

**Office of the Communications Security
Establishment Commissioner**

2012-13

Departmental Performance Report

A handwritten signature in blue ink, reading "Rob Nicholson", is positioned above a horizontal line.

The Honourable Robert Nicholson, P.C., Q.C., M.P.
Minister of National Defence

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Commissioner's Message

I am pleased to present to Parliament and Canadians the *Departmental Performance Report* of the Office of the Communications Security Establishment Commissioner (Commissioner's office) for the fiscal year ending March 31, 2013. This is my final report. I have completed my three-year term and two additional terms of three and one month respectively as Communications Security Establishment (CSE) Commissioner. For personal reasons I declined an offer to renew my mandate beyond October 17.

During the 2012–2013 reporting year, I submitted six reports and four recommendations to the Minister of National Defence on my review of Communications Security Establishment Canada (CSEC) activities. These reviews were conducted under two areas of my mandate:

- ensuring CSEC activities are in compliance with the law — as set out in paragraph 273.63(2)(a) of the *National Defence Act*; and
- ensuring CSEC activities under a ministerial authorization are authorized — as set out in subsection 273.65(8) of the *National Defence Act*.

Part of my mandate includes responding to complaints, by investigation if need be, that CSEC has engaged, or is engaging, in unlawful activity or is not taking measures to protect the privacy of Canadians. In 2012–2013, no complaints about CSEC activities warranted investigation.

I also have a duty under the *Security of Information Act* to receive information from persons who are permanently bound to secrecy seeking to defend the release of special operational information, such as certain information relating to CSEC activities, on the grounds that it is in the public interest. No such matters were reported to me in 2012–2013.

Last year, work was finally completed on the expansion of the physical space and the security retrofit of the office. This will provide sufficient accommodation for existing functions, and for additional responsibilities resulting from the office receiving its own appropriation from Parliament. The expansion will allow me to hire two additional review officers to enable adequate review of CSEC, which has experienced significant growth.

I noted in my annual report for 2012-13 about the excessive level of reporting required by central agencies. Some of this reporting is of limited value to both the office and its stakeholders and detracts me from my principal mandate. What is meaningful and relevant to ask of a large department and agency oftentimes is meaningless and irrelevant to a micro-agency.

Finally, I wish to thank the staff of my office, whose dedication, teamwork, sense of duty and fiscal responsibility have been nothing short of remarkable these past three years.



The Honourable Robert Décarie, Q.C.
Commissioner
September 11, 2013

Section I: Organizational Overview

Raison d'être

My mandate is to review the activities of CSEC to ensure that it performs its duties and functions in accordance with the laws of Canada. This includes having due regard for the privacy of Canadians. The Commissioner's office exists to support the Commissioner in the effective discharge of his mandate.

Responsibilities

The mandate of the Commissioner under the *National Defence Act* consists of three key functions:

1. reviewing CSEC activities to ensure they comply with the law;
2. conducting investigations deemed necessary in response to complaints about CSEC; and
3. informing the Minister of National Defence and the Attorney General of Canada of any CSEC activities that may not be in compliance with the law.

More specifically, under the *National Defence Act*:

273.63(2)

- a) to review the activities of the CSEC to ensure they comply with the law;
- b) in response to a complaint, to undertake any investigation that the Commissioner considers necessary;
- c) to inform the Minister of National Defence and the Attorney General of Canada of any activity of Communications Security Establishment Canada that the Commissioner believes may not be in compliance with the law;

273.65(8)

to review and report to the Minister as to whether the activities carried out under a ministerial authorization are authorized;

273.63(3)

to submit an annual report to the Minister on the Commissioner's activities and findings within 90 days after the end of each fiscal year; and

Under the Section 15 of the *Security of Information Act*:

to receive information from persons who are permanently bound to secrecy and who seek to defend the release of classified information about Communications Security Establishment Canada on the grounds that it is in the public interest.

