSC is also required to produce an annual report in respect to the activities of the office of the Director of Public Prosecutions, except in relation to matters referred to offences under the Canada Elections Act, as well as any appeal or other proceeding related to such prosecution, in the immediately preceding fiscal year.¹⁴⁷ This annual report provides an overview of the PPSC, a year in review of prosecutions carried out by this Service, regional profiles, and financial information, among other things. The annual reports are publicly available on the website of the PPSC.¹⁴⁸

¹⁴⁰ Public Prosecution Service of Canada Annual Report, 2012 – 2013, pg. 5, *supra* note 105.

¹⁴¹ *Ibid.*

¹⁴² Response to the Questionnaire, pg. 20, *supra* note 25.

¹⁴³ Public Prosecution Service of Canada Annual Report, 2012 – 2013, pg. 5, *supra* note 105.

¹⁴⁴ Response to the Questionnaire, pg. 27, *supra* note 25.

¹⁴⁵ The Departmental Performance Reports are available in the Publications webpage of the PPSC, at <http://www.ppsc.gc.ca/Eng/pub/index.html>

¹⁴⁶ See Departmental Performance Report 2012 – 2013, Message from the Director of Public Prosecutions, http://www.ppsc.gc.ca/Eng/pub/dpr-rmr/2012_2013/index.html

¹⁴⁷ Section 16 of the Director of Public Prosecutions Act, *supra* note 82 and Response to the Questionnaire, pg. 27, *supra* note 25.

¹⁴⁸ The Annual Reports are available in the available in the Publications webpage of the PPSC, at <http://www.ppsc.gc.ca/Eng/pub/index.html>

[113] In addition, the PPSC maintains on its website a section on Proactive Disclosure, a measure implemented by Canada to strengthen public sector management by enhancing transparency and oversight of public resources in the federal government. This section contains the mandatory financial and human resources related information with respect to the PPSC, such as travel and hospitality expenses for selected government officials; contracts entered into by the Government of Canada for amounts over \$10 000 (with only limited exceptions such as national security); and the reclassification of positions. This section also includes information on the awarding of grants and contributions of over \$25 000; and annual reports of expenditures on travel, hospitality and conference for the PPSC.¹⁴⁹

[114] The Committee also notes that the PPSC, on its Publications webpage, also provides financial statements and quarterly financial reports.¹⁵⁰

2.2. Adequacy of the legal framework and/or other measures

[115] The PPSC has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 2.1 of this report. However, the Committee believes it timely to make a number of observations in relation thereto:

[116] First, the Committee notes that the Corruption of Foreign Public Officials Act, an act that criminalizes transnational bribery, was recently amended in order to better meet Canada's anti-corruption obligations under international treaties on the subject, including the Inter-American Convention against Corruption.¹⁵¹ The amendments, among other things, increase the maximum sentence of imprisonment applicable to the offence of bribing a foreign public official; and eliminate the facilitation payments exception to that offence.¹⁵² Two further amendments are of note.

[117] First, in addition to the territorial jurisdiction, the Act establishes national jurisdiction for application to offences under the Act, which allows the country under review to prosecute Canadian companies, Canadian citizens, and permanent residents present in Canada after they have committed the offence of bribing a foreign public official, without having to provide evidence of a link between Canada and the offence. As noted in the Legislative Summary to the Bill that introduced the proposed amendments, "...the new section will allow the Government of Canada to exercise jurisdiction over all persons or companies that have Canadian nationality, regardless of where the alleged bribery has taken place."¹⁵³

[118] Secondly, the Act makes it a criminal offense to falsify books and records for the purpose of bribing a foreign government official or of hiding bribery, such as maintaining off-books accounts; not recording or inadequately recording transactions; recording non-existent expenditures; inaccurately identifying liabilities; knowingly using false documents; or intentionally destroying accounting books and records earlier than permitted by law.

[119] With these amendments, the Committee considers that this may potentially increase the opportunities for prosecution of transnational bribery, as more Canadian companies, citizens and permanent residents will fall under the scope of application of the Act, and these actors will also be subject to the newly created criminal offense with respect to accounting.

¹⁴⁹ See PPSC Proactive Disclosure, <http://www.ppsc.gc.ca/eng/tra/index.html>

¹⁵⁰ PPSC Financial Reports, <http://www.ppsc-sppc.gc.ca/eng/pub/index.html>

¹⁵¹ See Legislative Summary to Bill S-14: An Act to amend the Corruption of Foreign Public Officials Act, pg.1, <http://www.parl.gc.ca/Content/LOP/LegislativeSummaries/41/1/s14-e.pdf>

¹⁵² *Ibid.*

¹⁵³ *Ibid.*, pg. 7.

[120] Given the increased avenues for prosecution presented by the amendments to the Act, the Committee considers that the country under review should consider ensuring that the PPSC has adequate financial and human resources so that it may effectively carry out its prosecutorial role in enforcing the Act and help meet Canada's anti-corruption obligations. As mentioned under section 2.1, the PPSC is responsible for prosecuting all offences under the Act. The Committee notes that in the Response to the Questionnaire, the country under review states that it has appointed one prosecutor as a national coordinator for all pre-charge advice and prosecutions under the Act, for all of Canada, and in the 2012 – 2013 Annual Report of the Public Prosecution Service of Canada, reference is made to prosecutors in Ottawa conducting the first prosecution of an individual under the Act.¹⁵⁴ The country under review notes that this national coordinator actively works with the Royal Canadian Mounted Police to identify cases, which are expected to come forward, and in turn works with the PPSC offices in affected regions to ensure that the necessary expertise is in place to manage the cases as they arise. The country under review also notes that while it is anticipated that additional resources will be needed in relation to CFPOA prosecutions, flexibility is required in the provision of those resources, because, unlike other jurisdictions, it is not PPSC practice to assign prosecutors full-time to one type of cases particularly in areas where charges are relatively infrequent, and instead, the PPSC takes a flexible approach by assigning the right resources to a given case at the right time. The Committee notes that the 2012 – 2013 Annual Report of the Public Prosecution Service of Canada, regulatory and economic prosecutions, such as those for transnational bribery, can be complex and resource-driven.¹⁵⁵ Given the foregoing, the Committee will formulate a recommendation. (see Recommendation 2.4.1 in Section 2.4 of Chapter II of this Report)

[121] In this regard, Senators and Members of Parliament also noted the need for adequate human and financial resources to effectively apply the Act in the deliberations during the readings of the bill that introduced the amendments in the Senate and the House of Commons, for effective investigation and prosecution of transnational bribery.¹⁵⁶

[122] In addition, the civil society organization, Transparency International Canada, notes, in its Response to the Questionnaire of the Fourth Round of Review, the following as a difficulty with respect to the PPSC in carrying out its functions:

[123] *“As compared with other jurisdictions, the existence of a single subject-matter expert on international corruption in the PPSC is indicative of a shortage of expertise focused on the prosecution of corruption.”*¹⁵⁷

¹⁵⁴ Response to the Questionnaire, pg. 44, *supra* note 25 and Public Prosecution Service of Canada Annual Report, 2012 – 2013, pg. 11, *supra* note 105.

¹⁵⁵ Public Prosecution Service of Canada Annual Report, 2012 – 2013, *ibid*, pg. 10.

¹⁵⁶ For example, see the comments of the Hon. David P. Smith during the second reading of Bill S-14, where in the context of investigating transnational bribery, he states: *“The bill will empower the RCMP [Royal Canadian Mounted Police] with the exclusive ability to lay charges under the act... This amendment will strengthen its role. Our hope is that the government will ensure adequate resources to go along with this. Nowhere does the bill address this, but we will monitor the situation to ensure that the government provides the necessary backup,”* Second Reading of Bill S-14, http://www.parl.gc.ca/Content/Sen/Chamber/411/Debates/140db_2013-02-27-e.htm?Language=E#24 . Moreover, see the deliberations in the Second Reading of the bill in the House of Commons, at <http://www.parl.gc.ca/HousePublications/Publication.aspx?Pub=Hansard&Doc=255&Parl=41&Ses=1&Language=E&Mode=1> and <http://www.parl.gc.ca/HousePublications/Publication.aspx?Pub=Hansard&Doc=262&Parl=41&Ses=1&Language=E&Mode=1>

¹⁵⁷ See the Response of Transparency International Canada to the Questionnaire of the Fourth Round of Review, pgs. 18 – 19, *supra* note 3.

[124] Second the Committee observes that the PPSC has important manuals in place that provide rules and guidelines on the conduct of prosecutions in Canada, most notably the Federal Prosecution Deskbook. The Committee notes, however, that it appears that the last update to this manual occurred in October 2005, and therefore is outdated. For example, the last update predates the creation of the PPSC itself. Important aspects such as the organizational structure of the PPSC and its mandate, including the role of the Director of Public Prosecutions and the efforts to make this Office independent are not reflected in this manual. The Committee does note that in the Reports on Plans and Priorities of the PPSC, mention has been made of ongoing work on a major revision of the Deskbook,¹⁵⁸ and in the last Departmental Performance Report for this oversight body, it notes that a PPSC Deskbook will be launched early in 2014.¹⁵⁹ The Committee looks forward to this anticipated update, given that the manual dates from 1993.¹⁶⁰

[125] The outdated material is not only limited to the Deskbook. An important guide, as set out in section 2.1, is the Proposed Best Practices for Prosecuting Fraud against Governments, which deals with acts of fraud against the government committed by those having access to funds or other valuable public assets by virtue of their employment within a federal agency, or of a contractual relationship for the provision of required goods or services.¹⁶¹ The Attorney General, in 2007, assigned to the Director of Public Prosecutions the responsibility of developing a set of best practices for prosecuting frauds against the government.¹⁶² This best practice was developed as a response to the creation of new indictable offences that came into force in 2007, with the enactment of amendments to the Financial Administration Act. The Committee notes that this best practice was established on September 24, 2009, and makes reference to the Treasury Board Secretariat (TBS) Policy on Losses of Money and Offences and other Illegal Acts against the Crown, the objective of this policy being to ensure accountability for all losses of money and all allegations of offences and illegal acts against the Crown and other improprieties by reporting and investigating them, and taking appropriate action.¹⁶³ Various actions are to take place with the TBS, such as developing a strategy to increase awareness of this Policy, cooperate with the Department of Justice to review the Policy with a view of updating it, and provide legal advice in a timely manner to federal departments which suspect they are victims of fraud or to determine whether or not the incidents should be reported to the police. However, this Policy was rescinded a week after implementation of the best practice, and replaced on October 1, 2009 with the Directive on Losses of Money or Property.¹⁶⁴

[126] Given the foregoing, the Committee considers that the PPSC should update its guides and manuals. The Committee will formulate a recommendation. (see Recommendation 2.4.2 in Section 2.4 of Chapter II of this Report)

[127] Third, of particular note, the Committee highlights a specific matter for updating in the Deskbook, and that is the chapter on the Corruption of Foreign Public Officials Act. Currently, this chapter focuses solely on the reporting requirements of the Act, which requires the Minister of Foreign Affairs, the Minister for International Trade, the Minister of Justice and the Attorney General

¹⁵⁸ See the section on Planning Highlights under Program #2: Regulatory offences and economic crime prosecution program in the 2012 – 2013 and 2013 – 2014 Reports on Plans and Priorities of the PPSC, *supra* note 136.

¹⁵⁹ See Program 2: Regulatory Offences and Economic Crime Prosecution Program, Departmental Performance Report of the PPSC, 2012 – 2013, *supra* note 146.

¹⁶⁰ *Ibid.*

¹⁶¹ Proposed Best Practices for Prosecuting Fraud against Governments, *supra* note 125.

¹⁶² Assignment 1 of February 21, 2007, <http://www.ppsc-sppc.gc.ca/eng/dia-dia/a01.html>

¹⁶³ Policy on Losses of Money and Offences and Other Illegal Acts Against the Crown, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12209§ion=text>

¹⁶⁴ Directive on Losses of Money or Property, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=15792§ion=text>

to jointly prepare a report on the implementation of the Convention on Combating Bribery of a Foreign Public Officials in International Business Transactions, and on the enforcement of the Act.¹⁶⁵ The Committee believes this chapter should be updated to reflect the new amendments that have come into force for the Act. In addition, it may be beneficial to include an overview of the PPSC's practice and policies relevant to prosecution of the offenses set out in the Act, rather than just focus on the reporting requirements, much like what is found in Part VI of the Deskbook with respect to the chapters on proceeds of crime and other types of litigation.¹⁶⁶ The Committee will formulate a recommendation. (see Recommendation 2.4.3 in Section 2.4 of Chapter II of this Report)

[128] Finally, another step that the country may undertake is publishing, under the Proactive Disclosure area of the PPSC website, information on founded wrongdoing as set out under section 11(c) of the Public Servants Disclosure Protection Act, by describing the wrongdoing, including the identity of the person found to have committed it if necessary in order to describe the wrongdoing adequately; the recommendations, if any, set out in any report made to the chief executive; and any corrective action taken by the chief executive or the reasons why no corrective action was taken. This information is currently not found on the PPSC website. It is difficult to determine whether such wrongdoings have occurred, and have yet to be reported online, or that in the years since the Public Servants Disclosure Protection Act has been in force, no such founded wrongdoings have occurred in the PPSC. In either case, this information should be provided in the Proactive Disclosure section of the PPSC website, similar to what is provided by the Treasury Board Secretariat. Under that Secretariat, although no cases of founded wrongdoings have been made, this organization makes that known to the public all the same.¹⁶⁷ The PPSC may consider instituting a similar policy. The Committee will formulate a recommendation. (see Recommendation 2.4.4 in Section 2.4 of Chapter II of this Report)

2.3. Results of the legal framework and/or other measures.

[129] The Committee observes that the country under review maintains results on the outcomes of charges under the Criminal Code and of relevant federal statutes. The following is a summary of the information provided to the Committee subsequent to the visit with respect to relevant provisions of the Criminal Code:¹⁶⁸

Outcomes during Fiscal Years 2008/09 to 2012/13 on Charges under the Criminal Code, sections 122, 380 and 462.31, per Section and by Year					
Criminal Code	2008/09	2009/10	2010/11	2011/12	2012/13
Section 122 (Breach of trust by public officer)					
Acquittal	0	0	2	0	0

¹⁶⁵ See Federal Prosecution Service Deskbook, Part VI: Policy in Certain Types of Litigation, Chapter 33 Corruption of Foreign Public Officials, <http://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/fpd/ch33.html>, and Section 12, Corruption of Foreign Public Officials Act, *supra* note 103.

¹⁶⁶ Federal Prosecution Service Deskbook, Part VI: Policy in Certain Types of Litigation, <http://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/fpd/toc.html>

¹⁶⁷ See Disclosure of Information on Founded Wrongdoing at the Treasury Board Secretariat (TBS) – Reports, <http://www.tbs-sct.gc.ca/pd-dp/dww-dcapt/report-rapport-eng.asp>

¹⁶⁸ Public Prosecution Service of Canada – Results on Outcomes, http://www.oas.org/juridico/pdfs/mesicic4_can_out.pdf

No Outcome on Charge - Ongoing Matter Still Before the Courts	0	1	0	3	18
Withdrawal of Charge	0	1	1	0	0
Section 380 (Fraud)					
Acquittal	0	5	2	2	3
Appeal Abandoned	0	1	0	0	0
Charges Declined	0	3	0	0	0
Conviction	15	30	9	1	11
Conviction (Other/Lesser Off.)	1	0	2	0	0
Discharge	0	0	1	0	0
Diversion	0	0	0	1	1
Guilty Plea	113	124	42	50	15
Guilty Plea (Other/Lesser Off.)	0	0	0	2	0
Judicial Stay of Proceedings	3	0	1	1	0
No Outcome on Charge - Ongoing Matter Still Before the Courts	110	131	123	75	368
Quashed	0	1	0	0	0
Stay of Proceedings (Crown)	84	56	18	15	34
Withdrawal of Charge	59	60	21	25	29
Section 462.31 (Laundering proceeds of crime)					
Acquittal	0	0	1	1	0
Charges Declined	0	1	1	2	0
Conviction	2	2	3	1	0
Guilty Plea	5	13	5	3	0
No Outcome on Charge - Ongoing Matter Still Before the Courts	34	38	20	36	41
Stay of Proceedings (Crown)	1	2	6	8	9
Withdrawal of Charge	32	29	16	11	6

[130] The Committee notes that the acts of corruption found in the Criminal Code are indictable offenses and therefore not subject to a statute of limitations. In addition, the numbers reflect solely the prosecutions and outcomes carried out by the PPSC as an oversight body, and do not include the

prosecutions and outcomes carried out by provincial prosecutors. As stated in section 2.1, the provinces have traditionally been responsible for carrying out prosecutions under the Criminal Code, rather than the PPSC. However, the country under review did provide statistics with respect to the prosecutions of acts of corruption found in the Criminal Code, as carried out by the provinces and are available here: http://www.oas.org/juridico/pdfs/mesicic4_can_stat.pdf.¹⁶⁹

[131] The country under review also maintains results on the outcomes of charges regarding the offences contained in relevant federal statutes that address anti-corruption matters, which are indictable offenses and therefore not subject to a statute of limitations. The following is a summary of the information provided to the Committee subsequent to the visit with respect to relevant provisions of the Corruption of Foreign Public Officials Act and the Financial Administration Act.¹⁷⁰

Outcomes during Fiscal Years 2008/09 to 2012/13 on Charges under the Corruption of Foreign Public Officials Act and the Financial Administration Act, per Section, Statute and by Year					
Corruption of Foreign Public Officials Act	2008/09	2009/10	2010/11	2011/12	2012/13
Section 3 (Bribing a foreign public official)					
No Outcome on Charge - Ongoing Matter Still Before the Courts	1	0	1	2	1
Financial Administration Act					
There were no recorded charges under sections 80 (offences and punishment and frauds against the government), 81 (where bribes offered or accepted) and 154.01 of the Financial Administration Act (fraud against Her Majesty). ¹⁷¹					

[132] With respect to the Corruption of Foreign Public Officials Act, in the Response to the Questionnaire, reference is made to a prosecution and 2 further cases that were underway at the moment the country under review submitted its Response to the Questionnaire in June 2013.¹⁷² Further results are also presented in an annual report on implementation and enforcement of the Act. The Committee ascertains, upon reviewing the information in the annual reports of the Act and of the PPSC,¹⁷³ that there have been 4 convictions under the Act since 1999, when the Act was enacted,

¹⁶⁹ Statistics on Acts of Corruption – Provinces and Territories. In addition, the Committee also takes into account the following statement by the country under review, in its Response to the Questionnaire, pg. 44, *supra* note 25, “*In Fiscal Year 2011-2012, approximately 89% of all litigation files were within the drug, Criminal Code and terrorism offences prosecution program (which includes organized crime offences), whereas close to 11% involved the prosecution of federal regulatory offences and economic crime.*”

¹⁷⁰ Public Prosecution Service of Canada – Results on Outcomes, *supra* note 168.

