CHINA CANADA PROCURATORATE REFORM COOPERATION PROJECT

Canada's Experience with the Implementation of International Conventions against Corruption

Seminar on International Cooperation on Anti-Corruption
Including Fair Investigation Practices

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INTRODUCTION

Canada is currently involved in four international agreements dealing with the criminal aspect of corruption: the OAS *Inter-American Convention against Corruption*, which came into force on March 6, 1997; the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, which came into force on February 15, 1999*;* the *United Nations Convention against Transnational Organized Crime*, which came into force on September 29, 2003; and the U.N. *Convention against Corruption,* which came into force on December 14, 2005.

Canada was involved in the negotiations of all these agreements, as well as various Council of Europe anti-corruption instruments, and is currently a Party to the OAS and OECD Conventions. Canada signed the U.N. Convention in May 2004 and is committed to becoming a Party once we are satisfied that Canada's legislation meets all the requirements of the Convention.

Except for the OECD Convention that does not specifically deal with preventive measures, these Conventions generally all require Parties to criminalize acts of corruption; to take measures to prevent public sector corruption; to provide assistance to each other for the investigation and prosecution of convention offences; and to participate in a follow-up mechanism. [1]

This paper deals mostly with Canadian laws, policies, programs and other measures that are in place in Canada to implement the U.N. *Convention against Corruption* (UNCAC), which is the most universal and recent of these instruments.

I. CRIMINALIZATION OF ACTS OF CORRUPTION

The Canadian Criminal Code has prohibited acts of corruption since its enactment in 1892. Before the enactment of the Code, corruption was prohibited by the British Common Law offence of bribery that applied in Canada.

The Canadian criminal law currently prohibits active bribery (i.e. offering or giving of a bribe) and passive bribery (i.e. demanding or accepting a bribe) of domestic public officials, and it prohibits active bribery of foreign public officials. Trading in influence and acts creating conflicts of interest, such as accepting gifts, are also criminal offences. Private sector corruption is dealt with in Canadian criminal law through the prohibition of secret commissions. In addition, a number of offences, not specific to corruption, can also apply to acts of corruption and embezzlement, such as breach of trust, theft, and fraud. Canada also criminalizes laundering proceeds of crime, including those of corruption, and provides for their forfeiture. Participation and attempt in relation to these offences constitute offences. Criminal liability extends to legal entities, such as corporations.

[1] The *Inter-American Convention against Corruption* did not provide for a follow-up mechanism, but one was subsequently created.

The U.N. Convention requires States Parties to criminalize the bribery of domestic and foreign public officials, the bribery of persons who direct or work for private sector entities, and embezzlement in the public and private sectors. States Parties are also required to consider criminalizing trading in influence, abuse of functions and illicit enrichment by public officials. All required Convention offences are already criminal offences in Canada.

II. PREVENTIVE MEASURES

The adoption of measures to prevent corruption is an important element of the Convention. These measures include codes of conduct for public officials, including members of Parliament; rules for hiring and promotions in the public service; candidature to public offices and funding of political parties; systems for government procurement and management of public finances; procedures for access to information and participation of the civil society; and measures to prevent money-laundering. Such measures have been in place in the Canadian government for a long time.

III. INTERNATIONAL COOPERATION

The UN Convention requires States Parties to cooperate in four areas: investigations and prosecutions; extradition; asset recovery; and technical assistance and exchange of information.

The obligations created by the Convention to provide international assistance for the investigations or prosecutions of Convention offences and for related extraditions are similar to Canada's obligations under bi-lateral Mutual Legal Assistance Treaties (MLAT) and Extradition Treaties. There is already a specialized group of lawyers within the Department of Justice who has responsibility for responding to requests for assistance from foreign countries for extradition and assistance under MLAT. This group could expand its operations to requests made under UNCAC.

Canada's law provides for mutual legal assistance in the recovery of property confiscated by order of a court of criminal jurisdiction. This assistance includes freezing, seizure, or forfeiture, where the information provided by the requesting State is sufficient and compelling.

Canada already provides training and technical assistance under international conventions of which it is a Party, through the Canadian International Development Agency (CIDA) and other federal departments and agencies. Canada's current assistance policy would likely be extended to the States Parties of the UN Convention.