

Evaluation of the PSIC Disclosure and Reprisal Management Program

Final Report

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**Office of the Public Sector Integrity
Commissioner of Canada (PSIC)**

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1.0 Introduction

The purpose of this report is to present the findings of the evaluation of the Protected Disclosure and Reprisal Management Program at the Office of the Public Service Integrity Commissioner (PSIC). The first section of the report presents the evaluation scope and methodology and provides an overview of the program and its processes. The findings section is divided amongst relevance; design, delivery and efficiency; and effectiveness. The report ends with conclusions and recommendations.

1.1 Scope, Methodology and Limitations

The objective of this exercise was to conduct an evaluation of PSIC's operations with respect to the management of protected disclosures and complaints of reprisal. The evaluation was conducted as scheduled in PSIC's five-year Risk-Based Audit and Evaluation Plan, and in compliance with the coverage requirements outlined in the 2016 Treasury Board *Policy on Results* and the *Financial Administration Act*. Accordingly, the evaluation aimed to provide information on the issues of relevance, design and delivery, effectiveness, and efficiency.

This evaluation covered a three-year period (April 1, 2016, to March 31, 2019), while also occasionally referring to the period since the creation of PSIC in 2007. Included within the scope of this evaluation are program activities, from the reception of disclosures and complaints of reprisals to the tabling of Case Reports to Parliament, including processes for admissibility reviews, investigations and reporting. This evaluation excludes PSIC's communications, outreach and engagement activities; the reception of general enquiries, and the Legal Assistance Requests (LAR) Program.

- A total of 18 key informant interviews were conducted for this evaluation: 15 key informant interviews with PSIC employees and senior management, plus three interviews with external interviewees (including the LEAN Consultant who had previously worked with PSIC and representatives of organizations with similar mandates, for comparative purposes).
- A document review was conducted, which included:
 - PSIC documentation (e.g., departmental reports, publications, policies, web content, operations manuals, research reports, evaluations, program data, financial information, etc.);
 - Other Government of Canada (GOC) documents (e.g., legislative review and report of the Standing Committee on Government Operations and Estimates¹, Annual Report of the

¹ In February 2017, the House of Commons Standing Committee on Government Operations and Estimates (the Committee) decided, at the request of the President of the Treasury Board, to conduct the first statutory review of the Public Servants Disclosure Protection Act (PSDPA).



Public Servants Disclosure Protection Act (PSDPA, the Act), reports of the Auditor General, etc.); and

- Non-GOC documents (e.g., annual reports and documentation from other organizations (e.g., Office of the Integrity Commissioner of Ontario, *Protecteur du Citoyen*, Ombudsperson of British Columbia), and grey literature on integrity regimes.

The evaluation is primarily based on internal perspectives. While literature and some comparative research were undertaken, external or comparative perspectives are limited. Also, although there was abundant literature on integrity and whistleblower protection regimes from a mandate or legislative point of view, limited research was conducted regarding the operational aspects of these systems.

1.2 Program Context, Profile and Description

As a result of a legislative effort driven in part by findings regarding the Sponsorship Program², the PSDPA came into force in April 2007, replacing the Treasury Board's Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace. The PSDPA establishes a procedure for the disclosure of wrongdoings in the public sector, including the protection of persons who disclose the wrongdoings. Section 39 of the PSDPA created the Office of the Public Sector Integrity Commissioner (PSIC), one of two mechanisms for the disclosure of wrongdoings in the federal public sector.

PSIC is an independent organization and the Commissioner reports directly to Parliament. PSIC's stated mandate³ is to strengthen accountability and increase oversight of government operations by:

- providing an independent and confidential process for receiving and investigating disclosures of wrongdoing in, or relating to, the federal public sector, from public servants and members of the public;
- reporting founded cases of wrongdoing to Parliament and making recommendations to chief executives on corrective measures; and
- providing a mechanism for handling complaints of reprisal from public servants and former public servants, for the purpose of coming to a resolution, including through conciliation and by referring cases to the Public Servants Disclosure Protection Tribunal.

² Office of the Public Sector Integrity Commissioner of Canada (2017). *Review of the Public Servants Disclosure Protection Act (PSDPA)*. Submitted to the House of Commons Standing Committee on Government Operations and Estimates (OGGO).

³ Office of the Public Sector Integrity Commissioner (2020-02-09) *Our vision, mandate and values*. <https://www.psic-isp.gc.ca/en/our-vision-mandate-and-values>



The literature on disclosure protection regimes, including the report to the Standing Committee on Government Operations and Estimates for the statutory review of the PSDPA, illustrates that legislative limitations can affect a system's capacity to achieve long-term outcomes in terms of strengthening public confidence and oversight. For instance, some remark that the PSDPA does not cover certain public service agencies, nor the private sector, or, that it relies mostly on individual cases to identify wrongdoing, and so on⁴. In 2017, in the context of the legislative review of the PSDPA, the Commissioner prepared a series of recommendations to improve the Act, some of which could have an impact on operations, including: expanding the definition of reprisal; providing authority to request and use evidence obtained outside the public sector; and giving the Commissioner the power to self-initiated separate investigations based on information obtained in the course of a reprisal investigation. So far, the government has not adopted these changes.

Prior to the evaluation period (namely, in the 2010 Auditor General Report and 2014 Auditor General Case Reports) and during the legislative review of the Act, criticism had been expressed regarding PSIC's case admissibility approach, the length of investigations, and the manner in which investigations are conducted. These documents highlight the importance of the analysis and investigative functions at PSIC, and demonstrate that high expectations are placed upon the overall process.

PSIC's Operations Branch implements the Disclosure and Reprisal Management Program and constitutes most of PSIC's workforce. On the management side, at the time of the evaluation, the organizational chart listed a director of operations (who reports to the Deputy Commissioner and Commissioner), a case analysis manager and two senior investigators (team leads). The case analysis manager is responsible for six analyst positions. The team leads are each managing five investigator positions, including a junior investigator position on each team.

PSIC underwent two LEAN exercises in recent years (one in 2015–16 focused on analysis and one in 2017–18 focused on investigations) to identify means to reduce delays and deal with a backlog of cases. Some changes have been implemented as a result of those exercises, resulting in some tangible improvements in efficiency.

Following are the key steps in the process to manage protected disclosures and complaints of reprisal:

- After a protected disclosure or complaint of reprisal has been received by PSIC in an acceptable format, a case file is opened, and analysts conduct an admissibility review. The admissibility review entails examining the information submitted, and collecting additional information as needed from the discloser or complainant. The objective of the admissibility

⁴ Hutton, David. (2017) *What's Wrong with Canada's Federal Whistleblowing System*. The Centre for Free Expression at Ryerson University.

review is to make a recommendation to the commissioner on whether to launch an investigation or not, based on the parameters defined by the PSDPA.

