

**Transparency International Canada address to the Kroll Group**  
**October 17, 2004, Blue Mountain, Ontario**

Remarks by John Swinden, FCA, CFE, Director and Treasurer of Transparency International Canada.

Introduction

Thank you for the invitation to be with you this evening. TI-Canada welcomes the opportunity to tell its story. Kroll (and its predecessors) is much more than just an interested listener. Kroll has been a corporate member for a number of years, and has contributed financially to our annual budget. While we do not have a large budget, neither is our main interest funding raising, which makes your voluntary contribution worth more to us. Our annual audited financial statements are distributed each year to all members, so we have accounted for our stewardship of contributed funds.

I am not a stand up comic—nor is a serious discourse on the subject of corruption, grist for a comic’s mill. However, I hope I am able to relate our story in an interesting----and of course—in a transparent manner.

Who is Transparency International?

At the national and international level, today, there are some 90 country chapters. The Secretariat is in Berlin and has about 60 staff. TI was founded in 1993. TI is a not-for-profit organization committed to building, and working with, broad coalitions of individuals and organizations to curb corruption and introduce reforms. It believes that combating corruption effectively, and in a sustainable manner, is possible only with the involvement of all stakeholders, which include the state, civil society and the private sector. Some National Chapters have had quite an impact in their country, while in other countries they are searching for ways to attract attention. Among the greatest impacts have been where the country’s very poor ranking in the TI published corruption perception index was made an election issue (I will say more about this later). It has been said that at least one national government lost an election when the country’s poor ranking was ‘blamed’ on that government.

Who is TI-Canada?

TI-Canada was founded in late 1996 and today has a 14 person board, about one quarter each from corporate sector, volunteer community, academic world and the professions. Management is provided by our National Coordinator, a paid part-time position. Grants and membership fees fund the organization. Each National Chapter looks to its own financing. In Canada, funding has been obtained from charter and other annual memberships, along with government and special project grants.

Why was the TI organization started?

There was recognition that serious and material corruption occurred from the funds directed to needy governments. Often the motivation for directing the funds to developing countries was to foster and encourage economic development. It was observed that frequently the altruistic purposes were not being accomplished. Corruption negated the hoped for economic development and related social

security. Up to the early 1990's there was no consistent worldwide attention being given to addressing the issues around corruption. Even the world bank did not believe (although it now does!) that the results of corruption were material in the circumstances. George Soros was an early significant financial contributor to Transparency International.

You know that in many needy countries there is not a highly evolved form of transparent responsible government. Frequently the rulers of developing countries seized their mandate from the people and remain in power with the help of military force. In such circumstances it will only be through the successful efforts of forces outside those countries, that corruption issues will be addressed and exposed.

Please keep your mind clear and your critical sense alert in order to see the real facts. Don't just tut-tut quietly to yourself about the sad state of many of the countries in the world---remember much of this development directed money comes from the world's rich countries—and often the projects are carried out by and with the assistance of enterprises from the developed countries. For every bribe taken- there is a bribe made! So final solutions must address both parties to the bribe.

#### What has TI done and what is TI continuing to do?

The main strategy TI has adopted has been to focus attention and the light-of-day on the problem. Hence “transparency” is the theme word. It was felt that the beginning of a solution would be to expose the dirty details, and that alone would be the impetus needed to encourage solutions to be developed. Initially the emphasis was on naming corrupt governments--published rankings of nations were developed, naming and shaming. Then in recognition that for every bribe taken, there was a bribe offered, attention was also directed at corporations from the bribing nations. I might note in passing that TI does not do corruption investigations. So we are not in competition with Kroll! However, like Kroll, a very important credential that TI brings to the party is its independence. As you know one cannot be an effective part of the solution if one is also connected to the problem. TI has concerned itself with the structures and conditions within which fund applications are made, has concerned itself with the parties to the transactions and has concerned itself with the circumstances where funds are deployed. There are different solutions to each aspect to the problem. A substantial part of my remaining comments will be about the specifics of what TI has done since the early 1990's.

#### OECD initiative

As you know the organization for economic development and cooperation (“OECD”) comprises thirty of the world's more developed countries. The USA persuaded the OECD to adopt a protocol, which obtained the required membership support. TI participated to ensure there was effective monitoring and to make sure that civil society participated. OECD member country laws are to make it a criminal offense to bribe a foreign official, whether the bribe took place within or without the country's borders. In addition, income tax rules were to be changed to ensure that there would not be a tax deduction allowed for a bribe made. It would usually be argued that a bribe made was “an expense laid out to earn income”. Canada has now made the required changes. As part of these requirements, the OECD requires an independent review be made of each member country to determine if compliance occurred

and to report thereon. TI, along with the civil society, the business sector and legal and accounting professions, participated in the review done by the OECD.

