



Transparency International Canada Inc.

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

**REPORT ON THE 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 ROUNDS**

EXECUTIVE SUMMARY

Transparency International Canada (TI-Canada), as a member of the leading global coalition against corruption, is pleased to respond to the “Questionnaire on the Provisions of the Inter-American Convention against Corruption selected in the Third Round and for follow up on the Recommendations in the Previous Rounds.”

This Report was prepared primarily based on inputs from members, including Directors, of TI-Canada. The Directors of TI-Canada and its members comprise an extensive resource of experience. There is a significant representation from members of the legal profession engaged in international trade practices and from the accountancy profession – in particular those engaged in forensic practices. There is representation from academics and from industry. While the development and promotion of effective collaboration among civil society organizations committed to the elimination of corruption whether in international trade contexts or other international contexts or domestically is desirable for a comprehensive response to this questionnaire, the lack of resources for the promotion and adoption of more broadly based arrangements for collaboration, analysis and policy development with other organizations deterred initiatives in these areas.

Domestically, Canada is perceived to be relatively free of corruption. Conduct classified as corrupt, however, is not unknown, and Canada has in particular undertaken some very high profile public inquiries in recent years. These inquiries serve not only to cast light on a murky world where lack of regulation or controls (not likely pervasive) fails to discourage some forms of corruption but also to educate the public and emphasizes the importance of vigilance.

In the beginning of the Report, TI-Canada provides a brief description of the Canadian Legal-Institutional System, ending with a **recommendation** that future questionnaires call for a comprehensive examination of Provincial and Municipal initiatives to promote transparency and accountability in public administration to be undertaken to complement

the review of actions taken at the Federal level. Limited funding for such an initiative would need to be sourced.

There are signs that Canada is taking its commitments under international conventions against corruption (IACAC, OECD and UNCAC) most seriously, but it is clear that more can be done. The remainder of the Report focuses particularly on the review and conclusions of the implementation by Canada of these Convention provisions selected for the Third Round, and provides certain recommendations:

1. Denial or prevention of favourable tax treatment for expenditures made in violation of the anticorruption laws (Article III (7) of the Convention)

Recommendation: The Canada Revenue Agency (CRA) voluntary disclosure program may need to be altered so that if the funds that are being disclosed may form a part of another crime, the subject or person cannot gain the protections of the program.

2. Prevention of bribery of domestic and foreign government officials (Article III (10) of the Convention)

Recommendations:

- a) Consider amending the CFPOA to include a meaningful and enforceable books and records provision that requires the maintenance of accurate books and records, similar to other member states (i.e., the USA's *FCPA*).
- b) Consider amending the Criminal Code, the Canada Business Corporations Act, and the Income Tax Act to provide explicit descriptions of what types of records constitute adequate records to be maintained.

3. Transnational Bribery (Article VIII of the Convention)

Recommendations:

- a) The CFPOA does not currently permit prosecutions within Canada based strictly on Canadian nationality but requires a nexus between the alleged offence and Canada. Amendments to the statute addressing the lack of nationality jurisdiction were proposed in the previous parliamentary session but the amendments were not passed before the Canadian parliament was prorogued earlier in the year. It is not clear as of the date of this report whether the earlier proposed nationality jurisdiction amendment will be re-introduced in the current parliamentary session. The recommendation is to ensure that the amendments be passed as soon as possible.
- b) The CFPOA explicitly permits facilitation payments, which in our view is an unnecessary exception. We would recommend the elimination of this exception except in cases where the "facilitation payment" is required to protect the affected individual's physical safety and well-being.
- c) It appears that CIDA senior management make the determination regarding whether an allegation of corruption is unfounded or not in the public interest to

pursue. We would recommend that all allegations of corruption received by CIDA be referred to the Department of Justice to make that determination.

- d) It appears that the DFAIT disclosure of wrongdoing process does not provide an avenue for anonymous “whistleblower” disclosures of wrongdoing. We would recommend the implementation of such a process.