

CANADA
RESPONSE TO THE QUESTIONNAIRE
MESICIC – FOURTH ROUND OF REVIEW
JUNE 2013

Report prepared by Transparency International Canada
submitted on behalf of civil society

SECTION I

**QUESTIONS ON IMPLEMENTATION OF THE CONVENTION PROVISION
SELECTED FOR REVIEW IN THE FOURTH ROUND**

**OVERSIGHT BODIES, WITH A VIEW TO IMPLEMENTING MODERN
MECHANISMS FOR PREVENTING, DETECTING, PUNISHING, AND ERADICATING
CORRUPT ACTS (ARTICLE III, PARAGRAPH 9, OF THE CONVENTION)**

A) Oversight bodies:

- Royal Canadian Mounted Police (“**RCMP**”)
- Public Prosecution Service of Canada (“**PPSC**”)
- Foreign Affairs and International Trade Canada (“**DFAIT**”)
- Ontario Securities Commission (“**OSC**”)
- Provincial/municipal police forces
- Provincial Crown Attorneys offices
- Provincial securities commissions
- Supreme federal and provincial audit institutions
- Export Development Canada
- Canadian International Development Agency
- Canada Revenue Agency
- Department of Justice Canada
- Canadian Commercial Corporation
- Public Works and Government Service Canada

B) Selected oversight bodies

1. RCMP
2. PPSC
3. DFAIT
4. OSC

C) Profiles of selected oversight bodies

1. RCMP

- i. Objectives and functions

- a) Enforcement of Canada's laws relating to the corruption of foreign public officials is specifically referenced in the mandate of the RCMP Commercial Crime Program (<http://www.rcmp-grc.gc.ca/ccb-sddc/index-eng.htm>).¹ Current RCMP policy specifically identifies the *Corruption of Foreign Public Officials Act* (Canada) (“CFPOA”) as a responsibility of the Commercial Crime Branch. The RCMP has the capability to track CFPOA cases that it handles and expects that credible allegations reported to other law enforcement agencies or other Canadian officials, including those in foreign missions, will continue to be reported through the RCMP. Pending amendments to the CFPOA will grant to the RCMP exclusive authority to lay charges under the CFPOA. Decisions about whether to undertake prosecution services are made by prosecution services, including the PPSC and possibly the provincial Crown Attorneys offices.

- b) Within the Commercial Crime Branch, the RCMP established in April 2008 the International Anti-Corruption Unit (the “IACU”) (<http://www.rcmp-grc.gc.ca/ccb-sddc/international-corrup-eng.htm>), comprised of two seven-person teams based in Ottawa and Calgary, respectively. The unit is charged with investigating allegations that a Canadian person or business has bribed, offered or agreed to bribe a foreign public official, allegations that a foreign person has bribed a Canadian public official that may have international repercussions, and allegations that a foreign public official has secreted or laundered money in, or through, Canada. The IACU also deals with requests for international assistance. The RCMP provides functional oversight of the unit and anti-corruption enforcement activities through a commissioned officer at RCMP National Headquarters. The Ottawa-based IACU team services the eastern region of the country, while the Calgary-based IACU team services the western region.

- c) On June 3, 2013, the RCMP launched the new National Division based

¹ Provincial and municipal police forces, in conjunction with the RCMP, have the authority to lay charges under the anti-bribery and anti-corruption provisions of the *Criminal Code* (Canada). Such provisions, rather than those of the CFPOA, apply to corruption involving Canadian government officials. No aggregate data is publicly available for investigations or charges laid by the various provincial and municipal police forces related to corrupt acts involving Canadian government officials.

in Canada's National Capital Region. The National Division has a dual mandate, one of which is to focus its expertise in sensitive, high risk investigations into significant threats to Canada's political, economic and social integrity. The integrity of the political system is understood to include investigations into the corruption of Canadian officials, foreign officials and contracting and procurement processes. It is unclear at present how the creation of the new National Division will affect the organization of and resource allocation to the existing IACU teams. [RCMP representatives have indicated that resources dedicated to international anti-corruption efforts will continue at levels not less than the levels currently provided to such efforts.]

ii. Scope of functions

- a) The IACU investigates allegations of international corruption in accordance with the *Criminal Code* (Canada) and the CFPOA.
- b) The IACU (or other similar structure within the RCMP tasked with similar responsibilities) focuses on detecting, investigating and preventing international corruption, including bribery, embezzlement and money laundering. Their main goal is to target public sector corruption.

1. Investigations:

- a. To investigate matters concerning the corruption of foreign public officials by a Canadian person or business
- b. To investigate matters concerning the corruption of domestic public officials by a foreign person or business
- c. To investigate matters in accordance with Canadian obligations under mutual legal assistance treaties

2. Prosecution:

- a. Preparation for and participation in court processes
- b. Actual prosecution is done by the PPSC (or possibly, on request from the PPSC, provincial Crown Attorneys offices)

3. Prevention:

- a. Participation in government training programs to educate personnel in international trade/relations
- b. Awareness presentations made to business sector members operating internationally

4. Detection:

- a. Proactive investigations derived from intelligence
- iii. Decision procedures
 - a) No relevant information is publicly available.
- iv. Senior officer procedures
 - a) The RCMP provides functional oversight of the IACU and anti-corruption enforcement activities through a commissioned officer at RCMP National Headquarters.
- v. Human resources procedures
 - a) No relevant information is publicly available.
- vi. Manuals and training
 - a) The RCMP includes the issue of foreign bribery generally and the CFPOA, in particular, in its training of all RCMP liaison officers before they depart for overseas assignments. While the RCMP is an enforcement body, specific reference to the corruption of foreign public officials in the Commercial Crime Program mandate is intended to raise awareness of this responsibility among investigators. To this end, the IACU has participated in numerous anti-corruption awareness programs and training. In addition, orientation manuals have been completed for the IACU covering the CFPOA and the various contacts and their roles.
- vii. Procedures
 - a) Orientation manuals have been completed for the IACU covering the CFPOA and the various contacts and their roles. The establishment in 2010 of a logic model and measurements for the IACU complements these training efforts and promotes the unit's work.
 - b) The IACU has also established contacts within the Department of Justice's International Assistance Group to ensure that priority is given to requests for mutual legal assistance in corruption matters. Similarly, the RCMP continues to prioritize the establishment of procedures and mechanisms for information sharing within the Canadian government about suspected cases of corruption.
- viii. Information provision
 - a) The RCMP includes information on the IACU and its mandate on the RCMP's internal and external websites (<http://www.rcmp-grc.gc.ca/ccb-sddc/index-eng.htm>). Notably, the RCMP headlines International Anti-Corruption Day on its website. The RCMP also reaches out to the media to discuss the Force's work, which has promoted awareness of RCMP activities to prevent and combat corruption.

- b) In an effort to raise awareness of the work they do, members of the IACU teams have identified at-risk companies and have approached them to offer education and guidance. They have also attended and made presentations at several local and international conferences and workshops. As well, a flyer and a poster were developed and distributed to the public, both in Canada and abroad, to further publicize the work of the IACU.
- c) To report an offence under the CFPOA the RCMP can be reached at 613-993-6884 (east) or 403-699-2550 (west), or through the RCMP's Reporting Economic Crime On-Line website.

ix. Internal control mechanisms

- a) No relevant information is publicly available.

x. Budgetary resource acquisition

- a) No relevant information is publicly available.

xi. Coordination mechanisms

- a) Legislation currently before Parliament proposes to grant to the RCMP exclusive authority to lay charges under the CFPOA.
- b) Due to the specialized nature of its work, the RCMP complements its training by developing educative resources for external partners. In this respect, the RCMP has developed information pamphlets and posters describing the RCMP's work and the negative effects of corruption for distribution and presentation to DFAIT's Canadian missions abroad.
- c) The RCMP makes presentations to external stakeholders, including: presentations by representatives from RCMP National Headquarters to local universities, non-governmental organizations, banks, Trade Commissioners, industry groups and international associations of experts and professionals; and presentations by the IACU to targeted companies conducting business in other countries, law firms, government partners, Canadian professional associations, and the Foreign Corrupt Practices Act "Boot Camp" hosted by the United States in Washington, D.C.

xii. Accountability mechanisms

- a) The steps taken by the RCMP to combat foreign bribery are included in DFAIT's annual report to the Parliament of Canada on the implementation of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and the enforcement of the CFPOA.

