Transparency International Canada Inc.

TI-Canada

Fourth Annual Day of Dialogue: Spotlight on Corruption

Rapporteur Reports

3 June 2014

For any questions/suggestions or further information, please contact:
ti-can@transparency.ca; or 416-488-3939.

Introduction

On 3 June 2014, Transparency International Canada (TI-Canada) held its Fourth Annual *Day of Dialogue: Spotlight on Corruption*, in Toronto. This year the areas addressed were:

- Corruption in the Engineering and Construction Industry;
- Enhanced Corporate Transparency: Tackling Money Laundering and Illicit Money Flows;
- Whistleblowers;
- Resource Revenue Transparency.

As in previous years, participants came from a variety of sectors, including business, government, academia, the media and civil society, and had the opportunity to discuss with experts in each of these areas.

The Day of Dialogue is meant to explore and move forward the discussion on current anti-corruption issues. In order for people not able to attend the event in person to benefit, we have assembled Rapporteur Reports of each session, which were held under the Chatham House Rule, allowing for individuals' comments to be passed on without personal attribution.

We hope you will find these Reports useful and look forward to continuing the discussion with you.

Peter Dent
Chair and President

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Agenda

Transparency International Canada Inc.

presents the *Fourth Annual*

Day of Dialogue: Spotlight on Corruption

Tuesday, 3 June 2014
08:00 – 17:00, followed by TI-Canada's Seventeenth Annual General Meeting
Location: #3400, 1 First Canadian Place, Toronto (offices of Bennett Jones LLP)
PD credits are available for Ontario CAs
An application for accreditation of the program for professionalism hours is pending with the Law Society of Upper Canada

AGENDA

08:00 – 08:15 Coffee and Networking

08:15 – 08:30 Welcome and Introduction to Day

Mr. Peter Dent, *Chair and President, Transparency International Canada*

08:30 – 10:00 Corruption in the Engineering and Construction Industry

Why did Peter Eigen, Founder and past Chair of Transparency International, state in his Introduction to the 2005 TI Global Corruption Report, that "Nowhere is corruption more ingrained than in the construction sector"? Why has the Charbonneau Commission exposed so much evidence of corruption in engineering and construction contracts in Quebec? Join us for a discussion led by three eminent panelists, to discuss this important issue.

Moderator: Mr. Peter Dent, *TI-Canada Board Member, Partner, Americas Leader/ Global Financial Crime Initiative Leader, Deloitte Forensic*, Toronto, Ontario

Speakers: Mr. Andreas Pohlmann, *Consultant, SNC-Lavalin Group Inc.*, Montréal, Québec
Mr. Mike Atkinson, *President, Canadian Construction Association (CCA)*, Ottawa, Ontario
Ms. Signi Schneider, *Chief CSR Advisor, Export Development Canada*, Ottawa, Ontario

Rapporteur: Mr. Ken Mark, *Freelance Journalist*

10:00 – 10:30 Nutrition Break

10:30 – 12:15 Enhanced Corporate Transparency: Tackling Money Laundering and Illicit Money Flows

Corruption around the world is facilitated by people's ability to launder and hide the proceeds of corruption. Dirty money enters the financial system and is given the semblance of originating from a legitimate source by using corporate vehicles which disguise, concealment and anonymity. Even with the strengthening of global anti-money laundering standards, such as those set by the Financial Action Task Force (FATF) and the United Nations Convention against Corruption, significant loopholes continue to exist. A key loophole for money launderers is the lack of information collected and published on those who ultimately own and control companies, trusts and other legal structures, i.e., the beneficial owner. Public Beneficial Ownership registries are not, however, a silver bullet. National, financial, regulatory and supervisory authorities must take all necessary actions that rigorously enforce anti-money laundering obligations to ensure that they are not complicit in laundering the proceeds of corruption, tax evasion and organised crime. The creation of digital currencies, such as bitcoins, has raised further questions about how to exercise such controls and what kind of regulation should be imposed on these digital transactions, especially those that take place outside of the financial system.

Moderator: Dr. Mariana Mota Prado, *TI-Canada Board Member, Associate Professor, Faculty of Law, University of Toronto,* Toronto, Ontario

Speakers: Mr. Stéphane Eljarrat, *Partner, Investigations & White Collar Defence, Taxation & Litigation, Davies Ward Phillips & Vineberg LLP,* Montréal, Quebec

Ms. Josée Nadeau, *Senior Chief, Financial Crimes, International, Finance Canada,* Ottawa, Ontario

Dr. Yuri Takhteyev, *Assistant Professor (status only), University of Toronto, Chief Software Architect, rangle.io,* Toronto, Ontario

Rapporteur: Mr. Paul Pimentel, *Articling Student, Blaney McMurtry LLP*

12:15 – 13:15 Lunch

13:15 – 14:45 Whistleblowers

Acclaimed, spurned, rewarded or victimized, whistle-blowers have become a part of political, corporate and institutional life and play a growing part in the fight against corruption. Whistleblower policies, anonymous hot lines and whistle-blower protection laws are common but vary widely in their treatment of whistleblowers and the protection afforded to them. An experienced panel will examine the institutional, legal and personal challenges in dealing with whistleblowing.

