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of Canada

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Audit of the Office of the Correctional Investigator

A report by the Public Service
Commission of Canada

October 2007



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*All of the audit work in this report was conducted
in accordance with the legislative mandate and audit policies
of the Public Service Commission of Canada.*

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Summary

1. In 2005, for the coming into force of the current *Public Service Employment Act* (PSEA), the Public Service Commission (PSC) signed a new Appointment Delegation and Accountability Instrument (ADAI) with the Office of the Correctional Investigator (OCI). Subsequently, an audit published in 2006 by the Office of the Auditor General of Canada (OAG) reported that the OCI's human resources practices were poor. The purpose of the current audit was to determine whether the OCI had implemented an appropriate staffing management framework, as well as systems and practices, in accordance with the ADAI. The audit also determined the extent to which the OCI's staffing activities and transactions complied with the previous and current PSEA, relevant policies, and the delegation instrument signed with the PSC. The audit covers the period from April 1, 2004 to December 31, 2006.
2. We examined 10 appointments. We found that nine of the 10 appointments did not comply with the PSEA, relevant policies and/or the appointment values. We found appointments that were not made in accordance with the sub-delegation instrument, did not comply with the merit principle or did not respect the PSC Appointment Policy governing non-advertised processes. Our audit revealed a staffing pattern at the OCI that compromises the appointment values of fairness, transparency and access. We found that all six new indeterminate employees had prior experience at the OCI that was acquired through casual employment, temporary help agencies, long-term acting appointments or Interchange Canada. These employees had performed the duties of the positions for periods of two to four years, prior to being appointed indeterminately, giving them an advantage.
3. The OCI developed a human resources plan designed to address major challenges to meet its business objectives. We found that very little preliminary work had been done to implement the plan. The OCI also developed a staffing monitoring model but did not implement it.
4. We were generally satisfied with their framework and improvements in the challenge function of the service provider, Public Safety Canada. To strengthen this framework, we recommended that the OCI establish and implement a human resources plan and a staffing monitoring system. Accordingly, the PSC has decided not to withdraw the delegation of staffing authorities from the organization. Instead, the PSC has imposed a condition on this delegation. The Correctional Investigator must submit quarterly progress reports to the PSC, who will closely monitor staffing. This condition will remain in effect until the PSC is satisfied with the integrity of the OCI's staffing activities.
5. The Correctional Investigator has agreed with our recommendations. The OCI's detailed response follows the conclusion of this report.

Introduction

6. The role of the Correctional Investigator was established in 1973. The *Corrections and Conditional Release Act* (Part III), proclaimed in November 1992, is the current enabling legislation. The Correctional Investigator is independent of the Correctional Service of Canada (CSC) and has a mandate to function as an ombudsman for federal offenders. The Correctional Investigator may initiate an investigation on receipt of a complaint by or on behalf of an offender. In addition to addressing individual complaints, the Correctional Investigator also has responsibility to review and make recommendations on the CSC's policies and procedures to ensure that systemic areas of concern are identified and appropriately addressed.
7. The Correctional Investigator of Canada, appointed by the Governor in Council, heads up the Office of the Correctional Investigator (OCI). The current incumbent was appointed effective April 1, 2004. As of December 2006, the OCI had 25 employees, all reporting to the Executive Director, who in turn reports to the Correctional Investigator. The majority of employees are investigative staff.
8. The OCI does not have its own corporate human resources unit and uses the services of Public Safety Canada (Public Safety), formerly known as Public Safety and Emergency Preparedness Canada. During the period covered by our audit, Public Safety provided the OCI with staffing advice and services.
9. We conducted this audit following an audit released in 2006 by the Office of the Auditor General of Canada (OAG). The OAG audit reported poor human resources practices for the period April 1, 1998 to March 31, 2004. The OAG noted that when competitions were held, the successful candidate was frequently already working within the OCI on a casual or term appointment, on secondment, or as a participant on the Interchange Canada program.

Focus of the audit

10. The objectives of the audit were to determine if the Office of the Correctional Investigator (OCI) has an appropriate framework, systems and practices in place to manage its staffing activities. The audit also determined the extent to which the OCI's staffing activities and transactions complied with the previous and current *Public Service Employment Act* (PSEA), relevant policies, and the delegation instrument signed with the Public Service Commission (PSC).