2. PPSC

i. Objectives and functions

- a) The PPSC prosecutes criminal offences under federal statutes, including the CFPOA, on behalf of the Attorney General of Canada. To ensure a standard approach to the prosecution of offences under the CFPOA, the PPSC has established a subject-matter expert position located in Ottawa for international corruption cases. The subject-matter expert has developed linkages with the IACU and with other key government interlocutors involved with the enforcement and development of the CFPOA.
- ii. Scope of functions
 - a) The PPSC is the sole prosecuting entity for offences under the CFPOA.
- iii. Decision procedures
 - a) After the RCMP complete an investigation, often in consultation with the PPSC, the PPSC is then in complete control of the prosecution. They will continue with a prosecution so long as there is a reasonable prospect of conviction.
- iv. Senior officer procedures
 - a) No relevant information is publicly available.
- v. Human resources procedures
 - a) No relevant information is publicly available.
- vi. Manuals and training
 - a) Internally, training in relation of the CFPOA has been provided to designated contacts in each of the PPSC's regional offices. These contacts, who are generally senior prosecutors, act as local points of contact and coordinators in relation to CFPOA matters as they arise for prosecution. In addition, presentations have been made to the PPSC's Regional Directors in order to increase awareness of the OECD Convention, the CFPOA and the current activities of the RCMP and the PPSC in this area.
 - b) Other training and outreach efforts are ongoing, including the development of an internal website dedicated to CFPOA matters which will be made available to all federal prosecutors.
- vii. Procedures
 - a) An internal website dedicated to CFPOA matters is being developed which will be made available to all federal prosecutors.
- viii. Information provision

- a) No relevant information is publicly available.
- ix. Internal control mechanisms
 - a) No relevant information is publicly available.
- x. Budgetary resource acquisition
 - a) No relevant information is publicly available.
- xi. Coordination mechanisms
 - a) The subject-matter expert for international corruption has developed linkages with the RCMP International Anti-Corruption Unit and with other key government interlocutors involved with the enforcement and development of the CFPOA.
- xii. Accountability mechanisms
 - a) PPSC Complaints Policy is available at <http://www.ppsc-sppc.gc.ca/eng/bas/cmp-pln.html>

3. DFAIT

- i. Objectives and functions
 - a) DFAIT's Trade Commissioners and other personnel at Canadian missions work closely with Canadian companies doing business abroad through the provision of a wide range of services and support. In this respect, Trade Commissioners play a key role in the prevention of foreign bribery through making Canadian clients aware of their obligations under the CFPOA, and through the active promotion of Corporate Social Responsibility (CSR).
 - b) When allegations of bribery by Canadians or Canadian companies are made to Canadian missions abroad, High Commission and embassy personnel have reporting obligations pursuant to the Policy and Procedure for Reporting Allegations of Bribery Abroad by Canadians or Canadian Companies.
- ii. Scope of functions
 - a) No relevant information is publicly available.
- iii. Decision procedures
 - a) No relevant information is publicly available.
- iv. Senior officer procedures
 - a) No relevant information is publicly available.

- v. Human resources procedures
 - a) No relevant information is publicly available.
- vi. Manuals and training
 - a) DFAIT provides information and training for its Heads of Mission, Trade Commissioners, and Political Officers on the CFPOA and Canada's international obligations to prevent and combat corruption. For such training DFAIT includes a mandatory, comprehensive four-day training course called "The Global Learning Initiative for Commercial/Economic Staff Abroad" (GLI-2), which was developed by the Trade Commissioner Service (TCS) Renewal Division and is delivered numerous times per year to recent hires. In this course, participants are informed of their responsibilities regarding the CFPOA, and Trade Commissioners participate in exercises where they apply TCS core values. Over 1400 DFAIT Commercial/Economic staff abroad have participated in the GLI-2 course since 2005.
 - b) The Trade Commissioner Service's CSR online training course also includes a CFPOA component which details employee obligations and reporting procedures.
 - c) In addition, the Values and Ethics pre-posting presentation refers to the CFPOA and to DFAIT's Policy and Procedure for Reporting Allegations of Bribery Abroad by Canadians or Canadian Companies. This reference is also part of the Values and Ethics presentations to various stakeholders under the section covering the *Public Servants Disclosure Protection Act*.
- vii. Procedures
 - a) In March 2010, DFAIT adopted the Policy and Procedure for Reporting Allegations of Bribery Abroad by Canadians or Canadian Companies, which instructs Canadian missions, including High Commission and embassy personnel, on the steps that must be taken where allegations arise that a Canadian company or individual has bribed a foreign public official or other bribery-related offences. Under this policy, information in the possession of DFAIT officials is sent to DFAIT Headquarters and passed on to law enforcement in accordance with the established procedures.
- viii. Information provision
 - a) The DFAIT website includes a Trade Topic on "Bribery and Corruption" (<http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/index.aspx?lang=eng>).
 - b) DFAIT officials chaired a workshop entitled "New Ideas for Canada's Fight Against Foreign Bribery" in January 2012

- c) DFAIT organizes CSR seminars in various regions of the world, which include a specific focus on the CFPOA, and also speak at anti-corruption seminars/conferences held by other organizations, such as Transparency International Canada.
- d) The TCS Support Division's CSR E-Bulletin (available at <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr.aspx?lang=eng>) and CanadExport, the official e-magazine of the TCS (see, for example, the article "Canada cracks down on bribery" at <http://www.tradecommissioner.gc.ca/eng/canadexport/document.jsp?did=140958>), provide updates to government partners on efforts to enforce and bring awareness of the CFPOA.
- e) DFAIT legal experts also made presentations and actively participated on panels raising awareness to Canada's anti-corruption activities, including giving a presentation at the 2011 Conference of States Parties to the *UN Convention Against Corruption* about legal mechanisms for freezing assets of corrupt foreign officials and combating the bribery of foreign public officials.

ix. Internal control mechanisms

- a) No relevant information is publicly available.

x. Budgetary resource acquisition

- a) No relevant information is publicly available.

xi. Coordination mechanisms

- a) DFAIT is responsible for coordinating Canada's whole-of-government approach to meeting its international anti-corruption obligations.

xii. Accountability mechanisms

- a) As required pursuant to the CFPOA, DFAIT makes an annual report to the Parliament of Canada on the implementation of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and the enforcement of the CFPOA. Such annual reports are available through the DFAIT website at <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/>.

4. OSC

i. Objectives and functions

- a) The Ontario Securities Commission (OSC) is an independent Crown corporation that is responsible for regulating the capital markets in Ontario. The statutory mandate of the OSC is:

To provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

- b) The OSC strives to contribute to the health and performance of Ontario's economy by using its rule-making and enforcement powers to help safeguard investors, deter misconduct and regulate participants involved in capital markets in Ontario. The OSC regulates firms and individuals who sell securities and provide advice in Ontario. They also regulate public companies, investment funds and marketplaces, such as the Toronto Stock Exchange. The OSC has no mandate specific to foreign corruption.

ii. Scope of functions

- a) The OSC has two related but independent roles. It serves as the board of directors of the Crown corporation and it performs a regulatory function, which includes making rules and policies, and adjudicating administrative proceedings.
- b) Six of the Commission's branches are responsible for administering or enforcing regulations: Compliance & Registrant Regulation, Corporate Finance, Derivatives, Enforcement, Investment Funds and Market Regulation. The remaining branches and offices provide support across a range of functions.
- c) Specifically, the Operating branch responsibilities are as follows.
 1. Compliance & Registrant Regulation – responsible for regulating firms and individuals who are in the business of advising or trading in securities or commodity futures, and firms that manage investment funds in Ontario.
 2. Corporate Finance – responsible for regulating reporting issuers other than investment funds and for leading issuer-related policy initiatives. The OSC establishes the regulatory framework for securities offerings in the public and exempt markets, as well as take-over bids, and we monitor compliance through ongoing reviews.
 3. Derivatives – responsible for developing a regulatory framework for over-the-counter derivatives trading in Ontario.
 4. Enforcement – responsible for investigating and litigating breaches of the Securities Act (Ontario) and seeking orders in the public interest before the Commission and the courts.
 5. Investment Funds – responsible for regulating investment products that offer securities for sale to the public in Ontario, including mutual funds, exchange-traded funds, structured

products and scholarship plans.

