



## Final report

# Audit of the investigation and disciplinary function in Human Resources Branch

Office of Audit and Evaluation

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## **Executive summary**

- i. Public Services and Procurement Canada employs more than 13,000 employees across five different regions. Accordingly, creating a healthy work environment free from harassment and other misconduct yields a positive effect on employees' morale, productivity, and the organization's reputation. In support of a healthy work environment, it is critical to have in place an effective control framework to manage workplace investigations and disciplinary actions and maintain high standards of values and ethical behavior in the Department.
- ii. Public Services and Procurement Canada has developed and implemented the Investigation Management Framework and the Directive on Discipline to manage investigations of employee misconduct and corrective measures. The Deputy Minister sub-delegates the authority to investigate harassment complaints to the Assistant Deputy Minister, Human Resources Branch for complaints in National Capital Area and Regional Directors General for complaints in regions. Depending on the severity of the disciplinary measures, the authority to impose disciplinary measures is delegated to different levels of management who work with Labour Relations advisors.
- iii. The Audit was conducted to determine whether selected elements of the Management Accountability Framework are in place and functioning as intended to support the departmental Labour Relations investigation and disciplinary functions; and assess whether labour relations investigation and disciplinary activities comply with relevant legislation, policies and collective agreements. It focused on Labour Relations investigation and disciplinary activities for the period of April 2013 to March 2016.
- iv. The Public Services and Procurement Canada Instrument of Human Resources Delegation documents the delegated authorities for human resources activities, including harassment complaint investigations, fact-finding and discipline. We found, however, that roles and responsibilities of the stakeholder involved in harassment investigations could be further defined and disciplinary function could be further clarified. A number of initiatives were undertaken to raise employees' awareness on harassment as a result of the 2014 Public Service Employment Survey. The Department continues to make efforts to increase employee confidence in harassment prevention program.
- v. We noted that Labour Relations has taken initiatives to evaluate risk related to individual harassment investigation and disciplinary cases, but risk management practices have not been formalized and systematically implemented. Operational processes and procedures for Labour Relations investigation and discipline were established. Training and tools were available for Labour Relations advisors and managers to discharge their responsibilities. We, however, observed a number of instances where processes and procedures were not followed and results were not sufficiently documented. The need to establish a communication strategy has been

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acknowledged among stakeholders, and progress has been made to improve communication and collaboration among investigative bodies, Labour Relations advisors and management.

- vi. The Labour Relations Directorate established a process to physically control investigation and discipline records. A secure room with restricted access was used to store case files in the National Capital Region. The Directorate exercised an annual cleaning procedure to dispose of files passing the established retention period. However, we observed a number of situations where files were not disposed which indicates that the timeliness of record disposal could be improved to comply with relevant policies, directives and collective agreements.
- vii. Human Resources Branch transitioned its information system from the Human Resources Management System to the government-wide MyGCHR (PeopleSoft) system in November 2014. We also found that service standards for the disciplinary function were not formally established, monitored or communicated to stakeholders. Comprehensive reports could not be generated without manual manipulation and compilation of data from multiple sources as the MyGCHR system does not meet the sector's reporting needs. Human Resources Branch is currently exploring other mechanisms to facilitate its reporting requirements.
- viii. Overall, the Audit concluded that the selected elements of the Management Accountability Framework reviewed were in place for the Labour Relations investigation and disciplinary functions. The Labour Relations investigation and disciplinary functions, in general, complied with relevant legislation, policies and collective agreements. However, as noted, opportunities exist for further improvement.

### Management response

Management has had the opportunity to review the report, and agrees with the conclusions and recommendations found therein. Management also developed a Management Action Plan to address these recommendations.

### Recommendations and Management Action Plan

**Recommendation 1:** The Assistant Deputy Minister, Human Resources Branch should enhance the governance framework by further clarifying roles and responsibilities in certain areas of harassment investigation and discipline.

**Management Action Plan 1.1:** With respect to the harassment complaint process, Labour Relations will further clarify the roles and responsibilities of the various stakeholders in our Departmental Harassment Policy Instruments.

**Management Action Plan 1.2:** With respect to disciplinary files, Labour Relations will clarify the file documentation roles and responsibilities of Labour Relations and Management in the Departmental Discipline Guidelines.

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**Management Action Plan 1.3:** With respect to investigations into allegations of harassment, Human Resources Branch will acquire the in-branch capacity to put in place contracts from call-ups on standing offers instead of using Material Management as an intermediary, as this created delays out of our control.

**Recommendation 2:** The Assistant Deputy Minister, Human Resources Branch should implement measures to ensure the integrity of investigations, including enhancing the operational risk management practices, ensuring processes and procedures are followed, and results are supported by sufficient documentation, and supporting increased collaboration with other investigation units.

**Management Action Plan 2.1:** With respect to risk management practices related to investigations, Labour Relations will propose to the Investigation Management Framework Committee that Human Resources Branch create an investigation monitoring document for all related cases/files whereby the risks level, and related actions will be noted and rationalized at any stage where this is required. This will reinforce early communications and Labour Relations involvement in cases handled by the Department's investigative units.

**Management Action Plan 2.2:** With respect to harassment files, Labour Relations will modify its prima facie document for each file (analysis as to whether or not the allegation met the definition) and implement a new procedure whereby the National Harassment Coordinator will do a quality assurance review of each file and sign off on the document.

**Management Action Plan 2.3:** With respect to discipline files, Labour Relations will create a template disciplinary report document to be used on files where detailed investigative report was not deemed necessary – the template will document the main requirements of supporting evidence, circumstances to consider, analysis and conclusion of the misconduct.

**Management Action Plan 2.4:** Corporate Labour Relations will require Labour Relations Managers in NCA and Regions to do a Quality Assurance verification of the Discipline File Checklist, which aims at ensuring all supporting documentation is on file, and sign it for each disciplinary measures placed on file. A similar File Checklist for harassment files will be created and implemented the same way.

**Recommendation 3:** The Assistant Deputy Minister, Human Resources Branch should enhance records retention and disposition practices.