Moderator: Mr. Milos Barutciski, *Partner, Bennett Jones LLP,* Toronto, Ontario

Speakers: Ms. Joanna Gualtieri, *Founder, Federal Accountability Initiative for Reform (FAIR),* Ottawa, Ontario

Mr. Louis Clark, *President and Corporate & Financial Accountability Director, Government Accountability Project,* Washington, D.C., USA

Ms. Christa Wessel, *Chief Human Resources and Legal Officer, McCain Foods Limited,* Toronto, Ontario

Rapporteur: Ms. Sabrina A. Bandali, *Associate, Bennett Jones LLP*

14:45 – 15:15 Nutrition Break

15:15 – 16:45 Resource Revenue Transparency

Lack of transparency of the revenues paid by the extractive industries to governments worldwide has for many years been seen as a major inhibiting factor from holding governments accountable for the use of these resource revenues and efforts to stop corruption. Laws requiring resource companies to publicly report payments generated by resource projects to governments are becoming more frequent. Their reporting requirements are now a reality that many companies are having to deal with. In 2010 the US Congress under the provisions of the Dodd Frank Act put in place disclosure requirements for SEC listed companies. In 2011 the European commission proposed similar requirements for EU listed companies and large private corporations based in the EU. In January of 2014 a coalition of civil society and Canada's major mining associations released the Resource Revenue Transparency Working Group's joint recommendations for mandatory revenue disclosure requirements for Canadian mining companies. The Canadian government has committed to tabling its own legislation by 2015. Panelists will look at the changing landscape of revenue resource disclosure with particular emphasis on the Canadian Resource Revenue Transparency Working Group's recommendations. They will provide insight into the process leading up to the recommendations, highlight the current international landscape of revenue disclosure requirements and comment on some of the challenges and potential shortcomings of existing and proposed legislative initiatives.

Moderator: Mr. Martin Mueller, *TI-Canada Board Member,* Calgary, Alberta

Speakers: Ms. Samantha Burton, *Advocacy Manager, Engineers Without Borders Canada,* Toronto, Ontario

Mr. Ross Gallinger, *Executive Director, Prospectors & Developers Association of Canada,* Toronto, Ontario

Mr. Mark Pearson, *Director General, External Relations Branch, Natural Resources Canada,* Ottawa, Ontario

Rapporteur: Ms. Lindsay Senese, *JD*

16:45 – 17:00 Closing Remarks

Mr. Peter Dent, *Chair and President, TI-Canada*

17:00 – 17:30 TI-Canada Seventeenth Annual General Meeting

Rapporteur Reports

Corruption in the Engineering and Construction Industry

Moderator: *Mr. Peter Dent, TI-Canada Chair and President, Partner, Americas Leader/Global Financial Crime Initiative Leader, Deloitte Forensic, Toronto, Ontario*
Speakers: *Mr. Andreas Pohlmann, Consultant, SNC-Lavalin Group Inc., Montréal, Québec*
Mr. Mike Atkinson, President, Canadian Construction Association (CCA), Ottawa, Ontario
Ms. Signi Schneider, Chief CSR Advisor, Export Development Canada, Ottawa, Ontario
Rapporteur: *Mr. Ken Mark, Freelance Journalist*

Canadian corporate compliance officers rate our regulators as being 20 years behind the US and 10 years behind Europe in dealing with corruption and bribery charges. That's despite evidence of widespread corruption in Quebec engineering and construction contracts from the ongoing Charbonneau Commission and the current class-action suit against the SNC-Lavalin Group Ltd. for stock price losses related to its activities in Libya.

And yet, Canadian senior executives are paying more attention to these questions as risk management issues rather than mere business ethics concerns. Increasingly, courts here are linking corruption and bribery cases to criminal offences such as fraud, tax evasion, proceeds of crime and money laundering.

As well, prosecutors are reaching beyond actual wrongdoers to pursue senior executives and board members who either approved or overlooked these activities.

Globally, the penalties are becoming stiffer. In 2008, for violations of the US Foreign Corrupt Practices Act (FCPA) Siemens AG paid US$1.6 billion in fines to US and German regulators. As well, it had to spend an additional several hundred million dollars to set up the in-house infrastructure to ensure compliance with the FCPA.

In 2013, World Bank debarred SNC-Lavalin Inc.,* a subsidiary of the SNC-Lavalin Group, which represents more than 60% of its parent's business, from bidding on any of its projects for 10 years. The decision stems from the misconduct of one of SNC-Lavalin Inc.'s affiliated companies in a bridge project in Bangladesh. As a result of these experiences, both Siemens and the SNC-Lavalin Group made significant changes to their senior executive ranks and board membership.

Speakers concluded that corruption is all about people and that, within organizations, the root cause of corruption is their willingness to accept improper practices. Earlier codes of conduct did not address corruption issues, specifically. In response, senior executives need to set the proper "tone at the top". That involves establishing suitable corporate governance standards and policies as part of a global compliance program. These emphasize setting proper boundaries and expectations for all employees, especially those in business development and procurement. Finally, organizations need to roll out a comprehensive training program.

In this way, they are changing their corporate culture to stress basic values to make it uncompromisingly clear to all employees that corrupt behaviour is wrong and unacceptable.

Furthermore, organizations need to consider expanding the rules for calculating annual bonuses. One proposal is to base up to 25 per cent of such compensation on non-financial targets. In other words, it's not how many deals employees close but how they close them.

But such policies can also help organizations burnish their reputation in the marketplace. Consistently high rankings in annual conformance to anti-corruption regulations surveys can be used in corporate social responsibility (CSR) campaigns to attract new customers seeking to do business with ethical suppliers.

As well, it can assist them to attract and retain employees seeking to work for socially responsible employers whose moral values match their own. Similarly, bankers, analysts and investors are paying more attention to such issues in order to limit future risks.

While much attention has been focused on large multinational firms, many small- and medium-sized, family-owned firms are ignoring the reality of the scope of possible corruption when dealing through foreign agents, consultants, go-betweens, etc.

