

TRANSPARENCY INTERNATIONAL CANADA BOARD MEETING

Friday, November 28, 2003, 11:30 – 14:30 EST
Hydro One, 483 Bay Street, South Tower, 10th Floor, Board Room
(Tel. No. of Gwen Lockyer: 416-345-6008)

Present:

| | |
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| Wes Cragg | |
| Bronwyn Best | Joy Kennedy |
| Clare Bonnell | Ian E. Marshall (by conference call) |
| Peggy Cunningham | John McWilliams (by conference call) |
| Michael Davies | P. K. (Sunny Pal (by conference call) |
| Anita Davis (by conference call) | David Selley |
| Tom Goldie | John Willson (by conference call) |

Regrets:

| | |
|--------------|-------------|
| Peter Harris | Bob Olivero |
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MINUTES

1. Nigeria Project

Further to the information in the Background Notes, John McWilliams reported that he had attended a Global Compact meetings in New York, where he had the opportunity to speak with Jermyn Brooks, of the TI-S Board, and a Shell representative. There is considered interest in this project. Mr. McWilliams also reported that Nigeria has frozen transfers and approvals, in the oil and gas industry, in Nigeria, as a result of recent changes in and activities regarding the National Nigerian Petroleum Corporation. Following the Board Meeting, **Mr. McWilliams, Wes Cragg** and **Bronwyn Best** are to get together regarding opportunities for this Project to move forward.

2. TI-Canada Corruption Survey

The Board noted its gratitude for this project getting off the ground quickly. Mr. McWilliams encouraged **all Board Members** to provide the researcher, David Simpson, with names of, particularly, developers and suppliers to receive the survey. It was noted that both Toronto and Montreal have gone through amalgamation processes, but Vancouver has not, so how “Vancouver” is described will need to be determined. Dr. Cragg noted a study he and Mark Schwartz have done on municipal legislation and codes. Requests were made that **Ms. Best** ask Mr. Simpson to obtain the questionnaire used in the Madagascar study and what costs were incurred for the U.K. surveys. **Mr. McWilliams** is to contact the Survey Ad Hoc Committee, in early January, regarding Phase II, which will form a substantive part of the next Board Meeting.

3. Acres

▪ TI-Canada letter and policy statement

The Board noted that the letter, which appeared as a Letter to Members in the October 2003 TI-Canada Newsletter (Vol. 7, No. 3), was a very good letter and constitutes a policy statement.

▪ TI-Canada/Acres Meeting

The Board **agreed** it had been a good move to meet with individuals from Acres. A letter describing the meeting is attached to these minutes as an appendix.

4. Corruption of Foreign Public Officials’ Act – next steps

Further to the Background Notes, Michael Davies noted that the OECD individual, who is completing the Canadian study, has been very ill, resulting in the delay. At the next Board Meeting, **the Board** will look at next steps, with regard to the recommendations and formulate

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appropriate policy. It was noted that TI-Canada will have a major undertaking with regard to ratification, once the UN Convention against Corruption is signed, in early December. **Mr. McWilliams** is to send to Ms. Best, for dissemination to the Board, the information regarding the work on Business Principles by the World Economic Forum, in which TI is playing a part.

5. **Governance and Nominating Committee (GNC) Report**

▪ **Advisory Committee**

The Board **agreed** to the following recommendations from the GNC:

That TI-Canada engage the Charter Members around significant issues, one example being the Strategy Plan. It was **agreed** that:

- a) A letter be sent from **Dr. Cragg** to the Charter Members, asking them to comment on the TI-Canada Strategy Plan.
- b) The letter would be followed up by a **telephone call**, asking the Charter Members how they would like to make their comments.
- c) The Charter Members will be **gathered together** to focus on significant issues in the Strategy Plan, such as the corruption survey, to obtain their input.

▪ **Governance Issues**

The Board **agreed** to the following recommendations of the GNC:

- a) To each agenda of the GNC and the Board should be added the item, “In camera session, if required.” If necessary, issues related to any of the Directors or the National Coordinator can be discussed at this time, and the individual concerned will be asked to leave the room.
- b) This policy is to be added to the TI-Canada Governance Guidelines.