6. Market Regulation – responsible for regulating market infrastructure entities (including exchanges, alternative trading systems, self-regulatory organizations and clearing agencies) in Ontario and for developing policy relating to market structure and clearing and settlement.

iii. Decision procedures

- a) Although structured as a corporation, the Commission is a regulatory body and its purpose is mandated by statute. The *Securities Act* establishes the Commission's role in regulating capital markets, sets out the fundamental principles that the Commission shall have with regard to overseeing the administration and enforcement of the Act, and outlines the basic governance and accountability structure for the Commission. The Commission is accountable to the Minister responsible for securities regulation and, through the Minister, to the Ontario Legislature. Every five years the Commission enters into a Memorandum of Understanding (MOU) with the Minister. The MOU sets out the accountability relationship between the Commission and the Minister, the Board of Directors and the Minister, and the Chair and the Minister; and, describes the respective roles and responsibilities of the Minister, the Deputy Minister, the Chair, the Members, and the Executive Director. The MOU also specifies that the Commission is required to provide the Minister with an annual report and an annual business plan.

iv. Senior officer procedures

- a) No relevant information is publicly available.

v. Human resources procedures

- a) No relevant information is publicly available.

vi. Manuals and training

- a) There is no known specific training in respect of foreign corruption.

vii. Procedures

- a) The OSC investigates alleged breaches of Ontario securities law, such as misleading disclosure (including inaccurate reporting of transactions in a company's books of account), abusive trading practices and illegal insider trading. If an individual or company contravenes securities law, the OSC can initiate an enforcement proceeding against them. These types of cases are heard by an administrative panel of Commissioners who act as independent adjudicators. They have the power to impose sanctions, such as banning individuals from leadership roles in public companies, and ordering firms and individuals to pay a penalty. In certain cases, provincial securities legislation also gives the OSC the

authority to prosecute accused wrongdoers through the Ontario courts, which can impose jail terms as a possible sanction.

viii. Information provision

- a) The OSC works with other securities regulators to share intelligence and provide assistance in investigations of alleged cross-border misconduct. The OSC receives and shares enforcement-related information under several memoranda of understanding (MOUs) with securities regulators from around the world. The IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMOU), signed by more than 80 IOSCO members representing approximately 90 per cent of the world's capital markets, is a key instrument in advancing international co-operation on enforcement matters.

ix. Internal control mechanisms

- a) No relevant information is publicly available.

x. Budgetary resource acquisition

- a) There is no known budget specific to foreign corruption issues.
- b) The OSC is a self-funded Crown corporation, accountable to the Ontario Legislature through the Minister of Finance.

xi. Coordination mechanisms

- a) The OSC contributes to the international securities regulatory agenda by actively participating in international organizations such as the International Organization of Securities Commissions (IOSCO), the international Joint Forum, the North American Securities Administrators Association (NASAA) and the Council of Securities Regulators of the Americas (COSRA).
- b) The OSC's international activities are focused on developing financial stability standards and on information-sharing information and co-operation on cross-border enforcement initiatives. Financial stability and enforcement are two key areas where collaboration with international partners is critical for protecting the interests of investors and the integrity of our markets.

xii. Accountability mechanisms

- a) The Commission is accountable to the Minister responsible for securities regulation and, through the Minister, to the Ontario Legislature.
- b) The Statement of Governance Practices is a report on the governance initiatives undertaken by the Commission in a specific fiscal year. The Statement is intended to supplement the discussion of the governance of

the Commission which is contained in the OSC Annual Report.

D) Results

1. RCMP

i. Prevention

- a) The RCMP headlines International Anti-Corruption Day on its website.
- b) The RCMP also reaches out to the media to discuss the Force's work, which has promoted awareness of RCMP activities to prevent and combat corruption.
- c) Members of the IACU teams have identified at-risk companies and have approached them to offer education and guidance, as well as attended and made presentations at several local and international conferences and workshops.
- d) A flyer and a poster were developed and distributed to the public, both in Canada and abroad, to publicize the work of the IACU.
- e) The RCMP has developed information pamphlets and posters describing the RCMP's work and the negative effects of corruption for distribution and presentation to DFAIT's Canadian missions abroad.
- f) The RCMP has made presentations to external stakeholders, including: presentations by representatives from RCMP National Headquarters to local universities, non-governmental organizations, banks, Trade Commissioners, industry groups and international associations of experts and professionals; and presentations by the IACU to targeted companies conducting business in other countries, law firms, government partners, Canadian professional associations, and the Foreign Corrupt Practices Act "Boot Camp" hosted by the United States in Washington, D.C.

ii. Detection

- a) There are currently 35 ongoing investigations under the CFPOA.
- b) There have been two convictions under the CFPOA in the last five years.
- c) There are two cases in which charges have been laid but not yet concluded.
- d) Information on the number of investigations that have been suspended is not available. At least one investigation that was initiated in response to a complaint made to the RCMP was closed on the basis of the review by the RCMP of the results of the subject company's own internal investigation.

- iii. Punishment
 - a) Not applicable.

- iv. Monetary Sanctions
 - a) Not applicable.

2. PPSC

- i. Prevention
 - a) Not applicable.

- ii. Detection
 - a) Not applicable.

- iii. Punishment
 - a) There have been four cases investigated under the CFPOA that were ready for a decision in the past five years.
 - b) There have been two cases under the CFPOA in which decisions were adopted; two other cases are before the Canadian courts.
 - c) There have been two cases under the CFPOA in which penalties were imposed; in no cases were acquittals found or no penalties given.

- iv. Monetary Sanctions
 - a) \$19.85 million in monetary sanctions have been imposed and entered into the public treasury in the past five years. for violations of the CFPOA.
 - b) The aggregate amount of monetary sanctions imposed under Criminal Code (Canada) offences related to bribery, fraud or other types of corruption, if any, is unknown.

3. DFAIT

- i. Prevention
 - a) DFAIT officials chaired a workshop entitled “New Ideas for Canada’s Fight Against Foreign Bribery” in January 2012. DFAIT organizes CSR seminars in various regions of the world, which include a specific focus on the CFPOA.
 - b) The TCS Support Division’s CSR E-Bulletin (available at <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr.aspx?lang=eng>) and CanadExport, the official e-magazine of the TCS (see, for example, the article “Canada cracks

down on bribery” at <http://www.tradecommissioner.gc.ca/eng/canadexport/document.jsp?did=140958>), provide updates to government partners on efforts to enforce and bring awareness of the CFPOA.

ii. Detection

- a) Information on the number of allegations of bribery by Canadian companies or officials that have been passed on to the RCMP is not available.

iii. Punishment

- a) Not applicable.

iv. Monetary Sanctions

- a) Not applicable.

4. OSC

i. Prevention

- a) The primary means for achieving the purposes of the Act are,
1. requirements for timely, accurate and efficient disclosure of information,
 2. restrictions on fraudulent and unfair market practices and procedures, and
 3. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.
- 4. Effective and responsive securities regulation requires timely, open and efficient administration and enforcement of this Act by the Commission.**

- b) The OSC announced on July 5, 2011, the commencement of a regulatory review of selected emerging market issuers involving Canadian public companies of significant business operations in emerging markets **[issuers whose mind and management are largely outside of Canada; and issuers whose principle act of operations are outside of operation, and regions such as Asia, Africa, South America and Eastern Europe]**. The culmination of this project was Staff Notice 51-720 Issuer Guide for Companies Operating in Emerging Markets.

