

## **TRANSPARENCY INTERNATIONAL CANADA – January 2005**

### **INTER-AMERICAN CONVENTION AGAINST CORRUPTION CANADIAN CIVIL SOCIETY QUESTIONNAIRE RESPONSE ON PROVISIONS SELECTED BY THE COMMITTEE OF EXPERTS**

Transparency International Canada (TI-Canada) would like to acknowledge the information in this report provided by the Canadian Expert's Response to the Questionnaire in May 2002. TI-Canada would also like to note that, with regard to new government moves reported in this report, TI-Canada is not making judgments upon said innovations but merely identifying them for future comparison purposes. Appended to this report is "TI Report Card 2004 on Enforcement of OECD Convention – Canada," prepared by TI-Canada in August 2004. The information contained in this report is relevant to the issues addressed in this questionnaire.

#### **I. BRIEF DESCRIPTION OF THE LEGAL-INSTITUTIONAL SYSTEM**

Canada is a federal state comprised of a national parliament, ten provinces and three territories, it is a constitutional democracy governed by the rule of law. The British North America Act of 1867 (the Constitution Act) provides for the division of powers between the federal and provincial legislatures and guarantees the sovereignty of Parliament, subject to the limitations expressed in additional constitutional instruments, including the *Constitution Act 1982* and constitutional conventions that have developed over time. The Constitution also ensures an independent judiciary that can act as the final guardian and interpreter of laws.

The government of Canada retains vestiges of the British legal system in its legislative and legal institutions. It combines legislative and executive powers in the Prime Minister and Cabinet or Premier at the provincial level. Public services have a Minister of the government of the day assigned the authority for government functions and responsibility and accountability for one or more government Departments. Departments of government – "Ministries" execute legislation, collect and disburse revenues and administer government programmes and services. Special "central agencies" of government and "crown corporations" have developed and been created over time. Judges are appointed. Canada has an independent national police force, the Royal Canadian Mounted Police (RCMP) which enforces the "Criminal Code". Provinces also use the services of the RCMP but may also employ their own police. Security and emergency arrangements are in flux but are presently centred in a new Ministry of Public Safety and Emergency Preparedness. Canada's military is in a separate Ministry of Defence entirely under civilian control.

The *Canadian Charter of Rights and Freedoms* guarantees rights and freedoms. The Charter provides that everyone has the freedom of conscience and religion; freedom of thought, belief, opinion and expression, including the freedom of the press and other media of communication; freedom of peaceful assembly; and freedom of association. It also includes democratic rights, mobility rights, legal rights, and equality rights. Canada is a multi-cultural society that respects diversity. These goals require constant adjustment and balance between rights of minority groups and the power of the collective interest.

Trade agreements currently loom large in Canada's legal framework and relate to corruption in government procurement, market access and investment. These agreements include the North American Free Trade Agreement (NAFTA), WTO rules regarding various bi-lateral side agreements and the concluding rounds of the Free Trade Agreement of the Americas FTAA scheduled for 2005. Overall, foreign affairs are a federal responsibility but close links with provincial partners are maintained to the extent possible in the process of diplomatic negotiations.

## II. CONTENT OF THE EXPERT COMMITTEE NATIONAL QUESTIONNAIRE

### CHAPTER ONE

#### MEASURES AND MECHANISMS REGARDING STANDARDS OF CONDUCT FOR THE CORRECT, HONORABLE, AND PROPER FULFILLMENT OF PUBLIC FUNCTIONS (ARTICLE III, 1 AND 2 OF THE CONVENTION)

##### 1. General standards of conduct and mechanisms

- a. Are there standards of conduct in your country for the correct, honorable and adequate fulfillment of public functions? If so, briefly describe them and list and attach a copy of the related provisions and documents.**

The government of Canada has in place standards of conduct for the correct, honourable and adequate fulfilment of public functions, through a combination of federal statutes, parliamentary rules, codes of conflicts of interest and specific administrative guidelines. Provincial governments also have similar provisions in their legislation. On appointment, each new government employee is required to take a formal oath of office and secrecy.

In Canada a special Public Service Commission (PSC) is normally responsible for the selection and appointment of qualified persons to, or from within, a public service. Traditionally this process has involved competitive selection based on “merit”. In recent years such procedures have become onerous and time consuming and many jurisdictions have either delegated the authority of their PSC to Departments or opened up recruitment by contracting staff rather than making permanent appointments. Currently, preference in appointments is given to war veterans, former employees on “lay-off” status and political staff of former Ministers. As the powers of this type of control body have been distributed it has been found necessary to strengthen and expand their oversight capacity and ability to review appointments and hear complaints and grievances, i.e., quasi-judicial powers.

The federal Financial Administration Act provides the basis for most of the control processes and its regulations provide the requirements for the conduct of Canadian Government business and expenditures. In recent years many new pieces of legislation and significant amendments to existing laws have been enacted at the federal level. These include:- inter alia – restrictions on the private contributions and financing of political parties, re-establishment of the Controllership function, lobbyist registration, establishment of a Senate Ethics Officer and an Ethics Commissioner, a public service modernization act, public service employment act, “whistle-blower protection, and new management accountability and ethics codes and guidelines. Full implementation of this array of measures is not complete.

In the ten provinces and the three territories of Canada, generally similar rules of conduct in the form of legislation or guidelines exist. See, for example, *The Standards of Conduct for Public Service Employees, Policy Directive 5.4*, of British Columbia: <http://www.pserc.gov.bc.ca/policies/Directives/5-8/05-4soc.htm>.

- b. Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.**

Generally speaking, compliance mechanisms are built into or are associated with the various standards. There is also Parliamentary, public and, where appropriate, judicial scrutiny. Compliance mechanisms are addressed in other answers to questions in this Chapter and reference should also be made to the oversight bodies listed in Chapter 3.

- c. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

Please see the response to other questions in this Chapter and to Chapters 2 and 3.

- d. **If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the standards of conduct for the correct, honorable and proper fulfillment of public functions, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.**

N/A.

## 2. Conflicts of interests

- a. **Are there standards of conduct in your country regarding the prevention of conflicts of interest in the performance of public functions? If yes, briefly describe them, indicating aspects such as to whom they apply and the concept on which they are based, and list and attach a copy of the related provisions and documents.**

Canada has in place a conflict of interest and post-employment code for federal public office holders, federal public servants, as well as departmental codes of conduct. In addition, many of the statutes that create administrative tribunals or specialized commissions contain provisions for dealing with conflicts of interest if they arise within that specific body. In the ten provinces and the three territories of Canada, generally, similar rules of conduct in the form of legislation or guidelines exist for public officials, elected and appointed.

The *Conflict of Interest and Post-Employment Code for Public Office Holders* applies to Ministers, Secretaries of State, their exempt staff, Parliamentary Secretaries, as well as Governor in Council appointees. It addresses basic principles of conduct, which are followed by a set of rules regarding conflicts of interest and compliance measures. The Code outlines rules regarding which assets may or may not continue to be directly managed and sets limitations on outside activities, acceptance of gifts and hospitality, and post-employment activities. Ministers and Secretaries of State interested in a party leadership campaign are also subject to specific guidelines governing ministerial activities and fundraising. These guidelines administered by the Office of the Ethics Commissioner address government contracts, lobbyists, ministerial offices and fundraising.

As part of his June 2002 announcement, the Prime Minister released *Guidelines for Ministerial Dealings with Crown Corporations*. These guidelines are intended to clarify the relationship between Ministers and Crown corporations when dealing with constituency matters, to strengthen the managerial autonomy of Crown corporations, and to limit direct contact between all members of the Ministry and Crown corporations.

In addition, amendments are planned to the *Lobbyists Registration Act*, with the objective of improving its clarity, transparency and enforceability, and ensuring that the Government of Canada has one of the most rigorous regimes in the world. Important elements of this regime would include a clearer definition of lobbying and the need to register, stronger enforcement provisions, and simplified registration and strengthened deregistration procedures. In addition, measures will be brought forward to prohibit lobbying by former public office holders for a period of two years after leaving office.

The *Parliament of Canada Act* contains several conflict of interest prohibitions pertaining to senators and members of Parliament. The Standing Orders of the House of Commons and the Rules of the Senate of Canada also address conflict of interest matters.

The *Conflict of Interest and Post-Employment Code for the Public Service* establishes rules of conduct for federal public servants and is administered, through delegation to the deputy ministers of the federal government departments, by the Treasury Board Secretariat Office of Values and Ethics. This code applies to all public servants for whom the Treasury Board represents the government as employer.

The Defence and Administrative Orders and Directives (DAOD) provides direction and guidance to Canadian Forces (CF) members and Department of National Defence (DND) employees with regard to dealing with offers of gifts, hospitality or other benefits from sources external to the DND and CF.

Federal judges have their own self-regulating conduct rules established through the Canadian Judicial Council.

