



## International Business Ethics and Anti-Corruption

### Canada is pushed for stronger enforcement of anti-corruption laws

By Christa C. Wesel, B.A., LL.B., C.Dir.

While Canada ranked ninth of 180 countries in Transparency International's Corruption Perception Index for 2008, Canada's enforcement of anti-corruption measures has not received so favourable a perception. The 2009 Transparency International Progress Report on the OECD Anti-Bribery Convention called Canada a laggard and identified it as one of 21 countries making little or no effort to enforce its anti-corruption commitment.

In the 10 years since Canada adopted the Organization for Economic Cooperation and Development (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 main piece of legislation dealing with Canadians participating in corruption in other countries.

Federal Minister of International Trade Stockwell Day has defended Canada, saying that fewer convictions does not mean that Canada is not enforcing the Convention.

And, it seems that the Canadian government intends to change any perceptions that Canada is soft on international corruption. Bill C-31, introduced to Parliament in May 2009, is an Act to amend the CFPOA as well as the *Criminal Code* and the *Identification of Criminals Act*.

This bill is apparently 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. Currently, it is unclear whether Canadian courts will assume jurisdiction over the bribery of foreign public officials where the offence is committed in whole or in part outside Canada.

Among other things, Bill C-31 expands the jurisdiction of Canadian courts to include bribery offences committed by Canadians outside Canada.

Section 38 of the Bill says 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 this bill passes, it will strengthen Canada's anti-corruption law and make it easier to enforce the CFPOA against Canadian organizations and individuals carrying on illegal activities outside Canada by claiming nationality jurisdiction. It would eliminate the need for Canadian law enforcement agencies 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 out in section 3 of the CFPOA, to include a "conspiracy to commit, an attempt to commit, being an accessory after the fact in relation to, or any counseling in relation to, an offence under that section". This appears to be a substantial broadening of the spectrum of activities that could be caught by the CFPOA.

The bill goes on to specifically list “a public body, corporation, society, company, firm or partnership that is incorporated formed or otherwise organized under the laws of Canada or a province”, clarifying that for-profit and not-for profit entities, governmental or quasi-governmental agencies, as well as professional partnerships such as legal and accounting firms are subject to prosecution.

The Transparency International Report included specific recommendations regarding additional changes to the CFPOA that are not addressed in Bill C-31, namely to eliminate the present requirement to establish that the transaction be “for profit.” In that regard the Report specifically recommends that the issue of whether “not-for-profit” transactions should be covered by the Convention be placed on the OECD Working Group agenda.

As well, the TI report goes on to recommend that the Canadian government make efforts to promote compliance programs among small and medium-sized businesses. Small and medium-sized businesses are not defined, but it appears to assume that “large” businesses already have compliance programs in place.

In 2008 the Federal government beefed up the Royal Canadian Mounted Police (RCMP) resources by establishing two International Anti-Corruption Units, with a compliment of 14 persons. Their mandate is to investigate transnational bribery and other forms of corruption involving foreign public officials outside Canada.

The US Department of Justice is very aware of what is going on in Canada and it is expected, communicating regularly with the RCMP, and exerting pressure on the RCMP to take appropriate action.

Bill-31, once law, 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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