

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Eighth Meeting of the Committee of Experts
September 26 - October 1, 2005
Washington, DC.

SG/MESICIC/doc.152/05 rev. 4
30 September 2005
Original: English

CANADA

FINAL REPORT

(Adopted in the plenary session held on September 30, 2005)

**COMMITTEE OF EXPERTS OF THE MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST
CORRUPTION**

**REPORT ON IMPLEMENTATION IN CANADA
OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW
IN THE FRAMEWORK OF THE FIRST ROUND¹**

INTRODUCTION

1. Legal-institutional framework²

Canada is a federal state comprised of ten provinces (Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Saskatchewan) and three territories (Northwest Territories, Yukon and Nunavut). While the ratification of international treaties falls under federal jurisdiction, their implementation, where necessary, includes the participation of all levels of government.

Canada is a constitutional democracy governed by the rule of law. The Constitution provides for the division of powers among levels of government and guarantees the sovereignty of Parliament, subject to the limitations expressed in various constitutional instruments, including the Constitution Act 1867, the Constitution Act 1982 and any constitutional conventions that have developed over time. The Constitution also ensures an independent judiciary that can act as the final guardian and interpreter of laws.

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. In particular, the Charter provides that everyone has the freedom of conscience and religion; freedom of thought, belief, opinion and expression, including the freedom of the press and other media of communication; freedom of peaceful assembly; and freedom of association. It also includes democratic rights, mobility rights, legal rights, and equality rights. The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

2. Ratification of the Convention and adherence to the Mechanism

According to the official register of the OAS General Secretariat, Canada ratified the Inter-American Convention against Corruption on June 1, 2000 and deposited the instrument of ratification on June 6, 2000.

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on September 30, 2005, at its eighth meeting, held at OAS Headquarters in Washington D.C., United States, September 26 to 30, 2005.

² Updated Response of Canada to the Questionnaire (hereafter Updated Response), Introduction. p. 1: www.oas.org/juridico/spanish/can_res7.pdf

At the request of Canada, its response to the questionnaire, together with the corresponding annexes and the documents received from civil society, in accordance with the Rules of Procedure and Other Provisions, can be found on the following webpage on the internet: http://www.oas.org/juridico/spanish/corresp_can.htm.

In addition, Canada signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001, on the occasion of the OAS General Assembly in San Jose, Costa Rica.

I. SUMMARY OF INFORMATION RECEIVED

1. Response of Canada

The Committee wishes to acknowledge Canada's cooperation in the entire review process, and especially the assistance of the Department of Foreign Affairs and the Department of Justice, which was evident in the original and Updated Response and the effort put forth to collect and display all available data in those documents in a succinct, systematic and orderly manner.

Along with its response, Canada sent the relevant provisions and documents, listed in the appendix of this report.

For its review the Committee took into consideration the information provided by Canada up to January 31, 2005 and that which was requested by the Secretariat and the members of the subgroup for analysis, to carry out its functions in keeping with its Rules of Procedure and other Provisions.

2. Documents presented by civil society

The Committee also received, pursuant to its Rules of Procedure and other Provisions, and within the time limit established at its Sixth Regular Meeting, two documents prepared by Transparency International Canada, as a civil society organization.³

II. REVIEW OF THE IMPLEMENTATION OF THE SELECTED PROVISIONS BY CANADA

A. CONSIDERATIONS ON THE SCOPE OF REVIEW IN THE CASE OF CANADA

Concerning the analysis throughout this report regarding the implementations in Canada of the Convention provisions selected for review, it is necessary to bear in mind certain considerations.

As indicated in the 'Legal-institutional framework' section, Canada is a federal state comprised of ten provinces and three territories.

Canada also affirms that, "[w]hile the ratification of international treaties falls under federal jurisdiction, their implementation, where necessary, includes the participation of all levels of government."

Moreover, the Updated Response by Canada and the comments by "Transparency International Canada" provide information on certain aspects of the material under review, of various scope and content at the provincial and territorial level, in addition to that at the federal level.

³ These documents, entitled "Inter-American Convention Against Corruption Canadian Civil Society Questionnaire Response on Provisions Selected by the Committee of Experts" and "TI Report Card 2004 on Enforcement of OECD Convention – Canada" were received by email on January 21, 2005, http://www.oas.org/juridico/spanish/corresp_can.htm

Taking the aforementioned into account, this report focuses on the analysis at the federal level, and when appropriate, reference is made to the information received regarding the provinces and territories.

The Committee recognizes the efforts made by Canada to provide information on the developments in the provinces and territories concerning the implementation of the Convention provisions selected for review. As such, the Committee encourages Canada to continue promoting the purposes of the Convention in all levels of government and strengthening the cooperation and coordination between the Federal Government and those of the Provinces and Territories to this end. Bearing this in mind, the Committee will make a recommendation (see Recommendation in Chapter III, Part A of this Report).

B. REVIEW OF THE IMPLEMENTATION BY THE FEDERAL GOVERNMENT OF CANADA OF THE SELECTED PROVISIONS

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. CONFLICTS OF INTEREST

1.1.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

Canada, at the federal level, has a set of provisions and measures related to the mechanisms referred to, among which the following should be noted:⁴

- The Public Service Employment Act provides that the Public Service Commission (PSC) is responsible for the appointment of qualified persons to, or from within, the Public Service in accordance with the principles contained in this Act (e.g. selection according to merit, non-partisanship, representativeness, and use of both official languages), for conducting investigations and audits under its jurisdictions, as well as assisting deputy heads⁵ in the operation of staff training and development programs in the Public Service. In addition, this Act sets out the parameters for political participation by deputy heads and employees of the public service.⁶

⁴ For purposes of conflict of interest and codes of conduct, federal public servants are currently divided in three categories: (1) public servants who are employed under the rules of the Public Service Commission and for whom the Treasury Board is the employer are subject to the Values and Ethics Code for the Public Service; (2) public servants appointed by the federal Cabinet at the highest levels of the public service (e.g. deputy ministers, members of administrative tribunals) are subject to the Conflict of Interest and Post-Employment Code for Public Office Holders; and (3) employees of separate employer entities and Crown Corporations are subject to a code of conduct established by each corporation.

⁵ Section 2 of the Public Service Employment Act defines 'deputy heads' as: "(a) in relation to a department named in Schedule I to the Financial Administration Act, the deputy minister thereof, (b) in relation to any division or branch of the Public Service designated under the definition "department", such person as the Governor in Council may designate as the deputy head for the purposes of this Act, and (c) in relation to any other portion of the Public Service to which the Commission has the exclusive right and authority to appoint persons, the chief executive officer thereof or, if there is no chief executive officer, such person as the Governor in Council may designate as the deputy head for the purposes of this Act."

⁶ It should be noted that the Public Service Modernization Act, that came into force in November 2003, http://www.parl.gc.ca/37/2/parlbus/chambus/house/bills/government/C-25/C-25_4/C-25_cover-e.html, includes a restructured Public Service Employment Act, which, among other things, states that appointments to or from

- The Values and Ethics Code for the Public Service,⁷ established pursuant to the Treasury Board's authority under the Financial Administration Act, is applicable to federal public servants working in departments, agencies and other public institutions, listed in Part I, Schedule I, of the Public Service Staff Relations Act.⁸ This Code sets out the Public Service values (democratic, professional, ethical and people values), conflict of interest and post-employment measures, as well as in the acceptance of gifts, hospitality and other benefits, solicitation thereof and avoidance of preferential treatment or assistance to family and friends.
- The Department and Administrative Orders and Directives⁹ provide direction and guidance to employees of the Department of National Defence and members of the Canadian Forces. These norms contain conflict of interest and post-employment measures as well as rules regarding the acceptance of gifts, hospitality and other benefits and the solicitation of sponsorships or donations.
- The Conflict of Interest and Post-Employment Code for Public Office Holders,¹⁰ established under the Parliament of Canada Act, is applicable to a minister of the Crown, a minister of the state or a parliamentary secretary; a person, other than public servant, who works on behalf of a minister of the Crown or state; a Governor in Council appointee;¹¹ and a full-time ministerial appointee designated by the appropriate minister of the Crown as a public office holder. This Code addresses basic principles of conduct, which are followed by a set of rules regarding conflict of interest and compliance measures, including post-employment practices. It also contains rules limiting outside activities, acceptance of gifts and hospitality, avoidance of preferential treatment and which assets may or may not continue to be directly managed.¹²

within the public service must be based on merit and free of political influence (section 30(1)) and further defines the political activities public servants may engage in (sections 111 – 119), <http://laws.justice.gc.ca/en/P-33.01/text.html>

⁷ Values and Ethics Code for the Public Service, http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/dwnld/vec-cve_e.pdf.

⁸ 'Public Service' is defined under section 2 of this Act as the several positions in or under any department or other portion of the public service of Canada specified in Schedule I, <http://laws.justice.gc.ca/en/P-35/text.html> (now Schedule I and IV of the Financial Administration Act with the enactment of the Public Service Labour Relations Act on April 1, 2005).

⁹ Department and Administrative Orders and Directives, 7021-0 - 7021-4, http://www.admfincs.forces.gc.ca/admfincs/subjects/daod/7021/intro_e.asp

¹⁰ Conflict of Interest and Post-Employment Code for Public Office Holders, http://www.parl.gc.ca/sites/ethicscommission/en/public_office_holders/conflict_of_interest/coi_2004_e.pdf.

¹¹ Other than the following appointees: a Lieutenant Governor; officers and staff of the Senate, House of Commons and Library of Parliament; a person appointed or employed under the Public Service Employment Act who is a head of mission within the meaning of subsection 13(1) of the Department of Foreign Affairs and International Trade Act; a judge who receives a salary under the Judges Act; a military judge within the meaning of subsection 2(1) of the National Defence Act; and an officer of the Royal Canadian Mounted Police, not including the Commissioner.

¹² The Code further states that staff of federal boards, commissions and tribunals as defined in the Federal Court Act, separate employers as defined under the Public Service Staff Relations Act (now the Public Service Labour Relations Act), the Canadian Armed Forces, the Royal Canadian Mounted Police, part-time ministerial appointees who are persons other than public servants who work on average fewer than fifteen hours a week on behalf of a minister or minister of state, including persons working on a contractual or voluntary basis and part-time Governor in Council appointees, who are not appointed on a full-time basis and are not in receipt of an annual salary or benefits from the appointment, are subject only to the principles under Part I of the Code, and such other compliance measures as may be determined by the head of the organization in question, for whose application that individual is responsible. (Sections 4(3) (a) and 4(3) (b)).

- *Governing Responsibly: A Guide for Ministers and Ministers of State* provides and explains the principles of ministerial responsibility and actions that are intended to guide Ministers in the undertaking of their duties. Such principles include acting with integrity, preserving public confidence and accountability for the powers vested to them by statute.¹³
- *The Guidelines for Ministerial Dealings with Crown Corporations* is applicable to the Prime Minister, Ministers, Ministers of State and Secretaries of State on their dealings with Crown Corporations. These Guidelines prohibit these people from personally promoting the private interests of any individual, corporation or nongovernmental organization, including a constituent, with any Crown corporation. This prohibition also extends to the staff of the responsible Minister.
- *The Guidelines to Govern Ministerial Activities for Personal Political Purposes* is applicable to Ministers, Ministers of State and Secretaries of State. These guidelines provide that any leadership campaign, official or unofficial, be organized in a manner that will prevent real, potential or apparent conflicts of interest from arising. These Guidelines cover four areas: contracts with the Minister's department, registered lobbyists working on a campaign, the operations of the ministerial office and fundraising.
- *The Parliament of Canada Act* contains conflict of interest provisions applicable to Senators and members of the House of Commons as well as provisions on ineligibilities for members of Parliament. Section 16 prohibits Senators from receiving compensation, directly or indirectly, for services rendered to any person in relation to any bill, proceeding, contract, claim, controversy, charge, accusation, arrest or other matter before the Senate or the House of Commons, or for the purposes of influencing or attempting to influence any member of either House. Likewise, section 41 contains similar provisions applicable to members of the House of Commons. This Act also excludes certain officials at the provincial level from being eligible to be a member of the House of Commons, as well as persons who receive remunerated employment at the federal level.¹⁴ Similarly, the Act makes a member of a provincial legislature ineligible to be a member of the House of Commons.¹⁵
- *The Canada Elections Act*, under section 65, makes a person ineligible to be a candidate to the House of Commons if that person is a member of the legislature of a province, the Council of the Northwest Territories or the Legislative Assembly of Yukon or Nunavut. In addition, sections 404 to 405.4 of this Act, which set the rules for political contributions, provide that political contributions can be made only by Canadian individuals and are limited to a maximum annual amount of \$5,000. A limited exception allows for contributions from corporations and trade unions of up to \$1,000. These provisions also contribute to the prevention of conflicts of interest by Members of the House of Commons.
- *The Rules of the Senate of Canada* provides under Rule 65(4) that a Senator is prohibited from voting on any question in which he or she has a disproportionate pecuniary interest not available to the general public. The vote of any interested Senator is disallowed.
- *The Conflict of Interest Code for Members of the House of Commons*,¹⁶ which is an annex to the Standing Orders of the House of Commons, is applicable to Members of the House of Commons,

¹³ *Governing Responsibly: A Guide for Ministers and Ministers of State*, http://www.pco-bcp.gc.ca/docs/Publications/guidemin/guidemin_e.pdf at pp. iii - iv.

¹⁴ *Parliament of Canada Act*, <http://laws.justice.gc.ca/en/P-1/text.html> at section 32.

¹⁵ *Ibid*, at section 22.

¹⁶ *Conflict of Interest Code for Members of the House of Commons*, <http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm>

including Members who are ministers of the Crown or parliamentary secretaries. This Code addresses basic principles of conduct, which are followed by a set of rules regarding conflict of interest and compliance measures as well as containing rules limiting the acceptance of a gift or benefit.¹⁷

- The Judges Act¹⁸ is applicable to judges of superior courts and the Tax Court of Canada. This Act creates the Canadian Judicial Council, whose objective is to promote efficiency and uniformity, and to improve the quality of judicial service. This Council has issued the guidelines, Ethical Principles for Judges, of which Chapter 6 provides statements and principles on the issue of impartiality and conflicts of interest.¹⁹

Canada, at the federal level, also has mechanisms to enforce the above-mentioned standards of conduct, among which the following should be noted:

- Section 42 of the Public Service Employment Act provides that the Public Service Commission can summon persons to an inquiry if it believes that an irregularity or fraudulent practice has occurred in the selection process. Section 43 further provides that the person involved in the irregular or fraudulent practice or who is guilty of any breach of the regulations with respect to the selection process may be refused consideration for the appointment, and if already appointed, may be removed. Moreover, under section 34, an inquiry may be conducted by a board established by the Commission to inquire into allegations that a deputy head or employee²⁰ has contravened the prohibition against political participation.

- Under the Values and Ethics Code for the Public Service, a public servant who does not comply with the requirements of this Code is subject to appropriate disciplinary action, up to and including termination of employment. Compliance mechanisms include confidential disclosure of private interests, the avoidance or withdrawal of activities and situations and the sale of assets at arm's length or placed in a blind trust.²¹ Post-employment compliance mechanisms include, *inter alia*, a one year limitation period on: the type of employment that can be accepted after leaving the public service; on making representations on behalf of a person or organization to the former office; and providing advice to clients using information from their former office not available to the public.²² In addition, there are oversight bodies in place to enforce and provide advice on these standards.²³

¹⁷ Canada notes that the Senate adopted a Conflict of Interest Code for Senators on May 18, 2005, which is available at http://sen.parl.gc.ca/seocse/code_eng.html. Under this Code, the Senate Ethics Officer is responsible for administering and interpreting it. Section 44(1) provides that an inquiry may be conducted by the Senate Ethics Officer, as determined by the Committee of Senators, on whether a Senator has complied with the Code. The Committee, in the consideration of the report issued by the Senate Ethics Officer, may recommend specific action or sanctions. Mechanisms for observance of the Code include the confidential disclosure of the Member's private interests as well as of the Member's family, and the placement of the assets in a trust if the Senate Ethics Officer determines that it may affect a Senator's obligation to the Code. Finally, section 36 provides that a Senator shall not take any action that has as its purpose the evasion of the Senator's obligations under the Code.

¹⁸ Judges Act, <http://laws.justice.gc.ca/en/J-1/text.html>

¹⁹ Canadian Judicial Council: Ethical Principles for Judges: <http://www.cjc-ccm.gc.ca/cmslib/general/ethical-e.pdf>.

²⁰ Section 2 of the Public Service Employment Act defines 'employees' as: "a person employed in that part of the Public Service to which the Commission has the exclusive right and authority to appoint persons."

²¹ Values and Ethics Code for the Public Service, *supra* note 7 at pp. 22 – 28.

²² *Ibid.* at pp. 30 – 31.

²³ *Ibid.* at pp. 14 – 18.