- During the evaluation period (and, overall since PSIC's creation), most admissibility reviews have resulted in a recommendation to the Commissioner not to launch an investigation. When the Commissioner decides not to investigate, the discloser or complainant is notified through a letter which explains the decision.
- The PSDPA establishes that PSIC has 15 calendar days to determine admissibility of a complaint of reprisal. The 15-day service standard established by PSIC begins once all the documentation has been gathered. PSIC also established its own service standards in 2013 for the admissibility review of disclosures (90 days, which begins as soon as the file is opened), and for the conduct of investigations (one year from the moment an investigation is launched).
- If the Commissioner determines, based on the findings of the admissibility review that PSIC should investigate a disclosure or reprisal case, the file is assigned to an investigator.
 - Most disclosure investigations conducted by PSIC during the evaluation period did not result in the confirmation of founded cases of wrongdoing. In those cases, PSIC's established procedure is to submit a final investigation report to the Commissioner, and notify the parties of the Commissioner's decision.
 - During the evaluation period, most reprisal investigations were closed after investigations found that allegations of reprisals were not founded. In the case of reprisal investigation, a preliminary investigation report (PIR) is always sent to all of the parties for review and comments before a final report is submitted to the Commissioner.
 - In the case of reprisal investigations, investigators can recommend that the parties attempt to reach a settlement through conciliation. Eleven files were closed following a conciliation process during the evaluation period.
 - In cases of reprisals where conciliation is not recommended or does not work, and where the Commissioner concludes there are reasonable grounds to believe a reprisal was taken, the case is referred to the Public Servants Disclosure Protection Tribunal (the Tribunal). This has taken place once during the evaluation period.
- In the case where investigators find the allegation of wrongdoing to be founded (and in all cases of complaints of reprisals), a PIR is developed. The PIR is reviewed internally within PSIC, by operations and legal, and then circulated externally to collect comments from the parties.
- Once a disclosure PIR has been revised based on the comments received, a final investigation report is developed and submitted to the Commissioner for a final decision. Where the Commissioner considers there is sufficient evidence that a wrongdoing has been committed, a Case Report is written and filed with Parliament within 60 days of the decision, presenting the Commissioner's conclusions and recommendations.





2.0 Relevance

Summary: The Protected Disclosure and Complaints of Reprisal Management Program is the operationalization of the PSDPA: activities and objectives are strongly aligned with the mandate as described in the Act. The evaluation found that PSIC operates on an understanding of its specific role in the federal public sector integrity regime, with awareness of and respect for other existing mechanisms. PSIC has been responsive to reviews and judicial decisions, and has developed policies which describe its approach to interpreting the legislation. Some interviewees and external commentators feel that PSIC's mandate as defined in the PSDPA is too narrow to make a strong contribution to the broader strategic outcomes of strengthening public trust and accountability in the public service.

2.1 Alignment with PSIC's Mandate

The Protected Disclosure and Complaints of Reprisal Management Program constitutes PSIC's core operations, in direct alignment with the organization's mandate. The program represents the operationalization of the responsibilities of the organization established by the PSDPA. Although the Act sets certain parameters for decision-making, it does not define the exact manner in which PSIC is to design and conduct its operations. Over time, the organization has experimented with different delivery models, but past and present operational processes have been geared towards meeting the mandate laid out in the Act.

PSIC's mandate is to provide public servants and members of the public with an independent and confidential process for receiving and investigating disclosures of wrongdoing in, or relating to, the federal public sector; to report founded cases to Parliament and making recommendations to chief executives on corrective measures. PSIC's mandate also includes providing a mechanism for handling complaints of reprisal from public servants and former public servants, for the purpose of coming to a resolution, including through conciliation and by referring cases to the Tribunal. The evaluation found that the operations of PSIC are very consistent with this dual mandate.

The PSDPA was also worded to avoid duplication between various recourse mechanisms. Provisions of the Act clearly state that PSIC should not take on a case or pursue investigations where another recourse is in progress, nor where another entity would have legislative jurisdiction or be better positioned to deal with the case at hand. In those cases, the discloser or complainant receives a response from PSIC explaining the rationale for the decision, and suggesting where to turn for next steps⁵. Admissibility reviews and investigations of cases are

⁵ The PSDPA states that PSIC must refer disclosure cases which fall under the *Conflict of Interest Act* to the Conflict of Interest and Ethics Commissioner. This is the only instance in which PSIC would refer a case directly to another organization.

conducted with awareness of and respect for other existing mechanisms. Refinements have occurred over time, but PSIC operates on an understanding of its specific role in the public service integrity regime, which is to investigate disclosures of severe or systemic wrongdoing that represent issues of public interest, and could impact public trust in government institutions.

The PSDPA establishes that federal departments and agencies are accountable for implementing their own internal protected disclosure mechanisms. As evidenced during the 2017 review of the Act, there are different views on the effectiveness and appropriateness of the internal disclosure process. On the one hand, researchers have found that whistleblowers tend to raise concerns internally before they go to an external mechanism⁶ and the bulk of disclosures in the federal public service are done through internal processes. On the other hand, experts, as well as PSIC interviewees, explain that the disclosers may perceive the internal process as riskier^{7,8}. In this regard, PSIC plays a role as an independent entity offering an alternative to the internal process for protected disclosures. PSIC also has sole jurisdiction to investigate complaints of reprisals submitted by public servants who contributed to an investigation of wrongdoing.

2.2 Alignment with Broader Strategic Outcomes

While PSIC's operations are strongly aligned with the organization's mandate and the intent of the PSDPA, the question of the program's alignment with the broader strategic outcomes of the Act is more complex. PSIC's processes are ultimately meant to strengthen public trust and government accountability. The fact that PSIC will not investigate a case where other recourses are ongoing or when a case falls within another entity's mandate is critiqued by some as too narrow in scope⁹. The Federal Court of Appeal instructed the Commissioner to only use his discretionary power to dismiss a complaint of reprisal when it is "plain and obvious" it is out of his jurisdiction, or is not related to a protected disclosure. However, the Act gives the Commissioner significant discretion in determining whether PSIC should or should not investigate a disclosure. The language of the Act also requires interpretation when developing investigative conclusions and determining if a reprehensible act constitutes wrongdoing. For instance: is a wrongful action sufficiently important to be dealt with by PSIC, or to represent wrongdoing as defined by the PSDPA? The way these questions are answered can have an impact on the perceived alignment of the program with its strategic outcomes.

⁶ Vandekerckhove, Wim and Arron Philips (2016). *Section 1: Setting the Scene for Whistleblower Protection*, in Checkmate to Corruption: Making the case for wide-ranging initiative on whistleblower protection.

⁷ Office of the Public Sector Integrity Commissioner of Canada (2017). *Review of the Public Servants Disclosure Protection Act (PSDPA or the Act)*. Submitted to the House of Commons Standing Committee on Government Operations and Estimates (OGGO).

⁸ Public Safety Canada (2015). *Internal Audit of Values and Ethics – Internal Audit and Evaluation Directorate*. <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/2014-ntrnl-dtvl-thcs/index-en.aspx>

⁹ Hutton, David. (2017) *What's Wrong with Canada's Federal Whistleblowing System*. The Centre for Free Expression at Ryerson University.



PSIC has been responsive to reviews, audits and judicial decisions over time to ensure its processes reflect the strategic outcomes of the organization. It has also developed policies to refine and advertise its approach to interpreting the legislation. Two new policies came into effect during the evaluation period regarding disclosures: *the Directive on Disclosures for Assessing the Importance of the Subject Matter* and *the Policy on complaints of Reprisal Arising from Harassment or Workplace Grievances*. These policies were added to other existing policies and have clarified PSIC's stance on important issues. A few interviewees remarked that further clarification may be needed regarding who qualifies as a participant to a protected disclosure investigation in the context of a complaint for reprisal.

Interviewees remarked on the fact that PSDPA is a relatively recent piece of legislation with limited jurisprudence, which means that PSIC sometimes has to make decisions with limited guidance. PSIC strives for consistency of decisions, but staff has indicated that this probably has not always been the case across the organization's history.



