

REPORT BY CANADA

Français

THE FEDERAL ACCOUNTABILITY ACT

The *Federal Accountability Act*, which deals with a number of anti-corruption measures in various areas, received Royal Assent on December 12, 2006. Some provisions of the Act are already in force, and others will come into force over the coming months. The Act provides for tightening rules and controls, and strengthening enforcement mechanisms in a number of areas, including measures directly related to the Inter-American Convention against Corruption.

Legislating a code of conduct for federal politicians and senior officials

The *Federal Accountability Act* enacts the *Conflict of Interest Act*. The Act entrenches in legislation the *Conflict of Interest and Post-Employment Code for Public Office Holders*, but also codifies and clarifies existing policies, adds new rules, and broadens the class of public office holders to whom the Act applies. It governs their conduct during employment and for a specific period after leaving office. The Act is administered by the Conflict of Interest and Ethics Commissioner, who is an officer of Parliament. The *Conflict of Interest Act* requires reporting public office holders to publicly declare their recusals from situations that would put them in a conflict of interest, and requires the Conflict of Interest and Ethics Commissioner to make available to the public reports on investigations of breaches of the Act.

Lobbying Act

The *Federal Accountability Act* amends the existing *Lobbyists Registration Act* in several ways. It provides for the appointment of an Agent of Parliament, the Commissioner of Lobbying, to oversee the application of the rules applying to lobbyists. The amendments also broaden the scope for investigations by the Commissioner; create a prohibition for former public office holders on lobbying the federal government for a period of 5 years after leaving office; create a requirement for lobbyists to report communications with designated public office holders; increase fines; extend the limitation period; and provide more tools to the Commissioner to sanction violations of the Act.

Public Appointments Commission

The *Federal Accountability Act* creates a Public Appointments Commission to oversee, monitor and report on the processes for all Governor in Council appointments to agencies, boards, commissions and Crown corporations. The Commission ensures government appointments are based on merit, while respecting the values of fairness and openness in such processes.

Amendments to the *Public Servants Disclosure Protection Act*

The amendments to the Act made by the *Federal Accounting Act* strengthen protection provided to whistleblowers under the *Public Servants Disclosure Protection Act*, most importantly by creating a Public Servants Disclosure Protection Tribunal to deal with

allegations of reprisals. Disclosures and complaints of reprisal are made to the Public Sector Integrity Commissioner, who is an Agent of Parliament. The Commissioner is responsible for investigating complaints of reprisals and, when warranted, applying to the Public Servants Disclosure Protection Tribunal for remedial and disciplinary orders.

Expanding the application of the *Access to Information Act*

The *Federal Accountability Act* extends the application of the *Access to Information Act* to Crown corporations and their wholly-owned subsidiaries, with some exemptions to protect trade secrets or financial, commercial, scientific or technical information. The application of the Act is also extended to Agents of Parliament, five foundations and the Canadian Wheat Board.

Accounting officers

The *Federal Accountability Act* makes the Deputy Minister of a department or the head of a government agency the Accounting Officer for that organization. Within the framework of ministerial responsibility, the Accounting Officer is accountable before the appropriate Parliamentary committees for:

- measures taken to organize the resources of the organization in order to deliver departmental programs in accordance with government policies and procedures;
- measures taken to maintain effective systems of internal control;
- signing the accounts necessary for the preparation of the Public Accounts; and
- the performance of specific duties assigned under any Act.

Internal audit committees

The *Federal Accountability Act* makes the deputy head of an organization responsible for ensuring that an appropriate internal audit capacity is in place and for establishing audit committees consisting of members both internal and external to the Public Service.

Governance of Crown corporations

The *Federal Accountability Act* strengthens the rules for the governance of Crown corporations by separating the positions of Chair and Chief Executive Officer in these organizations, and requiring audit committees to be independent of management.

New fraud offences for public servants

The *Federal Accountability Act* creates new offences of fraud against public money by public servants responsible for its management, and new offences for employees of Crown corporations who commit fraud against the corporation's money. The penalties for these offences are higher than for the general offence of fraud. Conviction under these offences creates an inability to contract with the government, or hold a government office.

Procurement ombudsman

The *Federal Accountability Act* creates the office of the Procurement Ombudsman to review departments' procurement practices for fairness, openness and transparency, and provides a dispute resolution process for complaints from suppliers in areas that are not

covered by existing processes. The Procurement Ombudsman will provide an annual report to be tabled in Parliament.

Auditor General's mandate

The *Federal Accountability Act* expands the mandate of the Auditor General to allow her to inquire about the use of funds or “follow the money” to a larger class of recipients of grants, contributions and loans, and conduct performance audits to assess value for money. The Act also provides immunity for the Auditor General and his or her employees from civil or criminal proceedings, and protection from being compellable witnesses.

Director of Public Prosecution

The *Federal Accountability Act* enacts the *Director of Public Prosecutions Act*, which transfers the responsibility for the conduct of all prosecutions under federal law from the Attorney General and the Department of Justice to the Director of Public Prosecutions (DPP). Final and binding decisions to prosecute will be made by the DPP, unless the Attorney General provides written instructions otherwise that are made public. The DPP will provide an annual report to be tabled in Parliament.

Political financing

The *Canada Elections Act* has been amended to tighten limits on donations to federal political parties, riding associations and candidates. The maximum annual amount of donations is reduced to \$1,000 for individuals (it was previously \$5,000), and all donations from corporations, unions and associations are prohibited. The limitation period for prosecuting contraventions of the Act is extended from within 7 years to within 10 years of the offence, but not later than 5 years after the Commissioner of Elections Canada becomes aware of it (it was previously 18 months). All cash donations over \$20 are prohibited. Candidates must disclose any gift over \$500 received during the period they were candidates to becoming a Member of Parliament. Political parties and riding associations are prohibited from transferring trust funds to candidates.

AMENDMENTS TO THE *PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING ACT*

Bill C-25, which amends the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, received Royal Assent on December 14, 2006. The amendments enhance the client identification, record-keeping and reporting measures applicable to financial institutions and intermediaries. It establishes a registration regime for money services businesses and foreign exchange dealers and creates a new offence for not registering.

The Act also allows the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), Canada's financial intelligence unit, to disclose additional information to law enforcement and intelligence agencies, and to exchange compliance-related information with its foreign counterparts. It also allows the Canada Border Services

Agency to share information about the application of the cross-border currency reporting regime with its foreign counterparts.

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