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Office of the Public Sector Integrity Commissioner of Canada

2013-14 ANNUAL REPORT

Office of the Public Sector Integrity Commissioner of Canada

Commissariat à l'intégrité du secteur public du Canada

This Report is available on our website at: www.psic-ispc.gc.ca

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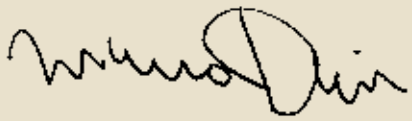
The Honourable Noël A. Kinsella
Speaker of the Senate
The Senate
Ottawa, Ontario K1A 0A4

Dear Mr. Speaker:

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

The report covers the fiscal year ending March 31, 2014.

Yours sincerely,



Mario Dion
Public Sector Integrity Commissioner

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

Dear Mr. Speaker:

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

The report covers the fiscal year ending March 31, 2014.

Yours sincerely,

Mario Dion
Public Sector Integrity Commissioner

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Public Servants Disclosure Protection Act

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

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

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

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

– Excerpt from the Preamble
Public Servants Disclosure Protection Act

Office of the Public Sector Integrity Commissioner of Canada

Our vision

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

Our mission

The Office provides a confidential and independent response to:

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

Our values

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

RESPECT FOR DEMOCRACY
We recognize that elected officials are accountable to Parliament, and ultimately to the Canadian people, and that a non-partisan public sector is essential to our democratic system.

RESPECT FOR PEOPLE
We treat all people with respect, dignity and fairness. This is fundamental to our relationship with the Canadian public and colleagues.

INTEGRITY
We act in a manner that will bear the closest public scrutiny.

STEWARDSHIP
We use and care for public resources responsibly.

EXCELLENCE
We strive to bring rigour and timeliness as we produce high-quality work.

IMPARTIALITY
We arrive at impartial and objective conclusions and recommendations independently.

CONFIDENTIALITY
We protect the confidentiality of any information that comes to our knowledge in the performance of our duties.

The PSIC Values and Ethics Code *was adopted in June of 2012. In addition to the values set out in the* Values and Ethics Code for the Public Sector*, this code includes two values that are central to our work, namely Impartiality and Confidentiality. The* PSIC Conflict of Interest and Post-Employment Policy *was also adopted this year and is effective March 31, 2014.*

Commissioner's message

The time has come once again to look back on the past year's activities. Not only is this review part of our legislated requirements, it also provides an opportunity to reflect upon what works well and what progress may still be made.

Undoubtedly, 2013-14 was highlighted by sustained productivity and a streamlining of our activities. Once again, I am satisfied with our results in relation to both the number and nature of the cases we brought before Parliament, as well as the referrals made to the Tribunal, where the stakes remain high. Further, due to the reengineering of our processes this year, we completed case analyses and investigations within the targets set out in our newly established service standards.

That said, a significant challenge remains before us: making ourselves better known within the federal public sector so that those who witness wrongdoing or feel they have been victimized through reprisal know that they can come to our Office. Indeed, despite our unprecedented outreach efforts, I continue to believe that a large portion of public servants have yet to hear about us or do not clearly understand our role. We will continue to focus our public education efforts via our newly redesigned website, increased social media presence and continued outreach among federal public servants through speaking engagements and exhibitor participation.

I strongly believe we are fulfilling our mandate as envisaged by Parliament in 2006.

Mario Dion
Public Sector Integrity Commissioner

Operational achievements

1

OUR OFFICE SERVES A DEMONSTRATED NEED IN THE PUBLIC SECTOR: A SAFE, EFFECTIVE MECHANISM FOR PEOPLE WITH GENUINE CONCERNS TO COME FORWARD IN GOOD FAITH, KNOWING THAT THEY CAN DISCUSS THEIR CONCERNS OPENLY AND CONFIDENTIALLY WITH AN INDEPENDENT BODY THAT WILL ACT ON THE INFORMATION PROVIDED, OR ASSIST IN GUIDING THEM TO SOMEONE WHO COULD MORE APPROPRIATELY HELP THEM.

This year, our ongoing operations were supported by the sound foundation of processes, procedures and structures that we have been working to improve and solidify over the past several years.

Founded cases of wrongdoing

In 2013-14, we tabled four case reports in Parliament as required under the *Public Servants Disclosure Protection Act* (the *Act*). These reports continue to demonstrate the extent of our mandate over the public sector, as well as the breadth of the definition of "wrongdoing".

The first case report related to the former Chairperson of the Canadian Human Rights Tribunal (CHRT), who committed gross mismanagement by harassing and abusing staff and members of the CHRT, by systematically disregarding advice, and by creating a dysfunctional workplace. The former Chairperson resigned from her position during the course of the investigation. In this case, I recommended that the acting Chairperson of the CHRT assess the need for a workplace wellness initiative and the implementation of means to support the staff who had been subjected to abuse. The CHRT agreed with this recommendation. As well, I highlighted the importance of the government properly

assessing prospective appointees' behaviour and attitude toward subordinates before making any appointment of a deputy head or chief executive in the federal public sector.

