

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

**QUESTIONNAIRE ON PROVISIONS SELECTED BY THE COMMITTEE OF
EXPERTS FOR ANALYSIS WITHIN THE FRAMEWORK OF THE FIRST
ROUND**

**REPORT BY CANADA
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I. BRIEF DESCRIPTION OF THE LEGAL-INSTITUTIONAL SYSTEM

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

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

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

II. CONTENT OF THE 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 federal 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, values and ethics codes including conflict of interest provisions, codes of conflicts of interest and specific administrative guidelines. Various standards are mentioned in response to this question, while other standards (e.g. standards to prevent conflicts of interest and standards to ensure the proper conservation and use of resources) are also identified in response to other questions. Federal departments and agencies have also established statements of their mission and values.

The Public Service Commission (PSC) is responsible for the appointment of qualified persons to, or from within, the Public Service in accordance with the principles of the *Public Service Employment Act* (e.g. merit, non-partisanship, representativeness, and use of both official languages), for conducting investigations and audits in accordance with the Act, and for administering the provisions of the *Public Service Employment Act* relating to political activities of employees and deputy heads. At the PSC, Commissioners and any person appointed as a Tribunal member are required to take an oath or solemn affirmation of office and every person appointed or deployed from outside the part of the public service to which the Commission has exclusive authority to appoint must take an oath or solemn affirmation of office and secrecy.

The mandate and function of the PSC are changing as a result of the passage of the *Public Service Modernization Act* (PSMA) in November 2003. The elements of the Act will come into force gradually and will be fully in force by the end of 2005. The PSC is in the process of developing policy frameworks and establishing a common understanding with parliamentarians of the new PSC as guardian of merit and the integrity of the public service staffing system. Under the PSMA, the Canada School of the Public Service was established on April 1, 2004, a new PSC was established in 2003-2004, and a new Public Service Staffing Tribunal will be created in late 2005.

The *Values and Ethics Code for the Public Service* sets forth the values and ethics of public service to guide and support public servants in all their professional activities. Public servants shall be guided in their work and their professional conduct by a balanced framework of public service values: democratic, professional, ethical and people values. This Code forms part of the conditions of employment in the Public Service of Canada. At the time of signing their letter of offer, public servants acknowledge that the *Values and Ethics Code for the Public Service* is a condition of employment. All public servants are responsible for ensuring that they comply with this Code and that they exemplify, in all their actions and behaviours, the values of public service. This Code applies to all public servants working in departments, agencies and other public institutions and is a policy of the Government of Canada.

Ministers and senior public office holders are governed by the *Conflict of Interest and Post-employment Code for Public Office Holders*, which governs ethical comportment

and conflicts of interest. Members of the House of Commons are governed by the *Conflict of Interest Code for Members of the House of Commons*, which includes similar provisions. In addition, Ministers are subject to *Governing Responsibly*, a Guide for Ministers and Ministers of State, which sets out their roles and tasks, including guidance on their relationship with arms-length bodies, including Courts, tribunals and Crown corporations.

In 2003, the *Canada Elections Act* was amended to tighten the rules for political contributions. The amendments extend to electoral district associations, leadership and nomination contestants the obligation to report to the Chief Electoral Officer on contribution received and expenses incurred. This obligation previously applied only to the election candidates. The amendments also provide that contribution to registered parties, candidates, registered electoral district associations, and leadership and nomination contestants can only be made by individuals and are generally subject to an aggregate annual limit of \$5,000. There is a limited exception allowing for contributions of up to \$1,000 from corporations and trade unions. Contribution limits are adjusted annually for inflation. These amendments came into force on January 1, 2004.

There is a federal *Lobbyists Registration Act* that requires all those who try to influence a public office holder on behalf of another person for money to register with the Government. Amendments to the Act were enacted in 2003 and will come into force once amendments to the Regulations under the *Lobbyists Registration Act* are made and changes to the electronic filing system, which supports the administration of the Act, have been made. The amendments will make three major changes to the existing *Lobbyists Registration Act*. First, the amendments will provide a clearer definition of lobbying and who must register as a lobbyist. Second, they will establish a simplified registration system. Third, they will introduce stronger enforcement provisions into the *Lobbyists Registration Act*.