Alberta's *Conflicts of Interest Act* provides the conflict of interest obligations for ministers and members of the Legislative Assembly, and covers all of their responsibilities and obligations with respect to inside information, gifts and hospitality, contracts and payments, statements of assets and other interests that could give rise to a conflict of interest. Alberta also has the *Code of Conduct and Ethics for the Public Service of Alberta*, which defines the responsibilities of employees under different subjects (e.g. impartiality, the obligation to disclose possible conflicts of interests). Independent agencies may also have internal codes of conduct or by-laws (e.g. Regional Health Authorities and quasi-judicial regulatory bodies such as the Alberta Energy and Utilities Board). At the municipal level, the *Municipal Government Act* and municipal by-laws apply.

The *Members' Conflict of Interest Act* of British Columbia stipulates that a member of the Legislative Assembly must not be involved in a decision during the course of public duties with the knowledge that there is an opportunity to further the member's private interests. The *Standards for Conduct for Public Service Employees* state that a conflict of interest occurs when an employee's private affairs or financial interests are in conflict, or could result in the perception of conflict, with the discharge of his or her public duties.

Prince Edward Island has a few guidelines on conflicts of interest for public service employees. The guidelines deal with political activities and the responsibility of each employee to avoid all conflict of interest situations and declare assets, external employment, activities and other situations that could place someone in a conflict of interest.

In March 1984, Manitoba adopted the *Policy on Conflict of Interests* for its public servants. This policy was amended in June 1996 to specify that, from then on, it would also apply to deputy ministers and those at the equivalent level. The Policy sets out the right of employees to participate in community activities as citizens, upholds the importance of the public interest and standards of honesty, integrity, impartiality and ethical behaviour, and sets out the responsibility of each employee to avoid all conflict of interest situations and disclose assets, external employment, activities and other situations that could place someone in a conflict of interest.

New Brunswick has the *Members' Conflict of Interest Act*, which sets out guidelines to govern the conduct of members of the legislature in conflict of interest situations. It prohibits and limits certain activities by members, and more specifically, establishes provisions concerning a variety of matters, such as blind trusts and conflicts of interest that could arise in making a decision. In addition, there is a *Conflict of Interest Act* that deals with all executive staff members, Deputy Ministers and heads of Crown corporations. New Brunswick also has a conflict of interest policy, which covers the obligation of employees to avoid any situation that could lead to a conflict, and sets limits with respect to other employment. As well, provisions under the *Provincial Court Act* prohibit judges from practicing, carrying on or conducting any business in the practice or profession of the law. They shall not engage in any business, trade, profession or occupation without the prior approval in each particular case by the Lieutenant-Governor in Council.

In Nova Scotia, the *Members and Public Employees Disclosure Act* (1991) prescribes the obligations of members of the legislature and members of the Executive Council to disclose their personal assets (e.g. interest in real property and securities) and those of their family, and the obligation to disclose the contributions they receive during election campaigns. In addition, Part III of the Act sets out specific obligations of public employees with respect to conflict of interest, use of information obtained in the course of their employment, and the obligation to disclose assets and potential conflict of interest situations.

The *Ontario Members' Integrity Act, 1994* deals with issues of conflict of interest. The Act prohibits members of the Assembly from participating in certain activities and provides for further restrictions on the activities of Members of the Executive Council (e.g. engaging in employment or the practice of a profession), including certain restrictions for a twelve-month post employment period. Ontario's Public Service has the *Rules of Conduct for Public Servants*, which was made pursuant to their *Public Service Act* in 1997 (Ontario Regulations 435/97). These rules deal with the obligations of public servants not to use

their position or confidential information to which they have access for personal gain; not to accept gifts; not to give preferential treatment, including the hiring of family members; to be prudent in their positions and in their activities outside work; and to declare assets and other interests and situations likely to place them in a conflict of interest.

The *Act respecting the National Assembly* clarifies conflict of interest situations in Quebec for Members and the time limits allowed to put to an end the conflict of interest situation once they become aware of it. The *Regulation respecting the ethics and professional conduct of public office holders* addresses the following issues: ethical principles and general rules of professional conduct; political activities; remuneration; code of ethics and professional conduct; and disciplinary process. Part II of the *Public Service Act* of 1993 governs the rights and obligations of public servants. These rules are broken down into four components: work performance, relationship with the organization, servicing the public and conduct. Quebec's Treasury Board also has a statement of four values for the staff of the Treasury Board Secretariat, namely, sense of State, the importance of individuals, innovation and action.

Saskatchewan has two main instruments regarding the conduct of the elected officials. The *Members' Conflict of Interest Act* provides a detailed legislative framework for the disclosure of assets and interests of elected officials and the avoidance of all abuse of inside information or elected position. The Code of Ethical Conduct for Members of the Legislative Assembly, as adopted by resolution of the Legislative Assembly for Saskatchewan, provides for normative rules for all members of the Legislative Assembly (elected officials) in their conduct both in the Assembly and with their constituents. With respect to government officials, *The Public Service Act* provides for specific rules for government officials regarding conflict of interest, as does *The Interpretation Act* and *The Crown Corporations Act, 1993*. The legislative requirements under these Acts range from offences in extreme situations to fines, suspensions and dismissals.

All of Part II of the *House of Assembly Act* of Newfoundland and Labrador deals with conflicts of interest for members. Provisions are detailed and explain the members' obligations and their responsibilities. Newfoundland also has a *Conflict of Interest Act* for its non-elected public office holders. This Act, amended in 1999, defines the employment conditions and responsibilities and obligations of employees so as to avoid situations of conflict (e.g. situations in which they take personal advantage of the status of their position or insider information; they accept gifts and other benefits; they participate in activities that may influence their work decisions and result in a conflict of interest). Newfoundland recently introduced further legislation titled "The Transparency and Accountability Act" focussed on assignment of responsibilities to senior officials and improving procurement practices.

In respect of elected Members of the Legislative Assembly of the Northwest Territories (NWT), the governing statute is the *Legislative Assembly and Executive Counsel Act*. In respect of public servants (employees) employed by the Government of the Northwest Territories, the governing documents are the Code of Conduct respecting Conflict of Interest and Oath of Office and Secrecy for the employees of the Government of the Northwest Territories and Appendix D to contracts of employment of Deputy Ministers. Members of Board and Councils are guided by the *Conflict of Interest Act*.

Nunavut was established as a Territory on April 1, 1999, at which time its first-elected legislators and cabinet became subject to conflict of interest provisions of the *Legislative Assembly and Executive Council Act* duplicated from the pre-division Northwest Territories. On July 1, 2001, the new *Integrity Act* came into force, establishing for members of the Legislative Assembly, including the Executive Council, standards of conduct in performing their duties of office. The Act also provides a system of accountability overseen by an independent officer of the Assembly, the Integrity Commissioner. The Act is based on the concept that elected representatives accept an obligation to favour the public good over private interests.

In the Yukon, conflict of interest issues are dealt with in several Acts, including the *Public Government Act*, the *Conflict of Interest (Members and Ministers, Public Servants and Cabinet and Caucus Employees) Act*, the *Public Services Act* and the *Cabinet and Caucus Employees Act*. The *Public Government Act* creates a conflicts commissioner who is an officer of the Legislative Assembly. The *Conflict of Interest (Members and Ministers, Public Servants and Cabinet and Caucus Employees) Act* establishes a Conflict of Interest Commission.

- b. Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.**

Generally speaking, compliance mechanisms are built into or are associated with the conflict of interest codes, and oversight bodies are usually in place. See, for example:

<http://www.strategis.ic.gc.ca/SSG/oe01063e.html>. The Guidelines for Ministerial Dealings with Crown Corporations announced in June 2002 include the establishment, by the offices of Ministers responsible for Crown corporations, of procedures so that their staff can refer representations from parliamentarians and constituents to Crown corporations for appropriate action. Crown corporations will be expected to record all such referrals.

- c. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

Results are made available through the annual reports of the various conflict of interest commissioners. In New Brunswick, for example, one investigation was undertaken in 2000 and another in 2001. In both cases the Commissioner of Conflict of Interest concluded that there was no breach of the Act.

- d. If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the standards of conduct intended to prevent conflicts of interests, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.**

N/A.

### **3. Conservation and proper use of resources entrusted to public officials in the performance of their functions**

- a. Are there standards of conduct in your country that govern the conservation and proper use of resources entrusted to public officials in the performance of their functions? If yes, briefly describe them, indicating aspects such as to whom they apply and whether there are exceptions, and list and attach a copy of the related provisions and documents.**

In the federal government of Canada, there is a very specific and structured Financial Management Control Framework (FMCf) that consists of the *Financial Administration Act* (FAA), the FAA Regulations, Central Financial and Accounting Policies and Departmental Financial Policies (Systems and Procedures). It applies to all federal Government Departments and Agencies as defined in Section 2 of the FAA and as listed in the Schedules attached to the FAA. The *Financial Administration Act* provides for the financial administration of the Government of Canada, the establishment and maintenance of the accounts of Canada including parliamentary control of all public funds into and out of the Consolidated Revenue Fund, the office of the Receiver General, the powers and functions of the Treasury Board and Comptroller General, and the control of the Crown corporations. Under the *Financial Administration Act*, the government is required to report on its financial activities in the Public Accounts. Provinces have similar requirements for financial administration. The provinces and territories produce final accounts within 12 months of fiscal-year end. In addition, British Columbia's *Budget Transparency and Accountability Act* provides for disclosure of information with respect to ministry service plans, major projects and budgets, and sets out mechanisms to ensure that the public is able to review government budgets and service plans.