- Under the Department and Administrative Orders and Directives, a Department of National Defence employee who fails to comply with the orders and directives is subject to appropriate disciplinary action, up to and including termination of employment.²⁴ As for members of the Canadian Forces, those who fail to comply are subject to one or more of the following measures: change of duties; deferment of promotion; counseling and probation or other administrative action; release; or disciplinary action under the *National Defence Act*. Compliance mechanisms include confidential disclosure of private interests, the avoidance or withdrawal of activities and situations and the sale of assets at arm's length or placed in a blind trust. Post-employment measures include, *inter alia*, a one year limitation period on: the type of employment that can be accepted after leaving; making representations on behalf of a person or organization to the former office; as well as providing advice to clients using information from their former office not available to the public. In addition, there are oversight bodies in place to enforce and provide advice on these standards.

- Under the Conflict of Interest and Post-Employment Code for Public Office Holders, the public office holder is subject to appropriate measures, as determined by the Prime Minister, including discharge or termination of appointment for failure to comply with the Code (section 23).²⁵ Under section 5, the Ethics Commissioner is responsible for administration of the Code, the application of the conflict of interest measures to public office holders as well as the determination as to the appropriate method of compliance with the Code.²⁶ Compliance mechanisms include confidential disclosure of private interests, the withdrawal or recusal from the discharge of their public duties and responsibilities in relation to specifically identified private interests or private activities and having an asset sold at arm's length, placed in a blind trust or any other recusal mechanism approved by the Ethics Commissioner. Post-employment compliance measures include time limitations²⁷ on the acceptance of appointment or employment with an entity that had direct and significant official dealings with the public office holder while employed with the government. In addition, public office holders are to report to the Ethics Commissioner when having official dealings with a former public holder so that a determination can be made if they are in compliance with these measures (section 31). Finally, an inquiry may be conducted when a written request is received by the Ethics Commissioner from a member of the Senate or House of Commons who has a reasonable belief that a Minister of the Crown, a Minister of the State or a parliamentary secretary has not complied with the Code.²⁸

- The Parliament of Canada Act, under section 20.5, establishes the Senate Ethics Officer, which performs whatever duties and functions are assigned by the Senate relating to the conduct of Senators in their official capacities, under the general direction of a committee.

²⁴ It should be noted that Department of National Defence employees are also subject to the Values and Ethics Code for the Public Service, and in the event of a conflict with the Department and Administrative Orders and Directives, the Values and Ethics Code prevails.

²⁵ Under section 72.061 of the Parliament of Canada Act, the Prime Minister is responsible for establishing ethical principles, rules and obligations for public office holders, *supra* note 14.

²⁶ As noted under section 72.07 of the Parliament of Canada Act, the mandate of the Ethics Commissioner is threefold: (1) to administer ethical principles, rules or obligations established by the Prime Minister; (2) provide confidential advice to the Prime Minister regarding those principles, rules or obligations and about ethical issues in general; and (3) provide confidential advice to public office holders with regard to their duties under the Prime Minister's ethical principles, rules or obligations, *ibid*.

²⁷ In the case of ministers of the Crown and ministers of state, the time period is two years, while for all other public office holders, this time period is one year, Conflict of Interest and Post-Employment Code for Public Office Holders, *supra* note 10 at section 28.

²⁸ Parliament of Canada Act, *supra* note 14 at section 72.08.

- The Standing Orders of the House of Commons provides that it is a high crime and misdemeanour if a Member is offered any advantage for promoting any matter before Parliament.²⁹

- Under the Conflict of Interest Code for Members of the House of Commons, the Ethics Commissioner administers this Code. Section 27 provides that the Ethics Commissioner may conduct an inquiry when a Member has a reasonable belief that another Member has not complied with the Code. Also, under this section, the Ethics Commissioner can also conduct an inquiry under its own initiative, or by direction of the House. In the report, the Ethics Commissioner can recommend appropriate sanctions. Mechanisms for observance of the Code include the confidential disclosure of the Member's private interests as well as of the Member's family,³⁰ and the placement of the assets a blind trust if the Ethics Commissioner determines that it may affect a Member's obligation to the Code. Finally, section 25 provides that a Member shall not take any action that has as its purpose the circumvention of the Member's obligations under the Code.

- The Judges Act provides that under section 63, the Canadian Judicial Council, makes inquiries and investigations of complaints or allegations against superior court justices or those of the Tax Court of Canada. The Council can recommend that a judge be removed for being guilty of misconduct, failing due execution as a judge or having been placed, by his conduct or otherwise, in a position incompatible with the due execution of that office (section 65(2)).

- The Criminal Code contains specific provisions setting out criminal sanctions for inappropriate behavior related to conflicts of interest, such as bribery of judicial officers, a member of Parliament or of the legislature of a province (s. 119), frauds on the government (s. 121), fraud or a breach of trust in connection with the duties of office (s.122), municipal corruption (s. 123), selling or purchasing office (s. 124), influencing or negotiating appointments or dealing in offices (s. 125), willfully attempting to obstruct, pervert or defeat the course of justice through bribery or other corrupt means (s. 139(3)), fraud (s. 380), and secret commissions (s. 426).

In its Updated Response, Canada provided information from all ten provinces and three territories on the provisions, measures and mechanisms of various scope and content regarding conflicts of interest.³¹

1.1.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms

The standards and mechanisms regarding the standards of conduct aimed at preventing conflicts of interest that have been reviewed by the Committee, based on the information made available to it, are relevant for promoting the purposes of the Convention.

In this respect, the Committee notes that provision is made within the Canadian legal framework for a system of incompatibilities, disqualifications and prohibitions in the public service. These norms contain a number of general and specific provisions for the correct, honorable and proper fulfillment of public functions that encompass the principles established in the Convention.

²⁹ Standing Order 23(1) of the House of Commons, <http://www.parl.gc.ca/information/about/process/house/standingorders/chap2-e.htm>.

³⁰ Section 3(4) of this Code defines family members as a Member's spouse or common-law partner; and a child of the Member, or a child of the Member's spouse or common-law partner, who has not reached the age of 18 years or who has reached that age but is primarily dependent on the Member or the Member's spouse or common-law partner for financial support.

³¹ Updated Response, *supra* note 2 at pp. 6 – 8.

These norms apply to federal public servants while containing special provisions for senior state officials, such as the Prime Minister, Members of Parliament, Ministers of the Crown, Ministers of the State, and Parliamentary Secretaries as well as superior court justices.

These standards also contain precise and detailed provisions regarding the different times at which conflicts of interest may arise or be detected: prior to the commencement of employment in the public service, during such employment and subsequent to its termination. They also identify the competent authorities for overseeing compliance therewith and indicate the steps that may be taken to that end, such as the application of sanctions on those who fail to observe them.

Nevertheless, the Committee believes that it is relevant to highlight the comments by Transparency International Canada, that “[i]n recent years many new pieces of legislation and significant amendments to existing laws have been enacted at the federal level. These include: [sic] -inter alia- restrictions on private contributions and financing of political parties, re-establishment of the Controllership function, lobbyist registration, establishment of a Senate Ethics Officer and an Ethics Commissioner, a public service modernization act, public service employment acts, “whistle-blower” protection, and new management accountability and ethics codes and guidelines. Full implementation of this array of measures is not complete.”³²

Similarly, Canada, in its Updated Response, referring to the standards of conduct in place regarding conflicts of interest, states for example, that “[i]n the Spring of 2004, three major initiatives strengthened the conflict of interest framework for Parliamentarians, including Ministers.” These initiatives were the following: “on March 31, 2004 the Parliament of Canada Act was amended to provide for an Ethics Commissioner for Members of the House of Commons and a Senate Ethics Officer for Senators,” “on April 29, 2004, the House of Commons adopted the Conflict of Interest Code for Members of the House of Commons, as recommended by the Standing [C]ommittee on [P]rocedure and House of Affairs...The Code came into force on October 4, 2004” and “[o]n May 17, 2004, the Ethics Commissioner was appointed as an Officer of Parliament, which makes him independent from the government.”³³

The foregoing demonstrates that the existing provisions, measures and mechanisms in Canada, among others, in relation with the standards of conduct for public servants are in constant review, evolution and improvement. At the present time, recently adopted measures are being implemented or new ones are being considered by the competent authorities, the purpose being to continue with the process of improving the provisions, measures and mechanisms in place.

In this respect, the Committee would like to make the following observations, from which it believes Canada may benefit regarding this ongoing process of improvement on the provisions, measures and mechanisms in place, and thus help in promoting the purposes of the Convention:

- As indicated above, there are a number of laws, standing orders and codes applicable to the Prime Minister, the Ministers and the Members of Parliament. The Committee believes these meet the requirements of the Convention. However, the enforcement mechanisms of some are recent or recently changed and thus their effectiveness is difficult to analyze. The Committee will address this in section 1.1.3.

³² Transparency International Canada, *supra* note 3 at p. 2.

³³ Updated Response, *supra* note 2 at p. 5.

- Further, the Committee observes that the Values and Ethics Code for the Public Service, as noted in the previous section, is applicable to federal public servants working in departments, agencies and other public institutions, listed in Part I, Schedule I, of the Public Service Staff Relations Act.³⁴ According to the annual report of the Public Service Integrity Officer, whose role is to receive, record and review disclosures of wrongdoing in the workplace, including breaches of the Values and Ethics Code for the Public Service, this represents approximately 170 000 public servants.³⁵ These are the departments and agencies under the purview of the Treasury Board as the employer.

However, as indicated in the Public Service Integrity Officer's Annual Report, 2003 – 2004,³⁶ over 288 000 public sector employees that work for separate employers and Crown Corporations, such as the Canada Revenue Agency, the Office of the Auditor General of Canada and the Canada Post corporation and other government enterprises, are excluded from the purview of the Public Service Integrity Officer, and are not bound to the Values and Ethics Code for the Public Service.

In regards to these institutions, this Code states that it “is a policy of the Government of Canada. Public service institutions not covered by this Code should respect its spirit and should adopt similar provisions for their organizations.”³⁷ On this point, Canada provided, as an example, the measures taken and policies adopted by three institutions not covered by the Code, the Canada Pension Plan Investment Board, the Canada Mortgage and Housing Corporation and Canada Post.³⁸

These policies demonstrate that some, but not necessarily all, institutions have been adopting measures consistent with the provisions found in the Code. Bearing this in mind, the Committee will make a recommendation (see Recommendation 1.1(a) in Chapter III, Part B of this Report).

- The Committee would also like to draw attention to the Interpretation Guide to the Values and Ethics Code for the Public Service. This Guide provides an invaluable tool to public servants in further understanding their duties and responsibilities under the Values and Ethics Code for the Public Service, by providing a glossary of terms and definition, a question and answer section, jurisprudence as well as presenting situation scenarios that public servants could potentially encounter in the exercise of their duties. In terms of post-employment measures, this Guide points to a possible difficulty in their enforcement. This Guide states that there “are no simple measures that a department can use to check whether that public servant is respecting the post-employment compliance measures to which he or she is subject. The onus for compliance is on the individual in question.”³⁹ It further states that since the Code is not a statute, but only an employer's policy and applicable to public servants, there is no guarantee post-employment measures will be followed. Bearing this in mind, the Committee will make a recommendation (see Recommendations 1.1(b) and 1.1(c) in Chapter III, Part B of this Report).

³⁴ Now Schedule I and IV of the Financial Administration Act since the Public Service Staff Relations Act was repealed on April 1, 2005.

³⁵ Public Service Integrity Officer, 2003 – 2004 Annual Report, http://www.pso-bifp.gc.ca/publications/ann-rpt-2003-2004/pdfs/psio-2003-2004_e.pdf at p. 6.

³⁶ *Ibid.*

³⁷ Values and Ethics Code for the Public Service, *supra* note 7 at p. 11.

³⁸ The Standards of Conduct for the Canada Mortgage and Housing Corporation, the Canada Post Conflict of Interest Policy, the Code of Conduct and Standards of Conduct for Officers and Employees of the Canada Pension Plan Investment Board, http://www.oas.org/juridico/spanish/corresp_can.htm.

³⁹ Interpretation Guide to the Values and Ethics Code for the Public Service, http://www.hrma-agrh.gc.ca/veo-ve/code/guide/guide_e.asp

1.1.3. Results of the legal framework and/or other measures and enforcement mechanisms

In the Updated Response, Canada has stated that, regarding results at the provincial and territorial levels, "...results are made available through the annual reports of the various conflict of interest commissioners."⁴⁰ Canada notes in the Updated Response that "[i]n New Brunswick, for example, one investigation was undertaken in 2000 and another in 2001. In both cases, the Commissioner of Conflict of Interest concluded that there was no breach of the Act."⁴¹ In addition, 6 investigations were conducted in Alberta in 2000, leading to the resignation of one Member of the Legislative Assembly. The reports of these investigations are found online at the website of the Alberta Ethics Commissioner <http://www.ethicscommissioner.ab.ca/commiss.htm>. Similarly, in Nunavut, one Member of the Legislative Assembly was found to have breached the disclosure requirements of the Integrity Act. The report on that matter (Re: Akesuk) and the last annual report, which refers to it, as well as the Act, may be found on www.integritycom.nu.ca.

The federal Office of the Ethics Commissioner was established in 2004, and has issued annual reports for 2004-05 on its activities concerning the Conflict of Interest and Post-Employment Code for Public Office Holders and the Conflict of Interest Code for Members of the House of Commons.⁴² The Ethics Commissioner has also prepared a report on sponsored travel for Members.⁴³ The Committee is aware that this Office has been actively engaged in matters under its jurisdiction.

The Public Service Integrity Officer, whose role is to receive, record and review disclosures of wrongdoing in the workplace, including breaches of the Values and Ethics Code for the Public Service, presents an annual report to the President of the Privy Council that is tabled in Parliament.⁴⁴ This report is available at its website.⁴⁵ According to the last annual report, of the 67 cases of wrongdoing, including allegations of violations of laws and regulations, misuse of public funds or assets and gross mismanagement by public servants, there were no reported cases of breaches of the Code. There was however one case involving a conflict of interest, though this was not elaborated in the report.

The Committee does observe with satisfaction that there exists an Office of Public Service Values and Ethics, whose mandate is to provide advice on the interpretation and promotion of the Values and Ethics Code for the Public Service. As stated in the Interpretation Guide to the Values and Ethics Code for the Public Service, this Office "provides departments and agencies educational material such as questions and answers, videos and interpretation guide."⁴⁶ This Office also organizes series of activities to raise awareness and provide information, which is reflected in its website.⁴⁷ The Committee believes that the work of this Office, as well as that of the Public Service Integrity Officer demonstrates Canada's active commitment to implementing the Values and Ethics Code for the Public Service.

⁴⁰ Updated Response, *supra* note 2 at p. 9.

⁴¹ Updated Response, *supra* note 2 at p. 9.

⁴² Parliament of Canada Act, *supra* note 14 at section 72.13. These reports are found at: http://www.parl.gc.ca/sites/ethicscommission/en/media/annual_reports.

⁴³ Report to the House of Commons on Sponsored Travel, previously available at:

[http://strategis.ic.gc.ca/epic/internet/inoec-bce.nsf/vwapj/Report_2004_en.pdf/\\$FILE/Report_2004_en.pdf](http://strategis.ic.gc.ca/epic/internet/inoec-bce.nsf/vwapj/Report_2004_en.pdf/$FILE/Report_2004_en.pdf)

⁴⁴ Values and Ethics Code for the Public Service, *supra* note 7 at p. 18.

⁴⁵ Public Service Integrity Officer, 2003 – 2004 Annual Report, *supra* note 35.

⁴⁶ Interpretation Guide to the Values and Ethics Code for the Public Service, *supra* note 39.

⁴⁷ Office of Public Values and Ethics, http://www.hrma-agrh.gc.ca/veo-bve/index_e.asp

Federal departments of the core public service are also assessed on a number of key performance expectations under Treasury Board's "Management Accountability Framework." This assessment process includes results for Public Service Values, as well as the management of human and financial resources. These assessments permit the Treasury Board to determine on annual basis whether departments are meeting their key accountabilities for, among other things, designating a senior official to assist public servants in raising, discussing and resolving issues of concern related to the Values and Ethics Code, as well as promoting awareness of the Code and the obligations of public servants under it.

Considering that the Committee does not have information other than that referred above that might enable it to make a comprehensive evaluation of the results of the standards and mechanisms referred to above, it will make recommendations in this regard (See Recommendation 1.1(d) in Chapter III, Part B of this Report and Recommendations 7.2 and 7.3 in Chapter III, Part B of this Report).

1.2. STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PROPER CONSERVATION AND USE OF RESOURCES ENTRUSTED TO GOVERNMENT OFFICIALS

1.2.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

Canada, at the federal level, has a set of provisions and measures concerning these standards, among which the following should be noted:

- The Financial Administration Act⁴⁸ makes provisions for the financial administration of the Government of Canada as well as the establishment and maintenance of the accounts of Canada and the control of Crown corporations. This act also provides "parliamentary control of all public funds into and out of the Consolidated Revenue Fund, the office of the Receiver General and the powers and functions of the Treasury Board and Comptroller General."⁴⁹ The Government is required to report on its financial activities in the Public Accounts, which contains all of the Government's financial statements and a summary of the financial results of all departments, agencies and Crown corporations.⁵⁰

- The Treasury Board Accounting Standards⁵¹ state that departments subject to the Financial Administration Act will follow generally accepted accounting principles in order to produce annually a full set of financial statements as at March 31 of each year that can withstand the test of audit.