11. We reviewed and analyzed the documents relating to the OCI's staffing framework, activities and transactions. We also conducted interviews with OCI's managers involved in staffing activities, OCI's employees, human resources advisors of the service provider, and PSC representatives. We also reviewed all staffing transactions, under both the previous and the current PSEA, for the period from April 1, 2004 to December 31, 2006.
12. For more information, see **About the audit** at the end of this report.

Observations and recommendations

Staffing transactions did not comply with the PSEA or with policies

13. We expected the Office of the Correctional Investigator's (OCI) staffing transactions to comply with the previous or the current *Public Service Employment Act* (PSEA) and with relevant policies. We also expected staffing decisions to be supported by sufficient and appropriate documentation.
14. We examined four staffing transactions completed under the previous PSEA and found two staffing transactions that were not in compliance with the Act. In one instance, an individual was given an acting appointment without meeting the essential qualifications for the position. In the other instance, a change in the effective date of the appointment was made in a letter of offer by an individual who did not have the sub-delegated authority to do so.
15. We examined four staffing transactions under the current PSEA, in force as of December 31, 2005, and found that none of the three non-advertised processes conducted by the OCI was in accordance with the Public Service Commission's (PSC) policy on choice of appointment process. The policy states that processes must be consistent with appointment values and that deputy heads must ensure that a written rationale demonstrates how a non-advertised process meets the established criteria and the appointment values. Furthermore, the file must document the reasons for appointment decisions. We found that the rationales on OCI's files focussed on operational needs but did not demonstrate how the choice of appointment process met the OCI's criteria for non-advertised processes or how the process respected the appointment values.

Essential experience was acquired through temporary assignments

16. Our audit revealed a staffing pattern of concern at the OCI. For the period from April 2004 to December 2006, the OCI hired six indeterminate employees. All six had prior experience at the OCI which was acquired through casual employment, temporary help agencies, long-term acting appointments or Interchange Canada.
17. The experience acquired at the OCI allowed the six successful applicants to be screened in when applying for indeterminate employment. This is unfair to other external applicants who did not have the opportunity to gain this experience and then apply. Moreover, these six successful applicants received on-the-job training and gained knowledge of the organization and its practices that they would not have acquired otherwise. Senior officials of the OCI told us that they try out individuals because they operate in a difficult environment that requires specialized qualifications. This compromises the appointment values of fairness, transparency, and access (**Exhibit 1**).

Exhibit 1: Prior experience is an advantage

1. In 2002 and 2003, the Office of the Correctional Investigator (OCI) retained the services of two individuals, who had no experience interacting with federal offenders, through a temporary help agency. Both were retained on a continuous basis until 2006, either through casual employment or through contracts with a temporary help agency. The statement of merit included “interacting with federal offenders” as an essential qualification. In February 2006, the OCI sent a request to Public Safety to appoint the two individuals through non-advertised external processes. In May 2006, both individuals were appointed on an indeterminate basis. Had the individuals not worked at the OCI, they would not have acquired the essential experience and would not have qualified for the available positions. Their previous work experience with the OCI provided them with an advantage.
2. In August 2004, an individual was deployed to the OCI and given an immediate acting appointment, without competition, two levels above the individual's substantive level. One of the essential qualifications for the position was experience “interacting with offenders/parolees and taking complaints from them or their families.” At the time that the acting appointment was made effective, the individual did not meet this qualification, as required by the *Public Service Employment Act* (PSEA). The file did not provide an explanation as to why the individual had been selected for the acting opportunity, nor did the assessment on file explain how the individual met the requirements of the position. The acting appointment was subsequently extended to June 2006. In April 2006, the OCI conducted an advertised process open to the OCI and two other federal organizations in the National Capital Region. We found documents on file which indicate that the hiring manager discounted certain essential qualifications held by candidates other than the selected person. The individual who had been acting was the only candidate who was deemed to meet all of the essential qualifications, including experience with federal offenders. In June 2006, the individual, who had been acting since August 2004, was appointed on an indeterminate basis to the position. The individual's previous employment with the OCI provided him or her with an advantage.

