7


For the merit system over the coming years, guardianship of values will be the predominant theme.

Public Service Commission, directional statement, 1999

The formation of a Liberal government following the general election of 1993 seemed to offer the opportunity of a new beginning for the federal public service. The Progressive Conservatives, initially distrustful of the bureaucracy and steeped in the rhetoric of cost-cutting and government retrenchment, were returning to the Opposition benches in a state of disarray. The Liberals, under the leadership of Jean Chrétien, a politician expected to be more supportive and respectful of the bureaucracy because of his many years of ministerial experience in Ottawa, were back at the helm. Their detailed electoral platform, known as the Red Book, did not pay much heed to the issue of public administration, a fact not surprising in a electoral platform, but its general tone seemed more positive about the role of government in Canadian society.1

In fact, the Liberal party's thirteen years in power witnessed the most significant changes to the public service in decades, including in the area of human resources management. Only a few years after the Chrétien government took power, a renewed sense of urgency about the country's finances led to some of the most dramatic cutbacks in the history of the Canadian public service. But beyond major cuts in personnel, this period also saw the most fundamental and comprehensive reform of the public service's human resources management system.
since 1967. As we will see in this chapter, throughout the 1990s, the Public Service Commission (PSC) itself sought to adapt to a changing context: it progressively revamped its approach to delegation, placing greater emphasis on respect for core values and accountability for results, and it came close to radically reducing its involvement in service delivery and focusing more exclusively on oversight. However, with the adoption of the Public Service Modernization Act in 2003, those efforts were overshadowed by more profound legislative and institutional reforms: the definition of merit was modified in the pursuit of greater managerial efficiency, and the PSC lost some of its functions in favour of a strengthened focus on the oversight of merit. In sum, as it was approaching its centenary, the PSC was returning to its essential mandate—protecting the merit principle—while the very meaning of merit was continuing to evolve.

**Preserving the Professional Public Service in a Changing Environment**

Despite their efforts at cost-cutting, the Progressive Conservatives left the federal government in a difficult fiscal position when they lost power in 1993; the new Liberal government found itself facing a very critical international financial press. The subsequent turbulence of international financial markets in 1994 created an even greater sense of urgency for a drastic turnaround in government spending. As a result, the need to control expenditures more effectively and reduce the size of government remained a driver of administrative reform. To deal with the situation, the Chrétien government launched a major reform initiative, known as Program Review.

Between 1994 and 1996, Program Review led to a major restructuring of the public service. Over a three-year period, cutbacks amounted to $29 billion out of annual program spending of about $120 billion. While a portion of these cuts were realized through a reduction of federal transfers to provincial governments, they still had a significant impact on the operations of the federal public service. In particular, roughly 45,000 positions were eliminated—an astonishing reduction of
nineteen percent of employees in the core public administration. Most departments were affected by the cuts, some in particular. Transport Canada, for example, saw many of its activities transferred to local authorities, autonomous agencies or private-sector organizations. While this may be an extreme case, the department went from the equivalent of 19,881 full-time employees in 1993 to 4,258 in 1999, and its budget fell from $3.9 billion to under $1.6 billion over the same period.

Program Review also aspired to be a 'rational' exercise in the redesign of government as opposed to a more traditional, across-the-board exercise in budget cuts. While there is considerable debate about whether these ambitions were realized, they certainly had an effect on the process that was adopted to secure the cuts. While central agencies set expenditure reduction targets for each department, deputy heads were asked to design reform plans in order to carry out those reductions in their respective departments. To do so, they were given a set of questions to guide their work. The questions were meant to steer executives through a systematic examination of their departments' programs and operations. Executives were expected to question and rethink what their departments did and how they did it, especially in light of the changing socio-economic environment. For instance, each program was to be reviewed to determine whether the public interest still required that it be maintained and, if so, whether it could not be offered as effectively by the private sector or by another level of government. The end result, it was hoped, would not simply be a cost-cutting exercise but a strategic review of the role of the federal government at the turn of the century.

There is no doubt that the Program Review exercise created some challenges for the PSC. As an organization, it experienced its own share of cutbacks. Between 1992 and 1998, it downsized its staff by 960 full-time employees and its annual budget was cut by $43 million. Moreover, as a central agency dealing with personnel, government-wide cutbacks of such magnitude also presented a considerable challenge. As Ginette Stewart, a commissioner of the PSC at the time, would later recall.
Program Review, with its staffing controls and employment reductions, had a major impact on the PSC. Responsible for administering priority entitlements and workforce adjustment, the PSC and its partners concentrated on providing support mechanisms for those affected by government restructuring: career counselling, resource centres, workshops, job matching and referral services to public service positions and outplacement networks with other employers. The PSC also assisted departments by participating in development and career-management programs to maintain an adaptive, competent and professional Public Service. As well, the PSC worked with the Joint Career Transition Committees, a cooperative venture by the employer and the bargaining agents to facilitate change. 18

Special measures were also taken by the commission, in collaboration with the Privy Council Office, the Treasury Board Secretariat and deputy heads, to support assistant deputy ministers and lower-level executives impacted by the restructuring. 19

Over this period, the PSC devoted a large part of its efforts to ensuring that affected employees were treated equitably despite the massive changes brought about by Program Review. 11 The commission worked to ensure that the rights of employees as well as the requirements of the merit principle were respected in the midst of tremendous changes. It also actively cooperated with other central agencies and departments to facilitate the movement of remaining employees and support the transitions of those who had to reorient their careers. Through these efforts, the commission demonstrated how, more than a simple oversight body, it remained an active member of the management team, working closely with other agencies to facilitate administrative changes and optimize the public service’s use of its human resources.

However, in addition to the challenge of dealing with the effects of the cutbacks, Program Review had another impact on the commission: it triggered another internal process of reflection about the PSC’s essential mandate and how best to fulfill it in an environment that had significantly evolved over the years. Like other departments, the
PSC was also targeted by Program Review and it received the series of questions intended to guide the internal review of its programs and spending. Ruth Hubbard, who had recently been appointed president of the commission at the time, remembers that the executive team originally found that the questions were difficult to apply to a central agency, let alone one that was also an independent parliamentary agent. But the intent of the exercise was clear and she decided to use the opportunity to engage the commission in a broader reflection on its role in the context of an evolving public service.¹²

To pursue this reflection, in addition to some purely internal discussion, the commission launched a series of learning workshops, involving a select group of senior public servants, academics and other experts. The discussions at the workshops held in the context of this Learning Series, which began in the fall of 1996, helped the commissioners explore the emerging challenges facing the public service and think about how the PSC should respond to them. One of the key issues to emerge from this reflection was the need to reaffirm the importance of a professional public service to the country’s democratic governance.¹³

In the late 1990s, this concern became an important theme for the PSC’s leadership. With the globalization of socio-economic relations and the shift toward a knowledge-based society, values such as efficiency, innovation and flexibility came to occupy a more prominent place in public discourse about government. In a fast-changing environment where the needs and problems of citizens were increasingly diverse and complex, governments were being called upon to quickly provide better adapted responses; but to do so they had to be flexible, results-driven, innovative organizations. The legitimate pursuit of these objectives, fuelled by the growing prominence of the new public management discourse, led to a widespread condemnation of the traditional bureaucracy and to the embrace of results-driven management as a way of reinventing the public service of many industrialized countries. On this score, Canada might not have been the most adventurous reformer, but it was part of the pack, and the culture of its public service had changed significantly over the years.¹⁴ For the Public Service Commission, the guardian of some of the most fundamental values of
traditional public administration, the potential erosion of these values in the face of the growing popularity of public management was cause for concern.