- The Parliament of Canada Act,⁵² under section 50, establishes the Board of Internal Economy, which acts on all financial and administrative matters respecting the members of the House of Commons, the House itself, its premises, its services and staff. This Board has adopted by-laws to govern the funds, goods, services and premises made available to the members of the House of Commons for carrying out their parliamentary functions.

⁴⁸ Financial Administration Act, <http://laws.justice.gc.ca/en/F-11/text.html>.

⁴⁹ Updated response, *supra* note 2 at p. 10.

⁵⁰ These can be found at <http://www.pwgsc.gc.ca/recgen/text/pub-acc-e.html>.

⁵¹ Treasury Board Accounting Standards, http://www.tbs-sct.gc.ca/fin/common/c_tbas_e.asp.

⁵² Parliament of Canada Act, *supra* note 14.

- The Parliament of Canada Act,⁵³ under section 19.3, provides that the Standing Senate Committee on Internal Economy is responsible for the members of the Senate, the Senate itself, its premises, its services and staff. This Committee may adopt regulations concerning the use by Senators of funds, goods, services and premises made available to them for carrying out their parliamentary functions.
- The Policy on Losses of Money and Offences and Other Illegal Acts against the Crown states that all departments subject to the Financial Administration Act are responsible and accountable for the security and proper use of the funds and property entrusted to them. The objective is to ensure accountability for all losses of money and all allegations of offences and illegal acts against the Crown and other improprieties by reporting and investigating them, and taking appropriate action. To that end, all “managers in particular and employees in general must be alert to control weaknesses, improper practices and illegal acts that arise in their respective areas of responsibility and must act promptly to resolve them.”⁵⁴
- The Proactive Disclosure policy⁵⁵ states all departments of the Government of Canada are required to publish on their web sites the travel and hospitality expenses for selected government officials; contracts entered into by the Government of Canada for amounts over \$10,000; and the reclassification of positions.⁵⁶
- The Values and Ethics Code for the Public Service states that, public servants are to endeavor to ensure the proper, effective and efficient use of public money. In addition, they are not to knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and that is not generally available to the public. As well, they are not to directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.⁵⁷
- Department and Administrative Orders and Directives, 7021-1 state that Department of National Defence employees and members of the Canadian Forces shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and that is not generally available to the public as well as not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.⁵⁸
- The Conflict of Interest and Post-Employment Code for Public Office Holders states all public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and that is not generally available to the public as well as not directly or indirectly use, allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.⁵⁹

⁵³ Ibid.

⁵⁴ Policy on Losses of Money and Offences and Other Illegal Acts against the Crown, http://www.tbs-sct.gc.ca/Pubs_pol/dcgpubs/TBM_142/4-7_e.asp at p. 1.

⁵⁵ Proactive Disclosure, http://www.tbs-sct.gc.ca/pd-dp/index_e.asp.

⁵⁶ The departmental publications are found at http://www.tbs-sct.gc.ca/pd-dp/gr-rg/index_e.asp.

⁵⁷ Values and Ethics Code for the Public Service, *supra* note 7 at pp. 8, 21 and 22.

⁵⁸ Department and Administrative Orders and Directives, 7021-1, *supra* note 9.

⁵⁹ Conflict of Interest and Post-Employment Code for Public Office Holders, *supra* note 10 at sections 3(8) and 3(9).

- The Conflict of Interest Code for Members of the House of Commons, section 10, states that a Member shall not use nor communicate information obtained in his or her position as a Member that is not generally available to the public to further the Member's private interests or those of the Member's family or to improperly further another person's private interest.⁶⁰

Canada, at the federal level, also has enforcement mechanisms for these standards of conduct, among which are the following:

- The enforcement mechanisms referred to in section 1.1.1 above, with regard to conflicts of interest, also serves to enforce the standards of conduct relating to the proper conservation and use of resources entrusted to government officials in the performance of their functions, particularly with respect to administrative, civil and criminal sanctions.

- The Financial Administration Act, section 78 provides that if by reason of malfeasance or negligence by any person employed in collecting or receiving any public money, any sum is lost, that person is accountable for the sum and it may be recovered from that person. Section 80(e) states that every officer or person acting in any office or employment connected with the management or disbursement of public money who having knowledge or information on contravention of the Act or any revenue law of Canada by any person or of fraud committed by any person under this Act or any revenue law and fails to report this, is guilty of an indictable offence and liable on conviction to a fine of \$5000 and imprisonment of 5 years. Finally, section 81 provides that any person who attempts to bribe any person employed in collecting, managing or disbursing public money in order to influence a decision or action or to influence that person to commit any fraud on the revenue, is guilty of an indictable offence and liable on conviction to a fine not exceeding three times the amount of the bribe and to imprisonment of five years.

- The Auditor General Act⁶¹ establishes the Office of the Auditor General. This Office audits federal government operations and provides Parliament with independent information, advice and assurance to help hold the government to account for its stewardship of public funds. It is responsible for performance audits and studies of federal departments and agencies and conducts financial audits of the government's financial statements (Public Accounts) and performs special examinations and annual financial audits of Crown Corporations.⁶² The Auditor General is independent from the government of the day and is appointed for a term of ten years.⁶³

- The Parliament of Canada Act, under section 56.1, grants the Board of Internal Economy the exclusive authority to determine whether any previous, current or proposed use of funds, goods, services or premises available to a Member of the House of Commons is proper. In addition, a Member may ask for an opinion from the Board with respect to the use of those resources.

⁶⁰ It should be noted that under section 6, it states the jurisdiction of the Board of Internal Economy of the House of Commons to determine the propriety of the use of any funds, goods, services or premises made available to the Members for carrying out their parliamentary duties and function is not affected by the Code, Conflict of Interest Code for Members of the House of Commons, *supra* note 16.

⁶¹ Auditor General Act, <http://laws.justice.gc.ca/en/a-17/text.html>.

⁶² Office of the Auditor General, <http://www.oag-bvg.gc.ca/domino/oag-bvg.nsf/html/menue.html>. This Office audits some 100 departments and agencies, 40 Crown Corporations and the governments of Nunavut, the Yukon, the Northwest Territories and some 20 territorial corporations and agencies, http://www.oag-bvg.gc.ca/domino/other.nsf/html/auqdn_waqv_e.html.

⁶³ Auditor General Act, *supra* note 61 at section 3.

- Likewise, the Parliament of Canada Act, under section 19.6, grants the Standing Senate Committee on Internal Economy the exclusive authority to determine whether any previous, current or proposed use of funds, goods, services or premises available to a Senator is proper. In addition, a Senator may ask for an opinion from the Board with respect to the use of those resources.

- The Policy on Losses of Money and Offences and Other Illegal Acts against the Crown provides a mechanism for mandatory reporting of suspected cases of theft, fraud, defalcation or any other offence or illegal act, either to the police or departmental legal services for an opinion,⁶⁴ and sets out the potential liabilities of public servants for failing to do so.⁶⁵ In addition, it sets out the parameters of a public servant's accountability for loss of money.

- Guidelines for Ministers' Offices consolidates the various financial, personnel and administrative rules and regulations that govern expenses incurred by Ministers, Ministers of State and their exempt staff when they perform duties directly related to their responsibilities.⁶⁶

- The Office of the Comptroller General is responsible for "promoting stronger financial and audit controls that are essential to ensuring rigorous stewardship of public funds and value for money; overseeing all government spending including review and sign-off on new spending initiatives; setting and reviewing financial, accounting and auditing standards and policies for the Government of Canada and providing leadership to ensure and enforce appropriate financial controls and cultivate sound resource stewardship at all levels across the federal public service; and nurturing and managing the professional development of the financial and internal audit communities and leading the introduction of modern, timely, "enterprise-wide" financial information systems to track all spending and provide appropriate tools for effective scrutiny and decision-making."⁶⁷

In terms of the standards of conduct at the provincial and territorial level, Canada states in the Updated Response that the "provinces and territories produce final accounts within 12 months of fiscal-year end. In addition, British Columbia's Budget Transparency and Accountability Act provides for disclosure of information with respect to ministry service plans, major projects and budgets, and sets out mechanisms to ensure that the public is able to review government budgets and service plans."⁶⁸ Likewise with respect to mechanisms at the provincial and territorial level, the Office of the Auditor General of Canada "audits the territorial governments of Nunavut, the Yukon and Northwest Territories and territorial agencies" and that "[i]n British Columbia, for example, provisions of the Financial Administration Act, the Budget Transparency and Accountability Act, and procedures for enforcing the Standards of Conduct for Public Service Employees would apply."⁶⁹

⁶⁴ Appendix C of this policy sets out the reporting steps to be taken, Policy on Losses of Money and Offences and Other Illegal Acts against the Crown, *supra* note 54 at p. 16.

⁶⁵ According to this policy, "offences" include, for example: breach of a trust by a public officer; theft or misappropriation of public funds or funds; conversion of public funds or property to personal use; willful damage to, or destruction of, public property; forgery and fraudulent endorsement of Government payment instruments; and theft of public property or property belonging to others that has been entrusted to, or seized by, the Crown, Policy on Losses of Money and Offences and Other Illegal Acts Against the Crown, *supra* note 54 at pp. 13 – 14.

⁶⁶ Guidelines for Ministers' Offices, http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/mg-ldm/gfmo_e.asp.

⁶⁷ Office of the Comptroller General, http://www.tbs-sct.gc.ca/organisation/ocg-bcg_e.asp.

⁶⁸ Updated Response to the Questionnaire, *supra* note 2 at p. 10.

⁶⁹ *Ibid.* at p. 11.

1.2.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms

The standards and mechanisms for conservation and proper use of public resources that have been reviewed by the Committee, based on the information made available to it, are relevant for promoting the purposes of the Convention.

Thus, Canada has standards that regulate this matter in detail, setting out the different types of sanctions and penalties for breaches thereof, and allocates powers and establishes procedures for enforcing those sanctions and penalties, thereby providing mechanisms for ensuring compliance with those standards.

1.2.3. Results of the legal framework and/or other measures and enforcement mechanisms

The results of the financial audits of the financial statements of the Government of Canada are found in the Public Accounts of Canada, which are published annually.⁷⁰ The Auditor General, in these reports, provides an opinion whether these financial statements are fairly presented in accordance with the government's accounting policies.⁷¹

In addition, according to the updated response of Canada, the report of the Auditor General is available on-line.⁷² These reports⁷³ contains the audit of the annual reports and summaries of the corporate plans and budgets of Crown corporations, as presented by the President of the Treasury Board⁷⁴ as well as performance audits, which "examine the government's management practices, controls, and reporting systems based on its own public administration policies and on best practices. The Office reports its findings, which may include areas that are working well and recommendations for improvement."⁷⁵

The Committee notes that the Public Service Integrity Officer, as mentioned in section 1.1.3, receives, records and reviews disclosures of wrongdoing in the workplace and issues an annual report. The 2002 - 2003 report states that six alleged instances of a misuse of funds or assets were reported, ranging from the review of business decisions and the application of the contracting policy to the use of cellular phones and travel by government employees.⁷⁶ It found in one case that an employee was misusing funds and that the department involved provided assurances that the losses would be recovered and mechanisms put in place to prevent future occurrences. No criminal charges were laid. In the 2003 - 2004 report, there were 6 cases as well.⁷⁷ Three of these cases, at the time of the publication of the report, were still under investigation, one was closed due to a lack of substantiating information and another two were concluded as unfounded or the evidence did not substantiate the allegation.

⁷⁰ See <http://www.pwgsc.gc.ca/recgen/text/pub-acc-e.html>.

⁷¹ Office of the Auditor General, http://www.oag-bvg.gc.ca/domino/other.nsf/html/auqdn_lavg_e.html#33.

⁷² Updated Response to the Questionnaire, *supra* note 2 at p. 11.

⁷³ Found at http://www.oag-bvg.gc.ca/domino/other.nsf/html/99repm_e.html.

⁷⁴ This information on the Crown corporations is published annually, the last report being the 2004 Annual Report to Parliament—Crown Corporations and Other Corporate Interests of Canada, found at http://www.tbs-sct.gc.ca/report/CROWN/04/cc-se-04_e.asp.

⁷⁵ Office of the Auditor General, *supra* note 71.

⁷⁶ Public Service Integrity Officer, 2002 - 2003 Annual Report to Parliament, http://www.psiio-bjfp.gc.ca/publications/ann-rpt-2002-2003/pdfs/psio-2002-2003_e.pdf at p. 13.

⁷⁷ Public Service Integrity Officer, 2003 - 2004 Annual Report to Parliament, *supra* note 35 at p. 14.

The Committee is aware that those covered by the Policy on Losses of Money and Offences and Other Illegal Acts against the Crown are to be periodically reminded of their potential liability. They are made aware of the policy through the manner determined by their employing department to be most appropriate based upon their duties. These methods can range from general orientation to formal education as part of other management and professional training.

Nevertheless, the Committee considers it relevant to make the following observations regarding the Policy on Losses of Money and Offences and Other Illegal Acts against the Crown, which is an important instrument in Canada regarding the standards of conduct under analysis:

- Canada provided the Committee with some information on the results of the Policy on Losses of Money and Offences and Other Illegal Acts against the Crown. According to Canada, the process of assessing the effectiveness of any Treasury Board policy is an ongoing evolving exercise, which involves the coherent convergence of ideas from a wide circle of stakeholders representing various spheres of influence, extensive policy analysis, and the making of informed judgments and decisions. The policy assessment is ongoing. It is not a structured process *per se*, but it is a process that responds to strategic initiatives and current developments that may call for a policy solution.⁷⁸ Bearing this in mind, the Committee will make a recommendation (see Recommendation 1.2 in Chapter III, Part B of this Report).

Regarding results at the provincial and territorial level, Canada states in the Updated Response that the reports of the provincial and territorial auditors general are available on-line.⁷⁹

Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of the standards and mechanisms referred to above, it will make recommendations in this regard (See Recommendations 7.2 and 7.3 in Chapter III, Part B of this Report).

1.3. MEASURES AND SYSTEMS REQUIRING GOVERNMENT OFFICIALS TO REPORT TO APPROPRIATE AUTHORITIES ACTS OF CORRUPTION IN THE PERFORMANCE OF PUBLIC FUNCTIONS OF WHICH THEY ARE AWARE

1.3.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

Canada, at the federal level, has a set of provisions concerning these standards of conduct and mechanisms, among which the following should be noted:

- The Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace⁸⁰ describes the responsibilities of public servants and managers when instances of wrongdoing are discovered in the workplace.⁸¹ A public servant can choose to bring forward information concerning wrongdoing internally to a Senior Officer within their Department or externally to the Public Service

⁷⁸ Information on the results of the Policy is reported and published annually in the Public Accounts of Canada.

⁷⁹ Updated Response, *supra* note 2 at p. 11.

⁸⁰ Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace, http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/idicww-diicraft1_e.asp#_Toc516303227.

⁸¹ Wrongdoing is defined as (a) a violation of any law or regulation; or (b) a breach of the Values and Ethics Code for the Public Service; or (c) misuse of public funds or assets; or (d) gross mismanagement; or (e) a substantial and specific danger to the life, health and safety of Canadians or the environment, *ibid.* at p. 3.

Integrity Officer in cases where the public servant believes the issue cannot be disclosed internally or has already raised the disclosure in good faith through the departmental mechanism but believes that the disclosure was not appropriately addressed.⁸² Both the Senior Officer and the Public Service Integrity Officer receive, record and review disclosures of information concerning wrongdoing and establishing if there are sufficient grounds for further action.⁸³ This policy also provides that public servants are not to be subject to reprisals for having made a good faith disclosure.

- The Policy on Losses of Money and Offences and Other Illegal Acts Against the Crown, as stated under section 1.2.1, provides a mechanism for mandatory reporting of suspected cases of theft, fraud, defalcation or any other offence of illegal act, either to the police or departmental legal services for an opinion, and sets out the potential liabilities of public servants for failing to do so. In addition, it sets out the parameters of a public servant's accountability for loss of money and requires departments to take prompt action in cases of reprisal.

- The Financial Administration Act, section 80(e) provides that every officer or person acting in any office or employment connected with the management or disbursement of public money who having knowledge or information on contravention of the Act or any revenue law of Canada by any person or of fraud committed by any person under this Act or any revenue law and fails to report this, is guilty of an indictable offence and liable on conviction to a fine of \$5000 and imprisonment of 5 years.

- The Conflict of Interest Code for Members of the House of Commons, under section 27, provides that a Member who has reasonable grounds that another Member has not complied with the Code may request the Ethics Commissioner to conduct an inquiry into the matter. In addition, the Ethics Commissioner can conduct an investigation under its own initiative.

- The Parliament of Canada Act, under section 72.08, states that a member of the Senate or House of Commons who has reasonable grounds that a minister of the Crown, a minister of state or parliamentary secretary has not observed the Conflict of Interest and Post-Employment Code for Public Office Holders, may request the Ethics Commissioner to conduct an inquiry into the matter.