The Commissioner's office can be most aptly described as a micro-agency. Operating out of Ottawa, the office currently has a staff of 8 with an operating budget slightly in excess of \$2 million. It should be noted that the *National Defence Act* provides the Commissioner with

independent hiring authority, and accordingly, the Commissioner’s office functions as a separate employer.

Strategic Outcome and Program Alignment Architecture

The relationship of the program and the strategic outcome is illustrated in the diagram and tables below.



Organizational Priorities

Priority	Type ¹	Strategic Outcome and program(s)
Improving the effectiveness and efficiency of the review program	Ongoing	<ul style="list-style-type: none"> CSEC operating in accordance with the law and safeguarding the privacy of Canadians Review Program
Summary of Progress		
<ul style="list-style-type: none"> The effectiveness and the efficiency of the review program have improved. The capacity of the review program was addressed during the year and will be expanded during the first quarter of the new-year. The Office continues to refine the planning and conduct of its reviews to help ensure that findings are well founded and recommendations for change in CSEC activities are implemented. 		

¹ Type is defined as follows: **previously committed to**—committed to in the first or second fiscal year prior to the subject year of the report; **ongoing**—committed to at least three fiscal years prior to the subject year of the report; and **new**—newly committed to in the reporting year of the RPP or DPR. If another type that is specific to the department is introduced, an explanation of its meaning must be provided.

Organizational Priorities (continued)

Priority	Type ²	Strategic Outcome and program(s)
Effectively provide support services to the Commissioner and the review program and meet the requirements of the central agencies	Ongoing	<ul style="list-style-type: none"> CSEC operating in accordance with the law and safeguarding the privacy of Canadians Internal Services Program
Summary of Progress		
<ul style="list-style-type: none"> The priority was met. Roles and responsibilities will be realigned in 2013-14 and the management and operational control framework will be updated to reflect changes in delivery of internal services. 		

Risk Analysis

Risk	Risk Response Strategy	Link to Program Alignment Architecture	Link to Organizational Priorities
Continued maintenance of an arm's length professional and cooperative relationship with CSEC	<ul style="list-style-type: none"> This is an ongoing risk. Failure to maintain an arm's length professional and cooperative working relationship will undermine the integrity of the review process and severely limit its effectiveness. The Office met with CSEC holding annual roundtable meetings, briefings, presentations, training, and information sessions that strengthened the review process. Discussions on plans, findings and recommendations of individual reviews were held with CSEC to ensure that facts were correct, that reviews proceeded as efficiently as possible and were completed in a timely manner. 	Review Program	Improving the effectiveness and efficiency of the review program
"Staying current"	<ul style="list-style-type: none"> This is an ongoing risk. The likelihood that review resources will be devoted to areas that are not of greatest risk increases drastically if the Office does not 	Review Program	Improving the effectiveness and efficiency of the review program

² Type is defined as follows: **previously committed to**—committed to in the first or second fiscal year prior to the subject year of the report; **ongoing**—committed to at least three fiscal years prior to the subject year of the report; and **new**—newly committed to in the reporting year of the RPP or DPR. If another type that is specific to the department is introduced, an explanation of its meaning must be provided.

	<p>remain current.</p> <ul style="list-style-type: none"> • Discussions with CSEC officials were ongoing throughout the year to help identify changes within CSEC that had the potential for impact on review planning and execution. • The Office work plan and risk assessment process were updated twice during the year, as scheduled. • The results of all reviews were subject to a rigorous quality assurance review to ensure that all critical issues were adequately assessed. 		
Capacity and capability	<ul style="list-style-type: none"> • CSEC is expanding. Its foreign intelligence collection, products and services are continuing to evolve. For the Office to remain relevant as its review body, it needed to expand its capacity and capabilities. • Training was provided to enhance review skill sets. • Specialized subject matter experts were engaged on a part-time basis to address complex review areas. • Staffing was initiated for two additional review officer positions. 	Review Program	Improving the effectiveness and efficiency of the review program
Ambiguities in the legislation	<ul style="list-style-type: none"> • The Office continues to wait for amendments to clarify ambiguities in the <i>National Defence Act</i>. 	Review Program	Improving the effectiveness and efficiency of the review program
Accountability	<ul style="list-style-type: none"> • Internal services are in the process of being reorganized and realigned in order to better meet the demands of the review program as well as the central agencies. 	Internal Services	<p>Contributed to improving the effectiveness and efficiency of the review program</p> <p>Ensuring compliance with the directives of the central agencies</p>

