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

FINAL REPORT

(Adopted at the September 14, 2017 plenary session)

## SUMMARY

This Report contains a comprehensive review of the implementation of the Recommendations that were formulated to Canada in the report of the Second Round with respect to paragraphs 5 and 8 of Article III of the Inter-American Convention against Corruption, which refer, respectively, to systems of government hiring and procurement of goods and services and for the protection of public servants and private citizens who, in good faith, report acts of corruption. Reference is also made, when appropriate, to new developments with respect to the implementation of these provisions.

In addition, the Report includes a comprehensive review of the implementation in Canada of paragraphs 3 and 12 of Article III of the Convention, which refer, respectively, to measures intended to create, maintain and strengthen instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities; and a study of further preventive measures that take into account the relationship between equitable compensation and probity in public service. These provisions were selected by the MESICIC Committee of Experts for the Fifth 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 Fifth Round, including the criteria set out therein for guiding the review based on equal treatment for all 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 mainly taking into account Canada's Response to the Questionnaire and information gathered during the on-site visit conducted between April 25 – 27, 2017, by representatives of El Salvador and Saint Kitts and Nevis, with the support of the Technical Secretariat. During that visit, the information furnished by Canada was clarified and supplemented with the opinions of civil society organizations.

With regard to the follow-up on the recommendations formulated to Canada in the Second Round and with respect to which the Committee, in the Third Round report, found required additional attention, based on the methodology for the Fifth 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, which required reformulation and which were no longer valid.

With respect to systems of government hiring, it is pertinent to highlight that statistics regarding investigations conducted by the Public Service Commission on external appointment processes and their results are being maintained. With respect to the government system for the procurement of goods and services it is pertinent to highlight the implementation of a Government-wide Integrity Regime.

Some of the recommendations formulated in the Second Round that remain valid or have been reformulated address issues such as: ensuring that those public bodies that do not fall under the purview of the Public Servants Disclosure Protection Act have adopted measures that protect persons who disclose wrongdoings; and making its statistical information on offences related to acts of corruption, in a manner that is more readily available and user-friendly to the general public.

In addition, regarding the new developments in Canada with respect to the implementation of the provisions of the Convention selected for the Second Round, the Committee formulated recommendations, such as consider making the recruitment policies and other relevant documents of the House of Commons Administration and the Senate Administration, public and easily accessible; making the procurement policies and other relevant documents of the House of Commons Administration and the Senate Administration, public and easily accessible; and consider implementing the recommendations stemming from the Report by the Standing Committee on Government Operations and Estimates of the House of Commons, entitled “Strengthening the Protection of the Public Interest within the Public Servants Disclosure Protection Act”, and publish information on the actions the country plans to take.

For the review of the first provisions selected for the Fifth Round that refer to instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, as set out under Article III, paragraph 3 of the Convention, Canada selected the Treasury Board of Canada Secretariat and the Public Service Commission, as the country under review considers them as principal groups that merit review, due to their organizational mandate or based on the importance of their functions.

This review was focused on determining, with respect to the selected personnel, if the country under review has adopted provisions and/or measures which ensure the proper understanding of their responsibilities and the ethical rules governing their activities; the manner or occasions in which personnel are provided instructions; the programs in place for them; the bodies responsible for them; as well as the objective results obtained on the implementation of said provisions and/ or measures, taking into account any difficulties and/or weaknesses to achieve the purpose of this provision of the Convention. At the same time, it took note of any difficulties and/or shortcomings in accomplishing the object of that provision of the Convention.

Some of the recommendations formulated to Canada, for its consideration, with respect to this topic, are noted as follows:

With respect to the Treasury Board of Canada Secretariat, consider reviewing and updating the Directive on the Administration of Required Training; as well as consider making publicly available an organization’s Annual Report on Training, as found in the Directive on the Administration of Required Training.

In accordance with the aforementioned methodology, the review of the second provision selected for the Fifth Round, as set out under Article III, paragraph 12 of the Convention, the Committee concluded that Canada has considered and adopted measures intended to establish objective and transparent criteria for determining the compensation of public servants.

Finally, the best practices about which Canada provided information refer, in synthesis, to the Values and Ethics Foundations for Employees course and the Values and Ethics Foundations for Managers course, which aims to familiarize public servants with the relevant Acts and policies, such as the Values and Ethics Code for the Public Sector, the Public Servants Disclosure Protection Act and the Policy on Conflict of Interest and Post-Employment; and the New Direction in Staffing, which aims to simplify and streamline staffing across the public service, while ensuring that staffing decisions remain merit-based and non-partisan.

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

**FINAL REPORT ON FOLLOW-UP ON IMPLEMENTATION IN CANADA OF THE  
RECOMMENDATIONS FORMULATED AND PROVISIONS REVIEWED IN THE SECOND  
ROUND, AND ON THE PROVISIONS OF THE CONVENTION SELECTED FOR REVIEW IN  
THE FIFTH ROUND<sup>1</sup>**

## INTRODUCTION

### 1. Content of the Report

[1] As agreed upon by the Committee of Experts (hereinafter “the Committee”) of the Follow-Up Mechanism for Implementation of the Inter-American Convention against Corruption (“MESICIC”) at its Twenty-Fourth Meeting,<sup>2</sup> this report will first refer to follow up on implementation of the recommendations formulated to Canada in the report from the Second Round,<sup>3</sup> and which were deemed by the Committee to require additional attention in the report from the Third Round.<sup>4</sup>

[2] Second, where applicable, it will refer to new developments in Canada with regard to the provisions of the Inter-American Convention against Corruption (hereinafter “the Convention”) selected for the Second Round, and regarding such matters as the legal framework, technological developments and results, and, if applicable, appropriate observations and recommendations will be formulated.

[3] Third, it will address implementation of the provisions of the Convention selected by the Committee for the Fifth Round. Those provisions are contained in paragraphs 3 and 12 of Article III regarding, respectively, measures to establish, maintain, and strengthen “*instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities*”, and “*the study of preventive measures that take into account the relationship between equitable compensation and probity in public service.*”

[4] Fourth, it will refer to the best practices, where applicable, that Canada has wished to voluntarily share regarding implementation of the provisions of the Convention selected for the Second and Fifth Rounds.

### 2. Ratification of the Convention and adherence to the Mechanism

[5] 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.

[6] 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.

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<sup>1</sup> 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 17, 2017, at its Twenty-Ninth meeting, held at OAS Headquarters, September 11 – 14, 2017.

<sup>2</sup> See the Minutes of the 24th Meeting of the Committee, available at: [http://www.oas.org/juridico/docs/XXIV\\_min.doc](http://www.oas.org/juridico/docs/XXIV_min.doc)

<sup>3</sup> Available at: [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_can\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_can_en.pdf)

<sup>4</sup> Available at: [http://www.oas.org/juridico/english/mesicic3\\_can\\_rep.pdf](http://www.oas.org/juridico/english/mesicic3_can_rep.pdf)

## I. SUMMARY OF INFORMATION RECEIVED

### 1. Response of Canada

[7] The Committee wishes to acknowledge the cooperation that it received throughout the review process from Canada, in particular, from the Department of Justice and Global Affairs Canada, which was evidenced, inter alia, in its Response to the Questionnaire, in the constant willingness to clarify or complete its contents, and in the support for the execution of the on-site visit referred to below. Together with its Response, Canada sent the provisions and documents it considered pertinent.<sup>5</sup>

[8] The Committee also notes that Canada gave its consent for the *on-site visit*, in accordance with provision 5 of the *Methodology for Conducting On-site Visits*.<sup>6</sup> That visit was conducted from April 25 – 27, 2017, by representatives of the Republic of El Salvador and Saint Kitts and Nevis, in their capacity as members of the review subgroup, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this report, and the agenda of meetings is attached hereto, in keeping with provision 34 of the above-mentioned *Methodology*.

[9] For its review, the Committee took into account the information provided by Canada up to April 27, 2017, as well as that furnished and requested by the Technical Secretariat and the members of the review subgroup, to carry out their functions in keeping with the *Rules of Procedure and Other Provisions*,<sup>7</sup> the *Methodology for follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round and for the review of the provisions of the Convention selected for the Fifth Round*,<sup>8</sup> and the *Methodology for Conducting On-site visits*.

### 2. Documents and information received from civil society organizations and/or, inter alia, private sector organizations, professional associations, academics, and researchers

[10] The Committee did not receive documents from civil society organizations within the time frame established in the schedule for the Fifth Round, as envisaged by Article 34(b) of the Committee's Rules of Procedure.

[11] Nonetheless, during the course of the on-site visit, information was gathered from civil society and private sector organizations; professional associations; and academics invited to participate in meetings to that end, pursuant to Article 27 of the *Methodology for Conducting On-site Visits*. A list of those persons is included in the agenda for the visit, which is appended hereto. Pertinent parts of this information are reflected in the appropriate sections of this report.

## II. FOLLOW UP ON IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE SECOND ROUND AND NEW DEVELOPMENTS WITH REGARD TO THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THAT ROUND

[12] First, the Committee will refer to progress made and new information and developments in Canada with respect to the recommendations formulated and measures for their implementation suggested by the Committee in its report from the Second Round,<sup>9</sup> which the Committee deemed required additional attention in the Third Round Report,<sup>10</sup> and it will proceed to take note of those that have been satisfactorily considered and of those that need further attention, in which case it will refer to the ongoing

<sup>5</sup> Available at: [http://www.oas.org/juridico/english/mesicic5\\_can.htm](http://www.oas.org/juridico/english/mesicic5_can.htm)

<sup>6</sup> Available at: [http://www.oas.org/juridico/english/met\\_onsite.pdf](http://www.oas.org/juridico/english/met_onsite.pdf)

<sup>7</sup> Available at: [http://www.oas.org/juridico/PDFs/mesicic4\\_rules\\_en.pdf](http://www.oas.org/juridico/PDFs/mesicic4_rules_en.pdf)

<sup>8</sup> Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_metodologia\\_en.pdf](http://www.oas.org/juridico/PDFs/mesicic5_metodologia_en.pdf)

<sup>9</sup> Available at: [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_can\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_can_en.pdf)

<sup>10</sup> Available at: [http://www.oas.org/juridico/english/mesicic3\\_can\\_rep.pdf](http://www.oas.org/juridico/english/mesicic3_can_rep.pdf)

relevance of those recommendations and measures and to their restatement or reformulation, pursuant to Section V of the *Methodology* adopted by the Committee for the Fifth Round.

[13] In this section, the Committee will, where applicable, take note of any difficulties indicated by the country under review with implementing the recommendations and measures alluded to in the foregoing paragraph and of any technical cooperation requested by the State in that connection.

[14] Second, where applicable, it will refer to new developments in Canada in respect of the provisions of the Convention selected for the Second Round regarding such matters as the legal framework, technological developments and results, and will formulate any observations and recommendations that may be applicable.

## **1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)**

### **1.1. SYSTEMS OF GOVERNMENT HIRING**

#### **1.1.1. Follow-Up to the Implementation of the Recommendations Formulated in the Second Round**

##### Recommendation 1.1.1:

*Continue strengthening the systems of government hiring of public servants, when applicable, that assure the openness, equity and efficiency of such systems.*

##### Measure a) suggested by the Committee that requires additional attention within the Framework of the Third Round:

*Promote the adoption of the relevant measures that ensure that all departments, organizations and separate employers that do not fall under the purview of the PSEA conduct its recruitment based on the principles of merit and non-partisanship.*

[15] In its Response to the Questionnaire, with respect to the foregoing measures, the country under review notes that it has nothing to report.<sup>11</sup>

[16] The Committee notes that in Canada, the public service, as defined under the Public Service Employment Act (PSEA), comprises of those departments and organizations named in Schedule I to the Financial Administration Act; (b) the organizations named in Schedule IV to that Act; and (c) the separate agencies named in Schedule V to that Act.<sup>12</sup>

[17] The Committee further notes that it is the role of the Public Service Commission to promote and safeguard merit-based appointments that are free from political influence in the public service and, in collaboration with other stakeholders, safeguard the non-partisan nature of the public service. In that respect, Section 30(1) of the Public Service Employment Act provides that appointments by the Commission to or from within the public service shall be made on the basis of merit and must be free from political influence.

<sup>11</sup> Response to the Questionnaire for the Fifth Round of Review, pgs. 1 – 2, [http://www.oas.org/juridico/PDFs/mesicic5\\_can\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_can_resp.pdf)

<sup>12</sup> See Section 2(1) of the Public Service Employment Act, <http://laws.justice.gc.ca/eng/acts/P-33.01/FullText.html>, and the Financial Administration Act, <http://laws-lois.justice.gc.ca/eng/acts/f-11/FullText.html>

[18] However, as noted in the Report of the Second Round for Canada, the Commission is not responsible for all appointments in the public service, but rather those that fall under Schedule I and IV of the Financial Administration Act, leaving separate agencies, as listed in Schedule V of that Act, to carry out their own recruitment.

[19] During the on-site visit, in a presentation provided by the representatives of the Public Service Commission, numbers were provided on the number of persons employed by these separate agencies, which number 25, as compared to those covered by the PSEA:<sup>13</sup> out of a total federal public service population of 258,979 persons, 61,625 are employed by separate agencies, which, in percentage terms, represents 24% of all federal public servants.<sup>14</sup> The vast majority of these employees work in 14 agencies whose recruitment is known to be based on the principle of merit.<sup>15</sup> Moreover, the PSC notes that agencies can submit their approach to hiring to the PSC for review to determine if they are merit-based, and that some agencies rely on the PSC for standardized testing and other staffing services which support merit-based hiring.

[20] In this respect, in a document provided subsequent to the on-site visit, the PSC noted the following:

[21] *“There are currently 25 separate agencies. The Financial Administration Act and or the separate agency’s enabling legislation determines whether they must staff under the PSEA. Therefore, while separate agencies are considered to be part of the public service most make appointments based on their own staffing program. They do not have to comply with the requirements of the Public Service Employment Act or the PSC’s Appointment Framework for their appointments.*

[22] *However, the PSC [Public Service Commission] has the authority to allow the deployment (at-level transfer) of persons employed in a separate agency (listed in the Financial Administration Act, Schedule V) to the core public service after the Commission has reviewed the agency’s staffing program at the agency’s request. For the PSC to approve deployments from a separate agency outside the PSC’s appointment jurisdiction, agencies are required to demonstrate that their staffing programs ensure appointments that are based on merit and are conducted in a non-partisanship manner.”*<sup>16</sup>

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<sup>13</sup> The full list of separate agencies are the following: Canada Investment and Savings, Canada Revenue Agency, Canadian Food Inspection Agency, Canadian High Arctic Research Station, Canadian Institutes of Health Research, Canadian Nuclear Safety Commission, Canadian Security Intelligence Service, Communications Security Establishment, Financial Consumer Agency of Canada, Financial Transactions and Reports Analysis Centre of Canada, Indian Oil and Gas Canada, National Capital Commission, National Energy Board, National Film Board, National Research Council of Canada, Natural Sciences and Engineering Research Council, Northern Pipeline Agency, Office of the Auditor General of Canada, Office of the Correctional Investigator of Canada, Office of the Superintendent of Financial Institutions, Parks Canada Agency, Security Intelligence Review Committee, Social Sciences and Humanities Research Council, Staff of the Non-Public Funds of the Canadian Forces, and Statistics Survey Operations.

<sup>14</sup> Presentation by the Public Service Commission, pg. 4, [http://www.oas.org/juridico/english/mesicic5\\_can.htm](http://www.oas.org/juridico/english/mesicic5_can.htm)

<sup>15</sup> The agencies that the PSC knows carry out their recruitment based on the principle of merit are the following 11: the Canada Revenue Agency, Canadian Food Inspection Agency, Canadian Nuclear Safety Commission, Financial Consumer Agency of Canada, Indian Oil and Gas Canada, National Energy Board, Office of the Auditor General of Canada, Office of the Correctional Investigator of Canada, Office of the Superintendent of Financial Institutions, Parks Canada Agency, and Security Intelligence Review Committee. See also, <https://www.canada.ca/en/treasury-board-secretariat/services/innovation/human-resources-statistics/population-federal-public-service-department.html>. In addition, through documents brought to the attention of the subgroup by the country under review, it was demonstrated that the Financial Transactions and Reports Analysis Centre of Canada, the Canadian Security Intelligence Service, and the Communications Security Establishment Canada also conduct their recruitment on the basis of merit and non-partisanship, see [http://www.oas.org/juridico/english/mesicic5\\_can.htm](http://www.oas.org/juridico/english/mesicic5_can.htm)

<sup>16</sup> Public Service Commission, Follow-Up to MESICIC On-Site Meetings, [http://www.oas.org/juridico/english/mesicic5\\_can.htm](http://www.oas.org/juridico/english/mesicic5_can.htm). The country under review further notes that the list the organizations from which the PSC has approved deployments include: Canada Revenue Agency, Canadian Food Inspection Agency, Canadian Nuclear Safety Commission, Parks Canada Agency, the Security Intelligence Review Committee, and the Office of the Auditor General of Canada.

[23] Moreover, the Committee notes that there are five separate agencies that fall under the appointment authority of the Commission, that being the Financial Consumer Agency of Canada, the Indian Oil and Gas Canada, the National Energy Board, the Correctional Investigator of Canada, and the Office of the Superintendent of Financial Institutions of Canada.<sup>17</sup>

[24] Considering the legislative framework and the additional information provided on staffing mechanisms established between government organizations, the Committee recognizes that the country under review conducts its staffing based on the principles of merit and non-partisanship for the vast majority of its government population. Given the foregoing, the Committee believes that measure a) should be reformulated. (see Recommendation 1.1.3.1 of Section 1.1.3 of Chapter II of this Report)

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

*Encourage the Office of the Senate Ethics Officer and the Office of the Conflict of Interest and Ethics Commissioner to continue to adopt appropriate hiring practices based on merit, and allowing for adequate advertisement opportunities and recourse mechanisms.*

[25] With respect to the Office of the Conflict of Interest and Ethics Commissioner, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:<sup>18</sup>

[26] *“Although the Office of the Conflict of Interest and Ethics Commissioner is not covered by the PSEA, it has adopted the principles and values upon which the legislation is built. In October 2009, the Office issued an internal staffing manual for managers, entitled “Manager’s Handbook on Staffing Procedures”, which specifically mentions that the Office has adopted the principles and the values of the PSEA and documents the importance of respecting the core values of staffing. The objectives of the manual are as follows: (1) Present general values and principles that support responsible staffing practices; (2) Provide a consistent approach to staffing within the Office; and (3) Outline the responsibilities and accountabilities of the managers and HR advisors. The Office also posts its employment opportunities on the website established by the PSC. In 2013, a copy of the manual was provided to the Technical Secretariat of the MESICIC for its use only.”*

[27] The Committee notes that subsequent to the on-site visit, this Office provided an update to this Response, observing that the Office is also subject to the Parliamentary Employment Staff Relations Act, which provides employees’ rights to grieve appointments.

[28] This Office also provided to the Technical Secretariat several documents related to policies and guidelines on human resources, including an updated Manager’s Guidelines on Staffing Procedures, which was adopted in April 2017.<sup>19</sup> This Guideline, in its introduction, notes that as the Office is an entity of Parliament, it operates under the Parliament of Canada Act and that legislation governing the administration of the public service such as the Public Service Employment Act does not apply to the

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<sup>17</sup> Eligibility for Job Opportunities in Federal Organizations, <https://www.canada.ca/en/public-service-commission/services/public-service-hiring-guides/information-staffing-obligations.html>. In addition, during the on-site visit, the representatives of the Commission further noted that there are 6 separate agencies which are bound by Part 7 of the PSEA, which sets out specific roles and responsibilities for employees and the Commission with respect to political activities and the administration of the related political activities regime. These are the Canadian Institutes of Health Research, the Financial Transactions and Reports Analysis Centre of Canada, Canada Revenue Agency, Parks Canada Agency, the National Film Board and the Canadian High Arctic Research Station.

<sup>18</sup> Response to the Questionnaire, pgs. 2 – 3, *supra* note 11 and Report of the Third Round of Review for Canada, pgs. 41 – 42, *supra* note 10.

<sup>19</sup> Manager’s Guidelines on Staffing Procedures, on file with the MESICIC Technical Secretariat.

Office nor do Treasury Board policies and guidelines. It further states that the Office ensures that its human resources management practices are consistent with those found in the public service and in Parliament.<sup>20</sup>

[29] The Guidelines provide that the principles of access, accountability, fairness, merit, and transparency are to be applied by Managers in the recruitment process. In this regard, appointments are to be based on merit and the ability for a candidate to do the job, whereby they are considered for appointment, or appointed, and meet the requirements of each position to the level of proficiency identified.<sup>21</sup> The Guidelines also provide that merit is achieved when the manager appoints a person who meets the essential qualifications and competencies for the work to be performed, and that the manager has regard to any additional criteria that is an asset for the work performed or for the organization currently or in the future, to any current or future operational requirement, and to any current or future need of the organization. It also provides and describes five requirements for establishing a statement of merit criteria: i) essential qualifications; ii) current and future asset qualifications; iii) current and future operational requirements; iv) current and future organizational needs; and v) conditions of employment.<sup>22</sup>

[30] These Guidelines also provide direction and describe the best staffing options for filling a vacancy, as set out in the following table:<sup>23</sup>

STAFFING OPTIONS			
	SHORT-TERM	LONG-TERM	
		Urgent	Standard
INTERNAL	<ul style="list-style-type: none"> <li>- Acting</li> <li>- Assignment</li> <li>- Pool of qualified Candidates</li> <li>- Student Programs – Bridging FSWEF</li> <li>- Advertised Process – Term appointment</li> </ul>	<ul style="list-style-type: none"> <li>- Priority surplus</li> <li>- Acting / Acting rotation</li> <li>- Assignment</li> <li>- Appointments from a pool of qualified candidates</li> <li>- Non-advertised appointment</li> </ul>	<ul style="list-style-type: none"> <li>- Priority surplus</li> <li>- Internal advertised process</li> <li>- Assignment</li> </ul>
EXTERNAL	<ul style="list-style-type: none"> <li>- Interchange Canada</li> <li>- Term offer</li> <li>- Contract /Agency</li> <li>- Student Programs Bridging FSWEF</li> <li>- Advertised or Non-Advertised Process</li> </ul>	<ul style="list-style-type: none"> <li>- Interchange Canada</li> <li>- Student Programs - Bridging FSWEF</li> <li>- Internal or external non-advertised or advertised appointment</li> </ul>	<ul style="list-style-type: none"> <li>- Interchange Canada</li> <li>- Student Programs - Bridging FSWEF</li> <li>- Internal or external non- advertised or advertised appointment</li> </ul>

<sup>20</sup> *Ibid.*, pg. 3.

<sup>21</sup> *Ibid.*, pg. 4.

<sup>22</sup> *Ibid.*, pgs. 6 – 7.

<sup>23</sup> *Ibid.*, pgs. 8 – 11.

[31] Moreover, it sets out the factors to consider when choosing between an external, internal, advertised and non-advertised process. These factors include priority status, the potential pool of qualified candidates, the nature of the work to be done, the duration of the appointment, existing sources of qualified persons, access to development opportunities, and career aspirations of internal employees.<sup>24</sup> It further states that the decision between an internal and external appointment process must be compatible with the Office’s Human Resources plan and respect the values of fairness, access and transparency. The Guidelines provide the following table to assist Managers regarding advertised versus a non-advertised process:

Advertised Process	Non-advertised Process
The manager informs people in the selection area of the employment opportunity.	The manager does not solicit candidates for the employment opportunity.
Those people have the opportunity to apply for the position.	N/A
Candidates must demonstrate that they meet the merit criteria.	The manager assesses the individuals based on the merit criteria.
Results of assessment process are used to determine successful candidate	The manager must prepare a written rationale showing how the non-advertised process meets the established criteria and respects appointment values.
Notice of appointment	Notice of appointment

[32] Assessment tools are also to be utilized, in order to determine how to assess each merit criterion. These tools should assess each merit criterion individually and assign a relative weight to each one. The Guidelines provide that one or more of the following methods of assessment should be used: interviews; previous achievements and experience; written exams; simulations; assessments from Personnel Psychology Centre of the Public Service Commission; and evaluation of references.<sup>25</sup> In this regard, the Guidelines note:<sup>26</sup>

[33] *“Assessment methods must treat all individuals in an equitable and non-discriminatory manner. At the initial screening step of the process, candidates must meet the essential qualifications in order to proceed further. An effective assessment should result in selecting a qualified person who is the right fit for the position.”*

[34] The Guidelines also indicate that the standard method to advertise an opportunity open to external candidates is to post it on the websites of the Government of Canada (<https://www.canada.ca/en/public-service-commission/jobs/services/public-service-jobs.html>); Parliament ([www.parl.gc.ca](http://www.parl.gc.ca)) and of the Office itself, ([www.ciec-ccie.parl.gc.ca](http://www.ciec-ccie.parl.gc.ca)). In internal processes, these are posted in the internal jobs section of the <https://www.canada.ca/en/public-service-commission/jobs/services/public-service-jobs.html> website for public servants; Intraparl for Parliament employees; and the Office’s Intranet for its employees.

<sup>24</sup> *Ibid.*, pg. 10.

<sup>25</sup> Manager’s Guidelines, pg. 11, *supra* note 19.

<sup>26</sup> *Ibid.*, pg. 12.

[35] The Guidelines further provide that appointments are made based on merit and are exempt from political influence and personal favoritism and that successful candidate are selected based on right fit following the assessment of the merit criteria. Selected candidate must meet all the essential qualifications.<sup>27</sup>

[36] Recourse mechanisms are also addressed in the Guidelines. In this regard, the following is noted:<sup>28</sup>

[37] *“An internal candidate wishing to raise concerns or questions regarding a staffing decision may request an informal discussion with the hiring manager. Should the result of the informal discussion be unsatisfactory, the candidate may request a discussion with Human Resources.*

[38] *In the event that informal discussions are not conclusive, recourse mechanisms as set out in the PESRA [Parliamentary Employment Staff Relations Act] and the OCIEC’s [Office of the Conflict of Interest and Ethics Commissioner] terms and conditions of employment, are accessible to OCIEC employees only.* [emphasis in original]

[39] *The right of an OCIEC employee to grieve under section 62 of the PESRA or to exercise his or her rights under the OCIEC’s terms and conditions of employment, as applicable, is not impaired by his or her status as applicant or candidate in a staffing process.”*

[40] Finally, the Guidelines provide that should it be determined that this policy has not been appropriately applied, proper corrective measures will be taken, up to and including suspending a manager’s delegated authorities and/or revoking a staffing decision.<sup>29</sup>

[41] 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, with respect to the Office of the Conflict of Interest and Ethics Commissioner.