In the Updated Response, Canada also provides information on the existence of provisions, measures and mechanisms requiring public officials at the provincial and territorial level to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware. Cited legislation in place is provided from Saskatchewan, Alberta, British Columbia, and Nova Scotia as well as the Northwest Territories.⁸⁴

1.3.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms

The standards and mechanisms in relation to the measures and systems requiring public officials to report acts of corruption in government service to the appropriate authorities that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

⁸² *Ibid.* at pp. 5 – 6.

⁸³ See Values and Ethics Code for the Public Service, *supra* note 7 at p. 18, the Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace, *supra* note 80, and the Interpretation Guide to the Values and Ethics Code for the Public Service, *supra* note 39.

⁸⁴ Updated response, *supra* note 2 at p. 12.

Nevertheless, the Committee believes it advisable to make some observations on certain aspects, through which Canada could consider measures to continue strengthening the provisions, measures and mechanisms in place.

The Committee notes that the Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace is applicable to public servants and to all departments and organizations of the Public Service listed in Part I, Schedule I of the Public Service Staff Relations Act, as these individuals and institutions fall under the purview of the Treasury Board as corporate employer. As for those who are excluded, a number do not have a mechanism to bring disclosures of wrongdoing, including presumed acts of corruption, nor receive protection from job reprisal for doing so.⁸⁵

In this respect, in its 2002 – 2003 Annual Report to Parliament, the Public Service Integrity Officer recommended, *inter alia*, that all public sector employees who have an employment relationship with the federal government should have access to a disclosure and reprisal protection mechanism, including “Public Service employees in the strict sense, employees of crown corporations and other agencies, and people who work in government institutions classified as separate employers.”⁸⁶ Similarly, on this point, a working group created by the Government of Canada in response to a number of factors including the recommendations by the Public Service Integrity Officer in the aforementioned Annual Report, concluded that there was “no compelling reason why all employees working in the federal public sector should not be afforded the same level of reprisal protection should they come forward in good faith to disclose wrongdoing. Since the primary intent of any federal disclosure policy or law would be to identify and address wrongdoing, it would appear inconsistent to dramatically limit the number of people who have access to disclosure mechanisms.”⁸⁷ This view was also supported by the House of Commons Standing Committee on Government Operations and Estimates, which examined matters related to the disclosure of acts of wrongdoing and the protection of whistle-blowers in the Public Service of Canada.⁸⁸ It should be noted that Canada did provide a Disclosure of Improper Activities in the Workplace (“Whistle-blowing”) Policy,⁸⁹ which is applicable to those who work at Canada Post, a crown corporation. This policy demonstrates that some, but not all, institutions outside of the purview of the Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace have been adopting measures to encourage disclosures of wrongdoing and provide protection from reprisals. Bearing this in mind, the Committee will make a recommendation (see Recommendation 1.3(a) in Chapter III, Part B of this Report).

⁸⁵ Canada notes that the federal government has taken steps to extend the protection for disclosure of wrongdoing to all of the federal public sector. The Public Servants Disclosure Protection Act, currently before Parliament, would apply to all the federal public sector, with the exception of the Canadian Forces, the Canadian Security Intelligence Service, and the Communications Security Establishment. These organizations excluded from the application of the Act would be required to establish procedures for disclosure and protections similar to those of the Act, and the Government could extend to them, by order, some of the provisions of the Act. A copy of this draft bill is found at:

http://www.parl.gc.ca/38/1/parlbus/chambus/house/bills/government/C-11/C-11_1/C-11_cover-E.html.

⁸⁶ Public Service Integrity Officer, 2002 - 2003 Annual Report to Parliament, *supra* note 76 at p. 44.

⁸⁷ Report of the Working Group on the Disclosure of Wrongdoing, http://www.hrma-agrh.gc.ca/reports-rapports/wgdw-gtdaf_e.asp at p. 14.

⁸⁸ The Thirteenth Report of the House of Commons Standing Committee on Government Operations and Estimates, <http://www.parl.gc.ca/committee/CommitteePublication.aspx?SourceId=66465>.

⁸⁹ Disclosure of Improper Activities in the Workplace (“Whistle-blowing”) Policy: http://www.oas.org/juridico/spanish/corresp_can.htm.

In addition, the Committee notes that in the annual reports by the Public Service Integrity Officer, there is continued reference to the apprehension of public servants to come forward to disclose wrongdoing, whether it be due to lack of awareness of the existence or the mandate of the Public Service Integrity Officer, uncertainty on what constitutes reportable wrongdoing, fear of reprisal, concerns about confidentiality, perception that the Officer is unlikely to be neutral and effective in correcting wrongdoing and disciplining wrongdoers or preference to use existing internal departmental avenues for reporting wrongdoing.⁹⁰ The federal government has taken steps to extend the protection for disclosure of wrongdoing to all of the federal public sector. The *Public Servants Disclosure Protection Act*, currently before Parliament, would apply to all the federal public sector, with the exception of the Canadian Forces, the Canadian Security Intelligence Service, and the Communications Security Establishment. These organizations excluded from the application of the Act would be required to establish procedures for disclosure and protections similar to those of the Act, and the Government could extend to them, by order, some of the provisions of the Act.⁹¹

A case study conducted by the Treasury Board of Canada in August 2003 among employees of the Office of the Privacy Commissioner found that there was limited understanding or confidence in the system in place.⁹² Only 56% of respondents were aware of the Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace, with the majority of respondents stating that they became aware of the policy by means other than direct communications from their agency.⁹³ As well, few believed that the policy would protect them from reprisal, with only 3 respondents out of 48 believing it would be an effective protection mechanism, as there were fears that confidentiality would not be respected or they distrusted senior officials in their office or in other departments or agencies.⁹⁴ As a consequence, 64% of respondents had been aware of wrongdoing since November 2001 up to the date of the study, but had not reported them. The most repeated recommendation that came from the respondents in the case study was the need for more education and information.⁹⁵ Bearing this in mind, the Committee will make a recommendation (see Recommendation 1.3(b) in Chapter III, Part B of this Report).

The Committee wishes to acknowledge that Canada currently is taking steps to improve and strengthen the disclosure system in place; A “proposed Public Servants Disclosure Protection Act (commonly referred to as “whistle-blowing legislation”) was introduced in the House of Commons in October 2004 to strengthen the regime governing the internal disclosure of wrongdoing. It requires heads of federal organizations to establish an internal disclosure mechanism, calls for the establishment of a code of conduct, and provides substantial protections in law from reprisal for good faith disclosures. The Bill has not yet been passed by Parliament.”⁹⁶ Bearing the status of this Bill in mind, the recommendation noted above (Recommendation 1.3(a) in Chapter III, Part B of this Report) includes those individuals who are covered by this Bill.

⁹⁰ Public Service Integrity Officer, 2002 – 2003 Annual Report to Parliament, *supra* note 76 at p. 19 and Public Service Integrity Officer, 2003 – 2004 Annual Report to Parliament, *supra* note 35 at pp. 17 – 18.

⁹¹ See note 85.

⁹² A Case Study on the Application of the Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace, <http://www.parl.gc.ca/InfocomDoc/Documents/37/2/parlbus/commbus/house/reports/oggorp001-e.pdf>.

⁹³ *Ibid.* at p. 9.

⁹⁴ *Ibid.* Executive Summary and p. 12.

⁹⁵ *Ibid.* Executive Summary.

⁹⁶ Updated response, *supra* note 2 at p. 13. See also note 85.

1.3.3. Results of the legal framework and/or other measures and enforcement mechanisms

Canada, in its Updated Response, states that, “for the fiscal year 2003 – 2004, the Public Service Integrity Officer received 67 disclosures. The Office of Public Service Values and Ethics reported 90 disclosures received in departments and agencies.”⁹⁷ The results found in the two annual reports are separated in various ways, such as category of wrongdoing, distribution by region and distribution by department and agency. Moreover, for the 2003 – 2004 year, the Public Service Integrity Officer also found one case of reprisal.⁹⁸ No results were available for those departments and agencies that are not under the purview of the Public Service Integrity Officer.

Considering that the Committee does not have additional information other than that referenced above which might enable it to make a comprehensive evaluation of the results of the standards and mechanisms referred to above, it will make recommendations in this regard (see Recommendations 7.2 and 7.3 in Chapter III, Part B of this Report).

2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)

2.1. Existence of provisions in the legal framework and/or other measures

Canada, at the federal level, has a set of provisions and other measures concerning these systems, among which the following should be noted:

- Values and Ethics Code for the Public Service, whereby public servants are required, within 60 days of their first appointment or any subsequent appointment, transfer or deployment, declare all outside activities, assets and direct or contingent liabilities that might give rise to a conflict of interest with respect to their official duties, in the form of a Confidential Report that is submitted to the Deputy Head.⁹⁹ This filing requirement also arises every time a major change in personal affairs or in official duties occurs and a real, apparent or potential conflict of interest exists. Appendix A of this Code contains a non-exhaustive list of the assets and liabilities that must be reported, those that are not required to be reported, as well as rules on the divestment of assets, when required. A public servant who does not comply with the requirements of this Code is subject to appropriate disciplinary action, up to and including termination of employment. The Confidential Reports are treated in complete confidence, in accordance with the *Privacy Act*.¹⁰⁰

- Defence and Administrative Orders and Directives, 7021-1, whereby Department of National Defence employees are required, within 60 days of their appointment, transfer or deployment, declare all non-exempt assets and liabilities, outside employment or activities, contracts with the government, as well as gifts, hospitality or other benefits that might give rise to a conflict of interest with respect to their official duties, in the form of a Confidential Report that is submitted to the Chief Review Services/Conflict of Interest Section.¹⁰¹ This filing requirement also arises every time a change in personal affairs or in official duties occurs or in the ownership of a non-exempt asset or liability, in

⁹⁷ Updated response, *supra* note 2 at p. 13.

⁹⁸ Public Service Integrity Officer, 2003 – 2004 Annual Report to Parliament, *supra* note 35 at p. 16.

⁹⁹ Values and Ethics Code for the Public Service, *supra* note 7 at p. 13.

¹⁰⁰ *Ibid*, at p. 16.

¹⁰¹ Department and Administrative Orders and Directives, 7021-1, *supra* note 9.

order to avoid a real, apparent or potential conflict of interest that might exist in respect of their official duties. Likewise, members of the Canadian Forces have the same requirements upon enrollment. This Administrative Order provides a non-exhaustive list of the non-exempt assets and liabilities that must be reported, those that are not required to be reported, as well as rules on the divestment of non-exempt assets and liabilities, when required. A Department of National Defence employee who fails to comply with these requirements is subject to appropriate disciplinary action, up to and including termination of employment. As for members of the Canadian Forces, those who fail to comply are subject to one or more of the following measures: change of duties; deferment of promotion; counseling and probation or other administrative action; release; or disciplinary action under the National Defence Act. The Confidential Reports are treated in complete confidence, in accordance with the Privacy Act.

- Conflict of Interest and Post-Employment Code for Public Office Holders, under section 9, public office holders are required to submit a Confidential Report to the Ethics Commissioner of all their assets, direct and contingent liabilities and income received during the twelve-month period before assuming public office as well as the income they are entitled to receive during the following twelve months.¹⁰² This Report should include all outside activities in the two-year period before assuming public office. In the case of Ministers of the Crown, Ministers of state and parliamentary secretaries, information on their families is required as well as disclosing any interest they or their families have in a private corporation. Section 8 provides that this Report be made 60 days after appointment. Under section 7(5), the Ethics Commissioner and the public office holder are to review annually the information contained in the Confidential Report and the arrangements that have been made to comply with the Code. In addition, under section 8(5), public office holders are to inform the Ethics Commissioner within 30 days of any material changes in assets, liabilities and outside activities, and in the case of Ministers of the Crown, Ministers of state and parliamentary secretaries, and those of their families, except for exempt assets. Other requirements include making Public Declarations, within 120 days after appointment, of declarable assets (section 11); liabilities greater than or equal to \$10,000, identifying their source and nature, but not their value (section 14); outside activities (section 18); and when the total value of gifts, hospitality or other benefits received, directly or indirectly, by a public office holder or family exceeds \$200, from any source other than relatives or close personal friends in a twelve month period (section 21). A Summary Statement is prepared containing the methods of compliance with the Code and identifies whether divestment of certain assets was accomplished by means of a sale, establishment of a blind trust, blind management agreement or recusal. The public office holder is subject to appropriate measures, as determined by the Prime Minister, including discharge or termination of appointment for failure to comply with the Code (section 23). The Summary Statement and Public Declarations are placed in the Public Registry, which is made available on the internet, while the Confidential Report is kept in strict confidence.¹⁰³

- Conflict of Interest Code for Members of the House of Commons, under section 20, provides that a Member, upon 60 days after the notice of election to the House of Commons is published in the Canada Gazette, and annually on or before a date established by the Ethics Commissioner, must file with the Ethics Commissioner a full statement disclosing the Member's private interests and the private interests of the members of the Member's family.¹⁰⁴ The content of this disclosure statement is listed under section 21, which includes, *inter alia*, identification of assets, liabilities and income received during the twelve-month period before assuming public office as well as the income they are

¹⁰² Conflict of Interest and Post-Employment Code for Public Office Holders, *supra* note 10 at section 9.

¹⁰³ *Ibid*, section 5. The Public Registry is located in the following website: http://strategis.ic.gc.ca/cgi-bin/sc_mrksv/coi/bin/coi.e/coi.phtml

¹⁰⁴ Conflict of Interest Code for Members of the House of Commons, *supra* note 16 at section 20.

entitled to receive during the following twelve months and the source of that income. Any material change to this statement shall be reported to the Ethics Commissioner within 30 days of that change. In addition, under section 22, a Member and the Member's family may be required to meet with the Ethics Commissioner to ensure that adequate disclosure has been made. Section 27 provides that an inquiry may be conducted by the Ethics Commissioner when a Member has a reasonable belief that another Member has not complied with the Code. In addition, the Ethics Commissioner can also conduct an inquiry under its own initiative, or by direction of the House. In the report, the Ethics Commissioner can recommend appropriate sanctions. A disclosure summary is prepared by the Ethics Commissioner and placed on file to be made available for public inspection during normal business hours.¹⁰⁵

- The Canadian Judicial Council oversees the conduct of judges. While there is no general statutory requirement for financial disclosure, the question of whether the judge has a pecuniary or other interest, which may give rise to recusal is dealt with on a case-by-case basis. The Council had indicated that "a judge should disclose on the record anything which might support a plausible argument in favour of disqualification."¹⁰⁶ This disclosure would be to the parties in the case. In addition, when a person is applying to be appointed as a judge, he or she must complete a "Personal History Form," which calls for the disclosure of certain financial information. Detailed explanations must be provided where the answer given to any of the financial disclosure questions is positive.

Finally, Canada, in the Updated Response, reports that the ten provinces and three territories, generally speaking, have a set of provisions in place concerning systems for registering income, assets and liabilities.¹⁰⁷ In this respect, Canada cites as an example the provisions and other measures adopted by Saskatchewan, Ontario, Alberta, British Columbia, and New Brunswick as well as the Northwest Territories have legislation requiring members of the provincial legislatures to submit disclosure statements on assets, income and liabilities.

2.2. Adequacy of the legal framework and/or other measures

The norms and measures regarding the systems under analysis that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

Nevertheless, the Committee believes it advisable to make the following observations in relation to certain aspects by which Canada could continue strengthening the existing provisions, measures and mechanisms in the area under review:

- First, the Committee notes that the provisions and measures in place on the systems for registering income, assets and liabilities, cover a large number of public servants, but it does not require the disclosure of potentially conflicting interests of family members, though those of public office holders and Members of the House of Commons and of the Senate are required to do so. Bearing this in mind, the Committee will make a recommendation (See Recommendation 2(a) in Chapter III, Part B of this Report).

¹⁰⁵ *Ibid.* at section 23(2). In addition, as indicated under note 17, Canada has adopted a Conflict of Interest Code for Senators on May 18, 2005. The disclosure provisions are similar to the rules applying to Members of the House of Commons. Senators have 120 days from the coming into force of the Code (thereafter from appointment) for making a confidential disclosure statement to the Senate Ethics Officer about their business interests, sources of income, government contracts or other business arrangements, and assets and liability over \$10,000. The requirement does not apply to family residences and mortgages on these residences, household and personal effects, bank deposits and guaranteed investment certificates. Gifts and sponsored travel over \$500 must also be disclosed.

¹⁰⁶ Canadian Judicial Council: Ethical Principles for Judges, pg. 48, *supra* note 19.

¹⁰⁷ Updated response, *supra* note 2 at pp. 15 - 16.

- In addition, complete information has not been provided on the existence of other similar provisions or measures for other important sectors of the public service. For example, of the three examples provided by institutions not covered by the Values and Ethics Code for the Public Service, only two, the Standards of Conduct for the Canada Mortgage and Housing Corporation and the Code of Conduct and Standards of Conduct for Officers and Employees of the Canada Pension Plan Investment Board contain provisions on the confidential reports of assets, income and liabilities. Bearing this in mind, the Committee will make a recommendation (See Recommendation 2(b) in Chapter III, Part B of this Report).
- Finally, the response contains no indications whether confidential reports filed under the Values and Ethics Code of the Public Service and of the Defence and Administrative Orders and Directives are reviewed on a timely basis, whether appropriate action is taken when problems are identified and provision is not made for their publication, where appropriate. Bearing this in mind, the Committee will make a recommendation (See Recommendation 2(c) in Chapter III, Part B of this Report).

