

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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CANADA

FINAL REPORT

(Adopted at the March 25, 2011 plenary session)

**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 THIRD ROUND, AND ON FOLLOW-UP TO THE
RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN PREVIOUS ROUNDS¹**

INTRODUCTION

1. Contents of the Report

[1] This report presents, first, a review of implementation in Canada of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the third round: Article III, paragraphs 7 and 10, and Articles VIII, IX, X and XIII.

[2] Second, the report will examine follow-up to the recommendations that were formulated to Canada by the MESICIC Committee of Experts in the previous rounds, which are contained in the report on that country adopted by the Committee and published at the following web pages: www.oas.org/juridico/english/mec_rep_can.pdf and www.oas.org/juridico/english/mesicic_II_inf_can_en.pdf

2. Ratification of the Convention and adherence to the Mechanism

[3] According to the official records of the OAS General Secretariat, Canada deposited the instrument of ratification of the Inter-American Convention against Corruption on June 1, 2000.

[4] 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.

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of Canada

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from Canada and in particular from the Department of Justice, which was evidenced, inter alia, in the response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, Canada sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following webpage: http://www.oas.org/juridico/english/mesicic3_can.htm.

[6] For its review, the Committee took into account the information provided by Canada up to August 13, 2010, and that furnished and requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and the review Methodology.

1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 25, 2011, at its Eighteenth meeting, held at OAS Headquarters, March 21-25, 2011.

2. Documents received from civil society organizations

[7] The Committee also received, within the deadline established in the schedule for the third round, a document from Transparency International Canada, the national chapter of Transparency International, submitted by that organization.²

II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE THIRD ROUND³

1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT⁴ FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

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

[8] Canada has a set of provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, among which the following should be noted:

[9] – Statutory provisions such as the Income Tax Act, of which the following should be noted:⁵

[10] Section 2 which provides that income tax shall be paid on the taxable income for each taxation year of every person⁶ resident in Canada at any time in the year and that the taxable income of a taxpayer for a taxation year is the taxpayer's income for the year plus the additions and minus the deductions permitted by Division C of the Act;

[11]Section 5, which establishes that a taxpayer's income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year;

[12]Section 6, which provides that in determining the income of a taxpayer for a taxation year as income from an office or employment, the following are to be included: the value of benefits, such as board and lodging, received or enjoyed by a taxpayer in the course of or by virtue of an office or employment; allowances received for personal or living expenses; director's or other fees; allocations under a profit sharing plan; standby charge for automobiles; any amounts received from employment insurance benefits; amounts received from supplementary benefit or permanent impairment allowance payable to members of the Canadian Forces and veterans; amounts received from an employee benefit plan; amounts received from an employee trust; amounts received from salary deferral arrangements; amounts received from an award or reimbursement; amounts received for operation of an automobile; payments by an employer to an employee; any amount received in respect of a group term life insurance;

2. This document was received electronically on August 13, 2010, and is available in English at: www.oas.org/juridico/english/mesicic3_can.htm

3. Given the nature of the standards and measures that Canada has in place relating to the provisions of the Convention selected for the Third Round, this report covers provincial aspects as well, notwithstanding the fact that Canada is a Federal State.

4. For the purposes of this report, the MESICIC Committee of Experts defines favorable tax treatment as all exemptions and any deductible items used for the purposes of determining the income tax base, and other treatment that gives rise to favorable reductions in the amount of tax payable by taxpayers.

5. Income Tax Act, <http://laws.justice.gc.ca/PDF/Statute/I/I-3.3.pdf>

6. Section 248 of the Act provides, in part, that 'person', or any word or expression descriptive of a person, includes any corporation or entity.

amounts received in respect of a loan or debt; amount of debt forgiveness; amount received for housing subsidies;⁷

[13] Section 8, which provides for the deductions allowed in computing a taxpayer's income from an office or employment, which are: legal expenses incurred to collect or establish a right to salary or wages owed to the taxpayer by the employer or former employer of the taxpayer; maintenance for a clergy residence; contributions to a teacher's exchange fund; expenses incurred by railway employees for meals and lodging; sales expenses; transport employees expenses; travel expenses; motor vehicle travel expenses; dues and other expenses of performing duties; motor vehicle and aircraft costs; premiums paid under the Insurance Act or contribution to the Canada Pension Plan; contributions to registered pension plans; contributions to a retirement compensation arrangement; salary reimbursement; reimbursement of disability payments; musical instrument costs; apprentice mechanics' tool costs; amounts spent on tradesperson's tools; and amount spent for work space at home;⁸

[14]Section 67.5(1), which provides that no deduction shall be made in respect of an outlay made or expense incurred for the purpose of doing anything that is an offence under section 3 of the Corruption of Foreign Public Officials Act or under any of sections 119 to 121, 123 to 125, 393 and 426 of the Criminal Code, or an offence under section 465 of the Criminal Code.⁹ Section 67.5(2) further empowers the Minister of National Revenue to reassess taxation years in order to give effect to the non-deductibility of illegal payments without regard to the normal time limits on reassessment;¹⁰

[15]Section 67.6, which provides that no deduction shall be made in respect of any amount that is a fine or penalty imposed under a law of a country or of a political subdivision of a country (including a state, province or territory) by any person or public body that has authority to impose the fine or penalty;

[16]Section 110, which provides for the deductions permitted in computing the taxable income of a taxpayer, such as: amount received from an employee option plan and social assistance payments;¹¹

[17]Section 110.1, which allows corporations to deduct charitable gifts from the amount to compute their taxable income;¹²

[18] Section 110.2(2), which allows for deductions of lump sum payments from the taxable income of an individual;¹³

7. The definitions and rules in determining a taxpayer's income for each of these items may be further consulted under this section in the Income Tax Act.

8. The definitions and rules relating to each of these deductions from a taxpayer's income may be further consulted under this section in the Income Tax Act.

9. Section 3 of the Corruption of Foreign Public Officials Act makes it an offence to bribe a foreign public official, <http://laws-lois.justice.gc.ca/PDF/Statute/C/C-45.2.pdf>. The offences of the Criminal Code cited in section 67.5 are as follows: section 119 (bribery of judicial officers); section 120 (bribery of officers); section 121 (frauds on the government); section 123 (municipal corruption); section 124 (selling or purchasing office); section 125 (influencing or negotiating appointments or dealing in offices); section 393 (fraud in relation to fares, etc.); section 426 (secret commission); and section 465 (conspiracy), <http://laws-lois.justice.gc.ca/PDF/Statute/C/C-46.pdf>

10. The country under review notes that the Province of Quebec has its own tax administration and its own tax legislation, which is quite similar to the federal legislation. For example, section 421.8 of the Quebec Taxation Act is almost identical as section 67.5 of the Federal Income Tax Act, see Response of Canada to the Questionnaire for the Third Round, pgs. 1-2, footnote 2, http://www.oas.org/juridico/english/mesicic3_can_resp.pdf

11. The definitions and rules relating to each of these items that are included in gross income may be further consulted under this section in the Income Tax Act.

12. The definitions and rules relating to this deduction may be further consulted under this section in the Income Tax Act.

13. The definitions and rules relating to this deduction may be further consulted under this section in the Income Tax Act.

[19] Section 152, which states that the Minister shall examine a taxpayer's return of income for a taxation year, assess the tax, interest and penalties payable, if any, and determine the amount of refund or tax;

[20] Section 163(2), which provides that every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of the Act, is liable to a penalty of the greater of \$100 and 50% of the tax for the year that would be payable by the person under the Act;

[21] Section 220, which provides that the Minister has the competence to administer and enforce the Act and the Commissioner of Revenue may exercise all the powers and perform the duties of the Minister;

[22] Section 230, which provides that every person carrying on a business and every person who is required to pay or collect taxes shall keep records¹⁴ and books of account (including an annual inventory) at the person's place of business or residence in such form and containing such information as will enable the taxes payable or the taxes or other amounts that should have been deducted, withheld or collected to be determined. Article 230(4) further provides that the records and books of account are to be kept for six years.

[23] Section 231.1, which provides that an authorized person may, inspect, audit or examine the books and records of a taxpayer and any document of the taxpayer or of any other person that relates or may relate to the information that is or should be in the books or records of the taxpayer or to any amount payable by the taxpayer. They may also examine the property in an inventory of a taxpayer and any property or process of the taxpayer. Section 231.1(1)(c) further provides that an authorized person may enter into any premises or places where any business is carried on, any property is kept, anything is done in connection with any business or any books or records should be kept, and require the owner or manager of the property or business and any other person on the premises or place to give all reasonable assistance and to answer all questions.

[24] Section 231.2, which provides that the Minister may, for the administration or enforcement of the Act, require that any person provide any information or additional information, including a return of income or a supplementary return or any document;

[25] Section 231.3, which provides that a judge may, on ex parte application by the Minister, issue a warrant to enter and search any building, receptacle or place for any document or that thing that may afford evidence as to the commission of an offence under the Act and seize any document or thing and bring it before or make a report to the judge;

[26] Section 231.4, which provides that the Minister may, for any purpose related to the administration or enforcement of the Act, authorize any person to make such inquiry as the person may deem necessary with reference to anything related to the administration or enforcement of the Act;

14. The Income Tax Act under section 248 defines 'records' as including an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form.

[27] Section 231.6, which provides that the Minister may require that a person resident in Canada or a non-resident person carrying business in Canada provide any foreign-based information or document;¹⁵

[28] Section 238, which provides that every person who has failed to file or make a return as and when required by or under the Act or a regulation or who has failed to comply with section 230, among others, is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to a fine of not less than \$1,000 and not more than \$25,000 and/or imprisonment for a term not exceeding 12 months. In addition, section 238(2) further provides that where a person has been convicted by a court of an offence under this section for a failure to comply with a provision of this Act or a regulation, the court may make such order as it deems proper in order to enforce compliance with the provision;

[29] Section 239(1), which provides that every person who has: (a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation, (b) to evade payment of a tax, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a taxpayer, (c) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular, in records or books of account of a taxpayer, (d) willfully, in any manner, evaded or attempted to evade compliance with the Act or payment of taxes imposed by the Act, or (e) conspired with any person to commit an offence described in this section, is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to a fine of not less than 50%, and not more than 200%, of the amount of the tax that was sought to be evaded, and/or imprisonment for a term not exceeding 2 years;

[30]Section 239(1.1), which provides that (1.1) Every person who obtains or claims a refund or credit under this Act to which the person or any other person is not entitled or obtains or claims a refund or credit under the Act in an amount that is greater than the amount to which the person or other person is entitled: (a) by making, or participating in, assenting to or acquiescing in the making of, a false or deceptive statement in a return, certificate, statement or answer filed or made under the Act or a regulation, (b) by destroying, altering, mutilating, hiding or otherwise disposing of a record or book of account of the person or other person, (c) by making, or assenting to or acquiescing in the making of, a false or deceptive entry in a record or book of account of the person or other person, (d) by omitting, or assenting to or acquiescing in an omission to enter a material particular in a record or book of account of the person or other person, (e) willfully in any manner, or (f) by conspiring with any person to commit any offence under this section, is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to a fine of not less than 50% and not more than 200% of the amount by which the amount of the refund or credit obtained or claimed exceeds the amount, if any, of the refund or credit to which the person or other person, as the case may be, is entitled, and/or imprisonment for a term not exceeding 2 years;

[31]Section 239(2), which provides that every person who is charged with an offence described in sections 239(1) or 239(1.1) may, at the election of the Attorney General of Canada, be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to a fine of not less than 100% and not more than 200% of the amount of the tax that was sought to be evaded, or the amount by which the amount of the refund or credit obtained or claimed exceeds the amount, if any, of the

15. This section defines 'foreign-based information or document' as any information or document that is available or located outside Canada and that may be relevant for the administration or enforcement of the Act, including the collection of any amount payable by any person.

refund or credit to which the person or other person, as the case may be, is entitled; and imprisonment for a term not exceeding 5 years;

[32]Section 242, which provides that where a corporation commits an offence under the Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

[33] - Publications issued by the Canada Revenue Agency, which provide advice and guidance on a wide range of issues related to compliance with the applicable provisions of the Income Tax Act, of which the following should be noted:¹⁶

[34]Income Tax Interpretation Tax Bulletin IT-533, Interest Deductibility and Related Issues,¹⁷ which under paragraph 34 provides that any interest incurred related to illegal payments are non-deductible.

[35]Income Tax Information Circular IC78-10R5, Books and Records Retention/Destruction,¹⁸ which provides information and guidance to persons who are required by law to keep books and records according to sections 230 and 231.1 of the Income Tax Act. Books and records are to be kept by every person carrying on a business, required to pay or collect taxes, registered charity or registered Canadian amateur athletic association; and registered agent of a registered political party or an official agent for a candidate in a federal election. The books and records have to permit the taxes payable or the taxes or other amounts to be collected, withheld, or deducted by a person to be determined and be supported by source documents¹⁹ that verify the information in the books and records. The Circular also sets out where and how the records are to be kept, their retention period, as well as sets out the management and imaging of electronic records.²⁰

[36] - The Compliance Programs Branch Audit Manual, which sets out a section explaining the non-deductibility of illegal payments and the application of the relevant sections in the Income Tax Act, the Corruption of Foreign Public Officials Act and the Criminal Code.²¹

[37] - The Compliance Programs Investigations Manual, which contains a reference to the Corruption of Foreign Public Officials Act and a link to the section of the Audit manual that deals with the application of section 67.5 of the Income Tax Act.²²

16. See the following website for a description of the various document types available: <http://www.cra-arc.gc.ca/formspubs/typ/dscrptn-eng.html>

17. Income Tax Interpretation Bulletin Tax Bulletin IT-533, <http://www.cra-arc.gc.ca/E/pub/tp/it533/it533-e.pdf>

18. Income Tax Information Circular IC78-10R5, <http://www.cra-arc.gc.ca/E/pub/tp/ic78-10r5/ic78-10r5-10e.pdf>

19. Source documents, according to this Circular, include items such as sales, invoices, purchase invoices, cash register receipts, formal contracts, credit card receipts, delivery slips, deposit slips, work orders, dockets, cheques, bank statements, tax returns, and general correspondence whether written or in any other form. In addition, the Circular provides that other documents, whether written or in any other form, including supporting documents such as accountants working papers that were used to determine the obligations and entitlements with respect to taxes payable, collectible or to be remitted are considered part of the books and records of the taxpayer and must be made available to the Canadian Revenue Agency.