**Management Action Plan 3.1:** With respect to the regular destruction of Labour Relations files as per established rules, Labour Relations has done an overall clean-up of their file room since the present Audit, and starting in January 2017, the Labour Relations Managers and their Administrative Staff will review the file list once a month,

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so as to proceed with the destruction of discipline files and related Electronic record (*exempli gratia* My GCHR) at the proper time.

**Recommendation 4:** The Assistant Deputy Minister, Human Resources Branch should establish formal service standards and monitor results.

**Management Action Plan 4.1:** Labour Relations will propose a new set of timeliness service standards for Management (supported by Labour Relations as advisor) to finalize disciplinary processes, which will be formalized and communicated to Management dealing with any case. The revised standards will take into account applicable jurisprudence. A tracking system will be put in place, and as well, the investigation monitoring document (see point 2.1) will be used to monitor results. There will be an ability to report on the achievement of the service standard.

**Management Action Plan 4.2:** With respect to the suggestion that an electronic reporting system would be ideal to capture data during investigation stages: Labour Relations has participated in data mapping sessions with CIOB in the Summer of 2016 for the potential acquisitions of a software (Microsoft Dynamics CRM) for electronic case management of certain Labour Relations functions not covered by My GCHR. The CRM system has flexible ability to produce various types of reports that could support oversight goals. These requirements will be part of the future roll-out of the CRM system. In the interim, Labour Relations will work with the data analytics team to explore options for electronic data gathering and analysis in support of Labour Relations activities in the workplace.



## **Introduction**

1. This engagement was included in the Public Services and Procurement Canada 2015 to 2018 Risk-Based Audit and Evaluation Plan.
2. Public Services and Procurement Canada plays an important role in the daily operations of the Government of Canada as its central purchasing agent, linguistic authority, real property manager, treasurer, accountant, and pay and pension administrator. With more than 13,000 employees across five different regions, creating a healthy work environment, free from harassment, human rights violations and other misconduct contributes to employees' morale, productivity, and the organization's reputation. Furthermore, satisfied, high-performing employees help assist Public Services and Procurement Canada to achieve its mandate and support government priorities.
3. In support of a healthy work environment, it is critical to have in place an effective control framework to manage workplace investigations and disciplinary actions in the Department. The 2009 Policy on Government Security Section 6.1.8 mandates that Deputy Heads of all departments are responsible for ensuring that allegations of misconduct are investigated, acted on and reported. To this end, Public Services and Procurement Canada has developed the Investigation Management Framework to manage investigations of employee misconduct. Each of the Public Services and Procurement Canada branches with investigative responsibilities act as an office of primary interest for allegations, review, and investigation in their respective areas; their authorities differ depending on the nature of the allegations.
4. At Public Services and Procurement Canada, the Deputy Minister sub-delegates the authority to investigate allegations. Two sectors in Human Resources Branch have investigative responsibilities and expertise for workplace administrative investigation: Staffing Oversight and Labour Relations.
5. Staffing Oversight conducts investigations and makes recommendations to the Deputy Minister on internal staffing processes. For external staffing processes or in any process where fraud or political influence is suspected, Staffing Oversight refers the file to the Public Service Commission who has exclusive jurisdiction to investigate such matters pursuant to the Public Service Employment Act.
6. Labour Relations supports the investigations of wrongdoing by providing information and advice to investigative bodies as required. The involvement of Labour Relations in various programs that can lead to addressing employee misconduct includes:
  - Harassment Investigations
  - Fact-finding and Discipline
  - Grievances

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- Human Rights Complaints
  - Conflict of Interest Program
  - Violence in the Workplace Prevention Program
7. Labour Relations is responsible for managing harassment investigations conducted by third-party investigators, and supports management with fact-finding and discipline.
  8. Managers, with the assistance of Labour Relations advisors, perform fact-findings and determine appropriate disciplinary measures. According to the Public Services and Procurement Canada Instrument of Human Resource Delegation, the manager who has the delegated authority for imposing any disciplinary measures must seek guidance from a Labour Relations advisor prior to taking any kind of disciplinary action. Public Services and Procurement Canada Directive on Discipline and Discipline Guidelines identify the types of disciplinary measures that may be imposed upon employees.
  9. Other programs of interest that are supported by Labour Relations include Grievance, Human Rights Complaints, Conflict of Interest Program, and Violence in the Workplace Prevention Program. Labour Relations supports these programs but is not responsible for investigative components of those programs. The grievance hearing process mostly is a formal conflict resolution mechanism between management and employee(s). Complaints to the Canadian Human Rights Commission are filed by employee(s) or individuals receiving services from Public Services and Procurement Canada directly to and investigated by the Canadian Human Rights Commission. The Special Investigations and Internal Disclosure directorate in Departmental Oversight Branch would usually conduct investigations when employees' misconduct is alleged involving Conflict of Interest or Violence in the Workplace. Violence in the Workplace Complaints are under the responsibility of Occupational Health and Safety Directorate in Human Resources Branch. Although Labour Relations supports these activities at certain junctures, they are not Labour Relations related investigations. They are therefore excluded from our audit.
  10. In the past three fiscal years (2013 to 14, 2014 to 15, and 2015 to 16), the Department received 30 harassment complaints and implemented 190 disciplinary measures. There are 26 Labour Relations advisors within the Labour Relations directorate with an operating budget of \$2.41 Million on average in the past three fiscal years.

### Focus of the audit

11. The objectives of the Audit were: (i) to determine whether selected elements of the Management Accountability Framework are in place and functioning as intended to support the departmental labour relations investigation and disciplinary functions; and (ii) to assess whether labour relations investigation and disciplinary activities comply with relevant legislation, policies and collective agreements.

