



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Canada

Review by Iraq and Switzerland of the implementation by Canada of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

I. Introduction

The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

The review process is based on the terms of reference of the Review Mechanism.

II. Process

The following review of the implementation by Canada of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Canada, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Iraq, Switzerland and Canada, by means of telephone conferences, e-mail exchanges and other means of direct dialogue in accordance with the terms of reference and involving Marcus Davies, Legal Officer, Criminal, Security, and Diplomatic Law Division, Foreign Affairs, Trade and Development, Canada; Judge Ezzat Tawfeeq Jaafar, Deputy Commissioner, Commission of Integrity, Iraq; Dr. Nawar Daham Matar, Inspector General, Iraq; Sajjad Ali Matooq, Director General, Commission of Integrity, Iraq; and Judge Jean-Bernard Schmid, Switzerland.

A country visit, agreed to by Canada, was conducted from 21 to 24 October 2013. During the country visit, the reviewing experts met with representatives of civil society, including GOPAC, Transparency International, the Canadian Bar Association and Bennett Jones LLP.

III. Executive summary

Canada

1. Introduction

1.1. Overview of the legal and institutional framework of Canada in the context of implementation of the United Nations Convention against Corruption

Canada signed the Convention on 21 May 2004 and ratified it on 2 October 2007. Canada deposited its instrument of ratification with the Secretary-General on 2 October 2007.

Canada is a federal state comprised of ten provinces (Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Saskatchewan) and three territories (Northwest Territories, Yukon and Nunavut). While the ratification of international treaties falls under federal jurisdiction, their implementation, where necessary, includes the participation of all levels of government. As a State party that follows a dualist tradition for implementing its treaty obligations, a treaty cannot as a general rule be invoked as a source of law in a Canadian court unless it has been transformed or implemented into Canadian law, usually by legislation.

Canada is a constitutional democracy. The Constitution provides for the division of powers among levels of government and guarantees the sovereignty of Parliament, subject to the limitations expressed in various constitutional instruments, including the Constitution Act 1867, the Constitution Act 1982 and any constitutional conventions that have developed over time. The Constitution also ensures an independent judiciary that can act as the final interpreter of laws.

The Canadian Charter of Rights and Freedoms guarantees enumerated rights and freedoms subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. In particular, the Charter provides that everyone has the freedom of conscience and religion; freedom of thought, belief, opinion and expression, including the freedom of the press and other media of communication; freedom of peaceful assembly; and freedom of association. It also includes democratic rights, mobility rights, legal rights and equality rights. The Constitution is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is of no force or effect.

Canada implements its obligations under the United Nations Convention against Corruption (“UNCAC”) through a variety of laws, listed below.

Criminal Code (R.S.C., 1985, c. C-46) [<http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>]

Corruption of Foreign Public Officials Act (S.C. 1998, c. 34) (“CFPOA”) [<http://laws-lois.justice.gc.ca/eng/acts/C-45.2/index.html>]

Proceeds of Crime (Money Laundering) and Terrorist Financing Act (S.C. 2000, c. 17) [<http://laws-lois.justice.gc.ca/eng/acts/P-24.501/index.html>]

Mutual Legal Assistance in Criminal Matters Act (R.S.C., 1985, c. 30 (4th Supp.)) [<http://laws-lois.justice.gc.ca/eng/acts/M-13.6/index.html>]

Extradition Act (S.C. 1999, c. 18) [<http://laws-lois.justice.gc.ca/eng/acts/E-23.01/index.html>]

Freezing Assets of Corrupt Foreign Officials Act (S.C. 2011, c. 10) [<http://laws-lois.justice.gc.ca/eng/acts/F-31.6/index.html>]

*Freezing Assets of Corrupt Foreign Officials (Tunisia and Egypt) Regulations (SOR/2011-78) [<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2011-78/index.html>]
The Witness Protection Program Act (S.C. 1996, c. 15) [<http://laws-lois.justice.gc.ca/PDF/W-11.2.pdf>]*

Specialized services responsible for combating economic crimes and corruption have been established in the Royal Canadian Mounted Police (“RCMP”). In February 2005, the RCMP appointed a commissioned officer to provide functional oversight of all RCMP anti-corruption programs. The corruption of foreign public officials is specifically referenced in the RCMP Commercial Crime Program’s mandate, which includes major fraud cases and corruption offences.

In 2008, the RCMP established the International Anti-Corruption Unit, comprised of two seven-person teams based in Ottawa and Calgary, respectively. This structure is currently undergoing a re-organization process to make available additional resources and expertise in the investigation of corruption and other complex cases in the newly established Sensitive Investigations Unit. The Unit’s mandate will include carrying out investigations of Canada’s CFPOA, related criminal offences and assisting foreign enforcement agencies or governments with requests for international assistance (asset recoveries and extraditions).

The RCMP also promotes its work by developing educational resources for external partners using information pamphlets and posters that describe the RCMP’s work and the negative effects of corruption for distribution and presentation to Canadian missions abroad.

2. Chapter III: Criminalization and Law Enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (articles 15, 16, 18, 21)

Bribery of public officials is made a criminal offence in various provisions of the Criminal Code, depending on the form of the bribery transaction, and includes both active and passive bribery. The definition of official contained in section 118 is broad in scope, and includes persons who perform a “public duty.”

Bribery of foreign public officials is addressed in the CFPOA, referenced above. The CFPOA also makes it possible to prosecute a conspiracy or attempt to commit such bribery, as well as aiding and abetting in committing bribery, an intention in common to commit bribery, and counselling others to commit bribery. Amendments to the CFPOA were adopted in 2013 that, among other things, expanded jurisdiction, increased penalties and will eliminate facilitation payments as an exception to the prohibition on bribery.

Sections 121, 122 and 123 of the Criminal Code make active and passive trading in influence a criminal offence which meets the requirements of Article 18 of the UNCAC.

Active and passive bribery in the private sector is made criminal under section 426 of the Criminal Code, and meets the requirements of the UNCAC.

Money-laundering, concealment (articles 23, 24)

Section 462.31 of the Criminal Code makes it an offence to use, transfer, send, transport, transmit, alter, dispose of or otherwise deal with any property or proceeds of any property – with intent to conceal or convert that property or proceeds – knowing or believing that all or part of the property or proceeds was obtained or derived from a designated criminal offence. This also applies to acts or omissions taking place outside of Canada, so long as the conduct would have constituted a designated predicate offence. Section 462.3 of the Criminal Code defines “designated offence” to include any potentially indictable offence. The maximum penalty is ten years imprisonment.

Sections 354 and 355 of the Criminal Code make it an offence to possess property or proceeds derived from an indictable offence. Provisions noted below regarding aiding and abetting, attempt and conspiracy apply to money laundering. A person can be convicted of both the offence of money laundering as well as the underlying offence.