[42] The Committee observes, however, that the Guidelines do not provide a recourse mechanism for those candidates participating in an external employment process, and who are not covered by the Parliamentary Employment Staff Relations Act. In this respect, in an update to the Response provided by this Office, subsequent to the on-site visit, it was noted that in the selection process open by this Office and open to external candidates, there is no grievance process for persons not employed by a parliamentary entity, therefore employees of the public service and members of the public do not benefit from the same recourse available to employees covered under the Parliamentary Employment Staff Relations Act.

[43] Given the foregoing, the Committee observes that the country under review may wish to consider establishing recourse mechanisms for external candidates participating in a recruitment process, that do not fall under the purview of the Parliamentary Employment Staff Relations Act. The Committee will formulate a recommendation. (see Recommendation 1.1.3.2 of Section 1.1.3 of Chapter II of this Report)

[44] In addition, the Committee notes that the Guidelines do not provide parameters or clearly defined criteria for the advertisement of hiring opportunities or vacancies, as well as the time frame in which they should be advertised or posted. The Committee will formulate a recommendation. (see Recommendation 1.1.3.3 of Section 1.1.3 of Chapter II of this Report)

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<sup>27</sup> *Ibid.*, pg. 14.

<sup>28</sup> *Ibid.*, pg. 15.

<sup>29</sup> *Ibid.*

[45] With respect to the Office of the Senate Ethics Officer, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:<sup>30</sup>

[46] *“The OSEO [Office of the Senate Ethics Officer] has adopted the policies of the Senate Administration for all HR matters, including the Senate Administration’s policy on hiring and recruitment, which was adopted by the Standing Senate Committee on Internal Economy, Budgets and Administration on November 23, 2006. Under this policy, the appointment processes and appointment decisions are required to respect the three key values of fairness, transparency and accessibility. In compliance with this policy and the PESRA, an employee may grieve an appointment or proposed appointment.*

[47] *Under the Office’s policy on hiring and recruitment, an employee, who would like to grieve an appointment or proposed appointment, must inform the Director of HR, in writing, of the grievance within fifteen business days of the date of notification, indicating the grounds for the complaint. The SEO, or the authorized representative of the SEO, will consider the grievance and respond within thirty calendar days after the grievance has been presented. The decision at this level is final and conclusive for the employee, unless the grievance is sent to arbitration under paragraph 63(e) of the PESRA.*<sup>31</sup>

[48] *All appointments are based on merit. Essential qualifications, asset qualifications, operational requirements and organizational needs form the basis for the assessment of merit. Managers establish merit criteria, which must be identified and communicated at the beginning of an appointment process. Merit criteria must be relevant and based on the needs of the position and of the organization.*

[49] *With respect to allowing adequate advertisement opportunities, the details concerning the advertisement of positions would depend on the nature of the position and related circumstances.”*

[50] The Committee notes that the Senate Administration Staffing and Recruitment Policy,<sup>32</sup> which has been adopted by the Office of the Senate Ethics Officer, was reviewed in Canada’s Report of the Second Round.<sup>33</sup> The objective of this Policy is, among others, to support merit as well as to apply the appointment values of fairness, transparency and access to all staffing and recruitment activities within the Senate Administration. In this Policy document, the following was noted:

[51] - Section 2.1, which states that appointment decisions are based on the principle of merit, meaning that a person meets all the essential qualifications and any asset qualifications, operational requirements or organizational needs that may have been identified by the manager.<sup>34</sup>

[52] - Section 2.2, which states that the appointment process and decision respect the key values of fairness, transparency and accessibility.<sup>35</sup>

<sup>30</sup> Response to the Questionnaire, pgs. 2 – 3, *supra* note 11.

<sup>31</sup> Section 63(1)(e) of the Parliamentary Employment and Staff Relations Act states: “63. (1) Where an employee has presented a grievance, up to and including the final level in the grievance process, with respect to... (e) where the employee has been denied an appointment, the employer’s evaluation of the skill, fitness and ability of the employee with respect to the employee’s qualification for the appointment... and the grievance has not been dealt with to the satisfaction of the employee, the employee may refer the grievance to adjudication.”. Parliamentary Employment and Staff Relations Act, <http://laws-lois.justice.gc.ca/eng/acts/P-1.3/FullText.html>

<sup>32</sup> Senate Administration and Staffing and Recruitment Policy. The Policy is applicable to all employees of the Senate Administration, other than (a) the Clerk of the Senate and Clerk of the Parliaments; (b) the Usher of the Black Rod; (c) the Deputy-Clerk of the Senate; (d) the Law Clerk and Parliamentary Counsel; or (e) a member of the staff of any Senator.

<sup>33</sup> Report of the Second Round, pgs. 8 – 9 *supra* note 9.

<sup>34</sup> This document also states that ‘merit’ is respected when: a) the manager appoints a person who meets all essential qualifications; and b) the manager gives consideration to any additional criteria deemed an asset to the work to be performed or that meets any current or anticipated operational needs or organizational requirements of the Senate.

[53] - Section 3.2, which states that an area of selection, which determines who is eligible to participate in a staffing or recruitment process and who has a right of recourse, may be established based on geographical and organizational criteria.

[54] - Section 3.4, which states that the individual selected for an appointment must possess all the essential qualifications, meet any asset qualifications, operational requirements and organizational needs and be in the area of selection.

[55] - Section 3.6, which states that an employee<sup>36</sup> may grieve, in writing, an appointment or proposed appointment within 15 business days of the date of notification, indicating the grounds of complaint. The Clerk of the Senate, or authorized representative considers the complaint, and the decision is final and conclusive unless the grievance is sent to arbitration under Section 63(1)(e) of the Parliamentary Employment and Staff Relations Act.<sup>37</sup>

[56] 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, with respect to the Office of the Senate Ethics Officer.

[57] The Committee notes that, as with the Office of the Conflict of Interest and Ethics Commissioner, the Senate Administration Staffing and Recruitment Policy does not provide a recourse mechanism for those candidates participating in an external employment process, and who are not covered by the Parliamentary Employment Staff Relations Act.

[58] Given the foregoing, the Committee observes that the country under review may wish to consider establishing recourse mechanisms for external candidates participating in a recruitment process, that do not fall under the purview of the Parliamentary Employment Staff Relations Act. The Committee will formulate a recommendation. (see Recommendation 1.1.3.4 of Section 1.1.3 of Chapter II of this Report)

[59] In addition, the Committee notes that the Senate Administration Staffing and Recruitment Policy does not provide parameters or clearly defined criteria for the advertisement of hiring opportunities or vacancies, as well as the time frame in which they should be advertised or posted. The Committee will formulate a recommendation. (see Recommendation 1.1.3.5 of Section 1.1.3 of Chapter II of this Report)

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

*Maintain statistics regarding investigations conducted by the Public Service Commission on external appointment processes and their results.*

[60] 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:<sup>38</sup>

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<sup>35</sup> These terms are defined as follows, “**Fairness** means decisions are made objectively, free from bureaucratic, personal and political favoritism; policies and practices reflect the fair and equitable treatment of employees and applicants. **Transparency** means information about decisions, policies and practices is communicated in an open and timely manner. **Access** means having a reasonable opportunity to apply and be considered for a position within the Senate Administration.”

<sup>36</sup> ‘Employee’ is defined for the purpose of the policy as meaning a person employed in the Senate Administration on an indeterminate basis or a person employed for a specified period of six months or more.

<sup>37</sup> See footnote number 31.

<sup>38</sup> *Ibid.*, pgs. 4 – 5.

[61] – “The PSC continues to publish on its website summaries of founded and unfounded PSC investigations. These investigations are organized by themes, to inform and educate the HR community, organizations, public servants, and the general public about what constitutes a breach of the PSEA. More information on summaries of investigations reports can be found at <https://www.canada.ca/en/public-service-commission/services/oversight-activities/investigations/summaries-investigation1.html>. ...

[62] Investigations data is published quarterly on the PSC website and annually by fiscal year in the Government of Canada’s open data portal. More information can be found at: <https://www.canada.ca/en/public-service-commission/services/oversight-activities/investigations.html> and <http://open.canada.ca/data/en/dataset/fc0ea6c8-11e7-4252-8ac1-38232424e5fe>, respectively. The data is broken down by investigation type, with the PSC having exclusive authority to investigate alleged fraud or political influence in both internal and external appointment processes; and merit, error, omission, or improper conduct in external appointment processes. As such, the data shows specifically how many investigations were completed to address allegations that an error, omission, or improper conduct may have affected the selection of an individual in an external appointment process and whether the allegations were founded or unfounded.”

[63] The Committee notes that in the Report of the Second Round, the Committee concluded that the country under review could consider maintaining statistics that break down the investigations conducted by the Commission regarding an appointment process, as it was unclear how many investigations were conducted regarding an external appointment process (Section 66 of the PSEA), an internal appointment process (Section 67) and if any investigations were initiated due to political influence (Section 68) or fraud (Section 69).<sup>39</sup>

[64] In this regard, the Committee observes that the investigations conducted by the Commission are now broken down, and made available to the public at the aforementioned website at <http://open.canada.ca/data/en/dataset/fc0ea6c8-11e7-4252-8ac1-38232424e5fe>. For example, the following information is found in the table for 2015 – 2016:

<b>2015 – 2016</b>				
<b>Investigations by the Public Service Commission</b>				
	Cases closed without investigation	Investigations unfounded	Investigations founded	Active cases remaining
Section 66 External appointment processes	128	4	3	20
Section 67(2) Internal appointment processes - delegated	3	1	1	0
Section 68 Political influence	0	0	0	0
Section 69 Fraud	16	18	43	42
Other sections	1	0	0	0

<sup>39</sup> Report of the Second Round, pg. 14, *supra* nota 9.

or subsections of the PSEA				
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[65] In addition, as noted in the Response, the country under review provides further information on the outcome of these investigations and cases in summarized form, as found in the following website: <https://www.canada.ca/en/public-service-commission/services/oversight-activities/investigations/summaries-investigation1.html>

[66] Given the foregoing, the Committee takes note of the satisfactory consideration by the country under review of measure c) of the foregoing recommendation.

### **1.1.2. New Developments with Respect to the provisions of the Convention on Systems of Government Hiring**

#### **1.1.2.1 New Developments with Respect to the Legal Framework**

##### a) Scope

- Statutory and other legal provisions applicable to a majority of public servants in the Executive and Judicial branch, among which the following should be noted:<sup>40</sup>

[67] – Amendments to the Public Service Employment Act (PSEA), the most recent coming into force in July 2015, resulting from the Veterans Hiring Act, which granted greater access to public service jobs to veterans and members of the Canadian Armed Forces. In addition, amendments were made as a result of the Public Service Labour Relations and Employment Board Act, which came into force on November 1, 2014, and merged the former Public Service Labour Relations Board and the Public Service Staffing Tribunal.

- Statutory and other legal provisions applicable to public servants in the Legislative branch, among which the following should be noted:

[68] – The adoption of the Manager’s Guidelines on Staffing Procedures, in April 2017, by the Office of the Conflict of Interest and Ethics Commissioner.<sup>41</sup> The Guidelines provide that the principles of access, accountability, fairness, merit, and transparency are to be applied by Managers in the recruitment process.

[69] – The adoption by the Office of the Senate Ethics Officer of the Senate Administration Staffing and Recruitment Policy for its recruitment process. The objective of this Policy is, among others, to support merit as well as to apply the appointment values of fairness, transparency and access to all staffing and recruitment activities within the Senate Administration.

##### b) Observations

[70] First, the Committee would like to recognize the new measures adopted by Canada to continue to push forward with the creation, maintenance, and strengthening of its systems of government hiring as referred to in Article III (5) of the Convention.

[71] Having said that, it believes it useful to make a number of comments regarding the advisability of strengthening, developing, and/or adapting certain provisions that have to do with those new developments, notwithstanding the observations made by the Committee in Section 1.1.1 above in connection with the

<sup>40</sup> Response to the Questionnaire, pg. 14, *supra* note 11.

<sup>41</sup> Manager’s Guidelines on Staffing Procedures, on file with the MESICIC Technical Secretariat.

follow-up on implementation of the recommendations made to the country under review in the report from the Second Round.

[72] The Committee notes that the Office of the Auditor General, in 2012, conducted an examination of the House of Commons Administration, focusing on whether it carries out the by-laws, policies, and directives set out by the Board of Internal Economy along with the policies that apply solely to the Administration. It is this Board that acts on all financial and administrative matters respecting the House of Commons, its premises, and its staff.<sup>42</sup>

[73] In this Report, the Office of the Auditor General noted the following:<sup>43</sup>

[74] *“The House Administration’s Staffing Policy specifies that systems and policies for staffing and recruitment are to facilitate the recruitment and retention of an appropriate number of qualified people. The policy also states that the Administration should promote the use of fair and transparent processes to hire competent employees, and should conduct staffing actions in accordance with the Parliamentary Employment and Staff Relations Act and the Parliament of Canada Act and its by-laws.*

[75] *We found that the Administration is in the process of improving its staffing practices. For example, it has identified the need for formal recruitment strategies for positions that are difficult to staff as well as the need for formal monitoring practices to ensure that positions approved for staffing are filled. The Administration informed us that it is currently developing a strategic plan to improve its recruitment practices.*

[76] *In addition, we found that the Administration has defined roles and responsibilities for staffing and recruitment, and has put in place appropriate staffing and recruitment policies and guidelines for its permanent employees. We also found that the staffing actions we reviewed complied with the Administration’s Staffing Policy and supporting guidelines.*

[77] *We also found that the Administration’s policy does not cover the hiring and use of term employees, and that related guidelines are outdated and not applied. The House relies heavily on the use of term employees, given the nature of its business. In the 2010–11 fiscal year, the Administration hired 377 term employees compared to 163 permanent employees. Without a policy for term employees, it is difficult for the Administration to know whether its practices are fair, transparent, and consistent.”*

[78] As a result, the Auditor General recommended that the House Administration should develop a policy to govern the hiring and use of term employees. To this, the Administration indicated that a policy to govern the hiring and use of term employees would be developed in 2013–14.<sup>44</sup>

[79] The Committee notes, however, that it is difficult to determine what steps were taken to address the issue of term employees within the House of Commons Administration, and if a policy was implemented in 2013 - 2014. The Committee could not find, within the reports issued by the House Administration any such references. For example, no mention is made in the Report to Canadians, which provides the public with an annual update on Members' parliamentary activities, includes a financial report, and, based on the priorities

<sup>42</sup> Section 52.3(a) of the Parliament of Canada Act, <http://laws-lois.justice.gc.ca/eng/acts/P-1/FullText.html>

<sup>43</sup> 2012 Report of the Auditor General of Canada to the Board of Internal Economy of the House of Commons—Administration of the House of Commons of Canada, paragraphs 46 – 49, [http://www.oag-bvg.gc.ca/internet/English/parl\\_otp\\_201206\\_e\\_36890.html](http://www.oag-bvg.gc.ca/internet/English/parl_otp_201206_e_36890.html).

<sup>44</sup> *Ibid.*, para. 50. The country under review, in its observations to the draft preliminary report, did note that with respect to the matter of term employees, the House of Commons updated its policy pertaining to recruitment and selection in November 2014. It further noted that this update clarifies practices to term employment in accordance with the recommendations made by the Office of the Auditor General of Canada.

laid out in the Strategic Plan, summarizes the Administration's accomplishments in support of Members and the institution.<sup>45</sup>

[80] As noted in the Report by the Auditor General on the importance of the audit:<sup>46</sup>

[81] *“The House of Commons is the keystone of Canadian democracy and is funded with public money. Canadians expect their public institutions to be well managed and accountable for the safeguarding of public assets and the use of public funds. This makes it important that the expenditures of the House and its Administration withstand public scrutiny and that appropriate policies and practices are in place to ensure fairness, consistency, and transparency. Transparency and accountability help to support the House’s credibility and its reputation.”*

[82] The country under review observes that the House of Commons has implemented a new Career Portal where members of the public are granted access to details of the recruitment and selection procedure employed by the House and falling under its policy pertaining to recruitment and selection and that under the revised policy, the guidelines have been modified and consolidated into three procedures: a Procedure on Recruitment and Selection; a Procedure on Probationary and Feedback and Monitoring Periods; and a Procedure on Posting Notices of Grievance. Moreover, the Procedure on Recruitment and Selection includes a detailed process map to clearly define the steps, according to roles, associated with recruitment and selection processes.

[83] In addition, the country under review notes that the House of Commons has introduced a number of new tools which serve to support the revised policy and procedures, including a new Recruitment and Selection Needs Identification Grid, an Interview Evaluation Grid, and an Appointment Without Competition Form. Moreover, a revitalized career portal includes detailed information about the various phases of a recruitment and selection process from a candidate’s standpoint, which is available at <http://www.ourcommons.ca/About/Employment/eligibility-e.html>

[84] Nevertheless, the Committee observes that the staffing policy in place for the House of Commons is not made available on the website of the Board, which is in contrast to the practice in place for the executive branch of Canada as a whole.

[85] Given the foregoing, the Committee believes that the country under review should consider making public and easily accessible the staffing policy in place that governs the administration of the House of Commons as well as consider publicizing what steps it has taken to address the recommendations of the 2012 Report of the Auditor General, in relation to the House of Commons staffing policies, to promote increased accountability. The Committee will formulate recommendations. (see Recommendations 1.1.3.6 and 1.1.3.7 of Section 1.1.3 of Chapter II of this Report)

[86] Likewise, the Committee notes that the Senate Administration Staffing and Recruitment Policy is not available online. In this respect, the Committee believes the country under review should consider placing this information online, in order to further promote transparency and accountability. As noted in the aforementioned 2012 Auditor General Report of the Administration of the Senate:<sup>47</sup>

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<sup>45</sup> See Reports from the Administration of the House of Commons, <http://www.ourcommons.ca/About/BOIE/boie-corpplans-e.html>

<sup>46</sup> 2012 Report of the Auditor General of Canada to the Board of Internal Economy of the House of Commons, Why Its Important, *supra* note 43.

<sup>47</sup> 2012 Report of the Auditor General of Canada to the Standing Senate Committee on Internal Economy, Budgets and Administration—Administration of the Senate of Canada, para. 65, [http://www.oag-bvg.gc.ca/internet/English/parl\\_otp\\_201206\\_e\\_36891.html](http://www.oag-bvg.gc.ca/internet/English/parl_otp_201206_e_36891.html)

[87] “*Transparency also involves ensuring that the rules are clear and publicly available. The Senate Administrative Rules are not posted on the Senate website; instead, members of the public wishing to consult them must submit a request to the Administration. Making the Senate Administrative Rules more accessible would enhance transparency with regard to Senators’ entitlement to allowances and would complement the public disclosure of Senators’ expenses.*”

[88] Given the foregoing, the Committee will formulate a recommendation. (see Recommendation 1.1.3.8 of Section 1.1.3 of Chapter II of this Report)

### 1.1.2.2 New Developments with Respect to Technology

[89] In its Response to the Questionnaire, the country under review presents various technological developments, which are presented as follows:<sup>48</sup>

[90] “*Enhancements have also been made to the PSC’s resourcing systems, which are used by organizations to conduct their staffing activities. These enhancements have included the consolidation of the systems used for internal and external appointment processes into a single platform (Public Service Resourcing System) to ease administration as well as to provide a single source for applicants to search for employment. The website is located at: <https://www.canada.ca/en/public-service-commission/jobs/services/public-service-jobs.html>.*”

### 1.1.2.3 Results

[91] The country under review, in its Response to the Questionnaire, notes that overall results and data are available in the Annual Reports of the Public Service Commission, which can be found on the Commission’s website.<sup>49</sup>

[92] In this respect, in the 2015 – 2016 Annual Report of the Public Service Commission, the following results are presented:<sup>50</sup>

#### PSEA Population as of March 31, 2016

Tenure <sup>51</sup>	Population	Percentage of population	Year-over-year change (%)
<b>Indeterminate</b>	169 662	86.0	- 0.5
<b>Term</b>	13 462	6.8	16.5
<b>Casual</b>	9 347	4.7	8.5
<b>Student</b>	4 809	2.4	7.3
<b>Total</b>	197 280	100.0	1.0

<sup>48</sup> Response to the Questionnaire, pg. 14, *supra* note 11.

<sup>49</sup> *Ibid.*, pg. 15.

<sup>50</sup> 2015 – 2016 Annual Report of the Public Service Commission, <https://www.canada.ca/en/public-service-commission/services/publications/public-service-commission-canada-2015-2016-annual-report.html>

<sup>51</sup> ‘Indeterminate’ is defined as employment for an indefinite duration, ‘term’ is defined as employment for a fixed duration, ‘casual’ is defined as employment for a maximum duration of 90 days per calendar year in a given organization, and ‘student’ is defined as employment through one of the student employment programs.

### Hiring into the Public Service by Tenure and Fiscal Year

Tenure	2011 – 2012	2012 – 2013	2013 – 2014	2014 – 2015	2015 – 2016
<b>Indeterminate</b>	5343	1979	2594	3904	4533
<b>Term</b>	8111	4804	5801	7364	9397
<b>Casual</b>	16275	14359	16896	18609	20187
<b>Student</b>	13099	9561	10386	11146	11848

### Applications to the Public Service by Mechanism/Program in 2015-2016

Program	Number of Applications	Year-over-year change (%)
General Recruitment	496 596	75.4
Student Recruitment Programs (FSWEP/RAP) <sup>52</sup>	54 777	23.1
Graduate Recruitment Programs (PSR/RPL) <sup>53</sup>	53 319	75.9
<b>Total</b>	<b>604 692</b>	

### Hiring into the Public Service by Tenure in 2015-2016

Tenure	2015 – 2016	Year over year change (%)
<b>Indeterminate</b>	4533	16.1
<b>Term</b>	9397	27.6
<b>Casual</b>	20187	8.5
<b>Student</b>	11848	6.3
<b>Total</b>	<b>45965</b>	<b>12</b>

### Hiring into the Public Service by Mechanism/Program in 2015-2016

Program	Hiring Activities	
<b>General</b>	Indeterminate	3 789
	Term	8 619
	Casual	20 187
<b>Student Recruitment Programs</b>	FSWEP	7 041
	RAP	390

<sup>52</sup> Federal Student Work Experience Program (FSWEP) and Research Affiliate Program (RAP).

<sup>53</sup> Post-Secondary Recruitment (PSR) and Recruitment of Policy Leaders (RPL).

### Hiring into the Public Service by Mechanism/Program in 2015-2016

Program		Hiring Activities
	CO-OP	4 417
Graduate Recruitment Programs	PSR	538
	RPL	12
Former Students	Indeterminate	512
	Term	460
<b>Total</b>		45 965

[93] Moreover, in results maintained in Canada's Open Government website the following information is provided with respect to the number of appointments to the public service that were advertised versus non-advertised, for the last three fiscal years:<sup>54</sup>

#### Hiring Activity to the Public Service

	Advertised (%)	Non-Advertised (%)
2013 – 2014	76.9	23.1
2014 – 2015	76.6	23.4
2015 – 2016	74.3	25.7

[94] Moreover, with regard to investigations carried out by the Public Service Commission, the following is noted in the 2015 – 2016 Annual Report of the Public Service Commission:<sup>55</sup>

[95] *“The PSC identifies and corrects irregularities in staffing through the investigation of specific hiring processes. The PSC has the exclusive authority to investigate cases which involve errors, omissions or improper conduct in external appointments and in all suspected cases of fraud and political influence. Deputies have the authority to investigate errors, omissions or improper conduct in internal appointment processes...”*

[96] *We received 212 requests for investigations in 2015-2016, which continues to represent a small number, relative to the volume of staffing transactions conducted each year. Within the same period, 61 requests were accepted for investigation and 48 of 74 investigations completed (opened this year and in previous years) were founded.”*

[97] Moreover, this Report also provides information on investigations carried out for fraud or improper conduct in a recruitment process, whereby it notes that there were 46 cases of fraud or improper conduct carried out for 2015 – 2016. The Report also notes that the bulk of allegations, which may or may not lead to investigations, are from candidates who felt that there was an error or omission that led to them being unfairly eliminated from an appointment process.<sup>56</sup> The following table is provided as well in this respect, whereby it

<sup>54</sup> Open Government, <http://open.canada.ca/data/en/dataset/2fe6b7f1-fbfe-4aaf-808f-b977d40d44db>

<sup>55</sup> 2015 – 2016 Annual Report of the Public Service Commission, *supra* note 50.

<sup>56</sup> *Ibid.*

notes that the decrease in investigations launched is due in part to a facilitated resolution mechanism which aims to resolve cases and eliminate the need for an investigation, and allow it to focus on addressing higher risk allegations such as improper conduct and fraud:<sup>57</sup>

### Errors, Omissions or Improper Conduct

	2013-2014	2014-2015	2015-2016
Requests for Investigations	178	171	126
Number of Investigations Launched	43	14	4

[98] Finally, the table from section 1.1.1 is replicated, as the results are relevant as well:

2015 – 2016 Investigations by the Public Service Commission				
	Cases closed without investigation	Investigations unfounded	Investigations founded	Active cases remaining
Section 66 External appointment processes	128	4	3	20
Section 67(2) Internal appointment processes - delegated	3	1	1	0
Section 68 Political influence	0	0	0	0
Section 69 Fraud	16	18	43	42
Other sections or subsections of the PSEA	1	0	0	0

[99] The Committee takes note of the efforts undertaken by the country under review, in particular that of the Public Service Commission, in maintaining results on the system of government hiring in Canada.