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12. This audit focuses on elements of Management Accountability Framework including: (i) Authorities, Roles and Responsibilities; (ii) Processes and Procedures; (iii) Information Management; (iv) Training, Awareness and Communication; (v) Risk Management; and (vi) Performance and Monitoring.
13. The Audit assessed the above elements from April 2013 to March 2016 by focusing on Labour Relations harassment investigations and fact-finding/discipline. We also reviewed certain grievances related to harassment investigation and discipline to assess whether grievances were filed related to the management of these processes. The Audit did not assess the appropriateness of investigation conclusions and disciplinary decisions.
14. The Audit excluded the departmental staffing investigation function that is managed by the Corporate Staffing Directorate under the Corporate Human Resources Policies and Programs Sector within Human Resources Branch for the following reasons. The risk areas of government-wide staffing activities and staffing investigative function were identified, reported, and monitored by the Public Service Commission. The Public Service Commission required the Department to submit an annual Departmental Staffing Accountability Report and conducted staffing audits of government departments and agencies. Further, as the Public Service Commission has exclusive jurisdiction for external staffing investigations, the Department conducts only a small number of staffing investigations each year. For instance, in 2014 to 2015 fiscal year, the Department processed three internal staffing investigation cases, which were directly overseen by the Deputy Minister. Accordingly, we assessed the staffing investigation function to be low risk and thus excluded it from the audit scope<sup>1</sup>.
15. The audit focused on investigation, fact-finding and disciplinary function of Human Resources Branch. We did not include in our scope other programs supported by Labour Relations that did not deal primarily with investigations of misconduct, such as Human Rights Complaints, Conflict of Interest Program, Violence in the Workplace Prevention Program, and Grievance.
16. Currently, the Office of Audit and Evaluation is undertaking a Horizontal Audit of the Public Services and Procurement Canada Investigation Management Accountability Framework. Observations that are more general in nature and span across all Public Services and Procurement Canada investigation functions will be reported as part of the Horizontal Audit.

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<sup>1</sup>To modernize the government staffing system, the Public Service Commission's Appointment Policy and Appointment Delegation and Accountability Instrument were revised and came into effective on April 1, 2016. The revised staffing framework reduced reporting requirement, and Departmental Staffing Accountability Report was no longer required. With the renewed appointment and oversight frameworks of Public Service Commission, the risks related to the staffing investigation function will be reevaluated as part of the Office of Audit and Evaluation's annual risk based audit and evaluation planning exercise.

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17. More information on the audit objective, scope, approach and criteria can be found in the section “About the Audit” at the end of the report.

### **Statement of conformance**

18. The Audit conforms to the Internal Auditing Standards for the Government of Canada, as supported by the results of the quality assurance and improvement program.
19. Sufficient and appropriate audit procedures have been conducted and evidence gathered to support the accuracy of the findings and conclusions in this report and to provide an audit level of assurance. The findings and conclusions are based on a comparison of the conditions, as they existed at the time, against pre-established audit criteria that were agreed upon with management. The findings and conclusion are only applicable to the entity examined and for the scope and time period covered by the audit.

### **Observations**

#### **Governance framework for the labour relations investigation and disciplinary function**

##### **Authorities have been established; roles and responsibilities can be further clarified**

20. An effective governance and accountability framework is essential for enabling an organization to inform, direct, manage, and monitor its activities toward the achievement of its objectives.
21. We expected that roles and responsibilities for HR harassment investigation and disciplinary function were clearly defined and communicated.
22. The Public Services and Procurement Canada Instrument of Human Resources Delegation (the “Instrument”) documents the delegated authorities for human resources activities, including harassment investigations and discipline. For harassment investigations, the Instrument states that the Deputy Minister sub-delegates his/her authority to receive and review formal harassment complaints, authorize harassment investigations and manage the investigative process, and render decisions based on investigations to the Assistant Deputy Minister, Human Resources Branch (in the National Capital Area) and the Regional Director General (for regions). With regard to discipline, the Instrument allows the Deputy Minister to sub-delegate his/her authority to different levels of management, depending on the severity of the disciplinary measure. The Labour Relations Directorate has functional authority to review and update policies on discipline, and advise managers through disciplinary processes.

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23. The Framework for Departmental Policy Instrument within Public Works and Government Services Canada states that the Responsibilities and Accountabilities section of the departmental policy instrument needs to document and communicate the roles and responsibilities of all the parties involved.
24. We noted the authorities for harassment investigation and discipline were established, however, roles and responsibilities need further clarification. Departmental harassment policy instruments refer to relevant Treasury Board of Canada Secretariat policies and directives for guidance on roles and responsibilities without specification. However, Treasury Board of Canada Secretariat policies and directives use the general term of “designated officials”, whose role at Public Services and Procurement Canada are assumed by the Labour Relations Director, the National Harassment Prevention Coordinator, Labour Relations Advisors, and third-party investigators. Further defining those roles and responsibilities under Treasury Board of Canada Secretariat policies is necessary to help improve accountability at Public Services and Procurement Canada.
25. Furthermore, roles and responsibilities for ensuring sufficient documentation to support disciplinary decisions need to be clearly delineated. Public Services and Procurement Canada’s Directive on Discipline stipulates that the delegated manager should ensure that sufficient fact-finding evidence is gathered to support disciplinary decisions. Labour Relations advisors support managers by providing advice on disciplinary processes and decisions. However, in practice their supporting activities extend beyond advisory roles. We noted that Labour Relations advisors not only provide advice to management but also manage the disciplinary files and document fact-findings that support the disciplinary decisions. Given the shared responsibilities for disciplinary processes, delineating responsibilities between delegated managers and Labour Relations advisors in the areas of documentation and file management are necessary. Through our file reviews, we noted deficiencies with respect to documentation to support disciplinary decisions (details in the next section). In addition, it is important to have clear roles and responsibilities in the area of quality assurance review or activities between management and Labour Relations advisors, which would help to ensure file administration is aligned with relevant policies and collective agreements.
26. Considering the sensitivity and complexity of Labour Relations investigation and disciplinary functions, further clarification of the departmental harassment and disciplinary policy instrument on roles and responsibilities could improve management and accountability of these functions.

### **The Department continued making efforts to increase employee awareness and confidence in the harassment prevention program**

27. Harassment prevention activities are key to an effective harassment management program. Helping employees to understand what is harassment reduces the occurrence of harassment incidents, and informing them of what to do if harassment takes place builds confidence in employees to bring harassment complaints forward.