Canada officially furnished copies of its money laundering legislation to the Secretary-General of the United Nations on 2 October 2007.

Criminal concealment is addressed in Sections 354 and 462.31 of the Criminal Code, which meet the requirements of the Convention.

Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)

Embezzlement is addressed in Sections 322, 334, 336 and 380 of the Criminal Code covering theft and fraud offences. These provisions address embezzlement in both public and private sectors.

Canada reported that Section 122 of the Criminal Code concerning “fraud or a breach of trust” by a public official applies to all conduct constituting abuse of functions under article 19 of UNCAC.

Canada considers the criminal offence of illicit enrichment to be contrary to the fundamental principles of its legal system, the Constitution of Canada and the Canadian Charter of Rights and Freedoms. Canada therefore made a reservation in relation to article 20 when ratifying the Convention.

Obstruction of justice (article 25)

Canada reported that Section 139 of the Criminal Code, that makes criminal the wilful attempt “in any manner...to obstruct, pervert, or defeat the course of justice” includes any act that dissuades or attempts to dissuade a person, through threats, bribes or other means, from giving evidence. Section 423.1 prohibits any act that interferes with the administration of justice against a “justice system participant.” This term is defined in Section 2, and applies broadly, including attorneys, judges, jurors, peace officers and law enforcement, judicial administration and other public sector employees.

Section 129 of the Criminal Code makes it a crime to resist or obstruct a public officer or a peace officer in the performance of official duties. In addition, it is a crime to fail, without reasonable excuse, to assist a peace officer in making an arrest or preserving the peace.

Liability of legal persons (article 26)

Section 22.2 of the Criminal Code extends liability to legal persons, including public bodies, for offences committed on their behalf by their senior officers or representatives. These officers and representatives are further defined in Section 2. Such liability does not prejudice the criminal liability of natural persons who commit the same offence.

Punishment includes fines or other monetary penalties. In addition to the imposition of a fine, a sentencing court may also make a probation order against an organization, which may include conditions (Section 732.1).

Participation and attempt (article 27)

Sections 21 and 22 of the Criminal Code extend liability to anyone who aids, abets, counsels, solicits or incites a criminal offence. Section 463 of the Criminal Code makes criminal the attempt to commit a criminal offence. Section 465 of the Criminal Code makes criminal the conspiracy to commit a criminal offence. Preparation to commit a criminal offence is not criminalized except to the extent that it constitutes an attempt.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

Under the Criminal Code, punishment is imposed in proportion with the gravity of the offence and the degree of responsibility of the offender, including ranges for both imprisonment and fines. Certain aggravating factors may apply, such as the status of the public official or the extent of the corruption activity. In some cases, mandatory minimum periods of incarceration apply.

Although functional immunities apply to certain categories of public officials, including parliamentarians, judges, prosecutors and members of some administrative bodies, these immunities are not a barrier to criminal investigation or prosecution relating to corruption. Public officials as “Crown agents” may be immune from personal liability for acts taken in furtherance of the public purposes that they are statutorily empowered to pursue, but this immunity does not extend to acts taken outside the lawful ambit of their agency.

Canadian prosecutors exercise a wide range of discretion in carrying out their duties in the public interest and are obliged to exercise independent judgment. Guidance is provided in the Public Prosecution Service of Canada Deskbook as well as in confidential practice directives.

The Criminal Code sets forth measures to be taken with regard to the detention and conditional release of persons being prosecuted, taking into account the need to ensure public safety and the accused’s appearance at subsequent proceedings. The Corrections and Conditional Release Act requires the Parole Board to consider the gravity of the offence, among other things, in the decision to grant parole.

A public servant who has been accused of any criminal offence (including corruption) may be removed, suspended or reassigned by the deputy head of the organization depending on the nature and seriousness of the alleged offence and pending the outcome of the investigation into the allegation. In addition, the Criminal Code provides, that natural or legal persons convicted of certain corruption-based offences may not contract with the government, or receive any benefit under a contract between the government and any other person. Such natural persons are also prohibited from holding public office. Under the Corrections and Conditional Release Act, the protection of society and the reintegration of offenders into society are main purposes of the federal correctional system and the Parole Board.

Regarding cooperation with law enforcement, measures exist to permit cooperating offenders to avoid prosecution in exchange for testimony and other assistance, including the identification of criminal proceeds. Further, plea bargains, reduced sentences, stays of proceedings and the granting of immunity from prosecution take place in cooperation with legal counsel and the courts in order to obtain cooperation. In practice, courts usually treat cooperation during the investigation or post-arrest phase as a mitigating factor in the determination of an appropriate sentence.

Protection of witnesses and reporting persons (articles 32, 33)

Mechanisms exist to protect witnesses, including measures that may be used in court to protect witnesses during their testimony. The Criminal Code authorizes a witness to provide evidence by means of audio or video technology, where deemed appropriate by the court. Canada's federal Witness Protection Program is administered by the RCMP and provides assistance to persons who are providing evidence or information, or

otherwise participating in an inquiry, investigation or prosecution of an offence. Protection measures may include relocation inside or outside of Canada, accommodation, change of identity, counselling and financial support to ensure the witness's security or facilitate the witness's re-establishment to become self-sufficient.

The Criminal Code requires the court to consider a victim impact statement at the time of sentencing an offender. The victim impact statement allows victims to participate in the sentencing of the offender by explaining to the court and the offender how the crime has affected them.

With regard to persons reporting corruption, Section 425.1 of the Criminal Code prohibits an employer from demoting, terminating, otherwise affecting or taking disciplinary action against an employee who reports a possible offence under any federal or provincial Act or regulation, either before the report takes place or in retaliation. In addition, the Public Servants Disclosure Protection Act (PSDPA) provides a mechanism for public servants to make disclosures of wrongdoing, and established the office of the Public Sector Integrity Commissioner. The PSDPA also provides members of the public with protection from reprisal by their employers for having provided, in good faith, information to the Public Sector Integrity Commissioner concerning alleged wrongdoing in the federal public sector. Other protections are available at the provincial level.

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

The mechanisms for identification and freezing criminal assets are set forth in the Criminal Code under section 462.3 and following - Part XII.2 - Proceeds of Crime. Under Section 462.37 of the Criminal Code, the court may order the forfeiture of any property, including property located outside of Canada, that it finds, on a balance of probabilities, is the proceeds of crime and that the offence was committed in relation to that property. If the court does not find the offence was committed in relation to the property concerned, but finds beyond a reasonable doubt that the property constitutes proceeds of crime, the court can still forfeit the property. In cases where the property cannot be forfeited due to being transferred to a bona fide third party, located outside of Canada or commingled with other property and therefore difficult to divide, the court may order a fine of an equivalent amount. Section 490.1 extends forfeiture to instrumentalities of the offence.

