

National Integrity Systems

Country Study Report

Canada 2001

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A Brief Introduction

This report and its completed questionnaire is part of a multi-country study carried out by Transparency International as part of its attempt to define and study the components and their inter relationships in a National Integrity System (NIS). For TI, a National Integrity System has two goals:

- First, combating corruption as part of the larger struggle against misconduct and misappropriation; and
- Second, creating an efficient and effective government system that works for and in the public interest.

The two-part report that follows consists of a narrative report and responses to questions posed in a questionnaire. TI drew up the Terms of Reference and designed the questionnaire. A number of country studies were then undertaken of which this is one. The country studies were then analyzed and the findings integrated in a TI Country Studies Overview Report entitled “The National Integrity System: Concept and Practice”.

As with any study, the authors of the Canada Study were faced with limitations of space, time and resources. The result is brief, general responses to complex questions. Four particular issues were taken into consideration in completing the report.

- First, the issues related to an integrity system are considerably broader and diverse than those concerned with anti-corruption. Our study has deliberately focused on those aspects of the Canadian integrity system particularly relevant to combating corruption.
- Second, as stated in the notes to the questionnaire, the nature of the Canadian federal system imposes significant challenges to any “national” study. The authors focussed primarily on national institutions and practices. A more complete study would extend the study to provincial and municipal levels of government and governance.
- Third, every integrity system has various types and degrees of real and perceived weakness. For example, perceptions as to the effectiveness and fairness of the judicial system or the law enforcement system vary considerably between individuals, as well as various ethnic, racial or socio-economic groups or communities. We have not attempted to track these nuances. However, it is unlikely that doing so would shift our conclusions focused as they are on the effectiveness of the Canadian system for addressing issues of corruption.
- Fourth, our responses in the section on “Formal provisions” and “What actually happens” in the questionnaire offers are by necessity only generalizations. For example, “administrative checks and balances on individual members of the executive” or “application of the merit principle in the public service” obviously have weaknesses and can be improved. In spite of possible weakness, which we do not enucleate, it is the authors’ interpretation that these are applied well in Canada.

Significant Developments and Reforms Over the Past Ten Years

Pre-1990

Enactment of freedom of information and privacy legislation

The Access to Information Act (July 1, 1983) gives Canadian citizens, as well as individuals and corporations present in Canada, the formal, and enforceable, right of access to federal government information in accordance with certain principles, subject to certain exemptions and exclusions. The Privacy Act (1983) gives Canadian citizens and anyone present in Canada a right of access, subject to certain exemptions and exclusions, to personal information about themselves and governs how federal organisations are to collect, use, disclose and retain personal information.

Appointment of freedom of information and privacy commissioners

The Information Commissioner (1983) plays a role similar to an ombudsman and investigates complaints from people who believe they have been denied rights under the Access to Information Act. He or she mediates between complainant and government institutions. The commissioner has strong investigative powers, can make recommendations, but cannot issue binding orders. The Privacy Commissioner (1983) is also a type of ombudsman. The Commissioner is appointed by Parliament to investigate individuals' complaints about private information and monitor government compliance with the federal Privacy Act and the new Personal Information Protection and Electronics Documents Act, which applies to the private sector.

Starr-Sharp Report

The 1984 report by Michael Starr and Mitchell Sharp, *Ethical Conduct in the Public Sector*, was one of the first major studies of values and ethics in Canada.

The 1990s

Appointment of a government ethics officer to advise public office holders

The Office of the Ethics Counsellor was created in June 1994. The Office has responsibility for the Conflict of Interest and Post-Employment Code for Public Office Holders (ministers and those appointed by the Governor in Council), the Lobbyists Registration Act and the Lobbyists' Code of Conduct. In addition, the Office regularly provides advice on ethical issues to federal and provincial departments and agencies, foreign governments as well as private sector organisations. The Ethics Counsellor reports to the Prime Minister.

Major Values and Ethics Initiatives by the Federal Government since 1995

May 1995	Auditor General presents his Report to Parliament, which includes Chapter 1, Ethics and Fraud Awareness in Government.
June 1996	The Royal Canadian Mounted Police completes the shared leadership vision process.
October 1996	National Defence publishes a Statement of Defence Ethics.
December 1996	The Tait Task Force publishes A Strong Foundation: Report of the Task Force on Public Service Values and Ethics.
March 1997	The Ethics Counsellor establishes the Lobbyists' Code of Conduct
October 1997	A report on modernising government comptrollership recognises the importance of values and ethics
October 1997	Public Works Government Service Canada initiates a comprehensive ethics program.
April 1998	The Organisation for Economic Co-Operation and Development adopts its Principles for Managing Ethics in the Public Service. Canada endorses the principles.
December 1998	Citizen and Immigration Canada (CIC) issues The Ethical Compass: Values and Ethics Dilemmas at CIC.
January 1999	The federal government initiates a project on best practices for managing science in the public sector.
February 1999	The Corruption of Foreign Public Officials Act is promulgated.
April 1999	The Treasury Board establishes the Office of Values and Ethics.
May 1999	Deputy minister co-champions for values and ethics are appointed.
May 1999	The Council of Science and Technology Advisors publishes Science Advice for Government effectiveness.
June 1999	Canada signs the Inter-American Convention Against Corruption.
August 1999	The Treasury Board emphasises the need for public servants to understand the legal and policy framework for conflict of interest.
January 2000	Deputy minister co-champions for values and ethics meet deputy ministers
January 2000	The Canadian Centre for Management Development re-issues A strong Foundation: Report of the Task Force on Public Service Values and Ethics.
March 2000	The Treasury Board's report, Results for Canadians: A management Framework for the Government of Canada, recognises the importance of sound public service values.
March 2000	In the Seventh Annual Report to the Prime Minister on the Public Service of Canada, the Clerk of the Privy Council emphasises the role of public service values.
Spring 2000	The Leadership Network reports on the values and ethics dialogue in the public service.
January 2001	The Personal Information Protection and Electronics Documents Act came into force. The Bill has two parts. The first is a privacy law for the federally regulated private sector (e.g. banks, international air carriers) and the second covers electronic communication between the federal government, clients and citizens