In the latter half of the 1990s, the PSC began to publicly reaffirm the importance of a professional public service, rooted in the traditional principles of merit-based appointments and promotions, non-partisanship and enough independence to allow public servants to “speak truth to power” in the public interest. In its annual reports for fiscal years 1995–1996 and 1996–1997, the commission dedicated entire chapters to “the essence of a professional public service,” reminding Parliament not to lose sight of the importance of these foundational principles as it pursued public sector reform. For example, in its 1995–1996 report, it affirmed:

‘Getting government right’ will mean optimizing both administrative efficiency and the traditional virtues Canadians associate with their public institutions. A vital challenge in the short and medium term—in addition to building the new Public Service through recruitment and reinvestment—is preserving the essence of a professional and politically neutral Public Service. The hallmark of that professionalism is the ability to give the government of the day the best possible advice without fear or favour, based on objective and impartial reflection on the long-term public good, to loyally carry out the orders of the democratically elected government, to obey the law and to act with probity in the public interest. In addition to being highly competent, a professional Public Service has to be nonpartisan, and entry and promotion must be based on merit. As the parliamentary agency which safeguards merit and nonpartisanship, the Commission believes it has a responsibility to remind Canadians that an institutionalized, professional bureaucracy is a cornerstone of our Westminster-based form of democracy. The final chapter of this annual report aspires to instigate a broader discussion about the importance of safeguarding fundamental democratic, ethical and professional public sector values as the search continues for more flexible ways of governing Canada in the interest of Canadians."
In subsequent years, the concern about safeguarding the fundamental values of the traditional public service did not subside. If anything, it probably deepened as the public service continued to evolve.

One of the important events that brought into even sharper focus the potential erosion of the merit principle due to managerial reforms was the creation of agencies with a distinct administrative and legal status in the late 1990s. At that time, more than 50,000 public servants were moved out of the core public service to join separate agencies with distinctive employment regimes. The most notable case was the creation of the Canada Customs and Revenue Agency in the spring of 1999, which took 43,000 employees out of the core public administration. Thousands of public servants also left for the newly created Canadian Food Inspection Agency or Parks Canada. While an important objective pursued by the creation of these agencies was the improvement of service delivery, the desire to make efficiency gains by escaping the more rigid staffing regime of the core public service was also a prominent goal. As separate employers under the law, the new agencies were no longer subject to the Public Service Employment Act and no longer fell under the authority of the PSC.

The creation of these agencies undoubtedly reflected a significant level of frustration with the staffing system among government and public-service decision-makers concerned that it constituted an enormous drag on efficiency. But the creation of these agencies was a significant blow to the application of the merit principle in appointing public employees. Before it became a separate employer, Revenue Canada accounted for about a third of the appointments made to and within the public service, a stunning proportion of appointments that now escapes the reach of the PSC. As public administration scholar Donald Savoie pointed out, this innovation resulted in a two-tier public service, where one tier is seemingly presumed to be naturally more impervious to political pressure to make partisan appointments. At the time that the decision was being considered, the commission's president strongly opposed it, causing some tension with the Privy Council Office, but to no avail.

It is important to note that the commission's concern regarding the erosion of the traditional values of a professional public service never
constituted a denial of the need for greater efficiency or managerial flexibility. In fact, its active support for legislative changes earlier in the 1990s and its endorsement of further changes in the following years show that the commission remained committed to these goals. Once again, the issue was rather one of balance. Having a public service staffed with competent and non-partisan civil servants able to advise the government of the day without fearing for their career advancement was as important for the future well-being of the country and the effectiveness of its government as having one that was innovative, efficient and capable of adapting to its changing environment. The challenge was to find ways to reconcile these legitimate and important objectives without neglecting one at the expense of the other.

In the late 1990s, as the commission struggled with this challenge, and what it meant for its future role in the public service, its response turned essentially on two related initiatives: one that sought to further delegate staffing authority to deputy heads within a stronger framework of accountability; and another that considered the radical curtailment of its involvement in service delivery in favour of a stronger oversight role.

**Rethinking Delegation: Accountability Agreements and Values-Based Staffing**

The PSC's commitment to delegation had remained unwavering since the adoption of the *Public Service Employment Act* in 1967. Throughout the 1990s, the commission pushed for even further delegation of its staffing authority to departmental heads, with maximum flexibility for managers. However, as a result of its own experience and in response to criticism from managers (insufficient delegation and flexibility) and employees (too much delegation to distrusted managers), the commission also decided to adopt a new approach to delegation: one that would emphasize respect for the values underlying public service staffing, a less prescriptive delegation framework that would allow departments to customize their staffing systems and departmental accountability that would be based less on individual transactions and
more on overall staffing outcomes. This shift in approach came as a result of two main reviews of staffing policies and practices.

First, early in the decade, the commission established a consultative committee on the Review of Staffing Delegation composed of departmental, union and private sector representatives. The process was extensive: no fewer than forty-nine consultative groups were convened as part of this initiative, involving various categories of managers, employees and stakeholders. The schism between managers and employees was evident, and the commission concluded, among other things, that it had to improve employees' confidence in managers.

The strong union opposition to the 1992 amendments to the Public Service Employment Act, which provided enhanced flexibility for managers, was largely a reflection of the distrust felt by many employees. More and better accountability for the use of delegated staffing authority was needed to improve the reputation of the staffing process and build confidence.

To address this problem, the commission worked on the development of a new delegation instrument: the Staffing Delegation and Accountability Agreement (SDAA). Each department would negotiate such an agreement, which, signed by the deputy head, would become the basis for rendering accounts for departmental performance. By using broad indicators and focusing on staffing outcomes and the overall integrity of the staffing system, this approach would counter the tendency to react to individual events and, since agreements were negotiated case by case, they could be tailored to the specific circumstances of each department. In this way, expectations would be clearer and more attuned to departmental requirements: something to assuage both employee representatives and managers. Moreover, departments were expected to share their annual performance report with their employee representatives and report on the feedback received.

Implementation of the Staffing Delegation and Accountability Agreement was delayed by the 1993 restructuring of departments and then by the 1995 Program Review, but it nevertheless progressed gradually throughout the decade. By 2001, the near totality of the core public administration was covered by the new system.

A second review conducted also helped confirm this broad shift in approach. Commissioned in the summer of 1995, the report of the
Consultative Review of Staffing was tabled in July 1996. The review was originally launched in response to departmental complaints about the excessive time required to fill positions, and it was tasked with finding ways to make staffing simpler and more efficient. Involving central agencies, managers, union representatives and various human resources experts, the initiative generated an exceptional level of consultation with stakeholders. At these consultations, PSC officials were struck by the intensity of interest in change that they encountered and, eventually, the review led to a broader agenda for non-legislative reform, known as staffing reform.

The Consultative Review of Staffing final report, which was sanctioned by the commission, strongly endorsed extensive delegation of authority to departments, but it also advocated a loosening of the constraints placed on departments for the exercise of their powers. Departments needed to be encouraged to fully use their delegated authority to redesign their own staffing operations, involving employee representatives in the process. But for this kind of renewal to work, the PSC had to ensure that its own staffing framework, within which departments must operate, was not too prescriptive. The commission had to focus less on detailed rules and more on the values that underpinned the staffing system. Accountability had to focus more on results and less on process and transactions. In this way, values-based staffing, as it would come to be known, was largely premised on a well-known bargain: fewer rules and constraints in return for more accountability for achieving results.