20. Further information and guidance to persons who use electronic business systems and who are required by law to keep books and records according to sections 230 and 231.1 of the Income tax Act are found in Income Tax Information Circular IC05-1R1, Electronic Record Keeping, <http://www.cra-arc.gc.ca/E/pub/tp/ic05-1r1/ic05-1r1-10e.pdf>

21. See Response to the Questionnaire, pg. 3, *supra* note 10. The country under review in its Response states that the audit function is the primary method for detecting instances of violations of anti-corruption laws and that during the course of an audit, the auditor ensures that revenues are appropriately reported and expenses are not overstated, see pg. 5.

22. See Response to the Questionnaire, pg. 4.

[38] The country under review also states in its Response to the Questionnaire that all new Canada Revenue Agency auditors undergo a minimum of 2 months in-class training and eventually, in the field training, where they are exposed to audit techniques that address uncovering unreported income and disallowing expenses. These new auditors receive legislation training that encompasses both revenues and expenses and become exposed to the main sections of the Income Tax Act that are cited in disallowing expenses.

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

[39] With respect to provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, the Committee notes that based on the information available to it, they can be said to constitute a set of relevant measures for promoting the purposes of the Convention.

[40] Nonetheless, the Committee considers it appropriate to formulate the following observations:

[41] First, the Committee observes that section 67.5 of the Income Tax Act prohibits, in computing income, deductions made in respect of an outlay made or expense incurred for the purpose of doing anything that is an offence under any of sections 119 to 121, 123 to 125, 393 and 426 of the Criminal Code, or an offence under section 465 of the Criminal Code as it relates to an offence described in any of those sections and under section 3 of the Corruption of Foreign Public Officials Act, the bribing of a foreign public official.

[42] In this regard, the Committee observes that while the Corruption of Foreign Public Officials Act criminalizes many forms of payment made to foreign public officials, section 3(4) provides an exception for facilitation payments.

[43] In this connection, the Committee notes that facilitation payments are generally considered an illegal bribe in the countries in which they are paid. In a similar sense, the Committee notes that section 121 of the Criminal Code in the country under review, which was examined in the Report on Canada for the Second Round of Review, contains no such exception for facilitation payments made to a domestic public official.²³

[44] In view of the foregoing, and taking into consideration that facilitation payments are not criminalized in the country under review, the Committee believes that Canada could consider continuing to make efforts to ensure that these payments do not receive favorable tax treatment. (See Recommendation 1.4(a) in Section 1.4 of this Report)

[45] Second, the Committee believes that it would be beneficial for the country under review to consider taking such steps as it deems appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment. (See Recommendation 1.4 (b) in Section 1.4 of this Report)

23. See the Report on Implementation in Canada of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, p. 45, http://www.oas.org/juridico/english/mesicic_II_inf_can_en.pdf. In addition, the Committee observes that in December, 2009, the Organization for Economic Cooperation and Development noted the “*corrosive effect of small facilitation payments, particularly on sustainable economic development and the rule of law...*” and in light of that fact, recommended, inter-alia, that countries take steps to combat the phenomenon of these payments, and encourage their companies to prohibit or discourage the use of these types of payment. For more information, see the recommendations adopted by the OECD for Further Combating Bribery of Foreign Public Officials in International Business Transactions, at recommendation VI, available at: www.oecd.org/dataoecd/11/40/44176910.pdf.

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

[46] With respect to results in this field, the response of the country under review notes the following: “Although no statistical data is available at this time, the Criminal Investigations Program (CIP) of the CRA [Canada Revenue Agency] is able to state that there have been very few cases so far. The CRA is considering modifying its systems to track the bribery cases. In the meantime, given the few number of cases, the CRA is able to track these manually. Furthermore, given the CRA’s commitment to several global fiscal organizations, the CIP will be analyzing cases involving bribery in order to better understand new schemes or typologies involved.”²⁴

[47] In addition, Canada also notes that under its Voluntary Disclosures Program, a program to encourage taxpayers to make disclosures to correct inaccurate or incomplete information or disclose information not previously reported, without penalty or prosecution that the taxpayer would otherwise be subject to under the Income Tax Act, 109 instances of “Overstated Expenses” were reported, of which bribery would fall under, for the years 2008-2009, and 186 instances reported for the years 2009-2010, as seen in the tables below:²⁵

Last update: July 11, 2010			
Voluntary Disclosures Program - Intake History			
MEASURES as values			<i>All Canada</i>
2008-2009	Net Intake	01 Unreported Business Income	
		02 Unreported Int/Div Income	
		03 Unreported Capital Gains	
		04 Unreported Rental Income	
		05 Unreported Pension Income	
		06 Unreported Wages, Benefits	
		07 Overstated Expenses	<i>109</i>
		08 GST Omission	
		09 GST Wash Transaction	
		10 Information Return	
		11 Source Deductions	
		12 Other	
		Disclosure Type	

24. Response to the Questionnaire, *supra* note 10, pg. 6.

25. *Ibid.*, pgs. 7 – 8. For more information on the Voluntary Disclosures Program, please see Income Tax Information Circular IC00-1R2, Voluntary Disclosures Program, <http://www.cra-arc.gc.ca/E/pub/tp/ic00-1r2/ic00-1r2-e.pdf>

Last update: July 11, 2010			
Voluntary Disclosures Program - Intake History			
MEASURES as values			<i>All Canada</i>
2009-2010	Net Intake	01 Unreported Business Income	
		02 Unreported Int/Div Income	
		03 Unreported Capital Gains	
		04 Unreported Rental Income	
		05 Unreported Pension Income	
		06 Unreported Wages, Benefits	
		07 Overstated Expenses	<i>186</i>
		08 GST Omission	
		09 GST Wash Transaction	
		10 Information Return	
		11 Source Deductions	
		12 Other	
		Disclosure Type	

[48] 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 this topic, the Committee will formulate a recommendation to the country under review so that, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (see Recommendation 1.4(c) in Section 1.4 of this Report)

1.4. Conclusions and recommendations

[49] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 7 of the Convention:

[50] Canada has considered and adopted measures intended to create, maintain and strengthen standards on the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, as described in section 1 of chapter II of this report.

[51] In light of the comments formulated in that section, the Committee suggests that Canada consider the following recommendation:

[52] Strengthen the standards and measures for the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws. To comply with this recommendation, Canada could take the following measures into account:

- a. Consider continuing to make efforts to ensure that facilitation payments do not receive favorable tax treatment, taking into consideration that these payments are not criminalized in the country under review. (see Section 1.2 of this Report)
- b. Consider adopting the measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for acts of corruption in the event that they are being used as grounds for obtaining such treatment, such as the following: (see Section 1.2 of this Report)
 - i. Computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions.
 - ii. Institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, and such aspects as certifying the authenticity of the documents submitted with the applications.
 - iii. Channels of communication so that they may promptly report to those who must decide on favorable treatment and warn them of the anomalies detected or of any irregularity that could affect the decision.
- c. Select and develop, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto. (See Section 1.3 of this Report)

2. PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III (10) OF THE CONVENTION)

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

[53]Canada has a set of provisions related to prevention of bribery of domestic and foreign government officials, among which the following should be noted:

[54]- Statutory provisions such as the Canada Business Corporations Act,²⁶ of which the following should be noted:

[55]Section 20(2), which provides that a corporation shall prepare and maintain adequate accounting records. Section 20(2.1) further provides that these records are to be kept for a period of six years after the end of the financial year to which the records relate, subject to any other Act of Parliament or provincial Act that provides for a longer retention period. Section 20(4) also provides that these records shall be kept at the registered office of the corporation or at any other place the directors think fit and at all reasonable times be open to inspection by the directors. If these records are kept outside of Canada, the accounting records must be electronically accessible in Canada. A corporation that fails to comply with this section is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars;

26. The Canada Business Corporations Act, <http://laws-lois.justice.gc.ca/PDF/Statute/C/C-44.pdf>. Section 2 provides that a 'corporation' means a body corporate incorporated or continued under the Act and not discontinued under the Act. A 'body corporate' includes a company or other body corporate wherever or however incorporated.

[56]Section 22, which provides that all registers and records required by the Act are to be prepared and maintained in bound or loose-leaf form or in a photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time. Corporations and its agents shall take reasonable precaution to prevent loss or destruction of; prevent falsification of entries in; and facilitate detection and correction of inaccuracies in the registers and other records required by the Act. A person²⁷ who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars and/or imprisonment not exceeding six months;

[57]Section 155(1), which provides the requirement that the directors of a corporation are to place before the shareholders at every annual meeting the 1) comparative financial statements, 2) report of the auditor, if any, and 3) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement.

[58]Section 157, which provides that a corporation shall keep at its registered office a copy of the financial statements of each of its subsidiary bodies corporate and of each body corporate the accounts of which are consolidated in the financial statements of the corporation and that shareholders of a corporation and their personal representatives may on request examine the statements during the usual business hours of the corporation and may make extracts free of charge.

[59]Section 158, which provides that the directors of a corporation are to approve the financial statements referred to in section 155(1), and this approval is evidenced by the manual signature of one or more directors or a facsimile of the signatures reproduced in the statements. Section 158(2) further provides that these statements cannot be published or circulated unless they are approved and signed by one or more directors and accompanied by a report of the auditor of the corporation, if any.

[60]Section 159(2), which provides that a corporation that fails to provide a financial statement to the shareholders as required under section 155 is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars;

[61]Section 161, which provides that a person is disqualified from being an auditor of a corporation if the person is not independent of the corporation, any of its affiliates, or the directors or officers of any such corporation or its affiliates.²⁸

[62]Section 162, which provides that a corporation shall, in each year by ordinary resolution of the shareholders, appoint an auditor to hold office for a year;

[63]Section 169, which provides that the auditor shall make the examination that is in their opinion necessary to enable them to report on the financial statements required by the Act to be placed before the shareholders;

27. A 'person' is defined under this Act as meaning an individual, partnership, association, body corporate or personal representative.

28. Section 161(2) of the Act further provides that independence is a question of fact and that a person is deemed not to be independent if he or his business partner: "(i) is a business partner, a director, an officer or an employee of the corporation or any of its affiliates, or a business partner of any director, officer or employee of any such corporation or any of its affiliates, (ii) beneficially owns or controls, directly or indirectly, a material interest in the securities of the corporation or any of its affiliates, or (iii) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the corporation or any of its affiliates within two years of his proposed appointment as auditor of the corporation."

[64]Section 170, which provides that on the demand of the auditor, the present or former directors, officers, employees or agents of the corporation shall furnish such information and explanations and access to records, documents, books, accounts and vouchers of the corporation or any of its subsidiaries as are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under section 169. This section further provides that the directors of the corporation shall obtain from present or former directors, officers, employees and agents of any subsidiary of the corporation any information and explanations, that are, in the opinion of the auditor, necessary for the auditor to make the examinations and report required under section 169;

[65]Section 171, which provides that a distributing corporation²⁹ shall, and any other corporation may, have an audit committee composed of not less than three directors of the corporation, a majority of whom are not officers or employees of the corporation or any of its affiliates. An audit committee shall review the financial statements of a corporation before they are approved under section 158. Section 171(6) further provides that the director or an officer of a corporation are to notify the audit committee and the auditor of any error or misstatement in a financial statement of which the director or officer becomes aware in a financial statement that the auditor has reported on. The auditor, upon receiving notification or becomes aware of an error or misstatement upon which he has reported and if in his opinion, the error or misstatement is material, shall inform each directory accordingly. The directors are then required to prepare and issue a revised financial statement, and inform the shareholders, and if a distributing corporation, inform the Director of the error or misstatement.³⁰ Section 171(9) further provides that every director or officer who knowingly fails to notify an error or misstatement or prepare and issue a revised financial statement is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars and/or to imprisonment for a term not exceeding six months;

[66]Section 229, which provides that the Director or a security holder may apply to the court to order an investigation of the corporation for various grounds, including fraud. Section 230 further provides that the court, under an investigation, may: 1) make an order authorizing an inspector to enter any premises and to examine and make copies of any document or record found on the premises; and 2) make an order requiring a person to produce documents or records to the inspector;

[67]Section 250, which provides that any person who makes or assists in making a report, return, notice or other document required by the Act or the regulations that contains an untrue statement of a material fact, or omits to state a material fact required therein or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made, is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars and/or imprisonment for a term not exceeding six months. Section 250(2) further provides that where a body corporate commits this offence, any director or officer who knowingly authorized, permitted or acquiesced in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to a fine not exceeding

29. A 'distributing corporation' under the Act means a distributing corporation as defined in the regulations. The Canada Business Corporations Regulations, 2001 defines this term as a corporation that is a "reporting issuer" under the Securities Act of the following provinces, Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Saskatchewan, Alberta and Newfoundland and Labrador; or in the case of a corporation that is not a "reporting issuer" a corporation: (i) that has filed a prospectus or registration statement under provincial legislation or under the laws of a jurisdiction outside Canada, (ii) any of the securities of which are listed and posted for trading on a stock exchange in or outside Canada, or (iii) that is involved in, formed for, resulting from or continued after an amalgamation, a reorganization, an arrangement or a statutory procedure.