To protect themselves, smaller firms need to talk to on-the-ground Canadian trade commissioners, along with their local marketplace experts, to find suitable partners and learn more about acceptable local business practices.

Ultimately, the wake-up call for Canadian executives will come when they grasp the real-market costs of not complying with anti-corruption and bribery agreements. Postponing that day will only make it more painful.

* worldbank.org/en/news/press-release/2013/04/17/world-bank-debars-snc-lavalin-inc-and-its-affiliates-for-ten-years

Enhanced Corporate Transparency: Tackling Money Laundering and Illicit Money Flows

Moderator: *Dr. Mariana Mota Prado, TI-Canada Board Member, Associate Professor, Faculty of Law, University of Toronto*
Speakers: *Mr. Stéphane Eljarrat, Partner, Investigations & White Collar Defence, Taxation & Litigation, Davies Ward Phillips & Vineberg LLP, Montreal, Quebec*
Ms. Josée Nadeau, Senior Chief, Financial Crimes, International, Finance Canada, Ottawa, Ontario
Dr. Yuri Takhteyev, Assistant Professor (status only), University of Toronto, Chief Software Architect, rangle.io, Toronto, Ontario
Rapporteur: *Mr. Paul Pimentel, Articling Student, Blaney McMurtry LLP*

Corruption is facilitated by the ability to launder and transfer the proceeds of corruption. Vehicles such as corporations, trusts and virtual crypto-currencies (i.e., Bitcoin) can be used to obscure funding sources and launder proceeds of crime. The Canadian government has responded with a regulatory framework aimed at identifying beneficial ownership of such vehicles. Despite the development of this framework, enforcement remains a challenge.

Crimes such as bribery generate illicit proceeds – proceeds of crime. When an individual does something with those proceeds, such as transferring the funds or using them to purchase real estate, that person is laundering money.

Corporations and trusts have been subject to misuse as vehicles for laundering proceeds of crime. Virtual crypto-currencies, such as the Bitcoin, are new vehicles with the potential to facilitate money laundering. The Bitcoin offers users anonymity in the sense that Bitcoin accounts are not linked to the identity of a particular individual or organization, as would be a conventional bank account. Bitcoin transactions, however, are readily traceable back to the accounts from which they originated. The Bitcoin is also limited in that relatively few exchanges handle a large volume of overall transactions. For example, one Bitcoin exchange based in Japan – which was shut down earlier this year – handled approximately 70% of all Bitcoin transactions globally. In addition, because transactions are public, large denomination transactions would tend to stand out. Transactions in the range of US$100 million are not commonplace and therefore are noticeable and traceable back to individual accounts. It is possible to regulate Bitcoins in terms of verifying the identity of beneficial owners of currency at the point at which conventional currencies are exchanged for Bitcoins. However, as regulation in this area emerges, new crypto-currencies with less traceability features will emerge with it, creating additional vehicles for money laundering.

Canada has committed to fighting money laundering through international and domestic commitments to the Financial Action Task Force (FATF). Created in 1989 by the G7 nations, the FATF sets legal, regulatory and operational standards to address threats to the international financial system. As a founding member, Canada has a role in establishing those standards and a responsibility to implement those standards domestically. More than 180 countries have recognized FATF standards and committed

– to varying degrees – to implementing them. Members of the FATF – of which there are currently 36 – are subject to monitoring, in the form of peer review, regarding the effectiveness of their implementation of FATF recommendations and standards. These peer reviews are publically available.

In 2012, the FATF released a revised set of 40 recommendations focusing on anti-money laundering (AML) effectiveness. They establish a framework for assessing a country's AML regime in terms of investigations and prosecutions. A key element of this framework is the standard dealing with beneficial ownership. The government of Canada has taken several actions in response to the FATF's recommendations regarding disclosure of beneficial ownership.

First, it strengthened customer due diligence requirements under domestic AML legislation. Effective February 1, 2014, entities subject to that legislation – which include financial institutions and money services businesses – must now identify and keep records of the identities of the beneficial owners of trusts and corporations, who are clients. This information can then be used to assist in reporting suspicious transactions, as appropriate, to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).[1]

Second, the government embarked on a consultation process on the *Canada Business Corporations Act* dealing with: "improved access to accurate and timely information by competent authorities such as law enforcement on beneficial ownership of corporations; the disclosure of ownership information regarding bearer shares and bearer share warrants; the disclosure by nominee shareholders of information on the individuals for whom they are acting; and the possibility of establishing a central registry for entities incorporated under the *Canada Business Corporations Act*."[2]

Third, the government proposed amendments to AML legislation that extend its application to "persons dealing with virtual currencies."[3] The amendments treat virtual currency exchanges as money services businesses and require those businesses to verify the identity of those exchanging national currencies for Bitcoins and vice versa. The amendments also extend the regulation of money services businesses beyond domestic borders to include persons dealing in "virtual currencies that do not have a place of business in Canada but provide services to residents of Canada."[4] In addition, the amendments impose enhanced due diligence requirements for entities dealing with high-risk politically exposed persons.[5]

Despite the emergence of a stronger AML toolkit, there has been a paucity of enforcement action. For example, recent convictions under the *Corruption of Foreign Public Officials Act* (CFPOA) were not accompanied by enforcement actions in relation to

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[1] Prime Minister of Canada, *Canada's G-8 Action Plan on Transparency of Corporations and Trusts*, pm.gc.ca/eng/news/2013/06/18/canadas-g-8-action-plan-transparency-corporations-and-trusts
[2] *Ibid.*
[3] Jacqueline Shinfield and Vladimir Shatiryan, *Blakes Bulletin*, blakes.com/english/resources/bulletins/pages/details.aspx?bulletinid=1919
[4] *Ibid.*
[5] *Ibid.*

money laundering offences under the criminal code, despite the fact that bribery of foreign officials would have given rise to proceeds of crime.