Under the *Lobbyists Registration Act*, a code of conduct was developed for lobbyists. The purpose of the *Lobbyists' Code of Conduct* is to assure the Canadian public that lobbying is done ethically and with the highest standards, with a view to conserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of government decision making. The *Code* establishes mandatory standards of conduct for all lobbyists communicating with federal public office holders and forms a counterpart to the obligations that federal officials must honour in the codes of conduct that apply to them when they interact with the public and with lobbyists.

Some provinces have legislation regulating lobbying, such as the Nova Scotia's *Lobbyists' Registration Act* and Quebec's *Lobbying Transparency and Ethics Act*.

In the ten provinces and the three territories of Canada, generally similar rules of conduct in the form of legislation or guidelines exist.

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. The *Conflict of Interest and Post-employment Code for Public Office Holders* and the Conflict of Interest Code for Members of the House of Commons are administered by the new Ethics Commissioner, an independent officer of Parliament.

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. For example, at the provincial level in British Columbia, Deputy Ministers are responsible for ensuring that any breaches are thoroughly investigated and that appropriate action is taken.

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 Public Office Holders*, a *Conflict of Interest Code for Members of the House of Commons*; a *Values and Ethics Code* for 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.

In the spring of 2004, three major initiatives strengthened the conflict of interest framework for Parliamentarians, including Ministers:

- On March 31, 2004 the *Parliament of Canada Act* was amended to provide for an Ethics Commissioner for Members of the House of Commons and a Senate Ethics Officer for Senators; ([See weblink in Annex 1](#));

- On April 29th, 2004, the House of Commons adopted the *Conflict of Interest Code for Members of the House of Commons*, as recommended by the Standing committee on procedure and House Affairs ([See weblink in Annex 1](#)). The Code came into force on October 4, 2004; and
- On May 17, 2004 the Ethics Commissioner was appointed as an Officer of Parliament, which makes him independent from the government.

The *Parliament of Canada Act* (as amended in 2004) contains a framework for the administration of conflict of interest codes pertaining to senators and members of Parliament. The new *Conflict of Interest Code for Members of the House of Commons* is appended to the Standing Orders of the House of Commons. The Rules of the Senate of Canada also address conflict of interest matters.

On October 7, 2004, the Prime Minister tabled in the House and released to the public a strengthened *Conflict of Interest and Post-Employment Code for Public Office Holders*. ([See weblink in Annex 1](#)). The *Code* and the *Governing Responsibly Guidelines* apply to Ministers, Secretaries of State, their staff, Parliamentary Secretaries, as well as about 3600 Governor in Council appointees. The *Code* addresses basic principles of conduct, which are followed by a set of rules regarding conflicts of interest and compliance measures. It 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, outside political activities, ministerial offices and fundraising.

The *Guidelines for Ministerial Dealings with Crown Corporations* 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 September 2003, the *Values and Ethics Code for the Public Service* was implemented and replaced the previous *Conflict of Interest and Post Employment Code for the Public Service*. The *Code* sets out public service values as well as conflict of interest and post-employment measures. It is administered, through delegation to the deputy ministers of the federal government departments, by the Treasury Board. 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) provide 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.

There are also conflict of interest rules at the provincial level.

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 *Members' Integrity Act, 1994* deals with issues of conflict of interest and Ontario parliamentary convention for Members of Provincial Parliament in Ontario. 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. Chapter 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, 1998* provides for specific rules for government officials regarding conflict of interest, as does *The Interpretation Act, 1995* 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 Chapter 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).

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.parl.gc.ca/oec-bce> . The Ethics Commissioner's mandate is to administer

the Codes governing public office holders and Members of the House of Commons. The *Values and Ethics Code for the Public Service*, for example, provides that a public servant who does not comply with the requirements of the *Code* is subject to appropriate disciplinary action, up to and including termination of employment.

- 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 Treasury Board Secretariat has various mechanisms in place to ensure efficient management and delivery of public services. For example, it has issued specific guidelines for Ministers' Offices. These guidelines consolidate the various financial, personnel and administrative rules and regulations that govern expenses incurred by Ministers, Secretaries of State and their exempt staff in the performance of duties related to their portfolio responsibilities.

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.