Publication of the Tait Report on Ethics and the Public Service

In May 1995 the Auditor General reported to Parliament on ethics and fraud awareness in government. In 1996 the government completed "A Strong Foundation: Report of the Task Force on Public Service Values and Ethics" (Tait Report) which was considered a landmark report in terms of focussing attention on public sector ethics. The Tait Report was a major step forward in developing a consensus on the values and ethics issues that need to be address in the federal public service. It is the most recent comprehensive assessment of the state of values and ethics in the public service. The Canadian Centre for Management Development (CCMD) reissued the Tait Report in January 2000 to help reinvigorate the dialogue.

A first ethics audit of four government departments by the Auditor General

In 1995, the Auditor General's office released the results of a study on ethics and fraud awareness in government. The purpose of the study was to assess public servant's awareness of ethics and fraud to assess the extent of ethics training and other initiatives, and to discuss a framework for ethics. The study was based on confidential interviews of a stratified sample of randomly selected public servants in four departments. The general findings indicated that those interviewed believed that the programs in which they work are administered ethically and that the risk of fraud is low. On the whole, they could identify questionable conduct and stated that they would take some type of action to report or stop it. At the same time a number of areas of vulnerability were found. Among these were gaps in the knowledge of policy and financial and management control mechanisms among senior managers.

Development of a Canadian, transparent, electronic public procurement system

Wherever possible, contracts are let on a fully competitive basis. There must be full justification for any contract that must be sole-sourced. Even when the situation warrants a sole-source approach, most requirements are posted on the MERX™, an electronic Internet-based open bidding system established in 1997, with an Advance Contract Notice process, which allows any company that feels it can meet the requirements to challenge the award. The Auditor-General continues to have concerns about the number of sole source contracts awarded. The main reasons for awarding the contracts are the need for continuity of knowledge and expertise, compatibility of equipment, and time pressures.

Emergence of internal government ombudsmen to respond to internal public servant complaints

Canada does not have a federal (national) ombudsman, although this was recommended in 1997 by a committee of deputy ministers and in 1999 by the Canadian Ombudsman Association. There are several commissioners (Privacy, Access to Information) whose role is essentially that of an ombudsman. Seven federal departments have ombudsmen. However, they are not ombudsmen in the generally understood sense. For the most part their role is to impartially provide employees with informal, confidential support and counselling in dealing with difficult work situations. They do not have investigative powers. Only the National Defence Ombudsman and the Office of the Correctional Investigator have mandates to investigate complaints. Some of the ombuds offices respond to issues raised by clients of the organisation. Eight provinces and one territory have ombudsmen, who are officers of the legislature.

Education and training in government and private sector

The 1995 Auditor General's review of ethics programs and training in nine departments indicates that, in the past, departments approached the issue of ethics by providing some type of training to certain groups of employees. Although there has been a noticeable growth in the number of ethics courses offered in the last few years, it is estimated that less than 6 % of public servants in the nine departments have participated in training. This gap in training is of concern since the results of interviews indicate that a large proportion of public servants were not aware of, or did not understand, the existing conflict of interest guidelines or other relevant policies. Clarification of conflict of interest guidelines has since been undertaken by the Treasury Board Secretariat. Ethics training has also increased in recent years.

Private sector ethics training and related activities such as seminars and conferences have increased substantially in recent years. However, the KPMG Ethics Survey 2000 suggests that the amount of time and effort is often inadequate. Nears 39 % of respondents say they provide ethics training, but

almost one third of these provide less than one hour per year to managers. Only about 10 % of Canadian organisations provide more than eight hours of ethics training per year.

Inclusion of anti corruption clauses in contracts and contribution agreements

The Canadian International Development Agency (CIDA) introduced an anti-corruption clause in its contracts with Canadian Executing Agencies as well as in its grant and contribution agreements with partner organisations and countries in 1999. The Department of Public Works and Government Services (the main federal procurement agency) also has "no bribe, gift, inducement" clauses in their General Terms and Conditions for all types of procurement.

Emergence of private sector support for international and national anti-corruption initiatives

Canadian private sector support for anti corruption initiatives was slow in coming. Early focus on corruption issues was generated by multi-national companies listed on American stock exchanges and therefore subject to the American Foreign Corrupt Practices Act. Canadian subsidiaries of American companies were also alerted to the issue by their parent companies who faced possible legal liabilities in the United States as a result of the operations of their foreign subsidiaries in international markets. Private sector involvement found two avenues of expression. The first was through the Canadian Council for International Business where leadership came from subsidiaries of US companies. The second was by supporting the launch of a Canadian Chapter of Transparency International. Leadership in this instance came from a small number of Canadian multinational companies as well as Canadian subsidiaries of American multinational companies. A Canadian Chapter of Transparency International was launched in 1996. A small number of companies and professional firms provided significant initial financial support by becoming charter members with contributions of \$5,000 a year for two years. The degree of caution on the part of the Canadian business community is perhaps best indicated by the fact that forming a Canadian Chapter of Transparency International based on significant private sector funding took two and a half years.