2.3. Results of the legal framework and/or other measures

Canada, in its Updated Response, states that “[r]esults are made available through the annual reports of the various conflict of interest commissioners and on the various websites.”¹⁰⁸

As stated under section 1.1.3, the Office of the Ethics Commissioner was established in 2004, and has issued annual reports for 2004-05 on its activities concerning the Conflict of Interest and Post-Employment Code for Public Office Holders and the Conflict of Interest Code for Members of the House of Commons.¹⁰⁹

However, the Values and Ethics Code for the Public Service, which came into force September 1, 2003, does not require an annual report, though the Public Service Human Resources Management Agency of Canada is responsible for monitoring the implementation of the Code in departments and agencies and routinely assesses departmental performance.¹¹⁰

The Committee recognizes Canada’s effort in making public a summary of the disclosures submitted by Members of the House of Commons and public office holders. The disclosure summary prepared by the Ethics Commissioner for Members of the House of Commons is made available for public inspection during normal business hours. Also, in the case of public office holders, there is a Public Declaration (which include declarable assets (section 11); liabilities greater than or equal to \$10,000, identifying their source and nature, but not their value (section 14); outside activities (section 18); and when the total value of gifts, hospitality or other benefits received, directly or indirectly, by a public office holder or family exceeds \$200, from any source other than relatives or close personal friends in a twelve month period (section 21)) and a Summary Statement, available at the Public Registry, on the internet.

Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of the standards and mechanisms referred to above, it will make recommendations in this regard (see Recommendations 7.2 and 7.3 in Chapter III, Part B of this Report).

¹⁰⁸ *Ibid.* at p. 16.

¹⁰⁹ Parliament of Canada Act, *supra* note 14 at section 72.13.

¹¹⁰ Interpretation Guide to the Values and Ethics Code for the Public Service, *supra* note 39.

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)

3.1. Existence of provisions in the legal framework and/or other measures

Canada, at the federal level, has a set of provisions and other measures in place concerning oversight bodies for effective compliance of the measures covered in paragraphs 1, 2, 4 and 11 of Article III of the Convention, among which the following should be noted:¹¹¹

- The Public Service Commission is responsible for the administration of the Public Service Employment Act (PSEA) and for the appointment of qualified persons to or from within the public service in accordance with the principles of merit, non-partisanship, representativeness and use of both official languages. The Commission also has the authority to conduct investigations and audits and administer the provisions relating to political activities of employees¹¹² and deputy heads.¹¹³

- The Public Service Human Resources Management Agency through the Office of Public Service Values and Ethics (OPSVE) monitors the implementation of the Values and Ethics Code for the Public Service in departments and agencies and routinely assesses departmental performance. It provides departments and agencies with educational material such as questions and answers, videos and an interpretation guide which are reflected in its website. It also maintains an advisory support service for Deputy Heads and for designated departmental officials on the interpretation and promotion of the Code.¹¹⁴ Among other Values and Ethics policies, OPSVE is also responsible for the Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace and tracks and reports on departmental statistics.

- The Public Service Integrity Officer receives, records and reviews disclosures of wrongdoing in the workplace, including breaches of the Values and Ethics Code for the Public Service.¹¹⁵ Similarly, there is a Senior Officer in each Department, who is responsible for, among other things, receiving, recording and reviewing disclosures of information concerning wrongdoing and establishing if there are sufficient grounds for further action.¹¹⁶

- The Chief Review Services is responsible for the development, administration and implementation of the Defence Ethics Program, including those Defense and Administrative Orders and Directives on conflicts of interest, post-employment, acceptance of gifts, hospitality and other benefits and sponsorships and donations.¹¹⁷

¹¹¹ For clarity, some of the explanation of the functions of these bodies is taken from previous sections of this report

¹¹² Section 2 of the Public Service Employment Act defines ‘employees’ as: “a person employed in that part of the Public Service to which the Commission has the exclusive right and authority to appoint persons.”

¹¹³ Updated Response, *supra* note 2 at p. 2. See also Public Service Commission of Canada, http://www.psc-cfp.gc.ca/index_e.htm.

¹¹⁴ Interpretation Guide to the Values and Ethics Code for the Public Service, *supra* note 39.

¹¹⁵ Values and Ethics Code for the Public Service, *supra* note 7 at p. 18. See also Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace, *supra* note 80.

¹¹⁶ Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace, *supra* note 80. See also Interpretation Guide to the Values and Ethics Code for the Public Service, *supra* note 39.

¹¹⁷ Department and Administrative Orders and Directives, 7023-1, http://www.admfincs.forces.gc.ca/admfincs/subjects/daod/7023/1_e.asp. See also Defence Ethics Program, http://www.dnd.ca/ethics/index_e.asp.

- The Ethics Commissioner is responsible for administering both the Conflict of Interest Code for Members of the House of Commons and the Conflict of Interest and Post-Employment Code for Public Office Holders.¹¹⁸
- The Senate Ethics Officer performs whatever duties and functions assigned by the Senate relating to the conduct of Senators in their official capacities under the general direction of a committee. It is expected that this Officer will administer a Code of Conduct for Senators, once one is adopted (see footnote 17).
- The Canadian Judicial Council promotes efficiency and uniformity, and improves the quality of judicial services in superior courts and the Tax Courts of Canada.
- The Office of Auditor General audits federal government operations and provides Parliament with independent information, advice and assurance to help hold the government to account for its stewardship of public funds. It is responsible for performance audits and studies of federal departments and agencies and conducts financial audits of the government's financial statements (Public Accounts) and performs special examinations and annual financial audits of Crown Corporations. The Auditor General is independent from the government of the day and is appointed for a term of ten years.
- The Office of the Comptroller General is responsible for "promoting stronger financial and audit controls that are essential to ensuring rigorous stewardship of public funds and value for money; overseeing all government spending including review and sign-off on new spending initiatives; setting and reviewing financial, accounting and auditing standards and policies for the Government of Canada and providing leadership to ensure and enforce appropriate financial controls and cultivate sound resource stewardship at all levels across the federal public service; and nurturing and managing the professional development of the financial and internal audit communities and leading the introduction of modern, timely, "enterprise-wide" financial information systems to track all spending and provide appropriate tools for effective scrutiny and decision-making."¹¹⁹

No one office is responsible for public participation, but there are a number of mechanisms available to civil society to raise concerns with the government, both formally and informally that are in place. For example, the one of the roles of the Privy Council Office is to instill and support a corporate consultation culture across government and ensures the effective integration of public consultation and citizen engagement into government policy and decision-making. The Information Commissioner investigates complaints from people who believe they have been denied rights under the Access to Information Act, Canada's freedom of information legislation and mediates between dissatisfied applicants and government institutions.¹²⁰ The President of the Treasury Board issues the guidelines regarding Access to Information and directives to government institutions and is responsible for producing a publication, Info Source, which contains information about government institutions and the information holdings to assist individuals in exercising their rights under the Access to Information Act (section 5). Members of civil society can also write to their Member of Parliament or to the responsible Minister about their concerns; non-governmental organizations have regular meetings with the responsible ministers on their issues of interest; some governmental organizations have an Ombudsman to receive public complaints (for instance, the Canadian Broadcasting Corporation has an Ombudsman and the RCMP has established a Public Complaints Commission). In addition, Ministers who bring a policy to Cabinet for approval indicate who was consulted in the development of the policy.¹²¹

¹¹⁸ Parliament of Canada Act, *supra* note 14 at sections 72.05 and 72.07.

¹¹⁹ Office of the Comptroller General, *supra* note 67.

¹²⁰ Office of the Information Commissioner, <http://www.infocom.gc.ca/menu-e.asp>.

¹²¹ Canada notes that as part of its study of the proposed Public Servants Disclosure Protection Act, the House of

As well, Canada, in the Updated Response, states that, in addition to the ones indicated in previous sections of this report, a great number of oversight bodies are in place. A representative sampling includes: the Treasury Board of Canada, the RCMP Office of the Ethics Advisor, the Commission for Public Complaints Against the RCMP, the RCMP External Review Committee, the Security Intelligence Review Committee, the Office of the Correctional Investigator, the Privacy Commissioner, the Public Accounts Committee (a Committee of the House of Commons), the Government-Wide Internal Audit Community, the Office of Infrastructure and Crown Corporations of Canada, the National Defence and Canadian Forces Ombudsman, the Canadian Forces Grievance Board and the Military Police Complaints Commission.¹²²

Finally, Canada states that “[a]uditors general, conflict of interest commissioners, ombudsmen, police commission and boards, and other oversight bodies may also be found in the provinces and territories.”¹²³

3.2. Adequacy of the legal framework and/or other measures

Based on the information available to it, the Committee notes that Canada has a legal framework and other measures related to the oversight bodies charged with functions related to the implementation of the provisions of paragraphs 1, 2, 4 and 11 of Article III of the Convention.

Nevertheless, the Committee notes that, as mentioned in section 1.1, not all individuals who work in the federal public sector are covered by the Values and Ethics Code for the Public Service. For example, employees working in a number of Crown Corporations or those who work for sections of the Parliament of Canada may not be covered by any conflict of interest code.¹²⁴ Bearing this in mind, the Committee will make a recommendation (See Recommendation 3(a) in Chapter III, Part B of this Report).

3.3. Results of the legal framework and/or other measures

The Committee observes that Canada, in its Updated Response, states that “[a]nnual reports are filed by many of the above oversight bodies and are publicly available.”¹²⁵

In this regard, information on the results with respect to each oversight body and the functions that they perform related to the provisions of the Convention under review, can be found in sections 1.1.3, 1.2.3, 1.3.3 and 2.3 of this report.

Nevertheless, the Committee observes that, in accordance with Canada’s Updated Response, the results of the various provisions, measures and mechanisms under review are found in performance audits of their corresponding federal departments and agencies. In this respect, the 2005 Report of the Auditor General of Canada¹²⁶ reviewed the results of the evaluation carried out with respect to the

Commons Standing Committee on Government Operations and Estimates has examined whether disclosures of alleged wrongdoing should be accepted from outside the federal public sector. The Committee might provide recommendations on this matter when it reports back to the House of Commons, see note 85.

¹²² Updated Response, *supra* note 2 at pp. 16 – 17.

¹²³ *Ibid.* at p. 17.

¹²⁴ Canada notes that section 5 of the Public Servants Disclosure Protection Act, currently before Parliament, would require the Treasury Board to establish a code of conduct applying to all the public sector, with the exception of the Canadian Forces, the Canadian Security Intelligence Service, and the Communications Security Establishment, see note 85.

¹²⁵ Updated Response, *supra* note 2 at p. 17.

¹²⁶ 2005 Report of the Auditor General of Canada, Chapter 5, “Rating Selected Departmental Reports”,

quality of these reports for three departments. On this point, the Report concludes that “[o]verall, we found that progress in improving performance reporting to Parliament continues to be a challenge for the three departments, even after almost a decade of effort” and adds that “[t]he findings from this audit are consistent with our observations from our previous work.”¹²⁷ For several years the Auditor General has observed, in part, that the performance reports of federal departments and agencies have focused more on outputs rather than outcomes and that the reports tended to focus on positive results rather than a more self-critical evaluation of performance that may not have always met expectations.¹²⁸

This Report also contains the response by the Government to the observations of the Auditor General. The Government states, *inter alia*, that “[i]n the coming months, the government, in collaboration with parliamentarians, will develop a blue print for improved reporting to Parliament that will better respond to needs of parliamentarians and other stake holders for transparent, timely, and easy-to-understand performance information. The government will also invest in technological systems that support performance data and reporting. Combined, these efforts should bring about a gradual shift in the management culture and in performance reporting practices across government departments.”¹²⁹ Bearing this in mind, the Committee will make a recommendation (See Recommendation 3(b) in Chapter III, Part B of this Report).

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)

4.1. GENERAL PARTICIPATION MECHANISMS

4.1.1. Existence of provisions in the legal framework and/or other measures

Canada, at the federal level, has a set of provisions and measures related to the above-referenced mechanisms.

In this regard, it should be noted that, according to the updated response of Canada to the questionnaire, “[t]here are extensive frameworks of laws and mechanisms and Parliamentary and legislative and regulatory processes in place to foster transparency and accountability in governments in Canada. Laws may be overturned if they violate the Charter. Oversight bodies, access to information legislation, and a tradition of public consultation by governments exist in Canada. As can be seen from the responses to the questions, which follow in this Chapter, there are laws in relation to, for example, public inquiries, referenda, and public complaint mechanisms. Members of the public may petition Parliament and the legislative assemblies on issues.”¹³⁰ In addition, Canada states that it has worked closely with civil society, in particular, through the Canadian International Development Agency (CIDA), which contributes to various nongovernmental organizations such as Transparency International, the Canadian Foundation for the Americas and the Institute for Strong Communities and CIVICUS.¹³¹

[http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20050405ce.html/\\$file/20050405ce.pdf](http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20050405ce.html/$file/20050405ce.pdf)

¹²⁷ *Ibid.* at p. 15.

¹²⁸ *Ibid.* at p. 15 – 17.

¹²⁹ *Ibid.* at p. 17.

¹³⁰ Updated Response, *supra* note 2 at p. 18.

¹³¹ *Ibid.*

4.1.2. Adequacy of the legal framework and/or other measures

Based on the information at its disposal, the Committee observes that Canada has standards and measures such as those noted in the foregoing section, with respect to the participation of civil society and non-governmental organizations in public activities. These standards and measures are either intended to promote or, as a direct or indirect effect, to facilitate the prevention of corruption.

Notwithstanding the above, and mindful of the classification referred to in the methodology for the review of the implementation of Article III, paragraph 11 of the Convention, the Committee will make the appropriate comments in each of the respective sections and in the final chapter, will formulate recommendations with respect to this area.

4.1.3. Results of the legal framework and/or other measures

With respect to the results of the general participation mechanisms, the Updated Response of Canada notes that it “requires its departments and agencies to submit to a number of review processes which may, at times, address public participation activities. The Treasury Board Secretariat is responsible for providing parliamentarians and Canadians with easy access to government performance and expenditure information and related material. Reporting to Parliament, the Auditor General of Canada audits government operations and provides the information that helps Parliament hold the government to account for its stewardship of public funds. In addition, the Parliament of Canada conducts this process through the Standing Committee on Government Operations and Estimates.” Overall, the results of using these many mechanisms have contributed to public participation in the development of policies, legislation and programs on a variety of issues.¹³²

4.2. MECHANISMS FOR ACCESS TO INFORMATION

4.2.1. Existence of provisions in the legal framework and/or other measures

Canada, at the federal level, has a set of provisions and measures related to the mechanisms referred to, among which the following should be noted:

- The Access to Information Act, which is the legislation in place that provides a legal right of access to civil society and non-governmental organizations to information in the control of federal government institutions. According to section 2 of this Act, its purpose is to “extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.”¹³³ This Act contains, *inter alia*, the following measures and provisions:

- as previously mentioned in section 3.1, the President of the Treasury Board issues the guidelines and directives to government institutions and is responsible for producing a publication, Info Source, which contains information about government institutions and the information holdings to assist individuals in exercising their rights under the Act (section 5).

¹³² *Ibid.*

¹³³ Access to Information Act, <http://laws.justice.gc.ca/en/A-1/text.html>. See also section 4 of this Act, which provides that a Canadian citizen or permanent citizen has a right to and shall be given access to any record under the control of a government institution.

- the head of a government institution¹³⁴ has 30 days to give written notice to a person who has made a request whether or not access to the record¹³⁵ will be given (section 7). Extended time may be required if there are many records to be examined, other government agencies are to be consulted or third parties are to be notified (section 9).
- exemptions are specific and limited, the purpose being to balance freedom of information against individual privacy, commercial confidentiality, national security and the frank communications needed for effective policy making (sections 13 – 26).¹³⁶
- the Office of the Information Commissioner¹³⁷ is established to receive complaints from persons who: (1) have been refused access to a record; (2) have been asked to pay too much for copied information; (3) consider the extension of the time frame to receive the information unreasonable; (4) the material was not in the requested official language; (5) have problems with the Info Source guide or the periodic bulletins issued to help the public use the Act; or (6) any other problems encountered in using the Act (section 30). The Information Commissioner investigates the matter and issues a report on whether a right has been violated under the Act (section 37). Since the Information Commissioner acts as an ombudsman, this Office cannot order a complaint resolved in a particular way, but relies on persuasion to solve disputes.¹³⁸ A further right of review to the Federal Court of Canada is also contemplated under the Act if the requester is not satisfied with the result of the Information Commissioner's investigation. The Information Commissioner may, with the requester's consent, also ask for a Federal Court review if the Office is dissatisfied with the department's response (section 41).
- sanctions are contemplated for destroying, mutilating, altering, falsifying or concealing a record in order to deny a right of access under the Act (if guilty of an indictable offence, 2 years' imprisonment and/or \$10,000 fine; if a summary conviction, 6 months' imprisonment and/or \$5,000 fine) (section 67.1).