The two areas of greatest risk to the effectiveness and efficiency of the review program are the relationship with CSEC and the “currency” of the review program. Because both of these risks are ongoing, they are actively managed on an ongoing basis throughout the year. Meetings, briefings, presentations and discussions were held throughout the year to address changes within CSEC, reviews planned and ongoing, and findings and recommendations from reviews completed. The success in actively managing these risks is reflected in the performance results, where all results exceeded targets.

Summary of Performance

Financial Resources – Total Departmental (\$ thousands)

Total Budgetary Expenditures (Main Estimates) 2012–13	Planned Spending 2012–13	Total Authorities (available for use) 2012–13	Actual Spending (authorities used) 2012–13	Difference (Planned vs. Actual Spending)
2,105	2,105	2,523	2,286	(181)

Human Resources (Full-Time Equivalents— FTEs)

Planned 2012–13	Actual 2012–13	Difference 2012–13
10	9	1

The human resources table above provides a summary of planned and actual human resources for 2012-13. The planned includes the Commissioner and 9 staff; the actual includes the Commissioner and 8 staff.

Performance Summary Table for Strategic Outcome and Program (\$ thousands)

Strategic Outcome: The Communications Security Establishment Canada performs its duties and functions in accordance with the laws of Canada and with due regard for the privacy of Canadians.

Program	Total Budgetary Expenditures (Main Estimates 2012–13)	Planned Spending			Total Authorities (available for use) 2012–13	Actual Spending (authorities used)			Alignment to Government of Canada Outcomes
		2012–13	2013–14	2014–15		2012–13 ³	2011–12	2010–11	
Review Program	1,455	1,455	1,540	1,540	1,873	1,663	1,052	1,075	Safe and Secure Canada
Strategic Outcome Sub-Total	1,455	1,455	1,540	1,540	1,873	1,662	1,052	1,075	

³ In order to align with departmental authorities by Program, as presented in Vol. II of the Public Accounts, services provided without charge amounts for employer's contribution to employee insurance plans, such as the Public Service Health Care Plan and the Public Service Dental Plan provided by the Treasury Board of Canada Secretariat, accommodations provided by Public Works and Government Services Canada, Workers' compensation provided by Human Resources and Skills Development Canada and legal services provided by the Department of Justice are not to be included in this figure. This information is presented in Departmental Financial Statements only.

Performance Summary Table for Internal Services (\$ thousands)