The second case report involved the former President and Chief Executive Officer (CEO) of Blue Water Bridge Canada (BWBC), a Crown corporation. The CEO was found to have misused public funds and seriously breached his organization's code of ethics by awarding two excessive severance payouts to two managers, totalling more than $650,000. The former President and CEO resigned from his position during the course of the investigation. The main shortcoming identified in this case was the lack of severance compensation guidelines at BWBC. I was satisfied that appropriate measures were put in place to avoid similar wrongdoing from recurring at BWBC thanks to the Board's adoption of a Severance Pay Policy in February 2012.

Under the *Act*, disclosures of wrongdoing can be made internally within federal organizations, or externally to our Office.

In the third case, our investigation led to the finding that the former President of the Canada School of the Public Service had contravened the *Public Servants Disclosure Protection Act* by failing to protect the identity of persons involved in the disclosure process. He admitted to giving a copy of a letter to all individuals named as alleged wrongdoers in order to urge their cooperation in my Office's investigation, only later realizing his mistake. We were satisfied that he acted in good faith with no intention of causing harm to anyone. Based on these findings, I recommended that the School bring up to date the necessary procedures needed to manage internal disclosures of wrongdoing and establish a process to deal with disclosures being investigated by my Office. I also recommended that the School emphasize the importance of respecting confidentiality when it establishes its new internal procedures. The School accepted the recommendations and took steps to implement them.

Finally, the fourth case of founded wrongdoing constituted a first for our Office as the allegations we investigated were the result of information obtained during the course of another investigation and not from an individual making a disclosure. The findings pertain to the actions of a former Ontario Regional Vice-Chairperson of the Parole Board of Canada who contravened the *Corrections and Conditional Release Act* by interfering in a Parole Board decision despite the presence of a conflict of interest. He also seriously breached the organization's *Code of Professional Conduct* by demonstrating inappropriate behaviour and actions towards female employees, criticizing some Parole Board members to outside parties and disclosing information to individuals who were not authorized to

receive it. As a result of these findings, I recommended that the Chairperson of the Parole Board consider whether discipline would be appropriate, and that a review of the wrongdoer's ability to hold a position of trust be conducted. I also recommended that the Chairperson implement a structured process to assess the past workplace behaviour of prospective Board Members and establish a mechanism to ensure that its *Code of Professional Conduct* is provided to and discussed with all new Board Members. The Chairperson agreed with all recommendations and took various measures to address the issues raised, including terminating the wrongdoer's designation as Regional Vice-Chairperson. Further, the Chairperson recommended to the Minister of Public Safety and Emergency Preparedness that a judicial inquiry be held to determine if the individual should be subject to any further disciplinary or remedial measures.

Under the *Act*, disclosures of wrongdoing can be made internally within federal organizations, or externally to our Office, which is an independent Agent of Parliament. These preceding four case reports, and indeed all of the information contained in this Annual Report, speak only to those disclosures made directly to our Office. In order to gain a more complete understanding of the level of activity under the *Act* and to have a clear picture of the federal disclosure regime, it is also necessary to be aware that disclosures can also be made internally within federal organizations. Information about the activities of the public sector's implementation of the *Act* is gathered and reported by the Treasury Board Secretariat in its own annual report on the *Public Servants Disclosure Protection Act*. It can be accessed at: www.tbs-sct.gc.ca/ve/pda-eng.asp

Reprisal cases

The *Act* gives our Office the exclusive right to deal with reprisal complaints, which are defined to include actions taken against someone for making a disclosure or for cooperating in an investigation into a disclosure. When there are reasonable grounds to believe a reprisal has taken place, we may apply to the Public Servants Disclosure Protection Tribunal for a final ruling on whether a reprisal occurred, and if so, the Tribunal can make disciplinary and/or remedial orders.

This year, we made three applications to the Tribunal in which we had reasonable grounds to believe that reprisal in the most serious form (termination of employment) had taken place at Blue Water Bridge Canada. These reprisals are directly related to the case report we tabled in Parliament earlier in the fiscal year regarding the former President and CEO of BWBC. The cases remain active before the Tribunal and are scheduled to be heard this autumn. For more information, visit www.psdpt-tpfd.gc.ca

When there are reasonable grounds to believe a reprisal has taken place, we may apply to the Public Servants Disclosure Protection Tribunal for a final ruling on whether a reprisal occurred, and if so, the Tribunal can make disciplinary and/or remedial orders.