As we can see, the general approach underpinning the Consultative Review of Staffing report had strong affinities with the approach to delegation and accountability that the commission was progressively developing over this period. Hence, it is not surprising that they became entangled together in the broader agenda of staffing reform pursued by the commission after 1997. As former commissioner Ginette Stewart observed, these reforms were founded on the core belief that Deputy Heads, under existing legislation, can be delegated staffing authorities specifically tailored to their needs and with fewer conditions — if the delegation is accompanied by customized delegation and accountability agreements.
These initiatives also illustrate clearly the overall direction that the commission was taking during the 1990s: focusing less on the direct control of staffing transactions, moving from a rules-based to a less prescriptive, values-based staffing framework and placing more emphasis on accountability for results by departments. There is no doubt that this shift in direction tended to play up the oversight and accountability dimension of the PSC's mandate. Thus, in conjunction with the PSC leadership's growing concerns about the challenges being posed to the traditional public service, this shift contributed to a reconsideration of the commission's historical role in the delivery of staffing and related services.

Reconsidering the PSC's Role in Service Delivery: The 1999 Directional Statement

As we have seen, one of the effects of Program Review at the commission was that it triggered a period of intense reflection about what its role should be at a time when the public sector was undergoing significant transformation. This thinking led the commission to pay increasing attention to the fundamental values and principles associated with a professional public service in a Westminster-type parliamentary democracy, a preoccupation that was reflected in its annual reports to Parliament in 1996 and 1997. As a parliamentary agent entrusted specifically with the protection of one of those fundamental principles (independent appointments based on merit), the commission was naturally concerned that those principles and values, essential for maintaining a professional bureaucracy able to administer the law fairly and for providing competent, non-partisan advice to government, might be eroded in the new context. In an environment overtaken by management, who should care about the fundamental issues of public administration and about the unique role of the bureaucracy in a parliamentary democracy if not the Public Service Commission?

However, this preoccupation naturally raised a number of questions about the commission itself. In the new environment, where departments enjoyed unprecedented authority and flexibility, did the
commission need to change in order to play its role in protecting the professional public service? If independent oversight of departmental staffing was becoming the commission’s key role, was it well prepared to fulfill this vital function? In particular, to what extent was a strengthened oversight function compatible with the commission’s continued role in the delivery of human resources services? These issues were discussed intensely by PSC officials as they considered the future of the organization. Then, following a series of strategic retreats held in the fall of 1998, the commissioners adopted a directional statement, which proposed a new orientation for the commission.

The directional statement, entitled *A Strengthened Focus for the Public Service Commission of Canada*, proposed to radically cut back the commission’s involvement in the delivery of human resources (HR) services in order to devote itself more fully to the independent oversight of departmental staffing systems. Over the years, it argued, the PSC had substantially changed how it safeguarded merit by moving away from the direct control of staffing (doing it itself) and toward more indirect forms of control (by delegating staffing to departments, prescribing how it should be done and then conducting periodic verifications and demanding accounts). But, at the same time, it had continued to deliver some staffing services and HR programs to departments. The result had been a source of some confusion and ambiguity both for departments and for employees of the commission: Was the PSC truly an independent guardian of merit, exercising oversight and demanding accountability from departments, or was it more of a service agency focused on pleasing and meeting the needs of the same departments that were its clients? Was it one of a handful of agencies offering HR services to departments or a unique agency safeguarding on behalf of Parliament the integrity of a crucial element of the HR system? As the public service was adopting a staffing model that made oversight and accountability ever more important, greater clarity was needed on these matters.

For the PSC, while the move away from the delivery of HR services would be historic and difficult, it nevertheless seemed necessary. It is worth quoting at length the directional statement’s rationale:
Throughout its history, the Commission has sought to balance its independence with the need to work with government to effectively apply merit. One important element of early thinking which remains to this day and which now requires clarification is the Commission’s program and service delivery role as an adjunct to merit. While the Commission has already begun to change the way it safeguards merit, moving from directly controlling and carrying out appointments to delegating staffing authority to deputy heads, it continues, at the same time, to deliver a variety of human resources programs and services. Because of this, the PSC finds itself increasingly present at tables comprising the very officials whose staffing decisions it may be adjudicating, reviewing or auditing.

The Commission questions today the assumption that performing these program and service delivery functions truly represents the best means to bring about merit. It is the altering of this premise that is the essence of this Directional Statement. With the reinforcing of deputy head responsibilities for good people management and the PSC’s own extensive delegation of powers to them, the Commission is of the belief that it need no longer safeguard merit through ‘doing’ but, rather, through strengthening oversight.

In other words, while being mindful of the need for special attention in areas such as senior appointments and initial entry to the Public Service, the PSC’s fundamental responsibilities would be clarified and strengthened if it no longer delivered services in precisely the same domains that it oversees. As a matter of principle, the PSC cannot optimally exercise its delegated authorities while being part of the system of program administration itself. Against this backdrop, therefore, the PSC intends to divest itself of its program and operational responsibilities and strengthen its focus on its fundamental mandate, the safeguarding of merit.\(^{32}\) (emphasis added)

This proposal—to divest itself of most of its program and operational responsibilities in favour of a more exclusive focus on the oversight of delegated authority—undoubtedly represented a bold
gesture on the part of the commission, and it certainly illustrates how the PSC has been willing to rethink its role in ensuring quality public administration over the years.

Divesting services would mean the loss of resources and employees, which, some people thought, might reduce the PSC's clout and influence in Ottawa. But it would help provide greater clarity of purpose, with the commission's energies being refocused on its core mandate. As the Directional Statement unequivocally stated.

Simply put, the PSC is involved in too many product lines which, taken together, divert energy and attention away from the main task of ensuring that the principles it was created to maintain are indeed protected and promoted. Modern public sector human resources management requires excellence in both the delivery of human resource services and the oversight of merit. The Commission believes the time has come for these two functions to be separated.

As officials of the commission argued at the time, this separation of functions would allow the government, if it wished to do so, to create a new, truly integrated HR service provider. Thus, reorienting the commission's mandate would strengthen oversight, and at the same time, if the government moved toward better integrated service provision, create an opportunity to increase the efficiency of the overall HR system.

The directional statement was not a definitive statement of policy. Rather, it painted a picture of where the commission should be heading. To become a reality, it needed to be supported by the senior leadership of the public service, not only because the separation of functions it was proposing would involve a significant reallocation of responsibilities among central agencies involved in the HR system but also because, even if legislative changes were not required, programs would have to be transferred out of the PSC and they would have to go somewhere. Support of the key actors in the system was crucial.

But, as it tried to move forward, the PSC obtained mixed support among senior public service leaders. While many senior deputy
ministers supported the overall thrust of the proposal and the idea of better integrated HR service delivery, they also expressed concerns about the system's ability to effectively coordinate HR policy if the PSC were to become further removed from the management team of the public service. At the time, the Clerk of the Privy Council Office (PCO) was talking about a more corporate (whole-of-government) approach to HR management in the public service, and it was not clear whether the commission's proposed course of action would contribute to this objective. In fact, the directional statement was not received with enthusiasm at the PCO when it was officially sent to the Clerk in January 1999.

In any case, a full debate of the directional statement, as an image of the future of the PSC and its role in the HR regime, was significantly hindered because of inopportune timing. Not only was the system preoccupied by other management issues, such as Y2K and a difficult reform of the universal classification system, but the directional statement also arrived at the PCO as the Clerk, Jocelyne Bourgon, was about to leave her position. As a consequence, serious consideration of the proposal would have to wait for a new clerk to be in place. As it turned out, by the time the new clerk settled in, the debate had shifted to the need for more fundamental and comprehensive HR reform, a debate triggered largely by the release of a very critical study by the Office of the Auditor General in April 2000.