- The Communications Policy of the Government of Canada¹³⁹ is intended to ensure that communications across the Government of Canada are well-coordinated, effectively managed and responsive. It helps implement the Government policy of providing the public with timely, accurate, clear, objective and complete information about its policies, programs, services and initiatives. It also ensures that the institutions of the Government of Canada are visible, accessible and accountable to the public they serve and that a variety of ways and means to communicate government information is available in multiple formats, using all forms of media practical. This Policy also requires that government institutions maintain an active presence on the internet and requires that public programs, services and information that are available through this medium are regularly updated, accurate, easy to understand and accessible in multiple formats.¹⁴⁰

¹³⁴ A government institution means any department, or ministry of state of the Government of Canada as listed in Schedule I of the Act, *ibid.* at section 3.

¹³⁵ 'Records' is defined as "any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof", *ibid.*

¹³⁶ See Information Commissioner Annual Report 2003 – 2004, http://www.infocom.gc.ca/reports/pdf/oic03_04E.PDF at p. 1.

¹³⁷ Office of the Information Commissioner, <http://www.infocom.gc.ca/menu-e.asp>.

¹³⁸ Information Commissioner Annual Report 2003 - 2004, *supra* note 136 at p. 2.

¹³⁹ Communications Policy of the Government of Canada, http://www.tbs-sct.gc.ca/pubs_pol/sipubs/comm/comm_e.asp.

¹⁴⁰ *Ibid.* at p. 14 – 15.

Canada also notes in its Updated Response that “the provinces and territories also have access to information and privacy legislation.”¹⁴¹

4.2.2. Adequacy of the legal framework and/or other measures

The standards and measures that the Committee has examined on access to information, based on the information available to it, are pertinent for promoting the purposes of the Convention.

In practice, the existing standards and measures constitute a wide-ranging set of provisions and measures that effectively ensure the right to access to government information.

In particular, the Committee notes that Canada has been active in periodically reviewing and discussing the scope and nature of this right and the operation of the Access to Information Act. For example, a task force was established in 2000, which made recommendations on how improvements could be made to the Act,¹⁴² a discussion paper has been presented by the Government of Canada to amend the Act,¹⁴³ and the Information Commissioner has been active in responding to these initiatives and making its own recommendations on the matter.¹⁴⁴

The Committee recognizes, for promoting the purposes of the Convention, the importance of the periodic review and updating of the provisions and measures on the area of access to information. For this reason, the Committee encourages Canada to continue with this dynamic process.

4.2.3. Results of the legal framework and/or other measures

Canada notes, in its Updated Response, that “[r]esults obtained in implementing the above standards and mechanisms can be found in the Information Commissioner's Annual Report.”¹⁴⁵

Indeed, the Committee has found that these reports provide extensive information on the implementation and operation of the Access to Information Act. For instance, these Annual Reports contain 'report cards' and a comprehensive review on the response times by departments and agencies to requests for information under the Act.¹⁴⁶ In the last Annual Report for the year 2003 – 2004, it gave grades to 12 departments, with 3 of them receiving a grade of 'A', meaning 0 – 5% of requests were not answered within the 30 days or any extended period properly claimed. Two of these departments received a grade of 'F', having not answered to a request more than 20% of the time.¹⁴⁷ The Annual Report also identifies the five main causes for the delay in the access system.¹⁴⁸

¹⁴¹ Updated Response, *supra* note 2 at p. 19.

¹⁴² Report of the Access to Information Review Task Force,
<http://www.atirtf-geai.gc.ca/report2002-e.html>.

¹⁴³ A Comprehensive Framework for Access to Information Reform: A Discussion Paper April 2005,
<http://canada.justice.gc.ca/en/dept/pub/ati/index.html>.

¹⁴⁴ See Response to the Report of the Access to Information Review Task Force,
<http://www.infocom.gc.ca/reports/2002special-e.asp>, and Remarks to House Committee on Access to Information, Privacy and Ethics,
<http://www.infocom.gc.ca/speeches/speechview-e.asp?intSpeechId=111>.

¹⁴⁵ Updated Response, *supra* note 2 at p. 19. These reports are found at:
<http://www.infocom.gc.ca/reports/default-e.asp>.

¹⁴⁶ Information Commissioner Annual Report 2003 - 2004, *supra* note 136 at pp. 15 – 18 and 79 – 195.

¹⁴⁷ *Ibid.* at p. 16.

¹⁴⁸ *Ibid.* at p. 18.

The Information Commissioner also reports that for the 2003 - 2004 year, 1338 complaints were made and 970 investigations were completed.¹⁴⁹ These complaints are broken down by institution and by type, for example, refusal to disclose, delay, time extension or fees.¹⁵⁰ In addition, the Information Commissioner provides data by department on the outcomes of the complaint findings, whether they were resolved, not substantiated or discontinued.¹⁵¹ Additional useful information, such as case summaries of various legal issues, the outcome of those complaints and the lessons learned from them, are also provided, which assist in understanding the operation of the Act.¹⁵² Finally, the Annual Report contains information on the decisions by the Federal Court of Canada on those matters that were sent for review, as well as cases in progress.¹⁵³

Nevertheless, the Committee notes the assertions by the Information Commissioner that it does not have the necessary resources to fulfill its mandate, and as such, its ability to act as an effective watchdog over the access system described as being in 'real jeopardy.'¹⁵⁴ For example, there were 1025 incomplete investigations for the reporting year, as compared to 657 for the previous year, due to lack of resources at the Office's disposal, according to the Information Commissioner. As a result, the Information Commissioner asserts that this has led the Office to give up on public affairs, research, education and training capacity in order to concentrate resources on investigations.¹⁵⁵ Canada notes that the Office of the Information Commissioner had a budget of over \$4.7 million (Canadian) and a staff of 52 people for the fiscal year 2004-05. It should also be noted that the government has committed to strengthening the budget process for all Agents of Parliament, including the Information Commissioner

Bearing these issues in mind, the Committee will make a recommendation (See Recommendation 4.2 in Chapter III, Part B of this Report).

4.3. MECHANISMS FOR CONSULTATION

4.3.1. Existence of provisions in the legal framework and/or other measures

Canada, at the federal level, has a set of provisions and measures related to the above-referenced mechanisms.

Canada notes in its response to the Updated Response that public consultations are frequently used by the government to ensure that citizens are given an opportunity to contribute to government decision-making with regard to public policies, legislation, regulation and programs. As well, departments and agencies have in place mechanisms for public participation to ensure that Canadians are involved in policy, legislative and program development.¹⁵⁶

These are evidenced by the set of provisions and measures related to the mechanisms under review, among which the following should be noted:

¹⁴⁹ *Ibid.* at p. 19.

¹⁵⁰ *Ibid.* at pp. 20 – 22.

¹⁵¹ *Ibid.* at pp. 24 – 25.

¹⁵² *Ibid.* at pp. 27 – 45.

¹⁵³ *Ibid.* at pp. 47 – 65.

¹⁵⁴ *Ibid.* at p. 19.

¹⁵⁵ *Ibid.* at p. 76.

¹⁵⁶ Updated Response, *supra* note 2 at p. 20.

- The Communications Policy of the Government of Canada provides, in addition to the objectives mentioned in section 4.2.1, that the public is to be consulted, listened to and their interests and concerns are to be taken into account when establishing priorities, developing policies and planning programs and services.¹⁵⁷ To carry out this objective, institutions are required to inform Canadians of opportunities to participate in public consultation and citizen engagement activities through web sites and may also include letters of invitation, notices to the media, paid advertising and other vehicles, such as publishing notices in the *Canada Gazette*.¹⁵⁸
- The Cabinet Directive on Law Making¹⁵⁹ allows for public consultations on draft bills before they are introduced to Parliament.
- The Government of Canada Regulatory Policy¹⁶⁰ requires regulatory authorities to consult with Canadians so that they have an opportunity to participate in developing or modifying regulations and regulatory programs. When regulatory authorities propose new regulatory requirements or changes to existing ones, they must carry out timely and thorough consultations with interested parties and clearly set out the process for those interested parties to provide their input.
- The Regulatory Process Guide¹⁶¹ sets out the steps to be followed to bring a regulation into force once a department or agency decides to regulate. Part of this process requires that the draft regulations be published in the *Canada Gazette* for a comment period in which interested groups and individuals have an opportunity to review and comment on them. The standard period is usually 30 days.¹⁶² In addition, this Guide encourages that departments or agencies involve the public before drafting regulations in order to receive input and gain acceptance. This is done through Reports on Plans and Priorities advising interested groups of upcoming regulatory initiatives, providing online information on departmental regulatory plans or publishing a Notice of Intent in the *Canada Gazette* soliciting the views of the public.¹⁶³
- Consultation Guidelines for Managers in the Public Service¹⁶⁴ states that it is a policy of the Government of Canada to pursue and promote consultation with Canadians in the development of public policy and in the design of programs and services. In order to assist in this endeavor, an appendix containing 'Principles of Consultation' is provided. These 'Principles' are to be considered by each department and agency in establishing a consultation strategy that encourages and provides for input from the public.

¹⁵⁷ Communications Policy of the Government of Canada, *supra* note 139 at p. 2.

¹⁵⁸ *Ibid.* at p. 7.

¹⁵⁹ Cabinet Directive on Law Making,

http://www.pco-bcp.gc.ca/default.asp?page=publications&Language=E&doc=legislation/directive_e.htm.

¹⁶⁰ Government of Canada Regulatory Policy,

<http://www.pco-bcp.gc.ca/raoics-srdc/default.asp?Language=E&Page=Publications&Sub=GovernmentofCanadaRegula>

¹⁶¹ Regulatory Process Guide,

http://www.pco-bcp.gc.ca/raoics-srdc/docs/Publications/regguide/regguide_e.pdf

¹⁶² *Ibid.* at pp. 25 – 26.

¹⁶³ *Ibid.* at pp. 16 – 17. In addition, departments might want to advise the public about upcoming regulatory initiatives through departmental publications and web sites, trade, sectoral or professional publications.

¹⁶⁴ Consultation Guidelines for Managers in the Federal Public Service, http://www.pco-bcp.gc.ca/raoics-srdc/default.asp?Language=E&Page=Publications&doc=ConsultationGuidelines/ConsultationGuidelines_e.htm

- The Consulting with Canadians website¹⁶⁵ serves as the government's gateway for public access to information on consultations planned, underway or recently completed by institutions. The purpose of this website is threefold: (1) to enhance public awareness of government consultation activities; (2) provide opportunities for Canadians to participate in government consultations, both online and offline; and (3) to develop the government's capacity for engaging Canadians online and improve management of government consultations across departments.¹⁶⁶ It should be noted that the aforementioned Communications Policy of the Government of Canada makes it mandatory for all Departments to publish on their websites information on all public consultations they are conducting.

- The Department of Justice's Policy Statement and Guidelines for Public Participation¹⁶⁷ "provides a policy tool for all Department of Justice managers and officials to frame the Department's public participation activities."¹⁶⁸ The objective is to "involve Canadians in the development of legislation, policies, programs and services through adequately resourced processes that are transparent, accessible, accountable, supported by factual information, and are inclusive of Canada's diversity."¹⁶⁹ In implementing this policy, the Department of Justice has included in its website current and past issues seeking the written consultations of Canadians, such as those that resulted in the United Nations Convention against Corruption.¹⁷⁰

- The Green Lane: Our Commitment to Effective Consultations¹⁷¹ by Environment Canada, sets out the guiding principles in seeking out public consultations on its mandate. At Environment Canada, "consultation is an interactive and iterative process that elicits and considers the ideas of people and provides opportunities to influence decisions before they are made."¹⁷²

Canada, in its Updated Response, also states that the provinces and territories involve the public through consultations in a broad range of policy areas and that their legislation may also mandate that the public be consulted on matters of public policy, legislation and regulation.¹⁷³

4.3.2. Adequacy of the legal framework and/or other measures

The provisions and measures in relation to the mechanisms for consultation that the Committee has examined, based on the information made available to it, are pertinent for promoting the purposes of the Convention.

In this regard, the Committee notes that the federal provisions and measures described above contribute to promoting civil society and non-governmental organization participation in efforts intended to prevent corruption and facilitate the purposes of the Convention.

¹⁶⁵ Consulting with Canadians, <http://www.consultingcanadians.gc.ca>

¹⁶⁶ *Ibid.* <http://www.consultingcanadians.gc.ca/cpcPubAux.jsp?lang=en&auxpageid=13&Type=current>

¹⁶⁷ Policy Statement and Guidelines for Public Participation, http://canada.justice.gc.ca/en/cons/pc_policy.html

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ Consultations, http://canada.justice.gc.ca/en/cons/cons_index.html and Proposed United Nations Instrument Against Corruption, <http://canada.justice.gc.ca/en/cons/FINAL.html>

¹⁷¹ Green Lane: Our Commitment to Effective Consultations, http://www.ec.gc.ca/consult/policy_e.html

¹⁷² *Ibid.*

¹⁷³ Updated Response, *supra* note 2 at p. 20.

In addition, the Committee encourages Canada to continue promoting the participation of all federal government departments and agencies with the Consulting with Canadians website so as to further meet the purposes of this initiative, namely enhancing public awareness of government consultation activities, providing Canadians an opportunity to participate in these consultations and helping develop the federal government's capacity for engaging Canadians online and improving consultations across departments. Bearing this in mind, the Committee will make a recommendation (see Recommendation 4.3 in Chapter III, Part B of this Report).

4.3.3. Results of the legal framework and/or other measures

With respect to the results of the mechanisms for consultation in Canada, the Updated Response notes that “the experience gained – and the results obtained – by Canada's different levels of government with public consultation mechanisms has been varied. This is in part the result of the variety of mechanisms that the different levels of government in Canada have resorted to in order to consult the public, and the broad range of issues that have been treated by public consultation processes.”¹⁷⁴

In this regard, Canada notes the results of a survey which found that of 28% of Canadians that participated in a consultation/citizen engagement exercises, 24% had participated in a process organized by the federal government, 46% through a provincial government process and 19% in a process organized at the municipal level. According to this survey, the majority of those that participated in a consultation/citizen engagement activity sponsored by a government viewed this process favorably.¹⁷⁵

Notably, the Canadian government has been active in promoting civil society participation in developing policies in regards to the Inter-American system. Initiatives included a meeting held in November 2004 between federal officials of the Department of Foreign Affairs and civil society organizations on gathering suggestions on methods to inform and consult civil society on Canadian positions vis-à-vis the Inter-American system so as to establish ongoing dialogue with these groups on hemispheric issues.¹⁷⁶

Nevertheless, considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of the standards and mechanisms referred to above, it will make a recommendation in this regard (see Recommendations 7.2 and 7.3 in Chapter III, Part B of this Report).

4.4. MECHANISMS TO ENCOURAGE PARTICIPATION IN PUBLIC ADMINISTRATION

4.4.1. Existence of provisions in the legal framework and/or other measures

Canada, at the federal level, has a set of provisions and measures related to the above-referenced mechanisms.

For instance, Canada notes in its response to the Updated Response that “all jurisdictions in Canada have developed mechanisms to encourage participation by civil society and non-governmental organizations in the development of public policy, legislation and government programs” and that

¹⁷⁴ *Ibid.* at p. 21.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

“[w]hile many of these mechanisms do not specifically focus on preventing corruption *per se*, they all have as their principal benefit the enhancement of the relationship between citizens and their government.”¹⁷⁷

Furthermore, Canada notes that the mechanisms in place to encourage participation in public administration include public opinion polls, public consultation and citizen engagement activities, response cards attached to various government communications products, toll-free telephone comment/information lines, information/service kiosks and internet service kiosks and related on-line services and programs for the provision of information and opportunity for citizen comment.¹⁷⁸

In addition, Canada has a set of provisions and measures related to the mechanisms under review, among which the following should be noted:

- The Referendum Act¹⁷⁹ provides the legal basis in which referendums are carried out in regards to the Constitution of Canada. As stated in the Updated Response by Canada, this is an important means by which the federal government receives input from Canadians on important issues of public policy.¹⁸⁰

- The Inquiries Act¹⁸¹ sets out the provisions in which Royal Commissions and Commissions of Inquiry are established. These Commissions carry out full and impartial investigations of specific national problems and serve as a means to seek the views of the public.¹⁸² There have been more than 200 federal Royal Commissions since Confederation, of which an index can be found on the internet.¹⁸³ In addition, the status of current Commissions of Inquiry as well as the reports of previous Commissions are found in the internet.¹⁸⁴

- Legislative and standing committees of the House of Commons and the Senate are empowered to receive interested parties to testify before them or submit written briefs in order to seek information about matters they are considering.¹⁸⁵ This allows Canadians to participate in policy and legislative development.¹⁸⁶

- Public hearings are also cited as instruments of public participation in a number of Acts of Parliament, including the National Energy Board Act (sections 8, 12, 24, 28.2, 28.5 and 35); Northwest Territories Waters Act (sections 21-24); Expropriation Act (sections 10, 11 and 18); Broadcasting Act (sections 15, 16, 18, 19, 21 and 28); Canada Grain Act (sections 11, 14, and 98);

¹⁷⁷ Updated Response, *supra* note 2 at pp. 21 – 22.

