



## TRANSPARENCY INTERNATIONAL CANADA INC. NEWSLETTER

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### TI-CANADA LETTER TO MEMBERS

#### **Re. Acres International**

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

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

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

Companies should, of course, not pay bribes, directly or indirectly to further their business interests. Further, since February 14, 1999, the bribery of foreign public officials has been a

criminal offence in Canada, bringing severe penalties by way of fines and imprisonment on the offender. Had the bribes relating to the Lesotho project been paid after 1999, Acres could have been prosecuted in Canada, assuming that law enforcement authorities believed that they had sufficient evidence.

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

1. Foreign jurisdictions have started to push for bribery convictions of companies they believe to have paid bribes to their government officials. Even if they have no intention of paying bribes, companies may find themselves in a position where they are accused of having done so. There are measures that can be taken to minimize this risk.
2. Companies should have a clear policy against paying bribes. Even more importantly, steps should be taken to ensure that every employee

3. and agent or representative is aware of this policy. Anti-bribery training programs for those engaged in foreign business transactions should be provided and participation required. Processes should be put in place to require constant reporting by those in a position to pay bribes that they have not, and will not, do so. A senior officer of the company should be charged with the responsibility for ensuring that the company does not participate in bribery and corruption, or put itself in a position where it can be accused of turning a blind eye to it. This officer should review every foreign contract, looking for suspicious aspects of it, and should have the authority to demand changes. He or she should take steps to find out as much as possible about local business and political circumstances in the countries concerned. A company should also have an effective “whistle-blowing” policy that requires employees to bring their concerns about bribery to the attention of, say, the senior officer mentioned above, and ensures they will not suffer discrimination for doing so.
4. The use of local agents or local representatives is frequently essential to effectively manage a project in a foreign country. However, experience tells us that agents or representatives do pay bribes to further the company’s interest, sometimes without the company’s knowledge. TI-Canada urges companies that use local agents or local representatives to specifically prohibit them from paying bribes and take steps to demonstrate that they are serious in order to reduce the risk of a bribe being paid by their agents or representatives without the companies’ knowledge or concurrence. Companies should keep fees to amounts that are reasonable in relation to international norms and the services rendered and, if in doubt, demand a strict accounting from agents or representatives of their use of funds provided. In high-risk parts of the world, companies should write an express provision in their contracts with agents or representatives, retaining the right to conduct an audit of the disposition of fees paid.
5. The Lesotho cases indicate that agent-representative fees were paid into numbered Swiss bank accounts. Companies should recognize that paying agents or representatives (or anyone else)

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

TI-Canada hopes that, as a result of the Lesotho cases, the potential financial costs of defence and the reputational injury suffered against charges of corruption will be seen as powerful motivation for companies to take extraordinary care in their dealings with the local agents or local representatives they engage to look after their interests, particularly in countries where bribery is believed to be pervasive.

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

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

The Lesotho judgment concerning Sole may be found at [www.odiousdebts.org/odiousdebts/publications/CullinanJSoleJudgement.pdf](http://www.odiousdebts.org/odiousdebts/publications/CullinanJSoleJudgement.pdf); the appeal judgment concerning Acres is also available on the Odious Debts site.

W. CRAGG, CHAIR AND PRESIDENT, TI-CANADA

**Whistle Blowing conferences in Calgary and Toronto**

**“Blowing the Whistle on Ethical Lapses: Accountability, Responsibility and Stewardship”**

**31 October 2003 - Calgary  
3 November 2003 - Toronto**

Whistle blowing has tended to be associated with the individuals who sounded the alarm, or the specific transgressions they uncovered. The more fundamental issue – from an organizational standpoint – is the need for ethics and integrity to be at the foundation of all actions and decisions, regardless of whether they are individual or collective, within a corporate, institutional or public context.

High profile incidents have shown that whistle blowing can be symptomatic of a failure to create an ethical organizational culture – particularly, in a corporate or institutional context, where to do so often necessitates “going outside”. Internal reporting procedures and processes alone are insufficient if using them is perceived as disloyal, ineffective or too high a risk.