The Seized Property Management Act governs the administration of property frozen, seized or confiscated by the State. It authorizes the Minister of Public Works and Government Services to manage, administer and dispose of property that has been frozen, seized or confiscated.

Bank secrecy does not prevent the prosecutor, upon a court order, to request and obtain financial records relating to the proceeds of crime.

Statute of limitations; criminal record (articles 29, 41)

In Canada, there is no statute of limitations for indictable offences, including corruption offences.

Generally, evidence of prior convictions of an accused presented during trial is not permitted. However, where an accused has put his or her character in issue, such convictions may be introduced whether or not the accused testifies. In either case, it is expected that this would include foreign convictions. In addition, evidence of a previous conviction in a foreign state could be introduced in the course of a sentencing hearing.

Jurisdiction (article 42)

Canada has jurisdiction over the offences established in accordance with the Convention when the offence is committed in whole or in part in its territory. To be subject to the jurisdiction of Canadian courts, a significant portion of the activities constituting the offence must take place in Canada.

Canada primarily enforces its laws through the exercise of territorial jurisdiction. As a matter of common law, however, Canada may exercise jurisdiction over acts that occur outside of territory when there is a real and substantial link between the offence and Canada. In addition, amendments to the CFPOA authorize jurisdiction over the offence of foreign bribery, deeming the act or omission to have been committed in Canada if the person committing the act is a Canadian citizen, or a permanent resident and who is present in Canada after the commission of the act or omission, or a public body, corporation, society, company, firm or partnership that is incorporated, formed or otherwise organized under the laws of Canada or a province. These amendments also extended nationality jurisdiction to the new offence (Section 4) of establishing off-the-books accounts.

Subsection 7(4) of the Criminal Code extends jurisdiction to an act or omission by public service employees within the meaning of the Public Service Employment Act committed outside Canada that is an offence in that place and that, if committed in Canada, would be an indictable offence.

Consequences of acts of corruption; compensation for damage (articles 34, 35)

Canada has taken several measures to make acts of corruption relevant in legal proceedings. Where a person exercising statutory authority acts for an improper purpose or in bad faith, including acts of corruption, his or her decisions or actions can be challenged in court by way of an application for judicial review. At the federal level, the legal framework governing government contracts includes a number of federal statutes and regulations, international and domestic agreements as well as policies, directives

and guidelines, to address corruption, including ineligibility of corrupt individuals, business entities and organizations for further contracts. In addition, a court may order restitution to a victim in a criminal proceeding.

In Canada, measures exist in the civil law to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings claiming compensation from those responsible for the damage. Except in the province of Quebec where the rules of civil liability are set out in the Civil Code of Quebec, the relevant legal rules are provided by the common law.

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

As detailed above, Canada has established specialized services at the RCMP in the area of anti-corruption and law enforcement.

Canada has adopted mandatory and voluntary reporting obligations, financial monitoring and outreach activities that raise awareness about corruption matters with the private sector and civil society. Although there is no single text that governs how Canada implements such measures, they are developed and adopted as necessary to encourage cooperation between the private sector and law enforcement. For example, Section 40-41 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act established the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), which collects, analyses, assesses and discloses information in order to assist in the detection, prevention and deterrence of money laundering and of the financing of terrorist activities. In addition, the RCMP has taken strong measures to encourage persons to report offences by preparing and distributing posters and pamphlets as well as developing a website that provides phone numbers to report a crime.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- Recent amendments to the CFPOA to expand jurisdiction, increase penalties and eliminate facilitation payments.*
- The recent strategic restructuring of the RCMP to increase the efficiency and effectiveness of corruption investigations, public awareness campaigns of the RCMP to facilitate reporting of corruption, and well-established cooperation and sharing of expertise between the RCMP and the Public Prosecution Service of Canada.*
- Scope and breadth of provisions of the Criminal Code addressing conspiracy, aiding and abetting, and other participation in the offence.*

- *Measures for confiscation of assets in cases where they cannot be tied to a particular criminal offence, but are found by the court beyond a reasonable doubt to constitute proceeds of crime.*
- *Imposition of an equivalent fine in cases where criminal assets cannot be forfeited, with graduated imprisonment penalties upon default.*
- *Scope and protections provided by the Public Servants Disclosure Protection Act.*

2.3. Challenges in implementation, where applicable

The following steps could further strengthen existing anti-corruption measures:

- *In accordance with the recent amendments to the CFPOA, continue efforts to eliminate the exemption for facilitation payments.*
- *Continue to engage with and involve civil society organizations in public awareness, detection and reporting of corruption cases.*
- *Continue to consider, in close cooperation with provincial authorities, measures to provide protection against unjustified treatment for any person in the private sector who reports in good faith and on reasonable grounds instances of corruption.*
- *Continue to consider measures to encourage cooperation between national authorities and entities of the private sector, including the proactive reporting of instances of corruption discovered by the private sector during compliance reviews or other processes.*

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (articles 44, 45, 47)

In Canada, extradition is provided under bilateral and multilateral agreements to which Canada is party and, in limited circumstances, through a specific agreement under the Extradition Act. Canada has signed 51 bilateral extradition Conventions and is also a party to 4 multilateral treaties. Canada also accepts the UNCAC as the legal basis for extradition where it does not have an existing agreement in place with a requesting State party and has informed the Secretary-General of the United Nations accordingly. The UNCAC has been used as the legal basis for extradition on a number of occasions.

Dual criminality is a prerequisite to grant extradition but a flexible, conduct-based test is applied to this requirement under section 3 of the Extradition Act. In addition, the offence in relation to which extradition is sought must be subject to a punishment of no less than

two years, meaning that all UNCAC offences (with the exception of illicit enrichment in relation to which Canada made a reservation upon ratification of the Convention) are extraditable offences. Canada permits the extradition of its nationals.

In accordance with Article 44, paragraph 4 of the Convention, none of the offences established in accordance with the UNCAC are considered political offences. Canada also meets the requirements of article 44, paragraph 16 of UNCAC by not denying extradition requests for the sole reason that they are based on fiscal matters.

Canada has taken effective steps to simplify the evidentiary requirements and procedures in relation to extradition proceedings which has resulted in a more efficient processing of extradition cases. Under the Extradition Act, Canada is able to provisionally arrest an individual in anticipation of a request for extradition.

Under the Canadian Constitution, the Canadian Charter of Rights and Freedoms and the Extradition Act, those subject to an extradition request benefit from due process and fair treatment throughout relevant proceedings. Furthermore, under both existing international agreements and the domestic provisions of the Extradition Act, Canada is required to refuse an extradition request when it is based on motives of a discriminatory nature, such as the race, sex, language, religion or the nationality of the person.

While the transfer of criminal proceedings is not specifically addressed in Canada's domestic legislation, it was indicated that the discretion available to Canadian prosecution services is exercised so as to facilitate the processing of cases in the most appropriate jurisdiction. Regarding the transfer of sentenced persons, Canada has entered into a wide range of bilateral and multilateral agreements and has demonstrated the effective use of such agreements in practice.