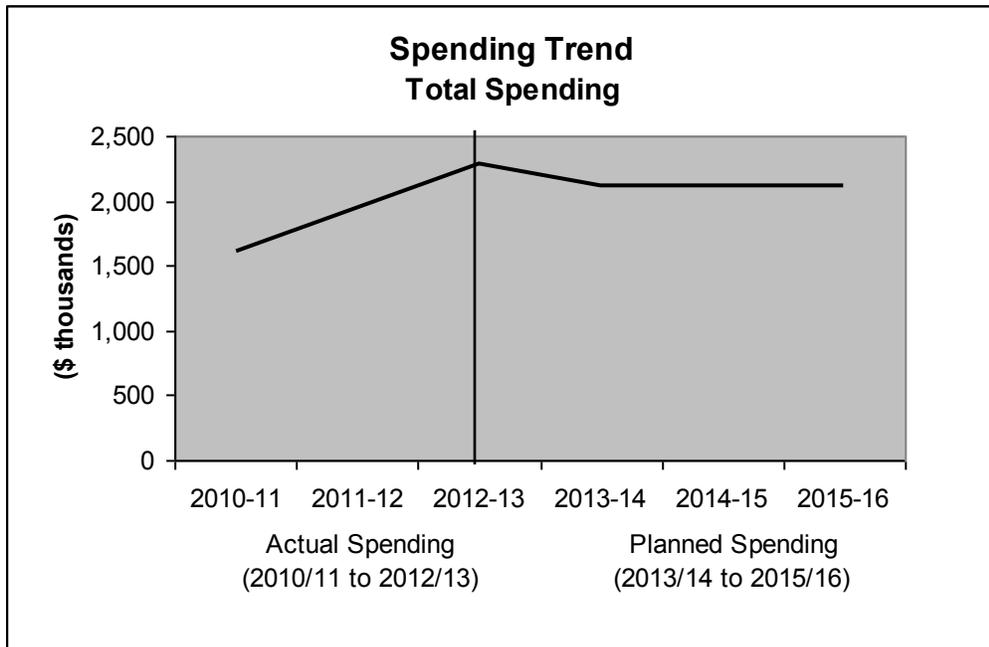
Internal Services	Total Budgetary Expenditures (Main Estimates 2012-13)	Planned Spending			Total Authorities (available for use) 2012-13	Actual Spending (authorities used)		
		2012-13	2013-14	2014-15		2012-13	2011-12	2010-11
	650	650	573	573	650	623	890	530
Sub-Total	650	650	573	573	650	623	890	530

Total Performance Summary Table (\$ thousands)

Strategic Outcome and Internal Services	Total Budgetary Expenditures (Main Estimates 2012-13)	Planned Spending			Total Authorities (available for use) 2012-13	Actual Spending (authorities used)		
		2012-13	2013-14	2014-15		2012-13	2011-12	2010-11
	2,105	2,105	2,113	2,113	2,523	2,286	1,942	1,605
Total	2,105	2,105	2,113	2,113	2,523	2,286	1,942	1,605

The total authorities available for use were \$418 thousand above the planned spending. The additional funding was from Supplementary Estimates (\$290 thousand for expansion of the physical space and security retrofit) and transfers (\$131 thousand) resulting from the operating budget carry-forward and pay list reimbursement. The planned spending for contributions to employee benefit plans was \$3 thousand greater than the authorities available for use. The actual spending increase of \$344 thousand from 2011-12 is attributable to the cost of the office expansion and security retrofit.

Expenditure Profile



The planned spending has remained relatively constant since 2010-11 at approximately \$2,100 thousand.

The actual spending has been increasing since the Office was created as a separate department in 2008. The initial increases in 2009-10 and 2010-11 were, for the most part, the cost of the Office getting established on its own. Increases in 2011-12 were related to the start-up of the security retrofit and expansion of the accommodation and one-time severance payments. The increase in 2012-13 was entirely attributable to the cost of the security retrofit and expansion of the physical space.

Estimates by Vote

For information on Office of the Communications Security Establishment Commissioner's organizational Votes and/or statutory expenditures, please see the [Public Accounts of Canada 2013 \(Volume II\)](#). An electronic version of the Public Accounts 2013 is available on the Public Works and Government Services Canada website.

Strategic Environmental Assessment

During 2012–13 the Office considered the environmental effects of initiatives subject to The Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals. The Office did not have any reports in relation to this directive.

Section II: Analysis of Program by Strategic Outcome

Strategic Outcome

The Communications Security Establishment Canada performs its duties and functions in accordance with the laws of Canada and with due regard for the privacy of Canadians.

Each year, the Commissioner provides an overall statement on his findings about the lawfulness of CSEC activities. With the exception of one review in which he was unable to reach a definitive conclusion about compliance or non-compliance with the law for certain CSEC foreign signals intelligence activities, all of the activities of CSEC reviewed this past year complied with the law.

This section provides a brief description of the Office's programs, the review program and the internal services program. For the review program, it identifies the expected results, performance indicators, targets and actual results. This section also describes the financial and human resources consumed by both programs in achieving the results

Additional information on the office's operations, methodology and results can be found on the Commissioner's website (www.ocsec-bcest.gc.ca).