Several potential reasons for the lack of enforcement were highlighted. For example, dealing with economic crimes is relatively new to the justice system and it is taking some time for investigators, prosecutors and judges to catch up. Moreover, many of the information-collection-and-sharing tools noted above are either in the design stage or have only recently been implemented. In addition, the need to share information dealing with beneficial ownership must be appropriately balanced against constitutionally protected privacy rights.

Finally, there is the issue of appropriate resourcing. Even if an organization such as FINTRAC has the legal authority to collect and share information provided by reporting entities with an enforcement agency, does FINTRAC have the resources to analyze the information it receives and decide what would be relevant to that enforcement agency? More than 30,000 entities are required to report multiple forms of information to FINTRAC creating a very large volume of data for analysis. Further, would an enforcement agency such as a police force have the resources to investigate economic crimes?

In sum, new tools are available for tackling money laundering and illicit money flows. However, more work needs to be done with regard to using those tools in the area of enforcement.

Whistleblowers

Moderator: *Mr. Milos Barutciski, TI-Canada Board Member, Partner, Bennett Jones LLP*
Speakers: *Mr. Louis Clark, President and Corporate & Financial Accountability Director, Government Accountability Project, Washington, D.C., USA*
Ms. Christa Wessel, Chief Human Resources and Legal Officer, McCain Foods Limited, Toronto, Ontario
Ms. Joanna Gualtieri, Founder, Federal Accountability Initiative for Reform (FAIR), Ottawa, Ontario
Rapporteur: *Ms. Sabrina A. Bandali, Associate, Bennett Jones LLP*

The session began with a discussion of the origins of interest in whistleblowers and transparency in North America. Significant developments in this area have followed high profile scandals concerning malfeasance in public office. For example, the Government Accountability Project is a US non-governmental organization that grew out of post-Watergate concerns with accountability, ethics and how institutions (mis)behave. Public outrage spurs action and the public is galvanized when misconduct has visible consequences, such as the failed Challenger launch. However, when misconduct does not have such visible consequences, it is still important for the public to defend and support whistleblowers who act in the public interest.

High profile corporate scandals such as Enron or WorldCom were the result of how business was being conducted in those organizations, rather than one-off decisions that might be easier to isolate. When whistleblowing exposes systemic or deeply-embedded practices, it can be profoundly threatening to an organization. Accordingly, when whistleblowers come forward with concerns, they are vulnerable to retaliation; one panellist reported that 20-40% of whistleblowers fear retaliation.

This does not mean that a fear of retaliation is the main reason why individuals fail to come forward and blow the whistle on illegal or unethical conduct. Commonly, whistleblowers care more about the issues at stake than they do about their jobs. They come forward, often undertaking significant personal risk, in order to change a situation they believe is wrong. Survey evidence indicates that if potential whistleblowers believe that their concerns will be ignored and that nothing will change, they are unlikely to come forward. If a company has a program or process to deal with the concerns that a whistleblower might raise, the whistleblower is more likely to raise the concern internally, staying within the company and the process in order to create change.

From the panellists' experience, whistleblowers almost always attempt to raise a concern internally before blowing the whistle on behaviour outside the organization.

Whistleblowers can be a critical line of the company's defence against harmful conduct. For companies for whom good ethics is good business, policies such as a Code of Conduct or a specific whistleblower policy help ensure that supply chains and other business operations are effective, and that any concerns are brought to light and reported up the chain internally. However, whistleblowers commonly report issues at lower levels in an organization. Individuals receiving such information from a whistleblower may not consider the importance of identifying and stopping improper conduct for the organization as a whole. As such, at the lower or middle management levels, the first reaction may be defensive, wanting the issue to go away rather than the manager having to escalate the report or otherwise respond to the alleged improper conduct. Once in a defensive mindset, a company's response to a whistleblower may be mired in interpersonal conflict that percolates for some time before the matter works its way up to an audit or compliance professional. In a government context, the defensive reaction may be particularly acute if the organizational culture teaches that the civil service must protect Ministers and government leaders.

In order to mitigate an organization's potential defensive reaction:

- Whistleblowing policies should have an educational component, enforcing the message that whistleblowers are not "tattletales" or those who have broken a trust.
- There must be consequences to retaliating against a whistleblower.
- Leaders in an organization need to send a clear message about the organization's perspective on whistleblowing as the 'tone from the top' can be critical in shaping an organization's culture.
- Leaders within the company need to put ethics first: going beyond the idea that good ethics is good business, companies should adopt the view that even in cases where good ethics might be bad for business, it is still good ethics and should guide decision-making.
- Shareholders and directors must understand that they are ultimately responsible for a corporation's ethics. Ethical business is the result of the leaders that shareholders and directors hire to run the business.

Importantly, even if management is not involved in the immediate response to concerns raised by a whistleblower, they may still be held responsible for conduct that occurs 'on their watch.' As such, it is important to emphasize the need to investigate and respond to a whistleblower's allegations. If the allegations are unfounded, this will become clear. If the allegations are well founded, they must be fully investigated. In discussion, participants differed on whether it is always necessary to get an independent external investigator involved once an issue is uncovered. Some felt that it might not always be appropriate to bring in someone external, and others suggested that where the

allegations create a conflict of interest it may be necessary to involve other officers of the corporation, such as the General Counsel, or a Compliance Officer, who then may be required to directly report to the Board. Participants commented that it would be useful to have a metric against which an organization's performance can be measured. For example, in assessing the calibre of an organization's transparency initiatives, does the company only report positives? Will it report negative things or weaknesses?