Emergence of T. I. Canada as an influential Canadian NGO

Because TI Canada was launched with strong private sector support from a small number of leading Canadian corporations, it was able to win a hearing with the Canadian government relatively quickly. Creating a dialogue with the Canadian government was important because the subject of corruption was gradually emerging as an important issue in the OECD. In the early stages of OECD discussion, Canada's involvement was muted. Like other OECD countries, the Canadian government seemed reluctant to undermine the competitive advantage of Canadian companies active in international markets. Because TI Canada had significant private sector support, it was able to advance the view that a strong international initiative to combat corruption was in the interests of Canadian companies competing in international markets and would have strong support from leaders in the business community. Canada therefore agreed to sign the OECD anti corruption convention in 1997.

When it appeared that Canada would not meet its commitment to ratify the convention by the December 31, 1998 deadline, TI Canada, in co-operation with the Canadian Council for International Business launched a campaign designed to persuade the government to table legislation criminalising the bribery of foreign public servants and to persuade opposition parties to support the legislation if it was tabled. The campaign was a success and Canada was able to ratify the OECD convention by the deadline set by the OECD. Ratification by Canada brought the OECD convention into effect by satisfying the requirement that the convention must be ratified by five of the top ten exporting countries in the OECD by December 31, 1998. TI Canada's success in persuading the Canadian Government to ratify the OECD convention within the stipulated time period marked the emergence of TI Canada as a significant Canadian voluntary sector organisation.

Co-operation with OECD and the OAS countries in the development of anti-corruption initiatives

From its inception, TI Canada has worked closely with other TI chapters in OECD and OAS member countries. TI provides support for efforts by Transparency International to persuade the OECD to develop an international anti corruption convention and to ensure that the convention contained effective monitoring provisions. The co-ordinated efforts of Transparency International with its national chapters played a significant role in persuading the OECD to create an anti corruption convention with strong monitoring and enforcement provisions. TI Canada has also worked closely with TI USA and

other TI chapters in central and Latin America to persuade the OAS to adopt an anti corruption convention with provisions similar to those contained in the OECD convention.

Endorsement of OECD and OAS anti-corruption conventions in response to private sector and T. I., urging

As result, in part, of TI Canada efforts, Canada ratified the OECD convention as indicated in December 1998. Canada went on to ratify the OAS convention on June 6, 2000.

Participation in the OECD monitoring process

TI Canada has participated in the OECD monitoring process only indirectly by responding to requests for the evaluation of the Canadian legislation by Transparency International who have maintained a close working relationship with the OECD on corruption related issues.

Publication of a private sector initiated, government endorsed, Canadian statement of principles of business ethics

In the late second half of the 1990's a small group of oil companies in Calgary Alberta initiated an effort to create an international code of ethics for Canadian corporations in international markets. This initiative was subsequently taken up by the Canadian Association of Exporters and Manufacturers. An "International Code of Ethics for Canadian Business" was formally announced by Lloyd Axworthy, Minister of Foreign Affairs and International Trade in September, 1997. Raising standards of business conduct in international markets has been flagged by number of Canadian corporations in the resource sector as a priority.

T I Canada/CIDA partnership in government consciousness raising

The International Secretariat of Transparency International has been supported financially by CIDA since its launch in 1993. TI Canada has also been supported by CIDA) as partner in the launch of TI Canada and since its inception as an incorporated NGO. Since its launch, TI Canada has worked extensively in partnership with CIDA to raise government awareness of the importance of addressing corruption issues in all aspects of its international activities. The primary mechanism for this has been meetings of Ministers of the Crown, Deputy Ministers and other high ranking officials of the Canadian Government.

The first of a series of meetings took place November 19, 1997 when TI-Canada held working meeting with Canadian federal government deputy ministers and senior government officials from Justice, International Affairs and Industry Canada at the invitation of the President of CIDA, Madame Huguette Labelle. The purpose of the meeting was to introduce Transparency International as an international anti corruption coalition and to discuss the need for Canadian Government leadership in international efforts to curb corruption and bribery in international business transactions. The morning session, co-chaired by Dr. Cragg, Chairman of TI-Canada and Madame Huguette Labelle was followed by a luncheon hosted by The Honourable Diane Marleau, Minister for International Co-operation (CIDA). The luncheon was attended by a number of ministers, deputy ministers and other senior government officials. The purpose of the luncheon meeting was to encourage a co-ordinated government response to the problem of corruption. The luncheon was followed by a TI-Canada afternoon workshop sponsored by David Kilgour, Minister of State for Africa and Latin America and attended by approximately forty representatives of government departments whose co-operation is essential to the development of a co-ordinated Canadian anti corruption strategy.