ii. Detection

- a) Section 19 of the *Ontario Securities Act* requires reporting issuers to keep appropriate books and records. OSC Staff Notice 51-720 reminds Boards that they should have effective access as needed to these books and records and should consider what mechanisms are in place to ensure that this happens.
- b) Securities legislation requires a company to describe its business and operations. A company's annual information form ("AIF") must include, among other things, disclosure about the company's principal markets, competitive conditions, economic dependence on significant contracts, and dependence on foreign operations. A company's management discussion and analysis ("MD&A") is also required to discuss events or uncertainties that are reasonably likely to have an effect on the company's business, and industry and economic factors affecting the company's business. For companies operating in emerging markets the notice emphasizes disclosure should highlight the challenges and risks of operating in emerging markets.
- c) National Policy 58-201 Corporate Governance Guidelines state that a company's board of directors should adopt a written mandate in which it explicitly acknowledges responsibility for, among other things, the identification of principal risks of the company's business and oversight of the implementation of appropriate systems to manage these risks. The staff notice specifically emphasizes that a risk of operating in an emerging market includes the risk of corruption and bribery (including possible prosecution under the CFPOA).
- d) The external auditor is an important gatekeeper that investors rely on to ensure that a company's financial statements are fairly presented. As stated in NI-52-110, a company's audit committee is directly responsible for overseeing the work of the external auditor, including the resolution of any disagreements between management and the external auditor regarding financial reporting. Under NI 52-110, the audit committee should enquire about and evaluate the external auditor's approach in auditing the areas that present risks specific to the company, and understand how the auditor fulfilled its responsibility to obtain sufficient appropriate audit evidence in these areas of risk.
- e) On June 12, 2013, Canada's Prime Minister announced that the Canadian government will establish new mandatory reporting standards for Canadian extractive companies with a view to enhancing transparency on the payments they make to governments, both nationally and internationally. These new reporting standards are in keeping with a focus among G-8 nations on transparency and will ensure Canada's reporting framework is aligned with other G-8 countries. Though the precise nature of the new reporting regime will be developed in consultation with provincial and territorial counterparts, First Nations and Aboriginal groups, industry and civil society organizations, the regime may be implemented, at least in part, through Canadian securities laws, thereby falling within the scope of activity of provincial and territorial securities regulators, including the

OSC.

iii. Punishment

- a) Material misrepresentations can be prosecuted as an offence in the Ontario Court of Justice pursuant to s.122 of the Act which provides for a period of incarceration for a term of not more than five years less a day.
- b) Where the matters proceed before the Commission, pursuant to s.127, the Commission may make one or more of the following orders if in its opinion it is in the public interest to make the order or orders:
 - i. An order that the registration or recognition granted to a person or company under Ontario securities law be suspended or restricted for such period as is specified in the order or be terminated, or that terms and conditions be imposed on the registration or recognition.
 - ii. An order that trading in any securities by or of a person or company or that trading in any derivatives by a person or company cease permanently or for such period as is specified in the order.
 - iii. An order that the acquisition of any securities by a particular person or company is prohibited permanently or for the period specified in the order.
 - iv. An order that any exemptions contained in Ontario securities law do not apply to a person or company permanently or for such period as is specified in the order.
 - v. An order that a market participant submit to a review of his, her or its practices and procedures and institute such changes as may be ordered by the Commission.
 - vi. If the Commission is satisfied that Ontario securities law has not been complied with, an order that a release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular, offering memorandum, proxy solicitation or any other document described in the order,
 1. be provided by a market participant to a person or company,
 2. not be provided by a market participant to a person or company, or
 3. be amended by a market participant to the extent that amendment is practicable.

- vii. An order that a person or company be reprimanded.
- viii. An order that a person resign one or more positions that the person holds as a director or officer of an issuer.
- ix. An order that a person is prohibited from becoming or acting as a director or officer of any issuer.
- x. An order that a person resign one or more positions that the persons holds as a director or officer of a registrant.
- xi. An order that a person is prohibited from becoming or acting as a director or officer of a registrant.
- xii. An order that a person resign one or more positions that the person holds as a director or officer of an investment fund manager.
- xiii. An order that a person is prohibited from becoming or acting as a director or officer of an investment fund manager.
- xiv. An order that a person or company is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.
- xv. If a person or company has not complied with Ontario securities law, an order requiring the person or company to pay an administrative penalty of not more than \$1 million for each failure to comply.
- xvi. If a person or company has not complied with Ontario securities law, an order requiring the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance.

iv. Monetary Sanctions

- a) Section 122 of the Act provides for fines of not more than \$5 million. S. 127 Administrative Orders can result in an administrative penalty of not more than \$1 million for each failure to comply.

E) Difficulties

1. RCMP

- a. The IACU is a relatively young unit within the Commercial Crime Branch and faces the corresponding challenges as it learns to operate most effectively. The size of the IACU limits its investigative capacity, particularly given the scope of work required to investigate corruption.

2. PPSC

- a. As compared with other jurisdictions, the existence of a single subject-matter expert on international corruption in the PPSC is indicative of a shortage of expertise focused on the prosecution of corruption.
3. DFAIT
 - a. DFAIT's efforts in preventing corrupt acts are limited to awareness-raising among Canadian individuals and companies operations outside of Canada.
4. OSC
 - a. The OSC does not appear to have a focus on foreign corruption. Unlike the SEC with its civil powers under the FCPA, the OSC is not armed with a civil statutory scheme under Canada's Corruption of Foreign Public Officials Act. The OSC's powers allow for enforcement measures related to misleading disclosure. That power would extend to inaccurate reporting of transactions in a filer's books of account. It is a common approach for the U.S. authorities to rely on inaccurate records as a significant part of their enforcement arsenal. There does not appear to be any specific effort by the OSC, however, to use their misleading disclosure enforcement powers in respect of improper book-keeping by filers in relation to foreign corruption transactions.

SECTION II

FOLLOW-UP OF PROGRESS AND NEW INFORMATION AND DEVELOPMENTS RELATED TO THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE COUNTRY REPORT FOR THE FIRST ROUND OF REVIEW: CONCLUSIONS AND RECOMMENDATIONS AT THE FEDERAL LEVEL

CHAPTER ONE

STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

- 1) **Adopt measures to ensure that the post-employment restrictions for public servants can be enforced.**
 - a) Describe the specific actions that have been carried out to implement the above recommendation, or the above measure suggested by the Committee for implementation, or the alternative measure(s) adopted by the country to that end. If deemed appropriate, please indicate the web page on which more detailed information on those actions can be obtained, clearly indicating the information of the web site in question:

The Values and Ethics Division of the Treasury Board of Canada Secretariat (TBS) developed a “Values and Ethics Code for the Public Sector”, pursuant to the *Public Servants Disclosure Protection Act*, available here: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049§ion=text#cha5>.

The Treasury Board also developed a specific conflict of interest and post-employment policy for the departments and agencies for which the Treasury Board is the employer, titled “Policy on Conflict of Interest and Post-Employment”. It “provides direction and measures to assist organizations and public servants in effectively dealing with real, potential and apparent conflict of interest situations which may arise during and after employment in the public service. Preventing, managing or resolving conflict of interest situations is one of the principal means of maintaining public trust and confidence in the impartiality and integrity of the public service” (Section 3.2). The full text is available here: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25178§ion=text>.

This new policy and the Values and Ethics Code for the Public Sector replace the 2003 Values and Ethics Code for the Public Service and both came into force on April 2, 2012.

- b) If applicable, indicate the new information and developments related to the subject matter of the above recommendation or corresponding measure suggested by the Committee, briefly describing the new provisions and/or measures adopted in connection with the subject, or the provisions and/or measures unknown to or not taken into consideration by the Committee when that recommendation or measure was formulated, indicating whether they are deemed to have an impact on the validity of that recommendation or measure or whether they could lead to its restatement or reformulation:

The Code of Conduct “outlines the values and expected behaviours that guide public servants in all activities related to their professional duties. By committing to these values and adhering to the expected behaviours, public servants strengthen the ethical culture of the public sector and contribute to public confidence in the integrity of all public institutions. As established by the Treasury Board, this Code fulfills the requirement of section 5 of the Public Servants Disclosure Protection Act (PSDPA). It was developed in consultation with public servants, public sector organizations and bargaining agents. This Code should be read in conjunction with organizational codes of conduct.”

The objectives of the new Post-Employment Policy are stated at Section 5.1 as follows:

“The objectives of this policy are to:

- Ensure that, in situations of real, apparent or potential conflict of interest and situations where there is a conflict of duties, decisions are made in a manner which upholds the public interest;
- Facilitate ethical decision-making within organizations and by public servants to resolve conflicts between private and public interests; and
- Establish measures to help public servants prevent, manage and resolve conflict of interest and post-employment situations that could impair either the integrity of the public service or the public's perception of its integrity.”