Even at the PSC, the directional statement was relatively short-lived, a victim of changing circumstances. While the commission released it publicly in the spring of 1999 and announced publicly that it would pursue "a very active, open and transparent consultation process" on its new direction,³⁶ the statement was in fact soon abandoned as a blueprint for thinking about the commission’s future. Before the end of the year, its strongest advocate, Ruth Hubbard, had left the PSC presidency. The two commissioners who served with her, Ginette Stewart and Mary Gusella, also left around the same time.

The new president of the commission, Scott Serson, did not readily endorse the divestment of most staffing and HR services, thinking that the PSC would remain more influential and better positioned to ensure
respect for the merit principle by continuing to balance both roles. And a few months later, in its 2000 annual report, the commission effectively shelved the directional statement:

The Commission believes its leadership role in the human resources management (HRM) system will be enhanced through the implementation of the values-based approach described above. The Commission will continue to monitor carefully the interplay of its two important roles of independent Parliamentary overseer and key player in the HRM system. The issue of an appropriate balance of these roles will be revisited if there is any indication that the effective oversight of merit is impeded in any manner. 85

Despite its limited direct impact, the directional statement had clearly raised an important issue that would not simply disappear in the following years. The more staffing authority delegated to departments and the fewer the constraints placed on them to exercise it, the more vital the commission’s oversight role would become. To what extent could the commission vigorously play this oversight role, including through audits and investigations, while at the same time remaining significantly involved in operations and offering services to client departments? Was there a need to rethink the activities of the PSC to allow it to focus better on its essential mandate: safeguarding the merit principle? Because they were germane to long-term trends in staffing, these questions would soon return as key issues. But, by the end of 2000, they had already become part of a much larger debate about the need to modernize the whole HR framework of the public service.

TRIGGERING COMPREHENSIVE REFORM: THE AUDITOR GENERAL’S 2000 HR STUDY

As the PSC was working on redefining its own role, pursuing its delegation and accountability agenda and reconsidering its role in delivering services, the Office of the Auditor General (OAG) was conducting a major study of the human resources management regime
of the public service. As we have seen in previous chapters, it was not the first time that the auditor general would take a critical look at the bureaucracy's management of its human resources. But, released as part of its report in 2000, this study, *Streamlining the Human Resource Management Regime: A Study of Changing Roles and Responsibilities*, would be a landmark, a particularly hard-hitting critique of the state of personnel management in the public service calling for fundamental institutional and legislative reforms.\(^{27}\)

Written under the direction of Maria Barrados, assistant auditor general, who incidentally would become the president of a reformed PSC three years later, the report conveyed the sense that action was urgently needed to resolve some key personnel management issues, especially in light of upcoming challenges, such as the major waves of retirements and the growing need for knowledge workers in a modern public administration.\(^{37}\) Extremely critical of the state of staffing and human resources management, the OAG's report observed that staffing remained "a major source of frustration" for managers and employees alike.\(^{39}\) Despite repeated efforts to make the system more flexible, managers essentially viewed it as "unduly complex, inflexible and inefficient," and many employees were even sceptical that it led to fair hiring decisions.\(^{40}\)

The OAG's diagnostic for the ills of the staffing and human resources management system focused largely on its excessive regulation. The report argued that much of the administrative burden on departments resulted from policies and regulations imposed by the PSC and the Treasury Board to ensure that the relevant laws, and the related and ever-expanding jurisprudence, were respected. As a result, despite successive waves of delegation of authority to departments, managers remained entangled in a web of cumbersome rules. For example, the report pointed out that the Treasury Board's personnel and pay administration manuals contained more than 12,000 pages of instructions in 1997.\(^{41}\) The system's complexity was such that, according to various studies, departments had to develop policies and rules of their own to ensure that their employees complied with the requirements of central agencies.\(^{42}\) The outcome was clearly inefficient: staffing a new position that had to
be classified took almost eight months, and the public service employed about three times the number of HR professionals as the standard in the private sector.\textsuperscript{43}

In order to improve staffing, the OAG advocated "substantial change—even legislative change."\textsuperscript{44} For example, changes to the Public Service Employment Act would be needed to provide departments and the Public Service Commission with greater flexibility in the appointment and deployment of personnel. But in addition to these modifications, there was also a need to deal with the excessive fragmentation of the responsibility for human resources management in the public service. The responsibility and related accountability for improving human resources management needed to be clarified and, for the OAG, there was no uncertainty about it: the responsibility and accountability of deputy heads, the leaders of departments and agencies, had to be strengthened. As it argued,

"The underlying philosophy should be that deputies have the authority to act at their own discretion in all areas except where the centre has chosen to prescribe policy, and those areas should be limited to the minimum essentials. It is crucial that new responsibilities and deputies’ accountability for acting on them be set out clearly."\textsuperscript{45}

Clearly, decades of an approach emphasizing the delegation of authority had successfully presented deputy heads as primarily responsible for administering a centrally prescribed framework but had failed to make them HR leaders by making human resources management an integral part of their management responsibilities. Reforms were now needed to take these additional steps: empower them, set clear expectations about HR management and hold them truly accountable for their performance.

The role of the Public Service Commission in all this was left rather undefined by the OAG. The OAG observed that there was agreement on the vital role played by the commission in protecting the merit principle. But the report advocated a renewed dialogue with Parliament about how the commission should fulfill this function, and
it stated that the possibility of legislative reforms should be part of the discussions. Consideration also had to be given to the appropriate extent of the commission's involvement in delivering services that were not central to the protection of merit. However, the report did not include any explicit calls for removing the commission's staffing authority or for changing its unusual institutional position as an independent parliamentary agency also exercising executive powers of appointment to the public service. Observers looking for a clear signal in this regard were left noting repeated exhortations in favour of clarifying the division of responsibilities among agencies and a passing observation that the "reluctance to tamper with the independence and role of the Public Service Commission has been a factor [in the Public Service's past inability to resolve key HR issues]." Thus, while it clearly advocated strengthening the authority and accountability of deputy heads in the area of human resources management, including staffing, the report's views on the appropriate role of the PSC were not as clear.

Initially, the report of the Office of the Auditor General did not generate much enthusiasm for reform. The Public Service Commission reiterated its support for reforming the staffing system so that it would be based more on values and less on rules. But it pointed out that, following its review of staffing in the mid-1990s, steps had already been taken in this direction. Furthermore, in sharp contrast to the OAG, the commission believed that much progress remained possible under the existing legislative framework. At a minimum, more work was needed before concluding that amendments to the Public Service Employment Act were necessary. Finally, in a clear attempt to caution the government against undertaking radical reforms in the search for greater flexibility, its official response to the OAG also stated that "efficiency, while unquestionably important, forms part of a larger balance of values" associated with staffing the Public Service of a democratic country. Maintaining this balance, the commission argued, is necessary to ensure that Canadians remain confident in the public service.

In the higher echelons of the public service and the government, the initial response to the OAG’s report was similarly lukewarm. Amongst the myriad of important issues faced by the centre of government, a
significant overhaul of the human resources management regime would consume a great deal of energy, would likely prove disruptive and hardly seemed a political priority. Moreover, as the Office of the Auditor General itself reported, there were “concerns, notably among deputy ministers, about the practicality of pursuing such fundamental reforms.” Consequently, the government’s initial response to the report was marked by a distinct lack of enthusiasm. In its official reply, the government stated that it was “considerably more optimistic than the Auditor General on such matters as collective and individual deputy minister responsibility, accomplishments in staffing reform, and the flexibility inherent in the current legislative framework.”