The *Act* specifically contemplates that reprisal complaints can be conciliated, on the recommendation of the investigator, and with the final approval of any settlement by the Commissioner. This year, using the services of an outside conciliator paid for by our Office, a reprisal file was settled to the satisfaction of the parties and to the Commissioner. The ability of the parties to settle the matter is an important and valuable one, recognizing as it does, that relationships can be restored and that personal interests can be reconciled within a well-functioning public administration.

Operational statistics

This year, with the benefit of some solid progress and operational achievements, we are now able to begin measuring trends and movements within our caseload. The number of disclosures made to our Office has declined to 84 from 113 the previous year. Whether this represents a levelling off or a longer-term trend will have to be determined over time. Reprisal complaints, on the other hand, increased from 24 to 29 over the past year.

Summary of new files received 2013-2014

General Inquiries	Total number of general inquiries received	201
Disclosures	Total number of new disclosures of wrongdoing received	84
Reprisals	Total number of new reprisal complaints received	29

Summary of activity 2013-14

Disclosures		
Total number of disclosures of wrongdoing		168
Number of disclosures of wrongdoing carried over from previous year	78	
Number of disclosures of wrongdoing received in 2013-14	84	
Number of disclosures of wrongdoing (reconsideration) in 2013-14	6	
Completed disclosure files		135
After admissibility review	112	
After investigation	18	
Number of files resulting in a founded case of wrongdoing	5*	
Active disclosure files as of March 31, 2014		33
Currently under admissibility review	19	
Currently under investigation	13	
Case report to be tabled pending outcome of ongoing judicial review application	1	
Reprisals		
Total number of reprisal complaints		44
Number of reprisals carried over from previous years	13	
Number of reprisals received in 2013-14	29	
Number of reprisals (reconsideration) in 2013-14	2	
Completed reprisal files		32
After admissibility review	24	
After investigation	7	
After conciliation	1	
Active reprisal files as of March 31, 2014		12
Currently under admissibility review	2	
Currently under investigation	6	
Currently before the Public Servants Disclosure Protection Tribunal	4	

*5 files resulting in 4 case reports tabled in Parliament

Note: Each disclosure file may contain one or a number of allegations of wrongdoing

Service standards

This is also the first year that we have worked with the new service standards that we introduced in last year's Annual Report. The *Act* already provides a 15-day time limit for us to determine what action to take on a complaint of reprisal, but in addition to this, we applied the following standards to new files, effective April 1, 2013. Subject to exceptional circumstances:

- General Inquiries will be responded to within one working day;
- A decision whether to investigate a disclosure will be made, following full analysis and legal review, within 90 days of a file being opened with our Office;
- Investigations will be completed within one year of being launched.

For 2013-14, all service standards were met.

Summary of results 2013-14

Service standard	Target	Result*
General Inquiries responded to within 1 working day	80%	95% (191 inquiries)
Decision whether to investigate a disclosure made within 90 days	80%	85% (58 files)
Investigations completed within 1 year	80%	100% (10 files)

* The results are based on files received after April 1, 2013 using the number of files completed prior to March 31, 2014, as well as any active files exceeding the standard as at March 31.

These service standards were part of a larger initiative to identify efficiencies and to ensure that each file is given the timely attention it deserves. In addition to implementing these standards, we were also very active this year in addressing structural and procedural issues that contributed to unnecessary delays in the past. We restructured our intake and case analysis function to reduce the number of steps in the review process of new files, a process which included new employees in newly created positions and the elimination of some other positions. We also welcomed a new Director of Operations to our Office to oversee the disclosure and reprisal management process. In addition, we have improved the functionality of our electronic case management system, to further support our goal of fair, thorough and consistent handling of all our files.

2 Building our profile

INCREASING THE KNOWLEDGE OF MY OFFICE'S EXISTENCE AND ROLE AMONG PUBLIC SERVANTS REMAINS A CHALLENGE, DESPITE ONGOING, SUSTAINED OUTREACH EFFORTS.

There are major factors influencing knowledge and understanding of our mandate:

- the sheer size of the federal public sector;
- the options available to public servants for whistleblowing – be it internally within their department, or directly to my Office; and
- the extent to which departments communicate the existence of the disclosure regime.

That said, given heightened visibility in the media following the tabling of our case reports and continued outreach activities within the public sector, the disclosures and reprisal complaints we receive are increasingly within our mandate.

Outreach and engagement

One of the key means of communicating our message continues to be face-to-face interaction. This year, my staff and I participated in 26 speaking engagements with various groups, including federal government departments, Crown corporations, federal councils, public administration professionals, and other interested stakeholders. These presentations are worthwhile opportunities for explaining our role and mandate. In addition, we made presentations to three international delegations and participated as exhibitors at the conferences of the Association of Professional Executives of the Public Service

of Canada (APEX), the Institute of Public Administration of Canada (IPAC) and the Financial Management Institute of Canada (FMI).