See section 1 of the Canada Business Corporations Regulations 2001, <http://laws-lois.justice.gc.ca/eng/SOR-2001-512/FullText.html>

30. Section 260 of the Canada Business Corporations Act provides that the Director is responsible for administering the Act, *supra* note 26.

five thousand dollars and/or to imprisonment for a term not exceeding six months, whether or not the body corporate has been prosecuted or convicted;

[68]Section 251, which provides that every person who, without reasonable cause, contravenes a provision of the Act or the regulations for which no punishment is provided is guilty of an offence punishable on summary conviction.

[69]- Statutory provisions such as the Canada Business Corporations Regulations, 2001,³¹ of which the following should be noted:

[70]Section 71, which provides that the annual financial statements referred to in section 155 of the Canada Business Corporations Act shall be prepared in accordance with Canadian generally accepted accounting principles.³² For corporations that are an SEC registrant,³³ the financial statements may be prepared in accordance with the United States generally accepted accounting principles,³⁴

[71]Section 71.1, which provides that the auditor's report referred to in section 169 of the Canada Business Corporations Act shall be prepared in accordance with Canadian generally accepted auditing standards.³⁵ For an SEC registrant that has prepared its financial statements in accordance with the United States generally accepted accounting principles and whose auditors are in compliance with the professional practice standards established or adopted by the Public Company Accounting Oversight Board of the United States, the auditor's report may be prepared in accordance with the United States generally accepted auditing standards; For corporations that are an SEC registrant, the financial statements may be prepared in accordance with the United States generally accepted auditing standards.³⁶ This section also states that in the case that the financial statements are prepared in accordance with the United States generally accepted auditing standards, they are also to comply with section National Instrument 52-107 of the Canadian Securities Administrators,³⁷ entitled Acceptable Accounting Principles, Auditing Standards and Reporting Currency,³⁸

31. The Canada Business Corporations Regulations, 2001, *supra* note 29. The country under review in its response to the draft preliminary reports noted that sections 70 – 72 of these Regulations were amended as of January 1, 2011, to reflect the adoption of new accounting rules.

32. Canadian generally accepted accounting principles under section 70 of the Regulations are defined as meaning generally accepted accounting principles as set out in the *Canadian Institute of Chartered Accountants Handbook - Accounting* or the *Canadian Institute of Chartered Accountants Public Sector Accounting Handbook*, as amended from time to time.

33. SEC registrant is defined under the Regulations as meaning means a corporation that (a) has securities registered under section 12 of the Securities Exchange Act of 1934 of the United States, as amended from time to time, or is required to file reports under section 15(d) of that Act; and (b) is not registered or required to be registered as an investment company under the Investment Company Act of 1940 of the United States, as amended from time to time.

34. United States generally accepted accounting principles is defined under the Regulations as meaning the generally accepted accounting principles established by the Financial Accounting Standards Board of the United States, as amended from time to time.

35. Canadian generally accepted auditing standards under section 70 of the Regulations are defined as meaning generally accepted auditing standards as set out in the *Canadian Institute of Chartered Accountants Handbook - Assurance*, as amended from time to time. The country under review notes that with the new amendments that were adopted on January 1, 2011 to the Canada Business Corporations Regulations, there are now two time periods for the preparation of financial statements in accordance with the United States generally accepted auditing standards.

36. United States generally accepted auditing standards is defined under the Regulations as meaning the generally accepted auditing standards established by the Public Company Accounting Oversight Board of the United States, as amended from time to time.

37. The Canada Securities Administrators, formed by the securities regulators in the ten provinces and three territories in Canada, is primarily responsible for developing a harmonized approach to securities regulation in the country under review. It has focused its efforts in four areas: developing uniform rules and guidelines for securities market participants; coordinating approval processes; developing national electronic systems through which regulatory filings can be made with

[72] Section 72, which provides that the financial statements referred to in section 155 of the Act shall include at least: (a) a statement of financial position or a balance sheet; (b) a statement of comprehensive income or an income statement; (c) a statement of changes in equity or a statement of retained earnings; and (d) a statement of cash flows or a statement of changes in financial position.³⁹

[73]– Publications issued by the Canada Revenue Agency, which the courts have used to provide assistance on how corporations are to maintain corporate and accounting records,⁴⁰ such as Income Tax Information Circular IC78-10R5, Books and Records Retention/Destruction,⁴¹ which provides information and guidance to persons who are required by law to keep books and records according to sections 230 and 231.1 of the Income Tax Act. The books and records have to permit the taxes payable or the taxes or other amounts to be collected, withheld, or deducted by a person to be determined and be supported by source documents⁴² that verify the information in the books and records. The Circular also sets out the where the records are to be kept, how are they to be kept, their retention period as well as sets out the management and imaging of electronic records.

[74]– Statutory provisions such as the Criminal Code,⁴³ of which the following should be noted:

[75] Section 397, which provides that every person who, with intent to defraud, destroys, mutilates, alters, falsifies or makes a false entry in, or omits a material particular from, or alters a material particular in, a book, paper, writing, valuable security or document is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years;

[76] Section 400, which provides that every person who makes, circulates or publishes a prospectus, a statement or an account, whether written or oral, that he knows is false in a material particular, with intent, among others, to deceive or defraud the members, shareholders or creditors, whether ascertained or not, of a company, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years;

and processed by all jurisdictions; and coordinating compliance and enforcement activities, see Canadian Securities Administrators, <http://www.securities-administrators.ca/>

38 National Instrument 52-107, Acceptable Accounting Principles, Auditing Standards and Reporting Currency, <http://www.osc.gov.on.ca/en/13530.htm>

39 The new amendments adopted on January 1, 2011 to section 72 of the Canada Business Corporations Regulations are now reflected in paragraph 74 of this Report.

40 For example, in *Woodford v. Johnston* (2000), 230 N.B.R. (2nd) 188 at par. 23, the court looked at Income Tax Information Circular IC78-10R5 to provide assistance on what is meant by maintaining adequate accounting records and records for the New Brunswick Business Corporation Act, the wording of which is almost identical to that of section 20(2) of the Canada Business Corporations Act. Section 18(2) of the Provincial act states:

“In addition to the records described in subsection (1), a corporation shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committees thereof.”

This Act is found at: <http://www.gnb.ca/0062/PDF-acts/b-09-1.pdf>.

The country under review also states that despite the fact that a decision of a superior court in a given province does not bind the superior courts in other provinces, such a decision can serve as guidance for the other courts. The decision of *Woodford v. Johnston* is available at: http://www.oas.org/juridico/english/mesicic3_can_johnston.pdf

41 Income Tax Information Circular IC78-10R5, *supra* note 18.

42 Source documents, according to this Circular, include items such as sales, invoices, purchase invoices, cash register receipts, formal contracts, credit card receipts, delivery slips, deposit slips, work orders, dockets, cheques, bank statements, tax returns, and general correspondence whether written or in any other form. In addition, the Circular provides that other documents, whether written or any other form, including supporting documents such as accountants working papers that were used to determine the obligations and entitlements with respect to taxes payable, collectible or to be remitted are considered part of the books and records of the taxpayer and must be made available to the Canadian Revenue Agency.

43 Criminal Code of Canada, <http://laws-lois.justice.gc.ca/eng/C-46/FullText.html>.

[77]- Statutory provisions, such as the Canadian Institute of Chartered Accountants Act,⁴⁴ of which section 2 provides that the purpose of the Institute is to promote by lawful means the practice of accountancy in Canada. In carrying out this purpose, the Institute has the powers to, among others, to maintain appropriate standards of professional conduct for all members of the Institute; create and improve standards of financial accounting, reporting and auditing for the members of the Institute; promote the knowledge, skill and proficiency of the members of the Institute; and do all such other things as are likely to promote the practice, profession and common interests of members of the Institute. It also, under section 2(2)(b), has the power to “assist and encourage provincial, territorial and affiliated institutes in promoting and developing appropriate and uniform standards of qualification for admission to membership therein and maintaining appropriate standards of professional conduct for all members of the Institute.” It is also noted that the Rules of Professional Conduct for Chartered Accountants are issued by the provincial institutes/ordre, not by the Canadian Institute of Chartered Accountants.

[78]- Part II of the Handbook of the Canadian Institute of Chartered Accountants - Accounting, of which the following should be noted:

[79] Section 1100, which sets out what constitutes generally accepted accounting principles for private enterprises.⁴⁵ It also provides guidance on sources to consult when selecting accounting policies and determining appropriate disclosures, when a matter is not dealt with explicitly in the primary sources of generally accepted accounting principles.⁴⁶ These standards are currently under transition, as the Accounting Standards Board of Canada is adopting the International Financial Reporting Standards (IFRS) as Canadian generally accepted accounting principles, which will be mandatory for publicly accountable enterprises⁴⁷ starting January 1, 2011, while private enterprises will have the option of adopting the IFRS or new Canadian accounting standards found in Part II of the Canadian Institute of Chartered Accountants Handbook – Accounting.⁴⁸

[80]- The Handbook of the Canadian Institute of Chartered Accountants - Assurance, of which the following should be noted:

[81] Section 5100, which provide the generally accepted auditing standards.⁴⁹ These standards are also in transition, as the Canadian Auditing and Assurance Standards Board is adopting the International Standards on Auditing as Canadian Auditing Standards for the audits of financial statements. Once effective, these standards will constitute Canadian generally accepted auditing standards for financial

44. Canadian Institute of Chartered Accountants Act, <http://www.cica.ca/about-the-profession/documents/item11317.pdf>

45. Private enterprises are defined as a profit-oriented entity that is neither a publicly accountable enterprise nor an entity in the public sector. A public accountable enterprise is defined as an entity that: (i) has issued, or is in the process of issuing, debt or equity instruments that are, or will be, outstanding and traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local and regional markets); or (ii) holds assets in a fiduciary capacity for a broad group of outsiders as one of its primary businesses.

Banks, credit unions, insurance companies, securities brokers / dealers, mutual funds and investment banks typically meet the second criterion above.

See, <http://www.cica.ca/privateenterprises/item33672.aspx>

46. Section 1100 of the Canadian Institute of Chartered Accountants Handbook,

http://www.oas.org/juridico/english/mesicic3_can_1100.pdf

47. See definition of publicly accountable enterprises under footnote 43.

48. See Response to the Questionnaire, pg. 11, *supra* note 10 and the Private Enterprise page of the Canadian Institute of Chartered Accountants, <http://www.cica.ca/privateenterprises/index.aspx> and IFRS in Canada page,

<http://www.cica.ca/ifrs/index.aspx>

49. Section 5100 of the Canadian Institute of Chartered Accountants Handbook,

http://www.oas.org/juridico/english/mesicic3_can_5100.pdf

statement audits and will come into effect for audits of financial statements for periods ending on or after December 14, 2010;⁵⁰

[82] Section 5135, which provides the auditor's responsibility to consider fraud and misstatements arising in an audit of financial statements and other financial information.⁵¹ Paragraph 5135.002 provides that the two types of fraud relevant to the auditor are misstatements resulting from misappropriation of assets and misstatements resulting from fraudulent financial reporting. Paragraph 5135.012 further provides that the primary responsibility for the prevention and detection of fraud rests with both those charged with governance of the entity and with management. Paragraph 5135.015 states that it is the responsibility of those charged with governance of the entity, in this case that audit committee, to ensure that the entity establishes and maintains internal control to provide reasonable assurance with regard to reliability of financial reporting, effectiveness and efficiency of operations and compliance with applicable laws and regulations. Paragraph 5135.023 further states that the auditor is to perform its audit with an attitude of professional skepticism. Paragraph 5135.093 provides that if the auditor has identified fraud or has obtained information that indicates that a fraud may exist, the auditor should communicate these matters to the appropriate level of management on a timely basis. Paragraph 5135.095 states that the auditor should communicate to the audit committee, among other things, questions regarding the honesty and integrity of management; fraud involving management; fraud involving employees who have significant roles in internal control; and matters that may cause future financial statements to be materially misstated. Paragraph 5135.102 further provides that while it is the auditor's professional duty to maintain the confidentiality of client information, the auditor may have a statutory duty to communicate certain matters to third parties, such as regulators. Paragraph 5135.106 provides that when an auditor cannot continue with an audit due to exceptional circumstances, such as the entity not taking appropriate action to address any discovered fraud or there is significant concern about the competence or integrity of management or the audit committee, the auditor consider legal advice in determining the appropriate course of action, including the possibility of reporting to shareholders, regulators or others. Finally, this section contains Appendix C, that provides various examples of circumstances that indicate the possibility of fraud;

[83] Section 5136, which provides additional guidance to auditors about material misstatements arising for the consequences of illegal acts.⁵² Paragraph 5136.05 states that its management's responsibility for ensuring and maintaining policies and procedures to identify and monitor compliance with laws and regulations that affect the entity and to prevent and detect illegal acts. Paragraph 5136.24 further

50. See Canadian Auditing Standards page of the Canadian Institute of Chartered Accountants, <http://www.cica.ca/cas//index.aspx>. The country under review reports that the new Canadian Auditing Standards (CAS) are in place, which are effective for audits of financial statements and other information for financial statement periods on or after December 14, 2010. As such, the standards cited in paragraphs 83 and 84 are no longer in effect. The new CAS standards of relevance to this Report are the following: CAS 200, Overall Objectives of the Independent Auditor and the Conduct of an Audit with Canadian Auditing Standards; CAS 240, the Auditor's Responsibilities relating to Fraud in and Audit of Financial Statements; CAS 250, Consideration of Laws and Regulations in and Audit of Financial Statements; and CAS 265, Communicating Deficiencies in Internal Control to those Charged with Governance and Management. These standards can be consulted at the following webpage: http://www.oas.org/juridico/english/mesicic3_can.htm

51 Section 5135 of the Canadian Institute of Chartered Accountants Handbook, http://www.oas.org/juridico/english/mesicic3_can_5135.pdf. This section is harmonized with International Standard on Auditing 240 issued by the International Auditing and Assurance Standards Board of the International Federation of Accountants, entitled "The Auditor's Responsibility to Consider Fraud in an Audit of Financial Statements."