[100] Nevertheless, the Committee observes that there appears to be no systematic results being compiled regarding the separate agencies that do not fall under the purview of the PSC. As noted earlier, there are 25 separate agencies, employing approximately 61,625 persons, the vast majority (84.6%) of which work in 11 agencies for which the PSC knows that their recruitment is based on the principle of merit.<sup>58</sup> Given the foregoing, the Committee cannot rely on statistical data on the number of appointment processes carried out in a year for these agencies, how many were completed, how many were abandoned, how many persons applied to a position, as well as the number of persons entering these separate agencies, in a given year. The

<sup>57</sup> *Ibid.*

<sup>58</sup> See <https://www.canada.ca/en/treasury-board-secretariat/services/innovation/human-resources-statistics/population-federal-public-service-department.html>

lack of information makes it difficult for the Committee to determine the efficiency and transparency of the government hiring system in place. The Committee will formulate a recommendation. (see Recommendation 1.1.3.9 of Section 1.1.3 of Chapter II of this Report)

[101] Moreover, the Committee notes that the hiring that is carried out in the Legislative Branch, under the Administration of the Senate of Canada and the Administration of the House of Commons, appears not to maintain results with respect to the system of government hiring carried out under their respective competence. As such, the Committee notes, it cannot rely on statistical data on the number of competitions carried out in a year, how many were completed, how many were abandoned, how many persons applied to a position, as well as the number of persons entering the public service in that branch of government, in a given year. The lack of information makes it difficult for the Committee to determine the efficiency and transparency of the government hiring system in place. The Committee will formulate recommendations. (see Recommendation 1.1.3.10 and 1.1.3.11 of Section 1.1.3 of Chapter II of this Report)

[102] In this respect, the Committee notes that in the case of the Administration of the House of Commons, the aforementioned 2012 audit by the Office of the Auditor General noted that the Board does not, among other things, formally collect and analyze data for a complete set of performance indicators, such as recruitment rates.<sup>59</sup> In its response to this observation, among others, the Board noted the following:<sup>60</sup>

[103] *“As the planning frameworks mature, the House Administration will enhance the performance measures that are currently included in the Report to Canadians, keeping in mind the report’s dual role: providing the public with an annual update on Members’ parliamentary activities and summarizing the Administration’s accomplishments and commitments in support of Members and the institution.”*

[104] The Committee notes however, that in the Report to Canadians, results on the recruitment carried out by the House Administration, as well as overall numbers on employees, are not found.<sup>61</sup> To the Committee, it appears that the last document to contain any such numbers is the Audit carried out by the Office of the Auditor General, where it indicated that *“the House of Commons Administration has more than 1,800 employees whose mandate is to support all Members of the House of Commons by providing them with the services, infrastructure, and advice they need to carry out their parliamentary functions.”*<sup>62</sup> Moreover, it further observed that for the 2010–11 fiscal year, the Administration hired 377 term employees compared to 163 permanent employees.<sup>63</sup>

[105] Similarly, no such numbers are readily available for the Administration of the Senate. In an audit carried out by the Office of the Auditor General in 2012, which reviewed, among others, the policies and control systems in place to support Senators and the operations of the Senate of Canada in the areas of strategic and operational planning, financial management, human resources, information technology services, and security, it noted there were about 430 employees.<sup>64</sup> The Committee cannot find any additional information regarding the current number of employees in the Senate.

### 1.1.3. Recommendations

<sup>59</sup> 2012 Report of the Auditor General of Canada to the Board of Internal Economy of the House of Commons, par. 96, *supra* note 43.

<sup>60</sup> Administration’s Response, *ibid.*

<sup>61</sup> 2016 Report to Canadians, <http://www.ourcommons.ca/About/ReportToCanadians/2016/rtc2016-e.pdf>

<sup>62</sup> 2012 Report of the Auditor General of Canada to the Board of Internal Economy of the House of Commons, Main Points, *supra* note 43.

<sup>63</sup> *Ibid.*, para. 49.

<sup>64</sup> 2012 Report of the Auditor General of Canada to the Standing Senate Committee on Internal Economy, Budgets and Administration, par. 16, *supra* note 47.

[106] In light of the observations formulated in sections 1.1.1 and 1.1.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 1.1.3.1 Demonstrate that the remaining 11 separate agencies that do not fall under the purview of the PSEA conduct their recruitment based on the principles of merit and non-partisanship (See paragraph 24 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.2 Establish recourse mechanisms for external candidates participating in a recruitment process conducted by the Office of the Conflict of Interest and Ethics Commissioner (See paragraph 43 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.3 Establish parameters or clearly defined criteria for the advertisement of hiring opportunities or vacancies in the Office of the Conflict of Interest and Ethics Commissioner, as well as the time frame in which they should be advertised or posted (See paragraph 44 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.4 Establish recourse mechanisms for external candidates participating in a recruitment process conducted by the Senate Administration (See paragraph 58 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.5 Establish parameters or clearly defined criteria for the advertisement of hiring opportunities or vacancies in the Senate Administration, as well as the time frame in which they should be advertised or posted (See paragraph 59 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.6 Make the recruitment policies and other relevant documents of the House of Commons Administration, public and easily accessible (See paragraph 85 of Section 1.1.2 of Chapter II of this Report).
- 1.1.3.7 Publicize the steps it has taken to address the recommendations of the 2012 Report of the Auditor General to the Administration of the House of Commons regarding the development of a policy to govern the hiring and use of term employees (See paragraph 85 of Section 1.1.2 of Chapter II of this Report).
- 1.1.3.8 Make the recruitment policies and other relevant documents of the Senate Administration, public and easily accessible (See paragraph 88 of Section 1.1.2 of Chapter II of this Report).
- 1.1.3.9 Maintain statistics, with respect to separate agencies that do not fall under the PSEA, regarding, inter alia, the number of employment opportunities publicized, and the number and percentage of public servants employed via meritocratic selection processes; as well as make available to the public information on the number of competitions carried out in a year, how many were completed, how many were abandoned, how many persons applied to a position, as well as the number of persons entering into these separate agencies in a given year, in order to identify challenges and recommend corrective measures where appropriate (See paragraph 100 of Section 1.1.2 of Chapter II of this Report).
- 1.1.3.10 Maintain statistics, with respect to the Administration of the House of Commons, regarding, inter alia, the number of employment opportunities publicized, and the number and percentage of persons employed via meritocratic selection processes; as well as make available to the public information on the number of competitions carried out in a year,

how many were completed, how many were abandoned, how many persons applied to a position, as well as the number of persons entering into the Administration of the House of Commons, in order to identify challenges and recommend corrective measures where appropriate (See paragraph 101 of Section 1.1.2 of Chapter II of this Report).

- 1.1.3.11 Maintain statistics, with respect to the Administration of the Senate, regarding, inter alia, the number of employment opportunities publicized, and the number and percentage of persons employed via meritocratic selection processes; as well as make available to the public information on the number of competitions carried out in a year, how many were completed, how many were abandoned, how many persons applied to a position, as well as the number of persons entering into the Administration of the Senate, in order to identify challenges and recommend corrective measures where appropriate (See paragraph 101 of Section 1.1.2 of Chapter II of this Report).

## 1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

### 1.2.1 Follow-Up to the Implementation of the Recommendations Formulated in the Second Round

Recommendation 1.2.1 suggested by the Committee that requires additional attention within the Framework of the Third Round:

*Continue strengthening systems for the procurement of goods and services by the government.*

Measure a):

*Support the Office of the Procurement Ombudsman so that, once established, it has the necessary trained personnel and resources to carry out its functions properly as well as establishing mechanisms that permit ongoing evaluation and follow-up of said activities.*

[107] This measure was satisfactorily considered in the Report of the Third Round for Canada and, therefore, does not require additional attention.

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

*Continue building awareness among industry stakeholders of their obligations and rights under the Code of Conduct for Procurement.*

[108] With respect to the aforementioned Recommendation, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:<sup>65</sup>

[109] “*Public Services and Procurement Canada (PSPC) continues its efforts to increase awareness in relation to the Code of Conduct for Procurement (Code). The Code is integrated into PSPC’s solicitation processes and must be complied with in order to conduct business with the Government of Canada. It explicitly outlines expected behaviours and commitments of the vendor when contracting with the Government, including prohibiting corrupt behaviour, among other practices, in the procurement process. A vendor bidding on a competitive or non-competitive solicitation (i.e., the process of seeking proposals and quotations from vendors) must certify that it meets all the requirements of the Code. After a contract is*

<sup>65</sup> Response to the Questionnaire, pg. 6, *supra* note 11.

awarded, these solicitation conditions are carried forward as a contractual obligation. The Code and supplementary information are available on the PSPC public website: <http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/index-eng.html>.<sup>66</sup>

[110] Moreover, in its Response, the country under review notes that the Office of Small and Medium Enterprises (OSME), a sector within PSPC, helps vendors/suppliers understand how to navigate the federal procurement process, and that this assistance, which is provided through six regional offices, includes: business seminars/webinars; one-on-one supplier consultations; presentations at industry events; and information booths at trade shows.<sup>67</sup> In addition, through a toll-free National InfoLine service and regional offices, the OSME answers a variety of procurement-related questions, including those related to the Code.

[111] The Committee takes note, however, that during the on-site visit, the representatives from the Acquisition Branch of the Public Services and Procurement Canada (PSPC) observed that the responsibilities of public servants and suppliers are intertwined in the Code, making it difficult to some extent for stakeholders to understand their responsibilities and expected behaviors.<sup>68</sup> Moreover, it was also recognized that the Code was not written in plain language and from a supplier perspective is somewhat difficult to read and understand.<sup>69</sup>

[112] Given the foregoing, the Committee believes that measure b) should be reformulated, and that the country under review should consider revising the Code of Conduct for Procurement to make it clearer as to the obligations and rights of both suppliers and public servants. The Committee will formulate a recommendation. (See Recommendation 1.2.3.1 in Section 1.2.3 of Chapter II of this Report)

[113] In this regard, the representatives of the Acquisition Branch of the PSPC noted that there is an initiative to revise the Code, which would provide a clearer picture of what is expected of suppliers in terms of their supply chain and socially responsible behaviors.<sup>70</sup> It is expected that the initiative to enhance the Code would make it easier and clearer to read and understand. As part of this review, it has also conducted a review of a number of industry Codes of Conduct, in order to identify commonalities that could inform the revision of the Code and consulted procurement officers as to their experiences in dealing with suppliers on a daily basis.<sup>71</sup> In this manner the new Code would be developed with the same look and feel as comparable industry codes, and will help facilitate greater understanding of the obligations contained therein.<sup>72</sup>

[114] The representatives, in their presentation, further noted that the PSPC will be engaging with internal stakeholders to identify key recommended changes to the Code; draft a new one based on comments and feedback from internal stakeholders, and then engage with external ones to further refine and improve it.<sup>73</sup> Once this exercise is completed, it will launch the new Code and work to identify venues and tools to broadly communicate this new Code.<sup>74</sup>

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<sup>66</sup> The country under review notes that the Code of Conduct for Procurement provides that Bidders must respond to bid solicitations in an honest, fair and comprehensive manner, accurately reflect their capacity to satisfy the requirements set out in the bid solicitation and resulting contract, submit bids and enter into contracts only if they will fulfill all obligations of the Contract. By submitting a bid, the Bidder is certifying that it is complying with the Code of Conduct for Procurement. Failure to comply with the Code of Conduct for Procurement may render the bid non-responsive, see <https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/1/2003/22#code-of-conduct-for-procurement>

<sup>67</sup> *Ibid.*

<sup>68</sup> Presentation by the Acquisition Branch of the Public Works and Government Services Canada, pg. 5, [http://www.oas.org/juridico/english/mesicic5\\_can.htm](http://www.oas.org/juridico/english/mesicic5_can.htm)

<sup>69</sup> *Ibid.*, pg. 5.

<sup>70</sup> *Ibid.*, pg. 7.

<sup>71</sup> *Ibid.*, pgs. 6 and 7. See also Annex A to the Presentation, which sets out the industry Codes of Conduct that were consulted.

<sup>72</sup> *Ibid.*, pg. 8.

<sup>73</sup> *Ibid.*, pg. 9.

<sup>74</sup> *Ibid.*

[115] The Committee further observes that during the on-site visit, the representatives of the Acquisition Branch of the PSPC noted that the Code of Conduct forms part of the tender process, and is a contractual obligation to be observed. In this respect, not abiding with the Code could lead to the termination of a contract. It noted, however, that not all procurements carried out by the Government of Canada are covered by this Code. The Code is an instrument developed by PSPC for itself and requires that PSPC and its suppliers abide by the legislation and policies outlined in the Code. It consolidates the government's existing legal, regulatory and policy requirements, and does not change them or their interpretation. All other government departments and agencies are subject to the same laws, regulations and policies.

[116] Subsequent to the on-site visit, the PSPC provided further information regarding the application of the Code, breaking down, on average of a three-year period, the number of contractual documents and value of these contracts, as follows:

	Number of Contractual documents	Value of Contractual Documents
3 year average for Public Services and Procurement Canada	30,746	\$18.5B
3 year average for Shared Services Canada	4,754	\$1.6B
3 year average for all other departments and agencies	405,200	\$3.5B
3 year average of all Government of Canada	440,700	\$23.6B

[117] The Code applies to all contracts that fall under the PSPC, as well as Shared Services Canada, which is responsible for delivering mandated email, data center and network services to the Government of Canada, while the contractual documents issued by the individual departments and agencies under their own individual delegation of authority, as set out above, can include the Code if they have chosen to use the standard clauses and conditions of the Public Services and Procurement Canada.<sup>75</sup>

[118] Given the foregoing, the Committee believes that the country under review should consider undertaking communication activities by the PSPC to make all government departments and agencies aware of the Code of Conduct for Procurement and the existing legal, regulatory and policy requirements.

[119] The importance of this Code, and its application to all government of Canada contracts, is underlined when considering the Context and Purpose of the Code:<sup>76</sup>

[120] *“The Code of Conduct for Procurement provides all those involved in the procurement process – public servants and vendors alike – with a clear statement of mutual expectations to ensure a common basic understanding among all participants in procurement.*

[121] *The Code reflects the policy of the Government of Canada and is framed by the principles set out in the Financial Administration Act and the Federal Accountability Act. It consolidates the federal government's measures on conflict of interest and anti-corruption as well as other legislative and policy requirements relating specifically to procurement.”*

<sup>75</sup> Public Service and Procurement Canada Follow Up Questions and Responses, pg. 2, [http://www.oas.org/juridico/english/mesicic5\\_can.htm](http://www.oas.org/juridico/english/mesicic5_can.htm)

<sup>76</sup> Context and Purpose of the Code, <https://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html>

[122] Given the foregoing, the Committee will formulate a recommendation. (See Recommendation 1.2.3.2 in Section 1.2.3 of Chapter II of this Report)

## **1.2.2 New Developments with Respect to the provisions of the Convention on Government Systems for the Procurement of Goods and Services**

### **1.2.2.1 New Developments with Respect to the Legal Framework**

#### a) Scope

[123] In its Response to the Questionnaire, the country under review notes that, on July 3, 2015, the Government of Canada introduced a new administrative policy, the Government-wide Integrity Regime, to demonstrate its commitment to conduct business with ethical suppliers and to support open, fair and transparent procurement and real property processes.<sup>77</sup> Under this Regime, an Ineligibility and Suspension Policy<sup>78</sup> sets out the circumstances in which the Public Services and Procurement Canada (PSPC), the department responsible for administering the Policy, may declare ineligible or suspend a supplier from the awarding of a contract or real property agreement, which includes instances where a supplier has been convicted or charged, in the previous three years, with an applicable listed offence (i.e., those related to unethical business conduct, such as corruption, bribery and fraud, etc.) in Canada or with a similar offence abroad. The Regime also covers affiliates and subcontractors.<sup>79</sup>

[124] The names of ineligible and suspended corporations under this regime are published on the PSPC's Integrity Regime website available at <https://www.tpsgc-pwgsc.gc.ca/ci-if/four-inel-eng.html>. Due to Canadian privacy laws, names of individuals are not published online.<sup>80</sup>

[125] Moreover, the country under review notes, in its Response, the efforts it has undertaken to reach out to stakeholders of this Regime:<sup>81</sup>

[126] *“Since the introduction of the Regime, the Department has undertaken outreach efforts to promote and inform stakeholders of the Regime, clarify its elements and implications, and solicit ongoing feedback for improvement. Presentations and information sessions have been given to federal partners, suppliers, industry members, third party service providers and civil society organizations, in addition to the Department offering to discuss particular issues on a one-on-one basis. OSME [Office of Small and Medium Enterprises] has played a critical role in coordinating SME engagement opportunities across the regions, for example, through its Supplier Stakeholder Network meeting, a Small Business Expo, and Business to Government Information Fairs. These outreach measures have been widely used to increase stakeholders' awareness and understanding of their obligations under the Regime.”*<sup>82</sup>

[127] *PSPC has also participated in a number of events where it has promoted measures that it has implemented within its procurement and real property processes, such as the Integrity Regime and the Code, to reduce instances of fraud and corruption in procurement and real property transactions. These have included delivering presentations at Transparency International Canada's Day of Dialogue: Spotlight on Corruption and at the Organization for Economic Cooperation and Development's Public Governance Committee Symposium, as well as participating in a number of events hosted by Industry Associations and third party service providers.”*

<sup>77</sup> Response to the Questionnaire, pg. 7, *supra* note 11.

<sup>78</sup> Available at <https://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-eng.html>

<sup>79</sup> Response to the Questionnaire, pg. 7, *supra* note 11.

<sup>80</sup> *Ibid*

<sup>81</sup> *Ibid.*

<sup>82</sup> The country under review further notes that the OSME coordinates SME engagement opportunities across Canada through its network of 6 regional offices.

[128] Moreover, during the on-site visit, the representatives from the PSPC provided an overview of the Integrity Regime and its operation. It noted that the Regime aims to reduce the risk of the Government of Canada entering into contracts or real property agreements with unethical suppliers; protect the integrity of procurement and real property agreements; hold suppliers accountable for their actions, while encouraging them to cooperate with authorities when problems arise and to quickly take corrective actions; and ensure consistency in application across contracts and real property agreements issued by the Government of Canada.<sup>83</sup> It is applicable to contracts and real property agreements government-wide, with some exceptions, such as contracts and real property agreements below \$10,000; transfer payments (grants, contributions); and contracts under the foreign military sales program.

[129] The representatives also stated that the Regime places specific requirements on suppliers bidding on Government of Canada contracts and real property transactions. Suppliers are to acknowledge that they are compliant with the Integrity Regime, certifying, for example, that: they understand that certain domestic and foreign criminal charges and convictions, and other circumstances, will or may result in a determination of ineligibility or suspension; none of the domestic criminal offences and other circumstances described in the Policy applies to them, their affiliates<sup>84</sup> and first tier subcontractors;<sup>85</sup> and they are not aware of a determination of ineligibility or suspension that apply to them.<sup>86</sup> In addition, a supplier is required to complete and submit an Integrity declaration form when it, one of its affiliates or a proposed first-tier subcontractor has been charged with, or convicted of, a criminal offence in a country other than Canada and to the best of its knowledge and belief, the offence may be similar to one of the listed offences in the Ineligibility and Suspension Policy, or if the supplier is unable to provide any of the certifications required by the Integrity clauses.

[130] Suppliers are also required to verify the status of any prospective first tier subcontractor named in a bid prior to submission and all subcontractors must be verified before entering in a direct contractual relationship.<sup>87</sup> This is done by consulting an Ineligibility and Suspension List<sup>88</sup> to confirm the company is not

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<sup>83</sup> Presentation on the Integrity Regime by the Public Services and Procurement Canada, pg. 4, [http://www.oas.org/juridico/english/mesicic5\\_can.htm](http://www.oas.org/juridico/english/mesicic5_can.htm)

<sup>84</sup> Under the Ineligibility and Suspension Policy, ‘affiliate:’

- a) is a person, including, but not limited to, parent companies, subsidiaries, whether or not wholly or partially owned, as well as a senior officer;
- b) one person is an affiliate of another person if,
  - i. one person is controlled by the other person;
  - ii. both persons are controlled by a third person;
  - iii. both persons are under common control; or
  - iv. each person is controlled by a third person and the third person by whom one person is controlled is affiliated with the third person by whom the other person is controlled;
- c) indicia of control, whether direct or indirect, exercised or not, include, but are not limited to, common ownership, common management, identity of interests (often found in members of the same family), shared facilities and equipment or common use of employees;
- d) an affiliate may also exist in instances of an amalgamation or merger. Where at any time two or more corporations (in this provision referred to as the “predecessors”) amalgamate or merge to form a new corporation, the new corporation and any predecessor are deemed to have been affiliated with each other where they would have been affiliated with each other immediately before that time if,
  - i. the new corporation had existed immediately before that time; and
  - ii. the persons who were the shareholders of the new corporation immediately after that time had been the shareholders of the new corporation immediately before that time.

<sup>85</sup> Under the Ineligibility and Suspension Policy, ‘first tier subcontractors’ means a subcontractor with whom a supplier has a direct contractual relationship to perform a portion of the work pursuant to a contract or real property agreement between the supplier and Canada (meaning all the activities, services, goods, equipment, matters and things required to be done, delivered or performed by the supplier under the contract or real property agreement), unless the subcontractor merely supplies commercial-off-the-shelf goods to the supplier.

<sup>86</sup> *Ibid.*, pg. 5.

<sup>87</sup> *Ibid.*, pg. 6.

<sup>88</sup> Ineligibility and Suspension List, <http://www.tpsgc-pwgsc.gc.ca/ci-if/four-inel-eng.html>

ineligible or suspended, or by submitting a written request to the Registrar of Ineligibility and Suspension along with a signed Integrity Verification Request for Subcontractor form for individuals.<sup>89</sup>

[131] In addition, under certain circumstances, suppliers will be automatically ineligible to be awarded a contract or real property agreement: convictions of frauds against the government under the Criminal Code or Financial Administration Act render a supplier permanently ineligible; convictions of one of the offences listed in the Policy in the last 3 years results in an ineligibility period of 10 years;<sup>90</sup> providing a false or misleading certification or declaration results in an ineligibility period of 10 years; and entering into a subcontract with an ineligible first-tier subcontractor results in an ineligibility period of 5 years.<sup>91</sup> The categories of offences that lead to a determination of ineligibility include: payment of a contingency fee to a person to whom the Lobbying Act applies; corruption, collusion, bid-rigging or any other anti-competitive activity under the Competition Act; money laundering; participation in activities of criminal organizations; income and excise tax evasion; bribing a foreign public official; offences in relation to drug trafficking; extortion; bribery of judicial officers; bribery of officers; secret commissions; criminal breach of contracts; fraudulent manipulation of stock exchange transactions; prohibited insider trading; forgery and other offences resembling forgery; and falsification of books and documents.<sup>92</sup>

[132] In the presentation, the following circumstances were provided where suppliers may be determined ineligible: convictions of an offence outside of Canada in the last three years that is similar to one of the listed offences may result in an ineligibility period of 10 years; and convictions of an affiliate of one of the listed offences in the last three years, or of a similar offence outside of Canada, which, in PSPC's opinion, the supplier directed, influenced, authorized, assented to, acquiesced in or participated in the commission of the offence may result in an ineligibility period of 10 years. Breaching any term or condition of an Administrative Agreement entered into with PSPC may result in a lengthened period of ineligibility or suspension, or an imposition of a suspension period. Charges or admissions of guilt in respect of a listed offence, or a similar offence in a jurisdiction other than Canada, may result in a suspension of up to 18 months. This period may be extended as judicial processes proceed. An Administrative Agreement may be entered in lieu of suspension.<sup>93</sup>

[133] The Integrity Regime also provides for Administrative Agreements, which provide assurances from suppliers that it will conduct business with Canada in an ethical and responsible manner. Such an agreement is required to reduce a period of ineligibility; as an alternative suspension; to avoid termination of an existing contract or real property agreement; or to award a contract or real property agreement to an ineligible supplier when it is in the public interest to do so.<sup>94</sup>

[134] Finally, the PSPC has also developed a number of tools and resources to assist stakeholders, including a toll free line and a generic email box; website; directives that elaborate or clarify aspects of the Ineligibility and Suspension Policy; information bulletins; list of federal organizations that have signed MOUs with the

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<sup>89</sup> Integrity Verification Request for Subcontractor form, <http://www.tpsgc-pwgsc.gc.ca/ci-if/dvi-ivr-form-eng.html>

<sup>90</sup> Which may be reduced by up to five years, provided the supplier has cooperated with law enforcement authorities; or has undertaken remedial actions to address wrongdoing.

<sup>91</sup> Presentation on the Integrity Regime by the Public Services and Procurement Canada, pg. 7, *supra* note 83. See also Section 6: Circumstances that automatically lead to a determination of ineligibility, of the Ineligibility and Suspension Policy, *supra* note 78.

<sup>92</sup> Presentation on the Integrity Regime by the Public Services and Procurement Canada, pg. 15, *ibid.*

<sup>93</sup> *Ibid.*, pg. 8. See also Section 7: Circumstances that may lead to a determination of ineligibility or suspension, of the Ineligibility and Suspension Policy, *supra* note 76.

<sup>94</sup> *Ibid.*, pg. 10. Moreover, suppliers are required to retain the services of an independent third party, at their own expense, in a variety of circumstances to provide and verify information. A supplier may propose a third party of their choice provided they hold a recognized designation or accreditation, such as a Certified Professional Accountant (CPA) license, public accounting license or membership in a provincial or territorial Law Society. It is within the sole discretion of PSPC to determine whether the proposed third party has sufficient expertise, experience and independence to provide the services required.

PSPC; list of ineligible and suspended suppliers; list of suppliers that have signed Administrative Agreements; and a Guide to the Ineligibility and Suspension Policy.<sup>95</sup>

b) Observations

[135] First, the Committee would like to recognize the new measures adopted by Canada to continue to push forward with the creation, maintenance, and strengthening of its systems of government systems for the procurement of goods and services as referred to in Article III (5) of the Convention.

[136] Having said that, it believes it useful to make a number of comments regarding the advisability of strengthening, developing, and/or adapting certain provisions that have to do with those new developments, notwithstanding the observations made by the Committee in Section 1.1.1 above in connection with the follow-up on implementation of the recommendations made to the country under review in the report from the Second Round.

[137] As noted by the Committee above, the Office of the Auditor General, in 2012, conducted an examination of the Senate Administration and the House of Commons Administration, respectively. In the case of the Senate, the Office examined whether the Senate Administration has management policies and control systems in place to support Senators and the operations of the Senate of Canada in the areas of strategic and operational planning, financial management, human resources, information technology services, and security. In the case of the House of Commons Administration, it focused on whether the House of Commons Administration carries out the by-laws, policies, and directives set out by the Board of Internal Economy along with the policies that apply solely to the Administration.