▪ **Leadership Renewal/Committee Membership**

The Board **agreed** with the GNC that it is important that both the Chair and other Board Directors are aware of what a Board Member is doing on behalf of TI-Canada and to have input into what the Member is doing. Most Committee members feel they have enough discretion and autonomy and feel it is natural for the Chair to have a certain amount of control and important for TI-Canada to move together as a collective. The onus is on **Directors** to keep the National Coordinator and the Chair informed of TI-related activities. If a Director is speaking on behalf of TI-Canada or if an issue is contentious, **the Director** should discuss these activities with the Chair. It was **agreed** that any TI-Canada report written by a member of the Board or anyone acting at the direction of the Board or the Chair of the Board should be reviewed by the Chair before it is circulated outside the Board. Rules regarding non-board members speaking on behalf of TI-Canada should be considered at a **future Board Meeting**. **David Selley** volunteered to draw up a recommendation regarding a clear description of functions of the Directors, when:

- a) they were speaking on behalf of the Board; and
- b) not speaking on behalf of the Board but on behalf of another organization involved in the bribery issue (e.g. Michael re OECD)
- c) not speaking on behalf of the Board but expressing a personal view on a corruption related matter.

Mr. Selley also committed to suggesting a discretionary amount to ensure out of pocket costs of Directors are covered, in a revised 2004 budget, to be presented at the next Board Meeting.

▪ **Succession Planning**

As per the GNC meeting Notes, Tom Goldie will be reconvening the Board. Dr. Cragg noted that one learns the role of the Chair/President on the job – it is a challenging opportunity. A number of suggestions were made (for example, create a position of Executive Director and eliminate that of President, create a search committee, follow the model of trade associations of “working up the ranks” through committee member, committee chair, vice-chair and chair), which will be taken up at the next meeting of the **GNC**. **Ms. Best** was tasked with finding out how some of the other National Chapters, of comparable size, are structured.

6. **TI-Canada Strategic Plan**

Ms. Best was tasked with finding out the definition of “corruption” used by TI-S. It was **agreed** that the Glossary would stand apart from the Strategic Plan and needs to be developed. Work on this will be a distinct task. Directors may provide suggestions for definitions. **Ian Marshall** volunteered to work with **Peggy Cunningham** and **Anita Davis**. **Ms. Best** is to send the TI Principles to Mr. Marshall. **Mr. McWilliams** is to send the UN Convention against Corruption to Mr. Marshall. The Board **approved** the TI-Canada Strategic Plan as circulated, in principle. It will go through a further refinement process. **All Board Members wishing to comment** are to send comments to **Ms. Best**. **Ms. Davis** is to take the lead on refinement, working with **Dr. Cragg** and **Ms. Best**. It was noted that **Ms. Best** will produce a Strategic Plan Implementation, i.e., what TI-Canada is doing, which will be attached to the Strategic Plan as an appendix. (NB: P. K. Pal had to sign off before the discussion of this item.)

7. **Approval of Minutes of 26 September 2003 Board Meeting**

Moved by Mr. Davies and **seconded** by John Willson to accept the Draft Minutes of the 26 September 2003 Board Meeting, as amended. **Carried.**

8. **Business arising from Minutes**

▪ **The Jeremy Pope contract – further action?**

Jeremy Pope has withdrawn his complaint to the TI Ethics Committee.

▪ **International corporate governance issues – next steps?**

Clare Bonnell and **Mr. Davies** have agreed to form a sub-committee of the GNC, with **Ms. Bonnell**, as Chair, to review what governance issues TI-Canada wishes to raise with TI-S.

▪ **Vancouver University letter**

It was **agreed** that the letter, as it appears in the Background Notes, would be sent to Vancouver University, along with another cheque.

9. **Correspondence**

There was nothing on this subject, further to the Background Notes.

10. **Treasurer’s Report**

▪ **As of 31 October 2003**

Ms. Best reported, subsequent to the financials being sent out, that word had been received from Export Development Canada, regarding their \$2,000 donation. EDC’s

lawyers have deemed the donation is to be made every term that Dr. Cragg serves on the Advisory Committee, i.e., every two years, so a donation will not be received in 2003.

▪ **Draft Working Budget 2004**

Ms. Best reported that CIDA is creating new guidelines re. their strengthening aid effectiveness principles. We have been asked to hold our application for further grant funding, until these guidelines have been finalized. CIDA has noted they will probably move away from core funding, which will have an effect on the Draft Working Budget 2004.

