



Transparency International – Canada

Submission to the Organization of American States (OAS) Experts Group on Certain Provisions of the Inter- American Convention Against Corruption

Washington, June 23, 2008

- Thank you, Chair, for the opportunity to represent the Canadian Chapter of Transparency International.
- My name is Bill McCloskey and I am a board member of TI-Canada.
- TI-Canada has submitted a report, which was prepared by a former distinguished board member, Bob Olivero, who could not be here today. I am presenting it in his absence. It should be noted that our report includes input from other civil society organizations.
- At the outset, I should note that TI-Canada does not have any major misgivings with the report of the Government of Canada in response to the questions on the implementation of the Convention provisions selected for review in the second round.
- It is very thorough and complete and mirrors the findings of TI-Canada's own report.
- Rather than review or summarize the body of the report that TI-Canada has submitted, I will instead concentrate on deficiencies that we believe still exist in the Canadian system in the areas under review.

Government Appointments

- First, with respect to government appointments, the Canadian federal government has long had laws and systems in place designed to produce a politically neutral, impartial and representative public service.

- Over the years there have been complaints that the systems in place went to such great lengths to ensure fairness and merit that they frustrated the efficiency and effectiveness of government programs through cumbersome and time consuming procedures.
- The government has made a number of legislative changes over the past few years that are outlined in our report that were designed to improve this situation, while at the same time preserving an impartial, non-political and meritorious public service.
- These changes, while still somewhat in flux, have generally been successful.
- The one area where TI-Canada feels improvement is still wanting is in the area of what are called Order-in-Council appointments.
- These are appointments to the most senior level positions in the public service -- deputy heads -- and to boards of Crown Corporations, federal judges and to various boards and commissions that exist.
- While relatively small in number compared to the appointments made in the federal public service, which are governed by a number of laws, these Order-in-Council appointments are to critically important positions. But they continue to be the sole prerogative of the government in power and have been generally shrouded in secrecy.
- The government has made some recent steps at opening this process up – some appointments are advertised and the public can apply – however, the process generally remains very much a black box to outsiders.
- The current government had at one point proposed creating a senior appointments commission to vet and recommend all or most Order-in-Council appointments, but this appears to have been dropped or placed on the back burner.
- TI-Canada believes this proposal needs to go forward in order to open up the process to greater scrutiny.

Procurement of Goods and Services

- On the issue of procurement, both TI-Canada and federal government reports indicate that the process is governed by strong laws and systems to ensure fair and non-partisan procedures for the procurement of goods and services, and for the impartial investigation of complaints.
- Noteworthy in this respect are the recent creation of a Procurement Ombudsman and the enunciation of a code of conduct for procurement.
- However, there are still some areas that TI-Canada believes need attention. These are:
 - Bring military and munitions procurement and sales under stricter oversight and control.
 - Bring so-called emergency procurements under standard controls by pre-purchasing and arranging advance contracts and regional and international stockpiles of emergency goods and services.

Protecting Public Servants and Citizens who Report Acts of Corruption

- On the issue of protecting public servants and citizens who report acts of corruption, the federal public service has taken some important and positive steps.
- To put this in context, in the past in Canada, there have been few formal mechanisms for reporting wrongdoing and it has been virtually impossible to protect the identity of whistleblowers or to prevent reprisals against them.
- A new federal *Accountability Act* has recently become law, which now offers a degree of protection for whistleblowers, along with the establishment of an Integrity Commissioner who will investigate and report on allegations of corruption at the federal level.

- It is yet too early to pronounce upon the success of this initiative, although it is clearly a step in the right direction.
- Having said this, many civil society organizations would have liked to have seen the legislation go somewhat further that it does:
 - At the moment the *Accountability Act* only offers protection for public servants at the federal level; it does not cover provincial and territorial public servants, and it does not cover private citizens who bring forward evidence of corruption.
 - Further, the burden of proof for threats or reprisals still rests with the whistleblower, and he or she usually does not have access to files or information that would show a reprisal may have taken place.
- TI-Canada recommends that:
 - The *Accountability Act* be amended to cover wrongdoing at the federal level that is reported by citizens.
 - Rewards be made to persons reporting wrongdoing where significant savings resulted.
 - Assistance be made to whistleblowers to prepare their case and to protect them from retribution.
 - Provinces and territories implement legislation to protect their employees and citizens who report corruption within their jurisdictions.

Criminalization of Acts of Corruption

- With respect to the criminalization of acts of corruption, Canada has in place a wide array of laws, as discussed in our report, which criminalize the different aspects of corruption, and provide vital investigative powers to authorities and ensure an independent judiciary to try any such cases that are brought before it.

- We have no specific recommendations to make in this area.

Follow-up on the Recommendations formulated in the National Report in the First Review Round

- Finally, with respect to the follow-up on the recommendations formulated in the national report in the first review round, TI-Canada concurs that Canada has made headway in a number of areas covered by the recommendations, as detailed in the federal government's report.
- There are two areas where TI-Canada believes further effort is required. The first is the implementation of the Convention at the provincial and territorial levels.
- Admittedly, constitutionally the Canadian federal government has limited ability to enforce the implementation of the convention at these levels.
- However, TI-Canada believes the MESICIC Action Plan Framework should be applied to all Canadian jurisdictions and we are willing to partner with other NGOs and academic bodies to complete such a plan.
- The second area concerns access to information.
- In Canada, there is still too much secrecy surrounding Cabinet documents.
- While we acknowledge that a certain amount of secrecy is warranted with respect to such documents, it is applied much too widely.
- Just last week, for example, the federal court upheld the government's interpretation that the *Access to Information Act* did not apply to the meeting agenda of the former Prime Minister!
- I emphasize that this was a meeting agenda of the former Prime Minister. It's difficult to understand how and why such a document

should be outside the purview of the Information Commissioner, but apparently it is.

- The law needs to be amended to widen the scope of access to like information.
- In concluding, I would like to summarize the recommendations of our report.
- TI-Canada believes that
 1. The federal government should proceed with establishing a Senior Commission for Order-in-Council appointments.
 2. Military armaments and munitions procurement and sales should be brought under stricter oversight and control.
 3. Emergency procurements should be put under standard controls by pre-purchasing and arranging advance contracts and regional and international stockpiles of emergency goods and services.
 4. The *Accountability Act* should be amended to cover wrongdoing at the federal level that is reported by citizens.
 5. Persons reporting wrongdoing where significant savings resulted should be rewarded.
 6. Assistance should be provided to whistleblowers to prepare their case and to protect them from retribution.
 7. Provinces and territories should implement legislation to protect their employees and citizens who report corruption in their jurisdictions.
 8. The MESICIC Action Plan Framework should be applied to all Canadian jurisdictions.
 9. The *Access to Information Act* should be amended to apply to a wider array of Cabinet documents and confidences.