[138] In the Report for the House of Commons Administration, the Office of the Auditor General noted the following:<sup>96</sup>

[139] *“We examined whether the Administration has appropriate policies and control systems in place to manage the procurement of goods and services. We found that the Administration’s Procurement Policy is designed to provide a reasonable procurement framework that supports fairness and transparency, strives to achieve best value, and seeks to manage risk. The policy outlines the responsibilities and accountabilities of Administration officials. It emphasizes the preference for a competitive approach for individual procurements, and defines who has authority for procurement.*

[140] *However, the manual intended to provide detailed guidance on how to carry out procurement is unclear: its guidance for managers is contradictory or insufficient and has contributed to inconsistent procurement practices. For example, the manual provides some guidance on communication with vendors during and after competitive procurements, but there is minimal guidance on when communication should or should not occur during the evaluation of bids submitted by vendors. We observed four files where the Directorate contacted vendors seeking clarification of their submitted bids after the bid closing date.”*

[141] As a result, the Auditor General recommended that the House of Commons Administration should ensure that its procurement manual is reviewed and revised so that all prospective bidders are treated consistently. The Administration agreed with this recommendation and indicated that the manager’s procurement manual was recently developed for use by managers in the House as phase 1 of a multi-phase/multi-year project and it was acknowledged that this manual needed to be updated and reviewed, and would be completed by March 31, 2013.<sup>97</sup>

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<sup>95</sup> *Ibid.*, pg. 14.

<sup>96</sup> 2012 Report of the Auditor General of Canada to the Board of Internal Economy of the House of Commons, paragraphs 33 – 34, *supra* note 43.

<sup>97</sup> *Ibid.*, para. 35.

[142] Another observation made by the Auditor General was that most procurements of goods and services were not in compliance with the House of Commons Administration's policies and processes. It found that of 59 procurements that were examined, 41 of them did not comply with the policies and processes for procuring goods and services of the House of Commons Administration.<sup>98</sup> These deficiencies included contracts that were not signed or were signed retroactively, and files that were missing documentation, such as a statement of work or the rationale for not choosing a competitive process. The Auditor General noted that his pointed to a widespread lack of compliance and that these deficiencies were due to a lack of guidance, inconsistent application of controls, and high turnover in senior positions.<sup>99</sup>

[143] The Report noted the following with respect to these deficiencies:<sup>100</sup>

[144] *“In one example, a vendor’s proposal for a contract valued at \$600,000 included a condition that qualified the vendor’s ability to meet one of the mandatory technical requirements in the Administration’s request for proposals. The procurement manual requires that bids not meeting the mandatory technical or performance requirements not be included in the evaluation process. Instead of setting aside the bid or cancelling the process and retendering the requirement, the Directorate retained and evaluated the bid, and the vendor was awarded the contract.*

[145] *The Directorate has introduced a conflict of interest form for its complex procurements, which both decision makers and evaluators are required to sign before drafting solicitation documents. This is a good practice and an important one: it supports transparency and protects the Administration from risk. However, we found that in five of the seven procurements requiring the form, it was either missing from the file or had been signed after a significant milestone.*

[146] *In addition, we noted that in establishing four non-competitive contracts, the service areas concerned did not follow Procurement Policy requirements and entered into agreements without involving the Directorate. Instead, the Directorate merely completed the paperwork to facilitate payments to the vendors. The Directorate is responsible for ensuring that the Administration’s procurement process is consistently applied and can withstand public scrutiny. It should have played a more significant role in the procurement actions.”*

[147] As a result, the Auditor General recommended that the House of Commons Administration should ensure that it complies with its Procurement Policy and processes and that all of its procurement files contain proper documentation and authorization of the related procurement action. The Administration agreed with this recommendation and indicated that additional guidance would be developed and staff would be trained to ensure that policy and processes are clearly communicated. It would also develop a procurement control framework to ensure procurement actions follow established policy and processes, and that these are evidenced in the respective files. It was understood that this work would be completed by March 31, 2013, with training to commence in 2013–14.<sup>101</sup>

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<sup>98</sup> *Ibid.*, para. 36.

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*, para. 37 – 39.

<sup>101</sup> *Ibid.*, para. 40. The Committee notes that in its observations to the draft preliminary report, Canada noted that the House of Commons updated its policy and practices pertaining to procurement in November 2014 and that this update addresses the recommendations made by the Office of the Auditor General of Canada on such compliance. Moreover, it noted that a major portion of this draft preliminary report is concentrated on House of Commons procurement and contracting activities as described in the 2012 June Report of the Auditor General of Canada, which was performed against data from 2010; being over 7 years old, the information therein is outdated. Further, the House’s total spending for its procurement and contracting activities is equivalent to less than 1% of that of the Executive Branch. Therefore, the House considers this report’s focus on the 2012 audit to be incommensurate with the small scale of the House’s procurement activities and recommends that the Committee consider consolidating its commentary and reducing its recommendations in order to better align this report with the risk it is seeking to address. The House of Commons has a rigorous internal audit program that provides objective and value-added assurance, risk

[148] The Committee notes, however, that no mention is made of the steps taken to address these serious issues in the Report to Canadians, which provides the public with an annual update on Members' parliamentary activities, includes a financial report, and summarizes, based on the priorities laid out in the Strategic Plan, the Administration's accomplishments in support of Members and the institution.<sup>102</sup>

[149] The Committee also observes that the procurement policies in place for the House of Commons are not made available on the website of the Board, which is in contrast to the practice in place for the Executive Branch of the Government of Canada.

[150] Given the foregoing, the Committee believes that the country under review should consider making public and easily accessible the instruments in place, such as policies, that govern the systems for the procurement of goods and services for the Administration of the House of Commons. In this respect, it should also consider publicizing what steps it has taken to address the recommendations of the 2012 Report of the Auditor General in this area to promote increased accountability. The Committee will formulate Recommendations. (See Recommendations 1.2.3.3 and 1.2.3.4 in Section 1.2.3 of Chapter II of this Report)

[151] Likewise, the Committee notes that there is a lack of information available online for the Senate Administration, as the procurement policy and guidelines are not available. In this respect, the Committee believes the country under review should consider placing this information online, in order to further promote transparency and accountability. The Committee will formulate a recommendation. (See Recommendation 1.2.3.5 in Section 1.2.3 of Chapter II of this Report)

### **1.2.2.2 New Developments with Respect to Technology**

[152] The country under review made no mention of new developments with respect to technology in this area.

### **1.2.2.3 Results**

[153] In its Response to the Questionnaire, the country under review did not provide any results. The Committee notes, however, that statistics are provided through Purchasing Activity Reports, which date back annually to 1995, as set out in Canada's Report of the Second Round.<sup>103</sup> Regarding these Reports, they are broken down by number and value of contracts by competitive and non-competitive awards and by total

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management and advisory services on all strategic and management practices, which has also validated that recommendations previously made have been addressed. Its reports are presented to the Board of Internal Economy (BOIE). The BOIE's proceedings will be public as of the fall of 2017. The House of Commons has received yearly unqualified audit opinions on its financial statements since 2005. These opinions have been rendered by independent accounting firms and confirm that the House's financial statements present fairly, in all material respects, the financial position, performance and cash flows of the House of Commons, in accordance with Canadian public sector accounting standards. Further, since 2005, external auditors found no areas of concern or improvement with respect to the accuracy of the financial statements or the internal financial reporting controls at the House of Commons. All audits of the House's financial statements can be found on its public website: <http://www.ourcommons.ca/About/BOIE/boie-financials-e.html>. Finally, it noted that Bill C-58, *An Act to amend the Access to Information Act and the Privacy Act* was tabled in the House on June 19, 2017, and if it receives Royal Assent, should be relevant to some of the Committee's recommendations. In summary and among other amendments, the bill proposes to amend the *Access to Information Act* to create a new Part providing for the proactive publication of information or materials related to the Senate, the House of Commons, parliamentary entities, ministers' offices, government institutions and institutions that support superior courts. A copy of the bill can be found at this link: <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-58/first-reading>

<sup>102</sup> See Reports from the Administration of the House of Commons, <http://www.ourcommons.ca/About/BOIE/boie-corpplans-e.html>

<sup>103</sup> Report of the Second Round, pgs. 33 – 35, *supra* note 9.

contracts. The following tables are a summary for the year 2015, the last year that this information is available:<sup>104</sup>

**Contracts above and below \$25,000: total number and value, including net amendments**

Contract Type	Number	Percent of total number of contracts	Value (thousands)	Percent of total value
Goods	193,838	56.8	6,694,402	33.7
Services	132,025	38.7	6,747,167	34.0
Construction	15,517	4.5	6,402,123	32.3
Total	341,380	100	19,843,693	100

[154] Information is also provided on total number and value of contracts above \$25,000, by solicitation procedure, number and value, as well as by percentage:<sup>105</sup>

**Contracts above \$25,000: total number and value, including net amendments**

Solicitation procedure	Number	Per cent of total number	Value (thousands)	Per cent of total value
Awards pursuant to public notice or invited competitive bids				
Competitive awards				
Electronic bidding <sup>106</sup>	7,459	27.70	9,212,786	49.93
Traditional competitive <sup>107</sup>	14,459	53.70	3,117,027	16.89
Total competitive awards	21,918	81.38	12,329,813	66.83
Net competitive amendments <sup>108</sup>	N/A	N/A	2,744,738	15.04
Subtotal competitive awards, including amendments	21,918	81.38	15,104,551	81.87
Advance Contract Award Notice (ACAN) <sup>109</sup>	517	1.92	176,621	0.96

<sup>104</sup> 2015 Purchasing Activity Report, <https://www.canada.ca/en/treasury-board-secretariat/corporate/reports/contracting-data/2015-purchasing-activity-report.html>

<sup>105</sup> *Ibid.*

<sup>106</sup> A method of procurement that promotes suppliers' access to, and transparency in, the procurement process, and that facilitates the Crown's receipt of best value by using

- a public notice by means of an approved electronic information service of procurement opportunities (e.g., buyandsell.gc.ca);
- a public notice by means of an electronic information service of proposed directed procurements by means of an Advance Contract Award Notice (ACAN); or
- such other procurement methods as may be approved by the Treasury Board.

<sup>107</sup> A method of procurement that gives public notice of a call for bids for a proposed contract, using traditional bidding procedures in a manner that is consistent with generally accepted trade practices, *ibid.*

<sup>108</sup> In 2015, the total value of positive amendments (i.e., those that increase the contract value) was \$4,298,964,285. The total value of negative amendments (i.e., those that decrease the contract value) was \$315,459,858. The total value of net amendments was \$3,983,504,427, see Section on Amendments, *ibid.*

<sup>109</sup> An ACAN allows departments and agencies to post a notice, for no fewer than 15 calendar days, indicating to the supplier community that it intends to award a good, service or construction contract to a pre-identified contractor. If no other supplier submits, during the 15-calendar-day posting period, a statement of capabilities that meet the requirements set out in the ACAN,

Solicitation procedure	Number	Per cent of total number	Value (thousands)	Per cent of total value
Net ACAN amendments	N/A	N/A	328,825	1.78
Subtotal competitive awards and ACANs, including amendments	22,435	83.30	15,609,997	84.61
Awards not pursuant to public notice or invited competitive bids				
Non-competitive awards	4,497	16.70	2,207,517	11.96
Net amendments	N/A	N/A	632,686	3.43
Non-competitive awards, including amendments	4,497	16.70	2,840,203	15.39
Total contracts \$25,000 and above	26,932	100.0	18,450,200	100.0

[155] In addition, reports are provided broken down by Department, solicitation procedure, number and value. This information is found available at the following website: <https://www.canada.ca/en/treasury-board-secretariat/corporate/reports/contracting-data/2015-purchasing-activity-report-departmental.html>

[156] The Committee also notes that there is Proactive Disclosure Policy in place, which states, that all departments of the Government of Canada are required, among other things, to publish on their web sites, on a quarterly basis, all contracts entered into for amounts over \$10,000; a positive or negative amendment when its value is over \$10,000; and a positive amendment when it modifies the initial value of a contract to an amended contract value that is over \$10,000.<sup>110</sup> These reports are available at the following link: <https://www.canada.ca/en/treasury-board-secretariat/services/reporting-government-spending/proactive-disclosure-department-agency.html>

[157] Finally, the Committee further observes that results are also maintained regarding the Integrity Regime. In Fiscal Year 2016-17, a total of 152 962 integrity verifications were conducted by PSPC on behalf of federal organizations to confirm whether a supplier was ineligible or suspended from conducting business with the Government of Canada. Over 98% of these were completed by PSPC within the four-hour client service standard. Moreover, 1,762 procurement and real property officers across the federal government request integrity verification services. This number continues to increase, and since the introduction of the Regime, 91 determinations of ineligibility have been conducted, 1 company has entered into an administrative agreement in lieu of suspension, and 3 suppliers have been determined ineligible.<sup>111</sup>

[158] In this respect, a list of the Ineligible and suspended suppliers under the Integrity Regime are available at the following link: <http://www.tpsgc-pwgsc.gc.ca/ci-if/four-inel-eng.html>

[159] The Committee takes note of the efforts undertaken by the country under review, in particular on maintaining results on the system of government procurement of goods and services in Canada.

[160] The Committee observes, however, as with the system of government hiring, it appears there is no readily available information on the procurement contracts carried out by the Legislative Branch, namely, the Senate Administration and the House of Commons Administration.

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the contract may be awarded pursuant to the Treasury Board's electronic bidding authority limits. For this reason, ACANs are grouped under "competitive awards" in the tables of this report., *ibid.*

<sup>110</sup> See Guidelines on the Proactive Disclosure of Contracts, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14676>

<sup>111</sup> Presentation on the Integrity Regime by the Public Services and Procurement Canada, pg. 13, *supra* note 83.

[161] Unlike the procurement processes carried out by the Executive Branch, there is no detailed information available online. As such, the Committee notes, it cannot rely on statistical data on the number of contracts, value and solicitation procedure used.

[162] The Committee further notes that some information on procurement processes are made available in the 2012 Auditor General Report. With respect to the Senate Administration, during the 2010–11 fiscal year, approximately \$7.9 million was spent on goods and services contracts for the Senate Administration and Senators and that 70 percent of the value of all contracts was for consulting and personnel services.<sup>112</sup> With respect to the House Administration, it was noted that \$60 million was spent for the 2010–11 fiscal year on goods and services for Members and the Administration’s programs and that the procurement activity varied from office supply purchases of less than \$10 to contracts valued at millions of dollars for information technology hardware and software.<sup>113</sup> Other than these figures, it appears there is no other information made available.

[163] The Committee further notes that in the Report for the Senate Administration, the Auditor General observed that under the General Material Management Policy, the Senate Administration is required to provide quarterly reports to the Internal Economy Committee, on contracts with a value greater than \$10,000 and on competitive contracts issued by the Finance and Procurement Directorate. This seems to be much in line with the aforementioned Proactive Disclosure Policy that is in place for the departments of the Government of Canada. Nevertheless, the Auditor General made the following observation:<sup>114</sup>

[164] *“We found that quarterly reports on competitive contracts were incomplete. They did not include information on the value for certain contracts similar to standing offers. In addition, the reports on contracts over \$10,000 provided limited information on sole source contracting activity. In the 2010–11 fiscal year, sole source contracts had an estimated value of \$6 million and represented approximately 80 percent of all contracts issued, with an average value of less than \$3,000. The quarterly reports covered only about a third of the sole source contracts by value. The reports did not include information on sole source personnel service contracts issued by Human Resources for Senators and the Administration. As a result, the Internal Economy Committee does not have the information needed to provide oversight of the Administration’s procurement activities.”*

[165] As such, the Auditor General recommended that the Senate Administration should provide complete information to the Internal Economy Committee on its contracting activity, including the volume, the value, and the use of competitive and non-competitive processes for all types of contracts being issued. In this respect, the Senate Administration agreed to comply with this recommendation, and would provide complete information to the Internal Economy Committee on its contracting activity, including the volume, the value, and the use of competitive and non-competitive processes for all types of contracts being issued.<sup>115</sup>

[166] The Committee believes that the country under review should consider making this information readily available to the public, by posting it on-line, much like the information made available regarding the procurement processes of the Government of Canada, including the same type of information made available by government departments under the Proactive Disclosure Policy. The Committee will make Recommendations. (See Recommendations 1.2.3.6 and 1.2.3.7 in Section 1.2.3 of Chapter II of this Report)

### **1.2.3 Recommendations**

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<sup>112</sup> 2012 Report of the Auditor General of Canada to the Standing Senate Committee on Internal Economy, Budgets and Administration, para. 52, *supra* note 47.

<sup>113</sup> 2012 Report of the Auditor General of Canada to the Board of Internal Economy of the House of Commons, para. 32, *supra* note 43.

<sup>114</sup> 2012 Report of the Auditor General of Canada to the Standing Senate Committee on Internal Economy, Budgets and Administration, para. 56, *supra* note 47.

<sup>115</sup> *Ibid.*, para. 58.

[167] In light of the observations formulated in sections 1.2.1 and 1.2.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 1.2.3.1 Revise the Code of Conduct for Procurement to make it clearer regarding the obligations and rights of both suppliers and public servants (See paragraph 112 of Section 1.2.1 of Chapter II of this Report).
- 1.2.3.2 Undertake communication activities by the PSPC to make all government departments and agencies aware of the Code of Conduct for Procurement and the existing legal, regulatory and policy requirements (See paragraph 122 of Section 1.2.1 of Chapter II of this Report).
- 1.2.3.3 Make the procurement policies and other relevant documents of the House of Commons Administration, public and easily accessible (See paragraph 150 of Section 1.2.2 of Chapter II of this Report).
- 1.2.3.4 Publicize the steps it has taken to address the recommendations of the 2012 Report of the Auditor General to the Administration of the House of Commons relevant to procurement (See paragraph 150 of Section 1.2.2 of Chapter II of this Report).
- 1.2.3.5 Make the procurement policies and guidelines of the Senate Administration, public and easily accessible (See paragraph 151 of Section 1.2.2 of Chapter II of this Report).
- 1.2.3.6 Maintain and publish statistics on the contracts awarded, broken down by number, value and procurement process, carried out by the House of Commons Administration, in order to identify challenges and recommend corrective measures where appropriate (See paragraph 166 of Section 1.2.2 of Chapter II of this Report).
- 1.2.3.7 Maintain and publish statistics on the contracts awarded, broken down by number, value and procurement process, carried out by the Senate Administration, in order to identify challenges and recommend corrective measures where appropriate (See paragraph 166 of Section 1.2.2 of Chapter II of this Report).

## **2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)**

### **2.1 Follow-Up to the Implementation of the Recommendations Formulated in the Second Round**

Recommendation suggested by the Committee that requires additional attention within the Framework of the Third Round:

*Ensure that those public bodies that do not fall under the purview of the Public Servants Disclosure Protection Act have adopted measures that protect persons who disclose wrongdoings.*

[168] With respect to the aforementioned Recommendation, the country under review, in its Response to the Questionnaire, provides information that was already reviewed by the Committee in the Report of the Third Round of Review for Canada, regarding the measures put in place by the Canadian Security

Intelligence Service, the Department of National Defence, and the Communications Security Establishment to meet with the Recommendation.<sup>116</sup>

[169] However, as noted by the Committee in Canada's Report of the Third Round, despite the measures that have been implemented in the aforementioned agencies that protect persons who disclose wrongdoings, there are other important sectors of the public service that do not fall under the purview of the Public Servants Disclosure Protection Act. As stated in that Report:<sup>117</sup>

[170] *“While the country under review is putting in place protection mechanisms for public bodies that do not fall under the purview of the Public Servants Disclosure Protection Act, other important sectors of the public service are not yet covered, such as Ministers, members of Minister's staffs, members of boards of directors of Crown corporations, Parliament and its institutions and federally appointed judges.”*

[171] Given the foregoing, the Committee takes note of the steps taken by the country under review to advance in its implementation of the recommendation, as well as reiterates the need for it to continue to give attention thereto. (See Recommendation 2.3.1 of Section 2.3 of Chapter II of this Report)

## **2.2 New Developments with Respect to the Provision of the Convention on Systems for Protecting Public Servants and Private Citizens Who, in Good Faith, Report Acts of Corruption**

### **2.2.1 New Developments with respect to the Legal Framework**

[172] The country under review made no mention in its Response to the Questionnaire of new developments with respect to the legal framework in this area.

[173] Nevertheless, during the on-site visit, representatives from the Treasury Board Secretariat noted that the Standing Committee on Government Operations and Estimates of the House of Commons was currently reviewing the Public Servants Disclosure Protection Act, and had received submissions from pertinent public agencies and civil society.<sup>118</sup>

[174] To this end, in June 2017, this Standing Committee adopted a report, “Strengthening the Protection of the Public Interest within the Public Servants Disclosure Protection Act.”<sup>119</sup> This Report notes that the Standing Committee reviewed the origins and the objectives of the Act, as well as foreign whistleblower protection legislation and international best practices.<sup>120</sup> In the opinion of the Standing Committee, it found six main challenges: the lack of clarity around the public interest purposes of the Act; the disclosure mechanisms under the Act do not necessarily ensure the protection of the public interest; the Act does not sufficiently protect whistleblowers from reprisals as most of them face significant financial, professional and health-related consequences; the commonly held perception that the federal organizational culture towards the disclosure of wrongdoing seems to discourage it; the mandatory annual reporting as prescribed under the Act is inadequate to provide a meaningful evaluation of the effectiveness of the disclosure mechanisms; and public servants and external experts lack confidence in the adequate protection of whistleblowers under the Act, notably due to the potential conflicts of interest of those administering the internal disclosure process.<sup>121</sup>

<sup>116</sup> Report of the Third Round, pgs. 44 – 45, *supra* note 10.

<sup>117</sup> *Ibid.*, pg. 45. Public Servants Disclosure Protection Act, <http://laws-lois.justice.gc.ca/eng/acts/P-31.9/FullText.html>

<sup>118</sup> Review of the Public Servants Disclosure Protection Act, <http://www.ourcommons.ca/Committees/en/OGGO/StudyActivity?studyActivityId=9339754>

<sup>119</sup> Strengthening the Protection of the Public Interest within the Public Servants Disclosure Protection Act, <https://www.ourcommons.ca/Content/Committee/421/OGGO/Reports/RP9055222/oggorp09/oggorp09-e.pdf>

<sup>120</sup> *Ibid.*, pg. 1.

<sup>121</sup> *Ibid.*

[175] It also made a series of recommendations to address these challenges, notably: expanding the definitions of the terms “wrongdoing” and “reprisal,” and modifying the definition of the term “protected disclosure” under the Act; amending the legislation to protect and support the whistleblowers and to prevent retaliation against them; reversing the burden of proof from the whistleblower onto the employer in cases of reprisals; providing legal and procedural advice, as necessary, to public servants seeking to make a protected disclosure of wrongdoing or file a reprisal complaint; embedding in the legislation confidentiality provisions of witnesses’ identities; making the Office of the Public Sector Integrity Commissioner responsible for training, education and oversight responsibilities to standardize the internal disclosure process; and implementing mandatory and timely reporting of disclosure activities.<sup>122</sup>

[176] The Committee notes that this Report is an in-depth and comprehensive review of the Act, where 12 meetings were held, 52 witnesses were heard, and 12 briefs received. It includes 15 recommendations to improve the Act in its objects and processes to ensure the integrity of the public sector and the protection of whistleblowers.<sup>123</sup> The Committee further notes that the exercise represents a serious attempt by the country under review to improve whistleblower protection.

[177] To that end, the Committee considers that the country under review should consider implementing the recommendations stemming from the Report by the Standing Committee on Government Operations and Estimates of the House of Commons, entitled “Strengthening the Protection of the Public Interest within the Public Servants Disclosure Protection Act”, and consider publishing information on the actions the country plans to take. The Committee will formulate a recommendation. (See Recommendation 2.3.2 of Section 2.3 of Chapter II of this Report)

[178] In this respect, the Committee does note that the Standing Committee requests that the Government of Canada table a comprehensive response to the Report.<sup>124</sup>

[179] Notwithstanding the comprehensive review and recommendations carried out by the Standing Committee on Government Operations and Estimates of the House of Commons, the Committee would also like to draw attention to the submission to this Standing Committee by the Office of the Public Sector Integrity Commissioner, which was created by the aforementioned Act, and is responsible for investigating wrongdoing in the federal public sector and helps protect from reprisal whistleblowers and those who participate in investigations. This submission sets out proposed legislative amendments to the Act, some of which this Committee would like to highlight.<sup>125</sup>

[180] As noted in the Report of the Second Round, Section 12 of the Act states that a public servant may disclose to his or her supervisor or the senior executive designated by the chief executive for that purpose, any information on wrongdoing, whether committed or about to be committed, or one that the public servant has been asked to commit.

[181] However, the Commissioner notes that this provision can be very restrictive, and that a public servant should be able to make a disclosure to any supervisor in a direct reporting line, up to and including the chief executive, or to a manager who has authority over the subject matter of the disclosure. The Commissioner notes that this would facilitate the making of disclosures, especially in the case when a public servant is not at ease with raising an issue with his or her direct supervisor, including instances that the disclosure may involve a direct supervisor.<sup>126</sup> To this end, the Committee notes that in the Report adopted by the Standing

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<sup>122</sup> *Ibid.*, pg. 2.

<sup>123</sup> *Ibid.*, pg. 1.

<sup>124</sup> *Ibid.*, pg. 107.

<sup>125</sup> Review of the Public Servants Disclosure Protection Act: Proposal of the Public Sector Integrity Commissioner for Legislative Amendments, <https://www.ourcommons.ca/Content/HOC/Committee/421/OGGO/Brief/BR8780292/br-external/OfficeOfThePublicSectorIntegrityCommissionerOfCanada-e.pdf>

<sup>126</sup> *Ibid.*, pg. 3.