In the panellists' view, if whistleblowing is a frontline defence to unethical and corrupt behaviour, there needs to be a much more serious public conversation about what works, what does not. Given the public interest in the information exposed by whistleblowing, it is important to make sure the law effectively protects those who shine a light on improper or unethical conduct. In order to have an informed public debate about the protections needed for whistleblowers, the public needs to better understand what the cost of whistleblowing can be to a whistleblower.

Being labelled a whistleblower may have long-lasting impacts, including affecting an individual's subsequent job prospects. Whistleblowers may be considered to be "tattletales" or otherwise untrustworthy. In the public sector context, poor implementation of access to information laws may increase whistleblowers' vulnerability: without public access to information, it is easier for a whistleblower to be labelled a liar and more difficult for the media or other civil society actors to scrutinize the alleged conduct. Whistleblowers may face protracted legal battles, and may not have the resources to fund their own representation.

Finally, participants raised the question of bounties for whistleblowers, asking if they work and if they should be implemented in Canada. In the US experience, bounties can work, but they have a downside as it becomes possible for people to perceive whistleblowers as only acting to realize a financial reward. Based on the Securities and Exchange Commission's tracking of whistleblower complaints, Canadian nationals are the second most common sources of information. They often raise allegations against Canadian companies, and are therefore ineligible to claim a bounty reward, and yet, nonetheless, come forward, enabling the SEC to share important information with Canadian law enforcement authorities.

Resource Revenue Transparency

Moderator: *Mr. Martin Mueller, TI-Canada Board Member, Calgary, Alberta*
Speakers: *Ms. Samantha Burton, Advocacy Manager, Engineers Without Borders Canada, Toronto, Canada*
Mr. Ross Gallinger, Executive Director, Prospectors & Developers Association of Canada, Toronto, Ontario
Mr. Mark Pearson, Director General, External Relations Branch, Natural Resources Canada, Ottawa, Ontario
Rapporteur: *Ms. Lindsay Senese, JD*

The significance of natural resource development in Canada, and the fact that 60% of mining companies in the world are registered here, underscore the importance of establishing a domestic framework for Resource Revenue Transparency (RRT). RRT not only contributes to a positive brand image for the resource extraction sector, but also plays a role in the government's international development goals.

Much of the discussion centered around the Resource Revenue Transparency Working Group (RRTWG), a coalition of civil society (Publish What You Pay – Canada and Revenue Watch Institute – now known as the Natural Resource Governance Institute) and Canada's major mining associations (Mining Association of Canada and the Prospectors and Developers Association of Canada), and the joint recommendations it developed for a RRT model, which were released in January 2014.

Reporting requirements have been codified by the United States Congress for SEC listed companies under the Dodd Frank Act (2010) and similar requirements were proposed by the European Commission in 2011 for EU listed companies. At the G8 meetings, in London, in June 2013, the Government of Canada committed to implementing mandatory reporting standards by April 2015, with the aim of deterring corruption and enhancing accountability at home and abroad. Since making this commitment, Natural Resources Canada has been actively working with stakeholders, including the RRTWG, natural resource businesses, the provinces, civil society organizations and Aboriginal groups to determine appropriate standards and processes, and has made strong efforts to align its framework with international standards, particularly those of the EU.

The panelists addressed some of the successes and challenges involved in reaching consensus within the RRTWG, and those involved were enthusiastic about the great achievement that brought together such different groups around common goals.

Further discussion sought to elucidate what made this consensus possible, as efforts have faltered in similar situations in the past. The fact that RRT legislation involves only

questions of "when" and "how" not "if" was identified as a major factor driving success. Additionally, the G8 acted as a catalyst in generating the collaboration in both the RRTWG and government consultations. The work of the Extractive Industries Transparency Initiative (EITI), an international standard for openness around the management of revenues from natural resources (wherein governments disclose how much they receive from extractive companies operating in their country and these companies disclose how much they pay) also had a bolstering effect. So also did PWYP-Canada, which is part of a global movement rooted in the perspective that a lack of transparency in oil, gas and mining revenues facilitates corruption, which undermines the process of leveraging resource revenue to generate economic and social development. It seeks to address this by requiring that payments to governments related to resource extraction projects be published. Transparency is, thus, an important tool for citizens to hold governments to account, allowing them to see where money is going and why they aren't seeing it in action in their daily lives. It can also help companies involved in resource extraction demonstrate their contributions in host countries.

It was acknowledged that the recommendations of the RRTWG changed throughout the process, highlighting the value of the exchange that took place. Key objectives included ensuring that the information reported was in a useable format, streamlining the reporting process, reducing duplication and ensuring equivalency with other systems so as to create the conditions to eliminate reporting in multiple jurisdictions.

The discussion touched on the motivations and justifications for developing domestic reporting requirements. Beyond a desire to lead by example, the notion that there is hypocrisy inherent in demanding transparency of foreign governments without enforcing it ourselves was also discussed. It was also noted that corruption and mismanagement can happen anywhere, and pointing the finger at developing countries is an ineffective long term strategy. The importance of addressing transparency in the resource extraction sector in particular was noted because of the impact these revenue streams have on development.

There was much in the negotiation that is unique and that will be interesting and challenging to implement. Much dialogue was generated with regard to the civil society experience with the oil and gas industry. However, the overall experience was coloured by the mutual benefit of participation, and not the addressing of wrongdoing. Parties were able to learn and benefit from each other's expertise and, through the process of collaboration, trust was built.

