



Transparency International Canada Inc.

NEWSLETTER

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Word from the President - Wesley Cragg

On 30 June 1999, five members of a Transparency International Canada (TI-Canada) mission met with deputy ministers and other senior officials of the Canadian government to discuss the implementation of the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and the Canadian legislation response to the Convention, *Corruption of Foreign Public Officials Act*. The mission included Wesley Cragg, Chair and President of TI-Canada and Gardiner Professor of Business Ethics at York University, Michael Davies, Vice Chair of TI-Canada and Vice President and General Counsel of General Electric Canada, P. K. Pal, TI-Canada Board Member, John McWilliams, Senior Vice President, General Counsel and Secretary of Canadian Occidental Petroleum Ltd., and Bronwyn Best, National Coordinator of TI-Canada.

Don Campbell, Deputy Minister of Foreign Affairs, and Huguette Labelle, President of the Canadian International Development Agency (CIDA), co-chaired the meeting. Representatives were present from International Trade, Treasury Board, Public Works and Government Services, Privy Council Office, Office of the Ethics Counselor, Revenue Canada, Office of the Auditor General, Justice Canada and Industry Canada.

In my introductory remarks, I thanked the Canadian Government on behalf of TI-Canada for meeting its public commitment to pass anti-corruption legislation by December 31, 1998. The government was urged to take such a proactive stance by developing a government-wide anti-corruption policy and initiatives to support it.

I noted that the Government had fulfilled the anti-corruption agenda set out by TI-Canada in a similar meeting a year and a half prior to this one, namely:

- ensuring the passage of the legislation required

by the OECD Convention - approved in December 1998,

- assisting the Global Coalition for Africa to move

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**“TI-Comments on Canadian Implementation of
OECD Convention”**

- ahead on its anti-corruption agenda - Canada is providing on-going support,
- encouraging the International Financial Institutions to take anti-corruption measures seriously - TI-Canada addressed the directors of the IFIs on this issue in November 1998, and
- supporting TI and its programs - CIDA is providing on-going support for both TI-Canada and TI-Secretariat.

I urged the government to take a leadership position nationally and internationally and laid out a number of different activities which I recommended, on behalf of TI-Canada, should form a four-part government-wide anti-corruption work plan and agenda.

TI-Canada recommendations for:

An Anti-Corruption Agenda for the Canadian Government

1. OECD Monitoring

The OECD has established a monitoring process for implementing the anti-corruption convention. It has two components:

- 1) Signatories to the Convention must first engage in a process of self evaluation. This requires that they respond to a detailed questionnaire whose purpose is to determine whether the legislation they have put in place

- meets the requirements of the Convention;
- 2) The legislation of participating countries is then to be evaluated by a small three person committee of experts, one appointed from the OECD Working Group on Bribery and two others from countries named by the Working Group. The purpose is to provide an objective basis for an assessment of the progress of the participating country in implementing the Convention.

The Working Group has indicated that it will provide report on this process only when the legislation of all participating countries has been assessed.

Concerns: Transparency International has identified several difficulties with the current process. Under OECD rules, only the final report of the OECD Working Group will be made public. All other aspects of the process are confidential - the questionnaire, responses of individual governments to the questionnaire, meetings and work of the three person committee of experts, the report of the committee to the Working Group and the deliberations of the Working Group itself. Transparency International and TI-Canada are concerned that the process will not be credible unless it is more transparent.

Recommendations: TI-Canada requested that the Canadian government urge the OECD to:

- make the questionnaire public;
- make all individual country responses to the questionnaire public;
- provide monitoring reports on a periodic basis, not only at the end of the review; and
- involve INGOs such as Transparency International, The International Chamber of Commerce (ICC), and the Trade Union Advisory Council in the monitoring process.

TI-Canada also requested that the Canadian government follow the example of the United States and Germany by making Canada's responses to the questionnaire public whether the OECD Working Group on Bribery changes its policy on this issue or not.