52 Section 5136 of the Canadian Institute of Chartered Accountants Handbook, http://www.oas.org/juridico/english/mesicic3_can_5136.pdf. Paragraph 5136.03 defines illegal acts as a violation of a domestic or foreign statutory law or government regulation attributable to the entity under audit, or to management or employees acting on the entity's behalf. Foreign statutory laws or government regulations means law or regulations of other jurisdictions where the entity operates.

provides that if management, particularly at the highest level, is involved in an illegal act, the auditor should consider obtaining legal advice about the auditor's contractual or statutory responsibilities and the appropriate course of action. Paragraphs 5136.26 - 5136.28 state that if the auditor has identified an illegal act, the auditor should communicate these matters to the appropriate level of management and the audit committee. Paragraph 5136.30 further provides that when an auditor has obtained evidence indicating an illegal act may have occurred, the auditor should also consider his or her responsibilities to communicate the illegal acts to third parties. While communication to third parties is not ordinarily an auditor's responsibility, the auditor may have a statutory duty to communicate certain matters to third parties, such as regulators.

[84] Instruments⁵³ that harmonize the securities practice in Canada and which are applicable to distributing corporations as referenced in section 171 of the Canada Business Corporations Act, of which Multilateral Instrument 52-110, *Audit Committees*,⁵⁴ provides that audit committees are responsible for establishing procedures for the receipt, retention and treatment of complaints received by the issuer regarding accounting, internal accounting controls or auditing matters and the confidential anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

[85]In addition, there are also provisions in the Cooperative Credit Associations Act,⁵⁵ which govern cooperative credit associations; the Bank Act,⁵⁶ which regulates banks; and the Insurance Companies Act,⁵⁷ which regulates insurance companies and fraternal benefit societies.

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

[86] With respect to the provisions that refer to the prevention of bribery of domestic and foreign government officials that the Committee has examined, based on the information available to it, they constitute a set of measures relevant for promoting the purposes of the Convention.

[87]Notwithstanding, the Committee considers it appropriate to express some comments regarding the advisability of developing and complementing certain legal provisions that might be useful for the country under review to consider.

[88]With respect to the Handbook of the Canadian Institute of Chartered Accountants, the Committee notes that an auditor may have a statutory obligation to disclose of any fraud or illegal acts that it comes across in the course of his or her work, although the auditor still has a professional duty to maintain the confidentiality of client information. Notwithstanding, the Committee considers that it would be useful for the country under review to consider adopting, through the means it deems appropriate, any additional measures that might be beneficial, to further promote that professional confidentiality is not an obstacle for auditors whose activities are governed by the Handbook to bring to the attention of the appropriate authorities any acts of corruption that they discover in the course of their work. The Committee will formulate a recommendation in this regard. (see Recommendation 2.4(a) in Section 2.4 of this Report)

53. See Access Rules and Policy webpage of the Canadian Securities Administrators, http://www.securities-administrators.ca/industry_resources.aspx?id=47

54. Multilateral Instrument 52-110, *Audit Committees*, http://www.osc.gov.on.ca/documents/en/Securities-Category5/rule_20040326_52-110-audit-comm.pdf

55. Cooperative Credit Associations Act, <http://laws-lois.justice.gc.ca/eng/C-41.01/FullText.html>

56. Bank Act, <http://laws-lois.justice.gc.ca/eng/B-1.01/FullText.html>

57. Insurance Companies Act, <http://laws-lois.justice.gc.ca/eng/I-11.8/FullText.html>

[89]The Committee also believes that it would be beneficial for the country under review to consider strengthening measures as it deems appropriate to make it easier for the organs and agencies responsible for the prevention and/or investigation of noncompliance with measures designed to safeguard the accuracy of accounting records to detect sums paid for corruption concealed in those records. (see Recommendation 2.4(b) in Section 2.4 of this Report)

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

[90]With regard to the Canada Business Corporations Act, the country under review states that it is not aware of any prosecutions.⁵⁸ The country under review also provided the following table regarding the enforcement of sections 397 and 400 of the Criminal Code, among others:⁵⁹

[91] Cases by most serious decision (MSD)⁶⁰

Fiscal Year	2004/2005			2005/2006			2006/2007		
	Total	Guilty	% Guilty	Total	Guilty	% Guilty	Total	Guilty	% Guilty
397	0	0	...	1	0	0%	2	0	0%
397(1)	0	0	...	0	0	...	0	0	...
397(1)(a)	3	2	67%	11	4	36%	5	1	20%
397(1)(b)	0	0	...	0	0	...	0	0	...
TOTAL 397	3	2	67%	12	4	33%	7	1	14%

Fiscal Year	2004/2005			2005/2006			2006/2007		
	Total	Guilty	% Guilty	Total	Guilty	% Guilty	Total	Guilty	% Guilty
400	0	0	...	1	0	0%	0	0	...
400(1)	0	0	...	0	0	...	2	0	0%
400(1)(a)	0	0	...	0	0	...	0	0	...
TOTAL 400	0	0	...	1	0	0%	2	0	0%

58. See Response to the Questionnaire, pg. 15, *supra* note 10.

59. See Annex II to the Response to the Questionnaire, pg. 56, *supra* note 10.

60. Canada informs that a case is identified by a single charge, therefore, when a case has more than one charge, it is necessary to decide which charge will be used to represent the case. In such multiple-charge cases, the “most serious decision” rule is applied. A case, where there is a single charge, is also included. The country under review, in its response to the draft preliminary report, provided updated information to this table, up to year 2008 – 2009, which is the most current data available. This updated information is available at: http://www.oas.org/juridico/english/mesicic3_can.htm

[92]Cases by most serious sentence (MSS)⁶¹

Fiscal Year	2004/2005						2005/2006						2006/2007					
Sentence (MSS)	Total	Custody	Conditional sentence	Probation	Fine	Other	Total	Custody	Conditional sentence	Probation	Fine	Other	Total	Custody	Conditional sentence	Probation	Fine	Other
397	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
397(1)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
397(1)(a)	2	1	0	0	0	1	4	0	1	1	0	2	1	0	0	0	1	0
397(1)(b)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total 397	2	1	0	0	0	1	4	0	1	1	0	2	1	0	0	0	1	0

Fiscal Year	2004/2005						2005/2006						2006/2007					
Sentence (MSS)	Total	Custody	Conditional sentence	Probation	Fine	Other	Total	Custody	Conditional sentence	Probation	Fine	Other	Total	Custody	Conditional sentence	Probation	Fine	Other
400	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total 400	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

[93]Charges by most serious decision⁶²

Fiscal Year	2004/2005			2005/2006			2006/2007		
Decision(MSD)	Total	Guilty	% Guilty	Total	Guilty	% Guilty	Total	Guilty	% Guilty
397	11	1	9%	6	0	0%	29	0	0%
397(1)	1	0	0%	2	0	0%	0	0	...
397(1)(a)	45	4	9%	81	16	20%	76	5	7%
397(1)(b)	3	0	0%	8	1	13%	3	0	0%
TOTAL 397	60	5	8%	97	17	18%	108	5	5%

Fiscal Year	2004/2005			2005/2006			2006/2007		
Decision(MSD)	Total	Guilty	% Guilty	Total	Guilty	% Guilty	Total	Guilty	% Guilty
400	1	0	0%	1	0	0%	1	0	0%
400(1)	0	0	...	14	0	0%	2	0	0%
400(1)(a)	0	0	...	0	0	...	0	0	...
TOTAL 400	1	0	0%	15	0	0%	3	0	0%

61. The Most Serious Sentence rule applies where more than one sentence is associated with the Most Serious Offence in a case. A case, where there is a single sentence, is also included. The country under review, in its response to the draft preliminary report, provided updated information to this table, up to year 2008 – 2009, which is the most current data available. This updated information is available at: http://www.oas.org/juridico/english/mesicic3_can.htm

62. The country under review, in its response to the draft preliminary report, provided updated information to this table, up to year 2008 – 2009, which is the most current data available. This updated information is available at: http://www.oas.org/juridico/english/mesicic3_can.htm

[94] The Committee takes note of the statistical data compiled by country under review regarding the enforcement of sections 397 and 400 of the Criminal Code in Canada and that these statistics are relevant for promoting the purposes of the Convention. However, in regards to enforcement of the Canada Business Corporations Act, since it does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the appropriate manner, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (see Recommendation 2.4(c) in Section 2.4 of this Report)

2.4. Conclusions and recommendations

[95] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 10 of the Convention:

[96] Canada has considered and adopted measures intended to create, maintain and strengthen provisions for the prevention of the bribery of domestic and foreign government officials, as described in section 2 of Chapter II of this report.

[97] In light of the comments formulated in the above-noted sections, the Committee suggests that Canada consider the following recommendation:

[98] Strengthen the provisions on the prevention of bribery of domestic and foreign government officials. To comply with this recommendation, Canada could take the following measures into account:

- a. Consider adopting, through the means it deems appropriate, any additional measures that might be beneficial, to further promote that professional confidentiality is not an obstacle for auditors whose activities are governed by the Handbook of the Canadian Institute of Chartered Accountants to bring to the attention of the appropriate authorities any acts of corruption that they discover in the course of their work. (see Section 2.2 of this Report)
- b. Consider the adoption of the instruments necessary to facilitate the detection, by the organs and entities responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records and protect their contents, of sums paid for corruption that are concealed in those records, such as the following (See Section 2.2 of this Report):
 - i. Review methods, including account inspections and analysis of periodically requested information, by which to detect anomalies in accounting records that could indicate the payment of sums for corruption;
 - ii. Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred;

- iii. Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based;
 - iv. Institutional coordination mechanisms that enable those organs or entities to easily obtain the necessary collaboration from other institutions to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity; and
 - v. Training programs for the officials of these organs and entities, specifically designed to alert them to the methods used to disguise payments for corruption in those records and to instruct them on how to detect them.
- c. Through the authorities responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records and protect their contents and for the authorities that ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the proper manner, select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations formulated in this report in relation thereto. (see Section 2.3 of this Report)

3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

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

[99]Canada has a set of provisions related to transnational bribery, among which the following should be noted:

[100] – Statutory provisions, such as the Corruption of Foreign Public Officials Act,⁶³ of which sections 3(1) and 3(2) states: “(1) *Every person*⁶⁴ *commits an offence who, in order to obtain or retain an advantage in the course of business*⁶⁵, *directly or indirectly gives, offers or agrees to give or offer a loan, reward, advantage or benefit of any kind to a foreign public official or to any person for the benefit of a foreign public official.*⁶⁶

(a) as consideration for an act or omission by the official in connection with the performance of the official’s duties or functions; or

63. Corruption of Foreign Public Officials Act, *supra* note 9.

64. A ‘person’ under section 2 of the Act is defined as a person as defined in section 2 of the Criminal Code. Section 2 of the Criminal Code states that “every one”, “person” and “owner”, and similar expressions, include Her Majesty and an organization. An organization is further defined as (a) a public body, body corporate, society, company, firm, partnership, trade union or municipality, or (b) an association of persons that (i) is created for a common purpose, (ii) has an operational structure, and (iii) holds itself out to the public as an association of persons.

65. A ‘business’ is defined under section 2 of the Act as meaning any business, profession, trade, calling, manufacture or undertaking of any kind carried on in Canada or elsewhere for profit.

66. A ‘foreign public official’ is defined under section 2 of the Act as meaning: (a) a person who holds a legislative, administrative or judicial position of a foreign state; (b) a person who performs public duties or functions for a foreign state, including a person employed by a board, commission, corporation or other body or authority that is established to perform a duty or function on behalf of the foreign state, or is performing such a duty or function; and (c) an official or agent of a public international organization that is formed by two or more states or governments, or by two or more such public international organizations.

(b) to induce the official to use his or her position to influence any acts or decisions of the foreign state⁶⁷ or public international organization for which the official performs duties or functions.

(2) Every person who contravenes subsection (1) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.”

[101] Sections 3(3) and 3(4) provide: “No person is guilty of an offence under subsection (1) if the loan, reward, advantage or benefit

(a) is permitted or required under the laws of the foreign state or public international organization for which the foreign public official performs duties or functions; or

(b) was made to pay the reasonable expenses incurred in good faith by or on behalf of the foreign public official that are directly related to

(i) the promotion, demonstration or explanation of the person’s products and services, or

(ii) the execution or performance of a contract between the person and the foreign state for which the official performs duties or functions.”