Mutual legal assistance (article 46)

The Mutual Legal Assistance in Criminal Matters Act is the legislative authority for the provision of mutual legal assistance in Canada, serving to implement bilateral and multilateral mutual legal assistance (MLA) treaties to which Canada is a party and setting forth the procedure for the execution of foreign requests made to Canada. Canada is presently party to 35 bilateral treaties and 4 multilateral conventions aimed at facilitating mutual legal assistance. Canada also recognizes the UNCAC as a legal basis for mutual legal assistance.

The central authority for mutual legal assistance in Canada is the Department of Justice, International Assistance Group (IAG) and the Secretary General of the United Nations has been informed of this in accordance with Article 46, paragraph 13 of the Convention. The IAG has also established a primary point of contact within its section to ensure that priority is given to requests for assistance in corruption cases for UNCAC. Canada accepts requests for assistance in both English and French.

Canada does not ordinarily require dual criminality in order to provide mutual legal assistance, including where coercive measures are required. While certain exceptions to this general rule exist in some bilateral treaties, a flexible conduct-based test is applied in such cases. Canada recognized that, due to the constitutional framework in which the MLA process operates, a significant amount of factual information is required from States parties in order to give effect to some types of requests for assistance that require the issuing of a court order, such as the production of bank records or the freezing of assets. It was noted that this had been raised as a concern by some requesting States. Significant steps had been taken by the Canadian authorities, through the production of guidance and other awareness-raising activities, to assist States in meeting these evidentiary requirements.

The grounds on which a mutual legal assistance request may be refused are in accordance with the requirements of the Convention and include where Canada has reasonable grounds to believe that the request has been made for the purpose of punishing a person by reason of their race, sex, sexual orientation, religion, nationality, ethnic origin, language, colour, age, mental or physical disability or political opinion. A request cannot be denied on the basis of bank secrecy or because an offence involves fiscal matters.

The mutual legal assistance that can be provided by Canada under relevant international agreements and domestic legislation cover all of the forms of assistance referred to in Article 46 of the Convention. Such assistance includes the taking of testimonies or statements, providing evidentiary items, tracing and identifying persons, transferring detained persons as witnesses, the execution of freezing or seizure orders, the freezing, seizure and confiscation and the disposal of the proceeds of crime and the recovery of assets.

As a matter of practice, consultations will take place with foreign authorities with a view to completing a request or determining whether and how the request may be executed subject to certain conditions before a decision is taken to refuse a request. Reasons are provided to the requesting State party where Canada does take a decision to refuse a request for mutual legal assistance.

Canada is also able to spontaneously transmit information to other States without a prior request. This can be done on a police-to-police basis, or under international agreements regarding the transmission of information agreed with other State parties. To assist other States in making a request for assistance, Canada has developed a template request form which can be used when making such a request to Canada.

Under the Mutual Legal Assistance in Criminal Matters Act, evidence in criminal proceedings in another State may be provided by video link or other means of technology that will allow for evidence to be given virtually without the witness being physically present at the hearing.

The costs of the execution of legal assistance are generally borne by Canada when they are giving effect to a request. Costs can however be shared between the requested and requesting State where execution will entail the use of significant resources.

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

FINTRAC has a mandate to exchange financial intelligence with other States parties in relation to money laundering and terrorist financing. Information received by FINTRAC is shared as appropriate with Canadian police and other designated agencies. Such information can also relate to corruption offences; from April 1, 2010 to March 31, 2011, 34 money laundering cases, suspected to be related to corruption according to the voluntary information received from law enforcement, were disclosed by FINTRAC to relevant authorities.

To further enhance cooperation in law enforcement, the RCMP has 37 liaison officers deployed worldwide, with this number soon to be expanded. Combined with the establishment of the International Anti-Corruption Team at the RCMP this provides a strong institutional framework for international cooperation in investigations. Furthermore, the RCMP has recently concluded an MOU with the United Kingdom, Australia and the United States on the establishment of an International Foreign Bribery Task Force which will strengthen existing cooperative networks between the participants and outline the conditions under which relevant information can be shared.

The Canadian Criminal Code permits the use of special investigative techniques, including all those specifically referred to in the Convention. The potential for joint investigations is evaluated on a case-by-case basis. They are most often conducted on the basis of an MOU or exchange of letters between the RCMP and a foreign agency partner. Such joint investigations can however also be conducted without a formal agreement.

3.2. Successes and good practices

Overall, the following points are regarded as successes and good practices in the framework of implementing Chapter IV of the UNCAC:

- Canada adopts a flexible approach to the application of the requirement of dual criminality, applying a conduct-based test under the Extradition Act and generally making no such requirement in relation to mutual legal assistance.*
- Canada accepts a wide variety of legal bases for the extradition of individuals in relation to corruption offences including bilateral and multilateral treaties, the domestic Extradition Act and the UNCAC itself.*
- Canada has introduced simplified evidentiary requirements and processes through the use of “records of the case” in extradition proceedings thereby reducing the burden on extradition authorities and judicial bodies in the processing of such cases.*

- *Canada has recently adopted a multilateral MOU which allows it to more effectively exchange information and provide mutual legal assistance to participating States.*
- *Canada adopts a flexible approach to the establishment of joint investigations with law enforcement bodies from other States parties and has conducted such joint investigations in practice.*

IV. Implementation of the Convention

A. Ratification of the Convention

Canada signed the Convention on 21 May 2004 and ratified it on 2 October 2007. Canada deposited its instrument of ratification with the Secretary-General on 2 October 2007.

B. Legal system of Canada

Canada is a federal state comprised of ten provinces (Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Saskatchewan) and three territories (Northwest Territories, Yukon and Nunavut). While the ratification of international treaties falls under federal jurisdiction, their implementation, where necessary, includes the participation of all levels of government. As a state party that follows a dualist tradition for implementing its treaty obligations, a treaty cannot as a general rule be invoked as a source of law in a Canadian court unless it has been transformed or implemented into Canadian law, usually by legislation.

Canada is a constitutional democracy governed by the rule of law. The Constitution provides for the division of powers among levels of government and guarantees the sovereignty of Parliament, subject to the limitations expressed in various constitutional instruments, including the Constitution Act 1867, the Constitution Act 1982 and any constitutional conventions that have developed over time. The Constitution also ensures an independent judiciary that can act as the final guardian and interpreter of laws.