A follow-up meeting took place Dec. 16, 1997 where a plan of action was developed. On June 30, 1999 a third meeting took place in Ottawa chaired on this occasion by Don Campbell, Deputy Minister of Foreign Affairs, and co-chaired by Huguette Labelle, President of the Canadian International Development Agency (CIDA). Representatives were present from International Trade, Treasury Board, Public Works and Government Services, Privy Council Office, Office of the Ethics Counsellor, Revenue Canada, Office of the Auditor General, Justice Canada and Industry Canada. At this meeting, TI Canada proposed that the Government of Canada develop a government-wide anti-corruption program. The recommendations were as follows:

- Ensure that an anti-corruption commitment is an element of all government agreements, loans, partnerships, grants, etc., where government and the private sector interact, for purposes of international business. This could be done, we suggested, by:

- putting explicit anti-corruption clauses in contracts issued by such departments and agencies as Public Works, CIDA, EDC, and Export Credit Insurance
 - recommending or requiring companies and organisations with which it works to have in place a code of conduct, staff education and training regarding the code, and monitoring and enforcement of the code, including disciplinary measures (TI-Canada pointed to the Competition Bureau Guidelines as a possible model.)
 - including right-to-audit provisions in all contracts and agreements
- Provide effective training programs for public servants responsible for managing anti-corruption programs.
 - Require reporting of anomalies relevant to government anti-corruption policies by contract administrators;
 - Develop a comprehensive research program designed to develop and evaluate the effectiveness of anti-corruption policies and tools such as voluntary ethics codes. (The current Industry Canada study of voluntary codes is an example of research that needs to be encouraged and integrated into a comprehensive research program.)
 - Continue to co-operate with the private sector on a model international business ethics code and on code implementation strategies.

The Canadian anti-bribery legislation requires that the Government report annually to Parliament on the implementation of the Convention and Canadian legislation. TI-Canada recommended that the government use its first annual report to Parliament as an opportunity to demonstrate Canada's commitment to lead and shape the anti-corruption agenda both at home and abroad.

TI-Canada recommended that the Canadian government promote corporate social responsibility by:

- encouraging the development of codes of ethics on the part of companies doing business internationally;
- encouraging effective code implementation programs as recommended, for example, by the Industry Canada voluntary codes initiative and the Competition Bureau;
- endorsing strong ethical standards for the conduct of Canadian companies doing business internationally;
- working with the private sector on the continued development of a model ethics code for the conduct of international business;
- encouraging the development of strong compliance and integrity programs; and
- encouraging and engaging in research into effective monitoring and independent auditing systems for anti-corruption codes.

TI-Canada pointed out that a number of international initiatives are underway in these areas. It is important that Canada not leave leadership in these areas to others.

In the course of the meeting a number of additional suggestions were made by TI-Canada delegation members. These included the need for the Canadian Government to advocate for:

- adequate budgets for the OECD to support its anti-corruption activities; and
- an international mechanism to deal with complaints about bids lost through corrupt practices. (It was pointed out that agreed procedures by OECD members countries would be a useful start.)

TI-Canada asked for follow-up meetings to explore its recommendations in more detail over the next few months. These meetings have not taken place owing to changes in leadership in the government and a subsequent election.

Increased emphasis on business ethics in Canadian business schools

Prior to 1990, courses in business ethics were rare schools of management in Canada. In the last decade, changes have come, though very slowly. As a general rule, students in business schools are not required to study business ethics. Today, business students can take a business ethics course as

an option. The Canadian Centre for Philanthropy is promoting corporate social responsibility to Canadian businesses and forming partnerships between the not-for-profit sector and the private sector. They are also developing MBA course material that integrates CSR/Sustainability/Ethics issues. The Canadian Centre for Ethics and Corporate Responsibility has co-operated with the Conference Board of Canada to organise two “Ethics Summits” designed to bring leaders from government, the private sector, the voluntary sector and university together to discuss business ethics issues and business ethics education. It is likely that business ethics education will gradually assume a higher profile in management education in Canada over the next decade. With that should come more focussed attention on the issue of corruption.

Agreement on the part of the Export Development Corporation (in response to T. I. Canada urging) to development of anti-corruption policies for lending agreements.

Transparency International has been leading a campaign over the past few years to strengthen the anti corruption policies and regulations of export development corporations in the developed world. TI Canada has participated in that campaign by meeting with the management of our Export Development Corporation to urge that they make their activities more transparent and that they strengthen their procedures and their policies in this regard. At recent hearings called by the EDC to review their policies on transparency, TI Canada presented a brief that urged the EDC to take a number of steps in support of Canada’s anti corruption legislation.

To encourage compliance, TI Canada recommended:

- That the EDC require that all companies applying for support declare that they are aware of the Anti-Corruption Act and its provisions and are committed to complying with them in their international business activities.
- That the EDC require that all companies applying for support put measures in place to ensure that their employees and agents are aware of the anti-bribery provisions of the Anti-Corruption Act and understand their obligation to comply with the law
- And that the EDC require companies applying for support or assistance to append a “No - Bribery Affidavit” that affirms their commitment to comply with the Anti-Corruption Act and describes the anti-corruption programs they have put in place to ensure compliance with the law.
- That the EDC determine how best to provide assistance to corporations that request advice on the creation and implementation of effective anti-bribery programs for their employees and agents. (Note: Advice is likely to be particularly important for small- and medium-sized companies that do not have extensive legal departments or experience in international markets.)

TI Canada also recommended among other things that effective sanctions should be imposed on companies that fail to comply with the Anti-Corruption Act. Sanctions should extend to subsidiaries and consortia in which the exporter holds a significant share. The EDC has indicated that it is in the process of strengthening its policies and procedures in this regard and will make public its specific anti corruption initiatives early in 2001.

2000 Report of the Auditor General

Chapter 12 of the 2000 Auditor General's report is on Values and Ethics in the Federal Public Sector. It provides a review of various ethics initiatives undertaken since 1995, assessed the major challenges facing the government, underlined the importance of developing shared values and ethics, proposed immediate steps to reinforce ethical decision making, and proposed objective assessment and reporting. It also emphasised the importance of leadership from parliamentarians, ministers and federal entities.