3.0 Design, Delivery and Efficiency

Summary: Program design has evolved over time to better align with the mandate and the Act, increase capacity and refine roles, improve efficiency, and leverage technology. All interviewees agreed that some further process improvements can be made.

On Admissibility Analysis

The unpredictable flow and nature of disclosures and complaints, combined with staff turnover and the statutory 15-day standard for analysis of reprisals, create challenges and vulnerability with regards to effectively managing admissibility reviews. It has been observed that cases are sometimes assigned too late. Effective triaging of cases was also identified as a priority.

- The simplified process for admissibility reviews is seen as a positive development. Analysis of admissibility under the Act can be complex, especially for new analysts.
- The review process for admissibility reports is straightforward, but in instances of large volume, strategies can be used to relieve pressure on the case admissibility manager.
- The Case Conference Meeting mechanism for reprisals represents a very useful improvement and some elements of this approach may be useful in assessing disclosures.

On Investigations

The evaluation found that assignment of investigations, as well as investigation planning and monitoring could be improved by optimizing the team lead function. Broadly speaking, in a relatively “top-heavy” structure with two team leads for fewer than ten investigators, there is a sense among staff that a clearer and stronger delegation from the director of operations to the team leads would lead to efficiency gains. Also, the information collection stage of investigations does not present many issues, but delays outside of the investigators’ control can arise. There is a need for ongoing communication and regular updates to team leads and management to quickly identify mitigation strategies and adjust the course as needed.

The review process for final reports and preliminary investigation reports is seen as an important area where improvements are needed to ensure that roles are well understood, expectations of investigative products are clear, and that reviews occur in the most effective and timely manner. The introduction of the “mid-way” meeting preceding the writing of the PIR or final report is a promising development, and should occur at a time when the investigation is sufficiently advanced. It should not replace organic consultations as the investigation is ongoing.

On Cross-cutting Dimensions



- Capacity and workflow are regularly monitored through management level meetings. Yet, some aspects of the processes continue to result in loss of efficiency and unnecessarily tight turnaround times to meet service standards.
- There is a continued need for a new information system which would help staff leverage the body of research/analysis from past cases, for greater efficiency and consistency of analysis and decisions.
- Tools and models can contribute to consistency and expeditious onboarding of new staff.
- The proximity and contribution of the legal function are highly valued in terms of contributing a legal perspective at key junctures.
- Retention of staff can be improved through encouraging a cohesive, collaborative and supportive environment and culture.

3.1 Program Design and Expenditures

Program design has evolved over time to better align with the mandate and the Act, as well as to respond to external reviews and court decisions. To become more efficient, PSIC has increased capacity, refined certain operational roles, and leveraged technology.

Interviewees described important operational changes implemented before the evaluation period. A clear differentiation was established between admissibility analysis and investigations, as a way to ensure a front-end process that is confidential and complainant/discloser-focused. PSIC also adopted an intake approach where complainants and disclosers are asked to provide the information they have, and PSIC is fully responsible for analyzing the nature of the case and assessing whether it warrants investigation. In addition to the statutory timeline (15 calendar days) for the admissibility review of complaints of reprisals established in the PSDPA, PSIC defines its own public-facing service standards for the admissibility review of disclosures and for investigations. Since the creation of PSIC, various operational innovations have been adopted and experimented with, leading to the system used during the evaluation period, which most interviewees described as functional and adequate as a result of progressive improvements.

In 2017–18, PSIC introduced an online intake form. Clients are now able to make a protected disclosure or file a complaint for reprisal online, in addition to existing mailing and faxing options. The uptake of the online method has been considerable (80%)¹⁰. Also during the evaluation and as a result of the LEAN exercise conducted for admissibility reviews, PSIC introduced a simplified process for certain files that are not expected to lead to an investigation. The admissibility review is conducted as usual, but the final product of the exercise is a template designed to be less resource-intensive to complete than a regular admissibility review report. The LEAN exercise also led to the adoption of systematic case management conferences during the admissibility analysis

¹⁰ 2017–18 PSIC Departmental Results Report.

of reprisal complaints. The conference is scheduled as soon as possible after a reprisal file has been opened. The analyst, case analysis manager, director of operations and legal counsel assigned to the case attend this meeting to decide whether additional information is needed, or what direction the analysis should take.

Also during the evaluation period, the two existing senior investigator positions were given the operational roles of “team leads”, namely to allow the director of operations to delegate certain management tasks. The office also created an internal Efficacy and Efficiency Monitoring, co-led by a team lead and senior counsel, in order to carry out projects to improve PSIC’s efficiency (e.g., development of templates, new processes and procedures, etc.).

At the time the evaluation was conducted, PSIC was hiring to staff various positions and attempting to reclassify admissibility analysts from EC3 to EC4, in an effort to improve retention. PSIC was also in the process of adopting a new case/information management system to replace the Office’s current antiquated Case Management System (CMS), which has been an outstanding issue for several years.

The table below indicates that the program spent less than its available budget over the evaluation period. However, expenditures for the program have increased along with the number of cases handled, and with a number of new hires.

Table 1: Operation/Program Financials for PSIC

	2016-17	2017-18	2018-19
Total budgetary authority available	5,202,586	5,279,398	5,382,010
Actual expenditures	3,928,727	4,518,110	5,202,329

Source: GC InfoBase

3.2 Program Delivery

The section below presents findings about program operations as they were implemented during the evaluation period. At the time of the evaluation, PSIC was already working towards addressing some of these issues identified and this section also considers some of those ongoing developments, to maximize the usefulness of the content.

3.2.1 Admissibility Analysis

Reception and assignment of cases

The reception of a disclosure or complaint of reprisals made using PSIC’s intake form (either online, via mail or through fax) represents the first step in the program’s operational process. As interviewees emphasized, the flow and volume of new cases are variable. Although certain time periods are considered “peak”, the nature of new files is unpredictable and has an impact on the



admissibility analysis process, especially given the statutory deadline to analyze complaints of reprisal.

Once a file is opened, the case admissibility manager is tasked with assigning cases to analysts. The manager is also responsible for assessing whether a file is suited to a simplified process.

The assignment of cases to analysts was identified by most PSIC interviewees as a key activity with regards to the timeliness and effectiveness of admissibility reviews. Interviewees explained that different approaches have been tested over time. The preferred approach during the evaluation period has been to assign cases progressively, as other cases are closed, so analysts deal with a manageable number of cases at once. This is to avoid overwhelming the analysts, or having them spend time on prioritization. However, interviewees' views on this approach were mixed. While some are confident that this is a good way to proceed based on previous experience, others are concerned this results in late assignment of cases (e.g., sometimes a month into the 90 days allocated for disclosures). This ultimately impacts the time allocated to review the admissibility report and produce a quality product.

In at least one other organization with a mandate and volume of requests similar to PSIC, cases are handled directly by the analyst who receives the disclosure or complaint (e.g., over the phone or during their day monitoring the online intake system). The manager re-assigns files only if there is a large disparity in workload, but analysts are fully responsible to deal with cases as they come in.