- c) If applicable Please briefly indicate the possible difficulties seen in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee. If deemed appropriate, please indicate the web page on which more detailed information on them can be obtained, clearly indicating the information of the web site in question:

No relevant information is publicly available.

- d) If deemed appropriate, please indicate which internal agencies or other organizations have participated in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee, and identify specific technical cooperation needs related to its implementation. In addition, if deemed relevant, please also indicate the web page dealing in greater detail with these issues, clearly indicating the information of the web site in question:

Treasury Board Secretariat
<http://www.tbs-sct.gc.ca/Default.asp>

Canada School of Public Service
<http://www.csps-efpc.gc.ca/>

Public Service Commission
<http://www.psc-cfp.gc.ca/>

2) Continue to improve evaluation mechanisms to analyze the results of enforcement of conflict of interest provisions.

- a) Describe the specific actions that have been carried out to implement the above recommendation, or the above measure suggested by the Committee for implementation, or the alternative measure(s) adopted by the country to that end. If deemed appropriate, please indicate the web page on which more detailed information on those actions can be obtained, clearly indicating the information of the web site in question:

Through the Values and Ethics Management Accountability Framework (MAF) process, the TBS has assessed the implementation of conflict of interest management practices in departments and agencies. Specifically, TBS has assessed whether departments have processes in place to help public servants raise, discuss and resolve issues related to conflict of interest and have implemented some activities to communicate with employees on their responsibilities for avoiding conflicts of interest. The information for the assessment is taken from organizations' values and ethics plans, codes of conduct or other documentation. More information on this process is available here: <http://www.tbs-sct.gc.ca/maf-crg/methodology-methodologie-eng.asp>.

- b) If applicable, indicate the new information and developments related to the subject matter of the above recommendation or corresponding measure suggested by the Committee, briefly describing the new provisions and/or measures adopted in connection with the subject, or the provisions and/or measures unknown to or not taken into consideration by the Committee when that recommendation or measure was formulated, indicating whether they are deemed to have an impact on the validity of that recommendation or measure or whether they could lead to its restatement or reformulation:

MAF Process

In regards to the MAF process, the TBS stated in its methodology for the 2012-2013 review that:

“the Treasury Board of Canada Secretariat (TBS) is taking a modified approach to the 2012-13 MAF, in response to the challenges facing departments and agencies as they implement their deficit reduction initiatives. For the 2012-13 assessment year, organizations will only be assessed on the six core Areas of Management (AoM): Values and Ethics, Internal Audit, Evaluation, Financial Management and Control, Integrated Risk Management, People Management. The MAF 2012-13 assessments will be based primarily on information that organizations must already produce to meet legislative and Treasury Board (TB) policy requirements. A limited number of targeted information requests will be made only where supplementary information is required for the assessment.”

The departments and agencies that were assessed during the 2012-2013 review are the following:

Canada Border Services Agency
Canadian International Development Agency
Canadian Security Intelligence Service
Citizenship and Immigration Canada
Communications Security Establishment Canada
Correctional Service of Canada
Courts Administration Service
Department of Foreign Affairs and International Trade
Justice Canada
National Defence
Public Prosecution Service of Canada
Public Safety Canada
Royal Canadian Mounted Police
Agriculture and Agri-Food Canada
Atlantic Canada Opportunities Agency
Canadian Environmental Assessment Agency
Canadian Food Inspection Agency
Canadian Space Agency
Canadian Transportation Agency
Economic Development Agency of Canada for the Regions of Quebec
Environment Canada
Fisheries and Oceans Canada
Industry Canada
Infrastructure Canada
National Research Council Canada
Natural Resources Canada
Statistics Canada
Transport Canada
Western Economic Diversification Canada
Canada Revenue Agency
Canada School of Public Service
Department of Finance Canada
Office of the Superintendent of Financial Institutions Canada

Privy Council Office
Public Service Commission of Canada
Public Works and Government Services Canada
Treasury Board of Canada Secretariat
Aboriginal Affairs and Northern Development Canada
Canadian Heritage
Health Canada
Human Resources and Skills Development Canada
Library and Archives Canada
Parks Canada
Public Health Agency of Canada
Veterans Affairs Canada

The results are not yet available for this cycle. However, based on previous cycles, we can assert that values and ethics are assessed by determining the organization's culture, leadership, and governance. Several other facets are also evaluated, and recommendations are provided. Here is a link to an example of a completed MAF review for the Public Prosecution Service of Canada (2011-2012): <http://www.tbs-sct.gc.ca/maf-crg/assessments-evaluations/2011/ppd/ppd-eng.asp>.

Recent Criminal Enforcement Actions Under the CFPOA

Two recent cases involving charges under the *Corruption of Foreign Officials Act* have come to light before the courts. In both instances, the companies charged under the Act pled guilty. One other case was debated in court; however, the outcome is pending. Below are summaries of these three cases.

Niko Case

On June 24, 2011, Niko Resources Ltd. (Niko), a publicly traded oil and gas company based in Calgary, pled guilty to a charge of bribery under Canada's *Corruption of Foreign Public Officials Act* (CFPOA). The case was related to two incidents that occurred in Bangladesh. Niko was in the process of negotiating a gas pricing contract with the Bangladesh government. In addition, Niko had a well in northeast Bangladesh which exploded and caused damages to the villagers. According to the agreed statements of facts, Niko, through its Bangladeshi subsidiary, provided a vehicle worth \$190,894 to the Bangladeshi State Minister for Energy and Mineral Resources who was in charge of determining the compensation claims of the villagers harmed by the explosion. It was also alleged that Niko paid \$ 5,000 for the Minister's travel costs to attend an oil and gas exposition in Calgary and for a personal trip to New York and Chicago.

The parties involved in the case agreed that there was a "real and substantial link between Canada and the offence" (as it is required under Common Law) based on the fact that the Bangladeshi subsidiary's activities were funded solely by Niko Canada (including the subsidiary's acquisition of the vehicle provided to the Minister). In addition, Niko Canada was aware of the subsidiary's activities, as evidenced by the fact that Niko's Chief Executive Officer was a director of the subsidiary and the fact that Niko closely monitored all of its foreign subsidiaries.

The Court sentenced Niko to a \$9.5 million fine and a three-year probation order under which Niko is under the Court's supervision as well as subject to regular audits (at its own expense) to confirm its compliance with the CFPOA.

Griffiths Energy Case

On January 22, 2013, Griffiths Energy International Inc. (Griffiths), a privately held oil and gas exploration and production firm based in Calgary, pled guilty to bribery charges under the CFPOA. The case was related to bribery payments made to secure oil and gas contracts in Chad, Africa.

On August 30, 2009, Griffiths set up a consulting contract with a company owned by the Chadian Ambassador to Canada whereby the Chadian company would provide oil and gas services to Griffiths for a fee of \$ 2 million. Under the agreement, upon payment of the fee, Griffiths would be secured certain production sharing contracts in Chad.

The contract was terminated in September 2009, when Griffiths was advised by legal counsel that the transaction constituted bribery of a foreign public official. However, during the same month, Griffiths entered into a similar contract with a company owned by the Ambassador's wife. In 2011, the consulting contract was renewed and the \$2 million payment was made.

Between July and September 2011, Griffiths hired a new management team and appointed six new independent Directors. The new management team and Directors discovered the illegal consulting agreements while performing due diligence procedures in preparation of an upcoming initial public offering of securities. They took immediate action by launching an internal investigation and by voluntarily disclosing the investigation to the RCMP. The IPO was subsequently cancelled.

The company agreed to pay a total fine of \$ 10.35 million, and on January 25, 2013, the Court approved the settlement. According to the prosecution, the fine would have been substantially higher had Griffiths not started its own investigation and not cooperated with the authorities. In light of the new management and Directors' actions, no probation order was imposed on Griffiths.

Nazir Karigar Case

This is the first case where charges have been brought on a natural person under the CFPOA. On May 28, 2010, Mr. Nazir Karigar was charged by the RCMP under the CFPOA. Mr. Karigar was an official of CryptoMetrics Canada Inc. (CryptoMetrics), a high-tech firm based in Ottawa.