Pointing out that committees of deputy ministers were already at work on such issues as recruitment and workplace well-being, it declared itself confident in the possibility of effectively modernizing human resources management without legislative change.

However, after a few months, this initial reluctance gave way to some genuine support for change. In early 2001, in its third report, the Advisory Committee on Senior Level Retention and Compensation (the Strong Committee), which advocated the development of a long-term human resources strategy for the public service, endorsed the Auditor General’s recommendation for structural reform of the HR regime. Then, a few months later, the final report of the Advisory Committee on Labour-Management Relations in the Federal Public Service, the Fryer Report, also advocated significant changes to the human resources management regime, this time to the legislative framework concerning labour relations. Within a short time span, the government had received consistent and strong signals about the need for institutional and legislative change.

The general election of 2000, which resulted in a comfortable Liberal majority, seemed to present a measure of political stability and commitment that would make significant reforms possible. Upon its return to office, in the Speech from the Throne read on January 30, 2001, the Chrétien government committed itself to administrative reforms that would allow the public service to attract the skilled workforce needed in a knowledge economy and society. As it stated,
The Government is committed to the reforms needed for the Public Service of Canada to continue evolving and adapting. These reforms will ensure that the Public Service is innovative, dynamic and reflective of the diversity of the country—able to attract and develop the talent needed to serve Canadians in the 21st century.52

In this context, enjoying clear political support and responding to growing calls for legislative changes, Mel Cappe, clerk of the Privy Council and Head of the Public Service, took steps to set the bureaucracy on a path of reform.

**Seeking a New Beginning: The Public Service Modernization Act**

The Clerk of the Privy Council’s *Eight Annual Report to the Prime Minister on the Public Service of Canada*, tabled in March 2001, was largely dedicated to the need to build a modern, people-centred public service in order to meet the challenges of a knowledge-based society, especially at a time when large-scale retirements would soon create significant recruitment challenges. In the report, Cappe announced “the beginning of a phase of more fundamental reform,” which would lead to a cultural shift that would bring managers to see that people management is an integral part of good management.53 But, “today’s human resources management laws,” the Clerk warned, “do not allow us to move quickly enough on the transformation to a modern, people-centred public service. More fundamental change is required.”54 Also in the report, he asserted that “no matter how you look at it, it is clear that we are not able to keep pace because our current people management regime is too linear, inflexible and complex” and that “to keep pace and better support the efforts of public servants at all levels, we need to move from our incremental approach to a more fundamental reform of the legislative framework for human resources management in the Public Service.”55

Once reformed, the legal framework would continue to ensure the protection of merit, representativeness, non-partisanship and
competence, but it would also ensure that management would be responsible for all aspects of personnel management, and authority for personnel management would be pushed down as far as possible in the departments' hierarchy.

The Clerk's report and other statements, coupled with the Speech from the Throne, undoubtedly represented an unequivocal and strong endorsement of significant legislative reforms by the centre of government. Moreover, the Clerk's declaration left no doubt about the overall orientation of the reforms to come: flexibility, efficiency and transfer of authority to departmental managers were the order of the day. However, to make these reforms a reality, much work remained to be done on the specifics of the legislative changes. To do this, on April 3, 2001, the Prime Minister appointed a Task Force on Modernizing Human Resources Management, headed by a senior deputy minister, Ranald A. Quail, who would report to the Clerk of the Privy Council. At the political level, the president of the Treasury Board, Lucienne Robillard, a senior minister with a long experience of the public service, was given responsibility for looking after this initiative and ultimately shepherding the resulting legislation through Parliament.

The recommendations of the Quail Task Force, and the eventual changes that it led to, were significant and wide ranging, affecting not only staffing but also labour relations, training and development and the regulation of political activities by public servants. Many of the changes that it advocated eventually made up part of the Public Service Modernization Act, which was enacted by Parliament in November 2003. With regard to staffing, significant changes were made to the public service's approach to the merit principle as well as to the distribution of responsibilities among central agencies and departments. The overall thrust of the reforms, in keeping with the Clerk's initial direction, was to emphasize greater flexibility in staffing rules and further delegation of authority, inscribed in the legislation itself, to departmental managers. Overall, the adopted measures clearly were the most fundamental and wide-ranging changes to the public service's human resources management framework since 1967.
In examining these changes and their impact on the Public Service Commission, two sets of issues appear particularly important: the debates over institutional reforms, dealing mainly with the independence of the PSC and the distribution of roles among central agencies, and the legislative changes that sought to make staffing more efficient, especially the new legislated approach to the implementation of the merit principle. We will now look at these issues in turn.

**Institutional Reforms: A Redistribution of Roles**

A key objective of the 2003 reforms was to clarify responsibilities for human resources management in the federal public service. In this regard, the reformers' main desire was to see the responsibility and accountability of deputy heads for managing their organization's personnel increased and more clearly affirmed in the law. As it has often been pointed out in the past, deputies had come to be seen as the operators of a centrally prescribed framework that left them little room for judgment and leadership. There was a sense that personnel management had often been a neglected dimension of their managerial responsibilities, a situation that was not tolerable in an environment where talented and motivated people had become the most precious resource of departments and where recruitment and retention were becoming increasingly difficult.

To address this concern, the *Public Service Modernization Act* included some important provisions. The preamble of the new *Public Service Employment Act* explicitly affirmed that staffing decisions should be made at the lowest possible level within departments: delegation of staffing authority, from the PSC to deputy heads then from deputy heads to lower level managers, was to be the core philosophy of the staffing system. In the same spirit, the preamble also provided that managers should enjoy flexibility in staffing arrangements. Furthermore, the PSMA also amended the *Financial Administration Act* to transfer some of the Treasury Board's authority for personnel management to deputy heads, especially in the areas of training and development, termination and demotion and the setting of standards for disciplinary actions. The
exercise of the new powers would be subject to policies and directives issued by the Treasury Board, but deputy heads would be at the helm and accountable for their performance. Finally, as a way to heighten the importance of human resources management, the Treasury Board was also tasked by the new legislation to table in Parliament an annual report on personnel management in the core public service.

While there seemed to be a widely shared consensus on the need for clearer and more extensive delegation of human resources (HR) management to deputy heads and managers, a trend supported by the PSC, there was no consensus on a second issue of institutional reform: the distribution of roles and responsibilities among central agencies with responsibilities for human resources management. As we have seen in previous chapters, the “ambivalence of central personnel management” has long been as a source of problems for HR management in the public service. The HR modernization initiative presented yet another opportunity to consider simplifying and clarifying the way personnel management was dealt with centrally. And, more particularly, it again raised the question of whether the PSC should retain its executive authority over appointments or whether it should confine its role to reporting to Parliament on the results of its audits of staffing actions undertaken by departments. In the latter model, staffing authority would be fully transferred to the employer.

Like many commissions and task forces over the years, the Quail Task Force, wanting to end the historic split in central personnel management responsibilities for the sake of efficiency, proposed to change the mandate of the PSC and to turn it solely into a parliamentary agency. Not surprisingly, the commission, represented by its president, Scott Serson, argued strenuously in favour of retaining its executive authority. Serson, like many PSC presidents before him, believed that the protection of merit required a strong and independent commission. In his view, a commission that relied almost exclusively on its power to take departments to task by tabling audit reports before Parliament would likely lack sufficient levers to ensure strict adherence to the principle of merit. With a more delegated and more flexible staffing model, there seemed to be an even greater need for a strong and
independent body capable of exercising direct authority in the event of incompetence, defective systems or abuse of discretion. In his view, in order to prevent abuses and retain the confidence of Canadians, the public service needed a PSC with one foot still firmly planted on the executive side of the fence.