Current and Emerging Issues

Status and independence of the Ethics Counsellor

The Office of the Ethics Counsellor, which reports to the Prime Minister, was created in June 1994. The Office has responsibility for the Conflict of Interest and Post-Employment Code for Public Office Holders, the Lobbyists' Registration Act and the Lobbyists' Code of Conduct. In addition, the Office regularly provides advice on ethical issues to federal and provincial departments and agencies, foreign governments as well as private sector organisations. The Lobbyists' Code of Conduct came into effect on March 1, 1997. The Code establishes standards of conduct for all lobbyists who communicate with federal public office holders and forms a counterpart to the obligations that federal officials must observe when they interact with the public and with lobbyists. The Lobbyists Registration Act was amended in 1996 to increase the amount of information available to the public on lobbying efforts directed at federal institutions.

For the purposes of the Conflict of Interest and Post-Employment Code for Public Office Holders, "public office holders" include Ministers, Parliamentary Secretaries and full-time Governor in Council appointees, as well as members of ministerial staff who are not public servants. It does not apply to backbenchers or members of the senate who do not hold public office.

The major concerns are

- The Code for Public Office Holders should include parliamentarians and senators,
- the code of ethics should be applied in conjunction with legislation related to the funding of political parties, and
- the independence of the Office of the Ethics Counsellor is limited by the fact that it reports to the Prime Minister. It should report to Parliament and have reporting requirements similar to those of other offices which report to Parliament. In addition, the reporting and counselling functions should be clearly separated so that confidentiality can be respected.

Changes in Public Sector Practices and the need for leadership

In the 2000 Report of the Auditor General, the report noted that "Major changes are occurring in the way government organises and delivers its programs. These changes include deregulation, downsizing, increasing delegation of decision making to officials in the field, contracting out and entering into partnerships with the private sector. As well, the government is using new technologies, and its work force is becoming more mobile and diverse."¹ The report recognised that most of the federal public sector values and ethics initiatives were in their early states of development. It also noted a number of issues and areas of concern including a lack of awareness on the part of most public servants of key reports, a belief that senior managers do not lead by example, and a lack of follow-up to gauge the success of values and ethics initiatives. In a 1998 publication by the Learning Advisory Panel for Middle Managers, on values and ethics there was "continuing cynicism, embitterment and lack of trust". The Auditor General's report emphasised the importance of leadership at all levels - senior public servants, public office holders, and parliamentarians.

Money laundering

Money laundering involves the illegal movement of funds estimated at between \$5 billion and \$17 billion in and through Canada each year. A significant proportion is linked to profits from the illicit drug trade but proceeds from other crimes, including burglaries and cigarette smuggling, are also involved. In recent years the federal government has taken a number of steps, in partnership with the provinces, territories and the police, against organised crime, including initiatives to fight smuggling and seize the proceeds of crime by targeting the financial rewards of criminal activity.

The Financial Action Task Force on Money Laundering (FATF), created by Group of Seven (G-7) leaders in 1989, has established international standards to improve national legal systems, enhance the role of financial systems and strengthen international co-operation in the fight against money laundering. Canada's proposed reporting regime will be consistent with those already in place in most industrialised countries around the world, including the other G-7 countries, most European nations and many of our Commonwealth partners, such as Australia and New Zealand.

The new legislation has three main components: Mandatory suspicious transactions reporting, reporting of large cross-border movements of currency, and the establishment of a new Financial Transactions and Reports Analysis Centre of Canada

This new body will be a central repository for information about money laundering activities across Canada. The Centre will analyse and assess the reports, together with other information available to it and, where appropriate, provide leads to law enforcement agencies. The Centre will operate independently from law enforcement agencies, and the disclosure of information by the Centre will be strictly controlled. The proposed legislation authorises the Centre to provide key identifying information of suspicious transactions (e.g., name, date, account number, value of the transaction) to the appropriate police force if it has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering offence. Provided that there is a reasonable suspicion of money laundering, the same identifying information may be provided to the Canada Customs and Revenue Agency, the Canadian Security Intelligence Service, and Citizenship and Immigration Canada.

Organised Crime (Drug trafficking, smuggling, illegal immigration, illegal gambling and other manifestations of organised crime)

Organised crime is involved a range of activities in Canada, from drug trafficking to various types of smuggling, including illegal migrants. Asian-based organised crime groups are the primary suppliers of heroin and are increasingly involved in cocaine trafficking. Eastern European-based organised crime groups in Canada are well connected to criminal counterparts in Russia, Europe and the United States. They are increasingly involved in drug trafficking in some regions. The Traditional (Italian-based) organised crime continues to infiltrate the legal economy, money laundering being a key activity. Outlaw Motorcycle Gangs, particularly the Hells Angels, are one of the most powerful and well-structured criminal organisations in Canada. Aboriginal-based organised crime is of growing concern. All the major organised crime groups are involved in the smuggling of illegal drugs into and out of Canada. Contraband includes the trafficking of illegal firearms as well as other commodities such as tobacco, alcohol, jewellery and stolen vehicles, both within Canada and across the U. S./Canada border.

Issues of growing concern include traffic in illegal migrants, illegal gambling, diamond smuggling and theft, and technological crime.

While there are some reported cases of corruption in the forms of bribes and kickbacks to public officials, there is no hard evidence of significant problem. At the same time, given the very large sums of money involved, it would be naive to think that there is not significant potential for corruption.

