



Government of Canada

Canadian Measures Against Corruption

International Conference on Fighting Corruption and Safeguarding Integrity and  
Security Among Justice and Security Officials

Washington, D.C., February 24-26, 1999

## CANADIAN MEASURES AGAINST CORRUPTION

Canada has in place a wide array of measures which are designed to ensure integrity in public life. In addition, the Canadian government is actively supporting international efforts to combat corruption.

The federal government of Canada regulates potential corruption by a combination of federal statutes, parliamentary rules and administrative provisions. The nature of the governing authority generally depends on the kind of public office held by an individual and this governing authority may involve a mixture of statutes, regulations and administrative provisions. In addition, the Auditor General of Canada, an independent body, reports annually to the House of Commons.

The Criminal Code of Canada includes offences which prohibit bribery (ss. 119, 120), frauds on the government (s. 121), fraud or a breach of trust in connection with the duties of office (s.122), municipal corruption (s. 123), selling or purchasing office (s. 124), influencing or negotiating appointments or dealing in offices (s. 125), possession of property or proceeds obtained by crime (s. 354), fraud (s. 380), secret commissions (s. 426), and laundering proceeds of crime (s. 462.31).

Further, a person is precluded from holding any public office or other public employment, or from being elected or sitting or voting as a member of Parliament or of a provincial legislature, or from exercising any right of suffrage, if that person has been convicted of an indictable offence for which that person has been sentenced to a term of imprisonment for two years or more until that person has served that term or the punishment has been substituted by a competent authority or the person has been given a pardon. No person convicted of frauds against the government, of selling or purchasing office, or of selling defective stores to the government has, after that conviction, the capacity to contract with the government or to receive any benefit under a contract between the government and any other person or to hold government office (s. 750).

Any person who, while in Canada, conspires to commit an indictable offence in a place outside Canada that is against the law in that place shall be deemed to have committed the conspiracy in Canada (s. 465(3)). Further, any person who, while outside Canada, conspires to commit an indictable offence in Canada shall be deemed to have committed the offence of conspiracy in Canada (s. 465(4)).

The Corruption of Foreign Public Officials Act entered into force on February 14, 1999. It features the offence of bribing a foreign public official. Not only would the offence of bribing a foreign official be subject to prosecution, but it would also be possible to prosecute, for example, a conspiracy or an attempt to commit this offence. It would also be possible to

prosecute for aiding and abetting in committing the offence, an intention in common to commit the offence, and the counselling of this offence.

The Act also criminalizes the laundering of profits obtained from bribing a foreign public official, and specifically covers proceeds found in Canada as a result of an act or omission outside Canada that, if it had occurred in Canada, would have constituted the offence of bribing a foreign public official. In addition, the possession in Canada of property or proceeds obtained or derived from both Canadian and offshore bribery of foreign public officials or laundering is criminalized. These proceeds of crime could be seized, restrained or forfeited.

By adding the Corruption of Foreign Public Officials Act offences to the list of offences under section 183 of the Criminal Code, it will be possible for police, through the lawful use of a wiretap and other electronic surveillance, to gather evidence in the bribery of foreign public officials cases, and in the possession and laundering of proceeds from these cases. This will assist in the investigation of these new offences.

Effective April 1, 1997, the national Integrated Proceeds of Crime (IPOC) enforcement initiative established ten new IPOC units across Canada and continued the three existing IPOC units. This initiative is aimed at intensifying the investigation and prosecution of major organized criminals and crime groups operating in Canada. These units will target profiteering from a whole range of enterprise crimes, including corruption crimes, in which organized criminals engage. Each IPOC unit brings together representation from the federal Department of Justice, the Royal Canadian Mounted Police, Canada Customs, provincial and municipal police, and forensic accountants.

As the offences in the Act are criminal offences, they permit effective mutual legal assistance pursuant to the Mutual Legal Assistance in Criminal Matters Act. The penalty for each of these offences is sufficient to enable extradition.

The offence of bribing a foreign public official has also been added to the list of offences found in section 67.5 of the Income Tax Act to deny claiming bribe payments as a deduction.

Witness protection is one of the most useful and effective law enforcement tools we have in the fight against crime. The Witness Protection Program Act in Canada serves the needs of police services and of potential witnesses and sources who need protection.

Canada is also modernizing the Extradition Act (Bill C-40) to accommodate other legal systems more readily, such as making Canadian rules of evidence easier to apply to evidence gathered in other countries. New legislation is also underway to allow Canada to give or receive evidence in criminal and extradition procedures by video or telephone link.

The Financial Administration Act provides for the financial administration of the Government of Canada, the establishment and maintenance of the accounts of Canada and the control of Crown corporations. It also creates specific offences to address corruption and fraud. The Income Tax Act contains provisions prohibiting the tax deductibility of bribes.

As well, other federal statutes contain specific provisions relating to the conduct of public officials who administer the statutes. For example, the Immigration Act prohibits bribery of immigration officers and adjudicators. The Statistics Act contains specific provisions dealing with the misuse of such information for gain.