¹⁷⁸ *Ibid.* at p. 22.

¹⁷⁹ Referendum Act, <http://laws.justice.gc.ca/en/R-4.7/text.html>

¹⁸⁰ Updated Response, *supra* note 2 at p. 22.

¹⁸¹ Inquiries Act, <http://laws.justice.gc.ca/en/I-11/text.html>

¹⁸² Updated Response, *supra* note 2 at p. 22 and Index to Federal Royal Commissions, <http://www.collectionscanada.ca/indexcommissions/g6-120-e.html>

¹⁸³ Index to Federal Royal Commissions, <http://www.collectionscanada.ca/7/6/index-e.html>

¹⁸⁴ Commissions of Inquiry, <http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=commissions>

¹⁸⁵ For the House of Commons, see Introduction to Committees of the House of Commons, http://www.parl.gc.ca/committees352/english_intro.html and Standing Orders 113(5), 122 and 108(1) (a) grant legislative and standing committees of the House of Commons the power "to send for persons...,"

<http://www.parl.gc.ca/information/about/process/house/standingorders/toc-e.htm>. For the Senate, see A guide for Witnesses Appearing Before the Senate, <http://www.parl.gc.ca/38/1/parlbus/commbus/senate/com-E/pub-E/witness-e.htm> and Rule 90 of the Rules of the Senate:

http://www.parl.gc.ca/information/about/process/senate/rules-e/senrules_10-e.htm.

¹⁸⁶ Updated Response, *supra* note 2 at p. 22.

Farm Products Agencies Act (sections 8-10); Pilotage Act (sections 21, 28, 29 and 34); Radiocommunication Act (sections 7 and 13); Nuclear Energy Act (section 10); Nuclear Safety and Control Act (sections 20, 40 and 46); Energy Supplies Emergency Act (sections 32.5 and 34); Motor Vehicle Transport Act, 1987 (sections 7-8); Patent Act (sections 69, 83 and 86); Firearms Act (section 75); Canada Water Act (sections 5 and 15); Canada-Newfoundland Atlantic Accord Implementation Act (sections 44, 124, 158, 168, 170, 173, 174 and 176); Mackenzie Valley Resource Management Act (sections 24, 42, 107 and 134); Shipping Conferences Exemption Act, 1987 (section 13); Canadian Radio-Television and Telecommunications Commission Act (section 11); Aeronautics Act (section 6.3); Judges Act (sections 63-69); Telecommunications Act (section 9); Tobacco Act (section 42.1); Canadian Environmental Assessment Act (sections 34, 35, 40 and 43); Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act (section 44) ; and the Great Lakes Fisheries Convention Act (section 3) (see Schedule 2-Article 5, Convention on Great Lakes Fisheries between Canada and the United States of America).¹⁸⁷

Mention should also be made of relevant provisions and mechanisms found in section 4.3 of this Report, such as the Communications Policy of the Government of Canada, the Cabinet Directive on Law Making, the Government of Canada Regulatory Policy, the Regulatory Process Guide, and the Consulting with Canadians website.

Finally, Canada notes in its response that the provinces and territories also encourage the active participation of civil society and non-governmental organizations in public administration.¹⁸⁸ For example, British Columbia has established an online “Wastebuster” program, which allows British Columbians to identify waste and make suggestions to improve processes, such as, government money spent on activities or products that are more costly than necessary; government time or money wasted because processes are inefficient or overlap; and government activities or processes that are unnecessary or outdated.¹⁸⁹ Referendums are also an important means to receive input at the provincial level on issues of public policy. In British Columbia, a provincial policy referendum on approaches to treaty negotiations with First Nations people was held in 2002.¹⁹⁰

4.4.2. Adequacy of the legal framework and/or other provisions

The standards and measures in relation to the mechanisms to encourage participation in public administration that the Committee has examined, based on the information made available to it, are pertinent for the promotion of the purposes of the Convention.

Specifically, the Committee notes, that as demonstrated by the available information, including the Updated Response of Canada, these standards and measures encourage the participation of civil society and non-governmental organization in public administration in Canada.

In the opinion of Transparency International Canada, these mechanisms have enhanced transparency and accountability overall.¹⁹¹

¹⁸⁷ These statutes are available at the Department of Justice web site at <http://laws.justice.gc.ca/en/index.html>

¹⁸⁸ Updated Response, *supra* note 2 at p. 22.

¹⁸⁹ British Columbia Wastebuster Web Site, <http://www.wastebuster.gov.bc.ca/>

¹⁹⁰ Updated Response, *supra* note 2 at p. 22.

¹⁹¹ Transparency International Canada, *supra* note 3 at p. 15.

4.4.3. Results of the legal framework and/or other measures

In its Updated Response, Canada states that efforts in encouraging active participation by civil society and non-governmental organizations in public administration “inform the development of public policy, legislation and government programs, and serve to enhance the relationship between citizens and their government. Reports following public consultations processes are often available on individual ministry websites.”¹⁹² Indeed, as indicated under section 4.4.1., the reports of Royal Commissions and Commission of Inquiries are found on the internet, and the outcomes of many past consultations of selected departments and agencies are found in the Consulting with Canadians website.¹⁹³

Nevertheless, considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of the standards and mechanisms referred to above, it will make recommendations in this regard (see Recommendation 7.3 in Chapter III, Part B of this Report).

4.5. MECHANISMS FOR PARTICIPATION IN THE FOLLOW-UP OF PUBLIC ADMINISTRATION

4.5.1. Existence of provisions in the legal framework and/or other measures

Canada, at the federal level, has a set of provisions and measures related to the above-referenced mechanisms.

For instance, Canada, in its Updated Response, states that examples of participation mechanisms in the follow-up of public administration “can be found to the questions above and also appear in Annex I.”¹⁹⁴ Relevant provisions and measures related to the mechanisms under review that should be noted are:

- The Access to Information Act, as discussed under section 4.2. This legislation facilitates the access of civil society and non-governmental organizations to information in the control of federal public institutions. This allows civil society and non-governmental organizations to receive information on the manner in which federal departments and agencies are implementing laws and regulations that prevent, detect, punish and eradicate public acts of corruption.

- The Communications Policy of the Government of Canada provides that the public are to be consulted, listened to and their interests and concerns are to be taken into account when establishing priorities, developing policies and planning programs and services.¹⁹⁵ To that end, institutions are to ensure that opportunities are available for the public to provide feedback on major policies, programs, services and initiatives, and that such feedback is carefully considered in reviews or evaluations of same to help make improvements.¹⁹⁶

- The Inquiries Act, as mentioned under section 4.4.1 sets out the provisions in which Royal Commissions and Commissions of Inquiry are established and serve as a means to seek the views of the public.

¹⁹² *Ibid.*

¹⁹³ Consulting with Canadians, <http://www.consultingcanadians.gc.ca/cpcPubPast.jsp?lang=en>

¹⁹⁴ Updated Response, *supra* note 2 at p. 23.

¹⁹⁵ Communications Policy of the Government of Canada, *supra* note 139 at p. 2.

¹⁹⁶ *Ibid.* at p. 4.

- The Legislative and standing committees of the House of Commons and the Senate, as mentioned under section 4.4.1, are empowered to invite interested parties to testify before them or submit written briefs in order to seek information about matters they are considering.

Mention should also be made of the Cabinet Directive on Law Making, the Government of Canada Regulatory Policy and the Regulatory Process Guide, which, as mentioned under section 4.3, allows for public consultations on draft bills and regulations before they are introduced to Parliament.

Moreover, in addition to the aforementioned Communications Policy of the Government of Canada which requires public consultations in establishing priorities and developing policies, Canada has had formalized Pre-Budget Consultations since 1994. The Minister of Finance travels across the country and conducts roundtable discussions and meetings to assist in developing the departmental economic forecasts used for the purpose of the Budget. The Deputy Minister and senior Finance officials also hold roundtables and meetings with a cross-section of business, academic and other stakeholders regarding budgetary and public policy priorities. The House of Commons Standing Committee on Finance is mandated to consider and make reports upon proposals regarding the budgetary policy of the government. The Committee holds pre-Budget hearings in Ottawa and across the country, which are open, to all. Following these hearings the Committee tables a formal report in the House on the result of its Pre-Budget Consultations.

4.5.2. Adequacy of the legal framework and/or other measures

The standards and measures in relation to the participation mechanisms for the follow-up of public administration that the Committee has examined, based on the information made available to it, are pertinent for promoting the purposes of the Convention.

Specifically, the Committee observes that, as demonstrated by the information at its disposal, these standards and measures, as a whole, allow civil society and non-governmental organizations to participate effectively in the follow-up of public administration in Canada.

4.5.3. Results of the legal framework and/or other measures

Canada states, in its Updated Response, that “[t]hese mechanisms result in ongoing communications between government and civil society on these issues.”¹⁹⁷

Indeed, the submission by Transparency International Canada attests to this ongoing communication. Transparency International Canada states that “[a] study conducted by FOCAL of 20 Canadian CSO’s reports that access to public information has become easier in the last few years and that CSO’s do participate in Canada’s political, economic and social policy development to varying degrees through a range of working relationships with the state. Different government departments at both the federal and provincial levels provide a variety of grants to fund programs that are relevant to their departments. FOCAL reports that the federal government provided \$2.2 billion to CSO’s in 1997-1998.”¹⁹⁸ Moreover, “[p]ublic consultations with CSO’s are the norm throughout Canada at the provincial and territorial levels. In Newfoundland, for example, there are public consultations on the provincial budget preparation, economic renewal, electricity rates, literacy programmes and health issues. In New Brunswick a formal network of more than 20 CSO’s is linked to the policy

¹⁹⁷ Updated Response, *supra* note 2 at p. 23.

¹⁹⁸ Transparency International Canada, *supra* note 3 at p. 16.

formulation process. In Saskatchewan, lottery policies are set by a joint committee of government and CSO representatives. City and municipal levels routinely include public and CSO input for most major planning actions.”¹⁹⁹

Nevertheless, considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of the standards and mechanisms referred to above, it will make recommendations in this regard (see Recommendation 7.3 in Chapter III, Part B of this Report).

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

5.1. MUTUAL ASSISTANCE

5.1.1. Existence of provisions in the legal framework and/or other measures

Canada has a set of provisions and measures related to the above-referenced mechanisms, notably the Mutual Legal Assistance in Criminal Matters Act.

This Act provides for legal assistance in criminal matters from other countries that have a treaty with Canada, thus enabling Canada to assist partner states seeking assistance in the investigation, prosecution and suppression of crimes, including acts of corruption.²⁰⁰ There are bilateral treaties in place, with Argentina, The Bahamas, Mexico, Peru, Trinidad and Tobago, the United States of America and Uruguay. Under the Act, measures of assistance available to foreign states include order for the gathering of documentary and physical evidence pursuant to either “evidence gathering orders” or search warrants, as well as warrants available under the *Criminal Code* maybe be obtained pursuant to a request from a treaty or convention partner. The legislation also allows Canada to (1) compel statements or testimony from a witness located in Canada, including those provided via video link to the foreign proceedings; (2) order the examination of a place or site in Canada; (3) lend court exhibits; and (4) transfer detained persons on consent to a requesting state to give evidence or to assist with the foreign investigation.²⁰¹ In addition, Canada notes that it “has the ability to assist in the enforcement of foreign fines, and, to some extent, foreign restraint, seizure and forfeiture orders.”²⁰² Canada also states that assistance is provided on an informal police-to-police basis, usually through Interpol channels. These occur in the cases were the assistance sought does not require the issuance of a court process.

Moreover, Canada has played a leading role, together with Argentina, The Bahamas, El Salvador and the General Secretariat of the Organization of American States, in establishing an electronic network on mutual legal assistance in criminal matters and extradition within the hemisphere.²⁰³ This network makes publicly available considerable information and there is ongoing work on establishing a secure point-to-point email system for use by the Central Authorities of OAS member States.

Finally, Canada notes that corruption is an intelligence priority for the Royal Canadian Mounted Police Criminal Intelligence Program and is the subject of regular monitoring, research and assessment.²⁰⁴ In this regard, the Royal Canadian Mounted Police “has Liaison Officers posted in

¹⁹⁹ *Ibid.*

²⁰⁰ Updated Response, *supra* note 2 at p. 23.

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ *Ibid.* at p. 24.

Colombia, Jamaica, Mexico, the United States and Venezuela. They are involved in many areas of law enforcement, including the fight against corruption.²⁰⁵ Moreover, the Royal Canadian Mounted Police is the Interpol agent for Canada, working with the other 180 Interpol Countries, including those that are member states of the OAS.

5.1.2. Adequacy of the legal framework and/or other measures

The provisions related to mutual assistance that have been examined by the Committee, based on the information made available to it, are pertinent for promoting the purposes of the Convention.

Canada states in its Updated Response that, to date, no requests for mutual legal assistance have been made to or from Canada under the Convention.²⁰⁶ The Committee notes, per Section 6 of this report, that formal notification of the designation of a Central Authority may facilitate such requests in the future.

5.1.3. Results of the legal framework and/or other measures

As noted in the previous section, Canada has not received a request for mutual legal assistance under the Convention.

5.2. MUTUAL TECHNICAL COOPERATION

5.2.1. Existence of provisions in the legal framework and/or other measures

Canada, at the federal level, has a set of provisions and measures related to the above-referenced mechanisms.

The Committee notes that Canada has mechanisms in place to permit mutual technical cooperation. In particular, the Canadian International Development Agency has a number of programs, which facilitates the sharing of experience in combating corruption.²⁰⁷ Through its Policy Branch, it coordinates and harmonizes anti-corruption policies of donor countries, such as those of the Utstein Group and the Organization for Economic Cooperation and Development DAC's GOVNET Task Force on Anticorruption.

The Multilateral Branch, through its contribution, works in cooperation with multilateral organizations that combat corruption in the region, such as the Organization of American States, the Inter-American Development Bank, the World Bank, the United Nations Development Programme and the United Nations family of development and regulatory organizations, as well as other international organizations such as Transparency International and the Global Organization of Parliamentarians against Corruption.

The Canadian Partnership Branch works in conjunction with local governmental and nongovernmental partners, such as universities, cooperatives, unions, professional associations, rights and governance nongovernmental organizations and municipalities, to promote the fight against corruption. Bilateral, country to country relationships are also pursued by which financial support is given to government agencies and other public institutions.

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

These bilateral programs, though some may not specifically address anticorruption issues, are carried out by institutions and agencies that do touch upon this matter, such as Auditor General's Offices, Ombudsman's Offices, Comptrollers, Finance Ministries, Government Procurement Agencies and Electoral Offices.²⁰⁸ Some of these bilateral programs include, among others, public sector reforms in Bolivia, supporting the Office of the Auditor General of Colombia in improving its capacity to monitor the fiscal management of the Colombian government, improving the transparency, efficiency and effectiveness of government procurement processes in Nicaragua, and assisting in the promoting the importance of human rights, democratic development and good governance among civil society and government through institutional strengthening of the Ombudsman's Office in Peru.²⁰⁹

Finally, it should be noted that the Canadian International Development Agency receives many requests from governments and supports these through a wide range of projects, consisting from minor requests for advice or contacts with Canadian counterparts to large, multi-year bilateral programs.

Canada also states that other federal departments and agencies provide mutual technical assistance. The Department of Justice contains an International Cooperation Group which provides support to countries to modernize their justice system. Moreover, the Royal Canadian Mounted Police provides overseas training on various subjects such as police management, adult education techniques and intelligence analysis. These training initiatives always contain an anti-corruption component built into it, which includes significant discussion of ethics and alternate philosophies of policing. Specific workshops on corruption and integrity are also carried out by the Royal Canadian Mounted Police, including one that was carried out in Colombia in conjunction with various police, justice and security agencies. These workshops are carried out in small groups whereby participants identify and explore local issues, make recommendations upon those issues to senior management and follow through on their implementation.²¹⁰

The provinces and territories also are involved in mutual technical assistance projects. As an example, Canada notes that, "the International Governance Office of Alberta is and has been involved in various governance projects with international financial institutions, private sector partners, and other countries. The Offices of the Auditor General, the Information and Privacy Commissioner, and the Ethics Commissioner, as well as members of the Legislative Assembly of Alberta and department officials, have all participated in such projects (see: http://www.iir.gov.ab.ca/international_relations/igo.asp)."²¹¹ This Office has received many invitations to participate in governance initiatives and has ongoing projects in Argentina, Brazil and Mexico, with short term results being examination of principles and practices, and a desire for ongoing improvement, and anticipated long term results to include governance reform in a variety of areas, including ethics, communications, business planning, performance management, financial management and accountability.²¹²

²⁰⁸ *Ibid.*

²⁰⁹ See Annex II, CIDA's Support to Anti-Corruption Efforts in the Americas, for more of these types of programs, http://www.oas.org/juridico/spanish/can_res9.pdf

²¹⁰ Updated Response, *supra* note 2 at p. 25.