Capacity for admissibility reviews

Interviewees explained that the potentially high volume of files and the tight timelines require strong capacity on the admissibility review side. Analysts deal directly with disclosers and complainants. Interviewees observed that analysis may be complicated when clients misunderstand the role of PSIC; submit a very large volume of documentation with varying relevance; struggle to clearly articulate their case; or are distressed. Analysts have to use the disclosure or complaint material to produce a comprehensive analysis including recommendations to the Commissioner based on their interpretation of the Act, which is also complex. The examples provided by interviewees illustrate how this can be a demanding task, especially for new analysts who need strong guidance and mentoring. Concretely, the work of analysts requires consistent access to a phone and private space to contact clients, and receive call-backs. The ability to receive documentation directly and securely via email could also be beneficial and could create some efficiency gains.

Some mechanisms to deal with a sudden surge of cases have been tested during the evaluation period, including a blitz approach where a senior legal counsel and team lead meet to deal with a number of straightforward admissibility analyses, from reviewing the material to drafting the decision letter. This mechanism was used once to relieve the pressure on the analysis team. One suggestion made internally, (which is used in one of the other organizations consulted for



comparison), is that available investigators (or team leads) be tasked with handling some admissibility reviews, when needed, to deal with an overflow of cases.

Interviewees highlighted that admissibility analysis remains the program component most affected by turnover. An EC3 analyst position is a good entry-level position for young public servants. Since PSIC's recruitment criteria are aligned with the nature of the task and the level at which analysts are expected to perform, analysts are often very capable candidates. These factors, along with PSIC's small size, complicate retention. This represents a significant vulnerability given that an analyst joining PSIC learns by doing: interviewees estimate it takes six months to a year for an analyst to achieve peak performance. Vacancies and the learning period can produce increased pressures on the program if combined with a large volume of new cases, which has been observed during the evaluation period. The constant hiring process also represents a draw on operational resources.

Introduction of the simplified process and case management conference

The introduction of the simplified process is seen by PSIC interviewees as an efficiency gain mostly in that the review process has been delegated: the Deputy Commissioner is the decision-maker and those reports are no longer reviewed by the director of operations. The workload is not necessarily lessened for the analysts themselves who still have to proceed with a sufficient review of the case, but reporting is somewhat lighter than with a regular case.

Triaging is an important step for the efficiency of the simplified process, and for the efficiency of the admissibility review function overall. If a file is misclassified as simplified and assigned later as a result, meeting the service standard may prove challenging. Interviewees all recognize that triaging and prioritizing cases is very difficult because elements of a case are sometimes not evident at the front end. Interviewees agreed that the ability to triage accurately can be acquired with experience over time. One other organization dealing with protected disclosure has a specific assessment grid that analysts use to classify the complexity of cases.

According to interviewees, the case conference meeting mechanism for reprisals is very useful, more so when reviewers have consulted the material ahead of the meeting. The case conference gives an analyst clear direction on next steps and offers an opportunity to unpack and address potential issues right away. The same mechanism could not be systematically implemented for disclosures given the volume of cases. However, check-ins with the case analysis manager, either *ad hoc* or based on an established schedule were perceived as very important to address any uncertainty and prevent errors of interpretation early on. Interviewees noted that drawing conclusions regarding disclosures is often more complex than in the case of reprisals, given PSIC's unique mandate for dealing with reprisal complaints, and the Commissioner's discretions concerning disclosures.

Review process



The case admissibility manager is responsible for quality assurance of admissibility reviews. As a result of the LEAN exercise, analysis reports which do not recommend the launch of an investigation are no longer reviewed by the director of operations, in an effort to avoid back-log. This was seen as a good practice to be enforced and maintained. Interviewees agreed that the director of operations should only see those analysis reports if there is contention, and that this should be flagged early on to avoid significant feedback being provided too far down the admissibility assessment timeline. The same applies for reviewing reports that suggest launching an investigation: interviewees underlined that the director should be consulted in a timely manner. In the case of an overload of cases, it was also suggested that team leads provide back-up support in the review process.

3.2.2 Investigations

Assignment and planning

As with admissibility reviews (and perhaps more so, given the smaller number of investigations compared to admissibility reviews), the timely assignment of cases is important. The workload of investigators may occasionally become heavy when they handle multiple investigations at once. However, interviewees mostly agree that investigations should be launched as early as possible, and that investigators should be able to efficiently divide their time over multiple files. Interviewees indicated that the immediate assignment of investigations should be more fully delegated to team leads, with only an oversight contribution from the director. The investigation plan provides the opportunity for a team lead and investigator to discuss the investigation mandate, define a preliminary scope and first steps. There is, however, a common understanding that the investigation plan is only a starting point and the investigation will likely change course after information gathering begins.

Information gathering and monitoring of progress

Although departments have a legal obligation to cooperate and provide documentation in the context of PSIC investigations, this can still be delayed. The same applies to engaging interviewees (i.e., disclosers, complainants, respondents, witnesses, experts, etc.), in the context of investigations. The Commissioner has the power to subpoena for disclosure investigations, and the review of the PSDPA suggested that similar powers should be granted for reprisal cases. PSIC staff and management interviewed for the evaluation explained that although subpoenas are rarely used, PSIC's ability to issue them factors in improving compliance. Some staff felt that delays in obtaining documents could also be addressed through follow-ups by PSIC senior management. When unreasonable delays occur, having the director of operations, the Deputy Commissioner or the Commissioner contact the Department's or Agency's senior officer may help move the file along. This would require keeping PSIC senior management informed of the pace of investigations, so mitigation strategies can be identified when a file is stalled due to missing information. A representative of another organization which also deals with investigations of protected disclosures explained that when a department or agency delays sending requested documents, the issue is escalated internally. A senior representative of the integrity organization



then reaches out to an interlocutor in the department, to dissipate any misunderstanding and obtain the information faster.

With the understanding that investigators are autonomous and fully responsible for their cases, some interviewees suggested that team leads should be responsible for check-ins with investigators, monitoring progress and provide support and guidance as needed. This could be done through regular bilateral meetings between team leads and investigators on their team. This mechanism would also facilitate troubleshooting of stalled cases, with team leads bringing issues to the attention of the director.

While in the field to conduct interviews, the lead investigator on a case is supported either by another investigator or an analyst. Interviewees emphasized the importance of having two people involved in investigative field work, but several interviewees suggested consistently having two investigators assigned to each investigation (e.g., an experienced investigator or team lead paired with a junior investigator), as is the case in some other organizations. Having two investigators collaboratively leading a file provides built-in redundancy. This reduces the likelihood of a file being transferred mid-course to someone who is not familiar with it, which was observed during the evaluation period. Working in pairs would also involve co-development and peer-review of reports. Pairing investigators was also described importantly as a way to accelerate the onboarding and development of new investigators, with team leads and more experienced investigators able to play strong mentorship roles.

Conciliation process in cases of reprisals

Conciliation is seen by interviewees as an effective mechanism for resolution of reprisal cases that have merit. A successful conciliation is considered a positive outcome, whilst the Tribunal process may be more uncertain for the complainant. A few interviewees wondered if some opportunities are perhaps missed to refer to the Tribunal to get clarifications and jurisprudence on complex cases. Interviewees indicated that an internal toolbox to launch the conciliation process has been developed. One interviewee suggested developing briefing material for the parties as well, on the process and about their roles and responsibilities. Interviewees felt that administrative responsibilities related to conciliation should be fully delegated to the team leads for greater efficiency, and to avoid delays.