The standards and mechanisms for the conservation and proper use of resources, although not formally listed or promulgated anywhere *per se*, are actually an integral part of and are embedded in the FMCf mechanism. The Government Accounting Policy Division has promulgated a Treasury Board Accounting Manual and a set of Treasury Board Accounting Standards, which also support the FMCf.

The Board of Internal Economy of the House of Commons has adopted several by-laws under the *Parliament of Canada Act*, which regulate the use of parliamentary resources made available to Members in the performance of their parliamentary functions.

**b. Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.**

Independent auditors, including auditors general, at both the federal and provincial levels, carry out external audits. A Treasury Board Active Monitoring Policy has been recently promulgated and the process of formalizing a mechanism to ensure its appropriate implementation on a Treasury Board Secretariat and Government-wide basis is now underway. For information on conflict of interest oversight bodies and compliance mechanisms, see the responses to Chapter 1, Question 2b, Chapter 2, Question a, and Chapter 3, Question 1b. For each Crown corporation, there is a named responsible minister, a board of directors charged with overseeing the business and affairs of the corporation, and a chief executive officer. Treasury Board approves corporate plans and budgets, and the responsible minister for the corporation must table a summary of the approved plans and budgets in Parliament. Each Crown corporation must prepare an annual report containing audited financial statements. Most corporations must have a special examination once every five years.

In British Columbia, for example, provisions of the *Financial Administration Act*, the *Budget Transparency and Accountability Act*, and procedures for enforcing the *Standards of Conduct for Public Service Employees* would apply.

**c. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

The reports of the federal, provincial and territorial auditors general are available on-line. For Crown corporation corporate plans and budgets, it is extremely rare that the corporation does not submit its annual plan and budgets to Treasury Board.

**d. If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the standards of conduct intended to ensure the proper conservation and use of resources entrusted to public officials in the performance of their functions, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.**

N/A.

**4. Measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware**

**a. Are there standards of conduct in your country that establish measures and systems governing the requirement that public officials report to appropriate authorities acts of corruption in public office of which they are aware? If yes, briefly describe them, indicating aspects such as to whom they apply and if there are any exceptions, and list and attach a copy of the related provisions and documents.**

As a general rule, all offences committed under the Criminal Code must be reported to the police. The Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace came into force on November 30, 2001. The objective of this policy is to allow employees to bring forward information concerning wrongdoing, and to ensure that they are treated fairly and are protected from reprisal when they do so in a manner consistent with the policy. The departments under the direct responsibility of the Treasury Board Secretariat have each appointed a senior officer who is responsible for receiving and acting on internal disclosures and who maintains regular contact with the Treasury Board Secretariat. On November 8, 2001, the government also announced the appointment of the first Public Service Integrity Officer.

The Policy on Losses of Money and Offences and Other Illegal Acts Against the Crown was established by the Treasury Board in order to assure the following: that any loss of funds and all allegations of infraction or other illegal acts are signalled to the proper authority; that investigations are conducted in these matters; and that the necessary follow-up measures are taken.

In June 2004, the Prime Minister of Canada announced that the Ethics Commissioner will be appointed after consultation with the leaders of the opposition parties for a term of five years, and his dismissal could only take place with the concurrence of Parliament. The Ethics Counsellor will have the authority to inquire into complaints referred to his Office by any member of Parliament, and will now be tabling an annual report on the activities of his Office that will be presented to the Speaker of the House of Commons. The Ethics Counsellor will also be available to appear before parliamentary committees to answer questions on the report.

Provinces and territories address these matters in various ways. In Saskatchewan, for example, government officials are expected, as a matter of course, to identify and report any questionable acts in public office, of which they become aware. The oath of office of public officials requires them to act in compliance with the law. In Alberta, any person can request an investigation of an alleged breach of the *Conflicts of Interest Act* by a Member of the Legislative Assembly. There is no specific whistleblower legislation, but s. 82(2) of the *Freedom of Information and Protection of Privacy Act* deals with an employee bringing certain information to the attention of the Information and Privacy Commissioner. In respect of elected members of the Legislative Assembly of the NWT, the complaint mechanism is always available, although it is not of a mandatory nature (see ss. 100-107). In respect of public servants of the NWT, see sections 83-85 of the *Code of Conduct respecting Conflict of Interest and oath of Office and Secrecy*. In B.C., while there are no specific reporting obligations for the public service, whistleblowers who do report corruption or other misdeeds are protected by the B.C. Government and Service Employees' Union Master Agreement.

**b. Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.**

The departments under the direct responsibility of the federal Treasury Board Secretariat have each appointed a senior officer who is responsible for receiving and acting on internal disclosures and who maintains regular contact with the Treasury Board. In respect of public servants of the NWT, see sections 95-98 of the *Code of Conduct respecting Conflict of Interest and oath of Office and Secrecy*. In B.C., there is a mechanism for enforcing standards of conduct of police in the *Police Act* and in the *Code of Professional Conduct Regulation*.

**c. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

The Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace is quite new. The Public Integrity Officer will provide annual reports to Parliament on the operation of the policy. The Government of Canada has recently established a new office of "Ethics Commissioner" and new "conflict of interest" and "disclosure of assets" legislation and an "Ethics Officer" to assist Members of the Senate. Disclosure statements are required from the spouse and family members of Cabinet. Post-employment restrictions have been increased.

In B.C., the Office of the Police Complaints Commission oversees the police complaint process. New "whistleblower protection" legislation is currently being considered by Parliament. Meanwhile, as of 2004, the Province of New Brunswick is the only Canadian jurisdiction that has in place a strict "whistle blower" protection law.

**d. If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the standards of conduct that establish measures and systems governing the requirement that public officials report to appropriate authorities acts of corruption in public office of which they are aware, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.**

N/A.

## CHAPTER TWO

### SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES

#### (ARTICLE III, 4)

- a. **Are there regulations in your country establishing methods for registering the income, assets and liabilities of those who perform public functions in certain posts as specified by law and, where appropriate, for making such disclosures public? If yes, briefly describe them, indicating aspects like to whom they apply and when the declaration must be presented, the content of the declaration, and how the information given is verified, accessed, and used. List and attach a copy of the related provisions and documents.**

Under the federal *Conflict of Interest and Post-Employment Code for Public Office Holders*, confidential disclosure is required. Adherence to this Code is a condition of holding office. Its rules are based on prevention and avoidance of conflicts of interest. The process begins by the submission to the Office of the Ethics Counsellor of a mandatory confidential report, within 60 days from the date of appointment. Public Office Holders must disclose in confidence, all their assets, investments, debts, former and current outside activities, gifts and hospitality and other benefits. While disclosure is also mandatory for Ministers' and Secretaries' of State spouses and dependents, the information provided is used by the Ethics Counsellor to better advise them on preventing conflicts from arising in respect of their spouses' interests. Each element of this disclosure is analysed to determine which compliance measure (sale, blind trust, blind management agreement or resignation) is most appropriate for the public office holder. All public documents that a public office holder must execute as a compliance arrangement are deposited in a Public Registry. Certain assets, outside activities and gifts, hospitality and other benefits permissible under the Code must be declared publicly. The Public Registry also contains a statement indicating the methods used for complying with the requirements of the Code. This registry is available to the public through the web site of the Office of the Ethics Commissioner. As a consequence, the participation of the public office holder in decision-making processes will not be influenced by any private interests, since none should exist once in compliance with the Code.

The *Guidelines to Govern Ministerial Activities for Personal Political Purposes*, released by the Prime Minister of Canada in June 2002, address four specific areas: government contracts, lobbyists, ministerial offices and fundraising. Under these guidelines, Ministers may opt to put contributions in a blind trust that will be disclosed no later than 30 days before a convention. Donations, including contributions in kind, collected outside of a blind trust or which otherwise become known to a Minister, must be disclosed every 60 days. In addition, those working on a Minister's leadership campaign will be ineligible either to lobby or to receive contracts from the Minister's department or any agencies in the portfolio. Ministerial exempt staff wishing to become engaged full time in a leadership campaign must take a leave of absence without pay or resign.

The Prime Minister also announced that the government will introduce strengthened legislation governing the financing of political parties and candidates to enhance fairness and transparency. Changes are in place setting specific limits on donations from corporations, unions and individuals as well as enhanced tax measures facilitating individual contributions. All Members of Parliament are required to disclose all contributions on a regular basis. As well, the financing of political parties' leadership campaigns will be regulated by law.

Federal public servants may comply with the *Conflict of Interest and Post-Employment Code for the Public Service of Canada* by completing and submitting to a designated official in their department or agency a disclosure of their private interests when such a situation could lead to a conflict with their official responsibilities. Failure to comply with the measures can be subject to appropriate disciplinary action. The receipt of a gift, hospitality, or other benefit, or participation in any outside employment or activity, which may present a conflict, is also to be divulged. These obligations arise from the Treasury Board policy, not from a statute. Salaries of public service employees are based on a complex system of classification. The range of salary for every category of employment is in the public domain. At the federal level no provisions exist requiring the disclosure of income, assets and liabilities of persons related to public service

employees. Disclosure of assets by the spouse and immediate family of office holders is required in some Canadian jurisdictions.