¹⁷¹ Information provided in the table Public Prosecution Service of Canada – Results on Outcomes, *ibid*, and from the country under review in subsequent exchange of emails.

¹⁷² Response to the Questionnaire, pgs. 44 – 45, *supra* note 25.

¹⁷³ See Public Prosecution Service of Canada Annual Report, 2012 – 2013, pg. 11, *supra* note 105 and Twelfth and Thirteenth Annual Report to Parliament on the Implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the Enforcement of the Corruption of Foreign Public Officials Act, available at <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corruption.aspx?lang=eng>

with the first trial and conviction of an individual occurring in 2013.¹⁷⁴ In addition, there are 35 ongoing investigations.

[133] Finally, the Committee takes note of the statistical data compiled by the country under review on the outcome of charges for corruption offenses with respect to relevant Criminal Code provisions. However, the Committee observes that this information is not available online and thus not available to the general public. In that regard, the Committee considers that the country under review would benefit from making this information easily available to the general public. The Committee will formulate a recommendation. (see Recommendation 2.4.5 in Section 2.4 of Chapter II of this Report)

2.4. Conclusions and recommendations.

[134] Based on the comprehensive review conducted with respect to the Public Prosecution Service of Canada in the foregoing sections, the Committee offers the following conclusions and recommendations:

[135] Canada has considered and adopted measures intended to maintain and strengthen the Public Prosecution Service of Canada as an oversight body, as described in Chapter II, Section 1 of this Report.

[136] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 2.4.1 Provide the Public Prosecution Service of Canada with the budgetary and human resources needed for adequate enforcement of the Corruption of Foreign Public Officials Act, within available resources. (See section 2.2 of Chapter II of this Report). (See section 1.2. of Chapter II of this Report)
- 2.4.2 Update the guides and manuals of the Public Prosecution Service of Canada, in particular the Federal Prosecution Service Deskbook and the Proposed Best Practices for Prosecuting Fraud against Governments. (See section 2.2 of Chapter II of this Report)
- 2.4.3 Update the chapter on the Corruption of Foreign Public Officials Act in the Federal Prosecution Service Deskbook so that it provides an overview on practices and policies relevant to prosecution of the offenses set out in the Act. (See section 2.2 of Chapter II of this Report)
- 2.4.4 Report whether or not founded wrongdoings have occurred in the Proactive Disclosure section of the website of the Public Prosecution Service of Canada. (See section 2.2 of Chapter II of this Report)
- 2.4.5 Make publicly available its statistical information with respect to relevant criminal code provisions on offences related to acts of corruption, in a manner that is more readily available to the general public. (See section 2.3 of Chapter II of this Report)

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¹⁷⁴ See *R. v. Karigar*, 2013 ONSC 5199 (CanLII), <http://canlii.ca/t/g03dw>

3.1. Existence of provisions in the legal framework and/or other measures.

[137] The Public Service Commission (PSC) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[138] The Public Service Employment Act establishes that the PSC is continued, consisting of a President and two or more other Commissioners.¹⁷⁵ The mandate of the Commission is, a) to appoint, or provide for the appointment of, persons to or from within the public service; b) to conduct investigations and audits in accordance with this Act; c) to administer the provisions of the Public Service Employment Act relating to political activities of employees and deputy heads, and d) perform any functions in relation to the public service that are assigned to it by the Governor in Council.¹⁷⁶ In this respect, the role of the PSC is to promote and safeguard merit-based appointments that are free from political influence in the public service and, in collaboration with other stakeholders, protect the non-partisan nature of the public service.¹⁷⁷

[139] As it is responsible for promoting and safeguarding merit-based appointments that are free from political influence, the PSC reports independently on its mandate to Parliament.¹⁷⁸

[140] With respect to the appointment of persons to or from within the public service, the Public Service Employment Act allows for the PSC to delegate to deputy heads its authority for making appointments, subject to certain terms and conditions. As noted in a document presented during the on-site visit, the country under review has a highly delegated staffing system in place.¹⁷⁹ Though the PSC has the exclusive authority to make appointments to and within the public service, it delegates most of its staffing authorities to deputy heads.¹⁸⁰ When the delegation is provided to a deputy head to make appointments pursuant to an internal process, the delegation includes the power to revoke those appointments or take corrective action whenever the deputy head, after an investigation is satisfied that an error, an omission or improper conduct affected the selection of a person or appointment.¹⁸¹ The

¹⁷⁵ Public Service Employment Act, section 4(1), *supra* note 22.

¹⁷⁶ Sections 11 and 12, *ibid.* Section 2 of the Act provides that ‘public service’ is defined as meaning several positions in or under the departments named in Schedule I to the Financial Administration Act; the organizations named in Schedule IV to that Act; and the separate agencies named in Schedule V to the Act. ‘Employee’ is defined as meaning a person employed in that part of the public service to which the Commission has exclusive authority to make appointments. With respect to ‘deputy head,’ the Act provides that it means: a) in relation to an organization named in Schedule I to the Financial Administration Act, its deputy minister; b) in relation to any organization or part of an organization that is designated as a department under the Act, the person that the Governor in Council designates as the deputy head for the purposes of the Act; and c) in relation to any organization named in Schedule IV or V of the Financial Administration Act to which the Commission has exclusive authority to make appointments, its chief executive officer, or if there is no chief executive officer, its statutory deputy head or, if there is neither, the person designated by the Governor in Council as its deputy head for the purposes of the Act. A ‘department’ is defined as meaning: a) an organization named in Schedule I of the Financial Administration Act; b) any other organization that is designated by the Governor in Council as a department for the purposes of the Act; and c) any part of any organization that is designated by the Governor in Council as a department for the purposes of the Act.

¹⁷⁷ See the document provided during the on-site visit, Presentation, Public Service Commission of Canada, slide 5, http://www.oas.org/juridico/pdfs/mesicic4_can_psc.pdf

¹⁷⁸ Response to the Questionnaire, pg. 9, *supra* note 25 and section 23 of the Public Service Employment Act, *supra* note 22. See also the preamble to this Act, which states that “Canada will continue to benefit from a public service that is based on merit and non-partisanship and in which these values are independently safeguarded.”

¹⁷⁹ Presentation, Public Service Commission of Canada, slide 10, *supra* note 177.

¹⁸⁰ Delegations are carried out through an Appointment Delegation and Accountability Instrument. This Instrument identifies the appointment and appointment-related authorities being delegated, the authorities that may be sub-delegated, the conditions of delegation and the manner the organization will be held accountable, see Appointment Delegation and Accountability Instrument, <http://www.psc-cfp.gc.ca/plcy-pltq/frame-cadre/delegation/adai-idrn/index-eng.htm>

¹⁸¹ Sections 15(3) and 16 of the Public Service Employment Act, *supra* note 22.

Commission may revise or rescind the delegation at any time and deputy heads are subject to any policies established by the Commission with respect to these delegated powers and functions.¹⁸² Currently, 82 deputy heads subject to the Public Service Employment Act have this authorization.¹⁸³

[141] Regarding the administration of provisions of the Public Service Employment Act relating to political activities of employees and deputy heads, the Act recognizes the right of employees to engage in a political activity, while maintaining the principle of political impartiality in the public service.¹⁸⁴ Moreover, it sets out specific roles and responsibilities for employees and the PSC with respect to political activities and the administration of the related political activities regime.¹⁸⁵

[142] With respect to conducting investigations and audits in accordance with this Act, the PSC carries out ongoing monitoring of the staffing performance of delegated organizations, the conduct of audits that provide an independent assessment of the performance and management of staffing activities; and the conduct of investigations of staffing processes and improper political activities by public servants and deputy heads.¹⁸⁶

[143] In this respect, Part 5 of the Act provides the PSC with the power to conduct investigations into external appointment processes for issues of merit, error, omission or improper conduct. The PSC may also conduct an investigation for these same issues in internal appointment processes when at the request of a deputy head or for non-delegated appointments.¹⁸⁷ For all appointment processes, whether external or internal, the PSC has the power to conduct investigations for suspicion of political influence, fraud, and improper political activities by an employee or deputy head. Regarding appointments, the PSC may issue any corrective action that it considers appropriate, including revocation of an appointment, following a founded investigation. In the case of improper political activities, the PSC may dismiss an employee or make any corrective action that it considers appropriate.¹⁸⁸

[144] With respect to its audit functions, the PSC, during the on-site visit, stated that the focus was primarily on staffing performance. There are approximately 82 organizations covered by the Public Service Employment Act. The PSC's audit objectives are as follows: to determine whether the organization has an appropriate framework, systems and practices in place to manage its appointment activities, and to determine whether appointments and appointment processes in the organization comply with the Public Service Employment Act, the Public Service Employment Regulations, the PSC Appointment Framework, and related organizational appointment policies.¹⁸⁹ Depending on the conclusions drawn from an audit, the PSC may provide an organization with recommendations for improving its staffing practices and ensuring compliance with legislative, regulatory and policy requirements. Further, depending on the issues raised, the PSC may take additional action, including

¹⁸² Section 15(2), *ibid.*

¹⁸³ Response to the Questionnaire, pg. 9, *supra* note 25.

¹⁸⁴ Section 112 of the Public Service Employment Act, *supra* note 22.

¹⁸⁵ See Part 7 of the Public Service Employment Act, *ibid.* and Response to the Questionnaire, pg. 9, *supra* note 25.

¹⁸⁶ See section 17 and Part 5 of the Public Service Employment Act, *ibid.* and Response to the Questionnaire, pg. 9, *supra* note 25.

¹⁸⁷ See Response to the Questionnaire, pg. 11, *ibid.*, and the document presented during the on-site visit, Public Service Commission Branch, Investigations Branch, http://www.oas.org/juridico/pdfs/mesicic4_can_psc_inv.pdf

¹⁸⁸ Response to the Questionnaire, pg. 15, *ibid.* The country under review also notes that deputy heads may be dismissed by the Governor in Council if the PSC substantiates an allegation by a person who is or has been a candidate in an election that a deputy head has engaged in a political activity other than voting, see section 119 of the Public Service Employment Act, *supra* note 22.

¹⁸⁹ The PSC audit reports may include an assessment, among other things, planning for staffing, appointment policies and compliance with appointment based on merit, see Audit Plan for 2013 – 2014 and 2014 – 2015, Audit Reports, <http://www.psc-cfp.gc.ca/adt-vrf/frame-cadre/2013-2014/index-eng.htm>

working collaboratively with the organization, to address the issues or imposing additional terms and conditions on the delegation to these organizations. These audits, which provide important information about the integrity of the staffing system, are tabled to Parliament and are available online.¹⁹⁰ They carry out approximately 10 - 15 audits a year, and the PSC has carried out audits in approximately 50 out of 82 organizations in the current seven year audit cycle. The PSC also conducts government-wide audits of specific issues in a number of organizations to enhance its understanding of the staffing system, draw attention to potential staffing issues and identify lessons learned and noteworthy practices.¹⁹¹

[145] The country under review also provides information in its Response to the Questionnaire regarding the exercise of the function of the PSC in conjunction or concert with other agencies or authorities.¹⁹² For example, the Public Service Employment Act establishes the Public Service Staffing Tribunal, an independent, quasi-judicial body, which is responsible for addressing complaints related to internal appointments and lay-offs in the federal public service.¹⁹³ The country under review further notes that the General Counsel advises the Commission on whether any power, function or duty to be exercised by the Commission is within its jurisdiction.¹⁹⁴

[146] With respect to the manner in which they adopt their decisions, a quorum of the majority of the PSC is required for all decisions, approvals and orders of the Commission.¹⁹⁵ These decisions are to be made by a majority of the Commission members, though it shall work towards a consensus.¹⁹⁶ All decisions are to be captured in a Record of Decision that reflect the fact that decisions are made at a meeting of the Commission, and should also reflect the date on which the decision was made and the date on which it was signed.¹⁹⁷ These decisions, including those respecting investigation decisions, are subject to judicial review.¹⁹⁸ The Director, Jurisdiction is responsible for decisions related to jurisdiction, which includes whether to investigate. This responsibility was provided through a delegation of authority from the Commission to the Director. The outcome of an investigation and the decision to implement corrective actions (as well as the form of those corrective actions), and the decision on whether to disclose personal information, are all decisions taken by the Commission (comprised of the President and the part-time Commissioners). These are presented to the Commission in the form of recommendations from the Investigations Branch.¹⁹⁹

[147] Regarding the manner in which senior officers are selected, section 4(2) of the Public Service Employment Act provides that in order to be eligible to hold office as a Commissioner, a person must be

¹⁹⁰ The audit reports are found in the Publications webpage of the PSC, at: <http://www.psc-cfp.gc.ca/adt-vrf/comrpt-rapter-eng.htm>. See also Audit Plan for 2013 – 2014 and 2014 – 2015, Introduction, *ibid*.

¹⁹¹ Audit Plan for 2013 – 2014 and 2014 – 2015, Introduction, *ibid*.

¹⁹² Response to the Questionnaire, pg. 10, *supra* note 25.

¹⁹³ Section 88 of the Public Service Employment act, *supra* note 22. The country under review notes that on December 12, 2013, the Government of Canada's Economic Action Plan 2013 Act, No.2 received Royal Assent. Included in the Act are provisions to merge the Public Service Staffing Tribunal and the Public Service Labour Relations Board into an organization called the Public Service Labour Relations and Employment Board (PSLRB) in order to consolidate their recourse mechanisms. Provisions to create the new Board will come into force on a date that has yet to be determined by Order in Council.

¹⁹⁴ Response to the Questionnaire, pg. 10, *supra* note 25. The General Counsel is a Justice Department representative assigned to the PSC, who provides legal advice and any other advice as required, see Operating Principles of the Public Service Commission, 3.7 The General Counsel, <http://www.psc-cfp.gc.ca/centres/bylaw-reglements-eng.htm>

¹⁹⁵ Section 7(1) of the Public Service Employment Act, *supra* note 22 and Response to the Questionnaire, pg. 12, *ibid*.

¹⁹⁶ See Operating Principles of the Public Service Commission, 3.9 Decision Making Procedures, *supra* note 194.

¹⁹⁷ *Ibid*.

¹⁹⁸ Response to the Questionnaire, pg. 12, *supra* note 25.

¹⁹⁹ See Response to the Questionnaire, *ibid*, and Framework for Mandated Investigations Relating to Appointment Processes, <http://www.psc-cfp.gc.ca/inv-eng/frame-cadre/main-enu-eng.htm>

a Canadian Citizen or a permanent resident. The President serves on a full-time basis while the other Commissioners serve on a part-time basis. The President is appointed under the Great Seal, after approval by resolution of the Senate and the House of Commons, and the Governor in Council appoints the Commissioners. They hold office for a term of seven years, and may be removed by the Governor in Council at any time on address of the Senate and the House of Commons. They are eligible to be reappointed for a further term not exceeding seven years. The Commissioners may not accept or hold any office or employment or carry on any activity that is inconsistent with their functions, and the President is required to devote a whole of his or her time to the performance of the President's functions.²⁰⁰ The Commissioners are subject to the Conflict of Interest Act,²⁰¹ the Guide for Ministers and Ministers of State and the Ethical and Political Activity Guidelines for Public Office Holders.²⁰²

[148] With respect to the manner in which human resources needed for their operations are identified, section 9 of the Public Service Employment Act provides that the Commission may appoint the persons necessary for the proper conduct of its work. These persons are appointed according to the Public Service Employment Act, the Public Service Employment Regulations and related appointment policies and are based on merit and free from political influence.²⁰³ As public servants, they are bound by the Values and Ethics Code for the Public Sector and the Policy on Conflict of Interest and Post-Employment, adherence to which is a condition of employment. The PSC is also empowered to retain on a temporary basis the services of experts and other persons having technical or special knowledge to assist in an advisory capacity.²⁰⁴ Finally, the Committee notes that the Public Service Employment Act provides that deputy heads and employees are to provide the PSC with any facilities, assistance, information and access to their respective offices that the PSC may require for the performance of its duties.²⁰⁵

[149] The PSC is composed of five branches and two further support functions. They are the Policy Branch, the Staffing and Assessment Services Branch, the Audit and Data Services Branch, the Corporate Management Branch, the Investigations Branch, and the Legal Services and Corporate Secretariat departments. The description of the responsibilities for each of these units is provided on the website of the PSC at <http://www.psc-cfp.gc.ca/centres/overview-apercu-eng.htm>.

[150] With respect to training, the country under review, in its Response to the Questionnaire, notes that initial and ongoing training is provided to Investigations Branch staff, particularly those in the Jurisdiction Officer and Investigator positions. Training material is provided and updated as necessary to perform the requirements of the positions.²⁰⁶ In addition, during the on-site visit, the representatives of the PSC stated that investigators are provided training to ensure that they obey procedural fairness, and in other areas, such as the drafting of briefing notes and the manner to carry out analytical work. The representatives also stated that training is provided to auditors in carrying out their work. The PSC has also carried out information sessions that provide practical insights on issues relating to the Public Service Employment Act and the PSC Appointment Framework, which guides deputy heads in building their own staffing systems adapted to their needs and in ensuring that they respect legislative requirements and core value.²⁰⁷ PSC subject matter experts lead these sessions and they assist human

²⁰⁰ Section 4, Public Service Employment Act, *supra* note 22.

²⁰¹ Conflict of Interest Act, *supra* note 19.

²⁰² See the Guide for Ministers and Ministers of State 2011 and its Annex A, *supra* note 20.

²⁰³ Section 30, Public Service Employment Act, *supra* note 22 and Response to the Questionnaire, pg. 12, *supra* note 25.

²⁰⁴ Section 10, Public Service Employment Act, *ibid.*

²⁰⁵ Section 135, Public Service Employment Act, *ibid.*

²⁰⁶ Response to the Questionnaire, pg. 13, *supra* note 25.