Where individual and collective responsibility, trust and a commitment to accountability and transparency are core values, appropriate whistle blowing can be a way of “keeping an organization honest”. Alone, whistle blowing is neither a guarantee of an organization’s integrity nor the most constructive way to safeguard against dishonest or unethical behaviour.”

As a supporting organization to this event co-hosted by ethicscentre.ca and the Sheldon Chumir Foundation, TI-Canada urges any of the following to register now: Corporate Executives, Chief Legal Officers, Compliance Officers, Corporate Secretaries, Senior Human Resources Executives, Board members, Public Sector Executives, Government/Public Affairs officers, Industry regulators, Ethics & Integrity Officers, Senior management, Employee representatives, Union officials, Governance experts, Communications specialists, Corporate Responsibility officers, Auditors and Accountants, Legal professionals,

Risk Management professionals, Academics, Media.

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**Perceptions of corruption among Canada’s public officials and politicians worsening**

*“Making comparisons from one year to another is problematic. However, to the extent that changes can be traced back to a change in the results from individual sources, trends can be cautiously identified. Noteworthy examples of a downward trend are Argentina, Belarus, Chile, Canada, Israel, Luxembourg, Poland, USA, and Zimbabwe. The considerable decline in their scores does not result from technical factors – actual changes in perceptions are therefore likely.” (Taken from “Questions & Answers on the TI Corruption Perceptions Index (CPI) 2003”)*

**London, 7 October 2003** --- “Rich countries must provide practical support to developing country governments that demonstrate the political will to curb corruption. In addition, those countries starting with a high degree of corruption should not be penalised, since they are in the most urgent need of support,” said Peter Eigen, Chairman of Transparency International (TI), speaking today on the launch of the TI Corruption Perceptions Index 2003 (CPI).

“The new CPI points to high levels of corruption in many rich countries as well as poorer ones, making it imperative that developed countries enforce international conventions to curb bribery by international companies, and that private businesses fulfil their obligations under the OECD Anti-Bribery Convention, namely to stop bribing public officials around the world,” said Eigen. But, he continued, “nine out of ten developing countries score less than 5 against a clean score of 10 in the TI CPI 2003. Their governments must implement results-oriented programmes to fight corruption, but they also urgently require practical help tailored to the needs of their national anti-corruption strategies.”

For these strategies to succeed, said Eigen, “such support must go hand in hand with international

backing for civil society to monitor the implementation of these strategies". In addition, he insisted, "donor countries and international financial institutions should take a firmer line, stopping financial support to corrupt governments and blacklisting international companies caught paying bribes abroad."

"Seven out of ten countries score less than 5 out of a clean score of 10 in the TI CPI 2003, which reflects perceived levels of corruption among politicians and public officials in 133 countries," explained Eigen. "Five out of ten developing countries score less than 3 out of 10, indicating a high level of corruption." The annual CPI, published today by TI, the leading international non-governmental organisation devoted to fighting corruption worldwide, reflects the perceptions of business people, academics and risk analysts, both resident and non-resident. The statistical work was co-ordinated by Prof. Dr Johann Graf Lambsdorff at Passau University in Germany, advised by a group of international specialists.

Corruption is perceived to be pervasive in Bangladesh, Nigeria, Haiti, Paraguay, Myanmar, Tajikistan, Georgia, Cameroon, Azerbaijan, Angola, Kenya, and Indonesia, countries with a score of less than 2 in the new index. Countries with a score of higher than 9, with very low levels of perceived corruption, are rich countries, namely Finland, Iceland, Denmark, New Zealand, Singapore and Sweden.

Some changes highlighted in the CPI were identified by Peter Eigen. "On the basis of data from sources that have been consistently used for the index, improvements since last year's index can be observed for Austria, Belgium, Colombia, France, Germany, Ireland, Malaysia, Norway, and Tunisia. Noteworthy examples of a worsening are Argentina, Belarus, Chile, Canada, Israel, Luxembourg, Poland, USA, and Zimbabwe."