In the Canadian military, a Canadian Forces (CF) member's assets are classified into two types. Exempt assets are all assets and interests of a non-commercial character intended for the private use of CF members and their families. Non-exempt assets and liabilities are all assets and interests, other than exempt assets and interests, and liabilities. They must be declared in a Confidential Report when they may give rise to a Conflict of Interest in respect of a CF member's official duties. The Defense Administrative Orders and Directives provide direction and guidance to CF members and Department of National Defense employees with regards to dealing with assets and liabilities.

In the ten provinces and the three territories of Canada, generally speaking, similar systems exist.

In Saskatchewan, for example, sections 11 to 17 of *The Members' Conflict of Interest Act* set out a system whereby elected officials must privately declare all incomes, assets and liabilities to the Conflict of Interests Commissioner, who, in turn, then provides a public disclosure statement to the Legislative Assembly, which is available for public review.

In Ontario, under the *Members Integrity Act, 1994*, Members are required to file annual Private Disclosure Statement containing financial information with respect to the member, spouse, minor children and private companies, and must file a Statement of Material Change after a significant change in the financial situation. A Public Disclosure Statement is completed and filed with the Clerk of the Legislative Assembly, for purposes of public information. The *Public Sector Salary Disclosure Act, 1996* requires that ministries disclose salary and other information about government employees earning \$100,000 or more.

In Alberta, the *Conflicts of Interest Act* requires all 83 Members of the Legislative Assembly to file, on an annual basis, disclosure statements of all income, assets, liabilities, and financial interests for the Member, the Member's spouse, minor children and private corporations controlled by any of them. The information filed is to the best knowledge of the Member and is not verified by the Ethics Commissioner unless the information is relevant to an alleged breach of the Act. Based on the confidential information provided to the Ethics Commissioner, public disclosure statements are prepared (deleting all values and amounts) and those documents are accessible to the public through the Office of the Clerk of the Legislative Assembly. Approximately 70-75 senior officials (deputy minister-level positions) file confidential disclosure statements on an annual basis. No public disclosure statements are created. No confidential statements (for senior officials or elected officials) are accessible through *Freedom of Information and Protection of Privacy Act* requests.

In New Brunswick, *The Members' Conflict of Interest Act* requires each member to provide a private disclosure statement to the Commissioner containing a statement on the nature of certain types of assets, liabilities, financial and business interests of the member and his or her minor children, as well as salary and assistance received from or to be received from a registered political party. The statement must be filed within 60 days of becoming a member of the legislative Assembly and each subsequent year.

For systems in place in the NWT, see 87-90 of the *Code* regarding elected members of the NWT Legislative Assembly and sections 27 to 50 of the *Code* and Sections II and III of the Appendix regarding public servants (employees) of the NWT Government. See also section 2 of the *Conflict of Interest Act*.

In B.C., see sections 7, 16 and 17 of the *Members' Conflict of Interest Act*.

In Newfoundland, disclosure of assets has been required of legislators and senior public officials since 1973. New legislation strengthening "Transparency and Accountability", government procurement controls and oversight of "lobbyists" was recently implemented.

**b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

Results are made available through the annual reports of the various conflict of interest commissioners and on the various websites.

- c. If no such regulations exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the regulations that establish methods for registering the income, assets and liabilities of those who perform public functions in certain posts as specified by law and, where appropriate, for making such disclosures public, in accordance with Article III (4) of the Convention.**

N/A.

### **CHAPTER THREE OVERSIGHT BODIES**

- a. Are there oversight bodies charged with the responsibility of ensuring compliance with the provisions stated in Article III (1), (2) and (4)? If yes, list and briefly describe their functions and characteristics, and attach a copy of the related provisions and documents.**

A great number and variety of oversight bodies are in place in Canada. At the federal government level, oversight bodies include the PSC, the Treasury Board of Canada, the Office of the Auditor General of Canada, the Office of the Ethics Commissioner, the RCMP Office of the Ethics Advisor, the RCMP Public Complaints Commission, the RCMP External Review Committee, the Security Intelligence Review Committee, the Information Commissioner, the Privacy Commissioner, the Public Accounts Committee (a non-partisan Committee of Parliament), the Government-wide Internal Audit Community, the Public Service Integrity Officer, the Office of Infrastructure and Crown Corporations of Canada, the National Defence and Canadian Forces Ombudsman, the Canadian Forces Grievance Board and the Military Police Complaints Commission. Auditors general, conflict of interest commissioners, ombudsmen, police commission and boards, and other oversight bodies are also found in the provinces and territories and in addition include an Inspector General, various public complaints and child protection bodies, professional association oversight committees, “watch dog” NGO’s and the media. No national “Ombudsman” is in place. Only two “Inspector-Generals’ Offices” are operating in Canada.

At both the federal and provincial levels of government special “commissions of inquiry” are provided for and may be used to examine and investigate issues and cases of alleged malfeasance. Such inquiries are usually conducted by a judge or eminent persons and may exercise the powers of sub-poena and other instruments to gather evidence and ensure full disclosure of facts under oath.

- b. Briefly state the results that said oversight bodies have obtained in complying with the previous functions, attaching the pertinent statistical information, if available.**

Annual reports are filed by many of the above oversight bodies and are publicly available. Most Crown corporations submit annually their corporate plans and budgets for Treasury Board approval.

- c. If no such oversight bodies exist, briefly indicate how your State has considered the applicability of Article III (9) of the Convention.**

N/A.

### **CHAPTER FOUR PARTICIPATION BY CIVIL SOCIETY (ARTICLE III, NUMBER 11)**

#### **1. General questions on the mechanisms for participation**

- a. **Are there in your country a legal framework and mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption? If so, briefly describe them and list and attach a copy of the related provisions and documents.**

There are extensive frameworks of laws and mechanisms and Parliamentary and legislative and regulatory processes in place to foster transparency and accountability in governments in Canada. Laws may be overturned if they violate the *Charter*. Oversight bodies, access to information legislation, and a tradition of public consultation by governments exist in Canada. As can be seen from the responses to the questions, which follow in this Chapter, there are laws in relation to, for example, public inquiries, referenda, and public complaint mechanisms. Members of the public may petition Parliament and the legislative assemblies on issues. In B.C., there are regularly scheduled “Open Cabinet Meetings” to increase the transparency of Cabinet decision-making.

Canada, through the Canadian International Development Agency (CIDA), contributes funding to Transparency International as well as TI-Canada, and to civil society organizations, which seek to strengthen the role of civil society (e.g. the Institute for Strong Communities and CIVICUS). On February 1, 2002, CIDA signed a three-year partnership agreement with the Canadian Foundation for the Americas (FOCAL), whereby FOCAL is to continue to work on various themes, including governance and civil society, as they pertain to the Americas; to offer an independent view on developments in the Americas; and to urge governments to implement fully the commitments made at the Quebec City Summit.

- b. **Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

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

- c. **If no such mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption, in accordance with Article III (11) of the Convention.**

N/A.

## **2. Mechanisms for access to information**

- a. **Are there mechanisms in your country that regulate and facilitate the access of civil society and non-governmental organizations to information under the control of public institutions? If so, describe them briefly, and indicating, for example, before which entity or agency said mechanisms may be presented and under what criteria the petitions are evaluated. List and attach a copy of the related provisions and documents.**

The *Access to Information Act* regulates and facilitates the access of civil society and non-governmental organizations to information in the control of federal public institutions. The Act is said to be quasi-constitutional in that it overrides provisions in other federal laws, except those listed in Schedule II of the Act. The Act provides a right of access to federal government information in accordance with certain principles, subject to certain exemptions and exclusions. Personal information held by the federal government is governed by the provisions of the *Privacy Act*.

The *Access to Information Act* identifies the institutions it applies to, the types of government information that may or must be protected in response to requests, and the types of information that are excluded entirely from the scope of the Act. The Act also delineates the process for making a request, including the timelines and the procedures for notifying third parties; it establishes the Office of the Information Commissioner to receive and investigate complaints; and provides a further right of review by the Federal Court of Canada.

The Minister of Justice is responsible for the legislation. The President of the Treasury Board has been designated as the Minister responsible for overseeing the administration of the Act, for the issuance of guidelines and directives to government institutions, and for producing publication (Info Source) containing information about government institutions and their information holdings to assist individuals in exercising their rights under the legislation. The Act establishes the Office of the Information Commissioner, who is an ombudsman appointed by Parliament to investigate complaints that the government has denied rights under the *Access to Information Act*.

The Act provides government institutions with 30 days to respond to access requests. Extended time may be claimed if there are many records to examine, other government agencies to be consulted or third parties to be notified. The requester must be notified of these extensions within the initial time frame. Access rights are subject to specific and limited exemptions, balancing freedom of information against individual privacy, commercial confidentiality, national security and the frank communications needed for effective policy-making. Such exemptions permit government agencies to withhold material, often prompting disputes between applicants and departments. Dissatisfied applicants may turn to the Information Commissioner who investigates applicants' complaints that: they have been denied requested information; they have been asked to pay too much for copied information; the department's extension of more than 30 days to provide information is unreasonable; the material was not in the official language of choice or the time for translation was unreasonable; they have a problem with the Info Source guide or periodic bulletins which are issued to help the public use the Act; or they have run into any other problem using the Act.

