

Transparency International Canada
Country Report 2007
Inter-American Convention against Corruption

In what areas of the IACAC has your country made the most progress?

The following Canadian laws support the IACAC:

C2 – The Federal Accountability Act with restrictions on election financing, measures respecting administration transparency, oversight and accountability (12/12/2006). This Act was passed by the Government of the Conservative party. Canada had a change in government because of corrupt government practices coming to light through whistleblowing of a public servant.

Whistleblower legislation is also in C2; for example punishment for retaliation, and financial assistance to public servants for legal council.

C25 – The Law to amend the proceeds of crime (money laundering) and terrorist financing, and amendments to the income tax act. (14/12/2006).

The enactment of the Corruption of Foreign Public Officials Act (CFPOA) (02/14/1999).

The policy on internal disclosure of information concerning wrongdoing in the workplace (11/30/2001).

What practices have proven to be the best practices within the public sector in complying with such areas?

The rules based quasi-judicial power sharing among the federal, provincial and territorial governments operates on a system of Acts and Codes with standards and mechanisms for supporting the provisions of the laws.

Examples are: the Constitution; Criminal Code; Parliament of Canada Act; Conflict of Interest Codes for both Public Officials and Public Servants; Financial Administration Act; Guidelines for Dealing with Crown Corporations; Lobbyist Registration Act.

Annual reports including audited financial statements are submitted to Parliament and available to the public. Mechanisms for oversight include the Auditor General for all levels of government and independent audits.

The Ethics Officer and Counselors, the Conflict of Interest Commissioner and the Public Security Integrity Officer will provide annual reports to Parliament on the operation of policies. Treasury Board appointed a Senior Officer responsible for receiving and acting on internal disclosures and operating the Treasury Board Active Monitoring Policy. Oversight bodies are Senior Officers appointed by government to ensure monitoring, reporting and implementation.

What lobbying strategies undertaken by civil society organizations have been successful?

The direct consultation process that takes place with government officials in order to bring the actions of government under scrutiny and exchange information to support government in formulating policy.

The process includes meetings with officials at all levels of government; public debates with Parliamentary and Senatorial Standing Committees, and program and project submissions to government for financial support for work in anti-corruption to NGOs for Civil Society inclusion in the multilateral process.

What collaborative models and/or experiences between the State and civil society have been successful in promoting and implementing the Convention?

There exists a long tradition of consultation with Civil Society in Canada. At all levels of government, individual departments are legislatively mandated with the responsibility for specific areas of public policy and have recourse to public participation mechanisms to ensure involvement in policy, legislative and program development. These mechanisms include the public consultation process, participation by written submission from Civil Society, support for participation in senior level events such as the OAS GA and the Summit of the Americas, published studies conducted by Civil Society organizations, surveys by independent research associates and annual reports.

In what areas of the Convention has your country made the least progress?

The Access to Information Act has become more complicated and bureaucratic requiring exactitude for any level of satisfaction on the acquisition of information.

CIDA, acting as a central authority in support of requests for assistance and cooperation on matters of Mutual Assistance, has limited authority to cover the Americas region. Each country has a designated budget which cannot be surpassed.

A specialized office with responsibility for both investigating and prosecuting foreign bribery cases has been rejected in favor of preserving the segregation of authority between police – federal, provincial and municipal - who investigate, and Crown prosecutors, both federal and provincial, who prosecute.

The accounting and auditing requirements to prevent practices for hiding foreign bribery are not fully satisfactory.

There is a low level of awareness in Small and Medium Size Enterprises (SMEs) regarding corporate anti-corruption compliance.

CSOs in Canada are limited in acting as advocacy agents through taxation exemption restrictions on “charitable” organizations. It is difficult to obtain a tax exempt status thus limiting the impact of their activity.

What obstacles have been the greatest in preventing compliance with these areas?

There exist legal obstacles and jurisdictional limitations among federal, provincial and municipal levels of government for the implementation of the IACAC.

There exist financial constraints given the current minority government status of the federal government and the strict policies they have put in place.

Anti-corruption efforts regarding financial disclosure of accounts remain weak. There is no clear prohibition relating to off-the-books accounts. Amendments to existing legal requirements at all levels of government are required to address the maintenance of adequate accounting records for Canadian companies, including foreign subsidiaries. These weaknesses include full identification and description of transactions in accounts; accurate and proper classification of transactions and adequacy of the audit trail. Large corporations are also not subject to independent audits.

SMEs often do not have codes of conduct or any form of compliance program, a situation that exacerbates the low level of awareness regarding anti-corruption compliance.

As available resources are less than satisfactory, increased financial support is necessary for encouraging CSO engagement in the multilateral process. Implementation mechanisms are important in order to enhance the relationship between citizens and their governments and ensure transparency and overall accountability as well as amendments to the Canadian Charity Act.

What do you feel are the challenges faced by the Convention in the next 10 years?

Canada should ensure that the IACAC is closely aligned with the UNCAC. We expect continued legal obstacles and jurisdictional limitations among federal, provincial and municipal levels of government for the implementation of the IACAC.

Canada has moved from a principle based conduct regime to a legislated regime. The Federal, Provincial and Territorial governments have not improved on their Access to Information Acts. The federal act is now more bureaucratic and less "user friendly" to the public as one must possess exact knowledge of the information in order to gain access. Government institutions have not taken the steps necessary to ensure that timeframes under the Access to Information Act are respected on a consistent basis. For example, the Privy Council Office and Justice Canada have had consistent failing grades, despite past assurances to the Information Commissioner and Parliament that they would respect their lawful obligations. There appear to be five main causes of delay in processing access requests: inadequate resources in Access to Information/Privacy offices (ATIP); chronic tardiness in the retrieval of records due to poor records management and staff shortages in offices of primary interest (OPIs); difficulties encountered during the consultation process with third parties and other government

institutions; top-heavy approval processes, including too much worry over politically sensitive requests and too frequent holdups in ministers' offices; and poor communications with requesters to clarify access requests. What continues to be troubling is the culture of secrecy at the federal level. Many bureaucrats will not take meeting notes. Also, while whistleblower protection has improved, the culture of fear continues to exist within the public service, given the ultimate negative effects to one's career if one formally reports abnormalities and wrongdoings in the workplace.

The anticipated level of prosecutions of foreign bribery remains unsatisfactory, and no significant change is expected over the next three years. However, accountability is at the core of the current minority government agenda and further positive activity is anticipated in promoting enforcement awareness of the Corruption of Foreign Public Officials Act (CFPOA). Hopefully the government will decide to reverse the current position of refusing to add "nationality" jurisdiction to the CFPOA and extend the jurisdiction outside of Canada.

There is a critical need for more oversight bodies and increased financial support for existing mechanisms to implement the IACAC such as funding to Central Authorities. Adequate funding for CSO inclusion will continue to be a challenge. Current oversight bodies have investigative powers that require strengthening in order to perform audits and be empowered to ensure that recommendations are implemented. Military expenditures and procurement for "emergency" are excluded from most control systems. This should end as procurement and contracting are key issues for controlling corruption. Regarding the specifics in the disclosure of assets, reports of changes and an account at end of service should be included in the process. There is a need for good governance using basic processes such as public budgets, transparent and honest judiciary and police, and it is crucial that public tendering take place with "low" thresholds.

Party financing and lobbying provisions have been addressed in C2. However there is a need to improve the tracing of lobbying activities.

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