The case involves an alleged payment of \$250,000 made by Mr. Karigar to India's former Minister of Aviation in order to secure a multi-million dollar contract with Air India for CryptoMetrics for the supply of a facial-recognition security system.

The trial was heard in 2012 before the Ontario Superior Court of Justice, and a motion was brought forward by the defense on the grounds that the real and substantial link between Canada and the alleged offence cannot be established. The court's ruling is pending.

- c) Please briefly indicate the possible difficulties seen in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee. If deemed appropriate, please indicate the web page on which more detailed information on them can be obtained, clearly indicating the information of the web site in question:

The RCMP has recently decided to dis-band the anti-corruption squads in Ottawa and Calgary and merge them into a general enforcement group. Resources would be shared rather than focused on a specific area of enforcement. The result is that enforcement officers with relevant experience might be used in other enforcement fields, and vice versa. This has the potential to adversely affect the quality and timeliness of enforcement actions.

- d) If deemed appropriate, please indicate which internal agencies or other organizations have participated in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee, and identify specific technical cooperation needs related to its implementation. In addition, if deemed relevant, please also indicate the web page dealing in greater detail with these issues, clearly indicating the information of the web site in question:

Royal Canadian Mounted Police
www.rcmp-grc.gc.ca

Treasury Board Secretariat
<http://www.tbs-sct.gc.ca/Default.asp>

3) Adopt provisions to establish the obligation to disclose wrongdoings, including presumed acts of corruption, as well as provide reprisal protection mechanisms to those individuals working in the federal public sector who are not currently required to disclose, or who are not afforded protection for such disclosure.

- a) Describe the specific actions that have been carried out to implement the above recommendation, or the above measure suggested by the Committee for implementation, or the alternative measure(s) adopted by the country to that end. If deemed appropriate, please indicate the web page on which more detailed information on those actions can be obtained, clearly indicating the information of the web site in question:

We refer to the detailed response given in Round 3, at page 33 et al. In addition, the following measures were implemented in 2012:

1- Values and Ethics Code for the Public Sector: The Values and Ethics Division of the Treasury Board Secretariat (TBS) undertook the development of a Code of Conduct for the larger public sector (“Values and Ethics Code for the Public Sector”), as required by the *Public Servants Disclosure Protection Act* (PSDPA). The full text of the policy is available at the following website: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25178§ion=text>.

2- The Department of Finance Code of Conduct: The Department of Finance of Canada also issued a Code of Conduct that consolidates the overarching principles and obligations of employees under Treasury Board’s Values and Ethics Code for the Public Sector, Policy on Conflict of Interest and Post-Employment and the pre-existing Conflict of Interest Code for the Department of Finance. The full text of the policy is available at the following website: <http://www.fin.gc.ca/afc/cc-eng.asp#a2>.

Furthermore, some pertinent legislative amendments are under way and include:

3-Bill C-505: Private Bill C-505, titled *An Act to amend the Public Servants Disclosure Protection Act (powers of inquiry)*, was tabled on May 2nd 2013, and amends the existing law (the full text is available here: <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6125404&File=4>).

4-Bill C-474: Private Bill C-474, titled *An Act respecting the promotion of financial transparency, improved accountability and long-term economic sustainability through the public reporting of payments made by mining, oil and gas corporations to foreign governments*, requires mining, oil and gas corporations to submit annual transparency reports disclosing all payments provided by them or their subsidiaries to a foreign government for the purpose of furthering mining, oil or gas industry activities. It also creates an offence to fail to comply with this requirement and establishes a maximum penalty on summary conviction of a \$5,000,000 fine, and a minimum fine of \$20,000 (the full text is available here: <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6000115&File=4>).

5-Bill S-14: Senate Bill S-14, titled *An Act to Amend the Corruption of Foreign Public Officials Act*, was tabled February 5, 2013 and is currently at its later stages of approval (the full text is available here: <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6064253&File=4>).

- b) If applicable, indicate the new information and developments related to the subject matter of the above recommendation or corresponding measure suggested by the Committee, briefly describing the new provisions and/or measures adopted in connection with the subject, or the provisions and/or measures unknown to or not taken into consideration by the Committee when that recommendation or measure was formulated, indicating whether they are deemed to have an impact on the validity of that recommendation or measure or whether they could lead to its restatement or reformulation:

1- Values and Ethics Code for the Public Sector

The Values and Ethics Code for the Public Sector contains provisions that support the disclosure of any wrongdoing to either their immediate supervisor, their senior officer for disclosure or the Public Sector Integrity Commissioner. The role of the Senior Officer for Disclosure is described in detail, as follows:

“The senior officer for disclosure helps promote a positive environment for disclosing wrongdoing and deals with disclosures of wrongdoing made by public servants of their organization. Senior officers are responsible for supporting the chief executive in meeting the requirements of the PSDPA. The senior officer's duties and powers within his or her organization also include the following, in accordance with the internal disclosure procedures established under the PSDPA:

1. Provide information, advice and guidance to public servants regarding the organization's internal disclosure procedures, including the making of disclosures, the conduct of investigations into disclosures, and the handling of disclosures made to supervisors.
2. Receive and record disclosures and review them to establish whether there are sufficient grounds for further action under the PSDPA.
3. Manage investigations into disclosures, including determining whether to deal with a disclosure under the PSDPA, initiate an investigation or cease an investigation.
4. Coordinate handling of a disclosure with the senior officer of another federal public sector organization, if a disclosure or an investigation into a disclosure involves that other organization.

5. Notify the person(s) who made a disclosure in writing of the outcome of any review and/or investigation into the disclosure and on the status of actions taken on the disclosure, as appropriate.
6. Report the findings of investigations, as well as any systemic problems that may give rise to wrongdoing, directly to his or her chief executive, with recommendations for corrective action, if any.”

2- The Department of Finance Code of Conduct

The Department of Finance’s Code also states that: “employees are encouraged to come forward if they believe that a serious wrongdoing has taken place in the workplace. In making a disclosure, employees shall be treated fairly, in confidence and protected against reprisal. Finance staff may make a disclosure of wrongdoing to the Disclosure Protection Officer or to the Public Sector Integrity Commissioner. If an employee makes a disclosure of wrongdoing to his or her supervisor, the disclosure must then be forwarded to the Disclosure Protection Officer.”

Although private member Bills seldom become law, Bill C-474’s predecessor, Bill C-300, was narrowly out-voted, notwithstanding the fact that it received unanimous opposition from the mining industry: It required mining companies to comply with human rights and environmental standards and was criticized for having the potential to trigger an exodus of companies from Canada. We therefore discuss two private member Bills as they demonstrate a change in policy direction. Furthermore, as the *Public Servants Disclosure Protection Act* was referred to in our answers to previous rounds, Bill C-505 merits mentioning as it proposes amendments to the Act.

This Bill purports to strengthen the existing law by²:

- Extending the time limit for the filing of a complaint;
- Allowing the Public Sector Integrity Commissioner to examine former public servants;
- Increasing the fine for an offence under section 10 of the *Inquiries Act*;
- Authorizing the Commissioner to disclose, in his or her report, the identity of the person found to have committed a wrongdoing.

The time limit for filing a complaint would be significantly increased, from 60 days to 18 months. Furthermore, the Public Sector Integrity Commissioner would have more investigative powers, such as questioning former officials and requesting that the former public servant provide “any information that the Commissioner may require³”. Although this Bill is still in its early stages, it merits mentioning as it is related to the above recommendation.

Reiterating the response given in Round 3, the following gives an overview of the existing framework in regards to disclosure:

“The *Public Servants Disclosure Protection Act*, as amended by the *Federal Accountability Act*, came into force on April 15, 2007. The Canada Public Service Agency is responsible for leadership and support to organizations in the implementation of the PSDPA. The purpose of the PSDPA is to encourage employees in the public sector to come forward if they have reason to believe that serious wrongdoing has taken place, and to prohibit reprisals against them if they do

² The full text of the Bill is available here:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6125404&File=4>.

³ Section 3 (1.1).

so. It also provides a fair and objective process for those against whom allegations are made. A key role in the regime established by the PSDPA is held by chief executives of public sector organizations, who must establish internal procedures for managing disclosures of possible wrongdoing.