"There are many countries, where there is now a high-level political commitment to fight corruption," said TI Vice Chair Rosa Inés Ospina Robledo, speaking in Bogota, Colombia, today. "In such countries, international support, especially for transparency in public contracting,

is essential to build solid foundations for removing corruption from government and public services. In particular, the private sector must take full responsibility for its conduct at home and abroad, and take urgent steps to stop paying bribes. To make this a reality, TI and private sector companies have worked together to develop a set of Business Principles for Countering Bribery, advocating anti-bribery training and codes of conduct within companies. TI has also implemented no-bribes Integrity Pacts in public contracting."

"We can begin to close the rift between developing and rich countries, which was so evident at the WTO meeting in Cancún, Mexico, last month," said Peter Eigen, "if WTO negotiations are launched on a multilateral framework agreement on Transparency in Government Procurement (TGP). For less developed countries, it is in their own interests to introduce transparency measures in public procurement because the waste of their own scarce resources is at stake. If corruption in procurement is not contained, poverty will grow."

"Today's CPI demonstrates that it is not only poor countries where corruption thrives," said Laurence Cockcroft, Chairman of TI (UK), in London today. "Levels of corruption are worryingly high in European countries such as Greece and Italy, and in potentially wealthy oil-rich countries such as Nigeria, Angola, Azerbaijan, Indonesia, Kazakhstan, Libya, Venezuela and Iraq."

"To turn around this situation so that ordinary people share in the oil wealth of their country, TI is campaigning, along with other NGOs, for international oil companies to publish what they pay to governments and state oil companies. This will enable citizens and civil society organisations in countries such as Nigeria, Angola, Iraq, Indonesia and Kazakhstan to have a clearer picture of state revenues," said Cockcroft, a member of TI's international Board of Directors, "so that they can call their governments to account where the state budget is not used to improve scarce public resources, but instead disappears on expensive vanity projects or into the secret offshore bank accounts of politicians and public officials."

“Political parties, the courts and the police were identified as the three areas most in need of reform in TI’s Global Corruption Barometer, a survey of the general public in 48 countries, launched in July 2003,” said Cockcroft. “This indicates a serious lack of confidence in those in authority worldwide.”

The CPI 2003, published today, is a poll of polls, reflecting the perceptions of business people, academics and risk analysts, both resident and non-resident. First launched in 1995, this year’s CPI draws on 17 surveys from 13 independent institutions. A rolling survey of polls provided to TI between 2001 and 2003, the CPI 2003 includes only those countries that feature in at least three surveys. “It is important to emphasise that the CPI, even with 133 countries, is only a snapshot,” said Peter Eigen. “There is not sufficient data on other countries, many of which are likely to be very corrupt.”

The CPI 2003 complements TI’s Bribe Payers Index (BPI), which addresses the propensity of companies from top exporting countries to bribe in emerging markets. The BPI 2002, published on 14 May 2002, revealed high levels of bribery by firms from Russia, China, Taiwan and South Korea, closely followed by Italy, Hong Kong, Malaysia, Japan, USA and France – although many of these countries signed the OECD Anti-Bribery Convention, which outlaws bribery of foreign public officials.

“The OECD Convention came into force in 1999, but we are still awaiting the first prosecutions in the courts of the 35 signatory countries,” said Eigen. “The governments of these countries have an obligation to developing countries to investigate and prosecute the companies within their jurisdictions that are bribing. Their bribes and incentives to corrupt public officials and politicians

are undermining the prospects of sustainable development in poorer countries.”