Review process

Most interviewees feel the formal review process for preliminary investigation reports and final report needs improvement to ensure it is useful, efficient and timely. The role of team leads as first reviewers of investigative reports is very important to identify issues early on, and achieve a solid first draft. If team leads are kept informed of investigative developments through regular updates, they should be able to thoroughly review a draft report in terms of form and the substance, before it moves on to be reviewed by legal. Interviewees noted that the director of operations should only review reports of founded cases (as was established following the LEAN exercise), but this does not seem to have consistently been the case during the evaluation period.



Interviewees explained that the review process is complicated by the absence of a shared vision between reviewers within operations. During the evaluation, interviewees reported instances of significant changes being recommended by the director of operations very late, and to a product that had already been reviewed by a team lead, and the legal counsel assigned to the case. This indicates the need for stronger communication before a report is drafted. Interviewees all agreed that operations should be the branch signing off on investigative reports. To reduce the risk of contradictory input which can occur when the review is conducted sequentially, some interviewees recommended that complex reports be reviewed collectively, with the investigator, operations and legal in the room together.

In 2019, PSIC introduced a new flowchart illustrating the key milestones for investigations into disclosures, including a mid-way point review at the 12th week mark (four months). This meeting would involve the investigator, team lead and legal counsel, to discuss the upcoming development of the PIR or final report, or to recommend additional investigative steps. Interviewees see the mid-way meeting (or any similar mechanism) as a promising development. In their view, this mechanism can be effective if it occurs at a time when the investigation is sufficiently advanced; allows for all actors to align their vision and provide early feedback; and is given adequate scheduling priority. It was also noted that it should not replace organic consultations as the investigation is ongoing.

3.2.3 Cross-Cutting Dimensions

Quality of writing

The quality of written documents was highlighted by interviewees as fundamental to the work of PSIC. Analysts and investigators are expected to demonstrate very strong writing skills. Models and templates are developed to support consistency in form, tone, style, and level of language. Interviewees felt that the review process, both for admissibility and investigations, should focus on content and substance, while minimizing stylistic review, especially for documents that are not circulated outside PSIC. This is seen as a way to make the review process more efficient while not compromising quality of public-facing documents like decision letters. There is recognition that given the possibility of judicial reviews, reports have to be well done, but this should not make the review process overly resource intensive or time consuming.

Case management

Capacity and workflow are regularly monitored through management level meetings. Yet, some timing issues remain, with staff having to deal with very tight turnaround times in what feels like avoidable circumstances. This can be proactively resolved through enhanced monitoring, which can occur at the operational level between the director, the general counsel, the case analysis manager and the team leads. These discussions would exclude decision-makers if they require discussing the content of ongoing cases. At a case-by-case level, regular check-ins with team leads and the legal counsel assigned to a case can help both monitor and orient developments.



Case/information management system

The limitations of the antiquated CMS are well known, and include imperfect indexing of cases, a limited research function, and the fact the system no longer holds documents. Interviewees described having to deal with multiple systems to store and access information, which is inefficient. Interviewees highlighted that an improved system should allow them to effectively leverage the body of analysis and investigations from past cases (e.g., ability to run key words searches in case documents, coding of decisions). This would contribute to greater consistency. A new system should support rigorous record-keeping and facilitate the live tracking of files by management. A number of interviewees encouraged a full digitalization of operations, to minimize reliance on paper as much as possible.

Operations tools

Models, templates, checklists and various other tools are available to support analysts and investigators. The interviewees indicated that the level of awareness and uptake of existing tools varies and could be elevated. Some interviewees noted that changes to templates and models are frequent and not clearly communicated. All tools (and translations) should be gathered in one agreed-upon location, and when a new resource becomes available or is updated, this should be communicated to drive uptake. Also, and recognizing the variability of cases, many interviewees suggested that additional tools could be developed including:

- Step-by-step guidelines for specific procedures (several interviewees noted that the current manuals are very broad);
- A reference tool for analysts (e.g., including examples of responses, a list of other organizations and their mandates, etc.); and
- Reliable, up-to-date models for communications.

Interviewees noted that this material can: provide a common understanding of roles and expectations; help in quickly onboarding new staff, and support (not replace) mentoring; clearly record processes to avoid ‘reinventing the wheel’ and inconsistencies over time; contribute to sustainable knowledge transfer in the office (as opposed to only relying on the institutional memory of experienced staff). Although projects to develop these tools are undertaken in parallel to core operational functions, interviewees felt they should be awarded adequate priority to be completed in a timely way, by capitalizing on available resources in the office.

Role of the legal function

No interviewees questioned PSIC’s model where legal counsel is embedded within the organization. Interviewees also felt that having a legal counsel assigned to each case was a sound approach, with the objective of this person contributing a legal perspective at key junctures, and being available to answer specific questions. The contribution of the legal function is highly



valued. Most interviewees are aware that legal can sometimes face a high workload, and that the counsels' time must be used strategically.

Service standards

PSIC's targets for meeting service standards are seen as adequate. Overall, interviewees generally agreed that internal processes can be improved so that complainants and disclosers get a decision faster. This being said, a few interviewees wondered whether the one-year service standard for investigations could be extended for funded disclosure cases, given the time and multiple steps required to produce a PIR, gather external comments, and generate a final investigation report. On the other hand, another organization responsible for managing protected disclosures has adopted a one-year service standard for the conclusion of investigations *including* the analysis phase.

Onboarding, retention, and knowledge transfer

As a micro-organization, PSIC faces challenges retaining staff. Interviewees also noted that recruiting can also be difficult given PSIC's particular needs, high expectations, and the nature of its mandate. Turnover has been identified as a program risk creating vulnerabilities especially in periods of high volume. This occurred in 2015–16 as PSIC launched a record number of investigations, while also participating in the legislative review of the Act¹¹.

Some interviewees noted a lack of internal coordination involving all PSIC staff. An interviewee from another organization mentioned they held a short team meeting every two weeks with analysts and investigators to share latest news, good practices, and relevant information on ongoing business.

Interviewees also flagged overreliance on individuals' experience and institutional memory as a risk, and encouraged knowledge transfer through the development of tools and through strong mentoring.

Interviewees also emphasized the importance of a collaborative, collegial, transparent and fair work environment, to retain talent and achieve optimal results. Given the nature of PSIC's work, the potential pressure on the analysis side and the liability risk for investigators, it is important that employees feel supported, informed, able to have constructive discussions and to voice their concerns. Interviewees also stressed that PSIC should embody the highest level of transparency, accountability and integrity, given its mandate.

¹¹ Ibid.

4.0 Effectiveness

Summary: The program provides an effective, independent and confidential process for making protected disclosure of wrongdoing and complaints of reprisals. PSIC has met its service standards during the evaluation period. The ability to meet those standards is always dependent on PSIC's ability to deal with the variability in volume and nature of cases. During the evaluation period, PSIC has presented five Case Reports to Parliament, 11 cases of reprisals were resolved in conciliation and one case was referred to the Tribunal. So far, none of the Commissioner's decisions concerning disclosures have been overturned in court, and PSIC has strengthened its approach on reprisal investigations given less positive results on reprisal-related judicial reviews. The Office is attempting to better track the way in which recommendations are actioned by chief executives following investigation findings. Awareness of PSIC and its mandate remain a major factor in contributing to long-term outcomes.