Federal, provincial and territorial conflict of interest codes and codes of conduct, and provincial and territorial financial administration acts and financial management policies, also address the conservation and proper use of resources.

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 audit. The role of the Auditor General of Canada is to audit government operations and to provide the information that helps Parliament to hold the government to account for its stewardship of public funds. Objectivity is vital to the effectiveness and credibility of the Office. To help achieve this objectivity, Parliament has taken steps to keep the Auditor General independent of the government. An Officer of Parliament, the Auditor General is appointed for a 10-year term and reports to Parliament through the Speaker of the House of Commons. The Auditor General has the freedom to recruit staff and set the terms and conditions of their employment, as well as the right to ask the government for any information required to meet the responsibilities of the position. The Office of the Auditor General audits most areas of the Canadian government. As well, it audits the territorial governments of Nunavut, the Yukon and Northwest Territories and territorial agencies.

A Treasury Board Active Monitoring Policy has been 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.**

The *Policy on Losses of Money and Offences and Other Illegal Acts Against the Crown* was established by the Treasury Board in order to ensure 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.

The Ethics Commissioner has the authority to inquire into complaints about members of the House of Commons referred to his Office. An annual report on the activities of the

Office of the Ethics Commissioner is presented to the Speaker of the House of Commons for tabling in the House. The Ethics Commissioner is available to appear before parliamentary committees to answer questions on his report.

On May 18th, 2004, the Minister for International Trade approved a new departmental policy which outlines how commercial officers overseas must deal with cases of corruption (alleged or verified) involving Canadian companies. The Trade Commissioner Service is now in the process of implementing this policy through the organization.

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. However, some statutes offer protection to employees, such as s. 82(2) of the *Freedom of Information and Protection of Privacy Act*, which 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. In Nova Scotia, the *Civil Service Disclosure of Wrongdoing Regulations* require public employees to report the contravention of any Act of the Parliament of Canada or of the Legislature, or of any regulations made under any such Act, if the contravention relates to the official activities of employees or any public funds or assets.

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 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 for which the Treasury Board is the Employer have each appointed a Senior Officer who is responsible for receiving and acting on internal disclosures of possible wrongdoing and who maintains regular contact with the Public Service Human Resource Management Agency of Canada. On November 8, 2001, the first Public Service Integrity Officer was appointed. The mandate of this Officer is to act as a neutral entity on matters of internal disclosure of wrongdoing. In particular, he or she assists employees who believe that their issue cannot be disclosed within their own department, or who have raised an issue through departmental mechanisms but believe that the disclosure was not appropriately addressed.

A proposed *Public Servants Disclosure Protection Act* (commonly referred to as “whistleblowing legislation”) was introduced in the House of Commons in October 2004 to strengthen the regime governing the internal disclosure of wrongdoing. It requires heads of federal organizations to establish an internal disclosure mechanism, calls for the establishment of a code of conduct, and provides substantial protections in law from reprisal for good faith disclosures. The Bill has not yet been passed by Parliament.

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.**

For the fiscal year 2003-2004, the Public Service Integrity Officer received 67 disclosures. The Office of Public Service Values and Ethics reported 90 disclosures received in departments and agencies.

- 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 of Ministers, Parliamentary Secretaries, and about 3600 public office holders. 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 Commissioner 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' spouses and dependents, the information provided is used by the Ethics Commissioner 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 at www.parl.gc.ca/oec-bce. 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 Conflict of Interest Code for Members of the House of Commons establishes an equivalent regime for Members of the House.

The *Guidelines to Govern Ministerial Activities for Personal Political Purposes*, released by the Prime Minister 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 staff wishing to become engaged full time in a leadership campaign must take a leave of absence without pay or resign.

The *Values and Ethics Code for the Public Service* is a condition of employment for public servants. It requires that public servants submit to their deputy head a disclosure of their private interests when such a situation could lead to a real, apparent or potential 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 real, apparent or potential conflict, is also to be divulged. 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. No provisions exist requiring the disclosure of income, assets and liabilities of persons related to public service employees.

In the Canadian military, a 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 *Defence and Administrative Orders and Directives* provide direction and guidance to CF members and DND 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 an 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 or adult interdependent partner, 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*.