Program

Program: Review Program

The review program includes research, monitoring, planning, the conduct of reviews and the reporting of results. It also includes consultations and communications with CSEC officials, with other government officials, and senior representatives of the security and intelligence community.

Financial Resources – Review Program (\$ thousands)

Total Budgetary Expenditures (Main Estimates) 2012–13	Planned Spending 2012–13	Total Authorities (available for use) 2012–13	Actual Spending (authorities used) 2012–13	Difference (Planned vs. Actual Spending) 2012–13
1,455	1,455	1,873	1,663	(208)

The costs of the review program remain relatively constant. However, the additional cost of the program overall is due to the costs of the expansion and security retrofit of the office accommodation.

Human Resources (FTEs) – Review Program

Planned 2012–13	Actual 2012–13	Difference (Planned vs. Actual) 2012–13
7	6	1

Performance Results – Review Program

Expected Results	Performance Indicators	Targets	Actual Results
Reviews are completed within targeted time frames as established by the Commissioner	% of reviews completed within targeted time frames as established by the Commissioner	80%	85%
Recommendations resulting from reviews conducted are accepted and implemented	% of recommendations resulting from reviews conducted are accepted and implemented	80%	100%
Negative findings addressed	% of negative findings addressed	80%	90%

Performance Analysis and Lessons Learned

This section of the DPR must be read in conjunction with the Communications Security Establishment Commissioner Annual Report 2012-2013 for more information about the mandate, the Commissioner’s Office, the findings and recommendations resulting from the reviews submitted to the Minister, activities and work plan beyond what is reported in the DPR.

Please visit the website for additional information on other publications and reports (www.ocsec-bccst.gc.ca).

Review Program

For each of the three performance indicators established for the review program, the performance exceeded the target set - reviews are completed on time, recommendations are accepted and implemented and negative findings are addressed.

However, even with such positive results, there are lessons to be learned or relearned, as the case may be, from the conduct of the reviews.

- The relationship with CSEC is critical to success; it must be built on mutual respect. If this is not firmly in place to support the relationship between the “reviewer” and the “reviewee”, the review process will fail.
- Transparency is a critical element - what we do and how we do it needs to be more clearly communicated while still respecting national security and public safety. Recent events have shown that some confusion still exists on what it is we do in relationship with CSEC.
- Cooperation among security and intelligence review bodies needs to increase in order to maximize the review efforts of the individual review bodies.

As noted in previous years, the office must continuously evolve in order to meet the requirements for review necessary for the Commissioner to deliver on his mandate. The growth and increasing complexity of CSEC operations force the office to seek innovative ways to plan, perform and report on its reviews. It also forces the office to ensure it possesses the necessary skill sets to complete the required reviews. Human resource planning must encompass the identification, acquisition and retention of review professionals as well as the use of, on a part-time basis, external subject matter experts in order that the office can address the complexities of the review environment.

Internal Services

Internal Services are those operations and resources that support the needs of the office’s review program and respond to the requirements of the central agencies. These operations include administration, human resources, finance, security, information management, and information technology.

The office is not a participant in the Federal Sustainable Development Strategy (FSDS). Formal contributions to the Greening Government Operations targets through the Internal Services program activity has been deferred as a result of delays in completing the security retrofit of accommodations and will commence in 2013-14.

Financial Resources – Internal Services (\$ thousands)

Total Budgetary Expenditures (Main Estimates) 2012–13	Planned Spending 2012–13	Total Authorities (available for use) 2012–13	Actual Spending (authorities used) 2012–13	Difference (Planned vs. Actual) 2012–13
650	650	650	623	27

The decrease of actual spending from planned spending was primarily related to the cost of the office equipment planned for 2012-13 that arrived subsequent to year-end.

Human Resources (FTEs) – Internal Services

Planned 2012–13	Actual 2012–13	Difference 2012–13
3	2	1

Internal Services

The work to define more clearly roles and responsibilities for all internal services is not yet complete. Its completion is scheduled for 2013-14. In addition, the update of the administrative policies and procedures will commence in 2013-14 following the clarification of roles and responsibilities.