²⁰⁷ Appointment Framework – Overview, <http://www.psc-cfp.gc.ca/plcy-pltq/index-eng.htm>

resources professionals and sub-delegated officials in gaining a deeper understanding and practical knowledge of the flexibilities of the Act and the PSC Appointment Framework, through structured presentations, practical exercises and group discussions.²⁰⁸

[151] Regarding the existence of documented procedures for performing their tasks, the PSC has various manuals and guides in place. For example, with respect to appointments, it has developed guides and tools to assist deputy heads and their staff that address issues such as merit, and on accountability.²⁰⁹ With respect to investigations, among others, framework documents have been put in place for investigations conducted at the request of a deputy head; mandated investigations relating to appointment processes; and investigations of improper political activities.²¹⁰ The PSC has also in place an Audit Manual, methodologies and tools to guide auditors. In the context of the PSC's mandate, audits are performed on the staffing activities of government departments and agencies to provide objective information, advice and assurance to Parliament – and ultimately Canadians – on the integrity of the Public Service appointment process. Audits can be conducted on individual government entities or on government-wide issues.²¹¹ Finally, another tool developed by the PSC for institutional strengthening or quality improvement is the Staffing Management Accountability Framework. This Framework establishes the key expectations of deputy heads and organizations of how delegated staffing authority should be managed effectively.²¹² As indicated in the Response to the Questionnaire by the country under review:²¹³

[152] “*Organizational staffing performance is assessed based on indicators contained in the SMAF [Staffing Management Accountability Framework] and forms part of the PSC's assessment of the overall health of the public service staffing system and the non-partisanship of the public service.*”

[153] With respect to documented procedures for institutional strengthening or quality improvement of actions implemented, the PSC submits a yearly Report on Plans and Priorities (RPP), and an end of year Departmental Performance Report (DPR), which provides an overview on how the goals in the RPP were met.²¹⁴ These reports provide an overview of spending and performance by the PSC. Moreover, the PSC is assessed in the Management Accountability Framework, which is a key performance management tool that the federal government uses to support the management accountability of deputy heads and improve management practices across departments and agencies. The PSC underwent an assessment under this tool in 2011 – 2012.²¹⁵

[154] In addition, the country under review notes that the PSC has in place a PSC Code of Conduct, which is based on the Values and Ethics Code for the Public Sector and can be found on the PSC intranet, an internal website accessible to PSC employees. The PPSC Code is tailored for its own

²⁰⁸ Information Sessions, <http://www.psc-cfp.gc.ca/plcy-pltq/smrshop-atelfute/index-eng.htm>

²⁰⁹ Guides and Tools, <http://www.psc-cfp.gc.ca/plcy-pltq/guides/index-eng.htm>

²¹⁰ Reference Documents, <http://www.psc-cfp.gc.ca/inv-enq/documents-eng.htm>

²¹¹ PSC Audit Manual, <http://www.psc-cfp.gc.ca/adt-vrf/mnl/index-eng.htm>

²¹² Staffing Management Accountability Framework (SMAF), <http://www.psc-cfp.gc.ca/plcy-pltq/frame-cadre/acco-resp/smaf-crgd-eng.htm>

²¹³ Response to the Questionnaire, pg. 13, *supra* note 25.

²¹⁴ These reports are available on the Publications webpage of the PSC, <http://www.psc-cfp.gc.ca/centres/publications-eng.htm>

²¹⁵ 2011 – 2012 MAF Results – Public Service Commission of Canada, <http://www.tbs-sct.gc.ca/maf-crg/assessments-evaluations/2011/psc/psc-eng.asp>

unique working environment and business needs and has been developed after extensive consultations. Adherence to this Code is as a term and condition of employment.²¹⁶

[155] With respect to the implementation of systems or modern technologies to facilitate their work, the PSC counts on the Public Service Resourcing System, a website used by administrators and hiring managers that contains a variety of reference documents and tools for usage of the system.²¹⁷ This system serves as an electronic recruitment system used to advertise external employment opportunities and receive on-line applications. It also includes candidate management functionality such as e-screening of applications, e-communications with candidates, volume management and selection tools, and allows electronic referral of applications to federal public service organizations.²¹⁸

[156] The PSC also has in place Priority Information Management System, which is an electronic web-based tool of the PSC that helps to ensure that individuals that have a priority entitlement to an appointment are respected.²¹⁹ The country under review also notes that the Investigations Branch manages the Investigations Management Information System, which facilitates the tracking of cases through the investigation process and generates performance data.²²⁰

[157] During the on-site visit, the representatives of the PSC also referred to web-based tools that provide guidance to public servants. One such tool provides guidance to public servants regarding their political involvement, the Political Activities Self-Assessment Tool. This tool asks public servants to examine their specific circumstances to assess and make an informed decision about whether engaging in a given non-candidacy political activity would impair or could be perceived as impairing their ability to perform their duties in a politically impartial manner.²²¹

[158] With respect to the manner in which the general public is provided with information about their objectives and functions, the PSC has a website which is located at <http://www.psc-cfp.gc.ca/index-eng.htm>. Moreover, contact information is available within the website at <http://www.psc-cfp.gc.ca/centres/contact-contactez-eng.htm>. This page contains not only the manner to contact the PSC by phone, fax, electronic mail or postal mail. It also contains specific sections on most frequently requested information, such as those on test results, employment information, political activities and the location of local PSC offices.

[159] Regarding mechanisms for internal control, the PSC has established an Internal Audit group, which regularly performs audits of its own programs and activities to help ensure effective use of its resources, working within an environment governed by professional standards and TBS policies.²²² This group receives guidance and input from its independent Audit Committee and all completed audits are posted on its website.²²³ As noted on the website of the PSC:²²⁴

²¹⁶ See for example the Annual Report of the Internal Audit Committee of the PSC, January 2012 – May 2013, Values and Ethics, where it is noted that among the steps taken by the PSC to foster a climate of values and ethics in the workplace is the implementation of a 2012-15 Values and Ethics Action Plan, as well as that of the PSC Code of Conduct, <http://www.psc-cfp.gc.ca/abt-aps/inta-veri/2013/riac-rcvi/index-eng.htm>

²¹⁷ Response to the Questionnaire, *supra* note 25.

²¹⁸ PSC Glossary, Public Service Resourcing System (PSRS), <http://www.psc-cfp.gc.ca/abt-aps/gls/index-eng.htm>

²¹⁹ Response to the Questionnaire, pg. 14, *supra* note 25 and PSC Glossary, Priority Information Management System, *ibid*.

²²⁰ Response to the Questionnaire, pg. 14, *ibid*.

²²¹ Political Activities Assessment Tool, <http://www2.psc-cfp.gc.ca/pat-oap/intro.do>

²²² Response to the Questionnaire, pg. 14, *supra* note 25 and Internal Audit at the Public Service Commission, <http://www.psc-cfp.gc.ca/abt-aps/inta-veri/index-eng.htm>

²²³ The reports are available on the website, Internal Audit at the Public Service Commission, *ibid*.

²²⁴ *Ibid*.

[160] “The PSC’s Internal Audit group conducts these audits either as part of the Commission’s Internal Audit Plan or on special request. In line with government policy and the PSC’s Internal Audit policy, the PSC posts its internal audit reports on this site. Since January 2006, the PSC’s Internal Audit Committee has been composed primarily of external members who are not currently in the federal public service. This reflects the government’s commitment to increase independence of departmental audit committees. This committee reports annually on its activities.”

[161] With respect to a mechanism for dealing with claims, complaints, or allegations related to the pursuit of their objectives and the performance of their personnel, allegations of serious wrongdoing may be reported by public sector employees under the Public Servants Disclosure Protection Act, through internal procedures that each chief executive must establish for managing disclosures in the workplace. In addition, the Public Servants Disclosure Protection Act provides that a public servant may choose to make a disclosure to the Office of the Public Sector Integrity Commissioner, rather than to the senior officer appointed for this purpose for internal disclosures in a given organization,²²⁵ an avenue that is also available to the public.²²⁶ Moreover, the Values and Ethics Code for the Public Sector provides that members of the public may also bring a matter to an organizational point of contact if they have reason to believe that a public servant has not acted in accordance with the Code.²²⁷

[162] Complaints may also be received with regard to an appointment process and for allegations of improper political activities. During the on-site visit, the representatives stated that anyone can bring a complaint and investigations may be made following an audit, requests from organizations, a formal request to investigate or an allegation is made, from media reports, question in Parliament, or from anonymous complaints known as ‘brown envelopes.’²²⁸ In addition, the website of the PSC provides a link to contact the Director’s Office of the Jurisdiction and Case Management Directorate of the Investigations Branch for lodging a complaint.²²⁹

[163] Regarding the manner in which budgetary resources needed for their operations are ensured, the PSC submits its Main Estimates for a year, which provides the financial resources that is required for a fiscal year.²³⁰ With this submission, the PSC is to also provide the Report on Plans and Priorities, which supplements the information, contained in the Main Estimates and describes departmental priorities, expected results and associated resource requirements covering three fiscal years.²³¹ A document submitted by the representatives of the PSC during the on-site visit provided the PSC’s Program Alignment Architecture, which reflects how it allocates and manages its resources to achieve their intended results. In this respect, for its strategic outcome of providing a highly competent, non-partisan and representative public service, operating in both official languages, in which appointments are based on merit and the values of fairness, access, representativeness and transparency, it allocates its budget by four programs: 1) staffing system integrity and political impartiality; 2) staffing

²²⁵ Public Servants Protection Disclosure Protection Act, section 12, *supra* note 9.

²²⁶ *Ibid*, section 33(1).

²²⁷ Values and Ethics Code for the Public Sector, Avenues for Resolution, *supra* note 43.

²²⁸ See Public Service Commission, Investigations Branch, slide 3, *supra* note 187.

²²⁹ Investigations, Contact Us, <http://www.psc-cfp.gc.ca/inv-eng/contacts-eng.htm>

²³⁰ For example, the 2013 – 2014 Main Estimates for the PSC is found here: <http://www.tbs-sct.gc.ca/ems-sgd/20132014/me-bpd/me-bpd02-eng.asp#toc2-108>

²³¹ The Reports on Plans and Priorities of the PSC are found on its Publications website: <http://www.psc-cfp.gc.ca/centres/publications-eng.htm>

services and assessment; 3) oversight of integrity in staffing and of non-partisanship; and 4) internal services.²³² The following is the budget provided for the past five years, by program:

(in Thousands \$000)	FISCAL YEAR				
	2009-10	2010-11	2011-12	2012-13	2013-14
Program					
Staffing System Integrity and Political Impartiality	10 672	12 835	13 063	13 805	12 806
Staffing Services and Assessment	30 660	29 729	28 556	27 349	26 719
Oversight of Integrity in Staffing and Non-Partisanship	21 706	22 379	21 781	21 324	19 575
Internal Services	32 082	34 019	33 945	30 234	30 850
Grand Total	95 120	98 962	97 345	92 712	89 950

[164] Regarding coordination mechanisms with other oversight agencies, the country under review, in its Response to the Questionnaire, notes that:²³³

[165] “As appropriate, senior PSC officials will meet with and inform their colleagues of their work in other oversight organizations (e.g. the Treasury Board Secretariat, the Office of the Auditor General of Canada, Office of the Comptroller General of Canada, Office of the Chief Human Resources Officer, Office of the Privacy Commissioner, Office of the Information Commissioner, etc.) to ensure that there is no overlap between audit work proposed by the different organizations.”

[166] In this respect, during the on-site visit, the representatives from the PSC also stated that they meet with colleagues in the Office of the Auditor General and Comptroller General in order to plan ahead and ensure that any audits carried out are not a burden on an organization.²³⁴

²³² PSC Panel Discussion: Determination of Budget, http://www.oas.org/juridico/pdfs/mesicic4_can_psc_panel.pdf. During the on-site visit, the representatives of the PSC noted that although the budget has been reduced, they have adequate resources and have no difficulties in meeting their mandate and goals. They emphasized that the PSC is small and fairly nimble and that it can reallocate their funding very quickly depending on their priorities. Their core important functions have been maintained through efficiency gains.

²³³ Response to the Questionnaire, pg. 16, *supra* note 25.

²³⁴ In this respect, see the 2009 Review of the Public Service Commission Oversight, a Report of the Independent Review Committee, which determined the appropriateness of the approach and level of effort of Public Service Commission oversight and to identify areas for improvement. On page 22 of this report, it noted that: “Pursuant to the PSEA [Public Service Employment Act] as the holder of the appointment authority, it is the PSC’s responsibility to hold deputy heads to account for their exercise of their delegated authorities, make recommendations to departments for improvement and

[167] In addition, the representatives indicated that they take steps to delineate their work from that of the Treasury Board. For example, the issue of non-partisanship may be addressed in the Values and Ethics Code for the Public Sector, but this also involves political activities, which is the responsibility of the PSC. There is collaboration with the Treasury Board in order to ensure there is no overlap. Moreover, as the PSC has the exclusive mandate to investigate certain appointment processes as well as improper political activities of public servants and deputy heads, where necessary, senior PSC officials will meet with colleagues in other organizations to ensure that there is no overlap and that there is an understanding of respective roles and mandates.²³⁵

[168] Regarding accountability mechanisms applicable to the performance of their duties, the PSC reports annually to Parliament on the results achieved and in meeting its organizational priorities through Departmental Performance Reports. The PSC is also required to produce an annual report in respect of matters under its jurisdiction.²³⁶ These reports are all available on its website.²³⁷

[169] In addition, the PSC maintains on its website a section on Proactive Disclosure, a measure implemented by Canada to strengthen public sector management by enhancing transparency and oversight of public resources in the federal government. This section contains the mandatory financial and human resources related information with respect to the PSC, such as travel and hospitality expenses for selected government officials; contracts entered into by the Government of Canada for amounts over \$10 000 (with only limited exceptions such as national security); and the reclassification of positions. This section also includes information on the awarding of grants and contributions of over \$25 000; annual reports of expenditures on travel, hospitality and conferences for the PSC, and contains a section for information on founded wrongdoing as set out under the Public Servants Disclosure Protection Act.²³⁸

[170] The Committee also notes that the PSC, on its Publications webpage, also provides quarterly financial reports.²³⁹

3.2. Adequacy of the legal framework and/or other measures.

[171] The Public Service Commission has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 3.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures.

[172] First, an important function carried out by the PSC is auditing the staffing activities of individual organizations. As stated under section 3.1, the objective of these audits is to determine whether the organization has an appropriate framework, practices and systems in place to manage its appointment activities and whether appointments and appointment processes are being carried out in compliance with

impose corrective measures, including the possible withdrawal of delegated appointment authorities. The PSC uses audits to fulfill this part of its oversight objectives because they provide the high level of assurance needed to support such an assessment given the potentially serious consequences. To minimize overlap and duplication of oversight activities, it is important that the PSEA audit activities be coordinated, wherever practicable, with those of other auditors with broader mandates, namely internal audit functions, the Office of the Comptroller General (OCG) and the Office of the Auditor General (OAG), while respecting individual statutory responsibilities,” <http://www.psc-cfp.gc.ca/abt-aps/rprt/ovr-srv/docs/report-rapport-eng.pdf>

²³⁵ Response to the Questionnaire, pg. 16, *supra* note 25.

²³⁶ Section 23 of the Public Service Employment Act, *supra* note 22.

²³⁷ See Publications webpage of the PSC, *supra* note 190.

²³⁸ See Transparency, <http://www.psc-cfp.gc.ca/disclosure-divulgaration/index-eng.htm>

²³⁹ Quarterly Financial Reports, <http://www.psc-cfp.gc.ca/centres/publications-eng.htm>

the Public Service Employment Act, the Public Service Employment Regulations and the PSC Appointment Framework. The PSC also monitors the implementation of previous audit recommendations and conducts follow-up audits as needed. These audits provide feedback to deputy heads so they can better understand staffing risks, controls and governance within their organizations. Importantly, the audits also provide important information about the integrity of the staffing system to the PSC.²⁴⁰ In 2013, the PSC underwent an organizational audit of its own staffing activities for the period between April 1, 2010 and September 30, 2012, the results of which were published on its website.²⁴¹

[173] The report found that there were certain areas the PSC could improve, which are described as follows. For example, the PSC is authorized to delegate appointment authorities to deputy heads subject to terms and conditions. These delegations to departments and agencies are carried out through an Appointment Delegation and Accountability Instrument, which identifies the appointment and appointment-related authorities being delegated, the authorities that may be sub-delegated, the conditions of the delegation, and the accountability mechanisms in place.²⁴² In order to ensure that the delegation is being properly carried out, the President of the PSC had established a Staffing Sub-Delegation and Accountability Policy, which required that the following conditions were applicable to receive sub-delegation:²⁴³

[174] “[A] manager had to occupy a sub-delegated position; receive financial authority; complete mandatory training on staffing delegation, involving a one-hour in-house training session specific to staffing; receive a staffing sub-delegation letter signed by the President; and accept the conditions of sub-delegation in writing.”

[175] The auditors found that the PSC maintained an outdated list of subdelegated authorities, as it did not reflect some of the changes in authorities that were effective during the period covered by the audit. Moreover, the list of managers maintained by the PSC to verify whether an individual was subdelegated was not always accurate or used adequately. Of 34 subdelegated managers that the auditors looked at, 9 did not meet the conditions of subdelegation. For example, the report states that two individuals did not occupy a position at the required level to receive a subdelegation when they signed a letter of offer, and the PSC could not demonstrate the three others had received a staffing subdelegation letter. Finally,

²⁴⁰ PSC Audit Plan for 2013-2014 and 2014-2015, Introduction, <http://www.psc-cfp.gc.ca/adt-vrf/frame-cadre/2013-2014/index-eng.htm>

²⁴¹ Audit of the Public Service Commission of Canada, <http://www.psc-cfp.gc.ca/adt-vrf/rprt/2013/ar-rv/10-psc-cfp/index-eng.htm>. The Committee notes that following measures that were taken to mitigate possible conflicts of interest in the scope of the audit, the performance of the work and the communication of results: 1) the President of the organization, as the deputy head responsible for the management and operations of the PSC, removing herself from any discussion or governance around the conduct of the audit; 2) the PSC Commissioners assuming the overall governance and oversight responsibility for the conduct of the audit; 3) the establishment of an independent committee, made up of three senior public servants from outside the PSC with a range of experience in audit and HR, to provide feedback and advice to the Commissioners on the conduct of the audit; 4) as a further measure to assure objectivity, the establishment of a contract with a private sector firm specializing in audits to independently review the quality of the audit; and 5) a senior public servant from outside the Commission with experience in human resources participated in reviewing the action plan that the organization developed to address the audit observations and in the elaboration of recommendations to the Commission on whether or not to impose additional terms and conditions to delegation.