The PSDPA establishes the Public Sector Integrity Commissioner (PSIC) as an agent of Parliament. The PSIC conducts independent reviews of disclosures of wrongdoing made directly to her, issues reports of findings to enable organizations to take appropriate remedial action, and submits annual and special reports to Parliament. The PSIC also reviews complaints of reprisal from federal public sector employees, which may be referred to a new, independent Public Servants Disclosure Protection Tribunal. The Tribunal will adjudicate such complaints, and it may order appropriate remedies if it finds that a reprisal took place, as well as order discipline for any public sector employee found to have committed a reprisal.

Public servants with information about possible wrongdoing in the federal public sector may make disclosures within their organization or to the Commissioner. Any member of the public may provide information concerning wrongdoing in the federal public sector to the Commissioner. Reprisal is prohibited for all employees (not just public servants), who provide information concerning a possible wrongdoing, as well as for public servants who cooperate in an investigation into a disclosure.

The PSDPA requires that information collected in relation to disclosures be kept confidential, including that such information is exempt from release under the *Access to Information Act* and *Privacy Act*. Further, identities of persons involved in the disclosure process (including the discloser, witnesses in any investigation, and any person alleged to have committed a wrongdoing) must be protected to the extent possible. If wrongdoing is found, the person or persons who committed the wrongdoing may be identified publicly only if information that may identify the person is necessary to adequately describe the wrongdoing.” A copy of the PSDPA is available on the web site of Justice Canada, at <http://laws.justice.gc.ca/en/P-31.9/>.

4-Bill C-474

Under Bill C-474⁴, companies that engage in the development of oil, natural gas or minerals would be required to submit an annual transparency report to both the Minister of Foreign Affairs and the Minister of Natural Resources. The report would disclose all payments made by the company to a foreign government for the purpose of furthering mining, oil or gas industry activities and would have to be independently audited. Furthermore, these reports would be made publically available. Based on these reports, the Minister of Natural Resources could conduct an investigation into the circumstances surrounding certain payments. The failure to comply would be punished on summary conviction with fines starting at \$20,000 going up to \$5,000,000.

The United States adopted a similar law in 2010 that requires all extractive companies to publish the payments they make to domestic and foreign governments. This information must be disclosed in an annual report to the Securities and Exchange Commission.

5-Bill S-14

⁴The full text of the Bill is available here:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6000115&Language=E&Mode=1&File=4>

A related piece of legislation currently in force is undergoing amendments. Although it does not have provisions requiring natural or legal persons to disclose wrongdoings, it merits mentioning. Senate Bill S-14⁵, amending the *Corruption of Foreign Public Officials Act*, was tabled in February 2013 and is at its later stages of approval. The main amendments include an increased maximum term of imprisonment from 5 to 14 years, the eventual removal of the facilitation payments exception, the application of the law to not-for-profit organizations, new provisions with regard to books and records, and a broader jurisdiction reach.

- c) Please briefly indicate the possible difficulties seen in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee. If deemed appropriate, please indicate the web page on which more detailed information on them can be obtained, clearly indicating the information of the web site in question:

A few difficulties are foreseeable with regard to Bill S-14. First is the eventual removal of the facilitation payments exception. Under the Bill, this amendment is to come into force “on a day to be fixed by order of the Governor in Council”⁶. The goal is said to allow organizations a period of time to adjust. However, no mention is made as to a specific timeframe.

Another possible area of difficulty resides in the burden of proof required to prosecute the new accounting provision. As it reads, individuals who maintain accounts that don’t appear in their organization’s books and records are guilty of an offence, if committed for the purpose of “bribing a foreign public official in order to obtain or retain an advantage in the course of business or for the purpose of hiding that bribery”⁷. Although the provision references the requirement that these books and records be kept in accordance with applicable auditing and accounting standards, no mention is made as to which specific accounting standards organizations should be used. This could pose some difficulty until the auditing and accounting standards to which companies should be upheld to criminally is defined by the courts.

A potential enforcement lacuna could be perceived when considering that the Bill clearly states that only RCMP officers can lay charges under the Act. This issue was discussed in our answer at 2) above.

- d) If deemed appropriate, please indicate which internal agencies or other organizations have participated in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee, and identify specific technical cooperation needs related to its implementation. In addition, if deemed relevant, please also indicate the web page dealing in greater detail with these issues, clearly indicating the information of the web site in question:

RCMP

<http://www.rcmp-grc.gc.ca/index.htm>

Office of the Public Sector Integrity Commissioner

<http://www.psic-isp.gc.ca/>

Treasury Board of Canada Secretariat

www.tbs-sct.gc.ca

⁵ The full text of the Bill is available here:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6064253>

⁶ Section 5.

⁷ Section 4.

CHAPTER TWO

SYSTEMS FOR REGISTERING INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)

1) Adopt provisions where they do not currently exist on the systems for registering sources of income, assets and liabilities of family members of appropriate individuals in the federal public sector that potentially could conflict with the official duties of the individual.

- a) Describe the specific actions that have been carried out to implement the above recommendation, or the above measure suggested by the Committee for implementation, or the alternative measure(s) adopted by the country to that end. If deemed appropriate, please indicate the web page on which more detailed information on those actions can be obtained, clearly indicating the information of the web site in question:

The TBS's Policy on Conflict of Interest and Post-Employment contains a provision with regard to assets and is available here: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25178§ion=text>.

- b) If applicable, indicate the new information and developments related to the subject matter of the above recommendation or corresponding measure suggested by the Committee, briefly describing the new provisions and/or measures adopted in connection with the subject, or the provisions and/or measures unknown to or not taken into consideration by the Committee when that recommendation or measure was formulated, indicating whether they are deemed to have an impact on the validity of that recommendation or measure or whether they could lead to its restatement or reformulation:

The provision within the above policy states the following:

“Public servants are required to evaluate their assets, taking into consideration the nature of their official duties and the characteristics of their assets. If there is any real, apparent or potential conflict of interest between the carrying out of their official duties and their assets, they are to report this matter to their deputy head in a timely manner. Where their deputy head determines that any of these assets results in a real, apparent or potential conflict of interest in relation to their official duties, public servants may be required to divest those assets, or to take other measures to resolve the conflict. Public servants may not sell or transfer assets to family members or anyone else for the purpose of circumventing the compliance requirements. The types of assets that should be reported and the procedures for reporting and managing such assets are set out in the *Directive on Reporting and Managing Financial Conflicts of Interest*.”

The Directive on Reporting and Managing Financial Conflicts of Interest has not yet been published.

- c) Please briefly indicate the possible difficulties seen in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee. If deemed appropriate, please indicate the web page on which more detailed information on them can be obtained, clearly indicating the information of the web site in question:

No relevant information is publicly available.

- d) If deemed appropriate, please indicate which internal agencies or other organizations have participated in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee, and identify specific technical cooperation needs related to its implementation. In addition, if deemed relevant, please also indicate the web page dealing in greater detail with these issues, clearly indicating the information of the web site in question:

No relevant information is publicly available.

2) Adopt provisions on the systems for registering, where appropriate, sources of income, assets and liabilities that potentially could conflict with the official duties of those employees in the federal public sector who currently are not required to meet such registration procedures, in order to contribute to the promotion of the purposes of the Convention.

- a) Please briefly describe the specific actions that have been carried out to implement the above recommendation, or the above measure suggested by the Committee for implementation, or the alternative measure(s) adopted by the country to that end. If deemed appropriate, please indicate the web page on which more detailed information on those actions can be obtained, clearly indicating the information of the web site in question:

The TBS's Policy on Conflict of Interest and Post-Employment contains a provision with regard to assets and is available here: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25178§ion=text>.

- b) If applicable, indicate the new information and developments related to the subject matter of the above recommendation or corresponding measure suggested by the Committee, briefly describing the new provisions and/or measures adopted in connection with the subject, or the provisions and/or measures unknown to or not taken into consideration by the Committee when that recommendation or measure was formulated, indicating whether they are deemed to have an impact on the validity of that recommendation or measure or whether they could lead to its restatement or reformulation:

The provision within the above policy states the following:

“Public servants are required to evaluate their assets, taking into consideration the nature of their official duties and the characteristics of their assets. If there is any real, apparent or potential conflict of interest between the carrying out of their official duties and their assets, they are to report this matter to their deputy head in a timely manner. Where their deputy head determines that any of these assets results in a real, apparent or potential conflict of interest in relation to their official duties, public servants may be required to divest those assets, or to take other measures to resolve the conflict. Public servants may not sell or transfer assets to family members or anyone else for the purpose of circumventing the compliance requirements. The types of assets that should be reported and the procedures for reporting and managing such assets are set out in the *Directive on Reporting and Managing Financial Conflicts of Interest*.”