(4) For the purpose of subsection (1), a payment is not a loan, reward, advantage or benefit to obtain or retain an advantage in the course of business, if it is made to expedite or secure the performance by a foreign public official of any act of a routine nature⁶⁸ that is part of the foreign public official’s duties or functions, including

(a) the issuance of a permit, licence or other document to qualify a person to do business;

(b) the processing of official documents, such as visas and work permits;

(c) the provision of services normally offered to the public, such as mail pick-up and delivery, telecommunication services and power and water supply; and

(d) the provision of services normally provided as required, such as police protection, loading and unloading of cargo, the protection of perishable products or commodities from deterioration or the scheduling of inspections related to contract performance or transit of goods.”

[102] – Statutory provisions, such as the Criminal Code,⁶⁹ of which section 22.2 of the Criminal Code addresses the criminal liability of an organization when the offence requires the prosecution to prove fault other than criminal negligence. In such a case, criminal liability may be found in three situations. The prosecution must prove beyond a reasonable doubt that an organization is a party to an offence if, with the intent at least in part to benefit the organization, one of the organization’s senior officers: (1) acting within the scope of his or her authority, is a party to the offence; (2) having the mental state required to be a party to the offence, and acting within the scope of his or her authority, directs the work

67 A ‘foreign state’ is defined under section 2 of the Act as meaning: a country other than Canada, and includes (a) any political subdivision of that country; (b) the government, and any department or branch, of that country or of a political subdivision of that country; and (c) any agency of that country or of a political subdivision of that country.

68 Section 3(5) provides that for greater certainty, ‘act of a routine nature’ does not include a decision to award new business or to continue business with a particular party, including a decision on the terms of that business, or encouraging another person to make any such decision.

69 Criminal Code, *supra* note 9.

of other representatives of the organizations so that they commit the act or omission that is specified in the offence; or (3) knowing that a representative of the organization is or is about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence.

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

[103] With respect to the provisions related to the criminalization of transnational bribery as provided for by Article VIII of the Convention, the Committee notes that based on the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

[104] Notwithstanding, the Committee considers it appropriate to formulate a number of observations on the advisability of developing and complementing certain legal provisions that might be useful for the country under review to consider.

[105] The Committee observes that, as discussed in Section 1.2, above, the Corruption of Foreign Public Officials Act, at section 3(4), provides that the foreign bribery prohibition does not apply to facilitation payments made to expedite or to secure the performance by a foreign public official of any act of a routine nature that is part of the foreign public official's duties or function. Notwithstanding the fact that the Convention does not include an exception for these types of payments, Canada is compliant with Article VIII of the Convention.

[106] Nonetheless, the Committee also notes that Article VIII of the Convention contains no such exception for facilitation payments. Accordingly, the Committee considers that it would be useful for the country under review to consider undertaking to periodically review its policies and approach on facilitation payments in order to effectively combat the phenomenon and continue to encourage companies to prohibit or discourage the use of facilitation payments in internal company controls, ethics and compliance programs or measures. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4 in Section 3.4 of this Report)

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

[107] With respect to results in this field, in its response, the country under review referred to enforcement measures and agencies in place to investigate and initiate prosecutions under the Corruption of Foreign Public Officials Act. For example, the RCMP Commercial Crime Program has two anti-corruption investigative teams, which consist of 15 officers working full-time and their mandate includes investigating matters concerning the corruption of foreign public officials and offences against the Act, investigating corruption matters in accordance with Canadian treaty obligations, and preventing, deterring and detecting criminal activity related to corruption of domestic and foreign public officials through public education and awareness.⁷⁰

[108] In addition, the country under review is legally mandated to maintain results on actions taken in enforcing the Corruption of Foreign Public Officials Act, whereby section 12 provides: "*Within four months of the end of each fiscal year, the Minister of Foreign Affairs, the Minister for International Trade and the Minister of Justice and Attorney General of Canada shall jointly prepare a report on the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and on the enforcement of this Act, and the Minister of Foreign Affairs shall*

70. See Response to the Questionnaire, *supra* note 10 at pg 19.

*cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is completed.*⁷¹

[109] The country under review also referred to the sole conviction obtained under the Act against a corporation and that as of the completion of the Response, there is one federally conducted prosecution under way.

3.4. Conclusion and recommendation

[110] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendation with respect to implementation in the country under review of the provisions contained in Article VIII of the Convention:

[111] Canada has adopted measures on the offense of transnational bribery as provided in Article VIII of the Convention, as described in Chapter II, Section 3 of this report.

[112] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendation:

- Consider undertaking to periodically review its policies and approach on facilitation payments in order to effectively combat the phenomenon and continue to encourage companies to prohibit or discourage the use of facilitation payments in internal company controls, ethics and compliance programs or measures. (See Section 3.2 of this report).

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

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

[113] Canada has not adopted a set of provisions on illicit enrichment as provided for by Article IX of the Convention, for the reasons set out in the following section.

[114] In addition, the country under review also reports the following:

[115] *“Should Canada receive a sufficient request under a bilateral Mutual Legal Assistance Treaty or this Convention, Canada could and would provide assistance and cooperation to States Parties with respect to the offence of illicit enrichment. The Mutual Legal Assistance in Criminal Matters Act, Canada’s domestic legislation under which mutual legal assistance in criminal matters is administered, does not generally require double criminality.”*⁷²

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

[116] As noted above in Section 4.1, Canada has not criminalized the offense of illicit enrichment. In this connection, the Committee observes that both in its instrument of ratification of the Inter-American Convention against Corruption, as well as in its response to the questionnaire, the country under review noted the following with respect to the offense of illicit enrichment provided for in the Convention:⁷³

71. Corruption of Foreign Public Officials Act, *supra* note 9. These Annual Reports are publicly available at the following website: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/index.aspx>

72. Response to the Questionnaire, *supra* note 10 at pgs. 20 – 21.

73. *Ibid.* at pg. 20.

[117] “Article IX provides that the obligation of a State Party to establish the offence of illicit enrichment shall be “Subject to its Constitution and the fundamental principles of its legal system”. As the offence contemplated by Article IX would be contrary to the presumption of innocence guaranteed by Canada's Constitution, Canada will not implement Article IX, as provided for by this provision.”⁷⁴

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

[118] With respect to results in this field, the country under review did not provide any results as it has not criminalized the offense of illicit enrichment, as the offence contemplated by the Convention would be contrary to the presumption of innocence guaranteed by Canada’s Constitution.

[119] However, in terms of providing assistance and cooperation, the country under review, in its Response to the Questionnaire noted:

[120] “The International Assistance Group of the Department of Justice Canada reports that, in the last five years, it has received only one mutual legal assistance request identifying illicit enrichment as the offence in question. This request was made by a State Party pursuant to a bilateral treaty which it has with Canada. That request did not meet Canada’s legal requirements (on issues unrelated to dual criminality) and the deficiencies were not remedied by the requesting state.”⁷⁵

4.4. Conclusion

[121] Based on the review conducted in the foregoing sections, the Committee offers the following conclusion with respect to implementation in the country under review of the provisions contained in Article IX of the Convention:

[122] Canada has not criminalized illicit enrichment as provided in Article IX of the Convention, on the ground that: (1) the offense contemplated by the Convention would be contrary to the presumption of innocence guaranteed by Canada's Constitution; and (2) Canada made a reservation with respect to this Article of the Convention upon its deposit of its instrument of ratification thereof. The Committee takes note of the explanation offered by the country under review.

5. NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)

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

[123] Canada criminalized transnational bribery as provided for by Article VIII of the Inter-American Convention against Corruption on February 14, 1999, prior to the date on which it ratified the Convention.

74. The country under review reports that Canadian jurisprudence supports this position. In *R. v. Fisher* (1994), 88 C.C.C. (3d) 103, the Ontario Court of Appeal determined that the words in section 121(1)(c) of the Criminal Code (“the proof of which lies on him”) should be deleted for violating section 11(d) of the Canadian Charter of Rights and Freedoms, which states: “11. Any person charged with an offence has the right: . . . (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.”

See the Canadian Charter of Rights and Freedoms, http://laws.justice.gc.ca/eng/charter/CHART_E.pdf and the case of *R. v. Fisher* at http://www.oas.org/juridico/english/mesicic3_can_fisher.pdf

75. See Response to the Questionnaire, *supra* note 10 at pg. 21.

[124] Canada has not criminalized illicit enrichment as provided in Article IX of the Inter-American Convention against Corruption, as the offence contemplated by the Convention would be contrary to the presumption of innocence guaranteed by Canada's Constitution.

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

[125] Canada criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption, prior to the date on which it ratified the Convention, and accordingly, the notification referred to in Article X is not applicable. Consequently, the Committee will offer no recommendation in this regard.

[126] Canada has not criminalized illicit enrichment as provided for by Article IX of the Inter-American Convention against Corruption, as the offence contemplated by the Convention would be contrary to the presumption of innocence guaranteed by Canada's Constitution, and accordingly, the notification referred to in Article X is not applicable. Consequently, the Committee will offer no recommendation in this regard.

5.3. Conclusions and recommendations

[127] Based on the review conducted in sections 5.1 and 5.2 above, the Committee offers the following conclusion with respect to implementation in the country under review of the provisions contained in Article X of the Convention:

[128] Canada criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption, prior to the date on which it ratified the Convention, and therefore, no notification pursuant to Article X is necessary.

[129] Canada has not criminalized illicit enrichment as provided in Article IX of the Convention, on the ground that (1) the offense contemplated by the Convention would be contrary to the presumption of innocence guaranteed by Canada's Constitution; and (2) Canada made a reservation with respect to this Article of the Convention upon deposit of its instrument of ratification thereof. The Committee takes note of the explanation offered by the country under review. Therefore, the notification provided by Article X is not applicable.

6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)

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

[130] Canada has a set of provisions related to extradition, among which the following should be noted:

[131] - Statutory provisions such as the Extradition Act,⁷⁶ of which the following should be noted:

[132] Section 3, which provides that a person may be extradited from Canada, either under the Act or a relevant extradition agreement,⁷⁷ and on the request of an extradition partner,⁷⁸ if, subject to a relevant

76. Extradition Act, <http://laws.justice.gc.ca/PDF/Statute/E/E-23.01.pdf>

77. Section 2 of the Act provides that 'extradition agreement' means an agreement that is in force, to which Canada is a party and that contains a provision respecting the extradition of persons, other than a specific agreement. This would include provisions respecting extradition contained in a multilateral agreement, such as the Inter-American Convention against

extradition agreement, the offence in respect of which the extradition is requested is punishable by the extradition partner by imposing or otherwise depriving the person of their liberty for a maximum of two years or more or by a more severe punishment; and if the conduct, had it occurred in Canada, would have constituted an offence punishable in Canada: i) in the case of a request based on a specific agreement,⁷⁹ by imprisonment of for a maximum term of five years or more or by a more severe punishment and ii) in any other case, by imprisonment for a maximum term of two years or more, or by a more severe punishment, subject to a relevant extradition agreement;

[133] Section 9, which provides that the names of members of the Commonwealth or other States or entities that appear in the schedule are designated as extradition partners. State Parties to the Convention that are found in this schedule are as follows: Antigua and Barbuda, The Bahamas, Costa Rica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago;

[134] Section 12, which states that the Minister of Justice may authorize the Attorney General to apply for a provisional arrest warrant, after receiving a request by an extradition partner for the provisional arrest of a person;⁸⁰

[135] Section 13, which provides that a judge may issue an arrest warrant, on ex parte application of the Attorney General, for the provisional arrest of a person;⁸¹

[136] Section 16, which provides that the Attorney General may, after the Minister of Justice has issued an authority to proceed, apply ex parte to a judge in the province in which the person is believed to be in, for the issuance of a summons to the person or a warrant for the arrest of the person. A warrant issued under this section may be executed anywhere in Canada;

[137] Section 44, which provides that the Minister of Justice shall refuse to make a surrender order, and thus not carry out an extradition request, if the surrender would be unjust or oppressive having regard to all the relevant circumstances or the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person's position may be prejudiced for any of these reasons. Section 44(2) further provides that a refusal may be made if the Minister is satisfied that the conduct in respect of which the extradition is made is punishable by death under the laws that apply to the extradition partner;

[138] Section 46, which provides that the Minister shall refuse to make a surrender order if the Minister is satisfied that: a) the prosecution of the person is barred by prescription or limitation under the law that applies to the extradition partner; b) the conduct in respect of which the extradition is sought is a military

Corruption. The country under review states that, as a consequence, this Convention can be considered as the legal basis for an extradition request from a State Party to the Convention, where there is no formal bilateral treaty in place.

78. Section 2 of the Act provides that 'extradition partner' means a State or entity with which Canada is party to an extradition agreement, with which Canada has entered into a specific agreement or whose name appears in the schedule.

79. Under section 10 of the Act, the Minister of Foreign Affairs may, with the agreement of the Minister of Justice, enter into a specific agreement with a State or entity for the purpose of giving effect to a request for extradition in a particular case.

80. Section 12 further provides that the Minister must be satisfied that the offence in respect of which the provisional arrest is being requested is punishable in accordance with section 3(1)(a) of the Act and that the extradition partner will make a request for the extradition of the person.