Source: Audit, Evaluation and Studies Branch, Public Service Commission

18. Furthermore, for the other three appointments not discussed in the exhibit above, we did not find documentation on file to demonstrate that these individuals had all of the required experience, such as conducting investigations, prior to their work at the OCI.
19. OCI officials informed us that the organization ceased using casual appointments to fill vacant positions, as of early 2006. We noted that two of the six new indeterminate employees joined the OCI through Interchange Canada. On March 30, 2007, another individual participating on Interchange was appointed through a non-advertised process into a vacant indeterminate position, as agreed to in January 2005. We expected the OCI to use Interchange in accordance with the intent of the Interchange Canada program. Interchange is designed to be a skills-exchange program with a developmental focus and is not designed to be a staffing or probation mechanism. Participants of the program are expected to return to their home organization. As of June 2007, we noted that two vacant positions were occupied by participants on Interchange.

OCI's 2006-2007 staffing strategy is not consistent with the appointment values

20. We expected staffing activities within the OCI to be consistent with its human resources plan and aligned with the organization's business plans. Human resources planning enables staffing activities to support the organization's business priorities by ensuring that competence is maintained, skill shortages are minimized, renewal of staff is assured, and other human resources priorities are addressed.
21. During the period covered by our audit, like other departments and agencies, the OCI was required to implement the current PSEA while having to deal with its own unique set of circumstances. For example, the OCI was faced with the unforeseen three-month absence of a key senior manager, and was responding to requests of the Office of the Auditor General of Canada (OAG) who was conducting an audit of the OCI.
22. The OCI developed a Corporate Human Resources Plan in April 2006. The plan is comprehensive and identifies a number of actions designed to address issues the OCI identifies as major challenges. These challenges include, for instance, the impact of departures on operations and the difficulty of attracting and retaining new talent in a small organization.
23. Although the plan called for the development of a succession strategy, a review of the organizational structure, and the development of a learning and development policy in order to address these challenges, we found that none of these planned actions had taken place, and very little preliminary work had been done.

24. The plan included a strategy for the staffing of five positions in fiscal year 2006-2007. The OCI identified asset qualifications and the type of appointment process to be used for four of these positions. The staffing strategy also indicated that, at the time, three of these positions had been filled through an acting assignment or on a casual basis.
25. In 2006, in accordance with the staffing strategy, the OCI used an internal advertised appointment process with restricted area of selection and two external non-advertised processes to staff three positions. We found that the three persons ultimately appointed had previously occupied these positions either through acting appointments or on a casual basis.
26. We are concerned about the OCI's staffing strategy. Our audit revealed that the staffing strategy pre-identified the results, more specifically for the cases of external non-advertised processes. The Corporate Human Resources Plan states: "the decision to proceed with a non-advertised process was taken because of the wish to regularise the situation of two long time employees without indeterminate status." These two individuals were in a combination of multiple contract or casual work arrangements for periods of between three to four years.
27. We noted that the other four indeterminate employees who had acquired prior experience at the OCI occupied positions through temporary assignments of approximately two to three years. In our opinion, having individuals occupy vacant positions through temporary arrangements for such long periods makes it difficult to make indeterminate appointments on a basis that respects the appointment values.
28. The OCI conducted staffing activities for long-term needs on an ad hoc basis. Under the current PSEA, appointment decisions must be supported by sound human resources planning that is consistent with values-based staffing. The OCI may want to give consideration to the creation of a pool of pre-qualified investigators when designing its staffing strategy.

Recommendation 1

The Correctional Investigator must establish and implement a human resources plan that includes a staffing strategy linked to its operational and business plans and that supports a manager's ability to make appointment decisions quickly and in accordance with the appointment values.

Recommendation 2

The Correctional Investigator must ensure that every staffing decision respects appointment values. When a non-advertised process is used, the rationale must be on file and must demonstrate how the process meets the established criteria and the appointment values.