A strong distinction was identified between mining companies and oil and gas companies. This was a large part of the early conversation of the RRTWG. Notably, the

mining industry did not require exemptions. Exemptions, however, are a big issue for oil and gas companies, particularly for existing operations, where there may be a conflict between Canadian law and the law of the countries, such as Qatar and China, in which they are operating. Paradoxically, this exemption might prevent disclosure in realms where one would most want to capture the information.

All sides of the RRTWG saw the utility of playing a role in the creation of legislation and were pleased with the government's responsiveness to their recommendations.

While Natural Resources Minister, Joe Oliver, has noted that the preference would be for provinces to implement the process, the federal government will act if necessary. They are currently working on a parallel track to ensure that legislation will be ready in April 2015. To meet this timeline, the Bill will need to be tabled by fall of 2014.

The Devil is in the Details: Challenges

Concerns were raised throughout the government's consultations. Some major stumbling blocks and issues to address going forward include:

- How is a "project" defined? Ensuring that the framework would not be overly onerous on junior and mid tier entities, as compared to their major counterparts drove this question. RRTWG's recommendations seek to make it as easy as possible to comply with reporting obligations.
- Where should the de minimis level be set? RRTWG recommended $100,000 for TSX and $10,000 for TSX V issuers. Much discussion has taken place within the junior sector. Many also say the government's level of $100,000 for all companies is too high and undermines the goals of the undertaking.
- Where firms are cross listed: Many mid tiers and majors are cross listed. With 13 Securities Commissions the concept of equivalency is very important. A framework needs to allow for entities that have disclosed with one, not to be required to disclose with others. This has given rise to interesting talks with the provinces. Again, the oil and gas sector are not yet on board and Alberta posed a major challenge.
- Equivalency is also a significant issue, internationally, as attempts are made to coordinate laws in the US, the EU and Canada.
- Social payments: If they are associated with commercial development, will they be captured within the framework? There is significant money involved in this realm and some large companies are seeking a threshold of $1,000,000. Notably, the threshold does not prevent voluntary reporting and it is important that this does not stall the process.
- By this point, there has not been sufficient consultation with First Nations, and this must be addressed going forward.

- Will proposed legislation really be valid under the domestic division of powers? Government is looking closely at this issue to ensure that the legislation will be constitutionally compliant and to minimize the risk of a legal challenge.
- Who will enforce this legislation? Securities commissions would be ideal as they are regulators with which industry is familiar, they understand the rules, and have oversight and enforcement. It would be burdensome and inefficient to design a unique entity for this. There is reluctance to make the first move.
- Timeline: Questions were raised as to the feasibility of the April 2015 deadline. It was generally agreed that provincial management would be ideal, but is there time remaining before the federal government will step in? Strong efforts are still being made. However, there is limited optimism on this front.
- How to translate reporting into greater accountability: Moving from data to a tool that can be used by citizens remains a challenge. Much work needs to be done at all levels to create an enabling environment and train civil society on how to access and make use of securities reporting.

Speakers' & Moderators' Bios

Michael Atkinson has been President of the Canadian Construction Association (CCA) since March of 1993. He joined CCA in 1981. In November 1982, he was appointed Secretary to the Canadian Construction Documents Committee, a position he held until 1993. Mr. Atkinson has emerged as a leading specialist in the area of standard construction practices in Canada. In 2013, he was awarded one of 38 Queen Elizabeth II Diamond Jubilee medals designated for Canadians demonstrating outstanding service in the construction industry.

Milos Barutciski chairs the International Trade and Investment Group at Bennett Jones LLP. He has represented Canadian and international companies in anti-corruption investigations and compliance matters in Canada and abroad, including ongoing investigations by the RCMP and foreign government agencies. He has also represented international companies in corruption investigations by the World Bank and appeared as counsel before the World Bank's Sanctions Committee. Mr. Barutciski was intimately involved in the OECD's work on the 1997 OECD Anti-Bribery as a representative of the Business and Industry Advisory Committee to the OECD, and also advised the Government of Canada on the drafting of the Corruption of Foreign Public Officials Act. He is a member of the Commission on Corporate Responsibility and Anti-Corruption of the International Chamber of Commerce. In April 2013, Mr. Barutciski was elected to the Executive Board of the International Chamber of Commerce for a three-year term and is currently a member of the Board of Transparency International Canada (TI-Canada).

Samantha Burton is the Advocacy Manager at Engineers Without Borders Canada (EWB). In this role, she leads the development and implementation of EWB's national advocacy strategy and the TRACE Campaign for TRansparent and ACcountable Extractives. Prior to joining EWB in 2012, Ms. Burton spent over 5 years working at the intersections of human rights, transparency and technology with organizations including Aga Khan University, Industry Canada and the International Freedom of Expression eXchange. She currently sits on the Steering Committee of the Devonshire Initiative.

Louis Clark serves as both President and Corporate & Financial Accountability Director of GAP. He assumed the directorship of GAP in 1978, having first served as legal counsel for the organization. As President, Mr. Clark serves as a spokesperson and public ambassador for GAP, and frequently negotiates with government and corporate officials about legal cases and social reform initiatives. He often meets with delegations from all over the world in order to describe GAP's methodology, the laws that are needed to protect employees who speak up about problems, and how to use information to promote progressive social change. In his role as Corporate & Financial Accountability Director, Mr. Clark oversees numerous cases involving widespread financial fraud and provides strategic advice to all GAP

programs, hoping to unite whistleblowers with citizens and public interest groups, government leaders, congressional committees, and the media to investigate, expose, and rectify problems. Mr. Clark received his J.D. from the American University in 1977, where he was awarded two honorary fellowships for his work within the clinical program and in the area of prison reform. Prior to becoming an attorney, he was a Methodist minister, from 1966 to 1968, and his pastoral counseling skills and training significantly influenced his career choices. In 1980, Mr. Clark was the first recipient of the Hugh M. Hefner First Amendment Award for Government. In 1992, he received the Gleitsman Award for his life-long commitment to initiating, promoting and implementing positive forms of social change.

