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### Challenges Facing New Oversight Bodies

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# Challenges Facing New Oversight Bodies:

Oversight bodies are integral to a strong anti-corruption framework. However, even once the process for establishing such a body begins, countless challenges may be encountered before the agency is up and running effectively. This brief identifies a few of the most critical challenges during this process, based on the accounts of agencies including (1) the Independent Broad-based Anti-Corruption Commission (IBAC) of Victoria, Australia, (2) the Office of the Inspector General of Montreal (Montreal OIG), and other relevant offices.

Each oversight body is unique in its history and attributes, such that a single set of common challenges is unlikely to exist for all agencies. However, the following, non-exhaustive list presents some of the major challenges oversight agencies have faced prior to and in the early days of their operations, which may be helpful guidance for anyone considering the establishment of an oversight agency.

## Original CAPI Publication:

This brief was prepared by the Center for the Advancement of Public Integrity at Columbia Law School. We can be reached at [CAPI@law.columbia.edu](mailto:CAPI@law.columbia.edu).

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## Challenge 1: Political Opposition

[“No politician suddenly wakes up one day and decides to make an oversight agency.”](#)<sup>1</sup> This sentiment captures the common knowledge that government bodies tend to resist oversight unless political circumstances require it. Significant opposition from various sources can pose an obstacle to the establishment of an oversight agency, and subsequently, the granting of sufficient resources and powers to that agency.

New oversight bodies may face opposition from the upper echelons of government, particularly from those whose interests may be threatened by an oversight body. Calls to establish an oversight agency often go ignored until a scandal brings corruption into the limelight, ramping up pressure to set up some sort of formal watchdog. For instance, the [Office of the Inspector General \(OIG\) of Montreal](#) was created in [early 2014](#) as a response to a public inquiry that revealed the proliferation of kickbacks and collusion schemes in the city’s public contracting process. The investigations led to the resignations of two mayors and the election of a mayoral candidate who vowed to appoint an [inspector general](#). Likewise, the [Independent Broad-based Anti-corruption Commission \(IBAC\), the first anti-corruption body in the Australian state of Victoria, was formally established in 2011](#) following years of repeated demands for reform, and only after corruption (and police misconduct) became important political issues in the 2010 state election.

New oversight agencies may also face skepticism from government actors who do not understand the need for an oversight body, or who feel that their bureaucratic “turp” has been threatened by the new agency’s establishment. Victoria’s IBAC faced a “culture of denial,” including at senior levels of the Victorian bureaucracy, concerning the extent of public sector corruption.<sup>2</sup> Additionally, the courts and certain elements of the police expressed fears over IBAC’s quasi-judicial authority, especially regarding its alleged potential to undermine the courts and threaten common law rights.<sup>3</sup>

Similarly, civilian investigators may face considerable resistance from police unions and their allies who [“oppos\[e\] the implementation of full investigatory oversight agencies”](#) on the grounds that civilian investigators are biased against police officers and/or lack the expertise to conduct investigations of officer misconduct. Thus, civilian investigators [“may have trouble penetrating the defensive police subculture that can characterize police organizations.”](#)

## Challenge 2: Politicization and Lack of Independence

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Another significant challenge for oversight bodies is the attempt by outside actors to influence the oversight process. Early in its establishment, the Montreal OIG feared political parties would attempt to use the agency as a political weapon.<sup>4</sup> The OIG discovered the importance of maintaining distance from politics and launching investigations based solely on the facts—fortunately, the OIG had been given a sizable and guaranteed statutory budget to shield it from undue political influence.<sup>5</sup>

Oversight agencies without a guaranteed budget appropriation or that report directly to the government bodies they oversee are particularly vulnerable to this sort of undermining influence. Politically unpopular investigations by oversight agencies can incur retaliation in the form of [defunding](#), [threats to remove the head](#), or [closure of the office](#). For instance, Chicago’s Office of the Legislative Inspector General (LIG), created by the Chicago City Council in 2010, [shut down](#) within five years after the Inspector General allegedly angered two powerful aldermen by launching investigations against them. In another case, the inspector general of the Kansas Health Policy Authority (KHPA) was pressured by the KHPA to modify an audit report and received threats of removal after speaking independently with legislators. The inspector general, a position created in 2007 by the Kansas state legislature to conduct audits and investigations of the KHPA, was unfortunately designed to report directly to the KHPA executive director, [allowing the KHPA to interfere in monitoring efforts](#). Finally, the New Jersey Inspector General’s Office was [shut down](#) five years after its creation, in large part because of politically unpopular investigations it had undertaken.