11. National Coordinator Contract

Ms. Best was thanked for her contribution and commitment. **Moved** by Mr. Selley and **seconded** by Mr. Marshall to renew the National Coordinator contract with Ms. Best for another year. **Carried.** It was **agreed** to discuss the TI-Canada Newsletter, at the next Board Meeting. It was also **agreed** that any communication or personnel concerns, on the part of the National Coordinator, should be referred to the GNC.

12. Other Business

▪ **Charitable Status**

Dr. Cragg is to speak with **Peter Harris** regarding whether or not to drop the attempt to gain charitable status or to keep at it.

▪ **Theme Suggestions for TI-Canada 2004 Symposium**

Two suggestions were made:

- a) UN Convention against Corruption;
- b) Corruption in the Municipal Sector – a university and/or the Federation of Canadian Municipalities might be very interested in co-hosting; have Mr. Simpson present his findings; Derek Elliott of the U.K. would be a good speaker; investigate what the UN has to say about municipal corruption; might draw in those who might fund the TI-Canada Municipal Corruption Survey – could lead to “partnerships”.

This will be discussed more fully at the next Board Meeting.

13. Next Board Meeting

It was **agreed** the next Board Meeting would be Friday, 6 February 2004, 11:30 – 14:30, EST.

14. Discussion on Report of National Coordinator

Moved by Ms. Bonnell and **seconded** by Mr. Selley to accept Robert and Margaret Anglin as Individual Members. **Carried.** It was **agreed** that, when the membership cheque from Public Works and Government Services Canada arrived, it could be immediately deposited.

15. Report of Chair and President

Dr. Cragg noted there was a lot of media interest in the 2003 CPI, and he had done a number of interviews; he continues to do a lot of work with the TI-S Ethics Committee, with issues surrounding Mr. Pope and governance issues. As per the 26 September 2003 Minutes, the Board may be hearing from **Dr. Cragg** in a couple of weeks, regarding recommending a course of action regarding the issue of Mr. Pope.

16. Report of Vice-Chair

Mr. Davies noted his meeting in Paris (see Item 4, including Background Notes). It was generally **agreed** that Huguette Labelle would be invited to attend a full TI-Canada Board Meeting, later in 2004.

17. Reports from Board Members on TI-Canada related activities

Ms. Davis reported she had spoken at the University of Waterloo Academic Council for United Nations Systems Annual Workshop. This workshop addressed the themes of the World Summit for Information Systems, to be held in Geneva, in December, and Ms. Davis presented recent achievements of TI in the last three years.

18. Other Business

It was **agreed**, when e-mail messages are sent for action, they should say “For Action” in the subject line, along with the subject.

APPENDIX

TI-CANADA LETTER TO MEMBERS –October 2003

Bold text indicates that fact-checking is necessary.

As you may know, in September, a Lesotho court upheld on appeal one of the two bribery charges on which Acres International Inc. (Acres) was found guilty approximately one year earlier. Transparency International Canada (TI-Canada), the Canadian National Chapter of the only non-governmental organization solely dedicated to the curbing of corruption, urges the Canadian business community, and government organizations involved in financing international business, to take careful note of the very serious consequences of being implicated in foreign bribery.

The Acres conviction in Lesotho relates to a very large, World Bank funded, public works project in the 1980s and early 1990s – The Lesotho Highlands Water Project. Masupha Sole, the CEO of the project, and a Lesotho civil servant, was earlier found guilty of accepting bribes. Then Acres, a leading Canadian consulting engineering company, was found guilty of having used a local agent to bribe Sole. **Other companies** also face similar charges in connection with this project.

Comment [WC1]: David, I don't think we have an obligation to communicate Acres denial of guilt. And if we do, I suggest that it go in a footnote.

TI-Canada believes that it is important that lessons be learned about the risks of conducting business in developing countries where bribery is believed to be common.

Comment [WC2]: Making this a new paragraph will make it more visible.

Companies should, of course, not pay bribes, directly or indirectly to further their business interests. Further, since February 14, 1999, the bribery of foreign public officials has been a criminal offence in Canada, bringing severe penalties by way of fines and imprisonment on the offender. Had the bribes relating to the Lesotho project been paid after 1999, Acres could have been prosecuted in Canada, assuming that law enforcement authorities believed that they had sufficient evidence.

