



International Business Ethics and Anti-Corruption

Global anti-corruption jurisprudence developments in Canada

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While Canada ranked ninth of 180 countries in Transparency International's 2008 Corruption Perception Index ("CPI"), the country's enforcement of anti-corruption measures has not received such a favourable perception. The 2009 Transparency International Progress Report on the Organization for Economic Cooperation and Development Anti-Bribery Convention ("T.I. Report") called Canada a laggard and identified it as one of twenty one countries making little or no effort to enforce its anti-corruption commitment.

In the ten years since Canada adopted the OECD Anti-Bribery Convention, there has been only one conviction (*R v. Watts*, [2005] A.J. No. 568) under the Canadian *Corruption of Foreign Public Officials Act, 1998* ("CFPOA"), the country's primary legislation dealing with Canadians participating in corruption overseas. Federal Minister of International Trade Stockwell Day has defended Canada, saying that the low number of convictions does not mean that Canada is not enforcing the Convention.

The Canadian government intends to change the perception that Canada is soft on international corruption with Bill C-31 ("Bill"). The Bill, which was introduced to Parliament in May 2009, will amend the CFPOA as well as the *Criminal Code* and the *Identification of Criminals Act*. The Bill is intended to eliminate one of the obstacles in Canada's current anti-corruption law – that it does not claim nationality jurisdiction, but requires that a real and substantial link be established between the offence and Canada. Section 38 of the Bill states that any Canadian citizen, permanent resident or Canadian-incorporated organization who commits an act or omission - outside Canada that would be considered an offence within Canada, is deemed to have committed that act or omission in Canada. If the Bill passes, it would eliminate the need for Canadian law enforcement to demonstrate a link between the offence and Canada since the link would be effectively established by Canadian citizenship, residency or incorporation.

Section 38 also expands the offence of giving, offering or agreeing to pay a bribe (set forth in CFPOA Section 3), to include a "conspiracy to commit, an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence under that section." This is a substantial broadening of the spectrum of activities that could be caught by the CFPOA.

In 2008, the Federal government enhanced the Royal Canadian Mounted Police ("RCMP") resources by establishing two International Anti-Corruption Units, with a compliment of fourteen persons. Their mandate is to investigate transnational bribery and other forms of corruption involving foreign public officials outside Canada. Once enacted into law, the Bill and the establishment in 2008 of the RCMP's international anti-corruption crime unit should push

corruption higher on the agendas of all Canadian organizations.

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