--For full details of the TI CPI 2003, visit:

[www.transparency.org/cpi/index.html#cpi](http://www.transparency.org/cpi/index.html#cpi)

### **Why is Canada dropping?**

While Canada still maintains a high ranking in the CPI, it has fallen from a score of 9.0 in 2002 to 8.7 in 2003; and a ranking of 5<sup>th</sup> in 1999 to 7<sup>th</sup> in 2001 and 2002 to 11<sup>th</sup> in 2003. According to the quote at the beginning of the last article, this is likely a result of actual changes in perceptions, and does not result from technical factors. Why is Canada dropping?

The answer to this question is not straightforward. The CPI is an index which technically ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. It is a composite index, which draws on 17 different polls and surveys from 13 independent institutions. These polls are carried out among business people and country analysts, including surveys of both local and expatriate residents. This year’s CPI is based on survey data collected between 2001 and 2003.

However, as its name indicates, the CPI deals with *perceptions*. These perceptions can be affected by a variety of sources, not the least of which are the many media articles dealing with Canada’s federal advertising contracts scandal, Toronto’s computer-leasing affair, public servants’ expense accounts, the Bre-X and Acres stories, reports on insider trading over the past few years, and recent revelations concerning Canadian financial institutions involved with loans to Enron, to name a few.

It will be interesting to see if the downward pattern continues. Waiting for the next CPI, however, is not a feasible alternative. The 2003 TI CPI is a wake-up call that corruption is perceived to exist in Canada and among Canadian officials. The onus, now, is on Canadian government, business and civil society to work together to erase this scourge.

### **OECD Anti-Bribery Convention: Overcoming Obstacles to Enforcement – A Canadian Perspective**

On Feb 15, 1999, the OECD *Convention on Combating Bribery of Foreign Public Officials in*

*International Transactions* came into effect. Since then, however, there has been almost no enforcement, other than in the U.S. and one prosecution in Canada relating to bribery of a U.S. customs official.

In preparation for a meeting in Paris in early October sponsored by TI and attended by TI representatives from several OECD countries and members of the OECD Working Group and a number of prosecutors from a variety of countries, TI Chapters in OECD countries were asked to conduct a national survey to identify obstacles to enforcement of the Convention in their own country and consider possible steps to overcome such obstacles.

The TI-Canada survey was carried out by Michael Davies, Vice Chair of TI-Canada, and is the result of meetings and discussions which he held over several weeks with Canadian law enforcement officials, officials with the Department of Justice and Foreign Affairs, leading lawyers in the field, corporate executives involved in international trade, accounting executives and other knowledgeable experts.

Some of the problems identified in the Canadian survey which could have an adverse effect on enforcement of the Convention and Canada's implementing law, the *Corruption of Foreign Public Officials Act* (CFPOA), were: the lack of "nationality" jurisdiction (Canada is one of only two or three OECD countries that does not prosecute bribery of a foreign public official by one of its citizens when the bribe is paid outside of the country), combined with a fairly narrow interpretation of what is required to constitute "territorial" jurisdiction; inadequate accounting offences (which are much easier to prove as they occur in the home country); for example, there is no clear prohibition in Canada relating to "off-the-books" accounts; and although there seems to be a fairly good level of awareness of the CFPOA within government and in domestic federal law enforcement agencies, the same does not apply in the business community, particularly in the case of small-to-medium sized companies.

Several remedies were suggested. Most of those surveyed outside government were strongly of the opinion that the government should act promptly to modify the CFPOA to add "nationality" jurisdiction, which would permit Canadian courts to hold Canadian nationals accountable for their illicit actions outside the country. Amendments were recommended to Canadian legislation to more specifically address the maintenance of books and records, including prohibition of off-the-books accounts, the recording of non-existent transactions and false documentation. Onerous sanctions, it was suggested, should be imposed for misrepresentations and omissions in financial reports and accounting records.

Regarding lack of awareness, it was noted that business associations, TI-Canada and the legal and accounting professions could all do more to raise awareness of Canada's new anti-bribery law among small- and medium-sized companies. It was also pointed out that government agencies, such as CIDA and EDC, that fund international projects, were in a unique position to inform and educate the business community that they serve that foreign bribery is now a criminal offence, and it was suggested that they might be even more proactive in this regard.