### Export Development Canada

The Canadian federal government agency, Export Development Canada, has made a number of changes to its procedures as a result of TI initiatives. The agency now requires a written declaration from credit recipients stating that they will not bribe. The agency has introduced an education program to help small and medium sized Canadian corporations educate their employees on how to take anti-corruption measures. The agency itself has effectively connected its ethics program to its anti-corruption program. Also, the agency has required credit applicants to have a code of conduct and their own ethics program. It is interesting to note that TI-Canada was invited to place a person on the agency's Corporate Responsibility Advisory Council..

### Publishing indexes related to corrupt activities

From the earliest days of TI an important objective has been to attract attention to the anti-corruption mission. TI decided to highlight the best and the worst by developing a ranked perception index (Corruption Perceptions Index) of countries. In reviewing available data it found there were a number of surveys being published that were relevant to this issue. TI chose a number of these surveys and developed a methodology for combining the results. Without exposing you to the statistical details of how this was done (such information is available) the end result was a ranked list of many countries—today there are 145 countries on the list. Initially the US and the UK were a dozen and a half places from the top and Canada was in the top few. The changes in the ranking of these three countries have only been for Canada, where it is steadily falling toward the US/UK ranking. Why should this be a surprise with the publicity of federal government patronage and other scandals? For a few of the really badly performing countries on the index, the bad ranking has become a national issue, with some countries objecting to their categorization and in others the matter had been politicized. Arguably, more than one government has been displaced in elections where its corruption ranking was a debated issue.

Since the original perceptions index, another index has been developed, a Bribe Payers Index. After all, for every bribe taken one has to be offered or solicited. This “balances the reporting”, as spotlights are thrown on countries where there is significant corruption in the business sector.

As a philosophical approach to the issue, it is believed that by throwing the light of day onto these matters, in many situations that light will initiate a cleansing process. Indeed a parallel could be suggested with the condition of an alcoholic-----repair doesn't really begin until the facts are faced, namely, the admission that there is a problem. As long as there is major denial, it is so much harder to launch a cleansing process.

### The Integrity Pact concept

TI has developed a technique called the “Integrity Pact”. It is based on the realization that one must first take small steps before larger steps can be considered. The idea is to persuade all the relevant

parties to a specified development effort to contract with each other to a set of terms and conditions that bring transparency and integrity to the entire bidding and contract execution process. The Kroll Group knows in its professional forensic mind that frauds require motivation, opportunity and rationalization. The Integrity Pact concept addresses these conditions. By contracting not to bribe, the opportunities to do so are lessened. By applying sanctions to those who might consider breaking their contractual commitment, incentives to comply are strengthened. By attempting to ensure that competing bidders will not bribe, the major rationalization of bribing behaviour may be removed. There have been successful examples where the integrity pact has accomplished the goals sought. Obviously, the monitoring and management process for the bidding and contracting must be effective and be believed in by all parties.

TI-Canada (with TI-Norway) is actively involved today in Nigeria concerning the oil and gas developments in the Niger Delta where we are involved in helping to put such an Integrity Pact in place, along with our Nigeria counterpart, Transparency In Nigeria. It is an exciting work in process. TI-Canada's costs are being funded importantly by the Canadian government agency, CIDA. The Canadian High Commission in Nigeria is also participating in the process. Suffice it to say that Canadian government involvement would not be occurring unless the process was real and showed actual prospects of being accomplished with the involvement of TI and its workers. The Integrity Pact integrates into contracts in the following way:

- (1) it requires bidders to promise not to offer bribes to win contracts, and if the bidder wins the contract, the bidder promises not to bribe during the implementation of the contract; bidders are required to have very senior level management people sign these promises;
- (2) the government officials managing the bidding process must also promise not to use or request bribes;
- (3) parties to the contracting process must agree to a monitoring process by inspectors who are neither from the contracting government or the private sector participants; the purpose is to determine whether or not any corruption occurred during the contract process; the Integrity Pact requires that access to all financial information be provided to the inspectors; there is agreement that at the completion of some contracts the monitoring group will publish its report which hopefully should state that the contract was completed without bribery occurring. The details of our Nigerian adventure could consume an entire presentation, as there is so much of interest to show and tell.