Peter Dent is a Partner, the Americas Leader and the Global Financial Crime Initiative Leader of Deloitte Forensic. He has over 20 years of experience practicing in the areas of investigating and providing expert testimony regarding allegations of fraud and corruption with a focus in the global arena, in addition to providing anti-fraud and anti-corruption strategies in the public and private sectors. Between 2000 and 2004 Mr. Dent was the Team Leader of the Forensic Services Unit within the Department of Institutional Integrity of the World Bank Group in Washington, DC leading international fraud and corruption procurement investigations into World Bank financed projects. In addition, he has experience working with the United Nations (UNDP and UNPS) evaluating and strengthening their anti-corruption strategies in their procurement processes. Currently, Mr. Dent is the Chair and President of TI-Canada, and a former director of the Alliance for Excellence in Investigative and Forensic Accounting. Mr. Dent is a faculty member of Rotman's Director's Education Program focused on a Director's responsibilities with respect to fraud and corruption

Stéphane Eljarrat is a partner in the Investigations & White Collar Defence, Taxation and Litigation practices of Davies Ward Philips & Vineberg LLP. For the last 20 years, his practice has been focused on tax and white collar crime litigation. He is a member of the Québec, Ontario and Paris Bars. Mr. Eljarrat's practice of corporate tax litigation and dispute resolution includes all aspects of representing clients in disputes with tax authorities. Mr. Eljarrat's practice of business litigation involves acting for corporate clients in the context of investigations and prosecutions for alleged white collar crimes including under the Corruption of Foreign Public Officials Act (CFPOA), the Competition Act, the Income Tax Act as well as the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. He has in-depth expertise in criminal investigations and proceedings, including search and seizures, production orders and wiretaps and has advised corporate clients in the context of national or multinational internal investigations. Before joining the firm as a partner, Mr. Eljarrat worked for the Federal Department of Justice, with the Royal

Canadian Mounted Police Legal Services, with the DOJ Tax Litigation Section and as a Federal prosecutor. He also worked for the Department of Legislation and Investigations of the Ministère du Revenu of the Province of Québec (now Agence du revenu du Québec) and for the Ministry of Public Safety.

Ross Gallinger is the Executive Director of the Prospectors & Developers Association of Canada (PDAC). As a Professional Agrologist and graduate of the University of British Columbia, Mr. Gallinger has held numerous positions throughout his 30-year career in health, safety, community and environmental development with IAMGOLD, Placer Dome Canada, BHP Billiton, Rio Algom, Noranda and Westmin. His work has taken him from Canada to South America and Africa, and, in each opportunity, he has passionately striven to enhance social and environmental impact assessments, community development, as well as closure planning and implementation. Prior to joining the PDAC, Mr. Gallinger was Senior Vice President of Health, Safety & Sustainability for IAMGOLD, where he worked to expand and improve the company's performance in engagement, social and environmental stewardship, and safety. Throughout his career, Mr. Galllinger has successfully improved corporate social responsibility (CSR) performance on a variety of projects that have received numerous awards and distinctions. He is dedicated to forging collaborative relationships between industry and civil society, is a founding member and current co-chair of the Devonshire Institute, A CMI Distinguished Lecturer, and a driving force behind the establishment of the Resource Revenue Transparency Working Group. For the past three years, Mr. Gallinger has also been named by Embassy Magazine as one of the Top 100 Canadians influencing Canadian foreign policy.

Joanna Gualtieri is a prominent Canadian whistleblower and a tireless advocate for freedom of speech in the workplace, who founded the Federal Accountability Initiative for Reform (FAIR), in 1998. In the early 1990s, Ms. Gualtieri discovered gross violations of the rules for housing diplomatic staff abroad, which she believed had cost Canadian taxpayers vast sums over the past decade. Bringing this information to the attention of senior management in Foreign Affairs, in order to have the situation corrected, resulted in her being ostracized by her bosses, shunned by colleagues and ultimately sent on leave without pay. Motivated by this crushing experience, she established FAIR, to help other truth-tellers avoid a similar fate, and sued the Government for damages. In 2010, after dragging her case through the courts for twelve years, government lawyers finally settled, virtually on the courthouse steps, thus ending what was seen as an attempt to crush and punish Ms. Gualtieri for speaking out. Ms. Gualtieri is a lawyer and an acknowledged expert in whistleblower law and has testified to several parliamentary committees on draft whistleblower legislation. In 2007, in recognition of her contributions she was appointed to the Board of Directors of the Government Accountability Project (GAP), a U.S.- based non-

profit that is internationally recognized as the pre-eminent authority on whistleblowing. She currently serves as Chairman of the Board.

Martin Mueller, formerly Chief Compliance Counsel at Nexen Inc., is a senior Integrity and Compliance executive specializing in international anti-corruption compliance and training programs. Throughout his corporate and legal career, he has focused on advising senior management and Boards of Directors on business legal and compliance issues. Mr. Mueller is experienced at overall Integrity and Compliance Programs including policy development, programs to maintain corporate culture, effective Integrity messaging and employee training. He has been involved in business code of conduct and policy development as well as updating and managing anti-corruption compliance programs. Mr. Mueller is a Board Member of TI-Canada, Chair of the Extractive Industries Committee and a member of the executive of the TI-Canada Calgary Discussion Group.