Even if an agency avoids political influence, it may not be immune from the courts. Courts often hear and sustain challenges to oversight agencies’ jurisdiction and powers.<sup>6</sup> Even if the challenge is unsuccessful, the lengthy legal proceeding delays reform. In Australia, a legal battle prevented Victoria’s IBAC from investigating allegations of excessive use of force by the police at a regional center by more than a year.<sup>7</sup>

## Challenge 3: Budgetary and Personnel Limitations

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Oversight agencies frequently face budgetary and personnel constraints that pose challenges for developing a fully functioning program.<sup>8</sup> New oversight agencies inevitably face budgetary constraints, ironically because their budget is often dependent on how developed their program is.<sup>9</sup> As mentioned above, the small or non-guaranteed budget is one vehicle by which external actors attempt to undermine oversight efforts. [Vested interests within city councils and state legislatures may seek to paralyze oversight agencies by passing miniscule budgets](#). And on occasion, hostile actors will attempt to completely shut down an oversight office by defunding it – a problem that the [Louisiana State Inspector General](#) has been contending with for years.

The budget limitations, in turn, make recruiting and retaining personnel difficult.<sup>10</sup> Agencies must balance their budgets but also should select only qualified personnel of various professions in order to investigate and prosecute different types of corruption.<sup>11</sup> The restrictions on budget are thus particularly felt in agencies dealing with specialized or technically advanced areas, because these agencies must often rely on specialists. Victoria’s IBAC, for example, reported great difficulty in recruiting specialists such as investigators, intelligence analysts, forensic accountants and cyber-security experts.<sup>12</sup>

## Challenge 4: Limited Powers

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Many newly established oversight agencies can struggle to carry out their duties given limitations to their powers. For Victoria’s IBAC, [a narrow statutory definition of corrupt conduct, strict threshold requirements for commencing an investigation, the lack of basic powers of arrest, search, and seizure, and other limitations](#) posed a

difficult challenge for the fledgling agency. For instance, initially IBAC had to be “reasonably satisfied” that corrupt conduct was presently occurring before it could commence an investigation.<sup>13</sup>

Despite its relatively broad investigatory and enforcement powers, the Montreal OIG has also faced constraints. While the OIG has the power to rescind contracts that were obtained by fraud or collusion, it cannot on its own stop the collusive parties from bidding again, and has no power to impose changes on the bidding process itself.<sup>14</sup> Instead, the OIG may recommend to officials that the offending party be blacklisted from bidding for a certain period of time, and may also recommend process changes.<sup>15</sup> To date, the OIG’s recommendations have routinely been followed. However, the OIG stated that “we need to remain vigilant to the possibility that one day the administration might not follow our recommendations anymore, and public confidence in the OIG could have an impact on this.”<sup>16</sup> Attempts to amend the law to grant the OIG even greater enforcement power have been unsuccessful.<sup>17</sup>

Victoria’s IBAC lacks the power to enforce its recommendations on agencies. The public sector’s initial “shock” at the scale of the corrupt conduct IBAC exposed led to a “rush” to accept IBAC’s recommendations. Five years down the line, however, the watchdog has started to see some resistance, and thus may well increasingly need to rely on the pressure brought to bear by public hearings and reports.<sup>18</sup>

### **Challenge 5: Managing Expectations**

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New oversight agencies face varying expectations from the public and the government. Some agencies encounter excessively high expectations: Victoria’s IBAC, for example, often received complaints about matters “clearly out of [its] jurisdiction . . . We have had to manage stakeholder perceptions of our role and capacity by active communications and engagement.”<sup>19</sup> Even after five years, IBAC still faces a considerable challenge in engendering a good public understanding of its role and functions.<sup>20</sup>

