

Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

CANADA

(Information as of May 2008)

Date of deposit of instrument of ratification/acceptance or date of accession

Canada ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Convention) on 17 December 1998.

Implementing legislation

Canada's implementing legislation, the *Corruption of Foreign Public Officials Act* (CFPOA) received Royal Assent on 10 December 1998 and came into force on 14 February 1999. Subsequent amendments were made to the Act in January 2002 as a consequence of amendments to Canada's *Criminal Code*. These amendments are of a technical nature.

The *Corruption of Foreign Public Officials Act* implements Canada's obligations set out in the Convention. The main offence of bribery of foreign public officials represents an effort to marry the Convention wording and requirements with wording that was found already in the corruption provisions of the *Criminal Code*. The Act calls for an annual report by the Minister of Foreign Affairs, the Minister of International Trade, the Minister of Justice and the Attorney General of Canada on the implementation of the Convention and on the enforcement of the Act.

The offences under the *Corruption of Foreign Public Officials Act* are included in the list of offences under section 183 of the *Criminal Code*. As a result, it is possible for police, through the lawful use of a wiretap and other electronic surveillance, to gather evidence in the bribery of foreign public officials cases, and in the possession and laundering of proceeds from these cases.

The *Corruption of Foreign Public Officials Act* requires the Minister of Foreign Affairs, the Minister of International Trade, and the Minister of Justice to provide information on the enforcement of the Act and the implementation of the Convention in an Annual Report to Parliament.

The Corruption of Foreign Public Officials Act may be found at:

<http://laws.justice.gc.ca/en/showtdm/cs/C-45.2?noCookie>

Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations

Income Tax Act

A payment that constitutes an offence under the *Corruption of Foreign Public Officials Act* is included in the list of expenses for which a deduction is denied under subsection 67.5(1) of the *Income Tax Act*.

The *Income Tax Act* may be found at: <http://laws.justice.gc.ca/en/i-3.3/text.html>

Criminal Code

The *Criminal Code* includes provisions that codify and modernize the Canadian criminal law in relation to corporate criminal liability. In particular, these provisions:

- a) establish rules for attributing to organizations, including corporations, criminal liability for the acts of their representatives (section 22.2);
- b) set out factors for courts to consider when sentencing an organization (section 718.21); and
- c) provide optional conditions of probation that a court may impose on an organization (section 732.1).

Since 2005, the *Criminal Code* includes an offence, for an employer, of threatening employees in order to prevent them to disclose unlawful conduct, or retaliating against them for doing so (section 425.1).

Provisions against domestic corruption are found in the *Criminal Code*, including sections 119 to 121 (bribery of Canadian officials and frauds on the government), 123 to 125 (municipal corruption and selling or influencing appointments to office), and 426 (secret commissions by an agent).

The *Criminal Code* may be found at: <http://laws.justice.gc.ca/en/c-46/text.html>

Federal Accountability Act

This Act was passed in December 2006. It provides for increased accountability of public servants and further measures to prevent domestic corruption, including: creating new fraud offences for public servants; reinforcing accounting within government departments by making accounting officers and internal audit committees mandatory; appointment of a Public Sector Integrity Officer and creation of a tribunal to deal with disclosure in the public sector; creation of a Procurement Ombudsman to review complaints from government suppliers; a legislated Code of Conduct for federal politicians and senior officials; lowering the limit for political contributions; making more Crown corporations subject to the *Access to Information Act*; and creating a Public Prosecution Service separate from the Department of Justice and providing for public disclosure of instructions given by the Attorney General in a specific case.

The Federal Accountability Act can be found at:

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3294507&file=4>

Public Servants Disclosure Protection Act (PSDPA)

The PSDPA provides legislated processes for reporting wrongdoing and strong legislated reprisal protections for employees who make disclosures. Employees can choose to make a disclosure to a senior officer within their own organization, or they can make a disclosure directly to the Public Sector Integrity Commissioner. The Public Sector Integrity Commissioner is a neutral third party, reporting directly to Parliament.

The Public Servants Disclosure Protection Act can be found at:

<http://laws.justice.gc.ca/en/showtdm/cs/P-31.9?noCookie>

Relevant authorities

The Public Prosecution Service of Canada.

The Royal Canadian Mounted Police.

Signature/Ratification of other relevant international instruments

- Inter-American Convention Against Corruption
- Signed: 7 June 1999
- Ratified: 1 June 2000
- United Nations Convention against Transnational Organized Crime
- Signed: 14 December 2000
- Ratified: 13 May 2002
- United Nations Convention against Corruption
- Signed: 21 May 2004
- Ratified: 2 October 2007

Working Group on Bribery Monitoring Reports

Phase 1: Review of Implementation of the Convention and 1997 Recommendation

<http://www.oecd.org/dataoecd/13/35/2385703.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions

<http://www.oecd.org/dataoecd/20/50/31643002.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions

<http://www.oecd.org/dataoecd/5/6/36984779.pdf>