- 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 of oversight bodies are in place in Canada. In answer to this question, a representative sampling is provided, but see also the responses to the other questions.

In respect of the federal government, oversight bodies include the Public Service Commission, 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 Commission for Public Complaints Against the RCMP, the RCMP External Review Committee, the Security Intelligence Review Committee, the Office of the Inspector General of the Canadian Security Intelligence Service, the Office of the Correctional Investigator, the Information Commissioner, the Privacy Commissioner, the Public Accounts Committee (a Committee of the House of Commons), 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 may also be found in the provinces and territories.

- 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, 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? Is 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 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 a 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.

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 departments 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 of 2001 and 2004 as well as 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. 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 2001 Summit of the Americas. One workshop dealt with good governance and security, while another dealt with corruption and corporate social responsibility. On November 26, 2004 the Department of Foreign Affairs organized a meeting between federal officials and civil society organizations to gather suggestions on methods to inform and consult civil society in the development of Canadian positions in the context of the Inter-American system, with a view to establishing on-going dialogue with the civil society on hemispheric issues. A follow-up meeting to the Summit Implementation Review Group will also be held on March 9-10, 2005 to keep Canadian civil society updated on preparations for the Fourth Summit of the Americas (Mar del Plata, Argentina, November 2005).

A further example of a consultation process undertaken by the Government of Canada was the 2001 written consultation on the proposals that resulted in the *United Nations Convention against Corruption*. In addition, on June 2001, federal officials have 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 exercise 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.

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 and also appear in Annex I. It may also be worth noting efforts that have been made in connection with the passage of the *Corruption of Foreign Public Officials Act*, which allows for the implementation of the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, including the efforts concerning the requirement under the Act for an annual report to Parliament.

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

These mechanisms result in ongoing communications between government and civil society on these issues.

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 provides the means to implement 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 either "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 a statements or testimony from a witness located in Canada, including testimony provided via video link into the foreign proceedings; (2) order the examination of a place or site in Canada; (3) lend court exhibits; and (4) transfer detained persons on consent to a requesting state to give evidence or to assist with the foreign investigation. In addition, Canada has some ability to assist in the enforcement of 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, Trinidad and Tobago, 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 dealing with mutual legal assistance in criminal matters and extradition within the hemisphere. The public component of the network currently exists and contains considerable information. Work is continuing on the establishment of a secure point-to-point e-mail system for use by Central Authorities of OAS member-States.

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. The Canadian International Development Agency (CIDA) has a number of programming channels, which facilitate the sharing of experience in combating corruption. First, CIDA works through its Policy Branch to coordinate and harmonize anti-corruption policies of donor countries. Examples of such collaboration are that with the Utstein Group and the OECD DAC's GOVNET Task Force on Anticorruption. Second, 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. Third, 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 NGOs, 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 General's Offices, Ombudsman's Offices, Comptroller's, Finance Ministries, Government Procurement Agencies, Electoral Offices, etc.). In many countries, CIDA provides financing for Public Sector Reform, which can be used for the purposes of analysis or the identification of larger reform programs. Annex II contains a partial list of bilateral programs against corruption in the Americas region. The Annex was prepared in 2002 and it has not been possible to update it in the timeframe provided.

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 gave a series of overseas corruption and integrity workshops. In Colombia, for instance, 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/international_relations/igo.asp)

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 the World Bank, the IDB, the UN agencies, and other international organizations such as Transparency International, the Global Organization of Parliamentarians against Corruption, etc. 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, 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

Requests for technical assistance can be directed to: Mr. Guillermo Rishchynski, Vice President, Americas Branch, Canadian International Development Agency, guillermo_rishchynski@acdi-cida.gc.ca (tel.) 819-997-3291/(fax) 819-997-0077.

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 15 lawyers and 9 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. It has received and responded successfully to many requests as can be seen in Annex II.

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

State Party: CANADA

The official to be consulted regarding the responses to the questionnaire is: Mr. Doug Breithaupt, Senior Counsel, Criminal Law Policy Section, Department of Justice, Rm. 5037, East Memorial Building, 284 Wellington Street, Ottawa, Ontario K1A 0H8, CANADA Tel: (613) 957-4743, Fax: 941-9310, e-mail: Doug.Breithaupt@justice.gc.ca