Committee, it recommends for a broadening of the definition of the term “supervisor” to enable public servants to make a protected disclosure to any manager, within their organization.<sup>127</sup>

[182] The Commissioner further notes that Section 33(1) of the Act provides it with the power to self-initiate a separate investigation into wrongdoing based on information obtained in the course of an investigation. However, the Commission is not able to investigate a wrongdoing if the information is obtained in the course of a reprisal investigation. It notes that it would be in the public interest for the Commissioner to have the authority to investigate wrongdoing that may arise from either a disclosure or reprisal investigation.<sup>128</sup> To this end, the Committee notes that in the Report adopted by the Standing Committee, it recommends providing the Public Sector Integrity Commissioner with the authority to commence an investigation of wrongdoing that is not being addressed in existing processes based on evidence obtained in the course of a reprisal investigation.<sup>129</sup>

[183] The Commissioner has also proposed amendments to the Access to Information Act and the Privacy Act. In the current legal regime, subsection 16.4(1) of the Access to Information Act and section 22.2 of the Privacy Act protect the confidentiality of information obtained or created by the Office of the Public Sector Integrity Commissioner only in the context of disclosures. These provisions, however, do not protect the confidentiality of personal and sensitive information about reprisal complaints, which can be made public through access to information requests, whether or not a reprisal complaint is investigated or referred to the Public Servants Disclosure Protection Tribunal, the body responsible for determining whether or not a reprisal has been carried out after an investigation by the Office. By introducing these amendments, reprisal complaints and disclosures would be dealt in the same manner under the aforementioned Acts, and thereby extend the protections for all participants in the reprisal complaint process.<sup>130</sup>

[184] Moreover, the Commissioner notes that the Act provides that the Tribunal may make an order granting a remedy to a complainant after it determines that a reprisal has occurred. However, it is pointed out that a significant time can occur between the completion of a reprisal investigation and the hearing before a Tribunal. In this instance, a complainant would have to wait for the hearing to be granted any relief. The Commissioner points out that in the most severe cases of reprisals, an individual’s employment may be terminated. As such, the Commissioner considers that the Act should be amended to authorize the Tribunal to issue interim relief pending a final determination of a case.<sup>131</sup>

[185] The Commissioner also proposes that the definition of ‘reprisals’ should be expanded to include protection in cases where a public servant has suffered a reprisal for filing a reprisal complaint or for participating in a reprisal investigation or cooperation in any other investigation of wrongdoing under any Act of Parliament. Currently, the definition of reprisal only contemplates instances where public servants have made a protected disclosure or have, in good faith, cooperated in an investigation into a disclosure.<sup>132</sup> To this end, the Committee notes that in the Report adopted by the Standing Committee, it recommends clarifying and expanding the definition of the term “reprisal” to include all acts and omissions which are inconsistent with the duty to protect and support.<sup>133</sup>

[186] Another amendment proposed by the Commissioner is to provide for a power to delegate the power and duties of the Commissioner to an external ad hoc commissioner, when both the Commissioner and Deputy Commissioner are unable to act on a disclosure or reprisal case because of a conflict of interest or other impediment, such as in the case involving a former colleague or acquaintance. Currently, the Act only

<sup>127</sup> Report of the Standing Committee, pgs. 35 and 36, *supra* note 119.

<sup>128</sup> Review of the Public Servants Disclosure Protection Act, pgs. 4 – 5, *supra* note 125.

<sup>129</sup> Report of the Standing Committee, pg. 37, *supra* note 119.

<sup>130</sup> Review of the Public Servants Disclosure Protection Act, pg.5, *supra* note 125.

<sup>131</sup> *Ibid.*, pg. 6.

<sup>132</sup> *Ibid.*, pg. 8.

<sup>133</sup> Report of the Standing Committee, pg. 66, *supra* note 116.

provides the delegation for decision-making powers to the Deputy Commissioner.<sup>134</sup> In this respect, the Committee notes that the Report adopted by the Standing Committee recommends that the mandate of the Auditor General of Canada to receive disclosures of wrongdoing from the public and reprisal complaints concerning the Office of the Public Sector Integrity Commissioner should be expanded, with all the related powers and duties of the Public Sector Integrity Commissioner.<sup>135</sup>

[187] Given the foregoing, the Committee will formulate recommendations, taking into account that it is the Office of the Public Sector Integrity Commissioner that has first-hand knowledge and experience on the operation of the Act. ((See Recommendations 2.3.2, 2.3.3, 2.3.4, 2.3.5, 2.3.6 and 2.3.7 of Section 2.3 of Chapter II of this Report)

[188] Finally, the Committee would like to highlight that under the Law, the Office of the Public Sector Integrity Commissioner determines whether a reprisal complaint reaches the Public Servants Disclosure Protection Tribunal, the body responsible for determining whether or not a reprisal has been carried out after an investigation by the Office. In this respect, in the Report by the Standing Committee, it noted the following:<sup>136</sup>

[189] *“The Committee is of the opinion that it is essential for those alleged to have been victims of reprisals after reporting a wrongdoing to be heard by the Tribunal. Forcing them to first go through the Commissioner’s Office to have their case reviewed and referred to the Tribunal not only delays the process, but also contradicts international whistleblowing policy best practices. Moreover, the Committee is of the opinion that the Tribunal takes much too long to deal with cases and must considerably speed up the process to ensure reprisal victims can obtain a timely decision.”*

[190] As noted earlier, the Report by the Standing Committee contains pertinent recommendations for which the Government of Canada is expected to provide a comprehensive response, including the important issue raised of access to the Tribunal and of timely decision by this institution. The Committee considers that this issue is important enough to warrant inclusion in this Report of the Fifth Round, and that the country under review should consider allowing reprisal victims direct access to the Public Servants Disclosure Protection Tribunal, and consider giving this Tribunal adequate resources, within available resources, to be able to rule on matters in a timely manner. (See Recommendation 2.3.2 of Section 2.3 of Chapter II of this Report)

[191] In this respect, during the on-site visit, and in a submission provided subsequently, the civil society organization, Transparency International Canada, noted the following:<sup>137</sup>

[192] *“Only the Tribunal can provide whistleblowers with a remedy, but access to the Tribunal is controlled by the Integrity Commissioner. The effectiveness of this mechanism has been brought into question, as the Commissioner has, to our knowledge, referred very few whistleblowers to the Tribunal, and no case has yet reached the point where the Tribunal could order a remedy for the whistleblower.”*

### **2.2.2 New Developments with Respect to Technology**

[193] The country under review made no mention of new developments with respect to technology in this area.<sup>138</sup>

<sup>134</sup> Review of the Public Servants Disclosure Protection Act., pgs. 9 – 10, *supra* note 122.

<sup>135</sup> Report of the Standing Committee, pg. 95, *supra* note 116.

<sup>136</sup> *Ibid.*, pg. 96.

<sup>137</sup> Presentation to the Committee of Experts of the Organization of American States on the Implementation of the Inter-American Convention against Corruption, Transparency International Canada, pg. 2, [http://www.oas.org/juridico/english/mesicic5\\_can.htm](http://www.oas.org/juridico/english/mesicic5_can.htm)

<sup>138</sup> Response to the Questionnaire, pg. 17, *supra* note 11.

### 2.2.3 Results

[194] The country under review, in its Response to the Questionnaire, did not present information with respect to results.<sup>139</sup>

[195] The Committee notes, however, that the Office of the Public Sector Integrity Commissioner as well as the Chief Human Resources Officer, under sections 38 and 38.1 of the Public Servants Disclosure Protection Act, respectively, are required to submit reports that provide an overview of the activities throughout the public sector respecting disclosures. With respect to the Chief Human Resources Officer, this report must provide information on activities related to the disclosures made in public sector organizations that are subject to the Act, and contain, among other things: a) the number of general inquiries under the Act; b) the number of disclosures received, the number acted on and the number not acted on; c) and the number of investigations commenced as a result of a disclosure.<sup>140</sup> With respect to the Office of the Public Sector Integrity Commissioner, this also includes, among other things, the number of disclosures received and complaints made in relation to reprisals, and the number of those that were acted on and those that were not acted on.

[196] In this respect, the Office of the Public Sector Integrity Commissioner has been presenting, in its Annual Reports, a summary of these activities. For example, in the 2015 – 2016 Annual Report, the following summary is provided:<sup>141</sup>

#### Summary of activity 2015-16

##### Summary of new files received in 2015-16

General Inquiries	Total number of general inquiries received	165
Disclosures	Total number of new disclosures of wrongdoing received	86
Reprisals	Total number of new reprisal complaints received	30

##### Disclosures

<b>Total number of disclosures of wrongdoing</b>		<b>125</b>
Number of disclosures of wrongdoing carried over from previous year	39	
Number of disclosures of wrongdoing received in 2015-16	86	
<b>Completed disclosure files</b>		<b>65</b>
After admissibility review	61	
After investigation	3	
Number of files resulting in a founded case of wrongdoing	1	

<sup>139</sup> *Ibid.*

<sup>140</sup> These Annual Reports are found at the following link: <https://www.canada.ca/en/treasury-board-secretariat/services/values-ethics/disclosure-protection/annual-report-public-servants-disclosure-protection-act.html>

<sup>141</sup> 2015 – 2016 Annual Report of the Office of the Public Sector Integrity Commissioner, pg. 12, <http://www.psic-ispic.gc.ca/eng/about-us/corporate-publications/2015-16-annual-report>

<b>Total number of disclosures of wrongdoing</b>		<b>125</b>
<b>Active disclosure files as of March 31, 2016</b>		<b>60</b>
Currently under admissibility review	45	
Currently under investigation	15	

### Reprisals

<b>Total number of reprisal complaints</b>		<b>46</b>
Number of reprisals carried over from previous year	16	
Number of reprisals received in 2015-16	30	
<b>Completed reprisal files</b>		<b>32</b>
After admissibility review	24	
After investigation	5	
After conciliation	3	
After being sent to the Public Servants Disclosure Protection Tribunal	0	
<b>Active reprisal files as of March 31, 2016</b>		<b>14</b>
Currently under admissibility review	4	
Currently under investigation	8	
Currently under conciliation	0	
Currently before the Public Servants Disclosure Protection Tribunal	2	

### Referrals to the Public Servants Disclosure Protection Tribunal

<b>Total number of cases referred to the Tribunal in 2015-16</b>		<b>1</b>
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**Note:** Each disclosure and reprisal file may contain one or a number of allegations of wrongdoing

[197] Regarding results, the Committee would like to highlight that, in the Report by the Standing Committee on Government Operations and Estimates of the House of Commons, one of the challenges it identified is that the mandatory annual reporting as prescribed under the Act is inadequate to provide a meaningful evaluation of the effectiveness of the disclosure mechanisms.<sup>142</sup> As such, it recommended that an annual report be issued by the Office of the Public Sector Integrity Commissioner that include: synopses of significant cases; the levels of disclosure and reprisal activity, and backlogs; the number of disclosures made by category of wrongdoing; the duration of all open cases and cases closed during the fiscal year; the

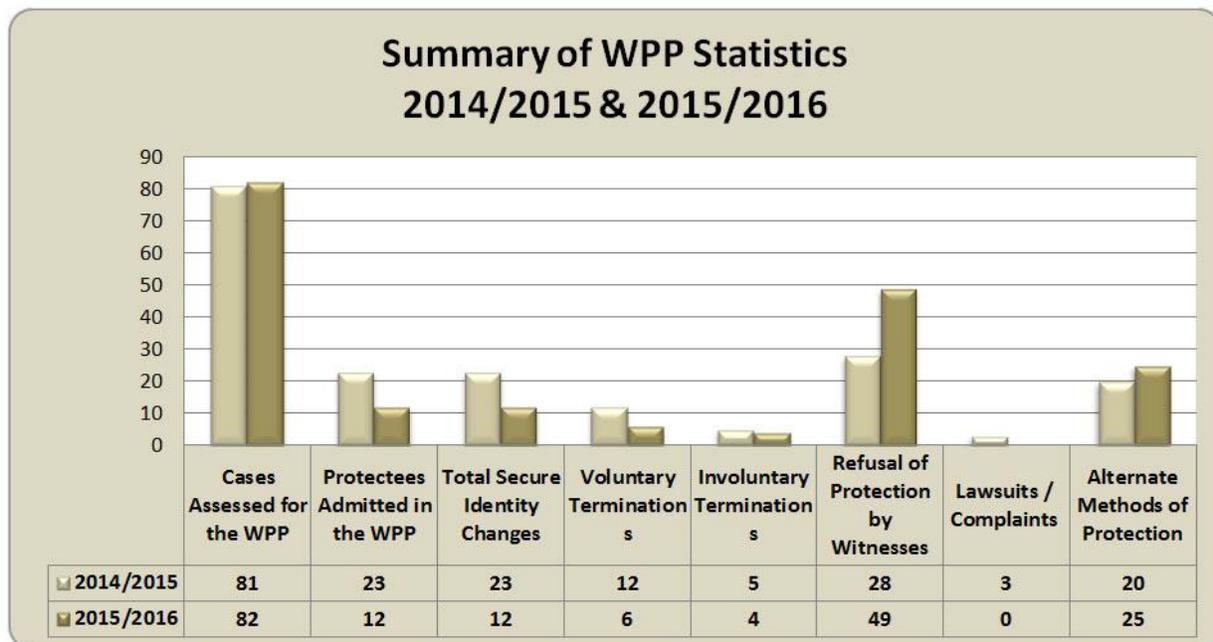
<sup>142</sup> Report of the Standing Committee, pg. 12 and 91, *supra* note 119.

distribution of cases by region across the organization; and the distribution of cases by federal departments and agencies.<sup>143</sup>

[198] The Committee believes that the country under review should consider adopting this recommendation, in order to better identify challenges, and recommend corrective measures where appropriate, in the application of the Public Servants Disclosure Protection Act. The Committee will formulate a recommendation. (See Recommendation 2.3.2 of Section 2.3 of Chapter II of this Report)

[199] The Committee further notes that in Canada's Report of the Second Round, reference was made to the Witness Protection Program, which puts into operation a program to enable certain persons to receive protection in relation to certain inquiries, investigations or prosecutions. This program was established by the Witness Protection Program Act, the purpose being to promote law enforcement, national security, national defence and public safety by facilitating the protection of persons who are involved in providing assistance in law enforcement matters in relation to activities conducted by the Royal Canadian Mounted Police or activities conducted by any law enforcement agency or international criminal court or tribunal, who are involved in providing assistance to a federal security, defence or safety organization or who have been admitted to the Alberta Witness Security Program or the Saskatchewan Witness Protection Program.<sup>144</sup>

[200] In that Report, results were provided overall on the operation of this Program, which are also available in its Annual Report. For example, in the 2015 -2016 Annual Report, the following statistics are provided with respect to the operation of the Program:



## 2.3 Recommendations

[201] In light of the observations formulated in section 2.1 and 2.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

<sup>143</sup> *Ibid.*, pg. 92.

<sup>144</sup> Witness Protection Program Act, section 3, <http://laws-lois.justice.gc.ca/eng/acts/W-11.2/FullText.html>

- 2.3.1 Ensure that those public bodies that do not fall under the purview of the Public Servants Disclosure Protection Act have adopted measures that protect persons who disclose wrongdoings (See paragraph 171 of Section 2.1 of Chapter II of this Report).
- 2.3.2 Consider implementing the recommendations stemming from the Report by the Standing Committee on Government Operations and Estimates of the House of Commons, entitled “Strengthening the Protection of the Public Interest within the Public Servants Disclosure Protection Act”, and publish information on the actions the country plans to take (See paragraphs 177, 182, 185, 190 and 198, of Section 2.2 of Chapter II of this Report).
- 2.3.3 Consider amending the Public Servants Disclosure Protection Act to allow public servants to make a disclosure to any supervisor in a direct reporting line, up to and including the chief executive, or to a manager who has authority over the subject matter of the disclosure (See paragraph 181 of Section 2.2 of Chapter II of this Report).
- 2.3.4 Consider amending the Access to Information Act and the Privacy Act in order to also protect the confidentiality of information obtained or created by the Office of the Public Sector Integrity Commissioner in a reprisal complaint process (See paragraph 183 of Section 2.2 of Chapter II of this Report).
- 2.3.5 Consider amending the Public Servants Disclosure Protection Act to allow the Public Servants Disclosure Protection Tribunal to issue interim relief measures pending a final determination of a reprisal investigation (See paragraph 184 of Section 2.2 of Chapter II of this Report).
- 2.3.6 Consider amending the Public Servants Disclosure Protection Act to provide for a power to delegate the power and duties of the Commissioner to an external ad hoc commissioner in situations where both the Commissioner and Deputy Commissioner are unable to act on a disclosure or reprisal case because of a conflict of interest or other impediment, such as in the case involving a former colleague or acquaintance (See paragraph 186 of Section 2.2 of Chapter II of this Report).

### **3. ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)**

#### **3.1. Follow-up on implementation of the recommendations made at the Second Round**

##### Recommendation 3.1:

*Making its statistical information on offences related to acts of corruption, in a manner that is more readily available and user-friendly to the general public.*

[202] With respect to the aforementioned Recommendation, the country under review, in its Response to the Questionnaire, provides information that was already reviewed by the Committee in the Report of the Third Round of Review for Canada.<sup>145</sup>

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<sup>145</sup> Response to the Questionnaire, pgs. 11 – 12, *supra* note 11. Report of the Third Round, pg. 46, *supra* note 10 and Response to the Questionnaire of the Third Round of Review, pgs. 48 – 49, [http://www.oas.org/juridico/english/mesicic3\\_can\\_resp.pdf](http://www.oas.org/juridico/english/mesicic3_can_resp.pdf). The country under review in its observations to the draft preliminary report noted that Statistics Canada provides information of broad interest to the public free of charge via its website and libraries throughout Canada. It also noted that due to the volume and confidential nature of the information collected by the Canadian Centre for Justice Statistics (CCJS) surveys, it is not possible to provide micro-level data on the Internet. Instead, a selection of statistical tables is available reflecting crime and justice information that is most commonly requested by Canadians. The content of these tables is reviewed regularly and additions

[203] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementation thereto. (See Recommendation of Section 3.3 of Chapter II of this Report)

[204] In this respect, during the on-site visit, a representative from the organization, Global Organization of Parliamentarians against Corruption (GOPAC) noted that, in order to obtain the information on offences related to corruption, the organization was charged \$226.56, not including harmonized sales tax. As noted, this monetary charge to receive the information can be a barrier to citizens requesting this information, which is not readily available online unlike other crimes and offences where are maintained by Statistics Canada at the following website: [http://www.statcan.gc.ca/eng/subjects/crime\\_and\\_justice/crimes\\_and\\_offences](http://www.statcan.gc.ca/eng/subjects/crime_and_justice/crimes_and_offences)

### 3.2. New developments in respect of the Convention provision on acts of corruption

#### 3.2.1. New developments in the legal framework

[205] The country under review made no mention of new developments with respect to the legal framework in this area.

#### 3.2.2. New developments with respect to technology

[206] The country under review made no mention of new developments with respect to technology in this area.

#### 3.2.3. Results

[207] In its Response to the Questionnaire, the country under review provided statistical information on offences related to acts of corruption, having regard to certain relevant sections of the Criminal Code, for the years 2009/2010 to 2013/2014.<sup>146</sup> Subsequent to the on-site visit, the country under review provided updated information up to the year 2014/2015, as set out below:<sup>147</sup>

#### Adult Cases by Decision

Section 118 of the CC - Definitions						
	Total Decisions	Guilty	Guilty %	Acquitted	Stay/ Withdrawn	Other Decisions
2009/2010	0	0	...	0	0	0
2010/2011	0	0	...	0	0	0
2011/2012	0	0	...	0	0	0
2012/2013	0	0	...	0	0	0
2013/2014	0	0	...	0	0	0
2014/2015	0	0	...	0	0	0

Section 119 of the CC - Bribery of judicial officers, etc.						

and/or deletions are made accordingly. Data on corruption, which are relatively low volume offences in Canada and in low demand, are not available from the selection of tables on the Internet but these data continue to be available by special request. Specialized requests for detailed information that is not available from the selection of tables on the Internet should be submitted directly to the Canadian Centre for Justice Statistics at [statcan.ccsj-ccsj.statcan@canada.ca](mailto:statcan.ccsj-ccsj.statcan@canada.ca).

<sup>146</sup> Response to the Questionnaire, pgs. 18 – 21, *supra* note 11.

<sup>147</sup> Justice Canada, Updated Criminal Code Statistics, [http://www.oas.org/juridico/english/mesicic5\\_can.htm](http://www.oas.org/juridico/english/mesicic5_can.htm)

	Total Decisions	Guilty	Guilty %	Acquitted	Stay/ Withdrawn	Other Decisions
2009/2010	0	0	...	0	0	0
2010/2011	0	0	...	0	0	0
2011/2012	0	0	...	0	0	0
2012/2013	0	0	...	0	0	0
2013/2014	0	0	...	0	0	0
2014/2015	0	0	...	0	0	0

Section 120 of the CC - Bribery of officers						
	Total Decisions	Guilty	Guilty %	Acquitted	Stay/ Withdrawn	Other Decisions
2009/2010	6	5	83%	0	1	0
2010/2011	10	8	80%	0	1	1
2011/2012	7	4	57%	2	1	0
2012/2013	9	6	67%	0	3	0
2013/2014	13	8	62%	0	5	0
2014/2015	8	4	50%	1	2	1

Section 121 of the CC - Frauds on the government						
	Total Decisions	Guilty	Guilty %	Acquitted	Stay/ Withdrawn	Other Decisions
2009/2010	2	2	100%	0	0	0
2010/2011	8	4	50%	0	4	0
2011/2012	5	5	100%	0	0	0
2012/2013	4	1	25%	1	1	1
2013/2014	4	2	50%	0	0	2
2014/2015	5	2	40%	0	3	0

Section 122 of the CC – Breach of trust by public officer						
	Total Decisions	Guilty	Guilty %	Acquitted	Stay/ Withdrawn	Other Decisions
2009/2010	10	5	50%	0	4	1
2010/2011	28	7	25%	2	5	14
2011/2012	18	12	67%	1	5	0
2012/2013	20	14	70%	0	2	4
2013/2014	19	14	74%	0	5	0
2014/2015	18	10	56%	0	4	4

Section 123 of the CC - Municipal corruption						
	Total Decisions	Guilty	Guilty %	Acquitted	Stay/ Withdrawn	Other Decisions
2009/2010	2	0	0%	0	0	2
2010/2011	0	0	...	0	0	0

2011/2012	0	0	...	0	0	0
2012/2013	2	2	100%	0	0	0
2013/2014	2	0	0%	0	0	2
2014/2015	0	0	...	0	0	0

Section 124 of the CC - Selling or purchasing office						
	Total Decisions	Guilty	Guilty %	Acquitted	Stay/ Withdrawn	Other Decisions
2009/2010	0	0	...	0	0	0
2010/2011	0	0	...	0	0	0
2011/2012	1	1	100%	0	0	0
2012/2013	0	0	...	0	0	0
2013/2014	0	0	...	0	0	0
2014/2015	0	0	...	0	0	0

Section 125 of the CC - Influencing or negotiating appointments or dealing in offices						
	Total Decisions	Guilty	Guilty %	Acquitted	Stay/ Withdrawn	Other Decisions
2009/2010	0	0	...	0	0	0
2010/2011	0	0	...	0	0	0
2011/2012	3	3	100%	0	0	0
2012/2013	0	0	...	0	0	0
2013/2014	0	0	...	0	0	0
2014/2015	0	0	...	0	0	0

Section 322 of the CC - Theft						
	Total Decisions	Guilty	Guilty %	Acquitted	Stay/ Withdrawn	Other Decisions
2009/2010	86	45	52%	0	17	24
2010/2011	73	52	71%	0	18	3
2011/2012	76	41	54%	0	10	25
2012/2013	53	37	70%	0	13	3
2013/2014	67	54	81%	0	9	4
2014/2015	63	46	73%	0	14	3

Section 334 of the CC - Punishment for theft						
	Total Decisions	Guilty	Guilty %	Acquitted	Stay/ Withdrawn	Other Decisions
2009/2010	40,992	26,809	65%	364	13,549	270
2010/2011	41,533	25,601	62%	343	15,297	292
2011/2012	38,762	24,222	62%	329	13,934	277
2012/2013	37,985	23,512	62%	359	13,865	249
2013/2014	36,013	22,190	62%	337	13,257	229
2014/2015	32,583	19,748	61%	355	12,333	147

Section 380 of the CC - Fraud						
	Total Decisions	Guilty	Guilty %	Acquitted	Stay/ Withdrawn	Other Decisions
2009/2010	7,261	4,634	64%	87	2,437	103
2010/2011	7,005	4,149	59%	99	2,637	120
2011/2012	6,243	3,905	63%	97	2,149	92
2012/2013	6,020	3,724	62%	104	2,076	116
2013/2014	6,112	3,757	61%	125	2,138	92
2014/2015	5,364	3,230	60%	109	1,911	114

Section 426 of the CC - Secret Commissions						
	Total Decisions	Guilty	Guilty %	Acquitted	Stay/ Withdrawn	Other Decisions
2009/2010	7	0	0%	0	7	0
2010/2011	4	1	25%	0	3	0
2011/2012	8	6	75%	0	1	1
2012/2013	9	7	78%	0	2	0
2013/2014	11	9	82%	0	2	0
2014/2015	5	3	60%	0	1	1

Section 462.31 of the CC – Laundering Proceeds of Crime						
	Total Decisions	Guilty	Guilty %	Acquitted	Stay/ Withdrawn	Other Decisions
2009/2010	88	30	34%	2	56	0
2010/2011	86	15	17%	0	71	0
2011/2012	130	31	24%	0	87	12
2012/2013	108	29	27%	4	72	3
2013/2014	122	41	34%	8	69	4
2014/2015	84	28	33%	5	49	2

[208] The Committee takes note of the statistical data compiled by the Adult Criminal Court Survey on the main corruption offences and resulting sentences. However, as noted under section 3.1 of this Report, the Committee observes that this information is not found online, particularly broken down the way it appears here.

### 3.3. Recommendations

[209] In light of the observations formulated in sections 3.1 and 3.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendation:

- Make its statistical information on offences related to acts of corruption, in a manner that is more readily available and user-friendly to the general public (See paragraph 203 of Section 1.1.2 of Chapter II of this Report).

## 4. GENERAL RECOMMENDATIONS

### Recommendation 4.1:

*Continue to design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.*

[210] This Recommendation was satisfactorily considered in the Report of the Third Round for Canada and, therefore, does not require additional attention.

Recommendation 4.2 suggested by the Committee that requires additional attention within the Framework of the Third Round:

*Continue to select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein.*

[211] Given that in sections 1, 2 and 3 of Chapter II of this Report provides an updated and detailed follow-up of the recommendations formulated to Canada in the Second Round of Review, as well as the systems, standards, measures and mechanisms that the suggested recommendations concern, the Committee believes that this recommendation is redundant.

### **III. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY CANADA OF THE CONVENTION PROVISIONS SELECTED FOR THE FIFTH ROUND**

#### **1. INSTRUCTIONS TO GOVERNMENT PERSONNEL TO ENSURE PROPER UNDERSTANDING OF THEIR RESPONSIBILITIES AND THE ETHICAL RULES GOVERNING THEIR ACTIVITIES (ARTICLE III, PARAGRAPH 3 OF THE CONVENTION)**

[212] In accordance with the Methodology adopted by the Committee for the Fifth Round regarding the implementation of Article III, paragraph 3 of the Convention, which refer to measures that intended to establish, maintain and strengthen “*instruction[s] to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities,*” the country under review selected the Treasury Board of Canada Secretariat and the Public Service Commission, as the country under review considers them as principal groups that merit review, due to their organizational mandate or based on the importance of their functions.