The provinces and territories also have access to information and privacy legislation.

**b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

Results obtained in implementing the above standards and mechanisms can be found in the Information Commissioner's Annual Report. Annual reports by provincial and territorial information and privacy commissioners also provide information on results in these jurisdictions. On June 12, 2002, the Access to Information Task Force issued a report, which included recommendations to modernize access to information.

### **3. Mechanisms for consultation**

**a. Are there mechanisms in your country for those who perform public functions to consult civil society and non-governmental organizations on matters within their sphere of competence, which can be used for the purpose of preventing, detecting, punishing, and eradicating public corruption? If so, briefly describe them and list and attach a copy of the related provisions and documents.**

The different levels of government frequently resort to public consultation mechanisms as a way of ensuring that citizens are given an opportunity to participate in government decision-making with regard to public policies, legislation, regulation and programs. At all levels of government in Canada, individual departments and agencies are legislatively mandated with responsibility for specific areas of public policy. In most cases, these departments and agencies will, at times, have recourse to public participation mechanisms to ensure that Canadians are involved in their policy, legislative, and program development. In some cases, these provinces and agencies frame these mechanisms with department or agency specific guidelines. In addition, as is the case with the Government of Canada, provincial and territorial legislation

may also mandate that the public be consulted on matters of public policy, legislation and regulation. The provinces and territories involve the public through consultation in a broad range of policy areas.

There are opportunities for the government or public servants to consult outside government on new initiatives. There is also the provision of main estimates, public debates in the legislature on the actions of government, debates within standing committees of the Parliament of Canada and the provincial and territorial legislative assemblies, which bring actions of the governments under scrutiny. Canada has supported the anti-corruption initiatives of The Trust for the Americas. It has participated in and financially assisted a roundtable discussion on "Transparency and Governance in the Americas" organized by the Canadian Foundation for the Americas (FOCAL), bringing together experts from throughout the hemisphere, including civil society organizations and the OAS, to discuss regional anti-corruption initiatives and policy challenges. In addition, civil society organizations interested in the Summit of the Americas, 2001 process and in hemispheric issues were able to express their comments and opinions through regularly organized information exchange sessions, and meetings were organized with various civil society representatives from across Canada. Further, on April 15, 2002, the government organized a day of discussion with civil society to take stock of progress over the past year following the Summit of the Americas. One workshop dealt with good governance and security, while another dealt with corruption and corporate social responsibility.

A further example of a consultation process undertaken by the Government of Canada was the 2001 written consultation on the Proposed United Nations Instrument Against Corruption. In addition, on June 21, 2001, federal officials participated in a Roundtable on International Corruption with members of civil society and of non-governmental organizations, sponsored by the Canadian Centre for Foreign Policy Development.

**b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

There is a long tradition in Canada of consultation with civil society. Consultations will continue to take place with civil society, through public consultation mechanisms, to give citizens an opportunity to participate in government decision-making with regard to public policies, legislation, regulation and programs. As can be expected, the experience gained – and the results obtained – by Canada's different levels of government with public consultation mechanisms has been varied. This is in part the result of the variety of mechanisms that the different levels of government in Canada have resorted to in order to consult the public, and the broad range of issues that have been treated by public consultation processes. Survey research conducted by Ekos Research Associates found that of the 28% of Canadians who had participated in a consultation/citizen engagement exercises 24% had participated in a process organized by the federal government, 46% did so in a provincial government process and 19% did so in a process organized by the municipal level. "Overall, those who participated in a consultation/citizen engagement activity sponsored by the government rate those exercises more favourably than unfavourably." (Ekos Research Associates, Rethinking Citizen Engagement: Moving From Theory to Practice. Final Report. June 2001. p. 39.)

**4. Mechanisms to encourage active participation in public administration**

**a. Are there mechanisms in your country to facilitate, promote, and obtain the active participation of civil society and non-governmental organizations in the process of public policy making and decision making, in order to meet the purposes of preventing, detecting, punishing and eradicating acts of public corruption? If so, briefly describe them and list and attach the related provisions and documents.**

The responsibility for understanding the needs of the public, particularly key target audiences, and for communicating the policies, legislation and programs that stem from their constitutionally-determined powers is held by each level of government in Canada. As a consequence, all jurisdictions in Canada have developed mechanisms to encourage participation by civil society and non-governmental organizations in the development of public policy, legislation and government programs. These mechanisms, however, and the recourse to these mechanisms, will vary from jurisdiction to jurisdiction. While many of these mechanisms do not specifically focus on preventing corruption *per se*, they all have as their principal

benefit the enhancement of the relationship between citizens and their government and enhanced transparency and accountability overall.

Each level of government can develop legal or other frameworks to encourage participation by civil society. These means of participation include parliamentary or administrative processes that may, depending on the jurisdiction or the issue, be framed in legislation. These include public opinion polls; public consultation and citizen engagement activities; response cards attached to various government communications products; toll-free telephone comment/information lines; information/service kiosks; and internet service kiosks and related on-line services and programs for the provision of information and opportunity for citizen comment. An example of the latter is B.C.'s on-line "Wastebuster" program. Parliamentary institutions at the federal and provincial levels provide important means for Canadians to participate in the policy and legislative development through legislative committees. Referenda are an important means by which the federal and provincial governments obtain the input of Canadians on important issues of public policy. For example, in 2002, B.C. held a provincial policy referendum on approaches to treaty negotiations with First Nations people. Royal Commissions and Commissions of inquiry are another means by which the Government of Canada and provincial and territorial governments can seek the views of the public. Sometimes consultations may be governed by legislative requirements. Public hearings are cited as instruments of public participation in a number of Acts of Parliament. Additionally, the *Canada Gazette* serves as public notice of federal government initiatives with regard to legislation and regulations, etc. Each weekly edition of Part I contains all formal public notices, official appointments and pre-publication of proposed regulations. Pre-publication allows for public scrutiny and comment on the proposal for a period of at least 30 days. It is expected that public comments will be addressed in a revised regulation, or provide reasons why a given concern could not be addressed.

**b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

These efforts inform the development of public policy, legislation and government programs, and serve to enhance the relationship between citizens and their government. Reports following public consultation processes are often available on individual ministry websites. In B.C., the public is invited to provide its ideas and advice on the province's economic performance to the "B.C. Progress Board".

**5. Participation mechanisms for the follow-up of public administration**

**a. Are there mechanisms in your country to facilitate, promote, and obtain the active participation of civil society and non-governmental organizations in the follow-up of public administration, in order to meet the purposes of preventing, detecting, punishing and eradicating acts of public corruption? If so, briefly describe them, and list and attach a copy of the related provisions and documents.**

Examples of mechanisms can be found in the answers to the questions above. It may also be worth noting efforts that have been made in connection with Bill S-21, *An Act respecting the corruption of foreign public officials and the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and to make related amendments to other Acts*, and with the subsequent *Corruption of Foreign Public Officials Act*, including the requirement under the Act for an annual report.

**b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

There are ongoing communications between government and civil society on these issues. A study conducted by FOCAL of 20 Canadian CSO's reports that access to public information has become easier in the last few years and that CSO's do participate in Canada's political, economic and social policy development to varying degrees through a range of working relationships with the state. Different government departments at both the federal and provincial levels provide a variety of grants to fund

programmes that are relevant to their departments. FOCAL reports that the federal government provided \$2.2 billion to CSO's in 1997-1998.

Two major shortcomings are that CSO's are restricted in acting as advocacy agents through taxation exemption restrictions on "charitable" organizations and that it is difficult to obtain tax-exempt status.

Public consultations with CSO's are the norm throughout Canada at the provincial and territorial levels. In Newfoundland, for example, there are public consultations on the provincial budget preparation, economic renewal, electricity rates, literacy programmes and health issues. In New Brunswick a formal network of more than 20 CSO's is linked to the policy formulation process. In Saskatchewan, lottery policies are set by a joint committee of government and CSO representatives. City and municipal levels routinely include public and CSO input for most major planning actions.

## CHAPTER FIVE

### ASSISTANCE AND COOPERATION (ARTICLE XIV)

#### 1. Mutual Assistance

- a. **Briefly describe your country's legal framework, if any, that establishes mechanisms for mutual assistance in processing requests from foreign States that seek assistance in the investigation and prosecution of acts of corruption. Attach a copy of the provisions that contain such mechanisms.**

The mutual legal assistance process in Canada is governed primarily by the *Mutual Legal Assistance in Criminal Matters Act*. This legislation implements the current and future mutual assistance treaties and conventions to which Canada is a party, thus enabling Canada to assist partner states seeking assistance in the investigation, prosecution and suppression of crimes, including acts of corruption. Among the measures of assistance available to foreign states under this legislation are orders for the gathering of documentary and physical evidence pursuant to evidence gathering orders or search warrants. As well, all warrants available under Canada's *Criminal Code* (e.g. DNA warrants and tracking devices) may be obtained pursuant to a request from a treaty or convention partner. Under the mutual assistance legislation, Canada may also (1) compel the statements or testimony of witnesses located in Canada, including by video link technology, (2) order the examination of a place or site in Canada, (3) lend court exhibits; and (4) transfer detained persons on consent to a requesting state to give evidence or to assist with the foreign investigation. In addition, Canada has the authority to enforce foreign fines and, to some extent, foreign restraint, seizure and forfeiture orders. Canada has bilateral mutual legal assistance treaties with Argentina, The Bahamas, Mexico, Peru, the United States of America and Uruguay.