Activities and policies of the EDC

Like most government supported export promotion agencies in the developed world, the Canadian agency, the EDC, has been reluctant to put any obstacles in the way of Canadian companies seeking to compete internationally. This stance may be slowly changing. Currently, the EDC does not emphasise the importance of obeying Canadian law with respect to the corruption of foreign public officials. Neither does it make respect for the law a condition of loans or penalise companies that it knows have used bribery to obtain contracts in foreign jurisdictions. As indicated above, there is some indication that this may be changing. It is a development that TI Canada will be monitoring carefully as this is a pressure point at which the government has an opportunity to encourage Canadian companies to become aware of Canadian anti bribery laws and to implement corporate compliance programs to ensure that the law is respected in letter and spirit by their employees and agents.

International trade initiatives (e.g. China, Mexico, Sudan)

The increasing emphasis on free trade with countries in Latin America, and attempts to expand international trade with countries such as China and Eastern Europe, many of which are high on the TI Corruption Perceptions Index, pose important dilemmas for Canadian exporters and investors. The existence of the OAS Convention, Canadian legislation against the bribing of foreign officials, and growing commitment on the part of OECD countries to not bribe are important measures. At the same time Canadian private sector firms continue to be face strong competition from other countries. It should be assumed that the competition to bribe will continue and that more sophisticated ways will be found to hide such activities. Stronger international co-operation and improved monitoring and

investigation on the part of international authorities as well as Canadian ones will be crucial if laws and conventions are to be respected.

Political patronage

Political patronage is fundamental to party politics in Canada. There is "behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of public power entrusted to them". However, most political patronage in Canada is done legally and there is relatively little that enriches civil servants. The major concern is the effect of patronage on the democratic process, how it is used to reinforce the position of elite economic groups, reward party supporters, and, in the view of many, reinforce regional differences.

Whistle blowing

Public servants need a clearly designated place where they can go to discuss or report ethical issues they encounter. The Financial Administration Act requires that public servants report any knowledge of suspected fraud or illegal activity to any supervisor. The 1995 Auditor General's report noted that there should be a number of options available to public servants to voice concerns about suspected illegal activity but also about transgressions of ethics in addition to raising the issue with a supervisor. The report noted that it is important that an individual wishing to discuss or report an ethical concern be able to do so without fear of reprisal. Canada does not have any explicit mechanisms in place, such as the U. S. whistle-blowing protection legislation. There are a number of measures to protect government employees who disclose corruption, such as policies on discipline, the grievance process, and workplace harassment policy. Seven federal departments have ombudsmen who could be of some assistance. There is also the right to appeal under the Public Service Employment Act. The Privacy Commissioner prevented the development of an anonymous hotline by arguing that the accused has a right to know the identity of the accuser. There are several mechanisms which could be considered, including the type of "whistle-blower protection" legislation passed by the Ontario government. The Auditor General's report noted that a thorough discussion of the advantages and disadvantages of alternative approaches is needed.

Corporate performance (KPMG ethics survey 2000)

The KPMG Ethics Survey 2000, a survey of ethics in the private sector, was released in February, 2001. This year's survey focused on the time and resources allocated to the efforts of Canadian organisations and ethics initiatives such as reporting mechanisms, training provisions, pre-employment screening, performance evaluation criteria related to ethics and international practices, including monitoring of international supplier labour practices. Key findings included:

- Issues considered to be of growing concern in the next few years are security of information, employee and client privacy, environmental issues, governance and conflicts of interest
- Issues related to labour and business practices abroad are becoming a bigger concern among most Canadians. It is clear that companies with operations or suppliers overseas need to develop specific initiatives related to vendor codes of conduct, labour standards, safety and environmental controls, briber and corruption.
- Only 14.3 % of respondents have performed an evaluation of their ethics-related performance
- Close to two thirds of respondents say they are implementing initiatives to promote positive organisational values and ethical practice, but the amount of time and effort allocated is often inadequate.
- Nearly 39 % said they provide ethics training, but almost one third of these provide less than one hour of training per year to managers.
- Only about 10 % of Canadian organisations provide more than eight hours of ethics training per year
- Nearly 58 % do not have designated senior managers responsible for ethical issues.

Improving reporting of anti-corruption issues

Improvement is needed in both the public and private sector. There are at least three issues:

- gathering and analysing statistical data,
- more proactive monitoring and investigation, and
- resources to undertake the first two.

Although the criminal code in Canada is national, its implementation, for the most part is at the provincial level. Gathering and getting complete statistics (types of offences, allegations, convictions, etc.) on corruption is time consuming and complex. It is also very difficult to determine how many cases are resolved without recourse to a legal process. (Staff are transferred, administrative sanctions are used, the source of conflict of interest is removed, etc.)

Currently there does not seem to be a formal process being used to monitor the Canadian legislation on the Bribery of Foreign Officials. Statistics will only be gathered if there is an actual complaint or, eventually, prosecution. While some firms may have their own monitoring process, there is no overall process by either the government or the private sector to determine such things as types of corruption being faced, increases or decreases, what actions were taken, countries involved, etc.

While a formal complaint would have to be investigated by the police, resources, particularly to do international investigation, are limited. Resources to undertake more proactive types of investigation are even more limited.