4.1 Immediate Outcome: Independent and Confidential Process

PSIC is an agent of Parliament and is completely independent as an investigative body. One of PSIC's proposed legislative amendment recommends that the Commissioner be allowed to delegate his or her authority to an *ad hoc* alternate in circumstances where neither the Commissioner nor Deputy Commissioner are able to act on a case, due to conflict of interest or other impediments.

Some of the other legislative amendments concern clarifying and strengthening confidentiality provisions to better protect information about reprisal complaints and information collected during the admissibility review stage for disclosures. The documentation indicates no breaches of confidentiality during the evaluation period. Interviewees confirmed that PSIC staff is strongly aware of the imperatives related to confidentiality.

4.2 Immediate Outcome: Effective Process

The tables below present statistics on cases handled by PSIC over the evaluation period.



Table 2: Statistics on Protected Disclosures (Evaluation Period)

Category / Year	2016-17	2017-18	2018-19
General Inquiries	218	265	316
Total Files¹²	141	166	176
<i>New Files</i>	81	147	148
<i>Carried Over</i>	60	19	28
Closed After Analysis¹³	105	125	138
Total Investigations	22	15	15
Cases Resulting in Wrongdoing	2	3	0
Recommendations by Commissioner	6	9	0
<i>Follow-ups on Recommendations</i>	6	9	0
<i>Actioned</i>	6	9	0

Source: PSIC Annual Reports

Both PSDPA mechanisms for protected disclosures (the internal departmental process and PSIC) registered an increase in disclosure activities in the last five years, i.e., the number of disclosures received, carried over, completed and referred to other processes. Between 2011 and 2017, PSIC received 551 new disclosures, with 94 investigations launched (approximately 17%)¹⁴. During the evaluation period, PSIC launched 52 disclosure-related investigations out of 376 new disclosure files (14%). The proportion of cases investigated was low in the second and third years of that period. The internal disclosure process also registered a lower number of new investigations over the period.

Article 33 of the PSDPA grants the Commissioner the power to launch an investigation into other wrongdoing if information obtained during an ongoing investigation gives reason to believe that a wrongdoing other than the one being investigated has been committed. During the evaluation period, the Commissioner mobilized Article 33 once to initiate new proceedings based on information gathered in the course of an ongoing investigation. Five PSIC disclosure investigations found conclusive evidence of wrongdoing, resulting in 15 recommendations by the Commissioner.

Table 3: Statistics for Complaints of Reprisals (Evaluation Period)

Category / Year	2016-17	2017-18	2018-19
Total Complaints	45	46	65
<i>New Files</i>	31	38	54
<i>Carried Over</i>	14	8	11

¹² Over the evaluation period, 33% of disclosures that were submitted came from members of the public, but interviewees noted that although the origin of the disclosure triggers different articles in the PSDPA, there is no operational difference between protected disclosures made by public servants or the public.

¹³ The case was closed after PSIC determined that the file did not fall within their jurisdiction, for reasons specified in their Act.

¹⁴ Information provided by PSIC, extracted from CMS.



Category / Year	2016-17	2017-18	2018-19
Closed After Analysis¹⁵	35	33	53
<i>After Conciliation</i>	2	6	3
Total Investigations	14	9	5
Total Files Sent to Tribunal	0	1	0

The number of reprisal files received by PSIC increased over the evaluation period. The majority of cases were closed after admissibility review, with a decreasing number of new investigations launched during the period. As noted previously, one case reached the Tribunal, in 2017-18. Eleven cases were resolved in conciliation.

During the evaluation period, nine judicial reviews were launched with regard to PSIC decisions on admissibility or investigations – five were discontinued, one was dismissed for delay, two others were dismissed and are currently under appeal, and one is ongoing. Some additional proceedings initiated before 2015-16 were also ongoing during the evaluation period. In all of PSIC's history, none of the Commissioner's decisions related to cases of wrongdoing have been overturned in Federal Court or in a Federal Court of Appeal. However, seven judicial reviews on reprisals have taken place and PSIC was successful on three of them. Interviewees explained that as a result of these rulings, PSIC improved its approach to reprisal investigations and expects to be more successful in the future.

A note on performance data and reporting

In 2018-19, TBS gathered additional information to report on the internal protected disclosure process, including the types of allegations made and a breakdown of files by cause of rejection and referral to other processes. In Québec, le *Protecteur du Citoyen* presents similar information in its annual reports. The same metrics could be used to provide a more detailed portrait of PSIC's activities. Importantly, PSIC could report on the number of instances where the Commissioner suggested that a discloser contact a different entity: these cases, albeit not handled by PSIC, may yet lead to an investigation and further proceedings following contact with the Commissioner's office. Surveying disclosers and complainants regarding their perception and satisfaction of PSIC's processes has been suggested in the past¹⁶, and would be valuable to gather feedback on the process from a "client" perspective.

Meeting service standards

Meeting service standards is dependent on PSIC's capacity and the volume and nature of incoming cases. In recent years, PSIC has met established service standards consistently, except in 2015-16. During that fiscal year, the volume of cases increased sharply, coinciding with staff departures, participation in the PSPDA review, and a record 36 new investigations launched. The backlog was

¹⁵ The case was closed after PSIC determined that the file did not fall within their jurisdiction, for reasons specified in their Act.

¹⁶ Hutton, David. (2017). "Is the Public Integrity Commissioner a friend or foe of whistle-blowers?". The Hill Times.



addressed as possible with term contracts, and prompted the launch of the LEAN review. The fact that PSIC was unable to meet service standards that year confirms PSIC's risk assessment that the organization can be vulnerable in terms of its capacity to deal with a sudden large volume of cases. It can be noted that while PSIC has exceeded the 80% proportion of disclosure admissibility analysis completed within 90 days by a good margin, the proportion of investigations completed within the one-year mark has slightly gone down over time.

Table 4: Service Standard Success Rates in PSIC

Goal/Year	2013– 14¹⁷	2014– 15¹⁸	2015– 16¹⁹	2016– 17²⁰	2017– 18²¹	2018– 19²²
Respond to 80% of inquiries within 24 hours	95%	99%	90%	99%	97%	99%
Complete 80% of analyses of disclosures within 90 days	85%	84%	33%	88%	90%	97%
Complete 80% of investigations within one year	100%	86%	50%	82%	86%	81%
Determine whether to deal with a complaint of reprisal within 15 days	N/A	N/A ^{23*}	100%	100%	100%	100%

4.3 Long-term Outcomes: Strengthening the Accountability and Enhancing Public Confidence

Ultimately, processes to manage protected disclosures and complaints of reprisals are meant to enhance public confidence in institutions, and contribute to the accountability of government. That is the ultimate objective of the program and the explicit purpose of PSIC as a whole, as part of

¹⁷ Office of the Public Sector Integrity Commissioner of Canada (2014). *2013–14 Annual Report*. ISSN 1925-7732

¹⁸ Office of the Public Sector Integrity Commissioner of Canada (2015). *2014–15 Annual Report*. ISSN 1925-7732

¹⁹ Office of the Public Sector Integrity Commissioner (n.d.). *Service Standards*. <https://www.psic-ispc.gc.ca/en/results/service-standards>

²⁰ Office of the Public Sector Integrity Commissioner of Canada (2018). *2017–18 Departmental Results Report*. ISSN 2561-2158

²¹ Office of the Public Sector Integrity Commissioner (2018). *2017–18 Annual Report*. ISSN 1925-7732

²² Office of the Public Sector Integrity Commissioner of Canada (2019). *2018–19 Annual Report*. ISSN 1925-7732

²³ N/A in the 2014–15 Annual Report; 100% on the PSIC Service Standards Website Page.



the government of Canada's integrity ecosystem. The extent to which the program actually contributes to the pursued objectives is understandingly hard to establish.