81. For the issuance of the arrest warrant, the judge must be satisfied that a) it is necessary in the public interest to arrest the person; b) the person is ordinarily resident in Canada, or is in Canada, or is on the way to Canada and c) a warrant for the person's arrest or an order of a similar nature has been issued or the person has been convicted.

offence that is not also an offence under criminal law; or c) the conduct in respect of which extradition is sought is a political offence or an offence of a political character;⁸²

[139] Section 47, which provides that a surrender order may be refused if the Minister of Justice is satisfied that: a) the person would be entitled, if tried in Canada, to be discharged under the laws of Canada because of a previous acquittal or conviction; b) the person was convicted in their absence and could not, on surrender, have the case reviewed; c) the person was less than eighteen years old at the time of the offence and the law that applies to them is not consistent with the fundamental principles of the Youth Criminal Justice Act; d) the conduct in respect of which the request for extradition is made is the subject of criminal proceedings in Canada, or e) none of the conduct on which the extradition request is based on occurred in the territory over which the extradition partner has jurisdiction;

[140] The country under review has also entered into a bilateral extradition treaty with the following State Parties to the Convention: Argentina, Bolivia, Chile, Colombia, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru, the United States and Uruguay.⁸³ In addition, as aforementioned earlier in this section, the following are designated States under the Act: Antigua and Barbuda, The Bahamas, Barbados, Costa Rica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago.

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

[141] With respect to provisions related to extradition, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

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

[142] With respect to results in this field, the country under review notes the following:

[143] *“Given the number of States Parties with which Canada currently has bilateral extradition treaties, as set forth below [set out in section 6.1 of this Report], to date there have been no cases in which the Convention has been invoked as the sole legal framework for extradition. Nevertheless, the Convention may be used as the basis for an extradition request.”*⁸⁴

[144] 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 this topic, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies responsible for processing incoming and outgoing extradition requests, respectively, it consider the selection and development of procedures and indicators, when appropriate, to analyze objective results

82. Section 46(2) further clarifies that conduct that constitutes an offence mentioned in a multilateral extradition agreement for which Canada, as a party, is obliged to extradite or submit to its appropriate authority for prosecution does not constitute a political offence or an offence of a political character. It also lists the following as conduct that does not constitute a political offence or an offence of a political character: a) murder or manslaughter; b) inflicting serious bodily harm; c) sexual assault; d) kidnapping, abduction, hostage taking or extortion; e) using explosives, incendiaries, devices or substances in circumstances in which human life is likely to be endangered or serious bodily harm or substantial property damage is likely to be caused; and f) an attempt or conspiracy to engage in, counseling, aiding or abetting another person to engage in, or being an accessory after the fact in relation to, the conduct referred to in any of (a) to (e).

83. The text of these bilateral treaties can be found at the Canada Treaty Information website of the Government of Canada at <http://www.treaty-accord.gc.ca> and at the website of the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition, at <http://www.oas.org/juridico/MLA/en/can/index.html>

84. See Response to the Questionnaire, *supra* note 10 at pg. 23.

obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. The Committee will formulate a recommendation in this regard. (see Recommendation 6.4(a) in Section 6.4 of this Report)

[145] In addition, the Committee considers that it might be useful for the country under review to consider the utility of the Inter-American Convention against Corruption for extradition purposes in corruption cases. This could consist, among other measures, in the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (see Recommendation 6.4(b) in Section 6.4 of this Report)

6.4. Conclusions and recommendations

[146] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article XIII of the Convention:

[147] Canada has adopted measures regarding extradition as provided in Article XIII of the Convention, as described in Chapter II, Section 6 of this report.

[148] In light of the comments formulated in that section, the Committee suggests that Canada consider the following recommendations:

- a. Select and develop, through the competent organs or agencies, procedures and indicators, when appropriate, to verify the follow up to the recommendations formulated in this report with respect to this area; and to analyze objective results obtained in relation to requests for extradition formulated to other States Parties to the Convention, for the investigation or prosecution of the crimes that have been criminalized pursuant thereto and the steps that have been taken to respond to similar requests from other States Parties. (See Section 6.3 of Chapter II of this Report)
- b. Consider the utility of the Inter-American Convention against Corruption for extradition purposes in corruption cases, which could consist of, among other measures, the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (See Section 6.3 of Chapter II of this Report)

III. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN REPORTS FROM PREVIOUS ROUNDS

FIRST ROUND⁸⁵

[149] With respect to the implementation of the recommendations issued to Canada in the report from the First Round on which it did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those for which it supplied information but which the Committee considered in Section IV of the report for that round that they

85. The references to sections that appear in italics in the recommendations and measures transcribed herein, refer to the report from the First Round of Review.

needed additional attention, and on the basis of the information available to it, referring to progress in implementation subsequent to that report, the Committee notes the following:

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

Sole recommendation formulated by the Committee, which was satisfactorily considered in the terms set out in the Second Round report:⁸⁶

Recommendation:

“[T]he 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.”

[150] The Committee takes note that the foregoing recommendation was deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that it is continuous in nature.

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

Recommendation:

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

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:⁸⁷

- 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.*
- 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.*

⁸⁶ Report of the Second Round, *supra* note 23, pgs. 56 – 57.

⁸⁷ *Ibid.*, pgs. 57 – 58.

[151] The Committee takes note that the foregoing measures that were deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that they are continuous in nature.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁸⁸

- b. *Adopt measures to ensure that the post-employment restrictions for public servants can be enforced.*
- c. *Canada should continue to improve evaluation mechanisms to analyze the results of enforcement of conflict of interest provisions.*

[152] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[153] *“The Values and Ethics Division of the TBS [Treasury Board Secretariat] is developing a conflict of interest and post-employment policy for the departments and agencies for which Treasury Board is the employer, as referred to in Measure a). Current policy proposals include methods to strengthen enforcement of post-employment requirements for high risk, high visibility positions through contractual obligations, enforceable through the courts. A decision on the adoption of this policy proposal is expected in the fall of 2010.”*⁸⁹

[154] The Committee takes note of the step taken by the country under review to advance in its implementation of measure b), as well as reiterates the need for it to continue to give attention thereto, bearing in mind that the development of a post-employment policy to address the concerns of measure b) is still in process.

[155] With respect to measure c) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[156] *“Through the 2010-2011 Values and Ethics Management Accountability Framework process, the TBS will assess the implementation of conflict of interest management practices in departments and agencies. Specifically, TBS will be assessing whether departments have processes in place to help public servants raise, discuss and resolve issues related to conflict of interest and have implemented some activities to communicate with employees on their responsibilities for avoiding conflicts of interest. The information for the assessment will be taken from organizations' values and ethics plans, codes of conduct or other documentation.”*⁹⁰

88. *Ibid.*

89. See Response to the Questionnaire, *supra* note 10 at pg. 26. The country under review, in its response to the draft preliminary report, notes that the adoption of the conflict of interest and post-employment policy is now expected in spring of 2011.

90. *Ibid.* The country under review, in its response to the draft preliminary report, notes that the Management Accountability Framework process has been completed and the question of conflict of interest was included. This information will be taken into account in the follow up to this measure in future rounds of review.

[157] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure c), as well as reiterates the need for it to continue to give attention thereto, bearing in mind that the assessment of the implementation of conflict of interest management practices in departments and agencies that would help address the concerns of measure c) is still in process.

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

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.

Measure suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:⁹¹

Establish a mechanism to assess the effectiveness of the Policy on Losses of Money and Offences and Other Illegal Acts against the Crown.

[158] The Committee takes note that the foregoing measure was deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that it is continuous in nature.

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

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.

Measure suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:⁹²

- 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.*

[159] The Committee takes note that the foregoing measure was deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that it is continuous in nature.

91. Report of the Second Round, *supra* note 23 at pgs. 58 – 59.

92 *Ibid.*, at 59 – 60.

Measure suggested by the Committee that requires information on their implementation or which required additional attention within the Framework of the Second Round:⁹³

- 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 disclosure.*

[160] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[161] *“The Canadian Security Intelligence Service (CSIS) is establishing internal procedures for the disclosure of wrongdoing, including the protection of persons who disclose the wrongdoings, in satisfaction of the requirement in section 52 of the Public Servants Disclosure Protection Act (PSDPA). The Service's policy entitled "Internal Disclosure of Wrongdoing and Reprisal Protection" came into force on June 1, 2010.*

[162] *The Department of National Defence (DND) and the Canadian Forces, as well as the Communications Security Establishment (CSE), have also taken action further to section 52 of the PSDPA. The Queen's Regulations and Orders for the Canadian Forces have been amended to include internal disclosure and reprisal protection procedures for members of the Forces. The CSE continues to work on updating and clarifying the existing mechanism and process in the Values and Ethics Code for CSE employees to disclose wrongdoing without risk of reprisal. DND has also established the DND Internal Disclosure Office that is mandated to ensure that the department's obligations as described in the PSDPA are fully met. This office conducts awareness and educational sessions on the Act and its implementation within DND, provides advice and guidance to management and employees considering making a disclosure, and initiates formal investigations by the Directorate of Special Examinations and Inquires (DSEI) or passes the disclosure to a more appropriate departmental agency.*

[163] *Wrongdoings reported under DAOD 7024-0, Disclosure of Wrongdoings in the Workplace, or DAOD 7024-1, Internal Procedures for Disclosure of Wrongdoings in the Workplace, are reviewed upon submission, and where a conflict of interest situation falls under the definition of wrongdoing, the DSEI investigates and makes recommendations for corrective actions. The DSEI also conducts investigations of conflict of interest situations separate from the reporting of wrongdoing under the PSDPA in accordance with its mandate to conduct administrative investigations allegations of wrongdoing in DND and the Canadian Forces.*

[164] *In January 2010, the CSE established and staffed the position of “Ethics Officer” to assist the Director General, Audit, Evaluation and Ethics in discharging ethics-related responsibilities. With specific regard to wrongdoing, these responsibilities include: raising organizational awareness of the mechanism for disclosing a suspected wrongdoing and providing interpretation and related advice; conducting and reporting the results of investigations pursuant to allegations or reasonable suspicion of wrongdoing, and making recommendations regarding corrective action; and protecting the identity and privacy of persons involved in a disclosure or related investigation. The establishment of the CSE Ethics Officer position augments CSE's capacity to deal with issues relating to wrongdoing and is intended to advance CSE's Ethics Program more broadly.*

93. *Ibid.*

[165] *In addition, the Criminal Code includes an offence (section 425.1) that protects employees from retaliation for reporting a workplace offence to a law enforcement authority. The offence covers both private and public sector employers.*⁹⁴

[166] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a), as well as reiterates the need for it to continue to give attention thereto. While it appears that the scope of protection for reprisals has been expanded by the implementation of policies in place to protect those who report wrongdoing in the Canadian Security Intelligence Service, the Department of Defence and the Communications Security Establishment, other important sectors of the public service are not yet covered, such as Ministers, members of Minister's staffs, members of boards of directors of Crown corporations, Parliament and its institutions and federally appointed judges. Moreover, the primary legislation in place, the Public Servants Disclosure Protection Act, does not make it an obligation for public servants to report to appropriate authorities acts of corruption in the performance of public functions.

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

Recommendation:

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

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁹⁵

- 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.*
- 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.*
- 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.*

[167] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[168] *“The Values and Ethics Division of the Treasury Board Secretariat (TBS) is undertaking the development of a policy on conflict of interest and post-employment measures for those departments and*

94. See Response to the Questionnaire, *supra* note 10 at pgs. 28 – 29.

95. See Report of the Second Round, *supra* note 23 at pgs. 60 – 61.

agencies for which Treasury Board is the employer, to accompany the Code of Conduct for the larger public sector required by the Public Servants Disclosure Protection Act (PSDPA), targeted for implementation in late 2010. The Values and Ethics Section will also develop a directive on the divestment of assets and establishment of blind trusts to accompany the policy, with implementation targeted for 2011. The question of the reporting of income and assets of family members will be reviewed and analyzed during the development of the directive, in consultation with departments and agencies, bargaining agents representing public servants, and legal services, in the context of Canada's legal framework for protection of private third-party information.”⁹⁶

[169] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a), as well as reiterates the need for it to continue to give attention thereto, bearing in mind that the reporting of the income and assets of family members is still to be considered.⁹⁷

[170] With respect to the implementation of measures b) and c) of the foregoing recommendation, in its response, the country under review did not present additional information that was not already reviewed by the Committee in the Report of the Second Round.⁹⁸ As such, the Committee reiterates the need for the country under review to give additional attention to their implementation.

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

Recommendation:

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).

96. See Response to the Questionnaire, *supra* note 10 at pg 31. The country under review, in its response to the draft preliminary report, notes that the implementation of the conflict of interest and post-employment policy is now targeted for late 2011.

97. The country under review in its response to the draft preliminary report notes that sections 22, 23 and 25 of the Conflict of Interest Act requires public office holders to declare certain assets belonging to family members, <http://laws-lois.justice.gc.ca/PDF/Statute/C/C-36.65.pdf>. This information will be taken into account in future rounds of review.

98. *Ibid.* The country under review in its response to the draft preliminary report notes that in the initial letter of offer of employment, public servants must acknowledge that they are required to observe the Values and Ethics Code for the Public Service and that the Code is part of their conditions of employment. In the same letter of offer, employees are advised that they must report any real, perceived or potential conflict of interest and must, if necessary, complete a Confidential Report within 60 days of the effective date of appointment. In addition, section 22 of the Conflict of Interest Act requires public office holders to provide a confidential report within 60 days of appointment. Section 25 of this same Act also requires public office holders to publicly declare certain assets, liabilities and outside activities, see Conflict of Interest Act, *ibid.* The country under review also reports that in October 2010, the Office of the Auditor General released a report on an audit of conflict of interest in the core public administration and found that the departments audited have set up organizational units to deal with values and ethics, designated senior officials to help public servants resolve issues related to the application of the Code, and provided guidance and training on conflict of interest. This report is available at www.oag-bvg.gc.ca/internet/English/parl_oag_201010_04_e_34287.html. Finally, the 2010-2011 round of Management Accountability Framework evaluated departments on whether key risks of ethical breaches, including conflict of interest, have been identified and addressed through mitigation strategies and whether lessons learned from ethical breaches are communicated throughout the organization. This information will be taken into account in future rounds of review.