Canada has in place a non-statutory conflict of interest and post employment code for federal public office holders and a code for federal public servants. These codes are designed to guide the conduct of federal public office holders and federal public servants and to maintain and enhance public confidence. For the purposes of the Conflict of Interest and Post-Employment Code for Public Office Holders, "public office holders" include Ministers, Parliamentary Secretaries and full-time Governor in Council appointees, as well as members of ministerial staff who are not public servants. This Code was strengthened by the Prime Minister in June 1994. It requires that public office holders act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced. The Conflict of Interest and Post-Employment Code for the Public Service of Canada is also in place. In addition, departmental codes of conduct exist. Canada recognizes that different sets of rules may be appropriate to persons serving in different capacities.

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. For example, section 16 of the Parliament of Canada Act, among other things, prohibits any Senator from receiving any compensation for services rendered in relation to any matter before the Senate or the House of Commons or for the purpose of influencing or attempting to influence any Member of either House. Standing Order 21 of the House of Commons, for example, prohibits any Member from voting on questions in which that Member has a direct pecuniary interest.

As well, to reinforce the importance of personal integrity within the federal public service, all federal civil servants on appointment from outside the federal public service, are required to take and subscribe to the oath or solemn affirmation of allegiance and the oath or solemn affirmation of office and secrecy.

In the ten provinces and the two territories of Canada, generally similar rules of conduct in the form of legislation or guidelines exist for public officials, elected and appointed.

Several departments have in place internal, but independent and impartial, investigative bodies, which report incidents to the RCMP or the proper police authority.

The Lobbyists' Code of Conduct came into effect on March 1, 1997. The Code establishes standards of conduct for all lobbyists who communicate with federal public office holders and forms a counterpart to the obligations that federal officials must observe when they interact with the public and with lobbyists. As well, the Lobbyists Registration Act was amended in 1996 to increase the amount of information available to the public on lobbying efforts directed at federal institutions.

Few institutions are more important to a healthy democracy than the courts. Their importance comes from the power they hold: the power to determine rights between individuals and between individuals and the government and the power to uphold the rule of law. They are entrusted to determine a multitude of issues and are responsible for making decisions over rights, obligations, freedoms and property of individuals. That is why it is so crucial to have an independent judiciary.

The objective of an independent judiciary is to ensure that everyone has access to an impartial judge, who is in control of the judicial proceedings, so that the rights of the person appearing before the bench will be determined solely on the basis of the facts and the law.

In Canada, the independence of the judiciary is a constitutional and legal principle of foremost importance. This principle has received recognition in Canada's constitution and has continued to be developed and strengthened in Canada's statutes. The basic constitutional provisions with respect to the independence of the judiciary are those set out in sections 96 to 101 of the Constitution Act, 1867. They specifically acknowledge the concept of judicial independence through the judicature provisions respecting tenure and removal and the fixing and payment of salaries, annuities and allowances.

The effect of the other constitutional provisions is to give judges very substantial guarantees against arbitrary interference or removal by the executive level of government. The fundamental status of the judges, as well as the provision of their salaries, allowances and pensions, is constitutionally guaranteed.

Certain of the rights established in the Canadian Charter of Rights and Freedoms by implication guarantee the independence of the judiciary by setting out minimum standards for the courts and tribunals which hear cases relating to criminal offences and specific fundamental rights.

The concept of an independent judiciary is truly recognized in Canada and the separation between the judiciary and the executive at the federal level clearly exists. In Canada, the independence and impartiality of the judiciary is a constitutional and legal principle of paramount importance.

The Canadian Charter of Rights and Freedoms also provides that everyone has the freedom of conscience and religion; the freedom of thought, belief, opinion and expression, including the freedom of the press and other media of communication; the freedom of peaceful assembly; and the freedom of association. 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.

Making government information accessible to Canadians is an important element of open government in Canada. The Access to Information Act includes an enforceable right of public access to most government information and records.

Human rights, democracy and good governance constitute one of the six priorities for Canadian Official Development Assistance. The Government of Canada's policy for the Canadian International Development Agency (CIDA) on human rights, democracy and good governance was adopted in December 1995. Through its development assistance programme, Canada seeks to strengthen democratic institutions and the public sector in order to promote the effective, honest and accountable exercise of power. Canada has provided assistance to developing countries and countries with economies in transition to strengthen legal and judicial systems and public sector institutions and organizations. With funds channelled through the Economics Development Institute of the World Bank, Canada has supported workshops and training programmes in Africa to examine ways to address corruption. Canada has also supported the founding of a Canadian chapter of Transparency International, which seeks to promote anti-corruption measures.

In the Development Assistance Committee of the Organization for Economic Co-operation, CIDA has supported efforts to curb corrupt procurement practices and CIDA is in the process of revising its contract language to ensure that the responsibilities of Canadian firms are clear.

Canada has also actively participated in discussions, and negotiations, in various international fora, including the United Nations, the Organization of American States, the Organisation for Economic Co-operation and Development, the Council of Europe, the Commonwealth and the G-8 about ways to combat corruption. As well, Canada is supporting the development of the United Nations Convention on Transnational Crime.

On December 17, 1998, Canada ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. By becoming the fifth country to ratify the Convention (out of the ten countries with the largest share of OECD

exports, and representing at least sixty per cent of the combined total exports of those ten countries), Canada was able to trigger the entry into force of the Convention sixty days after the deposit of its instrument of ratification. Thus, the Convention entered into force on February 15, 1999. Canada has indicated its intention to sign the Inter-American Convention Against Corruption and is reviewing what amendments to Canadian statutes may be required in order to comply with the Convention.