²⁴² Appointment Delegation and Accountability Instrument, <http://www.psc-cfp.gc.ca/plcy-pltq/frame-cadre/delegation/adai-idm/index-eng.htm>

²⁴³ Audit of the Public Service Commission of Canada, *supra* note 241.

seven of the subdelegated managers had not completed the training required by the organizational policy.²⁴⁴

[176] Another important issue raised, among others in the report, was the issue of merit. The PSC plays the vital role of ensuring that appointments are made on the basis of merit. This is met when the Commission is satisfied that the person to be appointed meets the essential qualifications for the work to be performed, as established by the deputy head, and, if applicable, any asset, qualifications, operational requirements and organizational needs established by the deputy head.²⁴⁵ The auditors reviewed a representative sample of 40 non-executive appointments out of 269 made by the PSC during the time period of the audit. In this review, they concluded that in 13 of the 40 appointments, merit could not be demonstrated, as a result of weaknesses in the assessment tools and the PSC being unable to provide information to conclude on merit.²⁴⁶

[177] The Committee considers that the country under review should make efforts to address these issues within the PSC, as they go to the core of its mandate: ensuring that appointment to the public service is based on merit and its role in ensuring that appointments are being properly carried out in departments and organizations, such as ensuring the proper people are delegated with these functions. In this respect, the Committee notes that the auditors were advised that the PSC had taken steps to address the issue with respect to the control mechanisms in place for the subdelegation process. In this respect, the country under review notes that the PSC has begun implementing an action plan to address results of the PSC audit, including issues related to merit in the appointment process. However the audit report does not indicate if the PSC has taken steps to address the issue of merit in their own appointment process.²⁴⁷

[178] The Committee considers that the PSC should take steps to address these important issues as soon as possible, as well as publicizing on their website those steps, in order to serve as an example for other departments and organizations in the public service. By looking at its own staffing and delegation policies, it may serve to refine and provide insight into its policy framework and improve the support provided to delegated departments and agencies. The Committee will formulate recommendations. (see Recommendations 3.4.1 and 3.4.2 in Section 3.4 of Chapter II of this Report)

[179] Finally, the Committee observes that the PSC has important guides, policies and manuals in place that help facilitate its work. For example, the Audit Manual sets out the audit framework and provides a set of comprehensive audit policies that govern the conduct of all audits and studies by the Audit Branch, and includes a PSC Audit Code of Professional Conduct. With respect to investigations conducted by the PSC Investigations Branch, they have in place a framework for investigations conducted at the request of a deputy head, a framework for mandated investigations relating to an appointment process; and a framework for investigations of improper political activities. These important documents, however, are in need of updating. For example, the Audit Manual refers to adherence in audit activities to the Values and Ethics Code for the Public Service, which is no longer in force, rather than the Values and Ethics Code for the Public Sector and the Policy on Conflict of Interest and Post-Employment.²⁴⁸ The Committee observes that replacing the wording of one Code for another may appear minor, but the

²⁴⁴ *Ibid.*

²⁴⁵ Section 30, Public Service Employment Act, *supra* note 22.

²⁴⁶ Audit of the Public Service Commission of Canada, *supra* note 241.

²⁴⁷ *Ibid.*

²⁴⁸ PSC Audit Manual, pg. 3, *supra* note 211.

allegations of conflicts of interest in an audit process can call into question the objectivity of an audit. As noted in the Audit Manual:²⁴⁹

[180] “*The Audit Branch is particularly vulnerable to allegations of conflict of interest, whether actual, potential or perceived, because they can call into question the objectivity and competence of the Audit Branch to pass impartial judgment. These attributes are essential to the success of the work of the Audit Branch. Since the reputation of the Audit Branch is based upon a number of factors, which include the public’s perception of its work, an appearance of a conflict of interest on the part of an auditor can be just as damaging as an actual conflict of interest.*”

[181] The Audit Manual should be updated to reflect the new framework in place for values and ethics and avoidance of conflicts of interest in the public sector.²⁵⁰

[182] With respect to the documents on frameworks on investigations in place the Committee observes that the PSC is currently reviewing and updating these documents. Persons accessing the PSC website, and those who seek clarification on these documents, are referred to the Investigations Branch by way of an e-mail address provided on the website.²⁵¹ As such, the documents on line are admittedly out of date by the PSC itself. The Committee observes that the PSC should as soon as possible conduct its review and place online current documents that can assist departments and agencies with their investigations of appointment processes. The Committee does note that the PSC investigation function is currently being reviewed by a panel of external experts, which is looking at investigations processes and procedures and to recommend improvements, where necessary, the result of which may update the framework documents and other pertinent policies for carrying out investigations.²⁵² Such a review should also be undertaken in the PSC as a whole, focused on updating the manuals and guidelines in place. Given the foregoing, the Committee will formulate a recommendation. (see Recommendation 3.4.3 in Section 3.4 of Chapter II of this Report)

3.3. Results of the legal framework and/or other measures.

[183] The country under review, in its Response to the Questionnaire, provided information with respect to the number of investigations completed (founded and unfounded) by the PSC related to appointment processes for each of the 5 years encompassing 2007 – 2008 to 2011 – 2012, as well as the number of cases for this time frame that the PSC determined the allegations were founded and therefore eligible for the ordering of corrective action.²⁵³ These numbers are provided below in the following table:

Table 1:

Appointment Process

²⁴⁹ *Ibid*, pg. 3.

²⁵⁰ The country under review notes that the PSC has updated the Audit Manual effective Winter 2014 to reflect the Values and Ethics Code for the Public Sector and the Policy on Conflict of Interest and Post-Employment. Further, as part of its ongoing commitment to its audit quality management framework, the PSC will review its manual to ensure that it is up-to-date.

²⁵¹ Reference Documents, *supra* note 210.

²⁵² 2012 – 2013 Annual Report of the Public Service Commission, pg. 87, <http://www.psc-cfp.gc.ca/arp-rpa/2013/rpt-eng.pdf>

²⁵³ Response to the Questionnaire, pgs. 41 - 42, *supra* note 25.

Year	Number of investigations completed (founded and unfounded)	Number of founded cases eligible for the ordering of corrective action
2007 – 2008	89	25
2008 – 2009	98	39
2009 – 2010	80	32
2010 – 2011	96	61
2011 – 2012	181	100

[184] The Committee notes that this information was taken from the annual reports of the PSC, and subsequent to the submission of the Response to the Questionnaire, the annual report for 2012 – 2013 was published containing updated and more detailed information. For example, for appointment processes, information is broken down by section number of the Public Service Employment Act on the basis the investigation was carried out. The Committee reproduces the results maintained by the PSC for external appointment investigations for the year 2012 – 2013, as found in its most recent annual report, as a demonstration of the detailed information maintained by this oversight body:²⁵⁴

Public service Commission investigations into appointment processes	Section 66 External appointments
Number of active cases carried over from previous years	42
Number of requests received in 2012-2013	110
Total number of active cases in 2012-2013	152
Number of cases completed in 2012-2013	108

²⁵⁴ 2012 – 2013 Annual Report of the Public Service Commission, pg. 79, *supra* note 252.

Public service Commission investigations into appointment processes	Section 66 External appointments
Number of cases closed at intake ²⁵⁵	83
Number of cases discontinued	2
Number of cases resolved through Early Intervention	1
Number of investigations unfounded	8
Number of investigations founded	14
Number of active cases remaining as of March 31, 2013	44

[185] The Committee notes that the information in the annual report also includes information on section 67(2) of the Public Service Employment Act (internal appointments – delegation), section 68 (political influence), section 69 (fraud), and other sections of the Act.

[186] The corrective actions undertaken with respect to appointment processes are also provided for the past three fiscal years, 2010 – 2011 to 2012 - 2013, the following being a small representative of the information found in the annual report, and not meant to be comprehensive:²⁵⁶

Corrective Action	2012-2013
Revocation of appointment	9
Candidate removed from process	1
Unable to exercise any responsibilities regarding any appointment process or staffing for 3 years	1

²⁵⁵ These are cases closed for reasons that include no mandate, no possibility of corrective action or other policy or regulatory considerations.

²⁵⁶ 2012 – 2013 Annual Report of the Public Service Commission, pg. 85, *supra* note 252.

Corrective Action	2012-2013
1-year permission clause ²⁵⁷	6
Staffing training	8
Values and ethics training	13
Investigation report and Record of Decision sent to the Royal Canadian Mounted Police pursuant to s.133 of PSEA	4

[187] The Committee takes note that the country under review maintains detailed results on the investigations the PSC carries out with respect to appointment processes, and maintains results on the corrective action taken. The PSC, in its annual report, observes that it may take any corrective action that it considers appropriate, up to revocation of the appointment and that they are determined on a case-by-case basis.²⁵⁸

[188] The country under review, in its Response to the Questionnaire, also provided information with respect to the number of investigations completed (founded and unfounded) by the PSC related to improper political activities for each of the 5 years encompassing 2007 – 2008 to 2011 – 2012, as well as the number of investigations that were founded and eligible for corrective action.²⁵⁹ These numbers are provided below in the following table:

Political Activities		
Year	Number of investigations completed (founded and unfounded)	Number of founded cases eligible for the ordering of corrective action
2007 – 2008	21	19
2008 – 2009	17	16
2009 – 2010	6	5

²⁵⁷ The requirement to obtain the Commission's written approval before accepting any position or work within the federal public service for a specific period.

²⁵⁸ 2012 – 2013 Annual Report of the Public Service Commission, pg. 84, *supra* note 252.

²⁵⁹ Response to the Questionnaire, pg. 42, *supra* note 25. The Commission retains exclusive authority to conduct investigations into allegations that an employee has failed to comply with any of subsections 113(1), 114(1) to (3) and 115(1) of the PSEA, that is, that they engaged in improper political activity.

2010 – 2011	3	1
2011 – 2012	3	3

[189] The Committee notes that this information was taken from the annual reports of the PSC, and subsequent to the submission of the Response to the Questionnaire, the annual report for 2012 – 2013 was published containing updated and more detailed information. For example, information on allegations of improper political activities is presented by number of active cases carried over from previous years, number of requests received during the fiscal year, the number of active cases and number of cases completed. The Committee reproduces the results maintained by the PSC for allegations of improper political activities, as found in its most recent annual report.²⁶⁰

Public Service Commission investigations into allegations of improper political activities

Number of active cases carried over from previous years	3
Number of requests received in 2012-2013	8
Total number of active cases in 2012-2013	11
Number of cases completed in 2012-2013	9
Number of cases discontinued after referral to investigation	0
Number of investigations unfounded	1
Number of investigations founded	3
Number of cases closed at intake ²⁶¹	5
Number of active cases remaining as of March 31, 2013	2

[190] The PSC also provides details in the annual report on the reasons why the 3 investigations were determined to be founded:²⁶²

²⁶⁰ 2012 – 2013 Annual Report of the Public Service Commission, pg. 61, *supra* note 252.

²⁶¹ Cases closed for reasons that include unreasonable grounds (4) and no possibility of corrective action (1).

²⁶² 2012 – 2013 Annual Report of the Public Service Commission, pg. 61, *supra* note 252.

[191] “In two of the founded cases, the employees in question failed to seek permission and a LWOP [leave of absence without pay] from the Commission prior to seeking nomination, or running, as a candidate in an election. In the third founded case, the employee performed activities on behalf of a federal political candidate. The investigation determined that, in light of the employee’s work description and of the testimony received in relation to the employee’s duties, the activities performed could impair the employee’s ability to perform their public service duties in a politically impartial manner.”

[192] Information is also provided on the corrective action undertaken for founded cases of improper political activities. As noted by the PSC in the annual report, since the Public Service Employment Act came into force, the Commission has ordered a range of corrective actions, including, but not limited to, the following: recovery of pay; requirement to attend training; requirement to obtain the Commission’s approval prior to returning from leave of absence without pay; or requirement to be placed on leave of absence without pay. Over the past three years, the Commission has ordered the following corrective actions:²⁶³

Corrective actions ordered for founded cases of improper political activity, by fiscal year				
Corrective Action	2010-2011	2011-2012	2012-2013	Total
Letter or letter of reprimand sent to deputy head and placed on employee file for two years	0	2	2	4
Values and ethics training	0	2	1	3
Recovery of pay	0	0	1	1

[193] The Committee takes note that the country under review maintains detailed results on the investigations the PSC carries out with respect to improper political activities, and maintains results on the corrective action taken.

[194] Another important function that the PSC undertakes is the audit of the departments and organizations. As noted under section 3.1 of this Report, audits are carried out on the staffing performance of the organizations that have received a delegation to carry out appointments. The PSC also conducts government-wide audits of specific issues in a number of organizations to enhance its understanding of the staffing system, draw attention to potential staffing issues and identify lessons learned and noteworthy practices.²⁶⁴ The Committee notes the extensive list of audits that have been carried out, which are found in the website of the PSC, which indicates that the PSC has been carrying out this important function.²⁶⁵

[195] Finally, the country under review, in its Response to the Questionnaire, details some of the work undertaken by the PSC to raise awareness of the legal rights and responsibilities of the public servants

²⁶³ 2012 – 2013 Annual Report of the Public Service Commission, pg. 62, *ibid*.

²⁶⁴ Audit Plan for 2013 – 2014 and 2014 – 2015, Introduction, *supra* note 240.

²⁶⁵ Audit and Data Services, Completed Reports, <http://www.psc-cfp.gc.ca/adt-vrf/comrpt-rapter-eng.htm>

with regard to political activities and the extent to which their organizations keep them informed of these legal rights and responsibilities. A PSC Survey of Staffing is cited, in the Response, based on the 2011 – 2012 Annual Report of the PSC.²⁶⁶ The Committee found updated results of this survey in the 2012 – 2013 Annual Report of the PSC that was published subsequent to the submission of the Response to the Questionnaire. In this respect, the PSC’s Survey of Staffing collected data on questions related to political activities, including employee participation in non-candidacy political activity and their degree of awareness of, and extent to which their organization keeps them informed of, their legal rights and responsibilities regarding political activities. In the latest Annual Report, the following is noted:²⁶⁷

[196] *“Over the years, employee awareness has continued to increase. This remains the case for the 2012 Survey. A total of 73% of employees indicated being aware of their legal rights and responsibilities to a moderate or great extent, up from 57% in 2009, 63% in 2010 and 69% in 2011. Over 95% of departments and agencies demonstrated an increase in their employees’ level of awareness in 2012, up from 84% in 2011. ... Employees were also asked to indicate all of the people or resources that they consulted concerning their legal rights and responsibilities with regard to participating in political activities. On-line and printed materials provided by the PSC continued to be the resources most frequently consulted by employees. This information will allow the PSC to continue focusing outreach initiatives in 2013–2014.”*

[197] Outreach activities are also cited in the Response to the Questionnaire that help raise awareness of a federal public service employee’s legal rights and responsibilities related to political activities. Some activities include the development of the on-line Political Activities Self-Assessment Tool, which helps to determine whether participation in a non-candidacy political activity could impair or be perceived to impair their ability to perform their duties in a politically impartial manner.²⁶⁸ Other tools developed include a Political Activities Quiz, an on-line tool to increase employee awareness in an interactive manner. The PSC also provided deputy heads and heads of human resources with information for distribution to employees regarding political activities, and liaised with provincial and municipal election authorities and associations to provide information about employees’ legal rights and responsibilities related to political activities, for use in their publications and on their Web sites.²⁶⁹

[198] In addition, the PSC worked with the Canada School of Public Service to include political activities content in training modules for new employees, as well as in two mandatory courses, Paving the Way and Orientation to the Public Service.²⁷⁰ This partnership further enhanced or produced new content related to political activities that was added to four further courses, Leadership through Values and Ethics, Leading for Results, Leading Strategically and Leading Scientific Teams.²⁷¹

3.4. Conclusions and recommendations.

[199] Based on the comprehensive review conducted with respect to the Public Service Commission in the foregoing sections, the Committee offers the following conclusions and recommendations:

²⁶⁶ Response to the Questionnaire, pg. 40, *supra* note 25.

²⁶⁷ 2012 – 2013 Annual Report of the Public Service Commission, pg. 60, *supra* note 252.

²⁶⁸ Response to the Questionnaire, pgs. 40 – 41, *supra* note 25.

²⁶⁹ 2012 – 2013 Annual Report of the Public Service Commission, pg. 60, *supra* note 252.

²⁷⁰ Response to the Questionnaire, pg. 41, *supra* note 25.

²⁷¹ 2012 – 2013 Annual Report of the Public Service Commission, pg. 60, *supra* note 252.

[200] **Canada has considered and adopted measures intended to maintain and strengthen the Public Service Commission as an oversight body, as described in Chapter II, Section 3 of this Report.**

[201] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 3.4.1 Review the control measures in place to ensure that the Public Service Commission is effectively monitoring the delegated appointment process within the Public Service Commission. (See section 3.2. of Chapter II of this Report)
- 3.4.2 Review the appointment process carried out by Public Service Commission to ensure that hiring is based on merit. (See section 3.2 of Chapter II of this Report)
- 3.4.3 Update the guides and manuals of the Public Service Commission, in particular the Audit Manual and those relating to investigations. (See section 3.2 of Chapter II of this Report)

4. OFFICE OF THE COMMISSIONER FOR FEDERAL JUDICIAL AFFAIRS

4.1. Existence of provisions in the legal framework and/or other measures.

[202] The Office of the Commissioner for Federal Judicial Affairs (OCFJA) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[203] The OCFJA was created in 1978 under the Judges Act to safeguard the independence of the judiciary and put federally appointed judges at arm's length from the Department of Justice.²⁷² In this way, it contributes to the prevention of corruption by ensuring the independence of the appointments process of judges from the executive branch.²⁷³

[204] The Commissioner of the OCFJA has the following duties and functions: a) act as the deputy of the Minister of Justice in performing all such duties and functions in relation to the administration of Part 1 of the Act, which deals with terms of appointment, age limit and salaries applicable to federally appointed judges; b) prepare budgetary submissions for the requirements of the Canadian Judicial Council; c) be responsible for any other administrative arrangements necessary to ensure that all reasonable requirements, including those for premises, equipment and other supplies and services for the officers, clerks and employees of the Canadian Judicial Council for the carrying of its operations are provided; and d) such other things as the Minister of Justice may require in connection with any matter or matters falling with the Minister's responsibilities for the proper functioning of the judicial system of Canada.²⁷⁴

[205] The Act separates the authority of the Department of Justice and the OCFJA by providing that for greater clarity, the duties and functions of the Minister of Justice as set out in the preceding paragraph

²⁷² Judges Act, <http://laws-lois.justice.gc.ca/eng/acts/J-1/FullText.html>

²⁷³ Response to the Questionnaire, pg. 28, *supra* note 25.