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28. We expected an employees awareness program existed to promote employees' confidence in the departmental harassment prevention program.
29. Considering the overall population of the Department, Public Services and Procurement Canada has a very low rate of harassment complaints and grievances related to harassment. However, the results from the 2014 Public Service Employment Survey indicated that 18% of departmental employees have reportedly dealt with harassment in the workplace (comparing with 19% in overall public service). A number of Labour Relations initiatives were undertaken as a result of the Survey to promote employees' confidence in departmental harassment programs. These initiatives included publication of nine series of articles in "In The Know"<sup>ii</sup> related to tools and programs available for harassment prevention and building a respectful work place (released between September 2014 and December 2015); and a panel discussion with the former Deputy Minister in December 2015 on harassment prevention and building a respectful work place. More recently, the Department conducted a Pulse Survey. The result indicated the percentage of the departmental employees who reported dealing with harassment decreased slightly. The Department has adjusted the training strategy to continue promoting employees' confidence by targeting Branches that reported higher percentages in dealing with harassment situation in the workplace compared to the rest of the Department.

### **Integrity of harassment investigations and disciplinary processes**

#### **Opportunities exist to formalize risk management practices**

30. In an environment with well-designed controls, management and staff have a good understanding of the internal and external factors that may create operational risk to the achievement of objectives.
31. To support this understanding, we expected formal, documented risk management practices to assist decision-making and permit the appropriate response to the residual risk exposure.
32. We found that Labour Relations has taken initiatives to evaluate the risk of individual harassment investigation/discipline (including fact-finding) cases but risk management practices have not been formalized and systematically implemented. Since December 2015, the monthly Active Cases Report, which includes departmental investigation and disciplinary active cases for senior management, added a column called "Level of Risk" indicating the assessed risk level (as high, medium, or low) of a particular case. This practice could be formalized and further developed to assist Labour Relations advisors and management to consistently and appropriately allocate time/resources, and identify appropriate mitigation strategies and operational procedures based on different risk levels.

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<sup>ii</sup> The weekly newsletter for Public services and Procurement Canada employees.

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33. The Labour Relations Directorate would be better positioned to manage the complexities associated with harassment investigation and disciplinary cases if a formal risk management approach was developed, formalized and implemented. Formalized risk management practice incorporated with Labour Relations operational activities could help to proactively alleviate potential legal and financial risks, and increase administrative efficiencies.

### **Operational processes and procedures have been established; training/tools were available for labour relations advisors/managers to discharge their responsibilities**

34. Established operational processes and procedures support staff/managers to effectively discharge their roles and responsibilities. Well developed and implemented processes and procedures can improve the overall quality and efficiency of the Labour Relations investigations and disciplinary function.

35. We expected that processes and procedures were established and carried out in compliance with applicable legislation, policies, and collective agreements.

36. Public Services and Procurement Canada put in place departmental policies, directives and guidelines to manage departmental harassment investigation and discipline activities. These include Public Services and Procurement Canada's Investigation Management Framework, Directive on Respect and Harassment Prevention in the Workplace, Directive on Discipline, and Discipline Guidelines. In the area of harassment investigations, Public Services and Procurement Canada's Directive on Respect and Harassment Prevention in Workplace requires that the Department follows steps as summarized by Treasury Board of Canada Secretariat's Guide on Applying the Harassment Resolution Process. For discipline of all types of misconducts, Public Services and Procurement Canada Discipline Directive and related Discipline Guidelines outlines the procedures for fact-finding for determining whether a suspected or alleged misconduct occurred and if disciplinary measures are warranted. With respect to the above, we, however, did not find evidence that quality assurance review/activities existed to ensure compliance to applicable policies, procedures and collective agreements.

37. Based on our document review and interviews, we noted that tools and resources were available for Labour Relations advisors to discharge their duties, such as templates, access to jurisprudence cases, and a network of inter-departmental Labour Relations teams as well as experts from Treasury Board of Canada Secretariat for support and advice. Additionally, Labour Relations advisors participate at bi-weekly meetings to discuss cases and share knowledge. Labour Relations advisors interviewed stated that they believe that they have sufficient tools and resources to perform their duties.

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38. We found that there was no mandatory training requirement for managers on conducting fact-finding for discipline. The Department, however, offered a course – Labour Relations for Managers and Supervisors that provided general knowledge for managers on the labour relation program. The course is delivered four to ten times a year with around 20 attendees per session.
39. The delegated manager is responsible for disciplinary decisions. As they often do not have detailed knowledge or experience in this subject area, we were informed that they rely on Labour Relations' guidance and assistance. To further assist delegated managers to make disciplinary decisions and prevent harassment, additional resources are available on the departmental intranet, such as "Discipline Fact Sheet for Managers", and "Prevention of Harassment in the Workplace-Worksheet for Managers". Further details for conducting disciplinary interviews, types of misconduct, and related disciplinary consideration were included in the Public Services and Procurement Canada Discipline Guidelines.

### **Operational procedures were not consistently applied**

40. We expected the processes and procedures designed to conduct investigations would be consistently applied and that files would contain sufficient documentation to support conclusions.
41. To test the effectiveness of the processes and procedures, we selected harassment investigation and disciplinary files by using non-statistical sampling methodology. We reviewed 16 harassment investigations conducted between April 2013 and March 2016, seven non-investigated harassment complaints, and 54 disciplinary files. We also reviewed 30 grievance files<sup>iii</sup> related to harassment and discipline, and did not note any complaints related to breach of investigative and disciplinary procedural requirements as outlined by Treasury Board of Canada Secretariat, Public Services and Procurement Canada or Collective Agreements.
42. However, we made a number of observations related to file completeness. We observed certain discrepancies related to the documentation in support of harassment investigations and disciplinary actions through file reviews.

### Preliminary assessment: Harassment complaint files

43. A key step required by the Treasury Board of Canada Secretariat Directive on the Harassment Complaint Process is to review a harassment complaint and determine whether the allegation(s) satisfy the definition of harassment as stated in the Guide. Allegations that satisfy the definition of harassment proceed to investigation, while those that do not are not investigated and complainants would be informed of the assessment results. Thus, it was expected that each

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<sup>iii</sup> Grievance files related to harassment investigation and discipline were selected to determine whether harassment and discipline processes were complained through grievance. Management Accountability Framework elements related to grievance were not included in our scope.