The broader impact of PSIC is dependent on people's awareness of the Office and its work, and the availability of information when individuals need to disclose a wrongdoing or file a complaint. This is hard to measure, but various sources²⁴ indicated that PSIC may not be well known and that its mandate may not be clearly understood. Most internal interviewees are also concerned that the program's contribution to detecting or deterring wrongdoing is limited due to a lack of visibility and awareness regarding PSIC's mandate and work.

Whether or not public servants and members of the public decide to disclose or file a complaint also depends on perceived risk and culture within the public service. The 2015 report commissioned by PSIC on whistleblowing and the fear of reprisal noted that about half of Public Service Employee Survey (PSES) respondents who experienced inappropriate behaviours in the workplace did not act for fear of reprisals, felt that disclosure would have made no difference, or feared the process would be complex and onerous.

Critics have previously commented on the low number of PSIC cases being presented to Parliament or reaching the Tribunal. However, in a 2016 decision, Justice Elliott of the Federal Court stated that the regime established by the PSDPA "addresses wrongs of an order of magnitude that could shake public confidence if not reported and corrected", cases involving "a serious threat to the integrity of the public service"²⁵. Some may still see the low number of Case Reports as a sign that the protected disclosure and complaint of reprisal management program is not contributing as strongly as it could to ultimate outcomes. But given PSIC's responsibility for dealing with aggravated issues, and the fact that a number of other mechanisms exist in the public service to report reprehensible acts, it is not so surprising.

PSIC itself does not have the power to order corrective action, sanction wrongdoers, or seek injunctions to put an end to ongoing misconduct. The literature on whistleblower regimes often suggests that interim relief should be granted after a preliminary determination, given that reprisal complaint cases can stretch out over a long period. The legislative amendments recommended by the Commissioner included providing the Tribunal with the authority to award interim remedies, to have the complainant's legal fees reimbursed, and to increase the maximum amount awarded for pain and suffering.

The Report of the Standing Committee on Government Operations and Estimates concerning the PSDPA notes that the Commissioner should be given more power to follow-up on his

²⁴ Paige, Andrée (2017). *Evaluation of PSIC's Outreach and Engagement Strategy, Initiatives and Activities (April 1, 2012 – March 31, 2015)*. OTUS.; Dowden, Craig (2016). *The Sound of Silence: Whistleblowing and the Fear of Reprisal*.; Phoenix SPI (2015). *Exploring the Culture of Whistleblowing in the Federal Public Sector*.

²⁵ Federal Court Decision (2016). Canada (Attorney General) v. Canada (Public Sector Integrity Commissioner), 2016 FC 886, T-2368-14.



recommendations to ensure compliance. Most of the five Case Reports to Parliaments published during the evaluation elicited responses or commitments from Departments to address wrongdoing identified by the Commissioner. Practically speaking, if a Department or Agency does not respond appropriately to the Commissioner's recommendations, PSIC does not have the power to apply additional corrective measures. In 2018–19, PSIC developed a new indicator to capture the percentage of recommendations that are followed up on after the tabling of Case Reports. The Commissioner hopes this will help demonstrate the impacts and benefits of PSIC's services.



5.0 Conclusions and Recommendations

The evaluation found that the Disclosure and Complaint of Reprisal Management Program is in strong alignment with PSIC's mandate, as defined in the PSDPA. The regime created by the Act may present certain limitations in terms of achieving broader strategic outcomes of strengthening public confidence and accountability, but it is beyond the control of PSIC operations. These limitations were identified during the 2017 legislative review of the Act and some are covered in the legislative amendments recommended by the Commissioner.

Program design has evolved over time, in response to various external processes (including judicial reviews), and as a result of testing different models and structures over time. The program underwent two LEAN exercises to identify ways to improve efficiencies, and some of the improvements implemented have been successful, including a certain redistribution and delegation of responsibilities, the development and adoption new tools and mechanisms, and an overall increase in operational capacity. However, some challenges and loss of efficiency remain, namely concerning the review process, for both admissibility and investigation reports. The team lead position is relatively new and there were a number of suggestions that were made to further leverage the team leads positions, namely regarding: assignment of investigation cases, ongoing support and oversight of investigations, handling the process for conciliation, providing a strong and constructive review of draft investigation reports based on a cohesive operational perspective, and occasionally supporting the analysis function.

In terms of meeting its immediate outcomes, the program provides a confidential and independent process for the management of protected disclosure and complaints of reprisal. PSIC has been managing an increasing number of new disclosures and complaints, most of them not triggering investigations. The organization has met all service standards during the evaluation period, but is aware of the need to maintain its readiness to deal with a sudden surge of cases.

The program has filed five Case Reports to Parliament during the evaluation period, with departments mostly offering a satisfactory response. In the same period, PSIC achieved 11 reprisal case resolutions through conciliation and made one referral to the Tribunal. None of the Commissioner's decisions on disclosures have ever been overturned in Court, and although PSIC has not seen the same success related to judicial reviews of reprisal cases, improvements are expected to yield better outcomes in the future.

Based on the findings of this evaluation, the following recommendations are offered to improve the Protected Disclosure and Complaints of Reprisal Management Program. PSIC should:

1. Continue to encourage and support full and effective delegation of tasks in order to minimize delays, especially tasks that can be delegated from the director of operations to the team leads. This would include assignment of and regular follow-ups on investigation cases, mentoring, and logistics of the conciliation process.



2. Create contingent capacity by:
 - a. Having two investigators involved in each investigation; and
 - b. Leveraging the capacity of team leads to conduct admissibility reviews or act as reviewers for admissibility reports, when the flow of cases causes increased pressures on the case admissibility manager function.
3. Continue to develop and support the utilisation of a comprehensive suite of up-to-date models, step-by-step process guides, and other tools to: 1) enhance efficiency for all staff, 2) accelerate the onboarding and learning of new analysts and investigators, 3) increase consistency and quality of written products, and 4) support sustainable transfer of knowledge from experienced staff members.
4. Adopt a new information and case management system that would allow for: 1) effective and detailed monitoring of ongoing cases in real time, 2) research on past cases to help support consistency of decisions and learning, and 3) effectively capture data for reporting.
5. Capture and publish statistics on the outcomes of cases managed through the program by type of allegation, and provide more detailed information on the volume of cases closed after admissibility reviews where the Commissioner had suggested that a disclosure or complaint could be better dealt with by a different organization.
6. Continue efforts to support retention of staff, which should include an emphasis on ensuring a transparent, collegial, collaborative and supportive work environment.
7. Improve the review process for investigation reports by:
 - a. Ensuring that the first review done by operations is rigorous, constructive and aligned with a common understanding of the case by operations;
 - b. Ensuring there are mechanisms in place (either organic check-ins or pre-set meetings) for input from operations and legal to be provided in a timely way and avoid major changes having to be made to a product late in the review process; and
 - c. Establishing a shared understanding of the purpose of the review process and the different roles and responsibilities of reviewers, with an understanding that different products may warrant different levels of review.