The expansion of the office space and the security retrofit is virtually complete. Early in the new-year, the final adjustments and touch-ups were completed.

The lesson to be learned in the delivery of internal services is that the demands for information continue to grow. The central agencies drive for accountability is relentless and to a large extent there is no tailoring of what is required from departments and agencies regardless of their size. “One size fits all” does not work well for a micro-agency.

As always, efforts continue to ensure the demands of the Office and the central agencies are being met in a timely and cost effective manner.

Section III: Supplementary Information

Financial Statements Highlights

Condensed Statement of Operations and Departmental Net Financial Position

Office of the Communications Security Establishment Commissioner Condensed Statement of Operations and Departmental Net Financial Position (Unaudited) For the Year Ended March 31, 2013 (\$ thousands)					
	2012-13 Planned Results (Restated)	2012-13 Actual	2011-12 Actual	\$ Change (2012-13 Planned vs. Actual)	\$ Change (2012-13 Actual vs. 2011-12 Actual)
Total expenses	1,743	1,609	1,647	134	(38)
Total revenues	—	—	—	—	—
Net cost of operations before government funding and transfers	1,743	1,609	1,647	134	(38)
Departmental net financial position	944	1,003	223	(59)	780

The departmental net financial position increase between 2012-2013 and 2011-2012 is for the most part a result of the increase in tangible capital assets of \$708 thousand related to leasehold improvements work-in-progress (expansion of office space and security retrofit).

Condensed Statement of Financial Position

Office of the Communications Security Establishment Commissioner			
Condensed Statement of Financial Position (Unaudited)			
As at March 31, 2013			
(\$ thousands)			
	2012-13	2011-12	\$ Change
Total net liabilities	266	480	(214)
Total net financial assets	202	344	(142)
Departmental net debt	64	136	(72)
Total non-financial assets	1,067	359	708
Departmental net financial position	1,003	223	780

The departmental net debt has decreased by \$72 thousand between 2011-12 and 2012-13. Payments prior to year-end greatly increased in 2012-13 resulting in a reduction of accounts payable of almost \$174 thousand. This resulted in a reduction of the amount due from the Consolidated Revenue Fund of \$163 thousand for an overall net reduction in net debt of \$11 thousand. Employee future benefits are being gradually paid out and this resulted in a further reduction of net debt of \$43 thousand. However, liabilities for vacation pay increased and increased net debt by \$3 thousand. Net debt was also decreased by an increase in accounts receivable and advances of almost \$21 thousand. The overall impact of these changes is a reduction in net debt of \$72 thousand. The \$708 thousand increase in non-financial assets, as set out above, is due to leasehold improvements work-in-progress related to the security retrofit of the work space.