²⁷⁴ Judges Act, section 74(1), *supra* note 272. Other important functions provided by the OCFJA include a judicial intranet; language training for judges; publication of the Federal Courts Reports; judicial international cooperation; and administrative support to the Canadian Judicial Council, Strategic Plan, What We Do, <http://www.fja.gc.ca/fja-cmf/plan-eng.html>

that are to be performed by the Commissioner do not form part of the duties and functions assigned to the Minister under the Department of Justice Act.²⁷⁵ This separation ensures that the mission statement of the OCFJA is met, that is, to promote the independence of the federal judiciary in order to maintain the confidence of Canadians in its judicial system.²⁷⁶

[206] With respect to the scope of their functions, among other things, the OCFJA has overall responsibility for the administration of the appointment process on behalf of the Minister of Justice. The Commissioner is expected to carry out his or her responsibilities in such a way as to ensure that the system treats all candidates for judicial office fairly and equally.²⁷⁷ The OCFJA has also been given the mandate to administer the Supreme Court of Canada Appointments Selection Process, which is established to evaluate candidates for appointments to the Supreme Court of Canada.²⁷⁸ To carry out this work, the OCFJA has an appointment secretariat that administers 17 advisory committees responsible for evaluating candidates for federal judicial appointments, three for Ontario, two for Quebec, one for each other province or territory and one unique committee for the Tax Court of Canada.²⁷⁹

[207] These advisory committees have the responsibility of assessing the qualifications for appointment of the lawyers who apply. Professional competence and overall merit are the primary qualifications.²⁸⁰ Assessment Criteria are used by the committee members for evaluating fitness for the bench, which look at professional competence and experience, such as general proficiency in law, intellectual ability, analytical skills and ability to maintain an open mind while hearing all sides of an argument; personal characteristics, such as sense of ethics, patience, honesty, tact and common sense; and potential impediments, such as any debilitating physical or mental condition, past or current disciplinary actions; and any current or past civil or criminal actions.²⁸¹ The committee assesses the candidates on the basis of two categories - "recommended" or "unable to recommend" for appointment. These categories reflect the advisory nature of the committee process. Candidates are not provided with results of the assessment, but rather are only notified of the date an assessment has been completed. The results are kept confidential and are solely used for the Minister's use.²⁸²

[208] Regarding the manner in which they adopt their decisions, these advisory committees normally arrive at their decision through consensus of the committee members present, without recourse to a recorded vote. If consensus is not possible, the Chair must request that a decision be made by majority of the members present. In this case, the Chair refrains from voting, unless it is to break a tie vote. These votes are recorded.²⁸³ The committees ultimately submit their comments and recommendations to the Minister of Justice and these are kept confidential and solely for use by the Minister.²⁸⁴ The country under review, in its Response to the Questionnaire, notes that the Minister may ask the committee for a reassessment of a candidate at any time if he or she receives information from other sources contrary to

²⁷⁵ Section 74(2), *ibid.*

²⁷⁶ Strategic Plan, Mission, *supra* note 274.

²⁷⁷ Response to the Questionnaire, pg. 29, *supra* note 25 and Process for an Application for Appointment, <http://www.fja.gc.ca/appointments-nominations/process-regime-eng.html>

²⁷⁸ Response to the Questionnaire, pgs. 29 – 30, *ibid.*

²⁷⁹ Response to the Questionnaire, pg. 30, *ibid.*

²⁸⁰ Response to the Questionnaire, *ibid.*, and Guidelines for Advisory Committee Members, <http://www.fja-cmf.gc.ca/appointments-nominations/committees-comites/guidelines-lignes-eng.html>

²⁸¹ Assessment Criteria, Candidates for Federal Judicial Appointment, <http://www.fja-cmf.gc.ca/appointments-nominations/assessment-evaluation-eng.html>

²⁸² Guidelines for Advisory Committee Members, Assessments, *supra* note 280.

²⁸³ Guidelines for Advisory Committee Members, Votes, *ibid.*

²⁸⁴ Guidelines for Advisory Committee Members, Confidentiality, *ibid.*, and Response to the Questionnaire, pg. 30, *supra* note 25.

the committee's advice. Exceptionally, a committee may initiate a re-assessment when it believes it has important new information that is contrary to the information on which the Committee's previous assessment was made. In these cases, prior consultation with the Executive Director for Judicial Appointments is required.²⁸⁵

[209] A judicial appointment is made by the Governor General acting on the advice of the federal Cabinet, which receives a recommendation for appointment by the Minister of Justice with respect to the appointment of *puisne* judges, chosen from amongst the names that have been previously reported by the committees to the Minister.²⁸⁶ The Cabinet receives from the Prime Minister a recommendation of appointment with respect to a Chief Justice and Associate Chief Justice.

[210] With respect to the manner in which their senior officers are selected, the Commissioner of the OCFJA, who has the rank and status of a deputy head of a department, is appointed by the Governor in Council after consultation by the Minister of Justice with the Canadian Judicial Council or such committee thereof as is named for that purpose by the Canadian Judicial Council.²⁸⁷ As a deputy head, the Commissioner is subject to the Conflict of Interest Act, the Guide for Ministers and Ministers of State and the Ethical and Political Activity Guidelines for Public Office Holders and is prohibited from engaging in political activities as set out under section 117 of the Public Service Employment Act, violation of which may lead to his or her dismissal by the Governor in Council. In addition, as a Governor in Council appointee, the Commissioner is subject to the Terms and Conditions of Employment for Full-Time Governor in Council Appointees.²⁸⁸ The Commissioner holds office during pleasure, meaning he or she can be replaced or removed at the discretion of the Governor in Council.²⁸⁹

[211] The Commissioner's responsibility for judicial appointments is exercised directly or by his or her delegate, which is normally the Executive Director of Judicial Appointments. This person is a member of the public service and subject to the Public Service Employment Act. As such, the Director is hired based on merit and free from political influence and is bound by the Values and Ethics Code for the Public Sector and the Policy on Conflict of Interest and Post-Employment, adherence to which is a condition of employment.²⁹⁰

[212] Regarding the manner in which the human resources are needed for their operations are identified and how their personnel are selected, the staff of the OCFJA are members of the federal public service and subject to the Public Service Employment Act as well. They are hired on the basis of merit and free from political influence, and are bound by the Values and Ethics Code for the Public Sector and the Policy on Conflict of Interest and Post-Employment, adherence to which is a condition of employment.

[213] The members of the judicial appointment committees are not staff of the OCFJA, nor are they considered public servants. They are volunteers appointed by the Minister of Justice to review applications for judicial appointments and provide recommendations to the Minister.²⁹¹ Each committee consists of eight members representing the bench, the bar, law enforcement associations and the general

²⁸⁵ Guidelines for Advisory Committee Members, Re-Assessments, *ibid.*, and Response to the Questionnaire, *ibid.*

²⁸⁶ Response to the Questionnaire, *ibid.*, and Process for an Application for Appointment, Appointments, <http://www.fja-cmf.gc.ca/appointments-nominations/process-regime-eng.html>

²⁸⁷ See Section 73 and Part II of the Judges Act, *supra* note 272.

²⁸⁸ Terms and Conditions of Employment for Full-Time Governor in Council Appointees, *supra* note 16.

²⁸⁹ See section 23, Interpretation Act, *supra* note 15 and Terms and Conditions of Employment for Full-Time Governor in Council Appointees: Appointment, Tenure and Related Matters, *ibid.*

²⁹⁰ Section 30, Public Service Employment Act, *supra* note 22 and Response to the Questionnaire, pg. 30, *supra* note 25.

²⁹¹ Response to the Questionnaire, pg. 31, *ibid.*

public: a nominee of the provincial or territorial law society; a nominee of the provincial or territorial branch of the Canadian Bar Association; a judge nominated by the Chief Justice of the province or by the senior judge of the territory; a nominee of the Attorney General or territorial Minister of Justice; a nominee of the law enforcement community and three nominees of the federal Minister of Justice representing the general public. With respect to the Tax Court of Canada, the committee is made up of five members: a nominee of the Tax Court of Canada and four nominees of the federal Minister of Justice in consultation with the Chief Justice of the Tax Court.²⁹² Committee members are appointed for a three-year term, with the possibility of a single renewal.

[214] Lawyer members of the committees cannot themselves be candidates for judicial appointment for one year following the end of their term of office in a committee.²⁹³ Committee members are to also comply with a Code of Ethics for Advisory Committee Members, which deals with issues such as conflicts of interest and discretion.²⁹⁴ During the on-site visit, the representatives from the OCFJA noted that a complaint alleging bias or any other type of impropriety in the selection process of a judge has never occurred.

[215] The OCFJA is composed of a Commissioner, a Deputy Commissioner, who is responsible for financial, personnel, communications and information systems, administrative matters and language training; the Executive Editor responsible for editing the Federal Courts Reports; the Executive Director of the Canadian Judicial Council; the Executive Director, Judicial Appointments and Senior Legal Counsel who administers the seventeen Advisory Committees on Judicial Appointments; the Head of International Cooperation; and the Director of Strategic Planning and Innovation. The Deputy Commissioner is assisted by the Director of Finance and Administrative Services; the Director of Compensation, Benefits and Human Resources; the Director of Communications and Information Systems; and the Director of Judges' Language Training.²⁹⁵

[216] With respect to training provided to the judicial advisory committees, during the on-site visit, the representative of the OCFJA noted that of approximately 50 personnel working in the office, one is dedicated to providing training to new committee members. Once a new committee is constituted, the first thing the members undergo is training, and review pertinent documents, such as the Code of Ethics, the Guidelines for Advisory Committee Members and requirements for confidentiality.²⁹⁶

[217] Regarding the existence of documented procedures for performing their tasks, or of manuals or guides dealing with those duties, the OCFJA has developed the Guidelines for Advisory Committee Members. These Guidelines are meant to provide the committee members with information and guidance on selected subjects related to the work of the committee.²⁹⁷ These Guidelines are prepared on the basis of the ongoing committee experience, and are updated and expanded as appropriate. Committee

²⁹² Response to the Questionnaire, pg. 31, *ibid* and Guidelines for Advisory Committee Members, Committee Memberships, *supra* note 280.

²⁹³ Guidelines for Advisory Committee Members, Committee Memberships, *ibid*.

²⁹⁴ Code of Ethics for Advisory Committee Members, <http://www.fja-cmf.gc.ca/appointments-nominations/committees-comites/ethics-ethiques-eng.html>

²⁹⁵ Organizational Structure, <http://www.fja-cmf.gc.ca/fja-cmf/structure-eng.html>

²⁹⁶ See also, for example the Office of the Commissioner for Federal Judicial Affairs, 2013–14 Report on Plans and Priorities, pg. 15, where it states that training for new members of these committees will be provided at the start of their term of appointment, <http://fja.gc.ca/fja-cmf/publications/rpp/2013-2014/2013-2014-eng.pdf>. The committee notes that past Report on Plans and Priorities for this oversight body consistently state training will be provided to new members of judicial advisory committees.

²⁹⁷ Guidelines for Advisory Committee Members, Foreword, *supra* note 280.

members are also encouraged to consult with the Executive Director, Judicial Appointments, if they have any questions or require clarification of any of their roles or responsibilities.²⁹⁸

[218] With respect to documented procedures for institutional strengthening or quality improvement of actions implemented, the OCFJA submits a yearly Report on Plans and Priorities (RPP), and an end of year Departmental Performance Report (DPR), which provides an overview on how the goals in an RPP were met.²⁹⁹ These reports provide an overview of spending and performance by the OCFJA. Moreover, OCFJA is assessed in the Management Accountability Framework, which is a key performance management tool that the federal government uses to support the management accountability of deputy heads and improve management practices across departments and agencies. The OCFJA last underwent an assessment under this tool in 2008 – 2009.³⁰⁰

[219] In addition, the country under review notes that the OCFJA has in place a Code of Conduct, which is based on the Values and Ethics Code for the Public Sector and can be found on the PSC intranet, an internal website accessible to OCFJA employees. Employees and bargaining agents were consulted and had the opportunity to participate in the development of the Code.

[220] Regarding the manner in which the general public is provided with information about their objectives and functions, the OCFJA has a website which is located at <http://www.fja-cmf.gc.ca/home-accueil/index-eng.html>. Moreover, contact information is available within the website at <http://www.fja-cmf.gc.ca/contact/index-eng.html>. This page contains the manner to contact the OCFJA by phone, fax email or postal mail. It also contains separate contact information for questions or comments with respect to the judicial appointment process. In addition, the country under review, in its Response to the Questionnaire, notes the following regarding this oversight body:³⁰¹

[221] *“The OCFJA is in the unique position that, while it operates in many ways [as] a department of the Government of Canada, it exists entirely as a unique service provider to the Canadian judiciary. As such, there are no direct services to the public; however, the mission statement of the OCFJA encapsulates the overall benefits to the Canadian public since the OCFJA exists to “promote the independence of the federal judiciary in order to maintain the confidence of Canadians in our judicial system.”*”

[222] Regarding mechanisms for internal control, the OCFJA is considered a small department, since it has an operating budget of less than \$300 million.³⁰² As such, it works with the Office of the Comptroller General to fully meet its internal audit requirements, and has elected to use the Small Department and Agency Audit Committee.³⁰³ The oversight body has participated in horizontal audits encompassing

²⁹⁸ Response to the Questionnaire, pg. 32, *supra* note 25.

²⁹⁹ These reports are available on the Publications and other Official Documents webpage of the OCFJA, <http://www.fja.gc.ca/fja-cmf/publications/index-eng.html>

³⁰⁰ 2008 – 2009 MAF Results – Office of the Commissioner for Federal Judicial Affairs, <http://www.tbs-sct.gc.ca/maf-crg/assessments-evaluations/2008/fja/fja-eng.asp>. As the OCFJA is considered a small agency, meaning an agency with less than 500 employees and a budget smaller than \$300 million, it is assessed on a three year cycle using a more targeted approach in order to reduce the burden of exercise on it, see How does MAF work?, <http://www.tbs-sct.gc.ca/maf-crg/overview-apercu/work-fonctionne-eng.asp>

³⁰¹ Response to the Questionnaire, pg. 34, *supra* note 25.

³⁰² See the definition of ‘small department’ in the Policy on Internal Audit, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?section=text&id=16484>

³⁰³ 2008 – 2009 MAF Results – Office of the Commissioner for Federal Judicial Affairs, Effectiveness of Internal Audit Function, <http://www.tbs-sct.gc.ca/maf-crg/assessments-evaluations/2008/fja/fja-eng.asp>. The roles and responsibilities of Small Department and Agency Audit Committees are found in the Directive on Internal Auditing in the Government of Canada, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25610§ion=text>

many small departments, such as the Horizontal Internal Audit of Electronic Record Keeping in Small Departments and Agencies and the Horizontal Internal Audit of Information Technology Asset Management in Small Departments and Agencies.³⁰⁴ It has also indicated that it will request an audit be performed if it feels there is a need for additional coverage based on the organization's risk assessment.³⁰⁵

[223] With respect to mechanisms for dealing with claims, complaints, or allegations related to the pursuit of the objectives and the performance of the personnel of the OCFJA, allegations of serious wrongdoing may be reported by public sector employees under the Public Servants Disclosure Protection Act, through internal procedures that each chief executive must establish for managing disclosures in the workplace. In addition, the Public Servants Disclosure Protection Act provides that a public servant may choose to make a disclosure to the Office of the Public Sector Integrity Commissioner, rather than to the senior officer appointed for this purpose for internal disclosures in a given organization,³⁰⁶ an avenue that is also available to the public.³⁰⁷ Moreover, the Values and Ethics Code for the Public Sector provides that members of the public may also bring a matter to an organizational point of contact if they have reason to believe that a public servant has not acted in accordance with the Code.³⁰⁸

[224] Regarding the manner budgetary resources needed for their operation are ensured, the country under review, in its Response to the Questionnaire, states that the OCFJA receives its resources through the annual estimates process and is accountable for the use of operational resources.³⁰⁹ The OCFJA is to also provide a Report on Plans and Priorities, which supplements the information, contained in the main annual estimates and describes departmental priorities, expected results and associated resource requirements covering three fiscal years.³¹⁰ If additional resources are required for the operation of the OCFJA, during the on-site visit, the representatives of this oversight body stated that it may prepare a submission to the Treasury Board.³¹¹ The budget of the OCFJA is allocated through four programs: 1) payments pursuant to the Judges Act; 2) Canadian Judicial Council; 3) Federal Judicial Affairs; and 4) Internal Services. The following is the budget for the past five years, by program taken from the Reports on Plans and Priorities of the OCFJA:³¹²

(in \$ millions)	FISCAL YEAR				
<i>Program</i>	2009-10	2010-11	2011-12	2012-13	2013-14
Payments Pursuant to the Judges	422.3	443.2	459.8	474.7	487.5

³⁰⁴ These reports are available at: <http://www.tbs-sct.gc.ca/report/orp/siglist-eng.asp>

³⁰⁵ 2008 – 2009 MAF Results – Office of the Commissioner for Federal Judicial Affairs, Effectiveness of Internal Audit Function, *supra* note 304.

³⁰⁶ Public Servants Protection Disclosure Protection Act, section 12, *supra* note 9.

³⁰⁷ *Ibid*, section 33(1).

³⁰⁸ Values and Ethics Code for the Public Sector, Avenues for Resolution, *supra* note 43.

³⁰⁹ For example, the 2013 – 2014 Main Estimates for the OFCJA is found here: <http://www.tbs-sct.gc.ca/ems-sgd/20132014/me-bpd/me-bpd02-eng.asp#toc2-45>

³¹⁰ The Reports on Plans and Priorities of the OFCJA are found on its Publications and Other Official Documents website: <http://www.fja-cmf.gc.ca/fja-cmf/publications/index-eng.html>

³¹¹ See also Response to the Questionnaire, pg. 34, *supra* note 25.

³¹² See Planning Summary Table for Programs and Planning Summary for Internal Services of the 2013 – 2014 Report on Plans and Priorities of the OCFJA, pgs. 8 – 9, <http://www.fja.gc.ca/fja-cmf/publications/rpp/2013-2014/2013-2014-eng.pdf>, and Planning Summary Tables of the 2010 – 2011 Report on Plans and Priorities of the OCFJA, pgs. 3- 4, <http://www.tbs-sct.gc.ca/rpp/2010-2011/inst/fja/fja-eng.pdf>

Act					
Canadian Judicial Council	1.8	1.7	1.9	1.8	1.7
Federal Judicial Affairs	8.6	7.8	8.6	8.6	7.6
Internal Services	0.9	0.9	0.9	0.9	0.9
Grand Total	433.6	453.6	471.2	486	497.7

[225] During the on-site visit, the representatives from the OCFJA stated that the majority of the budget received by the OCFJA is for payment of judges' salaries and other benefits they receive, as can be demonstrated in the above table. The Committee notes that in the 2012 – 2013 Departmental Performance Report for the OCFJA, the budget for the Federal Judicial Affairs program is broken down further. In this respect, the budget for the Judicial Appointments Secretariat is \$500 000, and it counts on staff of 3 full-time personnel to carry out its work.³¹³

[226] Regarding coordination mechanisms for harmonizing their functions with those of other oversight agencies or public authorities, in the Response to the Questionnaire, the country under review notes the following:³¹⁴

[227] *“The OCFJA fulfills a unique mandate, and its functions are defined in statute. Coordination of functions is thus partially governed legislatively and partially through cooperation among officials through coordination of functions and information sharing. For example, the OCFJA provides monthly reports to the Department of Justice on the number of federal superior court judges and the number of vacancies. This information then assists the Minister of Justice to ensure that judicial vacancies are filled in a timely fashion.”*

[228] In addition, the country under review also refers to coordination undertaken by the OCFJA involving the Canadian judiciary in international technical cooperation initiatives, as mandated by the Chief Justice of Canada and the Minister of Justice in 1996. Since then, the oversight body has implemented several judicial and court reform projects, funded by the former Canadian International Development Agency.³¹⁵ These initiatives are supported by Canada's judicial community, as well as the Courts Administration Service, and more information on current international cooperation initiatives is found in the OCFJA website at: <http://www.fja.gc.ca/cooperation/index-eng.html>

[229] During the on-site visit, the representatives from the OCFJA stated that requests also come, at times, through the Department of Foreign Affairs, Trade and Development, or they may come to the Office directly from another country, asking to obtain information about the judicial system in Canada and its fundamental principles and constituent elements. The representatives also stated that the projects in which the OCFJA is involved are varied. For example, in Mexico, help was provided in establishing a Code of Ethics for Justices. In Jamaica, a project was developed to establish a framework for court management services. The OCFJA has also organized numerous programs for visiting delegations, such as Argentina, Jamaica and the Eastern Caribbean States. With respect to these initiatives, the country under review, in its Response to the Questionnaire, also states that it continues to cooperate with the

³¹³ 2012 – 2013 Departmental Performance Report for the OCFJA, pg. 18, <http://www.fja.gc.ca/fja-cmf/publications/dpr-rmr/2012-2013/dpr-rmr-eng.pdf>

³¹⁴ Response to the Questionnaire, pg. 35, *supra* note 25.