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:⁹⁹

- 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*

[171] The Committee takes note that the foregoing measures were deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that it is continuous in nature.

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

4.2. Mechanisms for access to information

Recommendation:

Continue strengthening the mechanisms for access to information.

Measure suggested by the Committee that was satisfactorily considered within the Framework of the Second Round.¹⁰⁰

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.

[172] The Committee takes note that the foregoing measure was deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that it is continuous in nature.

4.3. Mechanisms for consultation

Recommendation:

Continue strengthening the mechanisms for consultation.

Measure suggested by the Committee that was satisfactorily considered within the Framework of the Second Round.¹⁰¹

Encourage federal government departments and agencies to continue to make full use of the Consulting with Canadians website.

99. See Report of the Second Round, *supra* note 23 at pgs. 61 – 62.

100. *Ibid.*, at pgs. 62 – 63.

101. *Ibid.*, at pg. 63.

[173] The Committee takes note that the foregoing measure was deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that it is continuous in nature.

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

[174] The Committee did not make any recommendations to Canada on this matter.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

[175] The Committee did not make any recommendations to Canada on this matter.

7. GENERAL RECOMMENDATIONS

Recommendation suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:¹⁰²

Recommendation 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.

[176] The Committee takes note that the foregoing recommendation was deemed to have been satisfactorily considered within the framework of the report for the Second Round, notwithstanding the fact that it is continuous in nature.

Recommendations suggested by the Committee that require information on its implementation or which required additional attention within the Framework of the Second Round:¹⁰³

Recommendation 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.

Recommendation 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.

[177] With respect to Recommendation 7.2, in its Response, the country under review presents information that it considers related:

102. *Ibid.*, at pg. 64.

103. *Ibid.*, at pgs. 64 – 65.

[178] The Treasury Board Secretariat of Canada, though the Management Accountability Framework, has been evaluating and strengthening departmental accountability for management. This Management Accountability Framework also provides a comprehensive view to both deputy heads and to the Treasury Board Secretariat on the state of managerial performance within a department or agency. In addition, the country under review states that the Treasury Board Secretariat “*continuously reviews the outcomes, indicators and measures for values and ethics. In 2010, 19 indicators for people management were introduced to provide a broad overview of the status of people management (including values and ethics) across the Core Public Administration. Some of those indicators will be used in the MAF [Management Accountability Framework] process. The TBS also formed an interdepartmental working group to elaborate new values and ethics outcomes, indicators and measures for use in 2010-2011.*”¹⁰⁴

[179] The Committee reiterates the need for the country under review to give additional attention to the implementation of Recommendation 7.2, bearing in mind that while the comprehensive review by the Treasury Board Secretariat of departmental accountability for management and its work in elaborating new values and ethics outcomes is commendable, it does not indicate if procedures or indicators that verify the follow-up to the implementation of the recommendations formulated in the First Round are being put in place.

[180] With respect to Recommendation 7.3, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the recommendation, the following:

[181] “*Provincial and territorial governments were consulted in the preparation of the response by Canada in this third round of review through the Coordinating Committee of Senior Officials (Criminal Justice). Federal departments and agencies, as well as various excluded organizations such as the Communications Security Establishment (CSE), the Canadian Security Intelligence Service (CSIS), the Department of National Defence (DND) and the federal ethics commissioners were also consulted for feedback and follow-up on recommendations made in the first and second rounds of review.*”¹⁰⁵

[182] The Committee takes note of the steps taken by the country under review to advance in its implementation of Recommendation 7.3, as well as reiterates the need for it to continue to give attention thereto, bearing in mind that it did not provide specific examples on how procedures designed to analyze the mechanisms mentioned in the First Round, and the recommendations contained therein are being carried out.

SECOND ROUND¹⁰⁶

[183] The Committee offers the following observations with respect to the implementation of the recommendations made to Canada in the Report from the Second Round, based on the information available to it:

104. See Response to the Questionnaire, *supra* note 10 at pgs 38 – 40.

105. *Ibid.*, at pg. 40.

106. The references to sections appearing in italics in the transcribed recommendations and measures refer to the report from the Second Round of Review.

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

Recommendation:

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 to continue strengthening the cooperation and coordination between the Federal Government and the provinces and territories for that purpose.

[184] With respect to the foregoing recommendation, the country under review presents information. In this regard, the Committee notes the following as steps that lead it to conclude that the said measure has been satisfactorily considered:

[185] *“Federal, provincial and territorial governments are engaged in an ongoing dialogue and various federal-provincial-territorial fora exist at different levels within which to exchange information and share experiences. Provincial and territorial governments were consulted in the preparation of the response by Canada for the first and second rounds of review. They were consulted as well in this third round of review through the Coordinating Committee of Senior Officials (Criminal Justice).”*¹⁰⁷

[186] The Committee takes note of the satisfactory consideration by the country under review of the foregoing recommendation, which, by its nature, requires a continuation of efforts in its implementation.

B. CONCLUSIONS AND RECOMMENDATIONS AT THE FEDERAL LEVEL

1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)

1.1. Systems of government hiring

Recommendation:

Continue strengthening the systems of government hiring of public servants, when applicable, that assure the openness, equity and efficiency of such systems.

Measures suggested by the Committee:

- a. Promote the adoption of the relevant measures that ensure that all departments, organizations and separate employers that do not fall under the purview of the PSEA conduct its recruitment based on the principles of merit and non-partisanship. (See Section 1.1.2. of Chapter II of this Report)*
- b. Encourage the Office of the Senate Ethics Officer and the Office of the Conflict of Interest and Ethics Commissioner to continue to adopt appropriate hiring practices based on merit, and allowing for adequate advertisement opportunities and recourse mechanisms. (See Section 1.1.2. of Chapter II of this Report)*

107. See Response to the Questionnaire, *supra* note 10 at pgs. 24 and 41.

- c. *Maintain statistics regarding investigations conducted by the Public Service Commission on external appointment processes and their results. (See Section 1.1.2. of Chapter II of this Report).*

[187] With respect to measure a) of the foregoing recommendation, the country under review presents information. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:

[188] *“If an organization is part of the PSC’s [Public Service Commission] “extended jurisdiction”, the PSEA principles will apply. For example, although some separate agencies have their own authority to appoint, the employees may nevertheless participate in certain advertised appointment processes and have the right to make a complaint (subsection 35(1) of the PSEA [Public Service Employment Act]). An organization may also be designated as within the public service for the purposes of employee mobility (subsections 35(2) and (4)). Members of the Canadian Forces, ministers’ staff and Parliamentary employees (which include the Office of the Senate Ethics Officer and the Office of the Conflict of Interest and Ethics Commissioner) may also participate in advertised appointment processes and make a complaint (section 35.3).”*¹⁰⁸

[189] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that it is unclear from the information provided whether the principles of the Public Service Employment Act, namely merit and non-partisanship, are being followed in the recruitment of personnel by the numerous government organizations that are not governed by the Act.

[190] With respect to measure b) of the foregoing recommendation, the country under review presents information. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:

[191] *“Although the Office of the Conflict of Interest and Ethics Commissioner is not covered by the PSEA, it has adopted the principles and values upon which the legislation is built. In October 2009, the Office issued an internal staffing manual for managers entitled “Manager’s Handbook on Staffing Procedures” which specifically mentions that the Office has adopted the principles and the values of the PSEA and documents the importance of respecting the core values of staffing. The objectives of the manual are as follows: (1) Present general values and principles that support responsible staffing practices; (2) Provide a consistent approach to staffing within the Office; and (3) Outline the responsibilities and accountabilities of the managers and Human Resources Advisors. The Office also posts its employment opportunities on the website established by the PSC.”*

[192] *“The OSEO [Office of the Senate Ethics Office] has a staff of four full-time employees, who have been with the Office since 2005. The OSEO is a separate employer under the Parliament of Canada Act. The OSEO is not subject to the PSEA; however, in practice, the OSEO hires and recruits staff in accordance with the principles and objectives of the PSEA. Specifically, appointments by the OSEO will continue to be made on the basis of merit and free from both political influence and personal favoritism. Moreover, it is currently working on formalizing this practice. The OSEO is also subject to the Parliamentary Employment Staff Relations Act, which provides rights to grieve appointments or proposed appointments. As noted in the Second Round Report, the SEO entered into a formal agreement with the Senate Administration in 2005 for the provision of support services, including human resources*

108. *Ibid.*, at pgs 42 – 43.

*services, as were required from time to time. Since this arrangement was efficient and cost-effective, the agreement was renewed a second time and is currently still in effect.*¹⁰⁹

[193] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the Committee has not had the opportunity to review the staffing manual issued by the Office of the Conflict of Interest and Ethics Commissioner and substantiate that its recruitment is based on merit, and allows for adequate advertisement opportunities and recourse mechanisms.¹¹⁰ In addition, the Committee notes that while the practice of the Office of the Senate Ethics Office to base its recruitment on the principles of merit and free from political influence and personal favoritism is commendable, this process has not been formalized and thus there is no assurance that this type of recruitment is conducted on an ad hoc basis.

[194] With respect to measure c) of the foregoing recommendation, the country under review presents information. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:

[195] *“The PSC [Public Service Commission] maintains Summaries of Investigations Reports for the Human Resources community which contain files of interest and which are updated quarterly. The Reports cover not only investigations into appointment processes (external, internal and fraud) but also investigations into improper political activities. There are also audit activities related to PSC investigations. Finally, as part of the PSC Assessment of the PSEA, the PSC will look at data gathered on investigations (eg. costs, volume).”*¹¹¹

[196] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure c) of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that while it is commendable that these statistics are being maintained, it is unclear to the Committee whether they will be made readily available in the Annual Reports issued by the Public Service Commission or if they are referred to in general terms as was noted by the Committee in the report of the Second Round. It is for this reason that the Committee formulated this measure for the country under review, as investigations into the staffing process are referred to in general terms in the Annual Reports, and not broken down into external and internal appointment processes or for investigations initiated due to political influence or fraud.

109. *Ibid.*, at pg. 43. The country under review in its response to the draft preliminary report notes that the Senate Ethics Office is comprised of a staff of only four employees who have been employed in the Office since its establishment in 2005 and that work is in progress by the Senate Ethics Office to formalize writing a policy on hiring and recruitment.

110. The country under review in its response to the draft preliminary report provided to the Technical Secretariat for its use only, a copy of the Manager’s Handbook on Staffing Procedures of the Office of the Conflict of Interest and Ethics Commissioner. This information will be taken into account in future rounds of review.

111. *Ibid.* The country under review, in its response to the draft preliminary report, notes that the Summaries of Investigations are available at www.psc-cfp.gc.ca/inv-enq/rprt/index-eng.htm. In addition, statistics are readily available in the Annual Reports issued by the Public Service Commission, and each Annual Report breaks them down into external appointment processes (section 66 of the PSEA), internal appointment processes (subsection 67(2)), political influence (section 68) and fraud (section 69), see for example the 2009 – 2010 Annual Report, at section 6.28 and Table 19, available at www.psc-cfp.gc.ca/arp-rpa/2010/chapter6-chapitre6-eng.htm#ch6anc4. The Annual Reports also contain some summaries of investigations of interest. Findings and recommendations are provided to deputy heads. Finally, the Public Service Commission also conducts “investigative audits” of appointment processes pursuant to section 17 of the PSEA where no authority otherwise exists to conduct an investigations. Findings and recommendations are provided to deputy heads. This information will be taken into account in future rounds of review.

1.2. Government systems for the procurement of goods and services

Recommendation:

Continue strengthening systems for the procurement of goods and services by the government.

Measures suggested by the Committee:

- a. *Support the Office of the Procurement Ombudsman so that, once established, it has the necessary trained personnel and resources to carry out its functions properly as well as establishing mechanisms that permit ongoing evaluation and follow-up of said activities. (See Section 1.2.2. of Chapter II of this Report)*
- b. *Continue building awareness among industry stakeholders of their obligations and rights under the Code of Conduct for Procurement. (See Section 1.2.2 of Chapter II of this Report)*

[197] With respect to measure a) of the foregoing recommendation, the country under review presents information. In this regard, the Committee notes the following as steps that lead it to conclude that the said measure has been satisfactorily considered:

[198] *“The Office of the Procurement Ombudsman (OPO or the Office) is a federally- constituted independent organization with a government-wide mandate. The Office's overall objective is to strengthen the confidence of Canadians in federal public procurement. As of July 31, 2010, the Office of the Procurement Ombudsman (OPO) had twenty-four (24) employees divided into the following groups:*

[199] *Procurement Inquiries and Investigations manages issues and complaints raised by Canadian suppliers regarding the award or the administration of contracts in a neutral, independent, timely manner and provides assistance to potential suppliers to better understand procurement processes. The OPO's approach is to encourage suppliers to try to resolve their issues directly with the relevant department first. If a supplier is still unhappy with the result, the OPO then becomes involved and tries to resolve issues informally. Only when informal approaches are exhausted unsuccessfully, does the OPO proceed with a formal investigation. Between May 2008 and March 2009, this unit handled 355 inquiries and complaints. In the 2009-10 fiscal year, this unit handled 519 inquiries and complaints, and conducted five formal investigations.*

[200] *Alternative Dispute Resolution (ADR) ensures that, upon request by parties to a contract, ADR processes are provided in a neutral, independent and timely manner. The OPO offers three forms of ADR: facilitation, mediation and neutral evaluation. Facilitation is a service that brings the parties together in a neutral setting where points of view about a contract dispute are aired. OPO officials provide facilitation services at no charge. Mediation is a more formal process where rights and interests are considered. Mediation services are provided by third party qualified mediators. The cost for mediation is borne by the parties on an agreed-upon basis. Neutral evaluation is provided by a third party, who delivers a written opinion about the legal merits of each party's position. The cost for this service is borne by the parties on an agreed-upon basis. Thus far, the OPO has facilitated a handful of cases and continues to promote its ADR services.*

[201] *Procurement Practices Review uses a systematic, evidence-based approach to carry out independent, objective reviews of federal government procurement practices, including the application of procurement policies and the processes, tools and activities related to acquiring goods and services. These practice reviews provide assurance to stakeholders that procurement practices of departments and*

agencies support fairness, openness and transparency. These reviews also identify and promote best practices and make affordable and feasible recommendations in areas for improvement. In its first year of operation, this team conducted five practice reviews, which involved fifteen different organizations. In fiscal year 2009-10, 6 practice reviews were conducted involving twenty-six different organizations.