Absence of co-ordinated government-wide anti-corruption policies and implementation initiatives

Since its launch, TI Canada has been urging the Canadian government to develop a comprehensive, co-ordinated, government-wide anti corruption program. As indicated above, we have met with the government to this effect. The formal response to this initiative has been positive. However, as a practical matter, little progress has been made. This is an area of considerable concern. If the Canadian government relies simply on the criminal law and normal enforcement by Canadian police forces, it is unlikely that the legislation will have a significant impact on the conduct of Canadian corporations. There are simply too many obstacles in the way of enforcing a law whose focus is the covert activities of sophisticated corporations operating in other countries, some of them with a history of corruption in government. TI Canada has urged the government to become proactive by creating incentives to obey the law and by building anti corruption principles into all its dealing with the Canadian corporate community on matters involving international business transactions. Some departments of the Canadian government have responded in the required way. The Canadian International Development Agency (CIDA) is an example. It has strengthened its anti corruption policies and has anti corruption clauses in all its contracts. The Office of the Auditor General has also taken significant initiatives to encourage the Canadian government to take its responsibilities in this regard seriously. However, there is a great deal still to be done. It is not yet clear that the government is committed to developing a systematic government-wide approach to the problem.

Government enforcement and reporting of anti-corruption national and international legislation enforcement.

The Canadian anti bribery legislation included a commitment to report annually to the Parliament government activity in implementing its legislation. In its first report to Parliament, the government took a minimalist approach to this task, reporting only on the number of cases prosecuted under Canadian legislation (none) and the number of countries that had ratified the convention by criminalising the bribery of foreign public officials. As noted above, TI has urged the government to become much more proactive in its efforts and to report the full range of its anti corruption activities on an annual basis. Whether the government will institute a government-wide anti corruption program and report comprehensively on progress in this regard remains to be seen.

General Observations

Corruption

The Transparency International Source book defines corruption as involving "...behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and

unlawfully enrich themselves, or those close to them, by the misuse of public power entrusted to them,"²

Corruption, as defined by T. I., is not seen to be a major problem in Canada.

- On the 1999 T. I. Bribe Payers Perceptions Index which ranked 19 leading exporters, Canada was number two (8.1 out of 10) - tied with Australia, as least likely to pay bribes to foreign officials. On the 1999 T. I. Corruption Perception Index, Canada (9.2 out of 10) ranked number five behind Denmark, Finland, New Zealand and Sweden (10 being highly clean).
- It is impossible to ascertain how many incidents of suspected or actual bribery, fraud and conflict of interest are resolved informally or administratively. However, actual prosecutions and convictions are very low. Public Works and Government Services Canada report that in recent years they have about 140 incidents annually, of which 40 or 50 go to the police. They do not have records on convictions. Based on RCMP research, police corruption is not a major issue in Canada.
- In Chapter 1 (Ethics and Fraud Awareness) of the 1995 Auditor-General's report, based on confidential interviews, public servants believed that the programs in which they work are administered ethically and that the risk of fraud is low. On the whole they could identify questionable conduct and stated they would take some type of action to report it or stop it. At the same time, some areas of vulnerability were noted.
- The Auditor General's report for the year 2000 included a chapter on Values and Ethics in the Federal Public Sector. In it he noted that: "There is a strong foundation of ethical standards in the federal public service. However, this foundation should not be taken for granted. Values and ethics initiatives undertaken in the public sector are not sustainable without leadership at the highest levels and a commitment to act."

Many Canadians take a broader view and see corruption as the abuse of public trust - irrespective of whether it is done for personal gain or not. For example, there is considerable concern about the erosion of health, environmental and other standards in the face of greater privatisation, deregulation and an increasingly competitive and global economy. Political and bureaucratic patronage which support economic elites and affect regional differences are also of considerable concern.

Globalisation and the changing role of the public sector is creating new challenges

The increased globalisation of trade, investment and organised crime, new forms of regulations related to financial transfers, along with very rapid developments in information technology pose new and complex problems for countries such as Canada - of which corruption is only one. While there are many reasons for corruption, large amounts of money are a natural attraction in any culture. Increased trade with countries who corruption indices are high will require a combination of Canadian private and public sector vigilance, as well as stronger and new forms of international and regional co-operation.

Within Canada, the focus on deregulation, the reduction of management supervision, the growing number of alternative service delivery agencies, the increasing partnerships with the private sector, the privatisation of certain services and the adoption of new technologies will have significant impact on ethics and values of public employees, the private sector and the various recipients of services. Fraud, bribery and other forms of conventional corruption will continue to be issues as well as more complex issues such as the public trust.

An Evaluation and Assessment of Canada's National Integrity System

The Canadian Integrity System has been remarkably effective in inhibiting corruption in any of its traditional manifestations. Canada has consistently ranked very highly in the TI Corruption Perceptions Index. It also obtained a high ranking in the Bribe Payers Index.

Transparency International has proposed that an effective national integrity system is an effective way to combat corruption. This hypothesis would seem to be supported by the Canadian experience. The Canadian National Integrity System has all the elements of an integrity system as set out in the TI Source Book.

Transparency and accountability

Canada has transparency and accountability in government procurement (see section 6 of the Questionnaire for details.) Indeed the Canadian Government has developed a ground breaking electronic procurement system designed to ensure open and unbiased access to information and effective conditions for open and honest competitive system for bidding on government contracts.

The Office of Auditor General

The office of Auditor General is independent, highly respected and effective. The Auditor General reports to Parliament through a committee that is chaired by a member of the Official Opposition. Hence the office is not controlled by the party in power and is free to examine in detail and criticize Government expenditures. Canada does not have a single ombudsperson. However, there are information and privacy commissioners that play a similar role. These commissioners have significant powers and do function effectively in their respective roles.