Established with considerable statutory powers and independence after a four-year public inquiry unveiled massive corruption, the Montreal OIG faced incredibly high expectations, receiving calls and complaints even before it established a formal hotline—the OIG noted that “[it] had to act rapidly.”<sup>21</sup> Particularly problematic were the expectations from the city government that the OIG would pre-approve various contract-related processes. The OIG’s job, however, was to “monitor the city’s contracts,” not to “act as counsel for the city.”<sup>22</sup> But as Montreal’s OIG observed, an oversight agency “cannot be everywhere and cannot be informed about all of the situations occurring within its jurisdiction.”<sup>23</sup> This is one of the reasons why the office sees its role in providing training to elected officials and employees of the city as vital, so that they too can recognize and prevent breaches of integrity or of the applicable rules in the contracting process.<sup>24</sup>

New oversight agencies may also face criticism from the public. Initially, certain civil society organizations were critical of IBAC’s ability to conduct sufficient oversight, given its limited powers, and some remain skeptical.<sup>25</sup> Montreal’s OIG observed that oversight agencies must diligently investigate complaints to “make people feel that we [are] independent and not a political tool.”<sup>26</sup> Failure to act may further alienate the public, whose support is helpful to agencies as they push reforms and conduct their oversight work.<sup>27</sup>

### **Challenge 6: Internal Governance**

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While many new oversight bodies struggle with constraints imposed on resources and powers, others must take precautions against their misuse. For those granted broad investigatory powers and jurisdiction, as well as an abundant budget, developing an adequate risk management framework is a necessary challenge. As Victoria’s IBAC has observed, “Historically, parliamentary or judicial reviews and inquiries into anti-corruption or police oversight

bodies have been due to at least a perception of overstepping of powers, or poor internal governance”<sup>28</sup> Oversight agencies must therefore take steps to protect “against potential misuse or abuse” of legislated powers.<sup>29</sup>

## Conclusion

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The critical challenges facing new oversight bodies described above are daunting but not insurmountable. With the knowledge that effective oversight bodies have been able to navigate these obstacles, we hope that those aspiring to establish such an office will take note of these challenges and use them to develop countermeasures and strategies for success.

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### References:

<sup>1</sup> Quote from Denis Gallant, Montreal IG, at CAPI Global Cities II conference.

<sup>2</sup> Written interview with Alistair Maclean, Chief Executive Officer of the Independent Broad-based Anti-Corruption Commission of Victoria, Australia, July 2017.

<sup>3</sup> *Id.*

<sup>4</sup> Phone interview with Emma Ramos-Paque, Office of the Inspector General of Montreal, conducted July 5, 2017.

<sup>5</sup> *Id.*

<sup>6</sup> Written interview with Alistair Maclean, July 2017.

<sup>7</sup> *Id.* The investigations were challenged on the basis that the public nature of IBAC hearings would jeopardize the due process of potential future criminal proceedings. *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Written interview with Alistair Maclean, July 2017.

<sup>11</sup> *Id.* Even upon hiring the right personnel, agencies must create a collaborative environment to allow specialists from multiple disciplines to function effectively as a single group. *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Written interview with Alistair Maclean, July 2017. The IBAC Act was amended in 2016, after petitioning by IBAC, to remove or lessen some of these limitations. *Id.*

<sup>14</sup> Phone interview with Emma Ramos-Paque, Office of the Inspector General of Montreal, conducted July 5, 2017.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Written interview with Alistair Maclean, July 2017.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Phone interview with Emma Ramos-Paque, Office of the Inspector General of Montreal, conducted July 5, 2017.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Written interview with Alistair Maclean, July 2017.

<sup>26</sup> Phone interview with Emma Ramos-Paque, Office of the Inspector General of Montreal, conducted July 5, 2017.

<sup>27</sup> Written interview with Alistair Maclean, July 2017.

<sup>28</sup> *Id.*

<sup>29</sup> Written interview with Alistair Maclean, July 2017.

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