³¹⁵ *Ibid.*

Department of Foreign Affairs, Trade and Development and other government agencies in shaping the Canadian government policies toward aid and technical assistance in the field of judicial reform abroad.³¹⁶

[230] With respect to accountability mechanisms applicable to the performance of their duties, the country under review, in its Response to the Questionnaire, notes that it reports annually through Departmental Performance Reports and Reports on Plans and Priorities, which are available on the website of the OCFJA.³¹⁷

[231] In addition, the OCFJA maintains on its website a section on Proactive Disclosure, a measure implemented by Canada to strengthen public sector management by enhancing transparency and oversight of public resources in the federal government. This section contains the mandatory financial and human resources related information with respect to the OCFJA, such as travel and hospitality expenses for selected government officials; contracts entered into by the Government of Canada for amounts over \$10 000 (with only limited exceptions such as national security); and the reclassification of positions. This section also includes information on the awarding of grants and contributions of over \$25 000; and annual reports of expenditures on travel, hospitality and conferences for the OCFJA.³¹⁸

[232] The Committee also notes that the OCFJA, on its Publications webpage, also provides departmental and future oriented financial statements as well as quarterly financial reports.³¹⁹

[233] Finally, the OCFJA has conducted general Client Satisfaction Surveys in 2008 and 2011. These surveys are:³²⁰

[234] “[O]ne of several tools FJA uses to actively listen to its clients and monitor the judicial environment and permits FJA to better understand its clients’ administrative needs, identifying if, and where, judges perceive service gaps exist. Conduct of a survey also assists the FJA in planning and delivering service improvements to its clients as mandated by the Treasury Board Secretariat’s Management Accountability Framework.”

[235] The outcome of these surveys is made available to the public on the website of the OCFJA.

4.2. Adequacy of the legal framework and/or other measures

[236] The OCJFA has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 4.1 of this report. However, the Committee believes it timely to make a number of observations in relation thereto:

[237] First, the Committee observes that a step that the OCFJA may undertake is publishing, under its Proactive Disclosure area of its website, information on founded wrongdoing as set out under section 11(c) of the Public Servants Disclosure Protection Act, by describing the wrongdoing, including the identity of the person found to have committed it if necessary in order to describe the wrongdoing adequately; the recommendations, if any, set out in any report made to the chief executive; and any corrective action taken by the chief executive or the reasons why no corrective

³¹⁶ *Ibid.*

³¹⁷ These reports are available on the Publications and other Official Documents webpage of the OCFJA, *supra* note 299.

³¹⁸ See OCFJA Proactive Disclosure, <http://www.fja.gc.ca/pd-dp/index-eng.html>

³¹⁹ Publications and other Official Documents, *supra* note 299.

³²⁰ 2011 Client Satisfaction Survey Executive Summary, Research Objectives and Approach, <http://www.fja.gc.ca/fja-cmf/publications/survey-sondage/summary-resume-2011-eng.html>

action was taken. This information is currently not found in the OCFJA website. It is difficult to determine whether such wrongdoings have occurred, and have yet to be reported online, or that in the years since the Public Servants Disclosure Protection Act has been in force, no such founded wrongdoings have occurred in the OCFJA. In either case, this information should be provided in the Proactive Disclosure section of its website, similar to what is provided by the Treasury Board Secretariat and the Public Service Commission. In the case of these oversight bodies, although no cases of founded wrongdoings have been made, these organizations make that known to the public all the same.³²¹ The OCFJA may consider instituting a similar policy. The Committee will formulate a recommendation. (see Recommendation 4.4.1 in Section 4.4 of Chapter II of this Report)

[238] Second, the OCFJA underwent an audit of its staffing activities by the PSC for the period between April 1, 2011 and March 31, 2012. As stated under section 3.1, the PSC carries out these audits to determine whether an organization has an appropriate framework, practices and systems in place to manage its appointment activities and whether appointments and appointment processes are being carried out in compliance with the Public Service Employment Act, the Public Service Employment Regulations and the PSC Appointment Framework. These audits provide feedback to deputy heads so they can better understand staffing risks, controls and governance within their organizations. The results of this audit were published on the website of the PSC.³²²

[239] The report found that the OCFJA could improve its appointment process. For example, all appointments are to be made on the basis of merit, which is met when the Public Service Commission is satisfied that the person to be appointed meets the essential qualifications for the work to be performed, as established by the deputy head, and, if applicable, any asset, qualifications, operational requirements and organizational needs established by the deputy head.³²³ The auditors reviewed 11 appointments that were made during the period of the audit, and found that in 6 out of 11 instances, merit was not demonstrated, the main reason being that the organization was unable to provide documentation supporting merit. These issues included the lack of proof that the person appointed met the advertised education requirements, or the absence of assessment documentation for the person appointed.³²⁴ To address these issues, an action plan was adopted with strategies to address the audit recommendations and findings, a timeframe for implementation and indicators that will be used to identify successful implementation. Furthermore, the country under review notes that the OCFJA is developing and implementing an Internal Staffing Monitoring Framework in order to evaluate the effectiveness of its staffing performance, identify deficiencies and implement corrective actions. Progress on the action plan is submitted to the PSC as part of the annual Departmental Staffing Accountability Report or as required as part of any additional reporting requirement.

[240] The Committee notes that although systems of government hiring is a subject of the Second Round of Review, it would be appropriate to make an observation and formulate a recommendation, as the issue is one that the oversight body specifically needs to strengthen, rather than an issue examined as a whole for the public service. As such, the Committee considers that the OCFJA should conclude with the implementation of the action plan that was developed to address the findings of the Public

³²¹ See, for example, Disclosure of Information on Founded Wrongdoing at the Treasury Board Secretariat (TBS) – Reports, <http://www.tbs-sct.gc.ca/pd-dp/dww-dcapt/report-rapport-eng.asp>, and Transparency: Public Servants Disclosure Protection Act, Public Service Commission, <http://www.psc-cfp.gc.ca/disclosure-divulgaration/psdpa-lpfdar-eng.htm>

³²² Audit of the Office of the Commissioner for Federal Judicial Affairs Canada by the Public Service Commission, <http://www.psc-cfp.gc.ca/adt-vrf/rprt/2013/ar-rv/5-fja-cmf/index-eng.htm>.

³²³ Section 30, Public Service Employment Act, *supra* note 22.

³²⁴ Audit of the Office of the Commissioner for Federal Judicial Affairs Canada by the Public Service Commission, par. 5.22, *supra* note 322.

Service Commission audit. The Committee will formulate a recommendation. (see Recommendation 4.4.2 in Section 4.4 of Chapter II of this Report)

[241] Third, the Committee notes that the OCFJA has participated in horizontal audits conducted by the Office of the Comptroller General that serve as internal audits on its operations. For example, they have participated in the Horizontal Internal Audit of Electronic Record Keeping in Small Departments and Agencies and the Horizontal Internal Audit of Information Technology Asset Management in Small Departments and Agencies. These audits serve as internal audits on the operations of these departments and agencies, and they also provide that deputy heads are to develop management action plans to address the recommendations contained in these reports. Moreover, the Commissioner of the OCFJA, as its deputy head, is required to make these horizontal audit reports, and the corresponding management action plans, public in a timely manner and posted on its website.³²⁵

[242] The Committee observes, however, that the OCFJA has not been complying with this requirement. On the publications section of its website, any reference to an audit is a Contracting Audit carried out in May 2008.³²⁶ No mention is made of the aforementioned horizontal audits that were carried out in 2010 and 2011, nor have the OCFJA management action plans to implement the recommendations of these audits been made public. The Committee does observe that in the 2012 – 2013 Departmental Performance Report, the OCFJA reports that it has begun to implement the Management Action Plan on the Office of the Comptroller General Horizontal Audit on Electronic Record Keeping, which includes actions such as reviewing the file structure of the 17 judicial advisory committees across the country to improve the structure and collection of crucial information, and implementing electronic tracking and managing of correspondence. However, the plan itself, as well as that for the horizontal audit on Information Technology Asset Management, is not found on the website of the OCFJA, as required under Canadian policy. Publication of these important studies and documents would assist the country under review in observing the important values and transparency and access in the operations of this oversight body. The Committee will formulate a recommendation. (see Recommendation 4.4.3 in Section 4.4 of Chapter II of this Report)

4.3. Results of the legal framework and/or other measures.

[243] The country under review, in its Response to the Questionnaire, referred to the statistical reports produced every year by the Judicial Advisory Committees, the results of which are posted on the OCFJA website.³²⁷ These reports provide information on the number of applications outstanding at the beginning of the year; applications received; applications assessed as ‘recommended’ and ‘unable to recommend;’ applications from Provincial or Territorial Court Judges; applicants who withdrew; applicants appointed as superior court judges; applications outstanding at the end of the year; and number of Advisory Committee meetings held across Canada. For the time period between November 1, 2012 to October 31, 2013, the following is found on its website:³²⁸

³²⁵ Policy on Internal Audit, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=16484§ion=text>

³²⁶ Contracting Audit, May 2008, <http://www.fja-cmf.gc.ca/fja-cmf/publications/audit-verification/audit-verification-eng.html>

³²⁷ Report of Activity of the Judicial Advisory Committees across Canada, <http://www.fja-cmf.gc.ca/appointments-nominations/committees-comites/reports-rapports/index-eng.html>

³²⁸ Report of Activity of the Judicial Advisory Committees across Canada for the year November 1, 2012 to October 31, 2013, <http://www.fja-cmf.gc.ca/appointments-nominations/committees-comites/reports-rapports/report-rapport-2013-eng.html>

Applications outstanding as of November 1, 2012	185
Applications received during the year.	495
Applicants assessed by Committees as ‘Recommended’.	132
Applicants assessed by Committees as ‘Unable to Recommend’.	168
Applications from Provincial or Territorial Court Judges. (Note: these candidates are not assessed. Committees comment only.)	21
Applicants who withdrew.	8
Applicants appointed as superior court judges.	52
Applications outstanding as of October 31, 2013.	359
Number of Advisory Committee meetings held across Canada.	42

[244] Guides and manuals are also produced by the OCFJA to help orient public servants and private citizens regarding ethical behavior. For example, the country under review, in its Response to the Questionnaire, cites the Code of Ethics for Advisory Committee Members and the Guidelines for Advisory Committee Members as examples of manuals and guides that assist the members of these committees with their work. Both documents ensure accountability in the functioning of the Advisory Committees, and publicize the conduct expected of them.³²⁹

[245] Moreover, the OCFJA also provides information to applicants for judicial appointments on its website, such as the Personal History Forms.³³⁰ Through these forms, information can be gathered on applicants on their suitability for a judicial appointment, in particular through yes/no questions in a ‘Personal and Other Matters’ section that could alert Committee members to potential areas of vulnerability. These questions encompass matters such as disciplinary matters before a Law Society, if the applicant was guilty of a criminal or other offence, and if the applicant has been involved in litigation, among other things. Candidates may also access information on considerations that apply to an appointment; explanations on tenure, remuneration, allowances, benefits and professional development; as well as ethical matters. Assessment criteria are also made available to potential candidates.³³¹

[246] The Committee takes note that the country under review maintains detailed results on the appointments carried out by the OCFJA as well as makes guides and manuals available that orient public servants and private citizens on its work.

4.4. Conclusions and recommendations.

[247] Based on the comprehensive review conducted with respect to the Office of the Commissioner for Federal Judicial Affairs in the foregoing sections, the Committee offers the following conclusions and recommendations:

[248] Canada has considered and adopted measures intended to maintain and strengthen the Office of the Commissioner for Federal Judicial Affairs as an oversight body, as described in Chapter II, Section 3 of this Report.

³²⁹ Response to the Questionnaire, pg. 46, *supra* note 25.

³³⁰ Personal History Forms, <http://www.fja-cmf.gc.ca/appointments-nominations/forms-formulaires/ph-fc/index-eng.html>

³³¹ Response to the Questionnaire, pgs. 46 – 47, *supra* note 25.

[249] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 4.4.1 Take steps to report whether or not founded wrongdoings have occurred, as set out in the Public Servants Disclosure Protection Act, in the Proactive Disclosure section of the website of the Office of the Commissioner for Federal Judicial Affairs. (See section 4.2 of Chapter II of this Report)
- 4.4.2 Conclude with the implementation of the action plan that was developed to address the findings of the Public Service Commission audit. (See section 4.2 of Chapter II of this Report)
- 4.4.3 Ensure that completed internal audit reports of which the Office of the Commissioner for Federal Judicial Affairs is subject, including its management action plans, are made accessible to the public on its website, in a timely manner. (See section 4.2 of Chapter II of this Report)

III. BEST PRACTICES

[250] In accordance with Section IV of the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round* and the *Format* adopted by the Committee for the Reports of said Round, references is made to the best practices identified by the country under review, which it has expressed its wish to share with the other member States of the MESICIC, as it could be beneficial to them:

[251] **With respect to the Treasury Board of Canada Secretariat:**

[252] In collaboration with the Canada School of Public Service, the Treasury Board of Canada Secretariat has developed on-line courses specifically on the topic of values and ethics for public servants. The first, entitled *Paving the Way: Values and Ethics Foundations for New Employees* has been made available since 2008, and was recently updated to reflect the new Values and Ethics Code for the Public Sector. As it is free and self-paced, learners can incorporate the course easily into their learning plans, and since 2010, more than 22 783 employees have registered for this course, as either as a stand-alone course or as part of their orientation to the public service.

[253] As a result of the success of this course, the TBS and the Canada School of Public Service has developed another on-line course, *Values and Ethics Foundations for Managers*, which is intended for the middle manager and supervisory levels. Available since April 2013, it is also free and self-paced.

[254] More information is available at <http://csps-efpc.gc.ca/forlearners/coursesandprograms/CourseDetail-eng.aspx?courseno=C255-2>; <http://www.csps-efpc.gc.ca/forlearners/coursesandprograms/CourseDetail-eng.aspx?courseno=C355> and on page 49 of the Response to the Questionnaire.

[255] **With respect to the Office of the Commissioner for Federal Judicial Affairs**

[256] The OCFJA has developed its website to serve as broad a population as possible. In this respect, the website provides information for individuals interested in judicial appointments by

outlining the process for appointment, as well as all necessary forms and requirements for submission. Moreover, members of Judicial Appointment Committees may also access information relevant for their mandate. The public may also find access to the Federal Courts Reports, and the reporting documents produced by all government departments.

[257] More information is available at <http://www.fja.gc.ca/home-accueil/index-eng.html> and on page 49 of the Response to the Questionnaire.

IV. FOLLOW-UP ON PROGRESS AND NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST ROUND OF REVIEW³³²

[258] The Committee will refer below to the progress, information, and new developments made by Canada in relation to the recommendations and measures suggested by the Committee for implementation in the Report of the First Round, and with respect to which the Committee deemed that additional attention was required in the Reports from the Second and Third Rounds,³³³ and shall, as appropriate, take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, restate or reformulate them pursuant to section VI of the *Methodology* adopted by the Committee for the Fourth Round of Review.

[259] The Committee will also take note in this section of the Report of the difficulties in implementing the aforementioned recommendations and the measures to which the country under review has drawn attention, as well as of its technical cooperation needs to that end.

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct to prevent conflicts of interest and mechanisms to enforce them

Recommendation:

Continue strengthening the provisions and measures on conflicts of interest and mechanisms to enforce compliance.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Adopt measures to ensure that the post-employment restrictions for public servants can be enforced. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[260] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following.³³⁴

³³² The list of recommendations that still require additional attention or which have been reformulated following this analysis, have been included as Annex 1 to this Report.

³³³ These Reports are available at: <http://www.oas.org/juridico/english/can.htm>

³³⁴ See Response to the Questionnaire, pgs. 50 - 51 *supra* note 25.

[261] – Canada has issued a revised Treasury Board Policy on Conflict of Interest and Post-Employment, effective since April 2, 2012.³³⁵ Accompanying this Policy is an Application Guide for Post-Employment under the Policy on Conflict of Interest and Post-Employment.³³⁶ The country under review further states that the revised Policy clarifies the responsibility of the deputy head of each organization to designate positions which are subject to post-employment restrictions and determine the appropriate measures to be taken in relation to each particular case. Moreover, the Policy is applicable to all organizations in the core public sector, for which the Treasury Board is employer, as defined in section 11(1) of the Financial Administration Act, unless excluded through specific acts, regulations or Orders in Council. As such, these organizations have all participated in the implementation of this Policy.

[262] In addition, during the on-site visit, the representatives of the Treasury Board of Canada Secretariat mentioned that the Code of Conduct for Procurement also contains measures on post-employment restrictions on former public servants. Moreover, with respect to public office holders, the Conflict of Interest Act contains post-employment measures applicable to them.

[263] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that although post-employment measures are put in place, adequate enforcement measures are still lacking. (see sole measure of section 1.1 of Annex 1 to this Report)

[264] The Committee observes that in the Application Guide for Post-Employment under the Policy on Conflict of Interest and Post-Employment, the following is stated:³³⁷

[265] *“Once a public servant has left the public service, there are no simple procedures that a department can use to check whether that public servant is respecting the post-employment compliance measures to which she or he is subject. The onus for compliance is on the individual in question. Once an individual has left office, he or she is no longer a public servant; hence, managers no longer have any authority over that individual. Public servants who are no longer employed in the public service cannot be subject to disciplinary measures.”*

[266] This passage points out the possible difficulty in enforcing the Code with respect to post-employment, given that there is no enforcement mechanism to compel former employees to abide by the Policy on Conflict of Interest and Post-Employment.