The service provider improved its challenge function

29. We expected the service provider's human resources advisors to provide appropriate advice and guidance to managers, including an effective challenge function, throughout the staffing process. We also expected OCI managers to have access to trained human resources advisors whose expertise in the Appointment Framework had been validated by the PSC.
30. In its November 2006 report, the OAG reported that Public Safety Canada (Public Safety), formerly known as Public Safety and Emergency Preparedness Canada, had a duty to challenge some of the problematic human resources practices at the OCI for the period starting April 1, 1998 and ending March 31, 2004. The OAG reported that Public Safety simply processed whatever it received from the former Correctional Investigator without challenging it.
31. Under the former PSEA, we found that the service provider had not provided an effective challenge function for two of the staffing transactions conducted as required. However, we found that as of September 2005, Public Safety human resources advisors had started to fulfill a challenge function in staffing matters. For instance, we found that Public Safety challenged OCI's managers on the decision to proceed with external non-advertised processes. Furthermore, during our interviews, Public Safety informed us that they had an internal process to deal with contentious staffing files with its client organizations.
32. OCI managers have access to Public Safety human resources advisors whose knowledge in the appointment framework has been validated by the PSC. These advisors have successfully completed the PSC Appointment Framework Knowledge Test on the current PSEA and have received appropriate staffing training.

Monitoring activities were not sufficient

33. The Appointment Delegation and Accountability Instrument (ADAI) requires that deputy heads put into place a management framework based on the PSC's Staffing Management Accountability Framework (SMAF). The PSC communicates to departments its expectations for a well-managed appointment system that respects the PSEA through the SMAF. In December 2005, the OCI implemented its own management framework based on the PSC's SMAF. The OCI's staffing management accountability framework includes mandatory indicators for reporting to the PSC.
34. We expected the OCI to monitor its staffing activities and systems in order to identify trends and practices and make improvements where needed. Monitoring should focus on areas of risk, such as staffing trends, at regular intervals in order to detect weaknesses.

35. The OCI developed a staffing monitoring and reporting model requiring semi-annual reviews and assessments of staffing activities against human resources plans, and semi-annual reviews of the organization's progress in putting in place the practices outlined in the PSC's SMAF. The OCI did not implement these measures.
36. OCI managers told us that all staffing actions are discussed at the management table as well as at staff meetings. Typically, upon completion of a staffing action, managers debrief one another on the process and on lessons learned. This current approach to monitoring does not permit the organization to effectively monitor staffing trends, detect weaknesses or respond to areas of risk.

Recommendation 3

The Correctional Investigator must implement a staffing monitoring system to assess progress achieved against planned results and to identify and respond to areas of risk.

Supporting mechanisms and policies have been developed

37. We expected that written sub-delegation of appointment authorities would be granted to officials who exercise staffing authorities at the OCI. We also expected that roles, responsibilities and accountabilities for staffing activities would be clearly defined, communicated and understood by sub-delegated officials and the service provider. Moreover, we expected that sub-delegated officials would have access to the training and tools necessary to exercise their staffing authorities.
38. A standard ADAI was signed between the PSC and the OCI on November 8, 2005. The ADAI identifies the delegated appointment and appointment-related authorities, those authorities that the organization may sub-delegate, the conditions of the delegation and how the OCI is to be held accountable.
39. On December 31, 2005, the Correctional Investigator sub-delegated human resources authorities to selected OCI managers. The sub-delegation instrument clearly defines the roles and responsibilities of the OCI Management Committee, the service provider's human resources advisors, and OCI managers in the area of staffing. Sub-delegated managers were given access to necessary training and tools such as staffing checklists and a manager's handbook.

40. We expected the OCI to have developed and approved the mandatory appointment policies and criteria that promote values-based staffing. We found that the OCI developed mandatory policies regarding Area of Selection (including National Area of Selection), Corrective Action and Revocation, and criteria for non-advertised processes. These policies and criteria were approved by the Management Committee in December 2005.
41. We found that the OCI used a variety of mechanisms to provide its managers and employees with relevant information on staffing policies. We also confirmed that copies of the mandatory policies have been shared with the service provider's human resources advisors.

The PSC has imposed a condition on the delegation of staffing authorities

42. Our audit revealed that the OCI staffing practices did not respect the staffing values. Given our general satisfaction with the OCI's framework and improvements in the challenge function of the service provider, Public Safety, the PSC has decided not to withdraw the delegation of staffing authorities from the organization. Instead, the PSC has imposed a condition on this delegation. The Correctional Investigator must submit quarterly progress reports to the PSC who will closely monitor staffing.
43. This condition will remain in effect until the PSC is satisfied with the integrity of the OCI's staffing activities.