The Directive on Reporting and Managing Financial Conflicts of Interest has not yet been published.

- c) Please briefly indicate the possible difficulties seen in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee. If deemed appropriate, please indicate the web page on which more detailed information on them can be obtained, clearly indicating the information of the web site in question:

No relevant information is publicly available.

- d) If deemed appropriate, please indicate which internal agencies or other organizations have participated in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee, and identify specific technical cooperation needs related to its implementation. In addition, if deemed relevant, please also indicate the web page dealing in greater detail with these issues, clearly indicating the information of the web site in question:

No relevant information is publicly available.

3) Adopt measures so that the Confidential Reports submitted in accordance with the Values and Ethics Code of the Public Service and of Defense and Administrative Orders and Directives, 7021-1, are reviewed on a timely basis and appropriate steps taken to address conflicts of interest and other possible violations of law and to consider publication of such reports, where appropriate.

- a) Describe the specific actions that have been carried out to implement the above recommendation, or the above measure suggested by the Committee for implementation, or the alternative measure(s) adopted by the country to that end. If deemed appropriate, please indicate the web page on which more detailed information on those actions can be obtained, clearly indicating the information of the web site in question:

Department of National Defense Code of Conduct, is available here: <http://www.dep-ped.forces.gc.ca/dep-ped/code/code-eng.aspx>.

- b) If applicable, indicate the new information and developments related to the subject matter of the above recommendation or corresponding measure suggested by the Committee, briefly describing the new provisions and/or measures adopted in connection with the subject, or the provisions and/or measures unknown to or not taken into consideration by the Committee when that recommendation or measure was formulated, indicating whether they are deemed to have an impact on the validity of that recommendation or measure or whether they could lead to its restatement or reformulation:

Confidential Reports made to the Department of National Defence and the Canadian Forces pursuant to Administrative Orders and Directive are usually reviewed and where a conflict of interest may represent breaches of financial rules or legislation, the Directorate Special Enquiries and Investigations investigates and makes recommendations for corrective measures. The Department of National Defense has ensured that its internal policies and regulations are in line with the new TBS Code of Conduct, available here: <http://www.dep-ped.forces.gc.ca/dep-ped/code/code-eng.aspx>.

- c) Please briefly indicate the possible difficulties seen in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee. If deemed appropriate, please indicate the web page on which more detailed information on them can be obtained, clearly indicating the information of the web site in question:

No relevant information is publicly available.

- d) If deemed appropriate, please indicate which internal agencies or other organizations have participated in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee, and identify specific technical cooperation needs related to its implementation. In addition, if deemed relevant, please also indicate the web page dealing in greater detail with these issues, clearly indicating the information of the web site in question:

No relevant information is publicly available.

CHAPTER THREE

GENERAL RECOMMENDATIONS

- 1) **Select and develop procedures and indicators, when appropriate, that make it possible to verify the follow-up to the recommendations contained in this report, and report back to the Committee through the Technical Secretariat in this regard. For the purposes indicated, Canada could consider taking into account the list of the most widely used indicators, applicable in the Inter-American system that were available for the selection indicated by the country under analysis, which has been published on the OAS website by the Technical Secretariat of the Committee, as well as information derived from the analysis of the mechanisms developed in accordance with recommendation 7.3, which follows.**
 - a) Describe the specific actions that have been carried out to implement the above recommendation, or the above measure suggested by the Committee for implementation, or the alternative measure(s) adopted by the country to that end. If deemed appropriate, please indicate the web page on which more detailed information on those actions can be obtained, clearly indicating the information of the web site in question:

We reiterate the responses given in Rounds two and three. The responses given are as follows:

Canada already has in place indicators which make it possible to identify objective results. For example, all departments and agencies of the federal government, including the agents of Parliament, must report annually on their activities. Reports of particular relevance to the follow-up of the Recommendations of the first round of review would include the reports of the Treasury Board, the Public Service Commission, the Public Sector Integrity Commissioner of Canada, the Office of Public Service Values and Ethics, the report of the Senate Ethics Officer made to the Senate and the Report of the Conflict of Interest and Ethics Commissioner to the House of Commons.

The Treasury Board Secretariat of Canada, through the Management Accountability Framework, has been evaluating and strengthening departmental accountability for management. This Management Accountability Framework also provides a comprehensive view to both deputy heads and to the Treasury Board Secretariat on the state of managerial performance within a department or agency. In addition, the Treasury Board Secretariat continuously reviews the outcomes, indicators and measures for values and ethics. In 2010, 19 indicators for people management were introduced to provide a broad overview of the status of people management (including values and ethics) across the Core Public Administration. Some of those indicators will be used in the Management Accountability Framework process. The TBS also formed an interdepartmental working group to elaborate new values and ethics outcomes, indicators and measures for use in 2010-2011.

- c) If applicable, indicate the new information and developments related to the subject matter of the above recommendation or corresponding measure suggested by the Committee, briefly describing the new provisions and/or measures adopted in connection with the subject, or the provisions and/or measures unknown to or not taken into consideration by the Committee when that recommendation or measure was formulated, indicating whether they are deemed to have an impact on the validity of that recommendation or measure or whether they could lead to its restatement or reformulation:

No relevant information is publicly available.

- d) Please briefly indicate the possible difficulties seen in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee. If deemed appropriate, please indicate the web page on which more detailed information on them can be obtained, clearly indicating the information of the web site in question:

No relevant information is publicly available.

- d) If deemed appropriate, please indicate which internal agencies or other organizations have participated in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee, and identify specific technical cooperation needs related to its implementation. In addition, if deemed relevant, please also indicate the web page dealing in greater detail with these issues, clearly indicating the information of the web site in question:

No relevant information is publicly available.

2) Develop, when appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, and the recommendations contained therein.

- a) Describe the specific actions that have been carried out to implement the above recommendation, or the above measure suggested by the Committee for implementation, or the alternative measure(s) adopted by the country to that end. If deemed appropriate, please indicate the web page on which more detailed information on those actions can be obtained, clearly indicating the information of the web site in question:

We reiterate the responses given in Rounds two and three. The responses given are as follows:

There are procedures in place to analyze the performance of the various mechanisms. Federal departments, agencies, tribunals, review boards and agents of Parliament must produce report annually on their activities, including information that allows for the analysis of these mechanisms. Provincial and territorial governments were consulted in the preparation of the response by Canada in the previous round of review through the Coordinating Committee of Senior Officials (Criminal Justice). Federal departments and agencies, as well as various excluded organizations such as the Communications Security Establishment (CSE), the Canadian Security Intelligence Service (CSIS), the Department of National Defence (DND) and the federal ethics commissioners were also consulted for feedback and follow-up on recommendations made in the first and second rounds of review.

- b) If applicable, indicate the new information and developments related to the subject matter of the above recommendation or corresponding measure suggested by the Committee, briefly describing the new provisions and/or measures adopted in connection with the subject, or the provisions and/or measures unknown to or not taken into consideration by the Committee when that recommendation or measure was formulated, indicating whether they are deemed to have an impact on the validity of that recommendation or measure or whether they could lead to its restatement or reformulation:

No relevant information is publicly available.

- c) Please briefly indicate the possible difficulties seen in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee. If deemed appropriate, please indicate the web page on which more detailed information on them can be obtained, clearly indicating the information of the web site in question:

No relevant information is publicly available.

- d) If deemed appropriate, please indicate which internal agencies or other organizations have participated in the implementation of the foregoing recommendation or corresponding measure suggested by the Committee, and identify specific technical cooperation needs related to its implementation. In addition, if deemed relevant, please also indicate the web page dealing in greater detail with these issues, clearly indicating the information of the web site in question:

No relevant information is publicly available.