[213] The following is a brief description of the two bodies selected by Canada that are to be examined in this section:

[214] The Treasury Board of Canada Secretariat is the body responsible for cultivating the federal public service as a model workplace where professional, skilled workers are trained and motivated to serve Canadians; building management frameworks; supporting pro-active risk management; empowering partners to manage resources and report results; and providing guidance so that resources are soundly managed across government with a focus on results and value for money.

[215] The Public Service Commission is the institution responsible for promoting and safeguarding a non-partisan, merit-based and representative public service that serves all Canadians.

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

[216] Canada has a set of provisions and/or measures that provide instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, among which the following are highlighted:

- Statutory and other legal provisions applicable to the personnel that fall under the purview of the Treasury Board of Canada Secretariat, among which the following should be noted:

[217] Regarding provisions and/or measures for providing instructions to personnel that fall under the purview of the Treasury Board of Canada Secretariat (TBS) to ensure proper understanding of their responsibilities, the country under review observes that, as stated in collective agreements and in compliance with the TBS Policy on Classification, every public servant has access to a work description that details the roles and responsibilities associated with their employment position.<sup>148</sup> In addition, during the on-site visit, the representatives of the TBS noted that under the Financial Administration Act, there is an obligation on the deputy head to determine the learning, training and development requirements of persons employed in the public service and fix the terms on which the learning, training and development may be carried out.<sup>149</sup>

[218] To this end, there is a Policy on Learning, Training and Development which supports deputy heads in meeting their responsibilities by addressing specific training requirements for new employees, managers at all levels and functional specialists in domains defined by the employer.<sup>150</sup> The goals of this Policy is to ensure that new employees will share a common understanding of their role as public servants; managers at all levels have the necessary knowledge to effectively exercise their delegated authorities; employees at all levels will acquire and maintain the knowledge, skills and competencies related to their level and functions; and leading-edge practices in public sector management will be applied to encourage innovation and continuous improvements in performance. In addition, this Policy provides that deputy heads are responsible for ensuring that: their employees are informed of this policy and have the knowledge, skills and competencies to do their work; measures are taken to strengthen organizational leadership and promote innovation through the adoption of leading-edge management practices; and their organizations have adequate governance, processes, strategies and capacity for the implementation of this policy.<sup>151</sup>

[219] In relation to required training, this Policy provides that deputy heads are responsible for ensuring that: employees newly appointed to the core public administration successfully complete an orientation program that meets the Standards on Knowledge for Required Training; first-time managers at all levels successfully complete the required training so that they meet the Standards on Knowledge for Required Training prior to delegating authorities; existing managers and executives validate knowledge associated with their legal responsibilities to maintain their delegated authorities; functional specialists successfully complete training and/or validate knowledge associated with their professional and legal responsibilities; and designated supervisors of those affected by this policy allow their employees to complete the required training within a specified time.<sup>152</sup> The deputy head is also required to provide on an ongoing basis, among others, to the President of the Canada School of Public Service (CSPS), relevant information on: employees

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<sup>148</sup> Response to the Questionnaire, pg. 23, *supra* note 11 and Policy on Classification, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=28697>

<sup>149</sup> Financial Administration Act, section 12(1)(a), <http://laws-lois.justice.gc.ca/eng/acts/f-11/FullText.html>. Under this Act, ‘deputy head’ is defined 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.

<sup>150</sup> Response to the Questionnaire, pg. 23, *supra* note 11 and Policy on Learning, Training and Development, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12405>

<sup>151</sup> Policy on Learning, Training and Development, paragraph, 6.1, *ibid.*

<sup>152</sup> *Ibid.*, paragraph 6.1.1.

newly appointed to the core public administration; first-time managers at all levels; and existing managers and executives required to validate their knowledge.<sup>153</sup>

[220] The President of the CSPS, under this Policy is responsible for the following: developing and regularly updating, in collaboration with the relevant policy authorities, courses and programs that meet the Standards on Knowledge for Required Training, and for delivering these courses and programs and assessing whether participants successfully complete them; supporting deputy heads in their efforts to strengthen organizational leadership; apply leading-edge management practices and promote innovation; and developing measures and standards against which to assess its programs and performance relative to this policy. Moreover, with respect to Required Training, the President of the CSPS is responsible for the design and delivery of: orientation programs for new employees of the core public administration; courses and programs for first-time managers at all levels; courses and programs for functional specialists in areas defined by the employer; and instruments for assessing knowledge for existing managers, executives and functional specialists in areas defined by the employer.<sup>154</sup> The President is also responsible, among others, for reporting on an ongoing basis to: deputy heads on the successful completion of training by employees newly appointed to the core public administration and on the successful completion of training by first-time managers at all levels.<sup>155</sup>

[221] Regarding the aforementioned Standards on Knowledge for Required Training, these establish the common knowledge elements linked to legal responsibilities of managers at all levels and employees newly appointed to the core public administration regardless of their functions, organization or profession.<sup>156</sup> The Standards are also to provide that employees newly appointed to the core public administration share a common understanding of their legal responsibilities as public servants; and managers at all levels have the necessary knowledge of legal responsibilities to effectively exercise their delegated authorities.<sup>157</sup>

[222] This document further provides that knowledge elements for managers at all levels are organized in the following categories: Values and Ethics; Official Languages; Management of Communications and Government Information; Management of Human Resources, including Employment Equity; Expenditure and Financial Management; and Management of Assets and Acquired Services (including contracting). Knowledge elements for newly appointed employees are organized in the following categories: Values and Ethics; Official Languages; Terms and Conditions of Employment; Employment Equity and Duty to Accommodate; Communications and Government Information; Labour Relations and Benefit Plans and Financial Resources.<sup>158</sup> Appendix 1 and Appendix 2 of this document further breaks down these knowledge elements.

[223] The Committee also notes there is a Directive on the Administration of Required Training, which provides direction to key stakeholders on how the policy requirements relating to required training under the aforementioned Policy are to be fulfilled.<sup>159</sup> Under this Directive, organizations are responsible for designating a required training Coordinator; communicating the name of the Coordinator to the Public Service Human Resources Management Agency of Canada, which became part of the TBS in 2009, and the Canada School of Public Service; and updating this information as required.<sup>160</sup>

[224] This Coordinator is responsible for supporting deputy heads in fulfilling their responsibilities for the implementation of required training by: identifying, within 30 days of appointment, employees who must complete required training; providing information, based on the relevant registration process, to

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<sup>153</sup> *Ibid.*, paragraph 6.3.2.

<sup>154</sup> *Ibid.*, paragraphs 6.2 and 6.2.1.

<sup>155</sup> *Ibid.*, paragraph 6.3.3.

<sup>156</sup> Standards on Knowledge for Required Training, paragraph 3.1, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12409>

<sup>157</sup> *Ibid.*, paragraphs 3.3.1 and 3.3.2.

<sup>158</sup> *Ibid.*, paragraphs 5.3 and 5.4.

<sup>159</sup> Directive on the Administration of Required Training, <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12407>

<sup>160</sup> *Ibid.*, paragraph 5.1.1.

the Registrar or other service provider, regarding employees who must complete required training; coordinating, within 2 months of appointment, the registration of employees who must complete required training; confirming employees will complete required training within a reasonable period of time; communicating with stakeholders relative to their responsibilities and requirements, including employees who must complete required training, their designated superiors, the Chief Financial Officer, relevant functional authority centers, the Registrar, other service providers and other stakeholders; confirming that managers and executives complete the necessary knowledge assessment leading to validation of delegated signing authorities at least every five years using the assessment instrument provided by the School through *Campusdirect*; tracking successful completion of required training based on the employee's certificate of completion or the Registrar's monthly report to the Coordinator; notifying designated superiors once required training has been successfully completed; recording information to be included in the Annual Report on Required Training to support the requirement by the TBS for reporting annually on government-wide implementation of the Policy on Learning, Training and Development; and other responsibilities as required by their department.<sup>161</sup>

[225] Moreover, under this Directive, designated superiors, the person responsible for conducting the performance evaluation of employees, are responsible for: encouraging their employees to attend required training within a reasonable period of time or to complete knowledge assessment leading to validation of delegated signing authorities at least every five years; until successful completion of required training, ensuring that first-time supervisors, managers and executives fulfill the duties of their position with the exception of delegated signing authorities; asking the Chief Financial Officer (CFO) to grant appropriate delegated signing authorities to first-time supervisors, managers and executives after they successfully complete required training; on notification by the Coordinator that managers or executives under their supervision have successfully completed their knowledge assessment, asking the CFO to update the delegated signing authorities of these managers or executives; supporting requests by functional specialists for appropriate professional recognition or certification issued by their functional authority center's recognized certification organization; and ensuring that employees who did not successfully complete their training submit a plan to successfully complete the required training within a reasonable period of time.<sup>162</sup>

[226] This Directive further provides that employees newly appointed to the core public administration are responsible for: registering for required training within two months of appointment based on their organization's training approval process; successfully completing required training within a reasonable period of time; and if they do not successfully complete the training, providing to their designated superior a plan to successfully complete the required training within a reasonable period of time. First-time supervisors, managers, executives and functional specialists are responsible for: registering for required training within two months of appointment based on their organization's training approval process; fulfilling the duties of their position with the exception of delegated signing authorities until successful completion of required training; successfully completing required training within a reasonable period of time; and if they do not successfully complete the training, providing to their designated superior a plan to successfully complete the required training within a reasonable period of time.<sup>163</sup>

[227] Each organization is responsible for presenting its Annual Report on Required Training to the TBS by June 30 of each year which will include the following information: for employees newly appointed to the core public administration, first-time supervisors, managers, executives and functional specialists, the total number needing required training; the total number registered within two months of appointment; the total number who successfully completed the required training; and a description of actions taken by the designated superior for those who did not successfully complete the required training. For managers and

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<sup>161</sup> *Ibid.*, paragraph 5.1.2.

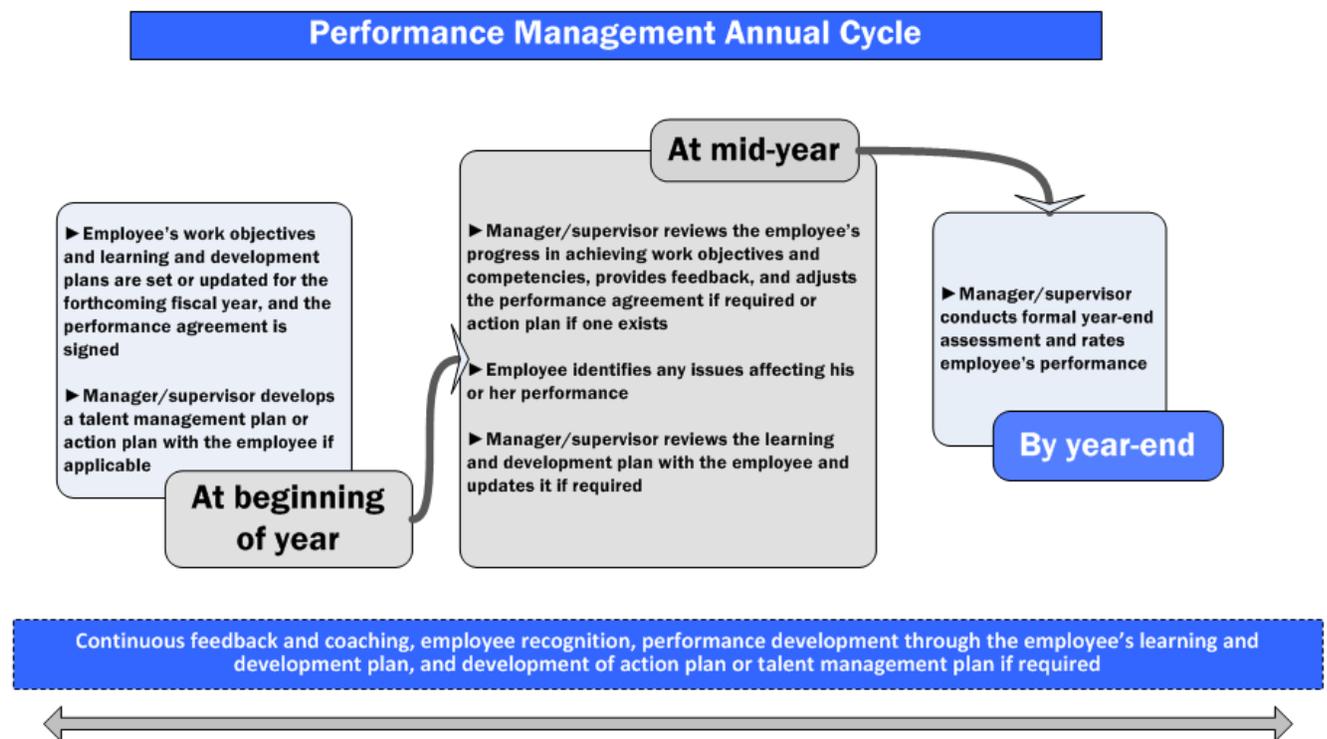
<sup>162</sup> *Ibid.*, paragraph 5.1.3. 'Reasonable period of time' means as soon as possible considering operational requirements and not to exceed 6 months.

<sup>163</sup> *Ibid.*, paragraph 5.1.4.

executives required to validate their knowledge of legal responsibilities at least every five years: the total number needing to validate their knowledge; the total number who validated their knowledge; and a description of actions taken by the designated superior for those who did not take or successfully completed the knowledge assessment.<sup>164</sup>

[228] The Committee also notes that the country under review, in its Response to the Questionnaire, notes that there is a Directive on Performance Management, which sets out the responsibilities of deputy heads, or their delegates, regarding the administration of a consistent, equitable and rigorous approach to performance management in their organizations. The Directive provides for annual written performance objectives for all employees, including commitments that reflect Government of Canada priorities, expected behaviours and learning or development plans.<sup>165</sup> The Performance Management Annual Cycle, that emanates from this Directive, is as follows:<sup>166</sup>

### Performance Management Annual Cycle



[229] The country under review also notes that the Key Leadership Competencies serve as the basis for selection, learning and development, performance and talent management of executives and other senior leaders. It defines the behaviors expected of the leaders in Canada's public service, and it is a mandatory component of the Executive Group Qualification Standard and the Directive on the Performance Management Program for Executives.<sup>167</sup> Finally, the country under review notes that it has a Directive on the Performance Management Program for Executives, which describes, among other things, the requirements

<sup>164</sup> *Ibid.*, Section 6.

<sup>165</sup> Response to the Questionnaire., pg. 24, *supra* note 11 and Directive on Performance Management, <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=27146>

<sup>166</sup> Performance Management Program for Employees, <https://www.canada.ca/en/treasury-board-secretariat/services/performance-talent-management/performance-management-program-employees.html>

<sup>167</sup> *Ibid.*, and the Key Leadership Competencies, <https://www.canada.ca/en/treasury-board-secretariat/services/professional-development/key-leadership-competency-profile.html>

for the Performance Management Program to manage the performance of executives in support of Key Leadership Competencies and values and ethics.<sup>168</sup>

[230] Regarding the provisions and/or measure in the country under review for providing instructions that ensure proper understanding of their ethical rules governing their activities, the country under review notes that the Values and Ethics Code for the Public Sector fulfills the requirement of section 5 of the Public Servants Disclosure Protection Act, which requires the TBS to establish a code of conduct applicable to the public sector.<sup>169</sup> The country under review further notes that upon being hired, every public servant is provided with their letter of offer, a copy of or a link to the Values and Ethics Code for the Public Sector and the Policy on Conflict of Interest and Post-Employment. Moreover, under the aforementioned Policy on Learning, Training and Development, deputy heads are responsible for ensuring that newly-appointed employees complete required orientation training, which includes the Values and Ethics Foundations course for employees.<sup>170</sup>

[231] As to the manner in which personnel are informed of their responsibilities and functions, indicating whether this is done verbally or in writing and whether records are kept of those instructions, the country under review notes that managers are responsible for ensuring that employees understand their roles and responsibilities and expected behaviors. Moreover, it notes that there are written job descriptions for all positions, and employees are required to receive the necessary training to fulfill their functions, as well as training specific to functional groups, such as financial management officers or procurement specialists, to ensure their employees acquire and maintain the knowledge, skills and competencies related to their level and functions. This training is provided through formal classroom and on-line training or through on-the-job training and records are kept of employees' training attendance and completion, regardless of whether the training was given verbally or in writing.<sup>171</sup> In addition, the country under review states that two times a year, managers meet with employees as part of the performance management cycle, which allow managers and employees to discuss work objectives and understand what is expected in the performance of their duties.<sup>172</sup>

[232] As regards the occasion(s) when personnel are informed of their responsibilities or functions, indicating whether this is when they begin performing them or at some later point; when said functions change; or when functions change due to a change of duties, the country under review notes that when they begin their career in the public service, employees have access to a job description with information on their duties and responsibilities and that they must also complete the mandatory orientation training, as well as any mandatory training specific to their functions. Moreover, the country under review notes that every time a public servant changes position, they have access to a job description of their new duties, as well as information on their position through their letter of offer and through a discussion with their manager. In addition, in the aforementioned twice-yearly performance management meetings, managers must set work objectives and performance indicators with their employees, which also include a discussion on expected behaviours in the workplace and all public servants, must attest that they have read the Values and Ethics Code for the Public Sector and understand their responsibilities.<sup>173</sup>

[233] As to the existence of induction, training, or instruction programs and courses for personnel on the proper performance of their responsibilities and functions, and, in particular, to make them aware of the inherent corruption risks in their performance, the country under review notes that the TBS collaborates with

<sup>168</sup> *Ibid.*, pg. 25, and Directive on the Performance Management Program for Executives, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14226>

<sup>169</sup> *Ibid.* See Public Servants Disclosure Protection Act, *supra* note 117 and the Values and Ethics Code for the Public Sector, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>

<sup>170</sup> *Ibid.*, pg. 26.

<sup>171</sup> *Ibid.*, pg. 27. See also the Policy on Learning, Training and Development, *supra* note 146.

<sup>172</sup> *Ibid.* See also the Directive on Performance Management, *supra* note 168.

<sup>173</sup> *Ibid.*

the CSPS to develop various courses available to public servants, of which, some are mandatory specific to functional groups, such as financial management officers and procurement specialists. Other mandatory courses include the “Values and Ethics Foundations for Employees” course, which helps employees understand the elements of the Values and Ethics Code for the Public Sector by exploring topics, such as conflicts of interest, ethical dilemmas, and accountability.<sup>174</sup>

[234] Moreover, the country under review notes that organizations have developed their own supplemental training and/or workshops to ensure that employees understand their responsibilities under the Values and Ethics Code for the Public Sector or the specific responsibilities and duties of their position. It also notes that up-to-date information on learning events can be found on the site of the CSPS, as well as a host of information for learners. This website is located at: <http://www.cspc-efpc.gc.ca/index-eng.aspx><sup>175</sup>

[235] As to the use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them properly, the country under review, in its Response to the Questionnaire, indicated that the TBS counts on GCcampus, which is a collection of interactive and open online resources, videos, courses and seminars, and cites this as an example of the way modern communication technologies are used to apprise personnel of their responsibilities and functions in the public sector. It further notes that the purpose of GCcampus is to implement a public service-wide, online learning gateway and that learners are able to access a wide range of formal and informal learning opportunities including: online self-paced products, job aids and templates, blogs, videos, and online self-paced, virtual and classroom courses. In addition, searching and registering for online and in-person events are completed through GCcampus, which can be accessed anytime and anywhere through the world-wide web. More information on Ccampus is found at: <http://www.cspc-efpc.gc.ca/index-eng.aspx><sup>176</sup>

[236] As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about how to perform their responsibilities and functions properly, the country under review indicates that the primary contact for employees, when they have doubts about how to perform their responsibilities and functions properly, is their manager, as this person is the best placed to inform and provide clarification to employees regarding their work description, roles and responsibilities because they are responsible for setting the work objectives for employees and are the principal resources to inform employees of their roles and responsibilities. In addition, the country under review notes that a secondary point of contact are Human Resources advisors, who can act as resource persons by providing advice on human resource related matters and policy interpretation to managers and employees, as well as by making recommendations on problem resolution.<sup>177</sup>

[237] In terms of the existence of a governing organ, authority or body responsible for defining, steering, advising, or supporting the manner in which personnel are to be informed of their responsibilities and functions, the country under review explained that the TBS is responsible for the Directive on Performance Management, which requires managers to meet twice a year with employees as part of the performance management cycle. These conversations allow for managers and employees to discuss work objectives and understand what is expected in the performance of their duties. The TBS monitors compliance with this directive and reports annually through the Management Accountability Framework, which is an oversight tool used to help ensure that federal departments and agencies are well-managed, accountable and that resources are allocated to achieve results. More information about the Management

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<sup>174</sup> *Ibid.*, pgs. 27 – 28.

<sup>175</sup> *Ibid.*, pg. 28.

<sup>176</sup> *Ibid.*

<sup>177</sup> *Ibid.*

Accountability Framework can be found at: <http://www.tbs-sct.gc.ca/hgw-cgf/oversight-surveillance/maf-crg/index-eng.asp>.<sup>178</sup>

[238] As to the manner in which personnel are informed of the ethical rules governing their activities, indicating whether this is done verbally or in writing and whether records are kept of those instructions, the country under review notes that upon being hired, employees are informed of their responsibility under the Values and Ethics Code for the Public Sector in their letter of offer and by signing their letter of offer, they attest that they have read and will abide by the Code. A copy of the letter of offer is kept in the employee's personal file. Moreover, new public servants must complete a 3-hour online self-paced course on Values and Ethics administered by the CSPC, of which records of course completion are kept.<sup>179</sup>

[239] In addition, the country under review notes that every time an employee changes functions, they are reminded of their responsibilities under the Code through their letter of offer. Employees must also review their responsibility under the Policy on Conflict of Interest and Post-Employment in light of their new functions and ensure that they are in compliance.<sup>180</sup>

[240] The country under review also notes that a discussion on values and ethics between manager and employee takes place twice a year, at the performance management meetings, where they review and discuss the obligations under the Code. A record is kept electronically in the Performance Management Application.<sup>181</sup>

[241] Finally, the country under review indicates that all organizations build awareness of values and ethics through communications, training and workshops and by giving advice. This is done in person and in writing through various virtual platforms, such as newsletters, intranet and e-mails.<sup>182</sup>

[242] Regarding the occasion(s) when personnel are informed of ethical rules governing their activities, indicating whether this is done when they begin performing them or at some later point; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules, in its Response to the Questionnaire, the country under review noted that when employees begin their career in the public service, they must complete a 3-hour online self-paced and interactive course on Values and Ethics. Moreover, every letter of offer, mentions an employee's responsibilities under the Code and the Policy on Conflict of Interest and Post-Employment. Compliance with the Code and Policy is a necessary condition of employment. The country under review also indicates that every time a public servant changes position, they are reminded of their responsibilities through the letter of offer.<sup>183</sup>

[243] In addition, during the performance management discussions, which occur twice a year, a discussion on values and ethics between public servants and their manager occurs and the employees attest that they have read the Values and Ethics Code for the Public Sector, have discussed any questions they may have with their manager and that they understand their responsibilities.<sup>184</sup>

[244] As regards the existence of introductory, training or instructional programs and courses for personnel on the ethical rules governing their activities, the country under review indicated in its Response to the Questionnaire that through the CSPS, there are various courses available to public servants. In this respect, there is a Values and Ethics Foundations Course for Employees, which is required training for all new public servants. This course helps employees understand the elements of the Code as they explore topics such as

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<sup>178</sup> *Ibid.*, pg. 29.

<sup>179</sup> *Ibid.* See also Presentation by the Treasury Board Secretariat, pg. 7, [http://www.oas.org/juridico/english/mesicic5\\_can.htm](http://www.oas.org/juridico/english/mesicic5_can.htm)

<sup>180</sup> *Ibid.*

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

<sup>183</sup> *Ibid.*, pgs. 29 – 30.

<sup>184</sup> *Ibid.*, pg. 30.

conflicts of interest, ethical dilemmas, and accountability. In addition, there is the Values and Ethics Foundations Course for Managers, which is an online course that helps managers to better understand the foundational concept of values and ethics and how to apply these principles when dealing with conflicts of interest, ethical dilemmas, harassment situations and issues of workplace well-being. The country under review further notes that through practical exercises and scenarios, participants identify, discuss and apply the key principles and policies related to values and ethics in the public service.<sup>185</sup>

[245] The country under review further notes that compliance with the Code is a condition of employment and failure to comply may result in disciplinary measures being taken, up to and including termination of employment.<sup>186</sup>

[246] As to the use of modern communication technologies to apprise personnel of the ethical rules governing their activities, the country under review, in its Response to the Questionnaire, notes that the Values and Ethics Foundations Course for Employees is accessible on the world-wide web for all employees to complete from any location. The training is interactive and self-paced. In addition, many web-based meetings (WebEX), panel discussions and conversations are accessible to all public servants from their offices and in-person, have taken place on the subject of values and ethics. The country under review further notes that the CSPS Values and Ethics website promotes a video on the disclosure of wrongdoing in the federal public service through its internal website, and which is also available on YouTube at: <https://www.youtube.com/watch?v=L7cmlwLhZg>. Finally, the country under review observes that periodically, when employees log on to their computer, there is a “pop-up” message reminding them of their responsibilities under the Code. Employees must check a box indicating that they have reviewed their responsibilities under the Code, or else they will not be able to continue.<sup>187</sup>

[247] As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about the scope or interpretation of the ethical rules governing their activities, the country under review, in its Response to the Questionnaire, notes the following:<sup>188</sup>

[248] *“When ethical issues arise, public servants are encouraged to discuss and resolve these matters with their immediate supervisor. They can also seek advice and support from other appropriate sources within their organization, such as the Senior Officer for Values and Ethics, the Values and Ethics Champion for the department or the Integrity Officer for the department. A list of departmental contacts for Values and Ethics is maintained by the TBS and is accessible to all public servants at the following link: <http://intranet.canada.ca/hr-rh/ve/vec-cve/sopsve-csrvefp-eng.asp>.*

[249] *The TBS provides advice and guidance to departmental representatives in values and ethics and to public servants directly and also liaises with networks that serve as platforms for the exchange of best and leading practices and the development of tools for the public service.*

[250] *Specific to values and ethics and to anti-corruption, the TBS maintains partnerships with federal networks that include senior officers responsible for the disclosure of wrongdoing, senior officials for values and ethics, and officers responsible for conflict of interest and post-employment measures in government departments and agencies.”*

[251] In terms of the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, the country under review explained that the TBS is responsible for promoting

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<sup>185</sup> *Ibid.*

<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.*, pgs. 30 – 31.