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. In particular, the Charter provides that everyone has the freedom of conscience and religion; freedom of thought, belief, opinion and expression, including the freedom of the press and other media of communication; freedom of peaceful assembly; and freedom of association. It also includes democratic rights, mobility rights, legal rights, and equality rights. The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Canada implements its obligations under the United Nations Convention against Corruption (UNCAC) through a variety of laws. These laws are referenced in the responses, but for ease of access they can also be accessed through the following links:

- *Criminal Code* (R.S.C., 1985, c. C-46) [online: <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>]
- *Corruption of Foreign Public Officials Act* (S.C. 1998, c. 34) [online: <http://laws-lois.justice.gc.ca/eng/acts/C-45.2/index.html>]
- *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (S.C. 2000, c. 17) [online: <http://laws-lois.justice.gc.ca/eng/acts/P-24.501/index.html>]
- *Mutual Legal Assistance in Criminal Matters Act* (R.S.C., 1985, c. 30 (4th Supp.)) [online: <http://laws-lois.justice.gc.ca/eng/acts/M-13.6/index.html>]
- *Extradition Act* (S.C. 1999, c. 18) [online: <http://laws-lois.justice.gc.ca/eng/acts/E-23.01/index.html>]
- *Freezing Assets of Corrupt Foreign Officials Act* (S.C. 2011, c. 10) [online: <http://laws-lois.justice.gc.ca/eng/acts/F-31.6/index.html>]
- *Freezing Assets of Corrupt Foreign Officials (Tunisia and Egypt) Regulations* (SOR/2011-78) [online: <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2011-78/index.html>]
- The Witness Protection Program Act (S.C. 1996, c. 15) [online at: <http://laws-lois.justice.gc.ca/PDF/W-11.2.pdf>]

In order to be taken into account in the present review, Canada provided the following act:

Bill S-14, An Act to amend the Corruption of Foreign Public Officials Act

- <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5960861&File=4>
- <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5960855>

Canada actively participates in the Mechanism for Follow-Up on the Implementation of the *Inter-American Convention against Corruption* (MESICIC), which is an inter-governmental body established within the framework of the Organization of American States (OAS). To this end, Canada has been reviewed three times. Reports from these reviews can be found online at the following link:

- <http://www.oas.org/juridico/english/can.htm>
- <http://www.oas.org/juridico/spanish/can.htm>

In addition, Canada is a party to the Organisation for Economic Co-operation and Development (OECD) *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and actively participates in the work of the OECD Working Group on Bribery in International Business Transactions, including participating in its peer review mechanism as a reviewed state and a reviewing state. Country reports for Canada can be found online at the following link:

- <http://www.oecd.org/daf/briberyininternationalbusiness/anti-briberyconvention/canada-oecdanti-briberyconvention.htm>

In Canada, the Constitution is the supreme law of the land. In addition to the UNCAC, Canada is a party to the Inter-American Convention against Corruption. Parliament enacts the criminal laws of Canada.

Criminal laws are enforced by provinces, but also by the RCMP as a contracting agency for many of the provinces and some municipalities. The RCMP has exclusive jurisdiction for international anti-corruption investigations. For domestic offences, the RCMP will conduct some of the investigations, but not all of them. The RCMP has jurisdiction for all but two of the provinces as a territorial matter – Ontario and Quebec.

C. Implementation of selected articles

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:
<http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Various provisions are in effect that address Article 15 of the Convention. Please refer to the following sections of the *Criminal Code*:

119(1)(b)

120(b)

121(1)(a)(i)

121(1)(e)

121(1)(f)(i)

123(1)

426(1)(a)

Section 118 of the *Criminal Code* provides, in part:

118. In this Part,

....

“government”

“government” means

- (a) the Government of Canada,
- (b) the government of a province, or
- (c) Her Majesty in right of Canada or a province;

....

“office”

“office” includes

- (a) an office or appointment under the government,
- (b) a civil or military commission, and
- (c) a position or an employment in a public department;

“official”

“official” means a person who

- (a) holds an office, or
- (b) is appointed or elected to discharge a public duty;

....

Paragraph 119(1)(b) provides:

119. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years who

(b) directly or indirectly, corruptly gives or offers to a person mentioned in paragraph (a), or to anyone for the benefit of that person, any money, valuable consideration, office, place or employment in respect of anything done or omitted or to be done or omitted by that person in their official capacity.

(2) No proceedings against a person who holds a judicial office shall be instituted under this section without the consent in writing of the Attorney General of Canada.

Paragraph 120(b) provides:

120. Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years who

(a) being a justice, police commissioner, peace officer, public officer or officer of a juvenile court, or being employed in the administration of criminal law, directly or indirectly, corruptly accepts, obtains, agrees to accept or attempts to obtain, for themselves or another person, any money, valuable consideration, office, place or employment with intent

(i) to interfere with the administration of justice,

(ii) to procure or facilitate the commission of an offence, or

(iii) to protect from detection or punishment a person who has committed or who intends to commit an offence; or

(b) directly or indirectly, corruptly gives or offers to a person mentioned in paragraph (a), or to anyone for the benefit of that person, any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in subparagraph (a)(i), (ii) or (iii).

Subparagraph 121(1)(a)(i), provides:

121. (1) Every one commits an offence who

(a) directly or indirectly

(i) gives, offers or agrees to give or offer to an official or to any member of his family, or to any one for the benefit of an official, or

(ii) being an official, demands, accepts or offers or agrees to accept from any person for himself or another person,

a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(iii) the transaction of business with or any matter of business relating to the government, or

(iv) a claim against Her Majesty or any benefit that Her Majesty is authorized or is entitled to bestow,

whether or not, in fact, the official is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;

Paragraph 121(1)(e) provides:

121. (1) Every one commits an offence who

....

(e) directly or indirectly gives or offers, or agrees to give or offer, to a minister of the government or an official, or to anyone for the benefit of a minister or an official, a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence, or an act or omission, by that minister or official, in connection with

(i) anything mentioned in subparagraph (a)(iii) or (iv), or

(ii) the appointment of any person, including themselves, to an office; or

Subparagraph 121(1)(f)(i) provides:

121. (1) Every one commits an offence who

....

(f) having made a tender to obtain a contract with the government,

(i) directly or indirectly gives or offers, or agrees to give or offer, to another person who has made a tender, to a member of that person's family or to another person for the benefit of that person, a reward, advantage or benefit of any kind as consideration for the withdrawal of the tender of that person, or

Subsection 123(1) provides:

123. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years who directly or indirectly gives, offers or agrees to give or offer to a municipal official or to anyone for the benefit of a municipal official — or, being a municipal official, directly or indirectly demands, accepts or offers or agrees to accept from any person for themselves or another person — a loan, reward, advantage or benefit of any kind as consideration for the official

(a) to abstain from voting at a meeting of the municipal council or a committee of the council;

(b) to vote in favour of or against a measure, motion or resolution;

(c) to aid in procuring or preventing the adoption of a measure, motion or resolution; or

(d) to perform or fail to perform an official act.