[202] *Quality Assurance and Risk Management supports the Office by establishing and maintaining a system to ensure that quality is built into all processes, and supports the work of the other business units by conducting quality control reviews at key points in their work. This team also conducts environmental scanning – including research and studies on developments in the field of procurement. The results of the environmental scanning form, among other things, the basis for continuous learning opportunities for the staff and a continuous improvement environment for the office.*

[203] *Communications and Corporate Management (CCM) provides strategic planning, communications, and corporate services (e.g. human resources, finance, and administration). The CCM team leads the production and delivery of the Office's Annual Report which is tabled in Canada's Parliament. This group is also responsible for the Office's program evaluation, and in 2010-11, will coordinate the conduct of a formative evaluation to measure the extent to which the Office's program has been implemented and ensure that the Office is functioning in accordance with its mandate and the expectations set for it. A summative evaluation will follow in 2013-14 which will measure the extent to which the Office has achieved its intended objectives, results and outcomes.*¹¹²

[204] The Committee takes note of the satisfactory consideration by the country under review of measure a) of the foregoing recommendation, which, by its nature, requires a continuation of efforts in its implementation.

[205] Furthermore, in regards to the implementation of measure a) of the foregoing recommendation, the civil society organization "Transparency International Canada" notes the following:

[206] *"At the time of writing of the report for the second round, the Office of the Procurement Ombudsman (OPO) had a staff complement of 15. Subsequently, on May 27, 2008, the Ombudsman testified before the Standing Committee on Government Operations and Estimates that "we have assembled a strong multidisciplinary team with expertise in procurement, investigations and communications." The Ombudsman concluded his testimony by saying "I'm greatly encouraged by the ... fact that senior government officials, including those of Public Works, Justice and the Treasury Board Secretariat and PCO have demonstrated a lot of goodwill in providing strong support for the setting up of the office." As of March 31, 2009, the total staff complement of the OPO was 22. The OPO website went online on May 15, 2008. The first annual report for the OPO was tabled in Parliament on Monday September 28, 2009.*¹¹³

[207] With respect to measure b) of the foregoing recommendation, the country under review presents information. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:

[208] *"Between May 13 and June 13, 2008, Public Works and Government Services Canada (PWGSC) undertook a series of consultations with suppliers, provincial and territorial jurisdictions, and the federal government procurement community on key electronic tendering tools. The purpose of the*

112. *Ibid.*, at pg. 44 – 46.

113. Appendices to the Report submitted by Transparency International Canada, at pgs. 6 – 7, http://www.oas.org/juridico/english/mesicic3_can_sc_anex.pdf

consultations was to obtain advice from stakeholders on how the Government of Canada could improve its e-tendering system. More specifically, information was requested on the following topics: current use of the e-tendering systems and any other approaches used; ways to improve the overall Government of Canada approach to e-tendering; ways to improve the Government of Canada's approach to providing web-based information on procurement; identifying priorities for future government tendering systems; and any additional input the participants wished to provide. Consultations were carried out in-person and online, and the resulting feedback and suggestions have been compiled into three separate reports, which are now available. More information can be found at the following address: <http://www.tpsgc-pwgsc.gc.ca/app-acq/pme-sme/sommaire-sommaire-eng.html>

[209] On October 9, 2009, the Office of Small and Medium Enterprises (OSME), a sector within PWGSC, released a new guide for business entitled "Doing Business with the Government of Canada" which forms the basis for the OSME's outreach program. The guide aims at helping the public to understand the basics of government procurement and explains the steps involved in how to do business with the Government of Canada. The Code of Conduct for Procurement is highlighted at page 19 of the guide. The guide can be found at the following address: <http://www.contractsCanada.gc.ca/pdf/bpme-osme-19oct09-eng.pdf>

[210] Furthermore, the OSME offers free seminars to businesses interested in learning about the procurement process and how to sell goods and services to the Government of Canada. More information can be found at the following address: <http://contractsCanada.gc.ca/colloques-seminars-eng.html>¹¹⁴

[211] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that while the steps noted by the country under review are commendable, the Committee believes that they do not specifically address the issues raised in the report of the Second Round. Key stakeholders in the Code commented that awareness building mechanisms should be put in place to clarify issues raised in the Code and for its overall promotion. The feedback mechanisms, seminars and guides cited by the country under review are relevant steps in this regard, however, upon looking over the provided links, the Committee notes that they do not significantly establish a mechanism to promote awareness of the Code.

2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)

Recommendation:

Ensure that those public bodies that do not fall under the purview of the Public Servants Disclosure Protection Act have adopted measures that protect persons who disclose wrongdoings. (see Section 2.2. of Chapter II of this Report).

[212] With respect to the foregoing recommendation, the country under review presents information. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the recommendation, the following:

114. See Response to the Questionnaire, *supra* note 10 at pg. 46.

[213] *“The Canadian Security Intelligence Service (CSIS) is establishing internal procedures for the disclosure of wrongdoing, including the protection of persons who disclose the wrongdoings, in satisfaction of the requirement in section 52 of the Public Servants Disclosure Protection Act (PSDPA). The Service’s policy entitled “Internal Disclosure of Wrongdoing and Reprisal Protection” came into force on June 1, 2010.*

[214] *The Department of National Defence (DND) and the Canadian Forces, as well as the Communications Security Establishment (CSE), have also taken action further to section 52 of the PSDPA. The Queen’s Regulations and Orders for the Canadian Forces have been amended to include internal disclosure and reprisal protection procedures for members of the Forces. The CSE continues to work on updating and clarifying the existing mechanism and process in the Values and Ethics Code for CSE employees to disclose wrongdoing without risk of reprisal. The DND has also established the DND Internal Disclosure Office that is mandated to ensure that the department’s obligations as described in the PSDPA are fully met. This office conducts awareness and educational sessions on the Act and its implementation within DND, provides advice and guidance to management and employees considering making a disclosure, and initiates formal investigations by the Directorate of Special Examinations and Inquires (DSEI) or passes the disclosure to a more appropriate departmental agency.*

[215] *Wrongdoings reported under DAOD 7024-0, Disclosure of Wrongdoings in the Workplace, or DAOD 7024-1, Internal Procedures for Disclosure of Wrongdoings in the Workplace, are reviewed upon submission, and where a conflict of interest situation falls under the definition of wrongdoing, the DSEI investigates and makes recommendations for corrective actions. The DSEI also conducts investigations of conflict of interest situations separate from the reporting of wrongdoing under the PSDPA in accordance with its mandate to conduct administrative investigations allegations of wrongdoing in DND and the Canadian Forces.*

[216] *In January 2010, the CSE established and staffed the position of “Ethics Officer” to assist the Director General, Audit, Evaluation and Ethics in discharging ethics-related responsibilities. With specific regard to wrongdoing, these responsibilities include: raising organizational awareness of the mechanism for disclosing a suspected wrongdoing and providing interpretation and related advice; conducting and reporting the results of investigations pursuant to allegations or reasonable suspicion of wrongdoing, and making recommendations regarding corrective action; and protecting the identity and privacy of persons involved in a disclosure or related investigation. The establishment of the CSE Ethics Officer position augments CSE’s capacity to deal with issues relating to wrongdoing and is intended to advance CSE’s Ethics Program more broadly.”¹¹⁵*

[217] The Committee takes note of the steps taken by the country under review to advance in its implementation of the recommendation, as well as reiterates the need for it to continue to give attention thereto. While the country under review is putting in place protection mechanisms for public bodies that do not fall under the purview of the Public Servants Disclosure Protection Act, other important sectors of the public service are not yet covered, such as Ministers, members of Minister’s staffs, members of boards of directors of Crown corporations, Parliament and its institutions and federally appointed judges.

115. *Ibid.*, at pgs. 47 – 48.

3. ACTS OF CORRUPTION (ARTICLE VI(1) OF THE CONVENTION)

Recommendation:

Making its statistical information on offences related to acts of corruption, in a manner that is more readily available and user-friendly to the general public. (See Section 3.3 in Chapter II of this Report).

[218] With respect to the foregoing recommendation, the country under review presents information:

[219] *“The Canadian Centre for Justice Statistics (CCJS) of Statistics Canada reports that a number of initiatives have been undertaken to improve the availability and utility of its data holdings since the Thirteenth Meeting of the Committee of Experts of the MESICIC (June 2008)...*

[220] *Due to the volume and confidential nature of the information collected by the CCJS surveys, it is not possible to provide micro-level data on the Internet. Instead, a selection of statistical tables is available reflecting crime and justice information that is most commonly requested by Canadians. The content of these tables is reviewed regularly and additions and/or deletions are made accordingly. Data on corruption, which are relatively low volume offences in Canada, are not available from the selection of tables on the Internet but these data continue to be available by special request. Specialized requests for detailed information that is not available from the selection of tables on the Internet should be submitted directly to the Canadian Centre for Justice Statistics at ccjsccsj@statcan.gc.ca*

[221] *In addition to the re-development of the Statistics Canada website, improvements have been made to several of the CCJS surveys, including the courts survey that continues to supply information on how corruption cases are processed by Canadian courts. From the Integrated Criminal Court Survey (ICCS) information is now available up to and including 2008/2009 from all 13 of Canada’s provinces and territories, representing about 95% of the criminal court caseload in the country. The ICCS also adopted a new definition of a court case which improves the comparability of data across jurisdictions.”¹¹⁶*

[222] The Committee takes note of the need for the country under review to give additional attention to the implementation of the foregoing recommendation bearing in mind that data on corruption is not readily available on the Internet and for the general public, as was provided to the Committee for its review during the Second Round of Review.

4. GENERAL RECOMMENDATIONS

Recommendation 4.1:

Continue to design and implement, when appropriate, training programs for public servants 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.

[223] With respect to the foregoing recommendation, the country under review presents information. In this regard, the Committee notes the following as steps that leads it to conclude that the said recommendation has been satisfactorily considered:

116. *Ibid.*, at pgs. 48 – 49.

[224] “*The Values and Ethics Division of the Treasury Board Secretariat (TBS) and the Canada School of Public Service (CSPS) launched, in December 2008, an on-line course for all federal public servants, entitled “Paving the Way”. The course content covers the Values and Ethics Code for the Public Service, the Public Servants Disclosure Protection Act (PSDPA), and other policies in the field of values and ethics in the federal public service. A certificate is given for successful completion of the course. To date, over 60,000 public servants have taken the course. A similar course for managers is in development.*

[225] *Furthermore, the CSPS offers many additional classroom and online courses to public servants on the following topics:*

[226] *-Public procurement and material management: <http://www.cspcs-efpc.gc.ca/sch/index-eng.asp?SearchString=procurement&goButton=Go&NavEvent=&FirstRow=&SearchMode=allwords&SearchZone=course&mylang=E>*

[227] *-Staffing and government hiring: <http://www.cspcs-efpc.gc.ca/sch/index-eng.asp?SearchString=staffing&goButton=Go&NavEvent=&FirstRow=&SearchMode=allwords&SearchZone=course&mylang=E>*

[228] *-Management Accountability Framework (which encompasses a wide array of topics such as accountability, results and performance, risk management etc.). For a complete list of the courses offered, please visit: <http://www.cspcs-efpc.gc.ca/cat/maf-eng.asp#id2>”¹¹⁷*

[229] The Committee takes note of the satisfactory consideration by the country under review of the foregoing recommendation, which, by its nature, requires a continuation of efforts in its implementation.

Recommendation 4.2:

Continue to select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein. (see Section 2.3 of Chapter II of this Report)

[230] With respect to the foregoing recommendation, the country under review presents information, such as the operation of the Management Accountability Framework that has helped clarify management expectations for deputy heads, has guided the Treasury Board Secretariat’s engagement with departments and agencies, and provided both an enterprise-wide view of management practices to departments and a view to government-wide trends and management issues to the Treasury Board Secretariat. Reference is also made to parliamentary instruments and that the Treasury Board Secretariat conducts annual evaluations of different departments for its performance against 19 indicators of the Management Accountability Framework.¹¹⁸

[231] The Committee takes note of the need for the country under review to give additional attention to the implementation of the foregoing recommendation bearing in mind that the information provided does not indicate the development of procedures and indicators that analyze the results of the Public Servants Disclosure Protection Act, and, in general, the system for protecting public servants and private citizens who, in good faith, report acts of corruption.

117. *Ibid.*, at pg. 50.

118. *Ibid.*, at pgs. 50 – 52.