### The G8 and the extractive industries

Significant developments have occurred in the last couple of years in placing corruption and transparency on the agenda of many world bodies. At the 2003 G8 meeting in Evian, France, the G8 member countries agreed to come together and with developing country partners and the international community to fight corruption and improve transparency. At the Sea Island conference in 2004 the G8 countries agreed to become parties to the UN Convention against Corruption. There is agreement to assist developing countries to accomplish the objectives of the UN convention. Included with the G8 commitments there is agreement regarding asset recovery whereby help will be given in detection, recovery and return of illicitly acquired proceeds of corruption. To try and ensure that these high statements of principle work their way into the practicalities of life, here is an example of what the G8 country agreements plan to implement:

-to have rules in place before 2005 to require wire transfer originator information

- to create best practice modalities of disposition and return of the proceeds of corruption
- to explore effective measures to recover assets in corruption cases
- to have rules in place by mid-2005 to require due diligence for 'politically exposed persons' accounts.

### Extractive Industries Transparency Initiative (EITI)

Related to some of the foregoing comments, is another initiative supported by TI. Following the World Summit on Sustainable Development in South Africa in 2002, and with the encouragement of Tony Blair from the UK, the Extractive Industries Transparency Initiative was launched. This initiative encourages governments, publicly traded, private and state-owned extractive companies, international organizations, NGO's and others to work together voluntarily to develop a framework to promote the transparency of payments and revenues. The publication of revenue receipts by governments is a complex issue, as receipts come in many forms, including grants, proceeds of sale of exploration permits, royalties on production, taxes on profits, etc. Very detailed model accounts have been published by the UK Department of Industry and an offer of technical implementation help has also been given. As you will be able to visualize, this is directed at exposing the facts and discouraging undisclosed diversions of funds. TI-Canada's work in Nigeria could be said to be a working example in the oil and gas extractive industry.

For those of you who read *The Economist*, in the September 25, 2004 edition (page 18) favourable comment is made on the EITI initiative, in an article entitled "Tackling the oil curse".

### Exposure of cases involving Canadian company Acres International

Acres is a leading Canadian consulting engineering company. It was found guilty by a court in Lesotho, Africa, of paying bribes in connection with a water dam project partly funded by the World Bank. In September 2003, an appeal against this conviction was upheld. Earlier, the CEO of the project, a Lesotho civil servant, was found guilty of accepting bribes. The offense occurred before February 1999, after which date such bribe payments have been a criminal offense under Canada's Criminal Code. In July 2004, the World Bank black listed Acres for three years with respect to projects funded by that Bank. This case could be a wake-up call to Canadian businesses. Techniques used in this example included the common practice of using agents as well as directing payments into numbered Swiss bank accounts. Clearly the damages to reputation are severe; and in addition there is the \$3m fine. Since then, Acres has merged with the Hatch Group. It was said that this example of corruption was premeditated, deliberate and went right to the top management of Acres. It was also said that one person who was involved was a Canadian federal cabinet appointment, namely Canada's Honorary Consul in Lesotho.

When I was living in London in 1997, I attended meetings with World Bank officials, and at that time my impression was that there was an ambivalence to bribery matters. Since then, however, the World Bank has completely changed and now is a strong supporter of anti-corruption efforts. This is an example of how transparency, when it occurs, brings with it its own solution. Today the World Bank has more than 100 firms and individuals named in its web site that have been found to engage in corrupt practices.

### A Big Four audit industry example of transparency in action

I will divert from TI for a brief moment and share with you some of my personal experience as Director of Risk Management for Ernst & Young International regarding bribery found during an audit engagement. Our Policy Manual prescribes very formal steps be taken in these circumstances. The issue must be brought to the attention of the CEO and the Board of Directors and their approval is to be obtained for the bribe given. You can just imagine the internal consternation this procedure will create. Very frequently the line managers will tell the auditor that the matter was all approved by the boss and “or the top people”. But watch the dance begin when you then say you wish to speak with these top people and confirm what you have been told! It’s a great way to expose liars. Often our auditor is encouraged to take legal advice, as not infrequently the client’s corporate lawyer joins the discussions. One could describe the audit procedure as being one of exposing the facts throughout the organization, that is making the transaction transparent. Of course, confidentiality and contract rules of the audit professional prevent public exposure, so one doesn’t hear about these sorts of examples very often.