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harassment file reviewed contained an analysis of whether allegations met the definition of harassment.

44. We noted that eight out of 16 investigated harassment files did not contain sufficient and appropriate documentation demonstrating the results of the above analysis had been completed. Two out of the eight non-investigated harassment complaints reviewed did not contain any documented analysis on whether the allegation(s) meet the definition of harassment.
45. Due to the lack of analysis/documentation of these assessments for the files reviewed, we were unable to determine whether the cases were sufficiently and appropriately analyzed to determine whether the allegation(s) meet the definition of harassment and the reasons for conducting or not conducting an investigation.

#### Fact-finding report/summary: Disciplinary files

46. Fact-finding is an important procedure to collect evidence for determining if a misconduct has occurred and whether disciplinary measures are warranted. Public Services and Procurement Canada Discipline Guidelines state that management must ensure an adequate inquiry is undertaken. One step in this process is to conduct an analysis and draw conclusion as to whether misconduct occurred. The fact-finding report/summary provides evidence that the Department has followed the principle of procedural fairness<sup>iv</sup> and has fulfilled its duty to act fairly in conducting administrative investigations<sup>v</sup>. As such, we expected to find documented evidence such as fact-finding reports/summaries, including an analysis and conclusion as to whether a misconduct occurred.
47. Out of the 54 files reviewed, 28 contained detailed fact-finding reports which included analysis and conclusions as to whether misconduct occurred. In the remaining 26 files, no information was provided or only brief interview notes were found on file.
48. Documented evidence supporting a disciplinary measure must be present. A fact-finding report/summary explaining the documented evidence, and summarizing an analysis and conclusion as to whether misconduct occurred is the best way to ensure the determination of appropriate disciplinary measure(s). It is important that this is completed and retained to best demonstrate due diligence and adherence to procedural fairness.

#### Discipline checklist

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<sup>iv</sup> A concept whereby an employee must be afforded the right to be confronted with the alleged misconduct and to have an opportunity to respond during an administrative process (PSPC Discipline Guidelines)

<sup>v</sup> This duty was expressed in a decision of the Supreme Court of Canada (Nicholson v. Haldimand Norfolk (Regional) Police Commissioners, [1979] 1 S.C.R. 311). (Treasury Board of Canada Secretariat Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process: Stage Three: Conducting the Investigation; The Concept of Procedural Fairness)

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49. While a discipline checklist has been developed to help ensure that all required information was contained in files, consistent use of the checklist was not observed. Based on the results of the disciplinary file review of 54 files, 12 files did not include discipline checklists and 17 files had discipline checklists that were either unsigned, undated or incomplete. Consistent use of the discipline checklist would help improve the completeness of the file documentation. We also noted some disciplinary files were incomplete. For instance, 10 files had no confirmation of financial application for disciplinary measures (such as suspension, financial penalty, demotion or termination) from compensation; four disciplinary files did not include the disciplinary letter; and 26 files had no documentation in support of the occurrence of a discipline hearing meeting.

### **Communication/collaboration among stakeholders supporting investigation and disciplinary action within the Department has improved**

50. The determination of the appropriate disciplinary measure first involves fact-finding and/or investigation. Because investigations requiring discipline may have been conducted by another section in Public Services and Procurement Canada, it is important to ensure continuous communication/ collaboration among stakeholders including the investigation units, delegated managers and Labour Relations advisors.

51. We expected continuous communication and collaboration between those conducting the investigations and those advising on disciplinary actions to be taken in response to the investigation findings.

52. We noted, through file review, that the different investigative units applied slightly different investigation procedures/methodology. For instance, the Special Investigations and Internal Disclosure directorate investigations did not include a procedure to provide the person being investigated with an opportunity to review the investigation report before finalizing it, which was different from how harassment investigations were managed by Human Resources Branch (we were informed, after the examination phase, that Special Investigations and Internal Disclosure changed its investigation procedure to provide review opportunity before finalizing the report in fall 2016). As such, when the file proceeded to the delegated manager and Labour Relations for disciplinary action, they, in certain cases, discovered new information/factors during fact-finding review (a required procedure before making a disciplinary decision), and as a result, additional procedures were pursued. In certain files reviewed, new information obtained by management and the Labour Relations advisor significantly changed the conclusion of the investigation. The disciplinary measure, thus, took a significant amount of time to be implemented.

53. In addition, the implementation of administrative action (i.e. temporary reduction of authorities, or requirements to attend training) was sometimes considered necessary after an investigation and prior to the determination of the formal discipline. In three disciplinary files reviewed, the administrative actions were applied long before the disciplinary measures were implemented due to the time required for manager and Labour Relations advisors to complete their fact-finding. At

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the time, it was not clear to the employees that further disciplinary actions may follow. Although there is no specific timeline requirement between applying administrative action and disciplinary measure, the situations created dissatisfaction for the stakeholders' involved.

54. As such, the need to establish a communication strategy to involve all stakeholders in investigation and discipline was noted. We were informed that recently there has been increased collaboration. Bi-weekly meetings between Labour Relations and Departmental Oversight Branch investigation units (Special Investigations and Internal Disclosure, Corporate Security etc.) were held; monthly Active Case Reports were generated including all important cases among different investigating units within the Department; and most recently, the Labour Relations advisor participated during the Special Investigations and Internal Disclosure investigations before the reports were finalized.
55. Early communication/collaboration between Labour Relations advisors and investigative units within the Department will help to increase the efficiency, consistency and compliance of departmental investigation and disciplinary processes. Labour Relations advisors provide the expertise in various collective agreements, and are functionally responsible for assisting management in implementing disciplinary measures. The involvement of Labour Relations advisors in investigations conducted by various units would not only enhance compliance with the relevant regulations, policies and collective agreements, but would also reduce the efforts made by Labour Relations advisor and manager during fact-finding processes and potentially improve the efficiency of the overall department investigation/ disciplinary function.