<sup>188</sup> *Ibid.*, pg. 31.

ethical practices in the public service and will work with all relevant partner organizations to implement and promote the Values and Ethics Code for the Public Sector, and will provide advice to chief executives and designated departmental officials with respect to its interpretation.

[252] To this end, the TBS has produced manuals and guides to orient public servants regarding ethical behaviour around conflict of interest, the Code and the Public Servants Disclosure Protection Act. The country under review also notes that a public servant, who has not complied with the requirements for public servants to prevent and deal with conflict of interest and post-employment situations, may be subject to disciplinary measures, up to and including termination of employment. Moreover, organizational consequences of non-compliance with this policy may include measures allowed by the Financial Administration Act that the TBS may determine to be appropriate, such as an audit of the organization or monitoring or reporting measures.<sup>189</sup>

- Statutory and other legal provisions applicable to the personnel that fall under the purview of the Public Service Commission, among which the following should be noted:

[253] Regarding provisions and/or measures for providing instructions to the personnel of the organizations that fall under the purview of the Public Service Commission (PSC) to ensure that they properly understand their responsibilities and the ethical standards that govern their activities, in its Response to the Questionnaire, the country under review notes that the mandate of the PSC, under section 11 of the Public Service Employment Act, is to (a) to appoint, or provide for the appointment of, persons to or from within the public service in accordance with this Act; (b) to conduct investigations and audits in accordance with this Act; and (c) to administer the provisions of this Act relating to political activities of employees and deputy heads.<sup>190</sup>

[254] Three groups of government employees are key to the PSC in its role of safeguarding the integrity of the staffing system and ensuring non-partisanship in the federal public service: delegated deputy heads and sub-delegated managers; human resources personnel; and employees in the federal public service.

[255] Regarding deputy heads, in accordance with section 15 of the PSEA, the PSC authorizes specified deputy heads to exercise, in relation to their organization, the appointment and appointment-related authorities found in Annex A of the Appointment Delegation and Accountability Instrument (ADAI). In addition, in accordance with the ADAI, prior to being sub-delegated the authority to make appointments, managers must read and sign an Attestation Form confirming that they understand and agree to the role and responsibilities they are assuming and they must also have completed the required training established by their deputy head. Managers are required to sign a new Attestation Form to be sub-delegated appointment authorities when they move to another organization.<sup>191</sup> In addition, during the on-site visit, the representatives of the Public Service Commission noted deputy heads and their sub-delegated persons must respect the requirements of the ADAI, the PSEA, other applicable statutes and regulations, the PSC's Appointment Policy as well as organizational staffing policies and the sub-delegation instrument.<sup>192</sup>

[256] Regarding human resources personnel, in accordance with the ADAI, delegated managers are to have access to knowledgeable personnel with whom they can obtain advice and guidance in making

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<sup>189</sup> *Ibid.*, pgs. 31 – 32.

<sup>190</sup> *Ibid.*, pg. 38. See also Public Service Employment Act, *supra* note 12.

<sup>191</sup> *Ibid.*, pg. 39.

<sup>192</sup> Presentation of the Public Service Commission, pg. 10, [http://www.oas.org/juridico/english/mesicic5\\_can.htm](http://www.oas.org/juridico/english/mesicic5_can.htm)

decisions related to making appointments in their organizations. Deputy heads are responsible for establishing the training pre-requisites for sub-delegation.<sup>193</sup>

[257] With respect to employees of the federal public service, the country under review notes that as part of its role in ensuring the non-partisan nature of the public service, the PSC works to provide awareness to employees on their legal rights and responsibilities related to political activities. This obligation is included in the letter of offer of employment, which each employee signs.<sup>194</sup>

[258] Regarding the provisions and/or measure in the country under review for providing instructions that ensure proper understanding of their ethical rules governing their activities, the country under review notes that the Values and Ethics Code for the Public Sector fulfills the requirement of section 5 of the Public Servants Disclosure Protection Act, which requires the TBS to establish a code of conduct applicable to the public sector, including those that fall under the purview of the Public Service Commission.<sup>195</sup> The country under review further notes that upon being hired, every public servant is provided with their letter of offer, a copy of or a link to the Values and Ethics Code for the Public Sector and the Policy on Conflict of Interest and Post-Employment. Moreover, under the aforementioned Policy on Learning, Training and Development, deputy heads are responsible for ensuring that newly-appointed employees complete required orientation training, which includes the Values and Ethics Foundations course for employees.<sup>196</sup>

[259] As to the manner in which deputy heads and employees are informed about their responsibilities and functions, indicating whether this is done verbally or in writing and whether records are kept of those instructions, the country under review notes that upon appointment or designation, deputy heads are deemed to have accepted the delegation of the PSC's appointment and appointment-related authorities outlined in the ADAI. In turn, deputy heads must provide, in writing, to persons being sub-delegated, the terms and conditions of sub-delegation and the appointment and appointment-related authorities being sub-delegated. Moreover, the President may also meet with the new deputy head to discuss areas of responsibility and any questions on the appointment system. With respect to appointment-related responsibilities, the ADAI requires managers to read and sign an Attestation Form confirming that they understand and agree to the role and responsibilities they are assuming prior to being sub-delegated the authority to make appointments. They must also have completed the required training established by their deputy head.

[260] Regarding employees of the federal public service, they are advised in writing of their legal rights and responsibilities related to political activities. This is done in writing, in the letter of offer of employment, which each employee is required to sign.<sup>197</sup>

[261] Regarding the occasion(s) when personnel are informed of their responsibilities and functions, indicating whether this is done when they begin performing them or at a later point; when those functions change; or when functions change due to a change of post, the country under review indicated that this occurs when new staff start their job, the country under review notes that delegated deputy heads, sub-delegated managers and employees of the federal public service are informed of their responsibilities and functions before and during the performance of their duties. The same is true when their functions change or evolve, or when their roles and responsibilities change as a result of a new position.<sup>198</sup>

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<sup>193</sup> Response to the Questionnaire, pg. 39, *supra* note 11.

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.* See Public Servants Disclosure Protection Act, *supra* note 117 and the Values and Ethics Code for the Public Sector, *supra* note 169.

<sup>196</sup> Response to the Questionnaire, pg. 26, *supra* note 11.

<sup>197</sup> *Ibid.*, pg. 40.

<sup>198</sup> *Ibid.*

[262] As for the existence of introductory, training or instructional programs and courses for personnel on how to perform their responsibilities and functions properly and, particularly, for making them aware of the risks of corruption inherent in the performance of those functions, the country under review notes, in its Response to the Questionnaire, that in collaboration with the CSPS, the PSC has contributed to the development of a curriculum related to staffing in the public service, which includes formal in-class training courses at the introductory, and advanced levels and that the School's course content is currently being updated for delivery to new and existing human resource personnel. Moreover, the country under review notes that on April 1, 2016, the PSC renewed its Appointment Policy and ADAI.<sup>199</sup>

[263] The country under review also notes that to support sub-delegated managers and employees interested in staffing, the School also delivers: (1) courses focused specifically on staffing in the public service; and (2) staffing-specific modules as part of the suite of mandatory training courses for financial and human resources delegation for supervisors, managers and executives in the public service. Regarding political activities, the mandatory orientation to the public service for new employees that is delivered by the School includes a module on this topic.<sup>200</sup>

[264] Finally, the country under review observes that the PSC routinely participates in key committees, such as the Human Resources Council, National Staffing Council, Personnel Advisory Group, in order to present workshops on staffing-related information and to answer questions of key Communities of Practice, and it partners with the School to provide interactive information and learning sessions.<sup>201</sup>

[265] As to the use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them properly, the country under review, in its Response to the Questionnaire, indicates that modern technology is routinely used by the PSC to apprise personnel. In this respect, it notes the following:<sup>202</sup>

[266] *“Internet sites – The PSC currently publishes the Appointment Framework documents, formal letters, and key pieces of information and guidance on its own website (<https://www.canada.ca/en/public-service-commission.html>) as well as, on GCPedia<sup>203</sup>, the Government of Canada's collaborative web-based reference tool.*

[267] *Online forums – The PSC also leverages the Government of Canada Communities of Practice, such as the Human Resources Council and National Staffing Council, which have a presence on GCConnex<sup>204</sup>, a Government of Canada forum where employees can ask questions, offer comments, and share information and experiences to communities of practice and other federal public service employees across Canada.*

[268] *Online broadcasts – In partnership with the CSPS, the PSC has participated in online broadcasts using tools, such as WebEX to hold interactive audio and video presentations in real-time to employees all across Canada.*

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<sup>199</sup> *Ibid.* The country under review, in its observations to the draft preliminary report, noted that the PSC also conducts workshops and presentations on key questions, such as policy and legislative amendments to ensure human resources personnel are aware and have a sound understanding of the changes at the outset. Moreover, the PSC provides specific training for the instructors at the School on these matters, and provides active observers in the courses, and some PSC personnel are adjunct instructors teaching the staffing curriculum. In addition, some deputy heads have also decided to supplement the School's curriculum with courses designed for their own organization's specific needs. The PSC supports this by giving interpretations, advice and reviewing material on request.

<sup>200</sup> *Ibid.*

<sup>201</sup> *Ibid.*, pg. 41.

<sup>202</sup> *Ibid.*

<sup>203</sup> GCPedia is a collaborative web-based reference tool for federal public service employees. Accessible via a computer or mobile device on the Government of Canada network, users are free to use the wiki as they see fit, within the terms of use.

<sup>204</sup> GCConnex is a professional networking and collaborative workspace for all public service, allowing people to connect and share information, leveraging the power of networking towards a more effective and efficient public service in Canada.

[269] *Videos* – The PSC has created two videos to increase awareness regarding political activities for public servants. The videos can be found by clicking on the “Political Activities: Make an Informed Decision!” box of the Political Activities website located at: <https://www.canada.ca/en/public-service-commission/services/political-activities.html>

[270] *Online tools* – A Political Activities Self-Assessment Tool was developed to assist employees in making an informed decision about whether to participate in non-candidacy political activities. The tool can be found at: <http://www2.psc-cfp.gc.ca/pat-oap/intro.do>.”

[271] As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about how to perform their responsibilities and functions properly, the country under review notes that support for resolving doubts on exercising sub-delegated staffing authorities are twofold: (1) each organization has expert human resources personnel, who can be consulted, and (2) the PSC assigns Staffing Support Advisors to each organization to provide further clarification on exercising their appointment and appointment-related authorities within the Appointment Framework. Moreover, annual or more frequent meetings and/or training sessions are also held for Departmental Liaisons for Investigations, for Political Activities, and for Priority Entitlements.<sup>205</sup>

[272] With respect to providing further support to employees in terms of making a decision with regards to political activities, employees are encouraged to discuss their specific circumstances with their manager prior to making a decision an employee may also consult the Designated Political Activities Representatives located at: <https://www.canada.ca/en/public-service-commission/services/political-activities/candidacy-request/designated-political-activities-representatives-organizations-subject-political-activities-provisions-public-service-employment-act.html>. In addition, employees may also consult the Guidance Document for Non-Candidacy Political Activities, which can be found at: <https://www.canada.ca/en/public-service-commission/services/political-activities.html>.<sup>206</sup>

[273] The country under review also observes that additional information on political activities is available on the Political Activities website (<https://www.canada.ca/en/public-service-commission/services/political-activities.html>). The website includes access to information and document, such as a Political Activities Self-Assessment Tool, a Guidance Document for non-candidacy political activities, or the Candidacy Request website for specifics on the process for requesting permission for candidacy.<sup>207</sup>

[274] In terms of the existence of a governing organ, authority or body responsible for defining, steering, advising, or supporting the manner in which personnel are to be informed of their responsibilities and functions, the country under review notes the following:<sup>208</sup>

[275] *“There is a joint responsibility between the TBS and the PSC for matters relating to staffing in the federal public service. In accordance with its mandate, the PSC establishes the Appointment Framework and provides independent oversight for the integrity of staffing in the public service.*

[276] *The Meeting of the Commission is the decision-making forum that allows the PSC to fulfill its obligations under the PSEA and the Employment Equity Act vis-à-vis the federal public service, and its governance role vis-à-vis the PSC as an organization. The Employment Equity Act can be found at: <http://laws.justice.gc.ca/eng/acts/e-5.401/...>*

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<sup>205</sup> *Ibid.*

<sup>206</sup> *Ibid.*, pg. 42.

<sup>207</sup> *Ibid.*

<sup>208</sup> *Ibid.*, pgs. 42 – 43.

[277] *As part of ongoing monitoring, deputy heads must assess on a cyclical basis (at least every 5 years), the adherence to the requirements established in the ADAI, the PSEA, other applicable statutes and regulations, the PSC's Appointment Policy, as well as organizational staffing policies and the sub-delegation instrument. In addition, deputy heads must ensure that appropriate remedial action is taken to address any deficiencies and report back to the PSC on areas identified in Annex D of the ADAI...*

[278] *Lastly, in combination with its investigations, the PSC's oversight activities (including mechanisms such as government-wide audits and studies) can provide further information to organizations in identifying potential risk areas in the organization's staffing system."*

[279] As to the manner in which personnel are informed of the ethical rules governing their activities, indicating whether this is done verbally or in writing and whether records are kept of those instructions, the country under review notes that upon being hired, the country under review refers to the response provided with respect to the Treasury Board of Canada Secretariat.<sup>209</sup> Employees are informed of their responsibility under the Values and Ethics Code for the Public Sector in their letter of offer and by signing their letter of offer, they attest that they have read and will abide by the Code. A copy of the letter of offer is kept in the employee's personal file. Moreover, new public servants must complete a 3-hour online self-paced course on Values and Ethics administered by the CSPS, of which records of course completion are kept.<sup>210</sup>

[280] In addition, the country under review notes that every time an employee changes functions, they are reminded of their responsibilities under the Code through their letter of offer. Employees must also review their responsibility under the Policy on Conflict of Interest and Post-Employment in light of their new functions and ensure that they are in compliance.<sup>211</sup>

[281] The country under review also notes that a discussion on values and ethics between manager and employee takes place twice a year, at the performance management meetings, where they review and discuss the obligations under the Code. A record is kept electronically in the Performance Management Application.<sup>212</sup>

[282] Finally, the country under review indicates that all organizations build awareness of values and ethics through communications, training and workshops and by giving advice. This is done in person and in writing through various virtual platforms, such as newsletters, intranet and e-mails.<sup>213</sup>

[283] Regarding the occasion(s) when personnel are informed of ethical rules governing their activities, indicating whether this is done when they begin performing them or at some later point; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules, in its Response to the Questionnaire, the country under review refers to the response provided with respect to the TBS.<sup>214</sup>

[284] In that respect, it notes that when employees begin their career in the public service, they must complete a 3-hour online self-paced and interactive course on Values and Ethics. Moreover, every letter of offer, mentions an employee's responsibilities under the Code and the Policy on Conflict of Interest and Post-Employment. Compliance with the Code and Policy is a necessary condition of employment.

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<sup>209</sup> *Ibid.* pg. 44.

<sup>210</sup> *Ibid.* pg. 29. See also Presentation by the Treasury Board Secretariat, pg. 7, *supra* note 179.

<sup>211</sup> *Ibid.*

<sup>212</sup> *Ibid.*

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*pg. 44.

The country under review also indicates that every time a public servant changes position, they are reminded of their responsibilities through the letter of offer.<sup>215</sup>

[285] In addition, during the performance management discussions, which occur twice a year, a discussion on values and ethics between public servants and their manager occurs and the employees attest that they have read the Values and Ethics Code for the Public Sector, have discussed any questions they may have with their manager and that they understand their responsibilities.<sup>216</sup>

[286] As far as the existence of introductory, training or instructional programs and courses for personnel on the ethical rules governing their activities and, particularly, on the consequences of failure to abide by them for public institutions and for wrongdoers, the country under review indicated in its Response to the Questionnaire the country under review notes the following:<sup>217</sup>

[287] *“In addition to the courses outlined above, which provide training, instructional programs and courses for personnel on ethical rules, the PSC’s Investigation website provides information and guidance to inform organizations and individuals about the investigation process. It is located at: <https://www.canada.ca/en/public-service-commission/services/oversight-activities/investigations.html> and provides a host of information on the entire investigatory process (i.e., before, during and after). Among the potential corrective actions, the PSC may order that an employee complete mandatory training, such as a course on staffing or values and ethics, and later engage in a discussion with their director or director general about the material covered in that course.*

[288] *As indicated in response to question vi above, the PSC can take any corrective action that it considers appropriate in founded allegations or concerns. Corrective action is determined on a case-by-case basis. Organizations and persons affected will be consulted on the Investigation Report and on the proposed corrective action before a final decision is made.”*

[289] As to the use of modern communication technology to apprise personnel of the ethical rules governing their activities and to provide guidance as to their scope or interpretation, in its Response to the Questionnaire, the country under review refers to the response provided with respect to the Treasury Board of Canada Secretariat.<sup>218</sup>

[290] In this respect, the Values and Ethics Foundations Course for Employees is accessible on the world-wide web for all employees to complete from any location. The training is interactive and self-paced. In addition, many web-based meetings (WebEX), panel discussions and conversations are accessible to all public servants from their offices and in-person, have taken place on the subject of values and ethics. The country under review further notes that the CSPS Values and Ethics website promotes a video on the disclosure of wrongdoing in the federal public service through its internal website, and which is also available on YouTube at: <https://www.youtube.com/watch?v=L7cmlwcLhZg>. Finally, the country under review observes that periodically, when employees log on to their computer, there is a “pop-up” message reminding them of their responsibilities under the Code. Employees must check a box indicating that they have reviewed their responsibilities under the Code, or else they will not be able to continue.<sup>219</sup>

[291] As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about the scope or interpretation of the ethical rules governing their activities, in its Response to the

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<sup>215</sup> *Ibid.*, pgs. 29 – 30.

<sup>216</sup> *Ibid.*, pg. 30.

<sup>217</sup> *Ibid.* pg. 44.

<sup>218</sup> *Ibid.*.

<sup>219</sup> *Ibid.*, pgs. 30 – 31.

Questionnaire, the country under review refers to the response provided with respect to the Treasury Board of Canada Secretariat.<sup>220</sup>

[292] In this respect, the country under review notes the following:<sup>221</sup>

[293] *“When ethical issues arise, public servants are encouraged to discuss and resolve these matters with their immediate supervisor. They can also seek advice and support from other appropriate sources within their organization, such as the Senior Officer for Values and Ethics, the Values and Ethics Champion for the department or the Integrity Officer for the department. A list of departmental contacts for Values and Ethics is maintained by the TBS and is accessible to all public servants at the following link: <http://intranet.canada.ca/hr-rh/ve/vec-cve/sopsve-csrvefp-eng.asp>.*

[294] *The TBS provides advice and guidance to departmental representatives in values and ethics and to public servants directly and also liaises with networks that serve as platforms for the exchange of best and leading practices and the development of tools for the public service.*

[295] *Specific to values and ethics and to anti-corruption, the TBS maintains partnerships with federal networks that include senior officers responsible for the disclosure of wrongdoing, senior officials for values and ethics, and officers responsible for conflict of interest and post-employment measures in government departments and agencies.”*

[296] In terms of the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, the country under review refers to the response provided with respect to the TBS.<sup>222</sup>

[297] In this respect, the country under review observes that the TBS is responsible for promoting ethical practices in the public service and will work with all relevant partner organizations to implement and promote the Values and Ethics Code for the Public Sector, and will provide advice to chief executives and designated departmental officials with respect to its interpretation. To this end, the TBS has produced manuals and guides to orient public servants regarding ethical behavior around conflict of interest, the Code and the Public Servants Disclosure Protection Act. The country under review also notes that a public servant, who has not complied with the requirements for public servants to prevent and deal with conflict of interest and post-employment situations, may be subject to disciplinary measures, up to and including termination of employment. Moreover, organizational consequences of non-compliance with this policy may include measures allowed by the Financial Administration Act that the TBS may determine to be appropriate, such as an audit of the organization or monitoring or reporting measures.<sup>223</sup>

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

[298] With respect to the statutory and other legal provisions reviewed by the Committee on the measures intended to provide instructions to government personnel of the three bodies selected by the country under review that ensure proper understanding of their responsibilities and the ethical rules governing their activities, the Committee notes that they are relevant for promoting the purposes of the Convention.

[299] Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

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<sup>220</sup> *Ibid.*

<sup>221</sup> *Ibid.*, pg. 31.

<sup>222</sup> *Ibid.*

<sup>223</sup> *Ibid.*, pgs. 31 – 32.

- With respect to the provisions and/or other measures applicable to the personnel that fall under the purview of the Treasury Board of Canada Secretariat, the Committee notes the following:

[300] The Committee notes that one of the documents that provide guidance and support regarding the training received from public servants and managers is the Directive on the Administration of Required Training.<sup>224</sup>

[301] In this document, reference is made to the role of the Public Service Human Resources Management Agency of Canada, although it became part of the TBS in 2009. This Agency is to be informed of the name of the Coordinator in an organization, who is responsible for supporting deputy heads in fulfilling their responsibilities for the implementation of required training of employees; receive, by June 30 of each year, an organization's Annual Report on Required Training; and responsible for reporting annually on government-wide implementation of the Policy on Learning, Training and Development.

[302] The Committee notes, however, that although that this Agency became part of the TBS in 2009, the Directive has not been updated to reflect this fact. In addition, the Committee could not find any further information on these Annual Reports on Required Training, and they appear not to be available online, nor the annual report on the government-wide implementation on the Policy on Learning, Training and Development.

[303] Given the foregoing, the Committee believes that the country under review should consider reviewing the aforementioned Directive, updating it as necessary. In addition, the Committee believes that it may be useful to make publicly available an organization's Annual Report on Training, as well as the annual report on the government-wide implementation of the Policy on Learning, Training and Development.<sup>225</sup> The Committee will formulate recommendations. (See Recommendations 1.4.1, 1.4.2 and 1.4.3 in Chapter III of this Report)

### 1.3 Results

[304] In its Response to the Questionnaire and during the on-site visit, the country under review described the following results from the application of the provisions and/or measures relating to instruction given to government personnel in order to ensure proper understanding of their responsibilities and the ethical rules governing their activities.

[305] With respect to the TBS, the country under review mentioned in its Response to the Questionnaire that mandatory training is offered through the CSPS and directly in departments, which has helped to ensure that employees have the necessary knowledge to perform the duties of their position. There is also training specific to functional groups, such as inspectors or financial specialists, which ensure that they have proper understanding of their specific role and of the ethical risks associated with the performance of their duties. There is usually a test at the end of these courses to ensure that the employees have assimilated the content,

<sup>224</sup> Directive on the Administration of Required Training, *supra* note 155.

<sup>225</sup> The country under review, in its observations to the draft preliminary report, noted that the TBS uses the Management Accountability Framework to report on government-wide results in areas of People management including Employee Learning. The report is made public through the TBS website <https://www.canada.ca/en/treasury-board-secretariat/services/management-accountability-framework/2015-16-management-accountability-framework-government-wide-report.html>. In addition, the TBS is currently undergoing Policy Suite Reset, an initiative that began in June 2014. Through this initiative, all Treasury Board policy instruments (directives, mandatory procedures and standards) that apply to federal departments and agencies, are being reviewed to identify opportunities for streamlining, simplifying compliance and reporting and to ensure that information is presented in clear and consistent language. The Policy on Learning, Training and Development is part of the exercise and opportunities to streamline and simplify compliance; including reducing the reporting burden for Departments will be identified and applied, when appropriate. The consultation period for this initiative is expected to conclude on September 30, 2017..

and they must obtain the minimum passing grade in order for the course to be considered to have been completed.<sup>226</sup>

[306] The country under review also observes that these courses have a feedback or evaluation component at the end, which is used to improve the quality of instruction and to validate the content. Moreover, training coordinators in every department ensure that employees have completed all the training required for their positions.

[307] Regarding the Directive on Performance Management, the country under review notes the following.<sup>227</sup>

[308] *“The Directive on Performance Management sets out the responsibilities of deputy heads, or their delegates, regarding the administration of a consistent, equitable and rigorous approach to performance management in their organizations. For employees, it reinforces the importance of demonstrating the required knowledge, skills, competencies and behaviours. The Directive provides for an annual written performance objectives for all employees, and a mid-year review in the form of informal conversations to review accomplishments in relation to performance commitment. It also provides for the opportunity to solicit and provide feedback and adjust commitments and learning plans, where necessary. These conversations allow for managers and employees to discuss work objectives and understand what is expected in the performance of their duties.*

[309] *Records of the meetings are kept in the Performance Management Application and the TBS Secretariat monitors and reports on compliance with the Directive annually through the Management Accountability Framework.*

[310] *The TBS liaises with a network of departmental representatives to ensure that the Directive is understood and applied consistently. Frequently-asked questions and tools for guidance have also been developed by the TBS. The statistics show that a vast majority of public service employees are compliant with the Directive on Performance Management and the TBS will continue to monitor and provide guidance as necessary.”*

[311] The country under review also provides the following tables for the past 2 cycles of performance management:<sup>228</sup>

	2014 – 2015	2015 – 2016
Population (subject to the Directive)	171,696	174,555
Registered	97.7%	98.8%
Claimed	89.7%	89.2%
Performance Agreement created	94.7%	95.2%
Learning & Development Plan	88.3%	91.5%
Beginning of year completed by the manager	93.5%	94.1%
Beginning of year completed by the employee	93%	93.7%
Mid-year completed by the manager	90.9%	92.4%
Mid-year completed by the employee	90.4%	92.0%
Year-end completed by the manager	86.9%	87.3%
Year-end completed by the employee	85.1%	85.6%

<sup>226</sup> Response to the Questionnaire, pg. 31, *supra* note 11.

<sup>227</sup> *Ibid.*, pgs. 31 – 32.

<sup>228</sup> *Ibid.*, pgs. 33 – 34.

	Population (Subject to the Directive) (Assujettie à la Directive)	% of Employees Offered a Talent Management Plan	% of Employees Given an Action Plan
<b>2014-2015</b>	171,696	3.3%	0.6%
<b>2015-2016</b>	174,555	6.2%	1.1%
Talent Management Plans offers include system generated plans due to an overall rating of "surpassed", manager requested plans, and plans that are carried forward from the previous cycle.			
Action Plans include system generated plans due to a rating of "did not meet" in either core competencies or work objectives, manager requested plans, and plans that are carried forward from the previous cycle.			