In the senior ranks of the public service, the debate about the institutional position of the PSC proved to be difficult, and deputy ministers were divided on the best course of action. As the debate intensified, there were growing tensions between the Commission, the Privy Council Office and some deputy ministers, and, at one point, the president of the commission stopped attending the regular meetings of the Committee of Senior Officials. As the head of an independent agency, Serson also met with the President of the Treasury Board to share some of his concerns about the threat to the PSC's statutory authority. As in the early 1990s, there were also concerns about the PSC taking a strong public position against the reform and publicly doubting its future ability to protect the merit principle if it lost its executive authority over staffing.

In its 2002 Annual Report, at a time when the Privy Council Office was still considering reform proposals, the commission had already warned against an eventual curtailment of its independence. Emphasizing the link between its institutional independence and the protection of the key values of neutrality and equity, it had stated,

Public Service neutrality is in large part a function of the accountability of deputy/agency heads to the Commission, who in turn is accountable directly to Parliament. Deputy/agency heads and the Commission are therefore protected from direct pressure from the government of the day in making appointments. This protection for deputy/agency heads from partisan influence should be maintained in the new system. Another possible threat to merit would be an excessive emphasis on efficiency in staffing, at the expense of the values of fairness, transparency and equity of access. At present we are responsible for ensuring an appropriate balance among all the staffing values. In a modernized system, the Commission should
have a way to guarantee that this balance continues to exist. At the heart of these issues is the continuing need for an independent agent of Parliament, working to protect merit in co-operation with— but not subject to—the Government in its role as employer.87

In the end, after what has been described by former senior officials of the commission as a very difficult period, the Privy Council Office decided not to strip the PSC of its statutory authority over staffing. Once again, the PSC had fended off an attempt at reducing its role to one of a parliamentary oversight body.

Ultimately, in fact, as a result of amendments introduced during the parliamentary consideration of the Public Service Modernization Act, the commission's independence was even strengthened. First, new provisions served to clarify the commission's governance structure and the leadership position of the organization's president, turning the jobs of the two commissioners into part-time positions and officially designating the president as the commission's chief executive officer. While the president had always had a unique leadership position in the past, the exact nature of the president's relationship with the other two commissioners had sometimes been the subject of dispute. Second, amendments were made to the procedures for appointing the president, bolstering the president's unique status and independence. While still a governor-in-council appointment, the president is now appointed only after the nomination has been approved by a resolution of the House of Commons and the Senate. Moreover, appointed for a seven-year term, the president can only be removed by the government at the request of Parliament. These amendments underscored the commission's special relationship to Parliament and its distance from the political executive.

However, while the PSC was kept as an independent agency exercising authority over staffing, the comprehensive reforms adopted in 2003 still profoundly affected the distribution of roles among central agencies involved in human resources management. The most notable change was the creation of a new central agency for human resources management: the Public Service Human Resources Management Agency of Canada (since renamed the Canada Public Service Agency).88
the portfolio of the president of the Treasury Board, the new agency was created by giving off most of the personnel responsibilities long held by the Treasury Board Secretariat, with the notable exceptions of labour relations management, collective bargaining, and compensation matters. Additional responsibilities, such as career development programs previously administered by the PSC, were also transferred to the Canada Public Service Agency.

Since it seemed to run somewhat counter to the oft-professed desire to simplify the central management of personnel, the creation of the Canada Public Service Agency might have been perceived as a surprising development. In fact, the Quail Task Force had not initially proposed the creation of a new central agency. But, as its recommendations were considered and debated within the senior ranks of the public service, the clerk of the Privy Council at the time, Alex Hirmawfelfarb, came to consider the creation of a separate human resources agency as a promising step forward. The creation of a separate agency, distinct from the Treasury Board Secretariat, and solely dedicated to human resources management, seemed to serve two objectives. First, while it might not simplify the system, it would serve to recognize, at the institutional level, the fundamental importance of people management to the future success of the public service. But, second, it would also allow the Treasury Board Secretariat to focus its efforts more exclusively on budgetary policy and financial management at a time when there were growing concerns about financial controls and accountability. In this sense, a separate agency would contribute to the improvement of the management framework of the public service.

As already noted, for the PSC, the creation of the Canada Public Service Agency meant the loss of its responsibilities for career development. Its career programs, including the well-known Management Trainee Program, the Career Assignment Program, the Accelerated Executive Development Program and Interchange Canada, were all transferred to the new agency. But this was not the only change in the distribution of responsibilities. As a result of the adoption of the Public Service Modernization Act, the Public Service Commission also lost most of its appeals functions. Under the new legal
framework, while the PSC would continue to investigate complaints involving external appointments, most complaints concerning internal appointments would be handled by a new independent Public Service Staffing Tribunal. The PSC's responsibility for language training, which had played a big part in the commission's life since the late 1960s, was transferred to a new Canada School of Public Service, an expanded training organization created out of the Canadian Centre for Management Development.

There is no doubt that these changes considerably transformed the PSC as an organization. Some of the affected functions, such as training, had been a sizeable part of the organization and had played a significant role in the commission's recent history. But the reorganization also provided the commission with greater clarity of purpose. As it discarded its training and career development activities, the commission dedicated a larger part of its efforts to better oversight of the staffing system, a task of growing importance due to the new law's emphasis on extensive delegation of authority to deputy heads and managers. For example, in this regard, a new Audit Branch was created and, between 2003 and 2006, the number of auditors at the commission increased from five to twenty-three, a significant reinvestment in an area that had been neglected over the years.

However, it must be noted that, despite the greater emphasis on delegation of staffing authority to the deputy heads, the commission has not fully shed its staffing, recruitment and assessment services in the years since the 2003 reforms, even though these services are no longer mandatory. For instance, the commission still runs a number of specialized government-wide recruitment programs and manages the Public Service's centralized online recruitment and screening system, which received over one million applications in 2006–2007. Moreover, while the new staffing regime encourages extensive delegation and seeks to maximize autonomy for departmental managers, many departments and agencies will never develop a full range of staffing, recruitment and assessment services, due to their small size or the lack of availability of HR expertise. For this reason, the commission still offers these services on an optional basis and many departments continue to use
them. Furthermore, even under a delegated authority model, effective centralized services are still necessary to allow the commission to withdraw, in part or in total, the authority to do staffing from any department that has been found to be inappropriately performing these delegated functions. Hence, despite a clear realignment of its functions in favour of its oversight role, the commission remains an organization that delivers important staffing services.

In sum, the institutional reforms brought about by the Public Service Modernization Act had the effect of recentring the commission on its core mission: ensuring that the merit principle is applied in staffing the public service. At the institutional level, it did so by re-emphasizing the commission's role as a parliamentary oversight body, shedding some of its services and strengthening the president's autonomy from the government. But, this recentring did not mean breaking with one of the central elements of the 1908 bargain: the dual personality of the commission as a parliamentary agent and an executive office possessing statutory authority over staffing. In this sense, despite the profound changes that it brought to the central personnel management system, the 2003 reforms also provided a significant degree of continuity with the commission's history.