Josée Nadeau has been the Senior Chief of the Financial Crimes - International Section at Finance Canada and the head of the Canadian delegation to the Financial Action Task Force, since 2009. She has held various positions at Finance Canada and other departments, including in macroeconomic analysis, international and trade policy, tax policy and Aboriginal economic development. Mme Nadeau also worked at the Canadian delegation to the OECD in Paris for three years as the economic counselor and spent five years at the Bank of Canada in the Currency Department, including three years in Halifax as the Regional Director (Currency) for the Atlantic Provinces. She graduated from Université de Montréal with a bachelor's and master's degrees in economics.

Mark Pearson is the Director General of the External Relations Branch at Natural Resources Canada and represents Canada on the Board of the Extractive Industries Transparency Initiative (EITI). With 30 years of government experience, half of which as an executive, Mr. Pearson brings a strategic and integrated approach to policy issues facing the energy and natural resource sectors. Over the course of his career, Mr. Pearson has collaborated with a broad range of domestic and international stakeholders on issues pertaining to regulation, economic and energy end-use analysis, energy and resource market diversification, sustainable development, transparency and corporate social responsibility.

Andreas Pohlmann was Chief Compliance Officer of SNC-Lavalin Group Inc. in Montreal from March 1, 2013, to May 31, 2014, and remains a consultant to the company. He also is founding partner of Pohlmann & Company – Compliance and Governance Advisory LLP in Frankfurt, Germany. Mr. Pohlmann has more than 25 years of international experience as senior executive in various industries. From 2007 through 2010, he was Chief Compliance

Officer of Siemens AG. Subsequently, until the end of 2011, he was Chief Administration Officer and member of the management board of the engineering and construction company Ferrostaal AG, in Germany, with specific responsibility for compliance. Previously, Mr. Pohlmann held various senior executive positions at chemical company Celanese AG in Germany and Celanese Corporation in the U.S. He started his professional career with the chemical and pharmaceutical company Hoechst AG. Mr. Pohlmann is a graduate from the law faculty of Goethe University in Frankfurt and holds a Doctorate of Law from the University of Tuebingen.

Mariana Mota Prado obtained her law degree (LLB) from the University of Sao Paulo in 2000, and her master's (LLM) and Doctorate (JSD) from Yale Law School (2002 and 2008). She is currently an Associate Professor at the Faculty of Law, University of Toronto. Prior to joining the University of Toronto in 2006, Dr. Prado worked for the Private Participation in Infrastructure Database Project at the World Bank (2004), and was a fellow of the Olin Center for Law, Economics and Public Policy at Yale Law School (2005). A Brazilian national, she regularly teaches intensive courses at Getulio Vargas Foundation in Rio de Janeiro, and has been collaborating extensively with Brazilian scholars on projects related to institutional reforms in Brazil. Her scholarship focuses on law and development, regulated industries, and comparative law. Her most recent publications include a book entitled What Makes Poor Countries Poor? Institutional Dimensions of Development (Co-authored with Michael Trebilcock), Edward Elgar (2011). Dr. Prado is a Board Member of TI-Canada and Chair of the Education Committee.

Signi Schneider joined Export Development Canada (EDC) in April 2002 and has more than ten years of emerging market risk assessment experience. Before becoming EDC's Vice President of Corporate. Social Responsibility in February 2011, she was the Director of the Political and Human Rights Risk Assessment Department. In that role, she oversaw detailed political risk and human rights risk assessments in more than 120 emerging markets. Ms. Schneider played a key role in developing and implementing EDC's Statement on Human Rights (April 2008) which sets out the principles that guide EDC's consideration of potential impacts on the human rights of individuals affected by the transactions it has been asked to support. Ms. Schneider has a Master of Arts degree in International Affairs from Norman Paterson School of International Affairs, Carleton University.

Yuri Takhteyev is the Chief Technology Officer of rangle.io and an Assistant Professor (status only) at the University of Toronto's Faculty of Information. His interests span a gamut of topics around software production, from software architecture to global software development culture. Dr. Takhteyev's book on software development in Brazil (codingplaces.net) has been published by the MIT Press in 2012. His other work has

appeared in academic journals and in popular publications such as foreignaffairs.com. Dr. Takhteyev holds a M.S. in Computer Science from Stanford University and a Ph.D. in Information Management and Systems from the University of California, Berkley.

Christa C. Wessel joined McCain Foods Limited in 2010. As the Chief Human Resources and Legal Officer, Ms. Wessel is responsible for the global human resources, communications, legal, compliance and ethics functions. Before joining McCain, Ms. Wessel was a partner in the Business Law Group of Gowling, Lafleur & Henderson. She was a partner at McCarthy Tetrault, prior to joining Siemens Canada in 2002 as its first General Counsel and Regional Compliance Officer where she was instrumental in the design and implementation of Siemens' groundbreaking compliance and ethics program. She served as a member of the board of Siemens Canada Limited as well as several of its Canadian affiliates. Ms. Wessel has also served as a Member and Chair of the Board of Halton Healthcare Services, and as a member of the Board of Oakville Christian School and Oakville Hydro Electricity Distribution Inc. Ms. Wessel was called to the Bar in the Province of Ontario, Canada in 1986. She holds an LL.B. from the University of Ottawa, a B. A. from York University and a C. Dir. from the Directors College at McMaster University.