Appendix A: Evaluation Matrix

Questions	Indicators	Data Sources
<i>Relevance</i>		
1. To what extent are the activities and objectives of the Disclosure and Reprisal Management Program consistent with PSIC's mandate and strategic outcomes?	<ul style="list-style-type: none"> • Alignment with PSIC's mandate and objectives • Alignment with the Act • Data and views on alternatives for disclosures, other than through PSIC (i.e., internal to departments) 	<ul style="list-style-type: none"> • Document /Administrative review • Key Informant Interviews
<i>Design, Delivery and Efficiency</i>		
2. To what extent is the design and delivery of the Disclosure and Reprisal Management Program optimal to achieve objectives efficiently?	<ul style="list-style-type: none"> • Data and views on program operations and processes, including suggested alternatives or improvements for: <ul style="list-style-type: none"> ○ Reception of disclosures and complaints of reprisal (triage and prioritization) ○ Case management/record keeping ○ Case admissibility reviews for disclosures ○ Case admissibility reviews for complaints of reprisal ○ Investigations into disclosures ○ Investigations into reprisals ○ Conciliation ○ Reporting, receiving comments ○ Formulating recommendations ○ Access to support resources (e.g., Wiki, guidelines and manuals) ○ Access to/role of legal ○ Service standards ○ Factors that support/hinder efficiency 	<ul style="list-style-type: none"> • Document /Administrative review • Interviews
	<ul style="list-style-type: none"> • Program data <ul style="list-style-type: none"> ○ Trends in number/nature of enquiries, disclosures, investigations and decisions (trends over time) ○ Average length of admissibility reviews and investigations for protected disclosures by category (e.g., made by public servants vs made by the public, by type of wrongdoing) ○ Average length of admissibility reviews and investigations for complaints of reprisals by category (e.g., nature of the complaint, type of reprisal) 	<ul style="list-style-type: none"> • Document /Administrative review

	<ul style="list-style-type: none"> ○ Cost to deliver the program (resources per case, by type if possible) 	
	<ul style="list-style-type: none"> • Data and views on implementation and impact of LEAN reviews • Operational alternatives/lessons learned/best and promising practices from other whistleblower protection regimes 	<ul style="list-style-type: none"> • Key informant interviews • Literature review
<i>Effectiveness</i>		
3. To what extent is the Disclosure and Reprisal Management Program achieving intended outcomes?	<ul style="list-style-type: none"> • To what extent is the program achieving its intended outcomes: <ul style="list-style-type: none"> ○ Percentage of cases addressed within established service standards (DRI) ○ Percentage of recommendations actioned by chief executives following investigation findings (DRI) 	<ul style="list-style-type: none"> • Document /Administrative review
	<ul style="list-style-type: none"> • Evidence/views on the overall effectiveness of processes, and the extent to which PSIC provides an effective, independent and confidential process for the management of disclosures and complaints of reprisal • Evidence/views on the extent to which program processes and case outcomes contribute to strengthened accountability and oversight of government operations • Views on the extent to which the program enhances public confidence in the integrity of public servants and public institutions 	<ul style="list-style-type: none"> • Document /Administrative review • Key informant interviews



Appendix B: Interview Guide

Evaluation of the Disclosure and Reprisal Management Program

Master Key Informant Interview Guide (interviewer version)

Introduction

The Office of the Public Sector Integrity Commissioner of Canada (PSIC) has engaged the services of Goss Gilroy Inc. (GGI) to undertake an evaluation of the Disclosure and Reprisal Management Program. This evaluation will be particularly focussed on program operations.

A major component of this evaluation is key informant interviews with program stakeholders. These interviews are an opportunity for individuals to share their experiences with and opinions regarding program operations. This interview will take approximately 45–60 minutes to complete.

This interview is voluntary and the information you provide will be kept confidential and managed in accordance with the *Access to Information and Privacy Acts*. Findings will be used only for evaluation and research purposes.

Background

1. [All] Please describe your role with respect to the Disclosure and Reprisal Management Program. How long have you been in this role?

Relevance

2. [All] In your view, how well does the program, as currently designed, support the achievement of PSIC's mandate and the Act? (Q1.1 and Q1.2)
3. [All] What role does the program play considering other existing mechanisms for disclosures of wrongdoing or complaints of reprisal in the public service? (Q1.3)



Design and delivery

4. [Senior level only] Which parts of the process for managing disclosures of wrongdoing would you say are effective or work well? What about the process for managing complaints of reprisal?
5. [Senior level only] What challenges affect operations for the management of disclosures of wrongdoing? Of complaints of reprisal?
6. [Staff only] In order to collect your feedback on program operations, we would like to walk-through program processes with you. For each of the steps defined below that you can comment on, what are the effective practices you have noted and challenges, if any? In terms of the challenges, how are they typically addressed? (Q2)
 - a. Reception of disclosures and complaints of reprisal and initial case analysis (*prompt: differences between disclosures from public servants or from the public; differences for wrongdoing or complaints of reprisal, role of the manager*)
 - b. Triaging, prioritization and assignment of cases (*prompt: differences between disclosures from public servants or from the public; differences for wrongdoing or complaints of reprisal*)
 - c. Case admissibility review
 - i. Prompts:
 - ii. Collecting information/contacting the discloser or complainant
 - iii. Analysis against the Act
 - iv. Time limit extension (complaint of reprisal)
 - v. Case conference meeting (complaint of reprisal)
 - vi. Case admissibility report/non-jurisdiction report
 - vii. Notices and decision letter
 - viii. Review process for report and decision letter
 - ix. Withdrawal (complaints of reprisal)
 - x. Request for reconsideration
 - d. Review of file, investigation plan and plan review
 - e. Investigation and information gathering
 - i. Prompt: Access to document or information from senior officer and other sources
 - ii. Preparation and conduct of interviews with complainant, person under investigation, expert and ordinary witnesses
 - f. Recommendation of conciliation (for complaints of reprisal)
 - g. Preliminary investigation report (PIR) and internal review process
 - h. Receipt of comments from parties on PIR
 - i. Final investigation report and report review process
 - j. Commissioner's final decision and decision letter
 - k. Referrals to Tribunal (for complaints of reprisal)
7. [Staff only] Have you noted any effective practices or challenges as they relate to the following cross-cutting dimensions? (Q2)
 - a. Case management/record keeping
 - b. Access to support resources (e.g., Wiki, guidelines and manuals)
 - c. Service standards
 - d. Access to/role of legal



8. [All] To your knowledge, how have the LEAN exercises impacted the delivery of the program? (Q2)

Effectiveness and Efficiency

9. [All] In your view, to what extent does the program provide a process for the management of disclosure and complaints of reprisal that is (Q3):
- a. Timely?
 - b. Effective?
 - c. Independent?
 - d. Confidential?
10. [All] In your view, to what extent do program processes and case outcomes contribute to PSIC's objectives (Q3):
- a. strengthened accountability and oversight of government operations?
 - b. enhanced public confidence in the integrity of public servants and public institutions?
11. [All] Have there been any unintended impacts of the current design and implementation of the Disclosure and Reprisal Management Program (positive or negative)? (Q3)
12. [All] What main factors (internal/external) help or hinder the effectiveness of the program? (Q3)
13. [All] What would you identify as priority areas for improvement for the Disclosure and Reprisal Management Program? (Q3)
- a. [All] Do you know of alternatives/effective practices from other regimes/organizations that could be adapted and adopted by PSIC to improve the delivery of the program? (Q2)
14. [All] Do you have any other suggestions or comments concerning the program?

Thank you