### **Integrity in safeguarding information and information management**

**Records were securely stored, however electronic information was not always appropriately transmitted; the timeliness of records disposal could be improved**

56. Information related to labour relations investigations and discipline is sensitive in nature. Various regulations, Treasury Board of Canada Secretariat departmental policies, and collective agreements specify requirements for recording, storing, and disposing of information, including both paper and electronic records.
57. We expected information related to harassment investigations and disciplinary measures to be recorded, stored and disposed of according to regulatory and contractual requirements.
58. Due to the sensitive nature of investigation and discipline, many documents are classified as Protected B. The Labour Relations Directorate has established a process to physically control investigation and disciplinary records that meets the requirement for Protected B information. A secure room with restricted access is used to store case files in the National Capital Region (we did not physically observe other Regions' practice), which is consistent with the requirement of the departmental Transport, Transmittal, Storage & Destruction of Protected & Classified

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Information Guide. Per auditee, electronic data/records are stored in GDOCS and MyGCHR<sup>vi</sup> with restricted access for Labour Relations advisors.

59. According to the Public Services and Procurement Canada Transport, Transmittal, Storage and Destruction of Protected and Classified information Guide, any “Protected B” information (including all disciplinary and investigation files) sent via email must be encrypted with a Public Key Infrastructure. As most of the departmental harassment investigations were conducted by third-party investigators, there was frequent e-communication between those involved in the process. We noted the inconsistent encryption of emails/documents throughout the course of the harassment investigations. File review results indicated that the above guide had not always been followed. For the 16 harassment investigations reviewed, eight files contained correspondence sent to email addresses that did not support Public Key Infrastructure encryption. Lack of periodic refresh training can contribute to the inconsistent application of Public Key Infrastructure encryption.
60. The Treasury Board of Canada Secretariat Guide on Applying the Harassment Resolution Process and various collective agreements require that any document or written statement related to discipline and/or harassment investigation be destroyed after two years if no further related disciplinary action has been recorded during the period. The Public Services and Procurement Canada Retention and Disposition Schedule further identifies that disciplinary records have a two year retention period from the last administrative action associated with that file.
61. The Directorate has established an annual cleaning procedure to dispose of relevant files. We were informed that once a year, the Directorate schedules a cleanup action to review the files that were on schedule to be destroyed. As the scope of the Audit included files from April 2013 to March 2016, we expected that some files would have been destroyed. Through file reviews, we noted that 12 of the 54 discipline files and three of the 23 harassment files available for review should have been disposed but were not.
62. In addition, as part of the document request for discipline files, we were provided with a disciplinary file exported from the Human Resources Management System (before implementation of MyGCHR in November 2014). This electronic file contained disciplinary records that dated back to 2002. We believe that these electronic records should have been disposed of according to the relevant collective agreement, Treasury Board of Canada Secretariat, and departmental requirements. Without a procedure for disposal of electronic information, there is a risk the Department is non-compliant with record retention requirements.
63. Currently, the MyGCHR system has an electronic function that calculates a file’s two year disposal date but there is no automated control function to flag when this particular date has been reached.

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<sup>vi</sup> GDOCS and MyGCHR are information technology application used by PSPC to create, collect and preserve data.

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Although the Directorate scheduled an annual disposal exercise, without automated reminders for Labour Relations advisors on which records have reached their purging date, it may be difficult to ensure records retention practices comply with regulatory and/or contractual requirements.

### **Functional limitations were observed in the new MyGCHR system**

64. In November 2014, Human Resources Branch transitioned its information system from Human Resources Management System to the government-wide MyGCHR (PeopleSoft) system. Although the MyGCHR system was implemented on schedule, we noted the new system contained functional limitations related to investigation and discipline compared to the legacy system (limitations related to the reporting function are discussed in the “Performance Monitoring” section).
65. The MyGCHR system is currently unable to track ongoing harassment investigations and ongoing disciplinary actions (the process for disciplinary measures has not yet been applied/determined). The Business System and New Initiatives Sector in Human Resources Branch has sent a formal request to the Office of the Chief Human Resources Officer at Treasury Board of Canada Secretariat to enable the tracking function, this outlines risks of not having the function to track ongoing investigation and disciplinary actions. This request was denied as Treasury Board of Canada Secretariat was of the view that investigations or disciplinary actions can only be recorded when misconduct or wrongdoing were found.
66. To mitigate the risks associated with the limited reporting capabilities, the Directorate established a procedure to manually track ongoing harassment complaints. Monthly harassment complaint reports are prepared to track all ongoing and closed harassment investigations at Public Services and Procurement Canada. We reviewed a sample of monthly reports against information available in the legacy system and noted that, in most cases, the reports contained accurate information. We did note that the monthly ongoing harassment investigation reports provided to Senior Management may not reflect the Department’s situation as a whole, as reports did not include cases in regions. However, the regional files appeared on the most recent report as of March 2016.
67. With regards to discipline files, we found there was no mechanism in place to track all on-going files. As the MyGCHR system did not permit data entry without disciplinary action, we could not obtain information on all ongoing discipline files within the Department. In addition to ongoing discipline files, fact-findings that do not result in discipline were also not documented in the database.
68. The Labour Relations Directorate is aware of these limitations. We were informed that Human Resources Branch is working with the Chief Information Officer Branch to procure a new tool to help improve reporting function for the Branch. The new tool will also help track ongoing Harassment Investigations and fact-finding once implemented.