Freedom of the Press

Freedom of the press is protected in the Canadian Constitution. The media is free to report on all aspects of government. It has access to official information via access to information legislation. The right to access government documents is frequently used to obtain information on government policy and government activities. There is a tradition of investigative journalism on the part of Canada's public and private radio and television broadcasters. There are concerns with respect to cross ownership of radio, television and print media and concentration of ownership in the hands of a small number of companies. Nonetheless, there is a strong tradition of investigative journalism and the government is vigorously criticized in the media. An example is a current controversy involving efforts of the part of the Prime Minister to obtain a government loan for the owner of a hotel in the Prime Minister's riding. The hotel was previously owned by the Prime Minister though at a point in time when he was not serving in the Parliament and was adjacent to a golf course in which the Prime Minister also had an interest. This and many other similar incidents have been extensively covered by the press.

A Responsible Business Sector

The B P I and the CPI are perhaps the best indication of a responsible business sector. Canada ranks highly on both. Canadian companies are not regarded as bribe payers in the countries in which they do business. The business sector in Canada does for the most part adhere to laws prohibiting private to public and private to private bribery and corruption.

The Canadian Judiciary

The Canadian judiciary is independent, competent and respected. The judiciary is well paid, relatively speaking. Judges hold tenure to age 75 and are protected from dismissal except for flagrant dereliction of duty and can only be dismissed by Parliament. Public prosecutors are appointed on merit, are protected by regulatory safeguards. Investigations are carried out by the police.

Legislature

Canada has an elected legislature, with power to hold public officials to account through a question period which takes place daily and provides the opposition an opportunity to question the government in the House of Commons. Committees of Parliament, for example the Public Accounts Committee, have the power to hold hearings as does the Senate.

Civil Society

There is a free and active civil society. Canada has a strong voluntary sector that includes over 175,000 organizations. Included are a wide variety of active NGO's that engage in public debate and public education. Transparency International Canada is one of those organizations.

The Public Services

The Public Services at the national, provincial and municipal levels are relatively independent, merit-based, and unpoliticised. The Public Service Commission at the national level reports to Parliament. Political appointees in the public service are relatively few. While there are exceptions, there does not

tend to be a large turnover of public servants after elections. This is an important factor in minimising some aspects of political patronage through the public service.

Codes of Ethics and Conflict of Interest Rules

Codes of ethics and conflict of interest rules are respected by the majority of public sector employees. In part, this is because of the existence of the codes and rules and, apparently, an inherent respect for the values the rules represent.

Components of the Canadian National Integrity System

It is not really possible to say which of these components of the Canadian integrity system have been the most effective. All elements have a role to play and play it vigorously. They are successful because they are relatively well funded with roles and powers that are well defined for the most part in legislation. These components are embedded in respected institutions that have a long history of independence. An added strength is a constitution that provides strong legal and judicial support for fundamental rights and freedoms which include freedom of assembly and freedom of the press. A constitutional division of powers between federal and provincial governments is an additional protection that provides a check on the use of legislative or executive government powers.

The various elements of the integrity system are mutually supportive for the most part. However, they also collectively provide checks and balances that serve to limit the exercise of power and spread the responsibility for monitoring government activity among a variety of agencies and government functionaries.

Emphasis for the Future Development of the National Integrity System

We have identified three areas that warrant emphasis:

- Our findings and observations in this report all point to the need for a comprehensive, government-wide, anti-corruption program that seeks to publicize, educate and persuade the Canadian public service and Canadian corporations to respect both the letter and the spirit of Canadian anti-corruption legislation. It is very unlikely that the legislation will dramatically alter the behaviour of Canadian companies doing business in other countries if the government relies on nothing more than the normal enforcement activities of Canadian enforcement agencies. Canadian business will not be persuaded that the government is serious until such time as they see the government anti-corruption measures reflected in all facets of its international activities. In our view, it is important that the Canadian government:
 - provide comprehensive anti-corruption training for civil servants engaged in supporting, evaluating or supervising international corporate activity,
 - build anti-corruption clauses into all contracts,
 - insist that Canadian corporations that are looking to government for support have an active program in place to ensure their employees and agents are aware of the law and the corporation's commitment to have the law respected and solicit active support in enforcing the law.

If the government develops this kind of anti corruption program, it is quite likely that the anti bribery legislation will be effective. If it does not, countries like Canada may well be seen by their competitors and the developing world as engaged in a public relations exercise whose dominant effect will be to increase cynicism about the standards of conduct of governments and business.

- Recent events in Canada have served to highlight the need for a Parliamentary Code of Ethics and a Parliamentary Ethics Officer with the power to oversee the implementation of the code of ethics. The Office of the Ethics Counsellor as it is currently constituted reports to the Prime Minister and the office holder is appointed by the Prime Minister. The independence of the Ethics Counsellor is therefore suspect though it is clear that the office has value and has provided cabinet ministers and senior level public servants with access to valuable counselling and advice.
- Funding political parties is a weak link in the Canadian integrity system as it is for any democratic system of government. A recent discussion paper written for the Canadian Democracy and Corporate Accountability Commission reports that in 1999, \$600,000 was

contributed by ten corporations and limited liability partnerships to the governing Liberal Party. In total, the business community contributed \$8,506,809 to the same party. While this does not establish extensive corruption, it does imply the possibility of extensive influence on government policy that is not open to public view. Various systems for overcoming this defect are a matter of frequent debate and evaluation. It is unlikely that foolproof systems will emerge quickly or easily in this regard.

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¹ 2000 Report of the Auditor-General of Canada, Chapter 12, paragraph 12.8

² T. I. Source Book, 1996:1

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