[267] There are measures suggested in the Policy that a deputy head can put into place, such as writing a former employee to remind the individual of his or her obligations and request that the former employee let the employer know in writing that he or she intends to comply. Other measures include ensuring that former colleagues do not provide ex-public servants with inside information or preferential treatment, or instruct staff to cease negotiations with an entity that has hired a former public servant in breach of post-employment restrictions. Another measure is a reference to the Code of Conduct for Procurement, which states that vendors are not to hire directly, or through a third party, former public servants during their

³³⁵ Policy on Conflict of Interest and Post-Employment, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25178>

³³⁶ Application Guide for Post-Employment under the Policy on Conflict of Interest and Post-Employment, <http://www.tbs-sct.gc.ca/gui/agcipe-gaciam-eng.asp>

³³⁷ *Ibid*, Post-Employment Restriction period: Waivers, Reductions and Enforcement.

one year cooling off period where this would constitute a violation of post-employment measures under the Values and Ethics Code for the Public Service.³³⁸

[268] However, these measures place the onus on the former employee to comply, rather than provide enforcement mechanisms that deter a former employee from violating these post-employment provisions.

[269] The Committee observes that the country under review may consider establishing penalties, as set out in the Legislative Guidelines: Basic Elements on Conflicts of Interest, a legal cooperation tool that the Technical Secretariat of the MESICIC has developed to support states in implementing the Convention and improve the efficiency and effectiveness of their national laws, policies and institutions related to the fight against corruption.³³⁹ The country under review may further consider the proposal to strengthen enforcement of post-employment requirements through contractual obligations, enforceable through the courts, as it stated in the follow-up to this measure in the Report for the Third Round of Review.³⁴⁰ In this respect, the country under review notes that deputy heads have the authority, on a case-by-case basis, to pursue legal action against a former public servant in violation of post-employment restrictions to sue for demonstrated damages with respect to government operations if required.

[270] With respect to public office holders, the Conflict of Interest Act makes them subject to post-employment measures contained in this law.³⁴¹ Further specific prohibitions are in place for those designated as reporting public office holders.³⁴² For example, these individuals are prohibited from entering into a contract of service, being appointed to a board of directors or accepting employment with an entity in which he or she had direct and significant official dealings for a period of one year immediately before his or her last day in office. Nor are they able to make representations for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which he or she had direct and significant official dealings for the same time period of one year after leaving public service. Former ministers are also prohibited from contracting and making representations in general, and making representations specifically to current ministers who were ministers at the same time as the former reporting public office holder. In the case of the former ministers, the prohibition period is two years, rather than one.

³³⁸ *Ibid.* The representatives from the Treasury Board Secretariat also raised these measures during the on-site visit, where they stated that with post-employment measures, there are challenges in enforcing them. Such measure to control post-employment include mechanisms that address a former public servant's attempts for new relationships with government, such as on procurement and government contracting. Moreover, public servants are reminded of their duties and on the internal control measures in place. Though they cannot control an individual who has left, those still in the public service are reminded of their duties and of the appropriate relationships that can be formed with former public servants.

³³⁹ Legislative Guidelines: Basic Elements on Conflicts of Interest, http://www.oas.org/juridico/english/gl_conflict_int.doc

³⁴⁰ Report on Implementation in Canada of the Convention Provisions Selected for Review in the Third Round, and on Follow-Up to the Recommendations Formulated to that Country in Previous Rounds, pg. 31, http://www.oas.org/juridico/english/mesicic3_can_rep.pdf

³⁴¹ Conflict of Interest Act, Part 3, Post-Employment, *supra* note 19. The definition of public office holders is found under footnote 19.

³⁴² These are public office holders who are: a) a minister of the Crown, minister of state or parliamentary secretary; b) a member of ministerial staff who works on average 15 hours or more a week; c) a ministerial adviser; d) a Governor in Council appointee, or a ministerial appointee whose appointment is approved by the Governor in Council, who exercises his or her official duties and functions on a part-time basis but receives an annual salary and benefits; e) a Governor in Council appointee, or a ministerial appointee whose appointment is approved by the Governor in Council, who exercises his or her official duties and functions on a full-time basis; or f) a full-time ministerial appointee designated by the appropriate minister of the Crown as a reporting public office holder.

[271] The Committee notes that the legislation provides for a sanction for violation of these post-employment restriction provisions. The Act establishes a Conflict of Interest and Ethics Commissioner, who may issue a report on whether a public office holder is complying with his obligations under the Act, especially with respect to those that apply to lobbying, but the most the Commissioner may do is order that current public office holders not have official dealing with a former reporting public office holder.³⁴³

[272] The Committee observes that the country under review does have enforcement provisions under the Lobbying Act, which provides for a five-year ban on lobbying activities by a public office holder after leaving public service.³⁴⁴ In this case, a former public office holder who violates the Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000.³⁴⁵ The country under review may consider establishing a similar sanction for those who violate the provisions of post-employment contained in the Conflict of Interest Act.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Canada should continue to improve evaluation mechanisms to analyze the results of enforcement of conflict of interest provisions. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[273] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered:³⁴⁶

[274] – The Management Accountability Framework assesses the implementation of conflict of interest management practices in departments and agencies, specifically whether departments have processes in place to help public servants raise, discuss and resolve issues related to conflict of interest, and have implemented activities to raise awareness of employees on their responsibilities for avoiding or managing conflicts of interest. For example, all departments in the core public administration and four separate agencies participated in this assessment exercise and provided information on how conflicts of interest risks have been identified and what activities have been implemented to raise employee awareness of conflict of interest responsibilities.

[275] In addition, regular internal audits and audits by the Auditor General are used to analyze the results of enforcement of conflict of interest provisions, the most recent being the one conducted by the Office of the Auditor General in 2010. The scope of this audit included the Treasury Board Secretariat in its role as the central agency responsible for conflicts of interest policies in the federal public service, as well as five departments (Public Works and Government Services Canada, Agriculture and Agri-Food Canada, Human Resources and Skills Development Canada, Natural Resources Canada and the Department of Canadian Heritage). The Office of the Auditor General requests annual updates on progress made in implementing its recommendations.

[276] The Committee takes note of the satisfactory consideration by the country under review of measure c) of the foregoing recommendation.

³⁴³ See sections 37, 40 and 41 of the Conflict of Interest Act, *supra* note 19.

³⁴⁴ Lobbying Act, section 10.11, <http://laws.justice.gc.ca/eng/acts/L-12.4/FullText.html>

³⁴⁵ Section 14(2), *ibid.*

³⁴⁶ Response to the Questionnaire, pgs. 52 – 53, *supra* note 25.

1.3 Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

Recommendation:

Continue strengthening the norms and mechanisms with respect to the existing systems and measures requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Adopt provisions to establish the obligation to disclose wrongdoings, including presumed acts of corruption, as well as provide reprisal protection mechanisms to those individuals working in the federal public sector who are not currently required to disclose, or who are not afforded protection for such disclosure. (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)

[277] In its Response, the country under review notes that the Canadian Security Intelligence Service, the Canadian Forces and the Communications Security Establishment have established measures to provide reprisal protection mechanisms for public servants who disclose wrongdoing, in satisfaction of section 52 of the Public Servants Disclosure Protection Act.³⁴⁷

[278] The Committee takes note that systems for protecting public servants and private citizens who, in good faith, report acts of corruption is reviewed in a more comprehensive manner in the Second Round of Review, and the country under review received a similar recommendation that provides for ensuring that those who do not fall under the Public Servants Disclosure Protection Act have adopted measures to protect persons who disclose wrongdoings. The country under review will have an opportunity to provide more comprehensive information on the manner it is meeting this recommendation on the follow-up to this round of review.

[279] With respect to the obligation to disclose wrongdoings, including presumed acts of corruption, during the on-site visit, the representatives from the Treasury Board Secretariat noted that under the Public Servants Disclosure Protection Act, members of the public may report to the Public Service Integrity Commissioner any acts of corruption committed by a public servant. However, there is no obligation on public servants to report presumed acts of corruption. It was explained that part of the reason such an obligation does not exist is that it would also then make it unlawful not to report these presumed acts of corruption.³⁴⁸

[280] The Committee does note that in some instances, the country under review does make it an obligation on public servants to disclose wrongdoings, with potential criminal liability for not doing so. For example, under the Financial Administration Act, section 80(1)(3) provides that:

³⁴⁷ *Ibid.*, pg. 54.

³⁴⁸ The country under review notes that the approach of the Public Servants Disclosure Protection Act is intended to provide a positive environment that encourages public servants to come forward with disclosures of wrongdoing in a protected manner, free from reprisals. Parliamentarians conducted extensive consultations with stakeholders during the committee stage of the legislative process in order to situate the Public Servants Disclosure Protection Act properly within Canada's values-based ethical framework.

[281] “Every officer or person acting in any office or employment connected with the collection, management or disbursement of public money who...

[282] (e) having knowledge or information of the contravention of this Act or the regulations or any revenue law of Canada by any person, or of fraud committed by any person against Her Majesty, under this Act or the regulations or any revenue law of Canada, fails to report, in writing, that knowledge or information to a superior officer.

[283] is guilty of an indictable offence and liable on conviction to a fine not exceeding five thousand dollars and to imprisonment for a term not exceeding five years.”

[284] Thus, it appears that there is an obligation on public servants to disclose wrongdoing on a specific presumed act of corruption, such as frauds against Her Majesty.

[285] Given the foregoing, the Committee considers the reformulation of measure a) of the recommendation for section 1.3 of Chapter IV of this Report, as follows:

[286] Adopt provisions to establish the obligation on public servants to report to appropriate authorities those acts of corruption set out in the Inter-American Convention against Corruption, which they come across in the performance of public functions. (see sole measure of section 1.3 of Annex 1 to this Report)

2. SYSTEMS FOR REGISTERING INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)

Recommendation:

Continue strengthening the systems for registration of income, assets, and liabilities.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Adopt provisions where they do not currently exist on the systems for registering sources of income, assets and liabilities of family members of appropriate individuals in the federal public sector that potentially could conflict with the official duties of the individual. (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[287] In its Response, the country under review notes that the Policy on Conflict of Interest and Post-Employment provides that deputy heads are to ensure that procedures are in place in their organization for public servants to file a report of all situations, assets or interests that might give rise to real, apparent or potential conflict of interest with respect to their official duties.³⁴⁹ Moreover, the Policy provides that:³⁵⁰

[288] “Where their deputy head determines that any of these assets results in a real, apparent or potential conflict of interest in relation to their official duties, public servants may be required to divest those assets, or to take other measures to resolve the conflict. Public servants may not sell or

³⁴⁹ *Ibid*, pgs. 55 – 56.

³⁵⁰ Policy on Conflict of Interest and Post-Employment, 2.1 Assets, *supra* note 335.

transfer assets to family members or anyone else for the purpose of circumventing the compliance requirements.”

[289] However, under the Policy, family members are not required to report their source of income, assets or liabilities, as the onus for reporting is on the public servant when such assets or liabilities put them in a conflict of interest.³⁵¹ In this respect, during the on-site visit, the representatives stated that there is strong privacy legislation in place that does not assume that family members have shared interests among them. Moreover, the country under review, in its Response to the Questionnaire, noted that there are difficulties in the implementation of the measure due to the laws associated with enforcing the collection of third party information from individuals who are not employees.³⁵²

[290] For this reason, the country under review notes that it is not in a position to implement this measure with respect to public servants subject to the Policy on Conflict of Interest and Post-employment, regardless of the individual’s position in the public service, given the restrictions of the Privacy Act and previously-raised legal difficulties in enforcing the collection of third-party personal information from individuals who are not employees.

[291] Given the foregoing, the Committee is satisfied with the explanation provided by the country under review and it finds that measure a) has been considered and is no longer valid.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Adopt provisions on the systems for registering, where appropriate, sources of income, assets and liabilities that potentially could conflict with the official duties of those employees in the federal public sector who currently are not required to meet such registration procedures, in order to contribute to the promotion of the purposes of the Convention. (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[292] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following.³⁵³

[293] – *“In the initial letter of offer of employment, public servants must acknowledge that they are required to observe the Values and Ethics Code for the Public Sector and that the Code is part of their conditions of employment. In the same letter of offer, employees are advised that they must report any real, perceived or potential conflict of interest and must, if necessary, complete a Confidential Report within 60 days of the effective date of appointment. In addition, section 22 of the Conflict of Interest Act requires public office holders to provide a confidential report within 60 days of appointment. Section 25 of this same Act also requires public office holders to publicly declare certain assets, liabilities and outside activities.”*

[294] In addition, the country under review reports that, *“[I]n October 2010, the Office of the Auditor General released a report on an audit of conflicts of interest in the core public administration and found that the departments audited have set up organizational units to deal with values and ethics, designated senior officials to help public servants resolve issues related to application of the Code*

³⁵¹ Response to the Questionnaire, pg. 56, *supra* note 25.

³⁵² *Ibid.*

³⁵³ See Response to the Questionnaire, pg. 57, *supra* note 25.

and provided guidance and training on conflict of interest... Moreover, the 2010 – 2011 round of Management Accountability Framework evaluated departments on whether key risks of ethical breaches, including conflict of interest, have been identified and addressed through mitigation strategies and whether lessons learned from ethical breaches are communicated throughout the organization.”

[295] The Committee notes that the Values and Ethics Code for the Public Sector was adopted on April 2, 2012, and it expanded the scope of coverage of the public sector as compared to the Values and Ethics Code for the Public Service. The adoption of this Code represents a major step forward in ensuring that there is a standard of conduct applicable to the public sector in Canada as a whole. In that respect, the Code states that all public servants are to take steps to prevent and resolve any real, apparent or potential conflicts of interest between their official responsibilities and their private affairs in favor of the public interest.

[296] However, the Committee observes that with respect to the submission of confidential reports within 60 days of the effective date of appointment on any real, perceived or potential conflict of interest, this only seems to be applicable to those subject to the Policy on Conflict of Interest and Post-Employment, where the scope of coverage is much more limited than that of the aforementioned Code. The Policy solely applies to the core public administration, for which Treasury Board is the employer, as defined in section 11(1) of the Financial Administration Act, unless excluded through specific acts, regulations or Orders in Council. As a result, there are numerous government and separate agencies³⁵⁴ that are not subject to the Policy and it is unclear whether these important sectors of the public service are required to provide confidential reports for any real, perceived or potential conflict of interest.

[297] It is worth noting that some excluded agencies are instituting their own policies on conflicts of interest and post-employment. For example, the Canadian Nuclear Safety Commission, a separate agency, has instituted its own Conflict of Interest and Post-Employment Policy³⁵⁵ and Directive on Reporting and Managing Financial Conflicts of Interest,³⁵⁶ which requires employees to submit a confidential report in a timely manner with respect to potential conflicts of interest. However, it is difficult for the Committee to determine whether other government or separate agencies are instituting these policies themselves.

[298] Given the foregoing, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that not all employees of the federal government are required to provide confidential reports of assets, income and liabilities on any real, perceived or potential conflict of interest. (see measure a) of section 2 of Annex 1 to this Report)

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

³⁵⁴ Under section 11(1) of the Financial Administration Act, ‘separate agency’ is defined as meaning, the portion of the federal public administration named in Schedule V of that Act. There are 26 government agencies in this schedule, including the Canada Revenue Agency, and the Office of the Superintendent of Financial Institutions, among others.

³⁵⁵ Canadian Nuclear Safety Commission Conflict of Interest and Post-Employment Policy, <http://www.cnsccsn.gc.ca/eng/about/valuesethics/code.cfm>

³⁵⁶ Canadian Nuclear Safety Commission Directive on Reporting and Managing Financial Conflicts of Interest, <http://www.cnsccsn.gc.ca/eng/about/valuesethics/CNSC-Directive-on-Reporting-and-Managing-Financial-Conflicts-of-Interest-Final.cfm>

Adopt measures so that the Confidential Reports submitted in accordance with the Values and Ethics Code of the Public Service and of Defence and Administrative Orders and Directives, 7021-1, are reviewed on a timely basis and appropriate steps taken to address conflicts of interest and other possible violations of law and to consider publication of such reports, where appropriate. (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[299] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following.³⁵⁷

[300] – The country under review notes that reporting requirements previously contained in the Values and Ethics Code for the Public Service is now contained in the Policy on Conflict of Interest and Post-Employment. In this respect:

[301] *“Section 6 of the Policy on Conflict of Interest and Post-Employment sets out the mandatory requirements for deputy heads with respect to their departments’ and agencies’ conflict of interest and post-employment programs in the areas of education, oversight, management of the function, monitoring and reporting, including the systems for reporting conflicts of interest and dealing with these reports. Treasury Board Secretariat will assess departmental performance in this area through a variety of methods, including the Management Accountability Framework.”*

[302] The country under review also provides that the practice of publication of the details of conflict of interest declarations requires a balance of the desire for transparency with the rights of individuals to security and privacy. In this respect:

[303] *“It is considered appropriate that the reports of possible conflicts of interest of public office holders, who are appointed by the Governor in Council, and who are subject to the Conflict of Interest Act are made public and as such, it is required by law. Public office holders include ministers of the crown and senior officials such as deputy ministers. They are accountable to Parliament (in the case of ministers) and before Parliament (in the case of deputy ministers) and the exercise of their powers is subject to public scrutiny. However, it is considered inappropriate to publish the reports of possible conflicts of interest submitted by most public servants at lower levels as within our system of government they are not public figures, and they are accountable to their deputy heads, not directly to Parliament.”*

[304] The Committee takes note that the country under review has considered the publication of confidential reports, when deemed appropriate. Under the Conflict of Interest Act, within 60 days of their appointment, reporting public office holders must file with the Conflict of Interest and Ethics Commissioner a Confidential Report describing their assets, liabilities, income and activities. A Summary Statement is prepared and placed in the public registry. Subsequently, reporting public office holders are required to review annually the information they disclosed and, if there are any changes, to inform the Commissioner.³⁵⁸ These Statements are available to the public on the website of the Office of the Conflict of Interest and Ethics Commissioner, including the Summary Statements for Members of the House of Commons.³⁵⁹ Summary statements for the interests of Senators are also made public through a registry. This registry provides the public with information regarding the interests of Senators, including activities they carry on outside their parliamentary duties, the source and nature (but not the value) of

³⁵⁷ Response to the Questionnaire, pgs. 58 – 59, *supra* note 25.