Financial Statements

http://www.ocsec-bccst.gc.ca/finance/index_e.php

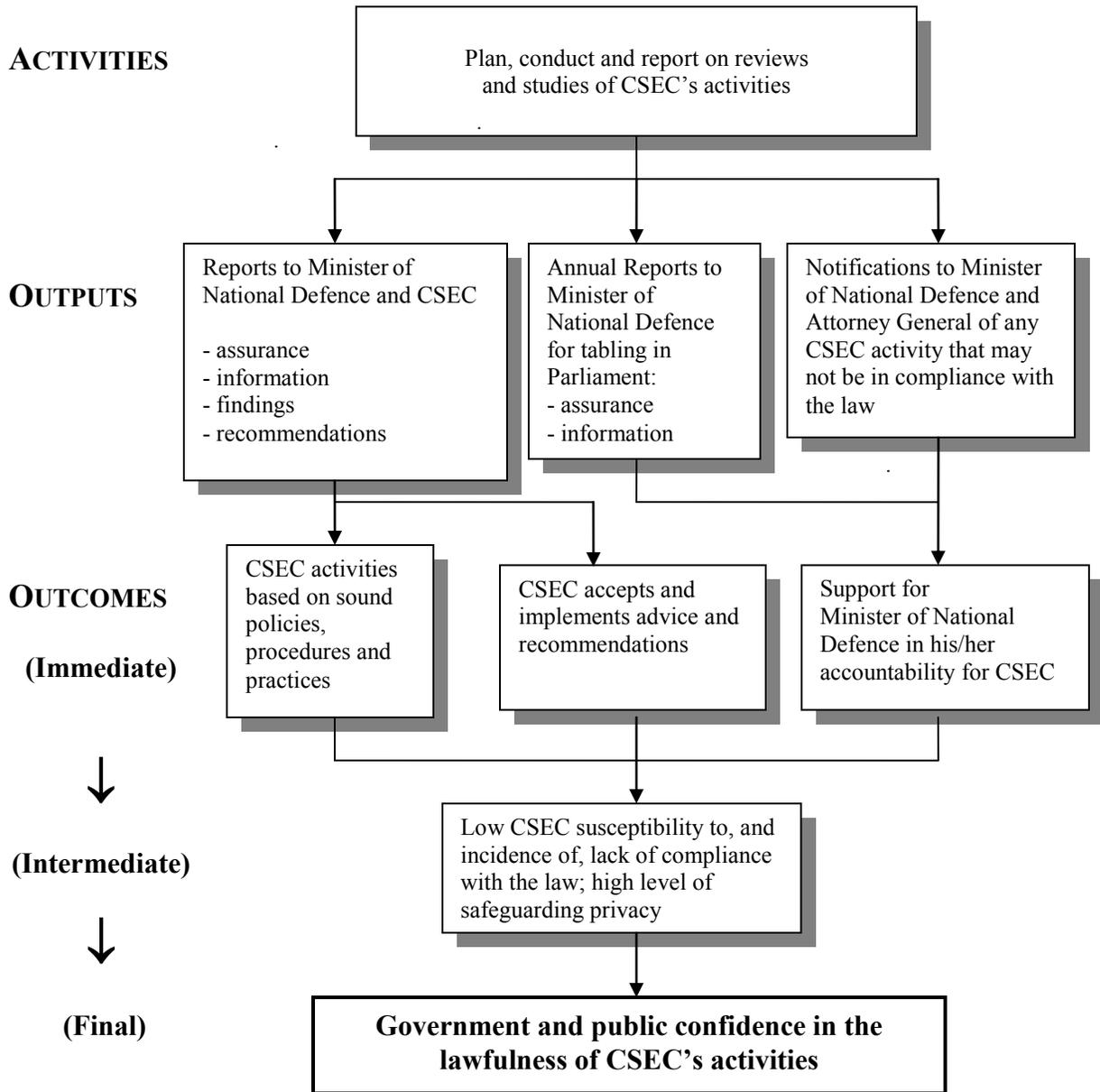
http://www.ocsec-bccst.gc.ca/finance/index_f.php

Tax Expenditures and Evaluations Report

The tax system can be used to achieve public policy objectives through the application of special measures such as low tax rates, exemptions, deductions, deferrals and credits. The Department of Finance publishes cost estimates and projections for these measures annually in the *Tax Expenditures and Evaluations* publication (see <http://www.fin.gc.ca/taxexp-depfisc/2012/taxexp12-eng.asp>) publication. The tax measures presented in the Tax Expenditures and Evaluations publication are the sole responsibility of the Minister of Finance.

Section IV: Other Items of Interest

Logic Model of Review Program



For further information on the Office of the Communications Security Establishment Commissioner (its mandate, function and history, annual reports etc.) please visit our website: <http://www.ocsec-bccst.gc.ca>

Organizational Contact Information

The Office of the Communications Security Establishment Commissioner can be reached at the following address:

Office of the Communications Security Establishment Commissioner
P.O. Box 1984, Station "B"
Ottawa, ON K1P 5R5

The office may also be reached:
Telephone: 613-992-3044
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Email: info@ocsec-bccst.gc.ca