A NEW APPROACH TO THE MERIT PRINCIPLE

While these institutional changes were of fundamental importance for the PSC and the central management of personnel in the public service, they were not the most contentious part of the legislative changes adopted in 2003. More controversial among stakeholders and more prevalent in parliamentary debates were the proposed changes to the public service's approach to the merit principle. In addition to pushing staffing authority as far as possible down departmental hierarchies, the modernization of human resource management also meant breaking down some of the staffing system's rigidities. Since 1967, court decisions had resulted in a rule-heavy system, and legislative changes were needed to allow the public service to leave behind some of these constraints. The elimination of "unnecessary red tape in staffing" was a clear objective of
Merit as the Essential Mandate: 1993–2008

the legislative reform. As Lucienne Robillard, president of the Treasury Board, put it, “The current system is cumbersome and outdated. The public service needs a renewed legal framework for its staffing and management practices to allow it to operate more effectively and to better meet the needs of Canadians.”

The approach taken was a bold one. Merit-based appointments had never been explicitly defined in statute. The Public Service Commission had been left to design selection procedures that would bring some life to the merit principle. However, as staffing decisions were challenged, the courts had progressively defined the nature of meritorious appointments, emphasizing the identification of the best qualified candidate as determined through a comparative assessment of candidates for a specific position. Despite the amendment to the Public Service Employment Act in 1992 that introduced the possibility of using a more absolute standard of competence, the staffing system was still largely dominated by cumbersome procedures meant to ensure that candidates were rigorously assessed and ranked, so as not to give grounds for appeals. The 2003 legislative changes sought to leave behind this approach by legislating, for the first time, a definition of merit that would be more flexible.

The new Public Service Employment Act, contained in the Public Service Modernization Act, redefined meritorious appointments as appointments where the selected person meets “the essential qualifications for the work to be performed, as established by the deputy head, including official language proficiency.” In other words, it would now no longer be necessary to show that the selected person was the best qualified candidate, but only that he or she possessed the necessary qualifications to perform the work. Moreover, in making staffing decisions, departments would now be able to consider additional qualifications deemed to be assets but not essential for the job, as well as take into account their current or future operational requirements and organizational needs. Deputy heads would now have the authority, which could be subdelegated, to define these various staffing requirements. Finally, the new act stipulated that it was not necessary to consider more than one person for an appointment to be
based on merit and that non-advertised appointment processes could be used. Overall, these measures represented a clear embrace of a more limited conception of merit—having the essential qualifications to do a job—and granted considerable discretion to managers in conducting the staffing process.

This new approach to merit was not universally well received. In Parliament, opposition parties, which generally agreed that a new legislative framework for staffing was required and that more flexibility was needed to speed up the hiring process, nevertheless expressed some concerns about the proposed approach to establishing merit. For instance, Paul Forseth, the Vancouver MP representing the Canadian Alliance Party on the file, stated,

My problem is that the new, watered down definition of merit gives no direction to select the best person for the job within a specific competition process. Since that basic goal would no longer be required, no justification or accountability would be required to defend perhaps a sloppy selection process or even insider advantage to a favoured person.... There is nothing that will bring the whole system down faster than the informal social network of news among employees when it becomes known that a significantly less able employee was selected for promotion under the new proposed system, where this so-called winner met the basic qualifications but was clearly not the best person within any given competition. I say to the minister that she will have a disaster on her hands if she fails to fix this most basic definition.

Then, Monique Guay, who spoke for the Bloc Québécois on the file, expressed similar views:

Staffing and the merit principle are at the heart of the reform in Bill C-25.... The minister wants to give managers greater leeway. Hiring time will be shortened, but we are wondering at what cost. The employees will have to make sure not only that they meet the position requirements, as they are currently required to, but also
that they are on the good side of the boss under whom the position falls, or else they will no longer even be evaluated. There is therefore the whole issue surrounding recruiting and staffing in which some balance should perhaps be sought, within limits. I realize that the process so far has proven complex and time consuming. But could a middle ground not be found? This is something we have a bit of a problem with."

As we can see, despite being fairly supportive overall, parliamentarians sitting on the opposition benches were clearly concerned about the reform’s eventual impact on the public service if, in practice, the reform resulted in an erosion of the merit principle.

Their concerns were fuelled or echoed by concerns expressed by many observers or stakeholders. As could be expected, labour unions were particularly critical. For example, Nycole Turmel, president of the Public Service Alliance of Canada, strongly condemned the legislation. Before the House of Commons’ committee studying the bill, she said:

"[The proposed Public Service Employment Act], in its current form, represents a wholesale retreat from a public service defined by the appointment of the best-qualified individuals. Bill C-25 delivers on its promise of increased flexibility for management, but contains very little protection for employees or the principle of merit.... In doing so, the PSAC fears that the new PSEA has the potential to usher in a new era of patronage, favouritism and a lack of accountability that is inconsistent with the government’s stated objective."

Some recognized experts, such as Nick D’Ombraan and Donald Savoie, acknowledged the need for greater flexibility and a rethinking of the distribution of responsibilities among institutional actors but nevertheless worried about the erosion of the merit principle. Ruth Hubbard, former president of the PSC, now retired from the public service, took a similar position. In an article published at the time, she endorsed the bill as “cautiously constructive” but worried that the new
approach to merit might open "the door to significantly more abuse" and become "a slippery slope to mediocrity." Those were hardly strong or unequivocal endorsements.

Despite these concerns voiced in the House of Commons and in public debates, the *Public Service Modernization Act* was adopted in June 2003, with some limited amendments. As we have seen, one of those changes modified the process for appointing the PSC president. Others provided for consultations among the commission, the employer and labour unions on a number of policy issues or gave the PSC more flexibility in granting leaves to employees wishing to run for political office. While these changes were useful, they did not alter the essential intent of the legislation on matters of staffing. The vast majority of the amendments accepted by the government came from the Canadian Alliance Party, which supported the bill in the end, judging that it was the best that could be achieved at the time. In contrast, all but one of the 120 amendments moved by the Bloc Québécois were rejected, as were all those proposed by the New Democratic Party.

It should also be remembered that, much like the *Public Service Reform Act* in the early 1990s, the *Public Service Modernization Act* was a very comprehensive piece of legislation. For example, in addition to pushing for more extensive delegation of staffing and redefining merit, the act also provided for the automatic conversion of term employees into indeterminate status after a specified period of time, without giving grounds for appeal. The first part of the act enacted an entirely new *Public Service Labour Relations Act*, which, among other measures, established a new Public Service Labour Relations Board and mandated the establishment of departmental labour-management committees. Moreover, because of the political climate at the time, a portion of the parliamentary debates centered on the need for better protection of civil servants who disclose wrongdoing in the workplace (whistleblowing), even though the issue was not part of the bill. Workplace harassment was another issue raised by some parliamentarians. While we have not examined them here, some of these issues and measures also met with opposition and motivated several amendment proposals. However, in the end, the government resisted most of the proposals and the legislation was adopted without much difficulty.
During these public debates on staffing reform, the Public Service Commission, as it had done with the *Public Service Reform Act* in the early 1990s, defended the need for greater efficiency. As its president, Scott Serson, argued before the House of Commons committee studying the bill,

The proposed legislation offers an opportunity to increase the flexibility of the staffing system so that managers can respond quickly to the evolving needs of Canadians. *This change is needed, and we support it.* Increased staffing authority for deputy heads and the greater discretion for managers contained in the bill is counterbalanced with measures to safeguard against such abuses as political and bureaucratic patronage. It is a significant challenge to find the right balance between flexibility and fairness.\(^{80}\) (emphasis added)

In other words, while not perfect, the new act seemed to strike a difficult but reasonable balance between efficiency and equity.