Paragraph 426(1)(a) provides:

426. (1) Every one commits an offence who

(a) directly or indirectly, corruptly gives, offers or agrees to give or offer to an agent or to anyone for the benefit of the agent — or, being an agent, directly or indirectly, corruptly demands, accepts or offers or agrees to accept from any person, for themselves or another person — any reward, advantage or benefit of any kind as consideration for doing or not doing, or for having done or not done, any act relating to the affairs or business of the agent's principal, or for showing or not showing favour or disfavour to any person with relation to the affairs or business of the agent's principal; or

(b) with intent to deceive a principal, gives to an agent of that principal, or, being an agent, uses with intent to deceive his principal, a receipt, an account or other writing

(i) in which the principal has an interest,

(ii) that contains any statement that is false or erroneous or defective in any material particular, and

(iii) that is intended to mislead the principal.

(2) Every one commits an offence who is knowingly privy to the commission of an offence under subsection (1).

(3) A person who commits an offence under this section is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(4) In this section, “agent” includes an employee, and “principal” includes an employer.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Regarding the related statistical data on number of investigation, prosecutions and convictions/acquittals, please refer to the Table provided by Statistics Canada, Canadian Centre for Justice Statistics (CCJS).

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

118

119(1)(a)

120(a)

121(1)(a)(ii)

121(1)(c)

121(1)(d)

121(1)(f)(ii)

122

123(1)

426(1)(a)

118. In this Part,

....

“government”

“government” means

- (a) the Government of Canada,
- (b) the government of a province, or
- (c) Her Majesty in right of Canada or a province;

....

“office”

“office” includes

- (a) an office or appointment under the government,
- (b) a civil or military commission, and
- (c) a position or an employment in a public department;

“official”

“official” means a person who

- (a) holds an office, or
- (b) is appointed or elected to discharge a public duty;

....

Paragraph 119(1)(a) provides:

119. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years who

(a) being the holder of a judicial office, or being a member of Parliament or of the legislature of a province, directly or indirectly, corruptly accepts, obtains, agrees to accept or attempts to obtain, for themselves or another person, any money, valuable consideration, office, place or employment in respect of anything done or omitted or to be done or omitted by them in their official capacity, or

Paragraph 120(a) provides:

120. Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years who

(a) being a justice, police commissioner, peace officer, public officer or officer of a juvenile court, or being employed in the administration of criminal law, directly or indirectly, corruptly accepts, obtains, agrees to accept or attempts to obtain, for themselves or another person, any money, valuable consideration, office, place or employment with intent

(i) to interfere with the administration of justice,

(ii) to procure or facilitate the commission of an offence, or

(iii) to protect from detection or punishment a person who has committed or who intends to commit an offence; or

Subparagraph 121(1)(a)(ii) provides:

121. (1) Every one commits an offence who

(a) directly or indirectly

....

(ii) being an official, demands, accepts or offers or agrees to accept from any person for himself or another person,

a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(iii) the transaction of business with or any matter of business relating to the government, or

(iv) a claim against Her Majesty or any benefit that Her Majesty is authorized or is entitled to bestow,

whether or not, in fact, the official is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;

Paragraph 121(1)(c) provides:

121. (1) Every one commits an offence who

....

(c) being an official or employee of the government, directly or indirectly demands, accepts or offers or agrees to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind for themselves or another person, unless they have the consent in writing of the head of the branch of government that employs them or of which they are an official;

Paragraph 121(1)(d) provides:

121. (1) Every one commits an offence who

....

(d) having or pretending to have influence with the government or with a minister of the government or an official, directly or indirectly demands, accepts or offers or agrees to accept, for themselves or another person, a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(i) anything mentioned in subparagraph (a)(iii) or (iv), or

(ii) the appointment of any person, including themselves, to an office;

Subparagraph 121(1)(f)(ii) provides:

121. (1) Every one commits an offence who

....

(f) having made a tender to obtain a contract with the government,

....

(ii) directly or indirectly demands, accepts or offers or agrees to accept from another person who has made a tender a reward, advantage or benefit of any kind for themselves or another person as consideration for the withdrawal of their own tender.

Section 122 provides:

122. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

Subsection 123(1) provides:

123. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years who directly or indirectly gives, offers or agrees to give or offer to a municipal official or to anyone for the benefit of a municipal official — or, being a municipal official, directly or indirectly demands, accepts or offers or agrees to accept from any person for themselves or another person — a loan, reward, advantage or benefit of any kind as consideration for the official

(a) to abstain from voting at a meeting of the municipal council or a committee of the council;

(b) to vote in favour of or against a measure, motion or resolution;

(c) to aid in procuring or preventing the adoption of a measure, motion or resolution; or

(d) to perform or fail to perform an official act.

....

(3) In this section, “municipal official” means a member of a municipal council or a person who holds an office under a municipal government.

Paragraph 426(1)(a) provides:

426. (1) Every one commits an offence who

(a) directly or indirectly, corruptly gives, offers or agrees to give or offer to an agent or to anyone for the benefit of the agent — or, being an agent, directly or indirectly, corruptly demands, accepts or offers or agrees to accept from any person, for themselves or another person — any reward, advantage or benefit of any kind as consideration for doing or not doing, or for having done or not done, any act relating to the affairs or business of the agent’s principal, or for showing or not showing favour or disfavour to any person with relation to the affairs or business of the agent’s principal; or

The French version of the *Criminal Code* is available at the following link:
<http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

In addition, the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry, also known as the Charbonneau Commission, is a public inquiry in Quebec, Canada currently looking into potential corruption in the management of public construction contracts. The commission was enacted on 19 October, 2011 by the provincial government of Quebec, and is chaired by Justice France Charbonneau. The mandate of the Committee is to:

1. Examine the existence of schemes and, where appropriate, to paint a portrait of activities involving collusion and corruption in the provision and management of public contracts in the construction industry (including private organizations, government enterprises and municipalities) and to include any links with the financing of political parties.
2. Paint a picture of possible organized crime infiltration in the construction industry.

3. Examine possible solutions and make recommendations establishing measures to identify, reduce and prevent collusion and corruption in awarding and managing public contracts in the construction industry.

The work of the commission is believed to have exposed an number of corrupt acts and led to the resignation of senior public officials. More information on the work of the commission can be found online at:

- <https://www.ceic.gouv.qc.ca/la-commission.html>

Regarding the related statistical data, please refer to the Table provided by Statistics Canada, CCJS

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Corruption of Foreign Public Officials Act* (CFPOA) which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-45.2/index.html>

The CFPOA criminalizes the bribery of a foreign public official. The CFPOA also makes it possible to prosecute, for example, a conspiracy or attempt to commit such bribery, as well as aiding and abetting in committing bribery, an intention in common to commit bribery, and

counselling others to commit bribery. Parliament passed the CFPOA to implement Canada's obligations under the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* into Canadian law. The CFPOA received Royal Assent on December 10, 1998 and came into force on February 14, 1999.