³⁵⁸ See Public Registry under the Conflict of Interest Act, <http://ciec-ccie.gc.ca/PublicSearch.aspx>

³⁵⁹ Public Registries, <http://ciec-ccie.gc.ca/Default.aspx?pid=11&lang=en>

their income, the nature (but not the value) of their assets and liabilities, authorized contracts or other business arrangements with the Government of Canada or any federal agency or body, as well as declarations of private interests, sponsored travel, gifts or other benefits, and statements of material changes.³⁶⁰

[305] With respect to review of the conflict of interest reports under the Policy on Conflict of Interest and Post-Employment, it is unclear to the Committee if they are being carried out on a timely basis and appropriate steps taken to address conflicts of interest. During the on-site visit, the representatives of the Treasury Board Secretariat noted that it is the responsibility of each Deputy Head to review these reports, and once submitted, there is an intention in the institutions to process them in order to mitigate any conflicts of interest. It is up to each department to look at the veracity of the content of these reports, but the representatives stated that there is no standard procedure in place for the review of conflict of interest reports. Moreover, upon review of the Values Code and the Policy, the Committee cannot find the requirement for a deputy head to review conflict of interest reports. This process may be set out in a Directive on Reporting and Managing Financial Conflicts of Interest, but the country under review, in its Response, notes that it is still in development, and is to accompany the aforementioned Policy.³⁶¹

[306] Finally, the Committee notes that the Department of National Defence is subject to the Values and Ethics Code for the Public Sector and the Policy on Conflict of Interest and Post-Employment.

[307] Given the foregoing, the Committee considers the reformulation of measure c) of the recommendation of section 2 of Chapter IV of this Report, as follows:

[308] Adopt measures to facilitate the timely review of Conflict of Interest Reports submitted in accordance with the Values and Ethics Code for the Public Sector and other policies on conflicts of interest and post-employment adopted throughout the public service. (see measure b) of section 2 of Annex 1 to this Report)

7. GENERAL RECOMMENDATIONS

Recommendation 7.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Select and develop procedures and indicators, when appropriate, that make it possible to verify the follow-up to the recommendations contained in this report, and report back to the Committee through the Technical Secretariat in this regard. For the purposes indicated, Canada could consider taking into account the list of the most widely used indicators, applicable in the Inter-American system that were available for the selection indicated by the country under analysis, which has been published on the OAS website by the Technical Secretariat of the Committee, as well as information derived from the analysis of the mechanisms developed in accordance with recommendation 7.3, which follows.

³⁶⁰ Office of the Senate Ethics Officer, Public Registry, <http://sen.parl.gc.ca/seo-cse/eng/PublicRegistry-e.html>

³⁶¹ Response to the Questionnaire, pg. 57, *supra* note 25. The country under review notes that while there is no standard procedure in place for the review of conflict of interest reports, it is confident that there are procedures in place in each organization. While the Committee was unable to find the requirement for a deputy head to review conflict of interest reports, there is a specific requirement for employees to submit such reports, and for deputy heads to consider the nature and risk of any conflict of interest so identified. It therefore submits that a review of the conflict of interest reports is inherent in the process.

[309] In its Response, the country under review notes that the Treasury Board Secretariat:³⁶²

[310] “[C]arries out assessments of the management performance of organizations in the public service annually. Organizations are assessed against Areas of Management that measure each of the 10 elements of the Management Accountability Framework (MAF), including the area of Values and Ethics, and are given a rating based on an assessment scale. (<http://www.tbs-sct.gc.ca/maf-crg/methodology-methodologie-eng.asp>).

[311] *The methodology used to assess the Values and Ethics area of management is reviewed regularly and is subject to constant refinement as a result of lessons learned and new priorities. The indicators suggested by the Technical Secretariat of the Committee of Experts in the first round continue to be under consideration for adaptation and inclusion in the methodology, subject to considerations such as jurisdictional issues, legal constraints and Canada’s structure of government and governing principles.”*

[312] The representatives from the Treasury Board Secretariat, during the on-site visit, noted that as part of this annual exercise, information is required on steps taken by Departments to implement the Values and Ethics Code for the Public Sector, what has been implemented, and provide results. Moreover, the assessment looks at areas that Departments are lacking and how it may be improved. Any areas of strengths are shared with other Departments as a model practice to be followed and assessments are also made on the performance of Deputy Heads.

[313] The Committee reiterates the need for the country under review to advance in its implementation of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that while the comprehensive review by the Treasury Board Secretariat of departmental accountability for management is commendable, it does not indicate if procedures or indicators that verify the follow-up to the implementation of the recommendations formulated in the First Round are being put in place. (see sole recommendation of section 7 of Annex 1 to this Report)

Recommendation 7.3 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Develop, when appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, and the recommendations contained therein.

[314] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered:³⁶³

[315] – *“The Treasury Board Secretariat carries out assessments of the management performance of organizations in the public service annually. Organizations are assessed against Areas of Management that measure each of the 10 elements of the Management Accountability Framework (MAF), including the area of Values and Ethics, and are given a rating based on an assessment scale.”*

³⁶² Response to the Questionnaire, pg. 62, *ibid*.

³⁶³ Response to the Questionnaire, pgs. 63 – 64 , *ibid*.

[316] In addition, the country under review has developed several procedures to analyze the mechanisms mentioned in the Report of the First Round and the recommendations contained therein. These include the establishment of an Interdepartmental Working Group on Corruption, which meets to examine Canada's implementation of the provisions of various anti-corruption conventions and instruments, including that of the Inter-American Convention against Corruption. This Group includes experts from the Department of Justice, the Department of Foreign Affairs, International Trade and Development, the Royal Canadian Mounted Police, the Public Prosecution Service of Canada, Public Works and Government Services Canada, and the Treasury Board of Canada Secretariat. Moreover, the country under review reports that, within the context of the Coordinating Committee of Senior Officials (Criminal Justice), provincial and territorial governments are informed of the preparation of the response by Canada in its Fourth Round of Review and are given updates on Canada's international anti-corruption activities.

[317] In this respect, during the on-site visit, the representative from the Department of Justice provided further information on the work of this Working Group and Committee. The Working Group brings together various departments and agencies, on an informal basis, and essentially works as a network of officials. Members of this Group, as well as others, are consulted on an as-needed basis to help prepare Canada's response as well as its progress reports. Meetings are held to determine timelines for responding to a questionnaire, in order to ensure that the required inputs are being received.

[318] The relevant departments and agencies are kept abreast of the recommendations so that they may respond to them, and they are given an opportunity to respond to Canada's draft preliminary report. The representative stated that it is a well-established network.

[319] With respect to the Coordinating Committee, the representative mentioned that the federal government also contacts the provinces with respect to the anti-corruption work. In this respect, they meet with their provincial counterparts twice a year through this committee.

[320] The Committee takes note of the satisfactory consideration by the country under review of Recommendation 7.3.

ANNEX I

OUTSTANDING AND REFORMULATED RECOMMENDATIONS REGARDING THE TOPICS REVIEWED IN THE FIRST ROUND

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct to prevent conflicts of interest and mechanisms to enforce them

Recommendation:

Continue strengthening the provisions and measures on conflicts of interest and mechanisms to enforce compliance.

Suggested Measure:

- Adopt measures to ensure that the post-employment restrictions for public servants can be enforced.

1.3. Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

Recommendation:

Continue strengthening the norms and mechanisms with respect to the existing systems and measures requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

Suggested Measure:

- Adopt provisions to establish the obligation on public servants to report to appropriate authorities those acts of corruption set out in the Inter-American Convention against Corruption, which they come across in the performance of public functions.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)

Recommendation:

Continue strengthening the systems for registration of income, assets, and liabilities.

Suggested Measures:

a) Adopt provisions on the systems for registering, where appropriate, sources of income, assets and liabilities that potentially could conflict with the official duties of those employees in the federal public sector who currently are not required to meet such registration procedures, in order to contribute to the promotion of the purposes of the Convention.

b) Adopt measures to facilitate the timely review of Conflict of Interest Reports submitted in accordance with the Values and Ethics Code for the Public Sector and other policies on conflicts of interest and post-employment adopted throughout the public service.

7. GENERAL RECOMMENDATIONS

Recommendation:

- Select and develop procedures and indicators, when appropriate, that make it possible to verify the follow-up to the recommendations contained in this report, and report back to the Committee through the Technical Secretariat in this regard. For the purposes indicated, Canada could consider taking into account the list of the most widely used indicators, applicable in the Inter-American system that were available for the selection indicated by the country under analysis, which has been published on the OAS website by the Technical Secretariat of the Committee, as well as information derived from the analysis of the procedures designed to analyze the mechanisms mentioned in this report, and the recommendations contained therein.

ANNEX II**AGENDA OF THE ON-SITE VISIT TO CANADA**

<u>Tuesday, October 15, 2013</u>	
14:00 hrs. – 14:30 hrs. <i>Novotel Hotel</i>	Coordination meeting between the representatives of the member states of the subgroup and the Technical Secretariat
14:30 hrs. – 16:00 hrs. <i>Novotel Hotel</i>	Coordination meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat
<u>Wednesday, October 16, 2013</u>	
9:00 hrs. – 9:25 hrs. <i>Department of Foreign Affairs, Trade and Development</i>	Opening Remarks by Mr. Peter M. Boehm, Associate Deputy Minister, Department of Foreign Affairs, Trade and Development and Mr. Pierre Legault, Associate Deputy Minister, Department of Justice Canada
9:30 hrs. – 11:30 hrs.	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers
	<p><u>Session</u>: Oversight Bodies and Follow-Up of the Recommendations of the First Round</p> <p>Topics:</p> <ul style="list-style-type: none"> • Cooperation between civil society, the private sector and oversight bodies in the fight against corruption • Challenges in the fight against corruption in Canada • Conflicts of interest and post-employment restrictions • Reporting acts of corruption and protection from reprisals • Systems for registering income, assets and liabilities

	<p><u>Participants:</u></p> <p><i>Transparency International Canada</i></p> <p>Mr. Peter Dent (Partner, National Practice Leader and Global Financial Crime Initiative Leader, Deloitte Forensic)</p> <p>Mr. Tom Marshall, QC (former Senior Counsel to the Attorney General of Ontario)</p>
11:30 hrs. – 13:30 hrs.	Lunch
13:30 hrs. – 16:30 hrs.	Treasury Board Secretariat
13:30 hrs. – 14:30 hrs.	<p>Panel 1:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Designation of senior officials; Autonomy • Exception to functions
	<p><u>Participants:</u></p> <p>Ms. Mary Anne Stevens (Director, Values and Ethics - Governance, Planning and Policy Sector, Office of the Chief Human Resources Officer)</p> <p>Ms. Kathleen Clarkin (Manager, Values and Ethics - Governance, Planning and Policy Sector, Office of the Chief Human Resources Officer)</p> <p>Ms. Rita Flynn (Policy Analyst, Values and Ethics - Governance, Planning and Policy Sector, Office of the Chief Human Resources Officer)</p>
14:30 hrs. – 15:30 hrs.	<p>Panel 2:</p> <ul style="list-style-type: none"> • Procedures for disclosure • Mechanisms for internal control
	<p>Ms. Mary Anne Stevens (Director, Values and Ethics - Governance, Planning and Policy Sector, Office of the Chief Human Resources Officer)</p> <p>Ms. Kathleen Clarkin (Manager, Values and Ethics - Governance, Planning and Policy Sector, Office of the Chief Human Resources Officer)</p> <p>Ms. Rita Flynn (Policy Analyst, Values and Ethics - Governance, Planning and Policy Sector, Office of the Chief Human Resources Officer)</p>

15:30 hrs. – 16:30 hrs.	<p>Panel 3:</p> <ul style="list-style-type: none"> • Existence of manuals, training and Best Practices • Determination of budget <p><u>Participants:</u></p> <p>Ms. Mary Anne Stevens (Director, Values and Ethics - Governance, Planning and Policy Sector, Office of the Chief Human Resources Officer)</p> <p>Ms. Kathleen Clarkin (Manager, Values and Ethics - Governance, Planning and Policy Sector, Office of the Chief Human Resources Officer)</p> <p>Ms. Rita Flynn (Policy Analyst, Values and Ethics - Governance, Planning and Policy Sector, Office of the Chief Human Resources Officer)</p>
17:00 hrs. – 17:30 hrs.	<p>Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.</p>
<u>Thursday, October 17, 2013</u>	
9:00 hrs. – 12:00 hrs. <i>Department of Foreign Affairs, Trade and Development.</i>	Public Prosecution Service of Canada
9:00 hrs. – 10:00 hrs.	<p>Panel 4:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Autonomy of Functions • Scope of Functions <p><u>Participants:</u></p> <p>Mr. George Dolhai (Deputy Director of Public Prosecutions)</p> <p>Ms. Kathleen Roussel (Deputy Director of Public Prosecutions)</p> <p>Mr. Marke Kilkie (Senior Counsel, Regulatory and Economic Prosecutions)</p>
10:00 hrs. – 11:00 hrs.	<p>Panel 5:</p> <ul style="list-style-type: none"> • Determination of budget and human resources • Mechanisms for internal control • Training

	<p><u>Participants:</u> Mr. George Dolhai (Deputy Director of Public Prosecutions) Ms. Kathleen Roussel (Deputy Director of Public Prosecutions) Mr. Marke Kilkie (Senior Counsel, Regulatory and Economic Prosecutions)</p>
11:00 hrs. – 12:00 hrs.	<p>Panel 6:</p> <ul style="list-style-type: none"> • Coordination mechanisms • Results
	<p><u>Participants:</u> Mr. George Dolhai (Deputy Director of Public Prosecutions) Ms. Kathleen Roussel (Deputy Director of Public Prosecutions) Mr. Marke Kilkie (Senior Counsel, Regulatory and Economic Prosecutions)</p>
12:00 hrs. – 13:30 hrs.	Lunch
13:30 hrs. – 16:30 hrs.	Public Service Commission
13:30 hrs. – 14:30 hrs.	<p>Panel 7:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Determination of budget • Investigations of appointments
	<p><u>Participants:</u> Ms. H��l��ne Laurendeau (Senior Vice-President, Policy) Ms. Jacqueline Bogden (Vice-President, Audit & Data Services) Mr. Omer Boudreau (Vice-President, Corporate Management) Mr. Geoff Zerr (Director, Investigations) Mr. Blair Haddock (Director General, Audit and Data Services) Mr. Philip Morton (Director General, Corporate Management) Ms. Kristin Solvason (Senior Policy Advisor, Policy)</p>
14:30 hrs. – 15:30 hrs.	<p>Panel 8:</p> <ul style="list-style-type: none"> • Training • Results

	<p><u>Participants:</u></p> <p>Ms. Hélène Laurendeau (Senior Vice-President, Policy)</p> <p>Ms. Jacqueline Bogden (Vice-President, Audit & Data Services)</p> <p>Mr. Omer Boudreau (Vice-President, Corporate Management)</p> <p>Mr. Geoff Zerr (Director, Investigations)</p> <p>Mr. Blair Haddock (Director General, Audit and Data Services)</p> <p>Mr. Philip Norton (Director General, Corporate Management)</p> <p>Ms. Kristin Solvason (Senior Policy Advisor, Policy)</p>
15:30 hrs. – 16:30 hrs.	<p>Panel 9:</p> <ul style="list-style-type: none"> • Coordination mechanisms <p><u>Participants:</u></p> <p>Ms. Hélène Laurendeau (Senior Vice-President, Policy)</p> <p>Ms. Jacqueline Bogden (Vice-President, Audit & Data Services)</p> <p>Mr. Omer Boudreau (Vice-President, Corporate Management)</p> <p>Mr. Geoff Zerr (Director, Investigations)</p> <p>Mr. Blair Haddock (Director General, Audit and Data Services)</p> <p>Mr. Philip Norton (Director General, Corporate Management)</p> <p>Ms. Kristin Solvason (Senior Policy Advisor, Policy)</p>
17:00 hrs. – 17:30 hrs.	Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
<u>Friday, October 18, 2013</u>	
09:00 hrs. – 12:00 hrs. <i>Department of Foreign Affairs, Trade and Development</i>	Office of the Commissioner for Federal Judicial Affairs
09:00 hrs. – 10:00 hrs.	<p>Panel 10:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Coordination mechanisms • Claims or complaints with respect to the pursuit of the objectives and performance of personnel

	<p><u>Participants:</u> Mr. Marc A. Giroux (Deputy Commissioner) Ms. Nicole Sayed (Director, Finance, Administration & Strategic Planning)</p>
10:00 hrs. – 11:00 hrs.	<p>Panel 11:</p> <ul style="list-style-type: none"> • Determination of budget • Training
	<p><u>Participants:</u> Mr. Marc A. Giroux (Deputy Commissioner) Ms. Nicole Sayed (Director, Finance, Administration & Strategic Planning)</p>
11:00 hrs. – 12:00 hrs.	<p>Panel 12:</p> <ul style="list-style-type: none"> • Best Practices
	<p><u>Participants:</u> Mr. Marc A. Giroux (Deputy Commissioner) Ms. Nicole Sayed (Director, Finance, Administration & Strategic Planning)</p>
12:00 hrs. – 13:30 hrs.	Lunch
13:30 hrs. – 15:30 hrs.	Follow-Up
	<p>Panel 13: Follow-Up</p> <ul style="list-style-type: none"> • Conflicts of interest and post-employment restrictions • Reporting acts of corruption and protection from reprisals • Systems for registering income, assets and liabilities • General recommendations
	<p><u>Participants:</u> Mr. Doug Breithaupt, (Director and General Counsel, Criminal Law Policy Section, Department of Justice Canada) Ms. Mary Anne Stevens (Director, Values and Ethics - Governance, Planning and Policy Sector, Office of the Chief Human Resources Officer) Ms. Kathleen Clarkin (Manager, Values and Ethics - Governance, Planning and Policy Sector, Office of the Chief Human Resources Officer) Ms. Rita Flynn (Policy Analyst, Values and Ethics - Governance, Planning and Policy Sector, Office of the Chief Human Resources Officer)</p>

15:30 hrs. – 16:00 hrs.	Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
16:00 hrs.	Final meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat.
<p>Government Officials in Attendance During the On-Site Visit</p> <p><u>Department of Justice</u></p> <p>Ms. Mathilda Haykal Sater (Counsel, Criminal Law Policy Section)</p> <p>Ms. Karine Bolduc (Counsel, Criminal Law Policy Section)</p> <p><u>Department of Foreign Affairs, Trade and Development Canada</u></p> <p>Mr. Marcus Davies (Legal Officer, Criminal, Security and Privileges and Immunities Law Section)</p> <p>Ms. Janice Fitchett (OAS Coordinator, Hemispheric Affairs Division)</p> <p>Ms. Laura Atar, (OAS and the Summit of the Americas, Hemispheric Affairs Division)</p>	

**CONTACT AUTHORITY FROM THE COUNTRY UNDER REVIEW FOR COORDINATION
OF THE ON-SITE VISIT, REPRESENTATIVES OF THE MEMBER STATES OF THE
PRELIMINARY REVIEW SUBGROUP AND THE MESICIC TECHNICAL SECRETARIAT**

COUNTRY UNDER REVIEW:

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Counsel, Criminal Law Policy Section
Department of Justice

Marcus Davies

Legal Officer, Criminal, Security and Privileges and Immunities Law Section
Department of Foreign Affairs, Trade and Development

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SAINT VINCENT AND THE GRENADINES

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