Despite its support for the bill, the PSC nevertheless suggested some amendments.\(^{81}\) Some of them sought to further strengthen the independence of the commission and tighten its ties to Parliament. For instance, the commission proposed that Parliament play a greater role in setting its budget, pointing out that negotiating its annual resources with the Treasury Board, the employer of public servants, was an uncomfortable position for an independent parliamentary agency in charge of overseeing and auditing staffing by departmental managers. It also suggested that Parliament weigh in on the criteria to be used for the selection of commissioners and it requested the right to table occasional special reports on emerging issues facing the public service in its areas of responsibility. Finally, the commission also asked to be given the authority to audit departmental practices regarding the establishment of staffing requirements (for example, essential qualifications, organizational needs and operational requirements) and to take or order corrective actions as a result of audits. Some of these proposed amendments were adopted, such as the right to issue special
reports and the right to audit managerial use of staffing requirements, while the others were ignored. However, the commission's proposed amendments were clearly aimed at improving the bill on the margins in the hope of striking a better balance between efficiency and fairness. They did not constitute a disavowal of the reform's essential intent or the bill's main provisions.

In the end, having survived the reforms with its staffing authority intact and a stronger affirmation of its institutional independence, the commission had reason to be comfortable with the overall thrust of the institutional reforms. While the loss of its training services, its development programs and its appeal function left it diminished in some ways, the renewed focus on staffing oversight and accountability was in keeping with the commission's direction over the last decade. Even the new definition of merit, a bold attempt at ensuring speedier, more flexible and more efficient staffing, was supported by the commission. This might have been surprising, given that many critics of the new approach were concerned about its deleterious effect on respect for the merit principle. But, having worked over the previous decades at maximizing the flexibility available under the old Public Service Employment Act, the commission was well aware of the difficulties that legal and policy constraints could cause, and it knew that flexibility would be needed to deal with the upcoming challenges of workforce renewal. The new approach was worth trying; it would now be incumbent upon the commission to be effective in its renewed oversight role in order to ensure that merit would indeed be respected under the new system.

**CONCLUSION**

Over the past fifteen years, the staffing system and the Public Service Commission have been significantly transformed. When the Chrétien government took office in 1993, the commission had just gone through the difficult experience of Public Service 2000 and the subsequent adoption of the Public Service Reform Act. Having survived this challenge to its independence and with newfound flexibilities under the Public
Service Employment Act, the PSC might have simply decided to focus on making the most of the new measures while continuing to ensure respect for the merit principle in staffing the public service. But instead the decade that followed was characterized by intense efforts to rethink the role of the PSC in the human resources management system.

The central issue was the need to strengthen the commission’s ability to demand accounts from departments for their use of their delegated staffing authority. The commission’s introduction of Staffing Delegation and Accountability Agreements, its bold proposal set out in the directional statement to move away from operations and HR services to concentrate on oversight as well as the reforms of 2003, which saw the commission actually divest itself of some of its functions and prioritize its oversight role—all these events resulted in a progressive shift in favour of the PSC’s responsibilities as an independent oversight body. As the staffing system as a whole increasingly moved toward the delegation of staffing powers and responsibilities to deputy heads, the need for the commission to concentrate on its essential mandate—the protection of merit—became clear. Strong oversight was crucial if merit, a foundational value of a professional public service, was to be adequately safeguarded. This conclusion left the Public Service Commission transformed, but with a greater clarity of purpose as it headed toward its centenary.

ENDNOTES

1 The issue of governor-in-council appointments was, however, discussed in the platform, with the Liberals promising to review the appointment process and make appointments more clearly based on competence and more representative of the diversity of Canadian society. Liberal Party of Canada (1992), Creating Opportunities: The Liberal Plan for Canada, Ottawa, Liberal Party of Canada, 93–94.


See, for example, the contributions by Gilles Paquet and Paul G. Thomas, in Amelia Armit and Jacques Bourgault (eds.) (1996), Hard Choices or No Choices: Assessing Program Review, Toronto, Institute of Public Administration of Canada.


For example, for Assistant Deputy Ministers, the PSC's ADM Secretariat, headed by Margaret Amoroso, worked with the Senior Personnel Advisory Committee to offer career counselling and identify suitable alternative opportunities within the public service. For lower-level executives, the commission implemented additional strategies, including greater use of diagnostic tests by its Personnel Psychology Centre to build a better picture of affected employees’ marketability, some measures to facilitate the deployment of other executives to create new opportunities for priority individuals, and the development of new programs, with the Treasury Board Secretariat, to facilitate movement of employees to the private sector, international agencies or even self-employment. See Ruth Hubbard, Memorandum to the Members of the Executive Group, entitled Managing the EX Cadre through Transition, dated February 27, 1995 (RG 108, vol. 1466).

A good survey of these activities is offered in Public Service Commission (1996), 1995–96 Annual Report, Ottawa, Minister of Public Works and Government Services, 7-11.

Interview with a former senior official of the PSC.


Merit as the Essential Mandate: 1993–2008

18 Ibid.
19 Savoie (2003), Breaking the Bargain, 218.
20 Interview with a former senior official of the PSC.
22 Ibid, 14.
23 Ibid.
32 Ibid, 8.
33 Ibid, 3.
34 Interview with a former senior official of the PSC.
38 Maria Barrados was first appointed interim president of the PSC in November 2003. She was then appointed president in the spring of 2004 for a seven-year term, following a review of her nomination by Parliament. The parallel with the experience of John Carson is striking. Carson had also played a key part in writing a landmark report advocating fundamental
changes to the personnel management system (the Glassco Commission) before being appointed to head the PSC under the reformed system.  

40 Ibid, 11.
41 Ibid, 18.
42 Ibid, 21 and 17.
43 Ibid, 16.
46 Ibid, 11.
48 Ibid, 16.
49 Ibid, 30.
51 Governor General of Canada (2001), Speech from the Throne to Open the First Session of the 37th Parliament of Canada, available on the website of the Privy Council Office at www.pco-bcp.gc.ca.
53 Ibid, 5.
56 In particular, the preamble of the Public Service Employment Act adopted in 2003 contains the following statement: “Delegation of staffing authority should be to as low a level as possible within the public service, and should afford public service managers the flexibility necessary to staff, to manage and to lead their personnel to achieve results for Canadians.”
57 The expression is originally from Ted Hodgetts. He is quoted in Paul M. Tellier (1990), “Public Service 2000: The Renewal of the Public Service,” Canadian Public Administration, 33:2, 129.
58 Interview with a former senior official of the PSC.
59 Interview with a former senior official of the PSC.
60 Interview with a former senior official of the PSC.
The creation of the Canada Public Service Agency was not the direct result of the adoption of the *Public Service Modernization Act*. The new agency was created a few months later, in December 2003.

In addition to complaints concerning external appointments (formerly known as open competitions), the PSC is also responsible for investigating complaints about internal appointments (formerly known as closed competitions) when they were made by the commission itself because staffing authority had not been delegated to the organization concerned. The commission also investigates cases where allegations of political influence or fraud are involved. The Public Service Staffing Tribunal hears cases related to layoffs.

However, the PSC kept its language testing services.

The definition is in Section 30(2) of the new *Public Service Employment Act*.

These provisions are contained in sections 30(4) and 33, respectively, of the new *Public Service Employment Act*.


For a description of the PSC's position on the bill, see Scott Serson's two appearances before the House of Commons Standing Committee on Government Operations and Estimates, March 19 and 27, 2003.