On February 5, 2013, the Minister of Foreign Affairs introduced Bill S-14, the *Fighting Foreign Corruption Act*, which seeks to amend the *Corruption of Foreign Public Officials Act*.

The proposed amendments to the Act include the following:

- **Nationality jurisdiction:** This amendment would make it easier for Canada to prosecute Canadians or Canadian companies for bribery in other countries, insofar as it would allow the Government of Canada to exercise jurisdiction over persons or companies that have Canadian nationality, regardless of where the alleged bribery has taken place.
- **Eventual elimination of facilitation payments:** The Act currently states that payments made to expedite or secure the performance by a foreign public official of any act of a routine nature that is part of the foreign public official's duties or functions do not constitute bribes. This amendment would eliminate the exception for facilitation payments and would come into effect at a later date to be set by the Governor in Council.
- **Exclusive ability to lay charges:** This amendment would provide exclusive authority to the Royal Canadian Mounted Police to lay charges under the Act.
- **Clarifying the definition of "business":** This amendment would remove the words "for profit" in the definition of business to ensure that the Act applies to all business, regardless of whether profit is made.
- **Increasing the maximum penalty:** Under the Act, the foreign bribery offence is currently punishable by a maximum of five years imprisonment. The amendment would increase the maximum penalty of imprisonment to 14 years.
- **Books and records offence:** This amendment would add a new books and records of account offence into the Act that is restricted in scope to the bribery of foreign public officials or hiding such bribery. This offence would be punishable by a maximum period of imprisonment of 14 years.

Section 3 of the *Corruption of Foreign Public Officials Act* provides:

3. (1) Every person commits an offence who, in order to obtain or retain an advantage in the course of business, directly or indirectly gives, offers or agrees to give or offer a loan, reward, advantage or benefit of any kind to a foreign public official or to any person for the benefit of a foreign public official

(a) as consideration for an act or omission by the official in connection with the performance of the official's duties or functions; or

(b) to induce the official to use his or her position to influence any acts or decisions of the foreign state or public international organization for which the official performs duties or functions.

(2) Every person who contravenes subsection (1) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(3) No person is guilty of an offence under subsection (1) if the loan, reward, advantage or benefit

(a) is permitted or required under the laws of the foreign state or public international organization for which the foreign public official performs duties or functions; or

(b) was made to pay the reasonable expenses incurred in good faith by or on behalf of the foreign public official that are directly related to

(i) the promotion, demonstration or explanation of the person's products and services, or

(ii) the execution or performance of a contract between the person and the foreign state for which the official performs duties or functions.

(4) For the purpose of subsection (1), a payment is not a loan, reward, advantage or benefit to obtain or retain an advantage in the course of business, if it is made to expedite or secure the performance by a foreign public official of any act of a routine nature that is part of the foreign public official's duties or functions, including

(a) the issuance of a permit, licence or other document to qualify a person to do business;

(b) the processing of official documents, such as visas and work permits;

(c) the provision of services normally offered to the public, such as mail pick-up and delivery, telecommunication services and power and water supply; and

(d) the provision of services normally provided as required, such as police protection, loading and unloading of cargo, the protection of perishable products or commodities from deterioration or the scheduling of inspections related to contract performance or transit of goods.

(5) For greater certainty, an "act of a routine nature" does not include a decision to award new business or to continue business with a particular party, including a decision on the terms of that business, or encouraging another person to make any such decision.

Bill S-14 is available at the following link:

<http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5960855>

The French version of the *Corruption of Foreign Public Officials Act* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-45.2/index.html>

The French version of *Bill S-14* is available at the following link:

- <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Mode=1&billId=5960855&Language=F>

Canada provided the following statistical data:

There are currently 35 ongoing investigations under the CFPOA, and there have been three convictions under the CFPOA to date. There are two cases in which charges have been laid but not yet concluded. There have been no acquittals to date.

The convictions are as follows:

Griffiths Energy International Inc. – On January 14, 2013, Calgary-based Griffiths Energy International Inc. pled guilty to the Court of Queen’s Bench in Calgary for one count of bribery under paragraph 3(1)(b) of the CFPOA for having paid a \$2 million bribe to Chadian ambassador’s wife to secure exclusive rights to explore and develop oil and gas reserves in Chad. The company was fined \$10.35 million. Notably, the company self-declared after a new management team was appointed at Griffiths in the summer of 2011, along with replacements for most of the Board of Governors. In the fall of 2011, while undertaking due diligence for a pending Initial Public Offering (IPO) bid, the company found internal irregularities in its contracts with Chad between August 20, 2009 and February 9, 2011. A \$2 million consulting contract with a company controlled by the Chadian ambassador's wife was found in Griffiths' internal documents, as well as an offer to her and several members of the country's staff to purchase 4 million shares of the company.

Niko Resources Ltd. – Niko Resources Ltd. is a publicly traded company based in Calgary, Alberta. On June 24, 2011, the company entered a guilty plea in the Court of Queen’s Bench in Calgary for one count of bribery under paragraph 3(1)(b) of the CFPOA, covering the period of February 1, 2005 to June 30, 2005. The company admitted that, through its subsidiary Niko Bangladesh, it provided the use of a vehicle (which cost \$190,984 CDN) in May 2005 to AKM Mosharraf Hossain, then the Bangladeshi State Minister for Energy and Mineral Resources, in order to influence the Minister in his dealings with Niko Bangladesh. In June 2005, Niko Resources Ltd. paid travel and accommodation expenses for the same Minister to travel from Bangladesh to Calgary to attend the GO EXPO oil and gas exposition, and improperly paid approximately \$5,000 CDN for the Minister to travel to New York and Chicago to visit his family.

As a result of the conviction, Niko Resources Ltd. was fined \$9,499,000 CDN and placed under a Probation Order, which puts the company under the Court's supervision for three years to ensure that audits are completed to examine the company's compliance with the CFPOA.

Hydro-Kleen Group Inc. – Hydro-Kleen Group Inc., based out of Red Deer, Alberta, entered a guilty plea in the Court of Queen's Bench in Red Deer on January 10, 2005 to one count of bribery under paragraph 3(1)(a) of the CFPOA and was ordered to pay a fine of \$25,000 CDN. Along with its president and an employee, the company had been charged under the CFPOA with, among other things, two counts of bribing a U.S. immigration officer who worked at the Calgary International Airport. The charges against the director and the officer of the company were stayed. The U.S. immigration officer pleaded guilty in July 2002 to accepting secret commissions under subparagraph 426(1)(a)(ii) of Canada's *Criminal Code*. He received a six-month sentence and was subsequently deported to the United States.