## **Performance monitoring and reporting**

### **Service standards and performance indicators of the disciplinary function were yet to be formalized and implemented**

69. Performance monitoring allows organizations to assess whether they are meeting policies and directives requirements. To manage operations effectively and efficiently, it is important for any organization to have key performance measures related to its operations and activities. Indicators such as service standards provide meaningful information to assess overall performance.
70. We expected that management would have developed appropriate service standards and performance measures to assess the effectiveness of the Labour Relations investigation and disciplinary function.
71. With respect to the harassment complaint investigations, the Treasury Board of Canada Secretariat Directive on the Harassment Complaint Process states that harassment investigation should be completed within 12 months unless there are extenuating circumstances. Based on the files reviewed, the Directorate was facilitating the harassment investigation process within the timelines prescribed by the Treasury Board of Canada Secretariat Directive. There were a few exceptions, but reasonable explanations were provided for the delay in the completion of these investigations.
72. We noted that performance measures for the disciplinary function were not formally established. The Directorate had a self-imposed 60 business day standard to implement a disciplinary measure after an incident was referred to labour relations (later, Labour Relations indicated the self-imposed target was 90 calendar days to apply disciplinary sanction). This self-imposed service standard was not formally communicated to the stakeholders or monitored against actual results.
73. Based on our file review of 54 discipline files, 24 (44%) took longer than 90 days to implement disciplinary actions. Out of the 24 files that took longer than 90 days to implement, we noted that 17 (71%) originated from investigation units (internally or externally) who referred the files to Labour Relations. Other noted reasons for delays over 90 days included absenteeism of parties involved, requirements for Disciplinary Council's recommendation, etc. Further, we noted that the six files (11%) that took in excess of 200 days to implement the disciplinary measure all involved other investigation units such as Special Investigations and Internal Disclosure, Corporate Security Directorate, or Public Service Commission.

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74. As administrative investigation and disciplinary processes are sensitive in nature, long processes can create significant anxiety for the stakeholders involved and increase potential legal, financial and reputational risks of the Department. Although certain circumstances fall outside the control of Labour Relations advisors and negatively impact their ability to meet timelines, establishing formal service standards and monitoring and reporting on results will provide insight in improving the effectiveness of the departmental investigation and disciplinary function.

#### **While certain monitoring mechanisms were in place, opportunities exist to strengthen reporting practices**

75. Monitoring and reporting ensures that Senior Management is informed on a regular basis as to whether Labour Relations investigation and disciplinary activities are functioning as intended.

76. We expected that Human Resources Branch monitors performance, collects relevant information, and reports on the state of the investigation and disciplinary function within the Department.

77. Labour Relations reported harassment and disciplinary results to many management-level committees (i.e. Executive Committee, Audit and Evaluation Committee, Investigation Management Framework Committee and Discipline Council) to inform Senior Management of investigation and discipline matters within Public Services and Procurement Canada. Presentations prepared by Human Resources Branch provided statistics on overall departmental harassment and disciplinary activities.

78. Annually, Human Resources Branch publishes a report called Bilan Social on the Public Services and Procurement Canada intranet, which provides a snapshot of ongoing human resources indicators and the analysis of the state of the organization including discipline and harassment. The report also provides historical organizational investigation and discipline data. In addition, the Labour Relations Directorate works with other investigation units within Public Services and Procurement Canada to produce monthly Active Cases Report that included 'interesting' cases undertaken by the Department.

79. As mentioned in the above section, at the time of the audit, the MyGCHR system did not allow information to be entered regarding on-going discipline cases, harassment files, and investigations that do not result in discipline. Accordingly, the Directorate performed manual tracking of harassment investigations and certain ongoing disciplinary files of interest to management. In addition, the MyGCHR system does not meet the reporting needs of the function. Comprehensive reports cannot be generated without manual intervention and compilation of data from multiple sources. We were informed that Human Resources Branch is currently exploring other software/system to facilitate its reporting needs.

80. Management would be better positioned to provide oversight over Labour Relations investigation / discipline function if an electronic reporting function was available to provide not only quantitative

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information but also qualitative information such as the achievement rate of service standards; redress rate of disciplinary/investigation decisions led to grievance; analysis of the type misconducts and relevant disciplinary measures.

81. With the proposed system reporting improvements over time, there is an opportunity for the Labour Relations Directorate to establish automated data capture and reporting solutions that better support management decision-making with respect to the discipline and investigation within the Department.

### Conclusions

82. Overall, the Audit concluded that the elements of the Management Accountability Framework in scope for the audit were in place for investigation and disciplinary functions in Human Resources Branch. The Labour Relations investigation and disciplinary functions, in general, complied with relevant legislation, policies and collective agreements. However, opportunities exist for further improvement.
83. The opportunities where Human Resources Branch could strengthen its investigation and discipline management framework include: further clarifying roles and responsibilities; enhancing the operational risk management practices; ensuring processes and procedures are followed and results are supported by sufficient documentation; supporting enhanced collaboration with other investigation units; enhancing records retention practice; as well as establishing formal service standards and monitoring results.

### Management response

Management has had the opportunity to review the report, and agrees with the conclusions and recommendations found therein. Management also developed a Management Action Plan to address these recommendations.

### Recommendations and management action plan

**Recommendation 1:** The Assistant Deputy Minister, Human Resources Branch should enhance the governance framework by further clarifying roles and responsibilities in certain areas of harassment investigation and discipline.

**Management Action Plan 1.1:** With respect to the harassment complaint process, Labour Relations will further clarify the roles and responsibilities of the various stakeholders in our Departmental Harassment Policy Instruments.



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**Management Action Plan 1.2:** With respect to disciplinary files, Labour Relations will clarify the file documentation roles and responsibilities of Labour Relations and Management in the Departmental Discipline Guidelines.

**Management Action Plan 1.3:** With respect to investigations into allegations of harassment, Human Resources Branch will acquire the in-branch capacity to put in place contracts from call-ups on standing offers instead of using Material Management as an intermediary, as this created delays out of our control.

**Recommendation 2:** The Assistant Deputy Minister, Human Resources Branch should implement measures to ensure the integrity of investigations, including enhancing the operational risk management practices, ensuring processes and procedures are followed, and results are supported by sufficient documentation, and supporting increased collaboration with other investigation units.

**Management Action Plan 2.1:** With respect to risk management practices related to investigations, Labour Relations will propose to the Investigation Management Framework Committee that Human Resources Branch create an investigation monitoring document for all related cases/files whereby the risks level, and related actions will be noted and rationalized at any stage where this is required. This will reinforce early communications and Labour Relations involvement in cases handled by the Department's investigative units.