We were was also pleased to welcome new members to our advisory committee this year including representation from the Canadian Association of Professional Employees (CAPE) and a professor from the University of Ottawa. The PSIC Advisory Committee meets on a quarterly basis to discuss issues of relevance to the Office and the disclosure regime in Canada.

Launch of new website

The PSIC website is the main source of information about our work. It is often the first in-depth exposure that potential disclosers of wrongdoing and reprisal complainants have to our Office.

In October 2013, we launched our new website (www.psic-ispc.gc.ca), which was redesigned to better tailor our messages and enhance the navigation experience for the end-user. We completed an exhaustive review of website content, as well as the overall look and functionality. Further, given certain legislated and Treasury Board Secretariat policy requirements, modifications were made to our website architecture to make it more accessible, usable and interoperable, in particular for use across various technological platforms.

In the coming year, we will continue to develop or renew our awareness-building tools, which include the release of an online submission tool to make it easier for complainants to come forward, increased social media presence, and targeting audiences that we may not have had the opportunity to reach in the past. This includes finding new ways to liaise with the National Manager's Community – a primary target audience for our work. The elimination of the annual NMC forum poses a challenge in this regard, but we remain receptive to all opportunities to reach managers and other employees across the federal public sector.

Raising our profile will always be a priority so that potential whistleblowers know where to go should they suspect wrongdoing is occurring and that those who seek protection from reprisal are aware of recourses available.

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3

Did you know?

AS STATED IN THE PREVIOUS CHAPTER, AWARENESS OF THE ROLE OF THE OFFICE AND THE COMPLEXITIES OF THE *PUBLIC SERVANTS DISCLOSURE PROTECTION ACT* REMAINS A KEY CHALLENGE. HERE ARE A FEW "DID YOU KNOWS" TO CLARIFY SOME ASPECTS OF THE *ACT* AND OUR ROLE.

Did you know?

Definition of wrongdoing

The *Act* defines wrongdoing as:

(a) a contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act, other than a contravention of section 19 of this *Act*;

(b) a misuse of public funds or a public asset;

(c) a gross mismanagement in the public sector;

(d) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of a public servant;

(e) a serious breach of a code of conduct established under section 5 or 6 of the *Act*; and

(f) knowingly directing or counselling a person to commit a wrongdoing set out in any of paragraphs *(a)* to *(e)*.

Did you know?

How disclosures of wrongdoing are handled at the Office

All disclosures of wrongdoing made to this Office are carefully reviewed to ensure they are within our legislated mandate. In many cases, the review process involves the extensive examination of documents provided and research into factual and legal issues to determine if further action is needed. Further action may include information gathering from the discloser and publicly available sources and, when appropriate, launching an investigation. Some of the factors considered when making this decision include:

- whether the allegations meet the definition of wrongdoing;
- whether the information disclosed has been properly and adequately dealt with, or could more appropriately be dealt with, according to another procedure (for example, human rights violations may be better dealt with by the Canadian Human Rights Commission);
- the length of time that has elapsed since the events occurred (after a certain amount of time, it may serve no useful purpose to deal with the disclosure);
- whether the subject matter of the disclosure results from a balanced and informed decision-making process on a public policy issue. Our role is not to replace or act as a review body of the policy-making function in the public sector, but rather to investigate wrongdoing that may occur in the carrying out of that function.

Potential disclosers should:

- first ask themselves: do I have all the facts; the right documentation to support my disclosure; is this wrongdoing detrimental to the public interest and does it meet one of the definitions of wrongdoing under the *Act*?
- know they have options: they can either disclose to a supervisor or manager, to the senior officer that has been designated in their institution or to our Office. The choice can be made by preference, in relation to the nature of the disclosure or for a personal reason. There is no “right” place to disclose.

Did you know?

Public disclosures

Public disclosures (for example, going to the media) are only permitted when there is not sufficient time to make a protected disclosure and when there are reasonable grounds to believe that the issue:

- constitutes a serious offence under an Act of Parliament or of the legislature of a province; or
- constitutes an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment.

If a public servant goes to the media with a disclosure of wrongdoing that doesn't meet one of these exceptional requirements, and they suffer reprisal action as a result, our Office cannot accept their complaint of reprisal as technically, they never made a disclosure under the *Act*.

It is therefore important for public servants to consider the various recourse mechanisms open to them, including consulting their union, or our Office, among others, to ensure the appropriate approach is taken.

A few words in closing

As I have stated in the past, we are ready to participate in the independent review of the *Act* to be launched by the Treasury Board Secretariat. I am ready to share our recommendations with the independent body who will be responsible for the review based on our experience in implementing our governing legislation.

We look forward to continuing to deliver on our mandate as we pursue our investigations, present findings of wrongdoing to Parliament, refer cases to the Tribunal, and continue to improve on our processes and service delivery.