Conclusion

44. We examined 10 appointments. We found that nine of the ten appointments did not comply with the *Public Service Employment Act* (PSEA), relevant policies and/or the appointment values. We found appointments that were not made in accordance with the sub-delegation instrument, did not comply with the merit principle or did not respect the Public Service Commission (PSC) Appointment Policy governing non-advertised processes. Our audit revealed a staffing pattern at the Office of the Correctional Investigator (OCI) that compromises the appointment values of fairness, transparency and access. We found that all six new indeterminate employees had prior experience at the OCI which was acquired through casual employment, temporary help agencies, long-term acting appointments or Interchange Canada. These employees had performed the duties of the positions for periods of two to four years, prior to being appointed indeterminately, giving them an advantage.

45. The OCI implemented a staffing management accountability framework and established a set of mandatory policies. The Correctional Investigator sub-delegated staffing authorities in writing and defined and communicated roles and responsibilities. The OCI has done very little preliminary work towards implementing its Corporate Human Resources Plan. The OCI's monitoring activities did not ensure that staffing decisions respected the appointment values.
46. The PSC has imposed a condition on the OCI's delegation that will remain in effect until the PSC is satisfied with the integrity of the OCI's staffing activities.

The Office of the Correctional Investigator's response. *The Office of the Correctional Investigator (OCI) agrees with the recommendations of the Public Service Commission (PSC). The OCI has taken actions to ensure that it fully complies with the Public Service Employment Act (PSEA) and all relevant human resources staffing policies. A revised human resources plan and staffing strategy will ensure that staffing decisions are fully documented to indicate respect for the PSEA and human resources staffing policies, as well as appointment values. Processes have been established to ensure that the technical non-compliance issues raised in this audit will not re-occur. For example, the OCI will require the completion of a checklist on all staffing files to ensure that each action is consistent with legal and policy requirements. In addition, in February 2007, the OCI signed a Memorandum of Understanding (MOU) with the Department of Public Safety Canada – the OCI's service provider. This MOU was developed to ensure that better human resources staffing support and oversight are provided by the Department of Public Safety Canada. The OCI will submit quarterly progress reports to the PSC to allow monitoring of its staffing actions. Finally, all OCI managers with sub-delegated authority have successfully completed human resources staffing training, including the Canada School of Public Service's Authority Online Delegation Assessments.*

The OCI is a very small organization (25 employees with an annual budget of approximately \$3 million) and operates as an independent agency within the Public Safety Portfolio. The OCI is a separate employer. In part due to its size, the OCI does not have its own human resources specialist and relies on the Department of Public Safety Canada as its service provider for staffing advice and quality control of staffing actions. Finally, the OCI does not have access to secondments to assist in temporarily staffing vacant positions for a determinate period. The OCI, therefore, uses staffing options available to separate employers, including interchanges coordinated by Interchange Canada, in addition to the undertaking of advertised selection processes.

During the three year audit period, the OCI had inconsistent support from its service provider, in part as a consequence of the high turnover of human resources advisors assigned to the OCI. With an average completion time of eight months to staff a position, the OCI had to contend with many work pressures to meet its mandate. As the audit covered the transition to the new PSEA, it is understandable that both the service provider and the Office would be faced with having to interpret and test new procedures and authorities. Given the above context and the steps taken by the OCI, the irregularities identified by the PSC audit are being addressed.

The OCI remains confident in the professionalism of its staff and believes that Canadians are well served by the qualified and competent public servants in its employ.

About the audit

Objectives

The objectives of the audit were to determine whether:

- the Office of the Correctional Investigator (OCI) has an appropriate framework, systems, and practices in place to manage its staffing activities; and,
- the OCI's staffing activities comply with the *Public Service Employment Act* (PSEA), other applicable legislation and policies, and with the instrument of delegation signed with the Public Service Commission (PSC).