TI-Canada believes there are important messages from this conviction that all involved should heed:

Comment [WC3]: This is not entirely accurate. The EDC did not look into the Lesotho case to the best of my knowledge. They may have audited contracts involving other loans to Acres. The World Bank did examine the case. Their conclusion was that there was not sufficient evidence to conclude that Acres had bribed Sole. Acres insists that all the evidence available to the court was available to the World Bank. This is hotly disputed by the Prosecutor of Acres in Lesotho. I believe it is also questioned by World Bank people familiar with the case. I am not certain about the latter.

1. Foreign jurisdictions have started to push for bribery convictions of companies they believe to have paid bribes to their government officials. Even if they have no intention of paying bribes, companies may find themselves in a position where they are accused of having done so. There are measures that can be taken to minimize this risk.

2. Companies should have a clear policy against paying bribes. Even more importantly, steps should be taken to ensure that every employee and agent is aware of this policy. Anti bribery training programs for those engaged in foreign business transactions should be provided and participation required. Processes should be put in place to require constant reporting by those in a position to pay bribes that they have not, and will not, do so. A senior officer of the company should be charged with the responsibility for ensuring that the company does not participate in bribery and corruption, or put itself in a position where it can be accused of turning a blind eye to it. This officer should review every foreign contract, looking for suspicious aspects of it, and should have the authority to demand changes. He or she should take steps to find out as much as possible about local business and political circumstances in the countries concerned. A company should also have an effective “whistle-blowing” policy that requires employees to bring their concerns about bribery to the attention of, say, the senior officer mentioned above, and ensures they will not suffer discrimination for doing so.

3. The use of local agents is frequently essential to effectively manage a project in a foreign country. However, experience tells us that agents do pay bribes to further the company’s interest sometimes without the company’s knowledge. TI-Canada urges companies that use local agents to specifically prohibit them from paying bribes and take steps to demonstrate that they are serious in order to reduce the risk of a bribe being paid by their agents without the companies’ knowledge or concurrence, Companies should keep fees to amounts that are reasonable in relation to international norms and the services rendered and, if in doubt, demand a strict accounting from agents of their use of funds provided. In high-risk parts of the world, companies should write an express provision in their contracts with agents retaining the right to conduct an audit of the disposition of fees paid.

4. The Lesotho cases indicate that agent fees were paid into numbered Swiss bank accounts. Companies should recognize that paying agents (or anyone else) through numbered off-shore bank accounts may expose them to suspicions that they are aiding inappropriate conduct by the recipient. It is also a troublesome practice in its own right, since companies in such circumstances do not know the identity of the owners of the accounts and therefore who really received the funds. Agents should be paid in the country in which they are being employed to provide services using normal banking procedures. If the situation in any country is so unsafe or chaotic that normal banking processes do not exist, companies may wish to ask themselves whether the risks of doing business in such environments are worth taking. If payments must be made in other jurisdictions, they can be made in reputable countries without unusual banking secrecy laws.

Comment [WC4]: This need to be stronger. I think TI should be taking a strong stand on these issues. Requiring audits for expenditures particularly in areas of high concern is surely not to ask too much.

Comment [WC5]: To proceed the recommendation with a qualification weakens it considerably. I don;t think you need this qualification. What you say in the rest of the paragraph covers off the problem you are getting at here.

TI-Canada hopes that, as a result of the Lesotho cases, the potential financial costs of defence and the reputational injury suffered against charges of corruption will be seen as powerful motivation for companies to take extraordinary care in their dealings with

the local agents they engage to look after their interests, particularly in countries where bribery is believed to be pervasive.

In short, if the original convictions in 2002 were a wake-up call for Canadian business, the appeal decision is a second alarm.

Corruption is a serious impediment to international development. TI-Canada's web site (www.transparency.ca) provides information about bribery and corruption. TI-Canada also provides assistance to companies requiring information on avoiding bribery and corruption.

The Lesotho judgment concerning Sole may be found at www.odiousdebts.org/odiousdebts/publications/CullinanJSoleJudgement.pdf; the judgment concerning Acres may in due course appear on the same site. The Acres response to the judgment may be found on their web site at www.acres.com/indexnew.html. **[This paragraph needs updating]**

W. CRAGG, CHAIR AND PRESIDENT, TI-CANADA