[312] Regarding the results on the application of provisions and/or measure relating to the instructions given to the personnel that fall under the purview of the TBS to ensure that they have an appropriate understanding of the ethical rules governing their activities, the country under review, in its Response to the Questionnaire, note that the Values and Ethics Foundations Courses for Employees and Managers, as well as the values and ethics workshops in all departments launched in 2012, have ensured consistent messaging and understanding of roles and responsibilities by all public servants.<sup>229</sup> As an example, the country under review cites the Public Service Employee Survey results that show a positive increase related to values and ethics when comparing 2011 and 2014 results.<sup>230</sup> These results regarding the employee values and ethics portions of the 2011 and 2014 Public Service Employee Survey can be found respectively at <https://www.tbs-sct.gc.ca/pses-saff/2011/ve-eng.asp> and <http://www.tbs-sct.gc.ca/psm-fpm/modernizing-modernisation/pses-saff/dr-rd-eng.asp>.

[313] The country under review also notes that the Values and Ethics Foundations for Employees course will also be made available shortly on the public website of the CSPPS to enable potential future employees to better understand our shared values and behavioral expectations prior to joining the public service.<sup>231</sup>

[314] Finally, the country under review, in its Response to the Questionnaire, provides tables, regarding training on values and ethics for the past three years, including selected courses with values and ethics segments or components from the finance curriculum, the human resource curriculum, the procurement curriculum and the information management curriculum.<sup>232</sup> Regarding values and ethics related courses in general, the following information was provided:<sup>233</sup>

#### Number of Registered Learners – Values and Ethics Related Courses

Number of Registered Learners		2013 – 2014	2014 – 2015	2015 – 2016
Values and Ethics Foundations for Employees	Online-Self Paced	4571	5808	8835
Values and Ethics Foundations for Managers	Online-Self Paced	398	502	829

<sup>229</sup> *Ibid.*, pg. 35.

<sup>230</sup> *Ibid.*

<sup>231</sup> *Ibid.*

<sup>232</sup> *Ibid.*, pgs. 36 – 37.

<sup>233</sup> *Ibid.*, pg. 36.

[315] Given the foregoing, the Committee acknowledges the efforts undertaken by the country under review to maintain statistics.<sup>234</sup>

[316] As noted under section 1.1, the Directive on the Administration of Required Training requires organizations, on an annual basis, to prepare an Annual Report on Required Training, from which the Public Service Human Resources Management Agency of Canada, which became part of the TBS in 2009, is required to prepare a report on government-wide implementation of the Policy on Learning, Training and Development. Presumably, much of the information may be contained in these reports. However, as noted under section 1.2, it is unclear whether this information is made public.

[317] With respect to the results provided by the PSC, the country under review notes that in the current staffing system, there are 75 organizations delegated and subject to the ADAI as of March 31, 2016.<sup>235</sup> In this respect, the country further adds that:<sup>236</sup>

[318] *“[R]esponsibilities and requirements for the delegation of appointment and appointment-related authorities are clearly outlined in the ADAI, including the establishment of training requirements for sub-delegation within each deputy head’s organization. The PSC supports the training of one of its key employee groups through its collaboration with the CSPS, which develops and delivers the mandatory courses for supervisors, managers and executives. These courses are offered on a regular basis and are accessible to public servants across the country.*

[319] *The PSC’s staffing system benefits from the training provided to government employees in different stages of their careers in the public service, from an orientation training when they first become a public servant to when they assume a leadership role as an executive. The provision of support and guidance for making appointment decisions is embedded in the Appointment Framework, such that sub-delegated managers have access to expert advice from organizational HR personnel who in turn have access to the policy centres at the PSC which provide advice and guidance on exercising appointment-related authorities.”*

[320] The PSC, in the Response to the Questionnaire, further notes that it maintains the integrity of the staffing system through its oversight framework, its regulatory authority and its policy-setting function and that this oversight approach includes the ongoing monitoring conducted by organizations, which assists organizations in the detection of any risk areas and provides the opportunity for the implementation of timely corrective measures as required.<sup>237</sup> Moreover, in its Response, the country under review indicates that to

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<sup>234</sup> The country under review, in its observations to the draft preliminary report, noted that under the Financial Administration Act, there is an obligation on the deputy head to determine the learning, training and development requirements of persons employed in the public service and fix the terms on which the learning, training and development may be carried out. The Policy on Learning, Training and Development supports deputy heads in meeting this obligation and provides, amongst other things, that deputy heads are responsible for ensuring that their employees have the knowledge, skills and competencies to do their work. For the public sector as a whole, the TBS uses the Management Accountability Framework to inform on Learning in the public sector, such as the percentage of employees that have documentation setting learning objectives, as well as the Public Service Employee Survey which for example informs on the percentage of employees who feel they get the training they need to do their job. This information informs the TBS on the needs of the public sector as a whole and informs policy and program development for public servants. Moreover, the Directive on Performance Management also requires managers to meet twice a year with employees to discuss work objectives and help understand what is expected in the performance of their duties as well as identify learning or development plans. The TBS monitors compliance with this directive and reports annually through the Management Accountability Framework. In addition, managers have the responsibilities to inform and provide clarification to employees regarding their work, roles and responsibilities, for setting the work objectives and evaluating employee’s performance of their duties.

<sup>235</sup> In total, 78 organizations are delegated in accordance with the list of organizations and deputy heads subject to the ADAI (<https://www.canada.ca/en/public-service-commission/services/appointment-framework/delegation-overview/list-organizations-deputy-heads-subject-appointment-delegation-accountability-instrument.html>). There are 3 organizations not active. However, they are considered to be delegated.

<sup>236</sup> Response to the Questionnaire, pg. 45, *supra* note 11.

<sup>237</sup> *Ibid.*

support organizations, the PSC has continued to develop tools and approaches that better respond to the diverse needs of each organization, recognizing that a customized approach, which responds to the needs of each organization, is required.<sup>238</sup>

[321] With respect to these tools, the country under review notes that the PSC has developed and launched various tools to ensure that employees in the organizations, subject to the political activities provisions of the PSEA, are aware of their legal rights and responsibilities in order to make an informed decision, which include: the launching the Suite of Political Activities Tools; exploring new and innovative ways to raise employee awareness by conducting a workshop related to the Suite of Political Activities tools for Designated Political Activities Representatives in departments and agencies; producing a two-minute animated video explaining the candidacy process by which employees must request and obtain permission from the PSC prior to seeking nomination as, or being, a candidate in an election; and updating the on-line Political Activities Self-Assessment Tool and the Guidance Document for Participating in Non-Candidacy Political Activities.

[322] The country under review also refers to the most recent Survey of Staffing collected data from questions related to political activities, including employee participation in non-candidacy political activities and their degree of awareness of, and the extent to which their organization keeps them informed of, their legal rights and responsibilities regarding political activities. In this respect:<sup>239</sup>

[323] *“The analysis of this data showed that the level of employee awareness of their legal rights and responsibilities is positively correlated to their accumulated experience within the federal public service. In response to this survey, the PSC focused its outreach activities in 2015-2016 to new employees with fewer years of experience in the federal public service, to help them understand their legal rights and responsibilities related to political activities.”*

[324] With respect to the results on the application of provisions and/or measure relating to the instructions given to the personnel of the organizations that fall under the purview of the Public Service Commission to ensure that they have an appropriate understanding of the ethical rules governing their activities, the country under review refers to the response provided by the TBS in this respect, as the Values and Ethics Foundations Courses for Employees and Managers, as well as the values and ethics workshops in all departments launched in 2012, include the PSC.<sup>240</sup>

[325] The Committee further notes that the PSC provides instructions to the personnel of the organizations that fall under its purview, such as delegated deputy heads, sub-delegated hiring managers, human resources personnel and public service employees involved in the staffing process. The PSC confirms that the coverage and content of this training provided ensures proper understanding of the responsibilities and functions in the staffing process.

[326] The PSC does so by collaborating with the Canada School of Public Service (CSPS) to ensure staffing course curricula are current and reflect the new Appointment Policy and the Appointment Delegation and Accountability Instrument. The PSC also works with CSPS instructors or co-instructors to ensure messaging provided to course participants is clear and accurate.

[327] In addition, the PSC conducts Smart Shops and Experts Corners in public service staffing, to ensure sub-delegated hiring managers, human resources personnel and public service employees understand their involvement in staffing processes. The President of the PSC also meets with every new deputy head to ensure

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<sup>238</sup> *Ibid.*

<sup>239</sup> *Ibid.*, pg. 46.

<sup>240</sup> *Ibid.*, pg. 35 and 47.

they understand the expectations of the PSC as they conduct delegated staffing activities within their organization.

[328] Finally, the PSC tracks and reports on queries received from delegated organizations, and the responses provided, in order to gauge the level of understanding of public officials regarding the correct performance of their functions. Reports, audits, surveys and investigations provide valuable information to the PSC regarding how delegated and sub-delegated appointment authorities are being applied within delegated organizations.

#### **1.4 Conclusions and recommendations**

[329] Based on the review conducted regarding the implementation of Canada of Article III, paragraph 3 of the Convention, the Committee offers the following conclusions and recommendations:

**[330] Canada has considered and adopted measures intended to establish, maintain and strengthen the instructions provided to government personnel by the bodies selected that ensure proper understanding of their responsibilities and the ethical rules governing their activities, as described in Chapter III, Section 1 of this Report.**

[331] 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 Consider reviewing and updating the Directive on the Administration of Required Training (See paragraph 303 of Section 1.2 of Chapter III of this Report).
- 1.4.2 Make publicly available an organization's Annual Report on Training, as found in the Directive on the Administration of Required Training (See paragraph 303 of Section 1.2 of Chapter III of this Report).
- 1.4.3 Make publicly available the annual report on the government-wide implementation of the Policy on Learning, Training and Development, as found in the Directive on the Administration of Required Training (See paragraph 303 of Section 1.2 of Chapter III of this Report).

## **2. THE STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE (ARTICLE III, PARAGRAPH 12 OF THE CONVENTION)**

### **2.1 STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE**

[332] In its Response to the Questionnaire, the country under review notes that it has not carried out studies of prevention measures that take into account the relationship between equitable compensation and probity in public service.<sup>241</sup>

### **2.2 ESTABLISHMENT OF OBJECTIVE AND TRANSPARENT CRITERIA FOR DETERMINING THE COMPENSATION OF PUBLIC SERVANTS**

#### **2.2.1 Existence of a legal framework and/or other measures**

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<sup>241</sup> Response to the Questionnaire, pg. 48, *supra* note 11.

[333] In its Response to the Questionnaire, the country under review notes that it establishes objective and transparent criteria for determining the compensation of federal public servants. In this respect, it notes that the terms and conditions for the vast majority of public service employees are set through a process of negotiation called collective bargaining. Through this process, federal public service employees, which include those that form the core public administration and separate agencies, have the right to determine the terms and conditions of their employment, including their salary through negotiation with their employer.<sup>242</sup>

[334] Regarding the core public administration, the country under review notes that of nearly 200,000 employees in more than 60 departments and agencies, the Treasury Board is the Employer. As such, it is the Treasury Board that directly negotiates compensation for about 164,000 unionized employees with their respective bargaining agents and determines compensation for the remaining non-unionized employees.<sup>243</sup> The Rates of Pay, a part of the terms of conditions of employment for the core public administration, are publicly available at: <http://www.tbs-sct.gc.ca/psm-fpjm/pay-remuneration/rates-taux/index-eng.asp>. Moreover, the country under review notes that these employees can access tools to ensure timely and accurate processing of their compensation, which are found at the following website: <http://www.tbs-sct.gc.ca/psm-fpjm/pay-remuneration/index-eng.asp>.<sup>244</sup>

[335] The country under review also notes that the Treasury Board in establishing the overall compensation plan, consults with Departments in advance of collective bargaining to determine whether there are any challenges with the retention and recruitment within their workforce or other issues that require special consideration.<sup>245</sup>

[336] The country under review also observes that compensation decisions by the Treasury Board are guided by four overarching principles, as follows:<sup>246</sup>

[337] “•*External comparability: compensation should be competitive with, but not lead to that provided for similar work in relevant labour markets;*

[338] • *Internal relativity: compensation should reflect the relative value the work provides to the employer;*

[339] • *Individual/group performance: where appropriate and practicable, compensation should reward performance, based on individual or group contributions to business results; and*

[340] • *Affordability: compensation provided must be affordable within the context of the commitments to provide services to Canadians, the fiscal circumstances, and the state of the Canadian economy.*

[341] *Wage comparability studies and total compensation studies are conducted to support the assessment of these considerations. Wage comparability studies will situate public service wages relative to wages outside of the public service for similar work.”*

[342] Regarding separate agencies, the country under review notes that the 27 different separate agencies conduct their own negotiations for their respective unionized employees and determine compensation levels for their non-unionized employees. The Treasury Board, however, maintains its expenditure management role in relation to these agencies, and as such, all unionized employees of these agencies are required to obtain a mandate for collective bargaining from the President of the Treasury Board through the

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<sup>242</sup> *Ibid.*

<sup>243</sup> *Ibid.*

<sup>244</sup> *Ibid.*

<sup>245</sup> *Ibid.*

<sup>246</sup> *Ibid.*, pg. 49.

Compensation and Labour Relations Branch. The collective bargaining mandate includes the objectives to be pursued and the limits to be observed throughout the negotiation.<sup>247</sup>

[343] In all cases, the country under review notes that compensation setting process for Canadian federal public servants is generally framed by the Public Service Labour Relations Act, and for those of the core public administration, the Treasury Board Framework for the Management of Compensation.<sup>248</sup>

[344] The Committee further notes that for employment and employer and employee relations in the Senate, House of Commons, Library of Parliament, office of the Senate Ethics Officer, office of the Conflict of Interest and Ethics Commissioner and the Parliamentary Protective Service, the compensation setting procedure is framed by the Parliamentary Employment and Staff Relations Act.<sup>249</sup> This Act provides for collective bargaining for these employees, in order to determine their terms and conditions of employment, including their salary.

[345] Regarding the federal judiciary, the Committee notes that Sections 9 – 22 of the Judges Act sets out the salaries for federally appointed judges, including that of the Supreme Court of Canada.<sup>250</sup> Moreover, the Committee notes that in examining judicial compensation, section 26(1) of this Act establishes a Judicial Compensation and Benefits Commission, which is responsible for inquiring into the adequacy of the salaries and other amounts payable under this Act and into the adequacy of judges' benefits generally. This Commission, which meets every four years, in conducting its inquiry, is to consider: the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government; the role of financial security of the judiciary in ensuring judicial independence; the need to attract outstanding candidates to the judiciary; and any other objective criteria that the Commission considers relevant.<sup>251</sup> This Commission submits a report containing its recommendations to the Minister of Justice, who shall respond to the report within four months of receiving it.<sup>252</sup> These reports are available at the following website: [http://www.quadcom.gc.ca/pg\\_JcJc\\_QC\\_01-eng.php](http://www.quadcom.gc.ca/pg_JcJc_QC_01-eng.php)

### 2.2.2. Adequacy of the legal framework and/or other measures

[346] With respect to the provisions that refer to the establishment of objective and transparent criteria for determining the compensation of public servants, the Committee notes there is a comprehensive system establishing objective and transparent criteria for determining the remuneration of public servants.

### 2.2.3. Conclusions and Recommendations

[347] Based on the review conducted in the above sections regarding the implementation by Canada of Article III, paragraph 12 of the Convention, the Committee offers the following conclusion:

**[348] Canada has considered and adopted measures intended to establish objective and transparent criteria for determining the compensation of public servants, as described in Chapter III, Section 2 of this Report.**

## IV. BEST PRACTICES

<sup>247</sup> *Ibid.*

<sup>248</sup> *Ibid.* See Public Service Labour Relations Act, <http://laws-lois.justice.gc.ca/eng/acts/p-33.3> and Treasury Board Framework for the Management of Compensation, <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12084&section=HTML>

<sup>249</sup> Parliamentary Employment and Staff Relations Act, *supra* note 31.

<sup>250</sup> Judges Act, <http://laws-lois.justice.gc.ca/eng/acts/J-1/FullText.html>

<sup>251</sup> *Ibid.*, section 26(1.1).

<sup>252</sup> *Ibid.*, section 26(7).

[349] In keeping with section VI of the Methodology for follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round and for the review of the provisions of the Convention selected for the Fifth Round, the following describes the best practices identified by the country under review that it has wished to share with the other member countries of the MESICIC in the belief that they could be of benefit to them.

[350] – **The Values and Ethics Foundations for Employees course and the Values and Ethics Foundations for Managers course.**<sup>253</sup> The Values and Ethics Foundations for Employees course aims to familiarize public servants with the relevant Acts and policies, such as the Values and Ethics Code for the Public Sector, the Public Servants Disclosure Protection Act (PSDPA) and the Policy on Conflict of Interest and Post-Employment. The Values and Ethics Foundations for Managers course aims to help managers to better understand the foundational concept of values and ethics and how to apply it when dealing with conflicts of interest, ethical dilemmas, harassment situations and issues of workplace well-being.

[351] It is considered a best practice given that they provide public servants and managers with a range of tools to cultivate ethical decision making; information about the five core values for the Canadian public service and prompts them to think about how to apply these values in their everyday work responsibilities; with information relating to the key risk areas for unethical conduct that are identified, such as bribery, the improper use of government property, conflict of interest and the mismanagement of public funds; and with descriptions that put the risks into practical, easy-to-understand language for employees at all levels.

[352] – **New Direction in Staffing,**<sup>254</sup> which aims to simplify and streamline staffing across the public service, while ensuring that staffing decisions remain merit-based and non-partisan. The goal is to ensure that departments and agencies are able to attract talented people, with modern skills, in a timely fashion.

[353] It is considered a best practice because it will improve the staffing system by: providing organizations with the ability to customize their own staffing system, based on their unique context and evolving organizational needs; reducing the administrative and reporting burden; increasing the focus on outcomes, including the quality and competency of the person hired rather than on the process; and making monitoring more useful and relevant to organizations.

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<sup>253</sup> See Response to the Questionnaire, pgs. 51 – 53, *supra* note 11.

<sup>254</sup> *Ibid*, pgs. 54 – 56.

## ANNEX

AGENDA FOR THE ON-SITE VISIT TO CANADA

<b><u>Monday, April 24, 2017</u></b>	
15:00 hrs. – 15:30 hrs. <i>At the hotel: Albert at Bay Suite Hotel</i>	<b>Coordination meeting between the representatives of the member states of the subgroup and the Technical Secretariat</b>
15:30 hrs. – 16:00 hrs. <i>At the hotel: Albert at Bay Suite Hotel</i>	<b>Coordination meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat</b>
<b><u>Tuesday, April 25, 2017</u></b>	
9:00 hrs. – 12:30 hrs. <i>Department of Justice</i> <i>Address:</i> <i>East Memorial Building, 284 Wellington street (use entrance at Lyon Street and Wellington)</i> <i>Room 1006 (first floor)</i>	<b>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers</b>
	<u>Session:</u>  Follow-Up of the Recommendations of the Second Round and Topics of the Fifth Round

	<p><b><u>TRANSPARENCY INTERNATIONAL CANADA</u></b></p> <p>Mr. Bruce H. Moore</p> <p>Presentation on the following topics:</p> <ul style="list-style-type: none"> <li>• The topic of Whistleblower protection in relation to Article III(3) of the <i>Inter-American Convention against Corruption</i> (“Instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities”); and</li> <li>• The topic of Beneficial Ownership in relation to procurement as under Article III(12) of the Convention which is following up on the implementation of the recommendations formulated in the second round of review (which dealt with matters such as systems of government hiring and systems for the procurement of goods and services).</li> </ul> <p><b><u>GOPAC</u></b></p> <p>Mr. Akaash Maharaj, Chief Executive Officer</p> <p>Presentation on:</p> <ul style="list-style-type: none"> <li>• The recommendation from the follow-up from the second round dealing with "<i>making statistical information on offences related to acts of corruption, in a manner that is more readily available and user-friendly to the general public</i>"</li> </ul>
12:30 hrs. – 13:30 hrs.	<b>Lunch</b>
13:30 hrs. – 15:30 hrs.	<b>Follow Up to the Recommendations of the Second Round: Systems of government hiring</b>
13:30 hrs. – 15:00 hrs.	<p><b>Panel 1:</b></p> <ul style="list-style-type: none"> <li>• <b>Merit and non-partisanship in the recruitment process of separate agencies</b></li> <li>• <b>New Technological Developments: INGENIUM</b></li> </ul>

	<p><b><u>THE PUBLIC SERVICE COMMISSION (PSC)</u></b></p> <p>Stan Lee, Vice-President, Oversight Branch          Denis Bilodeau, Vice-President, Investigations Branch          Geoff Zerr, A/Director General, Policy Development          Melanie Bowen, A/Director, Integrated Planning and Outreach          Carole Fujimoto, Advisor, Integrated Planning and Outreach</p> <p><b><u>THE TREASURY BOARD SECRETARIAT (TBS)</u></b></p> <p>Kathleen Clarkin, A/Director, Workplace Policies, Programs, Engagement and Ethics, Office of the Chief Human Resources Officer</p> <p>Diane Gatera, Senior Policy and Program Analyst, Office of the Chief Human Resources Officer</p>
15:00 hrs. – 15:30 hrs.	<b>Informal meeting</b> between the representatives of the member states of the subgroup and the Technical Secretariat.
<b><u>Wednesday, April 26, 2017</u></b>	
9:00 hrs. – 12:30 hrs. <i>Department of Justice</i>	<b>Treasury Board Secretariat</b>
	<p><b>Panel 2:</b></p> <ul style="list-style-type: none"> <li>• <b>Provisions and/or measures for providing instructions to selected government personnel which ensure proper understanding of their responsibilities</b></li> <li>• <b>Provisions and/or measures for providing instructions to selected government personnel which ensure proper understanding of their ethical rules</b></li> </ul>
	<p><b><u>THE TREASURY BOARD SECRETARIAT (TBS)</u></b></p> <p>Kathleen Clarkin, A/Director, Workplace Policies, Programs, Engagement and Ethics, Office of the Chief Human Resources Officer</p> <p>Diane Gatera, Senior Policy and Program Analyst, Office of the Chief Human Resources Officer</p>
12:30 hrs. – 13:30 hrs.	<b>Lunch</b>
13:30 hrs. – 16:00 hrs.	<b>Public Service Commission</b>

	<p><b>Panel 3:</b></p> <ul style="list-style-type: none"> <li>• Provisions and/or measures for providing instructions to selected government personnel which ensure proper understanding of their responsibilities</li> <li>• Provisions and/or measures for providing instructions to selected government personnel which ensure proper understanding of their ethical rules</li> </ul>
	<p><b><u>THE PUBLIC SERVICE COMMISSION (PSC)</u></b></p> <p>Stan Lee, Vice-President, Oversight Branch          Denis Bilodeau, Vice-President, Investigations Branch          Geoff Zerr, A/Director General, Policy Development          Melanie Bowen, A/Director, Integrated Planning and Outreach          Carole Fujimoto, Advisor, Integrated Planning and Outreach</p>
16:00 hrs. – 16:30 hrs.	<b>Informal meeting</b> between the representatives of the member states of the subgroup and the Technical Secretariat.
<b><u>Thursday, April 27, 2017</u></b>	
09:00 hrs. – 12:30 hrs. <i>Department of Justice</i>	<b>Follow Up to the Recommendations of the Second Round: Systems of government procurement of goods and services; Protection for whistleblowers of acts of corruption</b>
09:00 hrs. – 10:30 hrs.	<p><b>Panel 4:</b></p> <ul style="list-style-type: none"> <li>• Amendment and outreach on the Code of Conduct for Procurement</li> <li>• Introduction and outreach on the Integrity Regime (<i>Ineligibility and Suspension Policy</i>)</li> </ul>

	<p><b><u>PUBLIC SERVICES AND PROCUREMENT CANADA (PSPC)</u></b></p> <p><u>For the Code of Conduct for Procurement:</u></p> <ul style="list-style-type: none"> <li>• Matthew Sreter, Senior Director, Strategic Policy Sector</li> <li>• Ricardo Seoane, Manager, Strategic Policy Sector</li> </ul> <p><u>For the Integrity Regime:</u></p> <ul style="list-style-type: none"> <li>• Corri Barr, Senior Director, Integrity</li> <li>• Jenny Etmanskie, Senior Policy Analyst, Integrity</li> </ul> <p><u>From the Office of Small and Medium Enterprises and Stakeholder Engagement:</u></p> <ul style="list-style-type: none"> <li>• Alison Campbell, Senior Director</li> <li>• Jennifer Situ, Economic Policy Analyst</li> <li>• Syed Hasan, Manager</li> </ul> <p><b><u>THE TREASURY BOARD SECRETARIAT (TBS)</u></b></p> <p>Heather Spencer, Senior Advisor, Procurement Policy, Acquired Services &amp; Assets Sector, Office of the Comptroller General</p>
10:30 hrs. – 11:30 hrs.	<p><b>Panel 5:</b></p> <ul style="list-style-type: none"> <li>• <b>Protection of those that do not fall under the purview of the Public Servants Disclosure Protection Act</b></li> </ul> <p><b><u>THE TREASURY BOARD SECRETARIAT (TBS)</u></b></p> <p>Kathleen Clarkin, A/Director, Workplace Policies, Programs, Engagement and Ethics, Office of the Chief Human Resources Officer</p> <p>Diane Gatera, Senior Policy and Program Analyst, Office of the Chief Human Resources Officer</p>
11:30 hrs. – 12:00 hrs.	<p><b>Informal meeting</b> between the representatives of the member states of the subgroup and the Technical Secretariat.</p>
12:00 hrs. – 12:30 hrs.	<p><b>Final meeting</b> between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat.</p>

**CONTACT AUTHORITY FROM THE COUNTRY UNDER REVIEW FOR COORDINATION  
OF THE ON-SITE VISIT, AND REPRESENTATIVES OF THE MEMBER STATES OF THE  
PRELIMINARY REVIEW SUBGROUP AND THE TECHNICAL SECRETARIAT OF THE  
MESICIC**

**COUNTRY UNDER REVIEW:**

**CANADA**

**Mathilda Haykal Sater**

Lead Expert to the Committee of Experts of the MESICIC  
Counsel, Criminal Law Policy Section  
Department of Justice

**MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP:**

**EL SALVADOR**

**Edgar Palacios**

Ambassador of El Salvador to Canada

**SAINT KITTS AND NEVIS**

**Vincent F. Byron**

Attorney General

**TECHNICAL SECRETARIAT OF THE MESICIC**

**Rodrigo Silva**

Legal Officer, Department of Legal Cooperation  
OAS Secretariat for Legal Affairs

**Eduardo Parada**

Legal Officer, Department of Legal Cooperation  
OAS Secretariat for Legal Affairs