In addition to the above formal mutual assistance mechanism, Canada offers assistance to requesting States on an informal police-to-police basis in many cases where the assistance sought will not require the issuance of court process. This informal assistance is generally available through Interpol channels.

Canada is playing a lead role, together with Argentina, The Bahamas, El Salvador and the OAS Department of Legal Cooperation and Information, in efforts to establish, in the OAS, an electronic network on mutual legal assistance in the field of criminal law within the hemisphere.

Corruption (both of police officers and in its wider sense) remains an intelligence priority for the RCMP Criminal Intelligence Program and it is the subject of regular monitoring, research and assessment. The RCMP has Liaison Officers posted in Colombia, Jamaica, Mexico, the United States and Venezuela. They are involved in many areas of law enforcement, including the fight against corruption. In addition, the RCMP is the INTERPOL Agent for Canada, and works very closely with the other 180 Interpol Countries for Law Enforcement purposes, including all other member states of the OAS.

- b. **Has your government presented or received requests for mutual assistance under the Convention? If so, indicate the number of requests that it has presented, explaining how many of them have not been answered and how many have been denied and for what reason; indicate the number of requests that it has received, explaining how many of them have not been answered and how many have been denied and for what reason; mention the average time it has taken your country to answer said requests and the average time in which other countries have responded, and indicate whether you consider these intervals reasonable.**

To date, no requests for mutual legal assistance have been made to or from Canada under the Convention.

- c. **If no such mechanisms exist, briefly indicate how your State has implemented the obligation, in accordance with Article XIV (1) of the Convention.**

N/A

## **2. Mutual technical cooperation**

- a. **Does your country have mechanisms to permit the widest measure of mutual technical cooperation with other States Parties regarding the most effective ways and means of preventing, detecting, investigating, and punishing acts of public corruption, including the exchange of experiences by way of agreements and meetings between competent bodies and institutions, and the sharing of knowledge on methods and procedures for citizen participation in the fight against corruption? If so, describe them briefly.**

Yes. CIDA has a number of programming channels, which facilitate the sharing of experience in combating corruption. First of all, its Multilateral Branch contributions allow it to work through (and in cooperation with) multilateral organizations that are combating corruption in the region. Some of these include the Organization of American States, the Inter-American Development Bank, the World Bank, UNDP and the UN family of development and regulatory organizations. Second, CIDA works through its Canadian Partnership Branch with local governmental and nongovernmental partners to promote the fight against corruption. These partnerships can include universities, cooperatives, unions, professional associations, rights and governance CSO's, municipalities, and others. And finally, it can work in a bilateral, country-to-country relationship through which it finances direct support to government agencies and other public institutions. Most often, bilateral programming does not deal specifically and directly with anti-corruption, but CIDA works with the institutions and agencies, which are closely related to these issues (e.g. with Auditor Generals' Offices, Ombudsman's Offices, Comptrollers, Finance Ministries, Government Procurement Agencies, Electoral Offices, etc.). In many countries, CIDA provides financing for Public Sector Reform Funds, which can be used for the purposes of analysis or the identification of larger reform programs.

Other federal departments and agencies are also involved in mutual technical assistance. For example, the International Cooperation Group within the Department of Justice is active in providing support to countries to modernize their justice systems. As well, the RCMP is involved in a range of overseas training initiatives, both on its own and under the auspices of CIDA, focusing on subjects such as police management, adult education techniques and intelligence analysis. RCMP training, whether domestic or international, always includes a significant discussion of ethics and alternate philosophies of policing. Thus, an "anti-corruption" component is built into virtually all the training it does. The RCMP is beginning a series of overseas corruption and integrity workshops. In Colombia recently, members of the RCMP Criminal Intelligence and Drug Enforcement programs held the first of these workshops in conjunction with various Colombian police, justice and security agencies. Working with small groups of participants, efforts are made to help participants identify and explore specific local issues, to make recommendations upon those issues to senior management and to follow through on implementing the recommendations.

Provinces and territories may also be involved in mutual technical assistance projects. For example, the International Governance Office of Alberta is and has been involved in various governance projects with international financial institutions, private sector partners, and other countries. The Offices of the Auditor

General, the Information and Privacy Commissioner, and the Ethics Commissioner, as well as members of the Legislative Assembly of Alberta and department officials, have all participated in such projects (see [http://www.iir.gov.ab.ca/inter\\_rel/pages/governance/ongoing.htm](http://www.iir.gov.ab.ca/inter_rel/pages/governance/ongoing.htm)).

- b. Has your government made requests to other States Parties or received requests from them for mutual technical cooperation under the Convention? If so, briefly describe the results.**

CIDA receives requests from many governments and supports these through a wide range of projects. Requests can range from very minor requests for advice or contacts with Canadian counterparts to large, multi-year bilateral programs.

Alberta's International Governance Office has received invitations to participate in governance initiatives and has projects ongoing in Argentina, Brazil and Mexico within the Americas. Short-term results include examination of principles and practices, and a desire for ongoing improvement. Longer term results are expected to include governance reform in a variety of areas including ethics, communications, business planning, performance measurement, financial management, accountability, and so on.

- c. If no such mechanisms exist, briefly indicate how your State has implemented the obligation, in accordance with Article XIV (2) of the Convention.**

N/A

- d. Has your county developed technical cooperation programs or projects on aspects that are referred to in the Convention, in conjunction with international agencies or organizations? If so, briefly describe, including, for example, the subject matter of the program or project and the results obtained.**

CIDA supports a number of activities with other multilateral organizations. It has supported Transparency International as well as TI-Canada, the World Bank, the IDB, the UN agencies, and others. As mentioned, Canada is playing a lead role with Argentina, The Bahamas, El Salvador and the OAS Department of Legal Cooperation and Information, in efforts to establish, in the OAS, an electronic network on mutual legal assistance in the field of criminal law within the hemisphere. Canada is also actively involved in efforts to establish an Informal Network of Public Institutions with Ethics Responsibilities. Also, between 1994 and 2001, over 600 Canadian police officers contributed to successive UN missions in Haiti and for training and technical assistance to the Haitian National Police.

The International Governance Office of Alberta has worked with and assisted others (public and private sector) in projects sponsored by CIDA.

## CHAPTER SIX

### CENTRAL AUTHORITIES (ARTICLE XVIII)

#### 1. Designation of Central Authorities

- a. Has your country designated a central authority for the purposes of channeling requests for mutual assistance as provided under the Convention?**

Yes.

- b. Has your country designated a central authority for the purposes of channeling requests for mutual technical cooperation as provided under the Convention?**

Yes.

- c. **If your country has designated a central authority or central authorities please provide the necessary contact data, including the name of the agency(ies) and the responsible official(s), the position that he or she occupies, telephone and fax numbers, and e-mail address(es).**

Canada's Central Authority for the channeling of mutual legal assistance requests is: General Counsel and Director, Department of Justice Canada, International Assistance Group, Criminal Law Branch / Federal Prosecution Service, 284 Wellington Avenue, Room 2049, Ottawa, Ontario K1A 0H8, CANADA

- d. **If no central authority or authorities have been designated, briefly indicate how your State will implement the obligation, in accordance with Article XIV (2) of the Convention.**

N/A.

## **2. Operation of Central Authorities**

- a. **Does the central authority have the necessary human, financial and technical resources to enable it to properly make and receive requests for assistance and cooperation under the Convention? If yes, please describe them briefly.**

The International Assistance Group (IAG) presently comprises 12 lawyers and 8 support staff, including paralegals, junior paralegals and administrative assistants. The IAG is divided into three teams, one of which is devoted primarily to the review and coordination of mutual assistance requests.

CIDA has the program staff to review requests for assistance, but it has a limited budget to cover the Americas region. Each country has a designated budget, which cannot be surpassed. The use of these funds is agreed mutually between the Government of Canada and the partner country

- b. **Has the central authority, since its designation, made or received requests for assistance and cooperation under the Convention? If so, indicate the results obtained, whether there were obstacles or difficulties in handling the requests, and how this problem could be solved.**

No, with respect to mutual legal assistance.

## **III. INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE**

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## APPENDIX

### TI Report Card 2004 on Enforcement of OECD Convention - Canada

Date: August 20, 2004

#### I. Current Status of Enforcement

##### A. Prosecutions brought

Total number of cases - **one**

- R vs. Hydro Kleen Group Inc. et al (a Canadian company, its president and one of its employees.
- 2002 – charges laid by Royal Canadian Mounted Police (RCMP) under the CFPOA.
- Payments allegedly made in the order of \$28,000. to a US customs agent in Calgary International Airport to secure preferential treatment over competitors in terms of gaining access into the United States in order to do business there.
- The preliminary hearing was held in February, 2004. The trial is scheduled for Feb. 2005 in Red Deer, Alberta (Provincial Court)
- In a separate trial, the US customs agent who received the payments was charged under Canada's Criminal Code, pleaded guilty and was sentenced to 6 months in prison.