²¹¹ *Ibid.*

²¹² *Ibid.* at p. 26.

5.2.2. Adequacy of the legal framework and/or other measures

The measures related to mutual technical cooperation that the Committee has examined, based on the information made available to it, are pertinent for the promotion of the purposes of the Convention.

The Committee commends Canada for its continued efforts to support implementation of the Convention, as well as the numerous initiatives it has undertaken which are designed to promote or strengthen international cooperation against corruption, and which as a result, contribute to fulfilling the objectives of the Convention.

5.2.3. Results of the legal framework and/or other measures

Canada provided information with regard to the provision of mutual technical cooperation on subjects covered by the Convention. In addition, the Committee was informed that Canada is providing financial support to Argentina, Colombia, Nicaragua and Paraguay to assist them in initiating and facilitating the implementation of the recommendations made to them by the Committee of Experts in the first round of review.²¹³

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

6.1. Existence of provisions in the legal framework and/or other measures

Canada has formally designated the General Counsel and Director of the International Assistance Group of the Department of Justice, as the Central Authority for mutual assistance matters as provided for in the Convention, and also provided the contact information.²¹⁴

Similarly, Canada has formally designated the Vice-President for the Americas Branch of the Canadian International Development Agency as the Central Authority for technical cooperation matters, as provided for in the Convention, and also provides this Office's contact information.²¹⁵

²¹³ Additional capacity building projects sponsored by Canada in the Americas include contributions to: the Local Fund for Public Sector Reform to respond to immediate Southern Cone needs; the Public Sector Reform Fund in Peru to improve performance and accountability; the Guyana Economic Management Project to enhance expenditure management processes; the Office of the Auditor General of Colombia to promote good governance through the strengthening of the fiscal control system; the Inter-American Development Bank to assist Honduras to address challenges in public sector procurement; the Honduras Pro-mesas Education Sector Fund; the Honduras Pro-mesas to support civil society; the Honduran *Consejo Nacional Anticorrupción*; the Inter-American Forum on Political Parties Project; the Latin American Parliamentarians Against Corruption Consolidation Project; the Strategic Governance Mechanism governance project in Bolivia; the Inter-American Development Bank Transparency in Procurement Initiative; the Nicaragua Public Sector Reform Fund and the OECD Govnet Donor Survey on Anti-Corruption; the Costa Rica Trade Capacity Building Project to provide training and advice on effective verification of value of goods; the Government of Guyana for Initiatives in anti-money laundering; and the *Delegación Presidencial Anticorrupción* of Bolivia to assist in improving public sector transparency.

²¹⁴ Updated Response, *supra* note 2 at p. 27. This formal designation was communicated to the Secretariat by the Permanent Mission of Canada to the Organization of American States on August 15, 2005.

²¹⁵ *Ibid.*

6.2. Adequacy of the legal framework and/or other measures

The provisions and other measures adopted by Canada in relation to Central Authorities that the Committee has examined, based on the information made available to it, are pertinent for promoting the purposes of the Convention.

Canada notes that the International Assistance Group presently comprises of 15 lawyers and 9 support staff, including paralegals, junior paralegals and administrative assistants. They are divided into three teams, one of which focuses on the review and coordination of mutual assistance requests.²¹⁶

The Canadian International Development Agency has program staff to review requests for assistance, but it states that it has a limited budget to cover the Americas. Canada states, “[e]ach country has a designated budget, which cannot be surpassed. The use of the funds is agreed mutually between the Government of Canada and the partner country. It has received and responded successfully to many requests as can be seen in Annex II.”²¹⁷

6.3. Results of the legal framework and/or other measures

Canada, in its Updated Response, states that it has not received any requests for mutual legal assistance and the Updated Response contained no information about mutual technical cooperation under the Convention.²¹⁸

III. CONCLUSIONS AND RECOMMENDATIONS

Based on the review in Chapter II of this report, the Committee offers the following conclusions and recommendations regarding implementation by Canada of the provisions of Article III, paragraphs 1 and 2 (standards of conduct and mechanisms to enforce them); III.4 (systems for registering income, assets, and liabilities); III.9 (oversight bodies, solely with respect to the exercise by such bodies of functions related to compliance with the provisions contained in Article III. 1, 2, 4, and 11 of the Convention); III.11 (mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption); Article XIV (Assistance and Cooperation) and Article XVIII (Central Authorities) of the Convention, which were selected in the context of the first round.

A. IMPLEMENTATION OF THE CONVENTION AT THE PROVINCIAL AND TERRITORIAL LEVEL

In accordance with what is provided at Section A of Chapter II of this report, the Committee recommends that Canada continue promoting the purposes of the Convention in the different levels of government and continue providing information on the progress thereof. In addition, the Committee recommends Canada encourage the strengthening of the mechanisms for consultation with civil society and nongovernmental organizations at the provincial and territorial levels with regards to the drafting of public policy and in the development of draft laws or regulations. Further, the Committee recommends that Canada continue strengthening cooperation and coordination between the Federal Government and the provinces and territories for that purpose.

²¹⁶ *Ibid.*

²¹⁷ *Ibid.* See also Annex II, *supra* note 2.

²¹⁸ Updated Response, *supra* note 2 at p. 28.

B. CONCLUSIONS AND RECOMMENDATIONS AT THE FEDERAL LEVEL

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms

Canada considered and adopted measures to establish, maintain, and strengthen standards of conduct aimed at preventing conflicts of interest and mechanisms to enforce them, as noted in Chapter II, Part B, section 1.1 of this report.

In light of the comments made in that section, the Committee suggests that Canada consider the following recommendation:

Continue strengthening the provisions and measures on conflicts of interest and mechanisms to enforce compliance.

To carry out this recommendation, Canada could consider the following measures:

- a. Strongly encourage those public service institutions, as well as Parliament, whose officers and employees are not covered by a code of conduct outlined in Chapter II, Part B section 1.1.1 of the Report to adopt codes of conduct for those officers and employees (see Chapter II, Part B section 1.1.2 of this Report).
- b. Adopt measures to ensure that the post-employment restrictions for public servants can be enforced (see Chapter II, Part B, section 1.1.2 of this Report).
- c. Canada should continue to improve evaluation mechanisms to analyze the results of enforcement of conflict of interest provisions (see Chapter II, Part B, section 1.1.2 of this Report).
- d. Canada should continue to promote the importance of the Values and Ethics Code for the Public Service in decision-making in the management of human and financial resources (see Chapter II, Part B, section 1.1.3 of this Report).

1.2. Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms

Canada has considered and adopted measures intended to establish, maintain, and strengthen standards of conduct to ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions, as indicated in Chapter II, Part B, section 1.2 of this report.

In light of the comments made in that section, the Committee suggests that Canada consider the following recommendation:

Continue strengthening the implementation of the standards of conduct that ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions.

To carry out this recommendation, Canada could consider the following measure:

- Establish a mechanism to assess the effectiveness of the Policy on Losses of Money and Offences and Other Illegal Acts against the Crown (see Chapter II, Part B, section 1.2.3 of this Report).

1.3. Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

Canada has considered and adopted measures to establish, maintain, and strengthen standards of conduct and mechanisms concerning measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, as noted in Chapter II, Part B, section 1.3 of this report.

In light of the comments made in that section, the Committee suggests that Canada consider the following recommendation:

Continue strengthening the norms and mechanisms with respect to the existing systems and measures requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

To carry out this recommendation, Canada could consider the following measures:

- a. Adopt provisions to establish the obligation to disclose wrongdoings, including presumed acts of corruption, as well as provide reprisal protection mechanisms to those individuals working in the federal public sector who are not currently required to disclose, or who are not afforded protection for such disclosures (see Chapter II, Part B, section 1.3.2 of this Report).
- b. Strengthen the training and awareness building programs to ensure that individuals working in the federal public sector are aware of their duties, responsibilities, and protections for reporting acts of corruption and wrong-doing in the workplace (see Chapter II, Part B, section 1.3.2 of this Report).

2. SYSTEMS FOR REGISTERING INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)

Canada has considered and adopted measures intended to establish, maintain, and strengthen systems for registration of income, assets, and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public, as noted in Chapter II, Part B, section 2 of this report.

In light of the comments made in that section, the Committee suggests that Canada consider the following recommendation:

Continue strengthening the systems for registration of income, assets, and liabilities.

To carry out this recommendation, Canada could consider the following measures:

- a. Adopt provisions where they do not currently exist on the systems for registering sources of income, assets and liabilities of family members of appropriate individuals in the federal public sector that potentially could conflict with the official duties of the individual (see Chapter II, Part B, section 2.2 of this Report).
- b. Adopt provisions on the systems for registering, where appropriate, sources of income, assets and liabilities that potentially could conflict with the official duties of those employees in the federal public sector who currently are not required to meet such registration procedures, in order to contribute to the promotion of the purposes of the Convention (see Chapter II, Part B, section 2.2 of this Report).
- c. Adopt measures so that the Confidential Reports submitted in accordance with the Values and Ethics Code of the Public Service and of Defence and Administrative Orders and Directives, 7021-1, are reviewed on a timely basis and appropriate steps taken to address conflicts of interest and other possible violations of law and to consider publication of such reports, where appropriate (see Chapter II, Part B, section 2.2 of this Report).

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)

Canada has considered and adopted measures to establish, maintain, and strengthen oversight bodies for effective compliance with the provisions selected for analysis in the first round, as noted in Chapter II, Part B, section 3 of this report.

In view of the comments made in that section, the Committee suggests that Canada consider the following recommendations:

Continue strengthening the oversight bodies for effective compliance with the provisions selected for analysis in the first round (Article III, paragraphs 1, 2, 4 and 11).

To carry out this recommendation, Canada could consider the following measures:

- a. Adopt the relevant measures to ensure that there are oversight bodies for effective administration of new systems developed as a result of Recommendations in Part B (1) and (2).
- b. Continue to consider improvements to the performance reports of departments and agencies with oversight responsibilities for paragraphs 1, 2, 4 and 11 of Article III of the Convention (see Chapter II, Part B, section 3.3 of this Report).

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)

Canada has considered and adopted measures intended to establish, maintain and strengthen mechanisms to encourage the participation of civil society and nongovernmental organizations in efforts aimed at preventing corruption, as discussed in Chapter II, section 4 of this report.

In view of the comments made in that section, the Committee suggests that Canada consider the following recommendations:

4.1. General participation mechanisms

No recommendations are formulated by the Committee in this section.

4.2. Mechanisms for access to information

Continue strengthening the mechanisms for access to information.

To carry out this recommendation, Canada could consider the following measure:

- Continue to assess the reasons for the delays referred to in the Information Commissioner's Annual Report and the concerns of the Information Commissioner on the availability of limited resources, and take the measures deemed relevant on these matters (see Chapter II, Part B, section 4.2.3 of this Report).

4.3. Mechanisms for consultation

Continue strengthening the mechanisms for consultation.

To carry out this recommendation, Canada could consider the following measure:

- Encourage federal government departments and agencies to continue to make full use of the Consulting with Canadians website (see Chapter II, Part B, section 4.3.2 of this Report).

4.4. Mechanisms to encourage participation in public administration

No specific recommendations are formulated by the Committee in this section.

4.5. Mechanisms for participation in the follow-up of public administration

No specific recommendations are formulated by the Committee in this section.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Canada has adopted measures dealing with mutual assistance and mutual technical cooperation, in support of the provisions of Article XIV of the Convention, as noted and reviewed in section 5 of Chapter II of this report.

No specific recommendations are formulated by the Committee in this section.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Canada has adopted certain measures relative to the designation of the central authority referred to in Article XVIII of the Convention, discussed in section 6, Chapter II of this report.

No recommendations are formulated by the Committee in this section.

7. GENERAL RECOMMENDATIONS

Based on the review and the contributions made throughout this report, the Committee suggests that Canada consider the following recommendations:

- 7.1 Design and implement, when appropriate, programs to train public officials responsible for implementing the systems, standards, measures and mechanisms considered in this report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.
- 7.2 Select and develop procedures and indicators, when appropriate, that make it possible to verify the follow-up to the recommendations contained in this report, and report back to the Committee through the Technical Secretariat in this regard. For the purposes indicated, Canada could consider taking into account the list of the most widely used indicators, applicable in the Inter-American system that were available for the selection indicated by the country under analysis, which has been published on the OAS website by the Technical Secretariat of the Committee, as well as information derived from the analysis of the mechanisms developed in accordance with recommendation 7.3, which follows.
- 7.3 Develop, when appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, and the recommendations contained therein.

8. FOLLOW-UP

The Committee will consider the periodic reports from Canada on its progress in implementing the above recommendations in the framework of the Committee's plenary meetings, as prescribed in Article 30 of the Rules of Procedure.

It is further recommended that the Committee review the progress made in implementing the recommendations contained in this report, as provided in Articles 31 and, when appropriate Article 32 of the Rules of Procedure.

The Committee wishes to place on record the request made by Canada to the Secretariat to publish this report on the Mechanism's webpage and by any other means of communication, in accordance with the provisions of Article 25(g) of the Rules of Procedure and Other Provisions.

ANNEX
TO THE REPORT ON IMPLEMENTATION IN CANADA OF THE CONVENTION
PROVISIONS SELECTED FOR REVIEW WITHIN THE FRAMEWORK OF THE FIRST
ROUND

Together with its response, Canada sent attachments on the following provisions and documents:

STATUTES:

1. Access to Information Act
2. Aeronautics Act
3. Auditor General Act
4. Broadcasting Act
5. Budget Transparency and Accountability Act
6. Canada Grain Act
7. Canada Water Act
8. Canada-Newfoundland Atlantic Accord Implementation Act
9. Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act
10. Canadian Environmental Assessment Act
11. Canadian Radio-television and Telecommunications Commission Act
12. Department of Foreign Affairs and International Trade Act
13. Energy Supplies Emergency Act
14. Expropriation Act
15. Farm Products Agencies Act
16. Federal Court Act
17. Financial Administration Act
18. Firearms Act
19. Great Lakes Fisheries Convention Act
20. Inquiries Act
21. Judges Act
22. Mackenzie Valley Resource Management Act
23. Motor Vehicle Transport Act, 1987
24. National Defence Act
25. National Energy Board Act
26. Northwest Territories Waters Act
27. Nuclear Energy Act
28. Nuclear Safety and Control Act
29. Parliament of Canada Act
30. Patent Act
31. Pilotage Act

32. Public Service Employment Act
33. Public Service Modernization Act
34. Public Service Staff Relations Act
35. Radiocommunication Act
36. Referendum Act
37. Shipping Conferences Exemption Act, 1987
38. Telecommunications Act
39. Tobacco Act

OTHER DOCUMENTS

1. 2004 Annual Report to Parliament—Crown Corporations and Other Corporate Interests of Canada
2. 2005 Report of the Auditor General of Canada
3. A Case Study on the Application of the Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace
4. A Comprehensive Framework for Access to Information Reform: A Discussion Paper April 2005
5. Cabinet Directive on Law Making
6. Commissions of Inquiry
7. Communications Policy of the Government of Canada
8. Conflict of Interest and Post-Employment Code for Public Office Holders
9. Conflict of Interest Code for Members of the House of Commons
10. Consultation Guidelines for Managers in the Federal Public Service
11. Department and Administrative Orders and Directives
12. Draft Public Servants Disclosure Protection Act
13. Disclosure of Improper Activities in the Workplace (“Whistle-blowing”) Policy
14. Governing Responsibility: A guide for Ministers and Ministers of State
15. Government of Canada Regulatory Policy
16. Green Lane: Our Commitment to Effective Consultations
17. Guidelines for Ministers’ Offices
18. Information Commissioner Annual Report 2003 – 2004
19. Interpretation Guide to the Values and Ethics Code for the Public Service
20. Introduction to Committees of the House of Commons
21. Policy on Losses of Money and Offences and Other Illegal Acts Against the Crown
22. Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace
23. Policy Statement and Guidelines for Public Participation
24. Proactive Disclosure
25. Proposed United Nations Instrument Against Corruption
26. Public Service Integrity Officer, 2002 – 2003 Annual Report to Parliament
27. Public Service Integrity Officer, 2003 – 2004 Annual Report to Parliament

28. Regulatory Process Guide
29. Remarks to House Committee on Access to Information, Privacy and Ethics
30. Report of the Access to Information Review Task Force
31. Report of the Working Group on the Disclosure of Wrongdoing
32. Report to the House of Commons on Sponsored Travel
33. Response to the Report of the Access to Information Review Task Force
34. Standing Orders of the House of Commons
35. The Thirteenth Report of the House of Commons Standing Committee on Government Operations and Estimates
36. Treasury Board Accounting Standards
37. Values and Ethics Code for the Public Service

In response to the request from the Technical Secretariat of the Committee, Canada sent the following documents:

1. Canada Post Policy on Disclosure of Improper Activities in the Workplace ("Whistle-blowing")
2. Canada Post Conflict of Interest Policy
3. Code of Conduct and Standards of Conduct for Officers and Employees of the Canada Pension Plan Investment Board
4. Standards of Conduct for the Canada Mortgage and Housing Corporation