Scope and approach

The audit covered the period from April 1, 2004 to December 31, 2006. Audit activities included interviews with the service provider's human resources advisors, OCI managers involved in staffing activities, employees of the OCI, and PSC stakeholders. We also reviewed OCI documentation including plans, policies, programs, communications and reports with respect to staffing. We reviewed all staffing activities carried out by the OCI from January 1, 2004 to December 31, 2006.

Table 1: Type of Staffing Transactions

	Number of processes	Number of appointments
Staffing transactions reviewed under the former PSEA		
Open competition – by advertisement (indeterminate)	1	3
Open competition – by inventory (term)	1	1
Without competition (acting)	1	1
Without competition (reclassification)	1	1
Total staffing transactions and appointments under the former PSEA	4	6
Staffing transactions reviewed under the current PSEA		
Advertised within the public service (indeterminate)	1	1
Non-advertised external to the public service (indeterminate)	2	2
Non-advertised internal to the public service (acting)	1	1
Total staffing transactions and appointments reviewed under the current PSEA	4	4
Total staffing transactions and appointments reviewed under the former and current PSEA	8	10

Source: Audit, Evaluation and Studies Branch, Public Service Commission

Criteria

We drew the following audit criteria from the Staffing Management Accountability Framework (SMAF), as well as the Appointment Delegation and Accountability Instrument (ADAI) signed by the OCI and the PSC.

- Staffing is consistent with human resources planning which is aligned with the organization's business planning.
- Written sub-delegation of appointment authorities has been granted to officials who will be exercising these staffing authorities.
- Roles, responsibilities and accountabilities for staffing activities at the OCI are clearly defined, communicated and understood by sub-delegated officials and the service provider.
- Sub-delegated officials have access to the necessary training, have access to appropriate advice and have the tools to exercise their staffing authorities.

- Sub-delegated officials have access to trained human resources advisors whose knowledge in the appointment framework has been validated by the PSC.
- The OCI has approved the mandatory appointment policies and criteria which promote values-based staffing.
- The OCI has a process to track and monitor its staffing activities in accordance with the PSEA and which responds to the PSC reporting requirements.
- Staffing transactions comply with the PSEA, and other applicable legislation and policies, and are supported by sufficient and appropriate documentation.

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Glossary under the current *Public Service Employment Act*

Access

A staffing value that ensures that persons from across the country have a reasonable opportunity, in their official language of choice, to apply and to be considered for public service employment.

Acting appointment

The temporary promotion of an employee.

Advertised appointment process

When persons in the area of selection are informed of and can apply to an appointment opportunity.

Appointment

An action taken under the PSEA to hire someone.

Appointment Delegation and Accountability Instrument (ADAI)

The formal document by which the PSC delegates its authorities to deputy heads. It identifies authorities, any conditions related to the delegation and sub-delegation of these authorities and how deputy heads will be held accountable for the exercise of their delegated authorities.

Casual employment

A short-term employment option to hire someone. Under the PSEA, a casual worker cannot work more than 90 days in one calendar year in a given department. None of the provisions of the PSEA, such as the merit requirement, apply to casual workers.

Fairness

A staffing value that ensures that decisions are made objectively and free from political influence or personal favouritism, that policies and practices reflect the just treatment of persons, and that persons have the right to be assessed their official language of choice.

Non-advertised appointment process

An appointment process that does not meet the criteria for an advertised appointment process.

Transparency

Information about strategies, decisions, policies and practices is communicated in an open and timely manner.

Glossary under the former *Public Service Employment Act*

Appointment without competition

An appointment made without holding a competition, and is based either on individual or relative merit.

Casual employment

Casual employment is a temporary staffing method that may be used to meet short-term staffing requirements, e.g., to replace employees on leave or to carry out short-term projects. Persons hired under this authority are not considered employees under the *Public Service Employment Act* and are not eligible for closed competitions and may not work in any particular department, or in any other particular portion of the Public Service, for a period exceeding 125 days in any year.

Closed competition

A closed competition is a competition open only to persons employed in the public service.

Deployment

The lateral or downward movement of a person from position to another; it cannot constitute a promotion and cannot change the tenure of employment.

Open competition

A selection process by competition in which members of the general public as well as persons employed in the public service are eligible to compete.