In its fourth annual report to Parliament in October 2003, Justice Canada reported that there had been no other prosecutions under the *Act* either federally or provincially and we understand that no prosecutions are currently outstanding.

##### B .Investigations under way

Information regarding active criminal investigations (including those relating to foreign bribery) is generally not made available by law enforcement agencies in Canada.

In September, 2002 a Canadian company, Acres International, was convicted in the Lesotho High Court of having paid bribes to a Lesotho government official in relation to the Lesotho Highlands Water project. The judgment was subsequently upheld (in part) on appeal. A review, we understand, was commenced by the Canadian authorities but was subsequently terminated prior to any investigation as the events in question were determined to have preceded the enactment of the *Corruption of Foreign Public Officials Act* (CFPOA).

There have evidently also been investigations of at least two other Canadian companies relating to relatively minor infractions under the CFPOA but there is no indication that there have been any “big ticket” investigations under the legislation.

##### C Serious Allegations

**To the best of our knowledge, following various enquiries, there have been no serious allegations of foreign bribery carried out by Canadian companies or individuals after the CFPOA was enacted that have appeared in reputable domestic or international publications.**

## **II Actions to Promote Enforcement**

### **A Government Commitment to Enforcement**

Assessment of Canadian Government's commitment to enforcing foreign bribery laws

- **moderate**

#### Comments

- Foreign bribery appears to have received somewhat limited attention in terms of overall Canadian government planning since the passing of the CFPOA. No government-wide agenda for proactively addressing foreign bribery has been developed although, as identified in Section F below, some awareness initiatives have been taken independently by some government agencies.
- But, to assess the level of commitment to enforcement of the CFPOA in Canada, one needs to look not only at the political and bureaucratic levels of government (where an overall agenda seems to be lacking) but also at those agencies, who operate quite independently from the government, where responsibility lies for the investigation and laying of a charge under the CFPOA and subsequently for prosecution of the offence.
- The RCMP, the principal investigatory agency with respect to foreign bribery, operates quite independently from Parliament and is not subject to political influence or political commitment in its determination of which cases it will investigate and when it will lay charges.
- The RCMP's Commercial Crime division, and particularly the smaller sections, like all police forces, have budgetary constraints which prevent them from investigating every case that comes to their attention. As a guide to help determine what priority to assign to a particular case when deciding, within the limitations of existing resources, which case or cases to investigate, the RCMP has developed a computer software program called PROOF (Prioritized Rating of Operational Files) whereby, in respect of each category of crime, points are awarded to each case based on the number of criteria that the case satisfies. Regarding commercial crime these criteria include dollar amount, organized crime component, multiple victims, corruption and potential outstanding threat
- The PROOF system however, is only a guide and other considerations may be taken into account where there is a perceived need to investigate which is not reflected by the PROOF score. For example, with regards to a CFPOA case, the high national profile attributable to foreign bribery and the fact it involves a public official would almost certainly result in it being reviewed and an investigation commenced, if warranted
- In the OECD Phase 2 Review of Canada, the RCMP representative indicated that every corruption offence that had come to the attention of the RCMP had been investigated where there had been at least a prima facie case
- In determining which cases to prosecute, the Attorney General (usually through local Crown Counsel) exercises a broad discretion in the public interest. Among the list of public interest factors to be considered, as set out in the Federal Prosecution Services Deskbook, is "whether prosecuting would cause the disclosure of information that would be injurious to international relations, national defence, national security or that should not be disclosed in the public interest."

- Although no one at the political level in Canada is involved in decisions by crown counsel relating to whether or not to prosecute or to continue with a prosecution and Crown prosecutors are generally considered by counsel to be independent and free from political influence, there is a perceived risk that the above factors required to be considered in the public interest could result in a decision not to prosecute in very sensitive cases.

B. Organization of Enforcement

**NO.** The Canadian government does not have a centralized national office for foreign bribery enforcement.

Level of coordination and supervision provided by government for foreign bribery enforcement -

**Moderate**

Comments:

- Responsibility in Canada for criminal law enforcement rests concurrently with federal, provincial and local law enforcement agencies (i.e. police forces) all of which have authority to carry out an investigation in relation to the CFPOA. However, since the RCMP has a specialized Commercial Crime division and acts under contract as the municipal and provincial police in most regions (other than Ontario and Quebec) the RCMP generally assumes investigative responsibility for the CFPOA. The RCMP also normally investigates cases with an international dimension as well as “national interest” cases.
- Law enforcement agencies in Canada also have the responsibility for the laying of charges against an accused.
- As to prosecution, the Attorney General of Canada has specific, but concurrent with provincial Attorneys General, jurisdiction to institute and conduct prosecutions of offences under the CFPOA and the Federal and provincial Attorneys General enjoy a good working relationship in determining who should prosecute in a particular case.
- Although the system is perceived to be generally effective, no federal-provincial wide data system exists containing case related data and there is no formal process for the sharing of information between the relevant agencies although, prior to launching an investigation it appears that a police force will usually communicate with other police forces having concurrent jurisdiction.
- The system could therefore be reinforced by establishing a coordinating role for one of the principal agencies responsible for the implementation of the CFPOA for the purpose of collecting information from the police and prosecutorial authorities about investigations and prosecutions.
- The RCMP is also in the process of working with its partners to establish a protocol whereby police agencies would inform the RCMP about any case involving the CFPOA.
- A specialized office with responsibility for investigating and prosecuting foreign bribery cases such as the Serious Fraud Office model in the UK, Australia and New Zealand (where prosecutors direct serious crime investigations), was recently rejected in Canada in favour of preserving the segregation of authority between the police – federal, provincial and municipal (who investigate) and Crown prosecutors – federal and provincial (who prosecute).
- Since 1996 multi-disciplinary investigative teams (currently there are 12 of them) , involving the RCMP, the Justice Department, customs, tax, forensic accounting, the Ontario Provincial

Police (OPP) and local police, have been in place across the country for the purpose of investigating proceeds of crime offences (money laundering).

- Since foreign bribery cases are resource-intensive and expensive to investigate and prosecute, the single largest impediment to vigorous enforcement, in the opinion of one experienced counsel, is the absence of dedicated enforcement resources. These don't have to be solely dedicated to international corruption but, in his opinion there should be a unit in every federal and provincial Justice Dep't, the RCMP and the provincial police services that is expressly mandated to investigate and prosecute international corruption cases. Another mechanism that would be useful in his opinion would be an inter-agency task force like the one set up among the RCMP, OPP, Competition Bureau, etc. in the mid-90s to address telemarketing scams.
- Legislation has recently been enacted in Canada and should soon be in force to better coordinate and strengthen enforcement against serious capital markets fraud. Nine highly skilled Integrated Market Enforcement Teams (IMETs) made up of RCMP investigators, federal lawyers and other investigative experts are to be created and will be located in Canada's four major financial centers. Two IMET's are currently operating – in Toronto and Vancouver. They provide a new opportunity for the RCMP to increase its visibility in corporate Canada. The IMET's have a corporate outreach program, which aims at prevention of fraud and corruption, as well as a “knock-and-talk” program whereby the units will call upon companies in the news relating to alleged wrongdoing. The legislation also creates a new employment-related intimidation offence protecting employees who report unlawful conduct within their corporation.
- The RCMP is currently considering raising the profile of international corruption within its Commercial Crime Branch through various initiatives, in particular the appointment of a commissioned officer to oversee the program. Should this occur, that there will no doubt be increased linkages with the Proceeds of Crime or money laundering units and the Market Enforcement teams, which are already working within the corporate milieu.

### C. Available Resources

Canadian government's provision of staffing and resources for foreign bribery enforcement - **Moderate**

Comments:

- It is recognized that, other than the specialized Commercial Crime division of the RCMP and the two provincial police forces, law enforcement agencies in Canada do not have adequate budgets and resources to deal with the complexity of foreign bribery cases.
- Accordingly, although all three levels of the police - municipal, provincial and federal - have jurisdiction to investigate a case of foreign bribery, most foreign bribery investigations will be conducted by one of the RCMP Commercial Crime sections where the highest level of expertise and the requisite resources are most likely to be found. The RCMP Commercial Crime division is staffed by investigators with specialized knowledge and experience in fields such as law, accounting, finance, economics, computer services and business administration. They also receive education and training on the CFPOA.
- The RCMP, the law enforcement agency most qualified and therefore most likely to become involved in an investigation of foreign bribery, has established a Financial Crime Program consisting of three highly specialized divisions – Commercial Crime, Proceeds of Crime and Market Enforcement. The Commercial Crime division (whose responsibilities include the investigation of foreign and domestic bribery) consists of some 400 officers – a few situated

in the central branch in Ottawa and the others spread across Canada in 34 divisional field units called Commercial Crime sections

- Canada's new bribery law places more investigative responsibility on the police as will also the UN Convention against Corruption when it comes into force. It is considered imperative that additional resources accompany new treaty responsibilities, otherwise police forces, including the RCMP, must reallocate already stretched resources if they hope to meet new training and investigative challenges.