**Management Action Plan 2.2:** With respect to harassment files, Labour Relations will modify its prima facie document for each file (analysis as to whether or not the allegation met the definition) and implement a new procedure whereby the National Harassment Coordinator will do a quality assurance review of each file and sign off on the document.

**Management Action Plan 2.3:** With respect to discipline files, Labour Relations will create a template disciplinary report document to be used on files where detailed investigative report was not deemed necessary – the template will document the main requirements of supporting evidence, circumstances to consider, analysis and conclusion of the misconduct.

**Management Action Plan 2.4:** Corporate Labour Relations will require Labour Relations Managers in NCA and Regions to do a Quality Assurance verification of the Discipline File Checklist, which aims at ensuring all supporting documentation is on file, and sign it for each disciplinary measures placed on file. A similar File Checklist for harassment files will be created and implemented the same way.

**Recommendation 3:** The Assistant Deputy Minister, Human Resources Branch should enhance records retention and disposition practices.

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**Management Action Plan 3.1:** With respect to the regular destruction of Labour Relations files as per established rules, Labour Relations has done an overall clean-up of their file room since the present Audit, and starting in January 2017, the Labour Relations Managers and their Administrative Staff will review the file list once a month, so as to proceed with the destruction of discipline files and related Electronic record (*exempli gratia* My GCHR) at the proper time.

**Recommendation 4:** The Assistant Deputy Minister, Human Resources Branch should establish formal service standards and monitor results.

**Management Action Plan 4.1:** Labour Relations will propose a new set of timeliness service standards for Management (supported by Labour Relations as advisor) to finalize disciplinary processes, which will be formalized and communicated to Management dealing with any case. The revised standards will take into account applicable jurisprudence. A tracking system will be put in place, and as well, the investigation monitoring document (see point 2.1) will be used to monitor results. There will be an ability to report on the achievement of the service standard.

**Management Action Plan 4.2:** With respect to the suggestion that an electronic reporting system would be ideal to capture data during investigation stages: Labour Relations has participated in data mapping sessions with CIOB in the Summer of 2016 for the potential acquisitions of a software (Microsoft Dynamics CRM) for electronic case management of certain Labour Relations functions not covered by My GCHR. The CRM system has flexible ability to produce various types of reports that could support oversight goals. These requirements will be part of the future roll-out of the CRM system. In the interim, Labour Relations will work with the data analytics team to explore options for electronic data gathering and analysis in support of Labour Relations activities in the workplace.

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### About the Audit

#### Authority

This engagement was included in the Public Services and Procurement Canada 2015 to 2018 Risk-Based Audit and Evaluation Plan.

#### Objective

The objectives of the audit were:

1. to determine whether there was an effective Management Accountability Framework in place to support the departmental labour relations investigation and disciplinary function; and
2. to assess whether labour relations investigation and disciplinary activities complied with relevant legislations, policies and collective agreements.

#### Scope and approach

This audit focused on elements of Management Accountability Framework that were considered to be relevant and important to the labour relations investigation and discipline activities within Public Services and Procurement Canada, based on our risk assessment. Specifically, the Audit examined:

1. Authorities, Role and Responsibilities
2. Processes and Procedures
3. Information Management
4. Training, Awareness and Communication
5. Risk Management
6. Performance and Monitoring

The Audit assessed above elements from April 2013 to March 2016 by focusing on the following type of allegations and administrative investigations managed by Labour Relations: harassment, grievance, and disciplinary function to address employee misconduct. The Audit did not assess the appropriateness of investigation conclusions and discipline decisions.

The Audit excluded the departmental staffing investigation function that is managed by the Corporate Staffing Directorate under Corporate Human Resources Policies and Programs Sector within Human Resources Branch. As mentioned in the above section, we assessed the staffing investigation function to be a low risk area and thus excluded it from our scope.

As the audit focused on administrative investigations, grievance and discipline functions in Labour Relations management, other programs under Labour Relations responsibilities, such as conflict of interest declaration program (Labour Relations provides guidance to employees for official declarations) and violence in the workplace (Labour Relations participates in the response team to resolve health and safety matters), were not specifically addressed in this Audit.

The Office of Audit and Evaluation has undertaken a Horizontal Audit of the Public Services and Procurement Canada Investigation Management Accountability Framework. Observations that

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are more general in nature and cut across all Public Services and Procurement Canada investigation functions may be reported as part of the horizontal audit.

### Criteria

The criteria for this audit were derived from the results of the detailed risk assessment and were developed by referencing the Treasury Board Secretariat's Audit Criteria related to the Management Accountability Framework: A Tool for Internal Auditors, and other relevant Treasury Board of Canada Secretariat and departmental policies, directives and guides.

The following audit criteria were assessed during this Audit:

**Table 1: Lines of enquiry and audit criteria**

Lines of enquiry	Audit criteria
Governance framework	1.1 Authorities, roles and responsibilities for labour relations investigation and discipline functions are clearly defined, documented, and communicated.
	1.2 Employees' awareness programs existed to promote awareness and the confidence in the harassment prevention program.
Integrity of processes	2.1 Human Resources Branch identifies and manages strategic and operational risks in labour relations related allegations, administrative investigations and disciplinary measures.
	2.2 Operational processes and procedures are established; training and tools are available for Labour Relations advisors and managers to discharge their responsibilities; and consistently applied to ensure compliance with relevant legislations, policies and collective agreements.
	2.3 A communication strategy and protocol is in place to promote collaboration among investigation stakeholders and to support labour relations disciplinary actions within the Department.
Integrity in safeguarding information and information management	3.1 Records and information are maintained in accordance with the requirements of legislations, policies and collective agreements.
Performance monitoring and reporting	4.1 Human Resources Branch has appropriate performance measures, collects relevant data, and

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	reports on the state of the investigation and disciplinary functions within the Department.
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**Audit work completed**

Audit fieldwork for this audit was substantially completed on October 6, 2016.

**Audit team**

The Audit was conducted by members of the Office of Audit and Evaluation, overseen by the Director of Continuous Audit and Advisory Services and under the overall direction of the Chief Audit and Evaluation Executive.

The Audit was reviewed by the quality assessment function of the Office of Audit and Evaluation.