### And another example of the transparency principle in action

Another instance from my London, UK, experience also involved corruption at the highest level. I cite this example because I believe it validates how the principle of transparency is an excellent tool to use to address these problems. As part of my responsibilities, I was frequently brought in to help deal with significant difficulties in an international member firm audit, tax and consulting engagements. Many member firms in smaller countries did not always have the necessary resources to resolve all the challenges they faced. In 1997, our firm member in a newly “liberated” Eastern European country had obtained the engagement for a recently privatized business enterprise. This company provided a significant portion of that government’s national tax revenue! The business enterprise included banks, railways, hotels, tourist operations, steel mills and many factories. Would you believe that the managers of this enterprise were the former political communist bosses of the country! And how little, do you think, was paid to the state to purchase these enterprises?

Why, you may ask, did they want to hire a western big five (at the time) audit firm? The fact was that modernization of these businesses required huge new capital investments, and such funds could only come from the international banking community. Of course, funds could only be raised, along with the resolution to other pre-conditions, if there was a reputable audit opinion on the financial statements. My audit firm’s international vice-chairman responsible for Eastern Europe was brought into the situation, and while he helped solve some of the problems, his instructions were that the audit report could not be issued until I was in agreement with the formal terms of engagement. After due investigation, my requirement was that five conditions were to be met, one of which was that we had to have independent and sufficient evidence of who actually owned the enterprise. We must know for whom we are working and those owner principals had to meet our client acceptance standards.

The initial answer given was that it was not possible to determine the ownership of this conglomerate as it was documented in secret papers that were filed with a Swiss bank, and Swiss confidentiality laws did not permit them to obtain the necessary information for us. I said that was their problem, not mine,

and the ownership identification condition remained. I received two calls from the country's President, telling me how important these financial statements (and the contemplated financing) were to the country, etc., and I should relax my condition. If I ever needed confirmation that this was a material issue, the President's calls confirmed that to me! The standoff continued for six months. Pressures applied included threat of change of auditors, bankruptcy of the local audit firm, which was not being paid because we would not yet sign the audit report, and allegations that we had never applied such a standard to work anywhere else. Of course, I wouldn't be telling you this story if it didn't end to my satisfaction! And so it did. After six months we determined all the ownership facts, restated the accounts to now disclose related party transactions and in footnotes told exactly who had purchased these assets from the state--- and then signed the audit report. So here is another example of applying the principle of transparency to complex circumstances.

#### Another recent example of a Canadian company unhappily in the news

The SNC-Lavalin organization is also a Canadian consulting organization that does international projects. In this example, their own internal procedures uncovered a problem and top executives took the appropriate actions. In this example, the project was being partly financed by the Asian Development Bank. The firm was caught submitting resumes in which it lied about the employment status and work experience of two engineers it supplied under a 1997 contract, a practice comparable to mislabelling of goods. It also submitted a fabricated reference letter. This deceit helped the firm meet staffing requirements for supervising a road improvement project in Laos. SNC-Lavalin sent the responsible executive into early retirement and reprimanded the other staff involved. The firm suffered a two-year blacklisting by the Asian Development Bank. A bank official is quoted as saying "I cite them as a positive example, one of the most positive examples we have, as to how firms deal with these cases. They were very forthcoming with information when asked for it".

#### Another example—China seeking Canada's advice

I participated in a half-day meeting in Toronto in June of this year with nine senior Chinese government officials from Beijing, who wished to learn what TI-Canada, and Canada, were doing to fight corruption. They said how important it was to China, as it entered the world economy, that it set standards with which the West would agree.

#### TI-Canada's Strategic Plan

##### Priorities from TI-Canada's Strategic Plan

1. We will work to understand what goes on in Canada and what contributes to corruption at the federal, provincial and municipal level and among Canadian businesses. (I should mention we are currently working toward carrying out a survey of municipal government corruption in parts of Canada.)
2. We will work to encourage integration of anti-corruption provisions into bi-lateral international agreements.
3. We will work with the TI Secretariat and the international anti-corruption movement to effectively implement TI's various international anti-corruption initiatives.

4. We will explore potential associations with other National Chapters to implement various anti-corruption initiatives.

### Conclusion

I hope you have found my comments interesting, particularly so as they involve life threatening issues of corruption. “Life threatening?” you ask. If you need persuasion that corruption is a life threatening, why not ask Arthur Andersen and Enron? TI-Canada has a challenging mission. Publicizing TI activities is important. Introducing transparency into international deployment of capital and how these moneys are handled in foreign countries is a very good way to reduce corruption. I hope we can continue to count on your support for our mission. Thank you for your attention this evening.