#### D. Complaint Procedure

Canadian government's efforts to provide and publicize procedures for reporting foreign bribery complaints – **Weak**

Comments:

- The Canadian government has not provided or publicized any specific procedures for reporting foreign bribery complaints, such as hotlines and websites and does not currently appear to have any plans to do so.
- Under the Canadian system of criminal law enforcement, complaints are not made to prosecutors (who have no authority to investigate or lay charges or to direct that an investigation take place or that a charge be laid). They are usually made to a law enforcement agency, such as the local police, the provincial police or the Royal Canadian Mounted Police (RCMP) - either in its capacity as a federal law enforcement agency or in its role of providing, under contract, law enforcement services in all but two of the provinces.
- Investigations by the police are usually the result of a complaint received from an injured party or, in the case of foreign bribery as a result of information received from a government or police official, an NGO or some other source such as a newspaper report. In this regard, the RCMP Commercial Crime division carries out a comprehensive daily media scan.
- The RCMP also has some 35 liaison officers assigned to Canadian embassies around the world. Reports from these officers back to head office regarding suspicious transactions in the region for which they are responsible should play an important role in helping to detect bribery of foreign public officials.
- Similarly Canadian government agencies, such as CIDA and EDC, who provide money in support of international contracts, are also valuable potential sources of information. EDC requires that all cases of suspected bribery be reported by the officer processing the EDC application. This type of proactive activity, it has been suggested, could be expanded beyond the application stage and extended to other government agencies involved with international business.

#### E. Whistleblower Protection

Level of Canadian whistleblower protection for foreign bribery complaints - **Very weak**

Comments:

- Although Canada recently enacted whistleblower protection legislation applicable to public sector employees, Canada currently does not have any legislation that would help to encourage employees in the private sector to blow the whistle on the payment by their employer of a bribe to a foreign public official.

F. Public Awareness

Canadian government's efforts to create public awareness that foreign bribery has become a crime - **Moderate**

Comments:

- The Department of Justice (DOJ) and Department of Foreign Affairs and International Trade (DFAIT), the primary agencies responsible for oversight and implementation of the OECD Convention and the CFPOA, have been involved in a number of awareness raising activities since the CFPOA was enacted.
- The DOJ has published a guide on the Act and prosecutors and police officers have received training from the relevant justice authorities on the CFPOA. DFAIT has provided training for its trade officers and commercial officers and for its heads of missions and embassy personnel and has placed information on its web site to assist its trade officers on how to counsel Canadian businesses abroad on the risk of bribery and the CFPOA.
- Export Development Canada (EDC), Canada's official export credit agency with a mandate to support and develop Canada's export trade, has been quite proactive in its efforts to raise awareness among its customers and the Canadian business community at large. EDC sponsored a cross-country workshop for companies in 2002 (poorly attended, however by SME's) and has produced an anti-corruption brochure for its customers as well as writing to inform them about corruption and the CFPOA.
- The Canadian International Development Agency (CIDA), which provides contracting opportunities for Canadian companies through its international aid program to developing countries, has also engaged in some awareness-raising activities with its customers, but the perception is that considerably more could be done.
- The other principal agencies providing assistance and support to Canadian exporters – Team Canada Inc., Industry Canada's International Trade Centers, Canadian Commercial Corporation and Canada's Business Development Bank, provide little, if any, information about the CFPOA or the risks of bribery in their publications or on their websites.

G. Accounting and Auditing Requirements

Accounting and auditing requirements in Canada intended to prevent practices for hiding foreign bribery (such as the prohibition of off-the books accounts) - **Weak to Moderate**

Comment:

- Unlike the FCPA, which contains detailed accounting provisions, the CFPOA does not address accounting issues. Although there are "document fraud" and "accessory" provisions

in the criminal code, existing Canadian law does not appear to go far enough. For example, there is no clear prohibition in Canada relating to off-the-books accounts.

- The Canada Business Corporations Act (CBCA) in this regard simply requires a corporation to maintain adequate accounting records but does not specify what the accounting records must contain. In their verbal and written recommendations to the OECD reviewing team at the time of the Canadian review, the Canadian Institute of Chartered Accountants (CICA) recommended amendments to existing legal requirements in Federal and Provincial acts of incorporation to more specifically address books and records requirements for all Canadian companies, including foreign subsidiaries.
- The amendments, they suggested, should address the maintenance of adequate books and records, including prohibition of off-the-books accounts and transactions, the recording of non-existent transactions and false documentation and onerous sanctions should be imposed for misrepresentations and omissions in financial reports and accounting records. In addition, there should be requirements calling for full identification and description of transactions in the accounts, accurate and proper classification of transactions and adequacy of the audit trail.
- All public companies in Canada are required to have an annual external audit. Shareholders of a private company, however can agree to an exemption from the independent audit requirement with the result that many large private companies in Canada are not subject to independent audit. This is a problem.

#### H. Private Sector Efforts

Use of corporate anti-bribery compliance programs in Canada - **Moderate** (large companies) to **Very Weak** (SME's)

Comment:

- Large companies in Canada seem to have a high level of awareness of the CFPOA and most have codes of conduct and internal compliance programs which prohibit foreign bribery. There is, however a very low level of awareness in SME's and most SME's do not seem to have codes of conduct or any form of compliance program.

#### I. Statutory and Other Legal Obstacles

**YES.** There are a few inadequacies in the legal framework for foreign bribery prosecutions in Canada. Whether or not they are significant remains to be seen

- short statutes of limitation - **NO.** There is no statute of limitation for foreign bribery offences
- jurisdiction limitations - **YES.**

- Canadian courts apply “territorial” jurisdiction in criminal matters and the interpretation by the courts in this regard is not overly broad. A significant portion of the activities constituting the offence must take place in Canada and there must be a “real and substantial link” between the offence and Canada
  
- Where specifically provided by statute, Canadian courts also have jurisdiction to prosecute Canadian nationals for offences committed outside of Canada. The Canadian government, however generally only applies such “nationality” jurisdiction to those specific offences where there is universal agreement, confirmed by treaty or international consensus, that the specific act is recognized as a criminal offence and should be prosecuted on the basis of nationality (for example, war crimes, hi-jacking and terrorism). There have, however, been some exceptions to this requirement (notably bigamy and sex tourism).
  
- Although, following ratification of the OECD Convention, the US and the UK have both amended their laws to add jurisdiction based on nationality, Canada has not on the basis that to do so would not be “according to the same principles” (as per Article 4.2 of the Convention) that Canada applies to the extension of jurisdiction based on nationality to other offences.
  
- restrictive dual criminality limitations - **NO**.
  
- lack of criminal liability for corporations - **NO**.
  
- other - The CFPOA requirement that the purpose of the bribe must be “for profit” could render the Act to be not applicable to the public sector and non-profit companies and could even allow “for-profit” companies to escape the application of the statute where the particular transaction could be structured as being “not-for-profit”.
  
- Canada’s apparent reservation of an exception to Article 5 of the Convention with respect to investigation and prosecution of a CFPOA offence where “*proper*” considerations of “national economic interest, the potential relations with another state, or the identity of the natural or legal entities” are involved. This could allow certain cases of foreign bribery to escape investigation and prosecution.

J. Actions Needed in Canada To Promote Enforcement and Compliance

1. adoption by the Canadian government of “nationality” jurisdiction in addition to the existing “territorial” jurisdiction. This would no doubt, as per Article 4 of the Convention, be more effective in the fight against bribery of foreign public officials by permitting Canadian courts to hold Canadian nationals accountable for their illicit actions outside the country. This could be of particular benefit in reaching the activities of foreign subsidiaries where Canadian nationals are involved.

2. greater efforts by the Canadian government (and especially those agencies, such as CIDA and EDC, who are engaged with the international business activities of Canadian companies) to establish a more systematic, comprehensive and coordinated approach to promoting awareness of the CFPOA.
3. the enactment of amendments to Federal and Provincial acts of incorporation to more specifically address books and records requirements for all Canadian companies. The amendments should address the maintenance of adequate books and records, including prohibition of off-the-books accounts and transactions, the recording of non-existent transactions and false documentation and onerous sanctions should be imposed for misrepresentations and omissions in financial reports and accounting records.
4. the adoption, by federal agencies such as CIDA and EDC, of a requirement that their customers have in place an appropriate and effective code of conduct and compliance program and the imposition of administrative sanctions (such as debarment from future business and withdrawal of export credit protection) upon companies convicted under the CFPOA.
5. the guidelines in the FPS guideline Deskbook for prosecutors regarding the exercise of prosecutorial discretion should be changed to state that, in investigating and prosecuting a case under the CFPOA there are no *proper* "considerations of economic national economic interest, the potential effect on relations with another state or the identity of the natural or legal entities involved" that can or should be taken into account.
6. a coordinating role should be established for one of the principal agencies responsible for the implementation of the CFPOA (such as the RCMP) for the purpose of collecting information from the police and prosecutorial authorities about investigations and prosecutions.

### **III Current and Anticipated Level of Enforcement in Canada**

Current level of foreign bribery enforcement in Canada - **Moderate**

Expectations as to change in Canadian government's enforcement of foreign bribery in the next 3 years - **No significant change but hopefully some improvement in the promotion of enforcement.**

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