Finally, TI-Canada pointed out the need to broaden the Convention to include a number of outstanding issues such as:

- donations to foreign political parties and persons likely to stand for public office,

- subsidiaries and joint ventures controlled by a national company,
- money laundering, and
- off-shore financial centres.

2. A Government-Wide Anti-Corruption Agenda

Recommendations:

- 1) Ensure that a uniform and consistent anti-corruption commitment is an element of all federal government agreements, loans, partnerships, grants, etc., where government and the private sector interact, for purposes of international business. This could be done by:
 - putting explicit anti-corruption clauses requiring compliance with the Canadian Corruption of Foreign Public Officials Act in contracts issued by such departments and agencies as Public Works and Government Services, CIDA and EDC;
 - recommending or requiring that companies and organizations whose work for the government has an international dimension 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 and the TSE Governance Guidelines as possible models.);
 - including government right-to-audit provisions in contracts and agreements;
- 2) Provide effective training programs for public servants responsible for managing anti-corruption programs;
- 3) Require reporting of anomalies relevant to government anti-corruption policies by contract administrators;
- 4) Develop a comprehensive research program designed to develop and evaluate the effectiveness of anti-corruption policies and tools such as voluntary ethics codes in both the private and public sectors. (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.)
- 5) Continue to co-operate with the private sector on a model international business ethics code for Canadian companies and on code implementation strategies.

Additional proposals made in the course of the discussion included:

- setting up an enforcement infrastructure for Bill S-21, which might include a system so that Canadian companies have a way of channelling complaints when they lose contracts because of corruption on the part of their competitors;

- establishing a process through which the government could take up substantiated complaints at the OECD;
- adding accounting provisions such as those in the Foreign Corrupt Practices Act in the US (which have been the basis for most of the prosecutions under that Act);
- sanctions for companies found to pay bribes, such as exclusion from new government financed international contracts for a certain period of time and cancellation of any export credit insurance on contracts where bribery was involved;
- a comprehensive review of the Canadian legislation in two or three years' time involving the government, academics, civil society and the private sector; and
- urging the adoption of international standards and procedures for the purpose, for example, of investigating the complaints of companies that believe they have lost contracts because of bribery or corruption with a view to ensuring a level competitive international playing field.

TI-Canada stressed that the government agenda should emphasize positive incentives designed to win compliance and cooperation with the government's anti-corruption policy and legislation wherever possible, rather than relying exclusively on criminal law and other sanctions. The goal should be to create conditions that would enable developing countries to derive maximum benefit from international trade while helping to ensure a level playing field for companies engaged in international business. TI-Canada recommended that systems put in place should be kept as simple as possible to avoid creating obstacles to participation in international markets on the part of small- and medium-sized companies.

TI-Canada also recommended that the Canadian government play an international leadership role, by exporting Canadian success stories, such as the electronic bidding system of Public Works and Government Services. Dr. Cragg noted that TI-Canada is prepared to consider recommending that Transparency International advocate this approach to government procurement as a model system internationally.

Finally, TI-Canada recommended that Canadian representatives in the IFIs and elsewhere be asked to encourage the emulation of these kind of initiatives internationally.

3. Reporting to Parliament

The Canadian anti-bribery legislation requires that the Government report annually to Parliament on the implementation of the Convention and Canadian legislation. The Government has indicated that it plans to report on two items only:

- the signatories added in the year under review and
- prosecutions in the previous year.

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 also requested that the Government use the occasion of its first annual report to address the broad range of issues raised by the Convention and by Transparency International. Finally, TI-Canada asked the Government to lay out its government-wide anti-corruption agenda for Canada in its first report to Parliament.

4. Corporate Social Responsibility

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 Guidelines;
- endorsement of 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
- 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:

- 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 has asked for follow-up meetings to explore its recommendations in more detail over the next few months.

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Individual members will be entitled to full participation and voting privileges at all meetings of the members.

VOLUNTARY SECTOR ORGANIZATIONS (Fee Range -- \$50 to \$500)

The designated spokesperson of an NGO has full voting and participation rights at meetings of members.

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