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--The full text of the survey can be found at:  
[www.transparency.ca](http://www.transparency.ca)

### **EC's new Policy Statement Against Corruption in place, but....**

In June 2003, the European Commission's *Comprehensive EU Policy Against Corruption* was quietly passed. While TI reports that this Convention "reflects real change than has occurred during the past few years in terms of awareness and, more importantly, concrete steps in several areas," TI is calling for a mechanism to monitor implementation of this instrument and others like it.

While the Commission does not share the same view, TI believes there is a need for an EU mechanism to monitor the implementation of various EU initiatives and instruments and is urging the EU to establish such a mechanism. As corruption is a serious problem in many accession

countries to the EU, such a mechanism is of particular importance.

*--Information taken from TI press release of 3 September 2003, "TI welcomes the European Commission's new Policy Statement Against Corruption and calls for a mechanism to monitor implementation of EU instruments"; for full press release, visit: [www.transparency.org](http://www.transparency.org)*

### **UN Convention Against Corruption also requires monitoring mechanism**

**Berlin/Vienna, 1 October 2003** --- The UN Convention Against Corruption, on which talks concluded [on 1 October], "will provide a comprehensive set of standards and measures to promote international co-operation and domestic efforts in the fight and prevention of corruption," said Peter Rooke, Transparency International (TI) Advisory Council member and an observer at the negotiations. "Political will is essential to the Convention's success, in particular to the goal of achieving effective corruption prevention and enforcement." TI, the leading international non-governmental organisation devoted to fighting corruption, is fully committed to supporting this process at a global level and through TI's national chapters around the world.

Governments will sign the Convention in Merida, Mexico, at a ceremony on 9-11 December 2003. In addition to providing for measures to combat corruption in both private and public sectors, the Convention is groundbreaking in introducing into an international legal instrument the concept, description and processes for international co-operation in the recovery of stolen assets. The Convention also establishes the right of persons who have suffered damage from corruption to initiate legal proceedings against responsible parties.

"The important task ahead is to urge states to ratify the Convention as soon as possible so it will be an active, legally binding instrument for States," said Rooke. The seventh session included agreement to lower the threshold number of ratifications from 40 to 30 countries. "The UN Transnational Organised Crime Convention required 40 ratifications, and came into force only

on 29 September 2003, almost three years following the conclusion of its negotiations," said Rooke. "The lower number of 30 provides greater chance that the UN Convention Against Corruption will come into effect more quickly. The impact the Convention has in combating corruption will depend, however, on its effective implementation and application by a large number of States."

"As the first global anti-corruption instrument, the Convention gives a unique opportunity to create public awareness and commitment to curbing corruption," said Rooke. "This includes awareness of the degrees of corruption, that there are steps which can be taken to curb it and that the Convention is evidence of global solidarity and commitment." TI therefore supports very strongly the Committee's inclusion, in its draft UN General Assembly resolution to adopt the Convention, of a decision to designate December 9<sup>th</sup> as the annual International Anti-Corruption Day.

At the seventh and final session from 29 September till 1 October 2003, government delegations debated a highly controversial article regarding the need for dual criminality in mutual legal assistance cases. Dual criminality implies that in order for a state to give mutual legal assistance to another state upon request (e.g. to help out with investigations, prosecution and judicial proceedings), both states must have similar legislation regarding the criminal offences for which the assistance is sought.

"The agreed text provides that, even when states do not have dual criminality, they can still use the Convention as the basis for providing legal assistance in many cases," explained Peter Rooke. "This breakthrough provision gives states the ability to refuse assistance when dual criminality is not satisfied only when the assistance involves coercive action or the assistance is of a trivial nature".

Over the three years of negotiations, the Convention did suffer some setbacks – an important article which called for legislative and policy changes to make the funding of political parties transparent and accountable was replaced