The cases where charges have been laid but not yet concluded are as follows:

Mr. Nazir Karigar – On May 28, 2010, the RCMP laid charges against Mr. Nazir Karigar under paragraph 3(1)(b) of the CFPOA for allegedly making a payment to an Indian government official to facilitate the execution of a multi-million dollar contract for the supply of a security system by Cryptometrics, a Canadian high-tech firm. This matter is currently before a Canadian court.

Padma Bridge Case – In relation to the awarding of a contract for the supervision and consultancy services for the construction of the PADMA multipurpose Bridge in Bangladesh, on February 29, 2012, the RCMP's "A" Division International Anti-corruption Unit arrested two former SNC Lavalin employees. Both were later released on the condition that they remain in Canada and promise to appear in court. On April 11, 2012, the RCMP laid charges at the Downtown Toronto Courthouse (Ontario) against two former employees of SNC Lavalin. Ramesh SHAH of Oakville, Ontario, and Mohammad ISMAIL of Mississauga, Ontario, have been charged jointly with one count under paragraph 3 (1) b) of the Corruption of Foreign Public Officials Act.

The charge reads as follows:

Between December 1st 2009 and September 1st 2011, in Oakville and elsewhere in the Province of Ontario, and in Bangladesh, did, in order to obtain or retain an advantage in the course of business of SNC International Inc, directly or indirectly offer, or agree to give or offer a reward, advantage or benefit of any kind to foreign public officials of the Republic of Bangladesh or to any person for the benefit of foreign public officials of the Republic of Bangladesh to induce the officials to use their position to influence acts or decisions of the Republic of Bangladesh for which the officials perform duties or functions in particular the awarding of a contract for the supervision and consultancy

services for the construction of the PADMA multipurpose Bridge and did thereby commit an indictable offence contrary to paragraph 3 (1) b) of the Corruption of Foreign Public Officials Act.

The investigation is on-going and the matter is currently before a Canadian court.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. During the country visit, Canada reported that the amendments to the CFPOA were adopted on 19 June 2013. A date will be set in the future for the elimination of the facilitation payments exception. In addition, it was noted that these amendments would permit jurisdiction over Canadian companies or persons who commit the act of bribery outside of the territory of Canada.

Canada provided the following supplemental information regarding examples of implementation:

Mr. Nazir Karigar was convicted under the CFPOA by the Ontario Superior Court on August 15, 2013 for agreeing with others to bribe Indian government officials to facilitate the execution of a multi-million dollar contract for the supply of a security system by Cryptometrics, a Canadian high-tech firm. The Karigar case represents both the first trial and first conviction of an individual under the CFPOA.

Amendments to the Act

On February 5, 2013, the Government of Canada introduced Bill S-14, the Fighting Foreign Corruption Act, which seeks to amend the Corruption of Foreign Public Officials Act.

On June 19, 2013, Bill S-14, entitled the Fighting Foreign Corruption Act, was granted Royal Assent to strengthen the CFPOA with six amendments that include:

- Giving the RCMP the exclusive authority to lay charges;
- Introduction of nationality jurisdiction;
- A new books and records offence for foreign bribery;
- Elimination of the requirement that business be for profit;
- Removal at a later date of the facilitation payment defence; and
- Prison maximums increased from 5 years to 14 years.

- The *Corruption of Foreign Public Officials Act* (CFPOA) implements Canada's international obligations under the Organization for Economic Cooperation and Development (OECD) Anti-Bribery Convention by making it a criminal offence in

Canada for persons or companies to bribe foreign public officials in the course of international business. The CFPOA also makes it possible to prosecute, for example, a conspiracy or attempt to commit such bribery, as well as aiding and abetting in committing bribery, an intention in common to commit bribery, counselling others to commit bribery. Laundering property and proceeds of such bribery, as well as possession of property and proceeds, are offences under the *Criminal Code*.

Jurisdiction and Scope

- Based on recommendations from business stakeholders, civil society and the OECD Working Group on Bribery, the government introduced amendments in the Senate on February 5, 2013, to strengthen the CFPOA. Bill S-14, entitled the *Fighting Foreign Corruption Act*, received Royal Assent on June 19, 2013. It amends the *Corruption of Foreign Public Officials Act* (CFPOA) by increasing the maximum penalty applicable to the offence of bribing a foreign public official from five to 14 years; creating a new books and records offence punishable by a maximum penalty of 14 years; introducing nationality jurisdiction to allow the Government of Canada to exercise jurisdiction over Canadian citizens, permanent residents and Canadian companies who commit offences under the CFPOA, regardless of where the alleged offences have taken place; giving the Royal Canadian Mounted Police (RCMP) the exclusive authority to lay charges under the CFPOA; clarifying that the offence of bribing a foreign public official applies to international business transactions regardless of profit; and providing for the removal at a later date of the facilitation payment defence that exempts payments made to officials to secure the performance of acts of a routine nature.

Investigations and Prosecutions

- There are currently 35 ongoing investigations, four convictions and one case in which charges have been laid but not yet concluded under the CFPOA.
- **Padma Bridge Case** – On February 29, 2012, the RCMP arrested and on April 11, 2012 jointly charged two former employees of SNC Lavalin, Ramesh Shah of Oakville, Ontario, and Mohammad Ismail of Mississauga, Ontario, for allegedly paying bribes in relation to the awarding of a contract for the supervision and consultancy services for the construction of the PADMA multipurpose Bridge in Bangladesh and did thereby commit an indictable offence contrary to paragraph 3(1)(b) of the CFPOA. A preliminary inquiry took place in April, 2013, and both accused were committed to stand trial. On September 17, 2013, the RCMP also laid charges under the CFPOA against former Vice-President of SNC Lavalin, Mr. Kevin Wallace, as well as two persons in Bangladesh, Mr. Zulfiquar Ali Bhuiyan, a Canadian citizen with business ties in Bangladesh, and Mr. Abul Hasan Chowdhury a prominent lobbyist in Bangladesh. The matter remains before a Canadian court.
- **Mr. Nazir Karigar** – On August 15, 2013, Mr. Nazir Karigar was convicted by the Ontario Superior Court of agreeing with others to offer bribes to foreign public officials contrary paragraph 3(1)(b) of the CFPOA. The RCMP laid charges against Mr. Nazir

Karigar under the CFPOA on May 28, 2010 for making a payment to Indian government officials to facilitate the execution of a multi-million dollar contract for the supply of a security system by Cryptometrics, a Canadian high-tech firm. The conviction marks the first time that an individual has been convicted under the CFPOA, and the first time that a matter has gone to trial under the CFPOA. Hearings took place in 2012 with final arguments in March 2013. Sentencing is expected in the fall of 2013.

- **Griffiths Energy International Inc.** —Griffiths Energy International Inc., a privately held oil and gas company based in Calgary, pleaded guilty on January 22, 2013 to one count of bribery under the CFPOA and was sentenced on January 25, 2013 to pay a to pay a \$9,000,000 fine with a 15% victim fine surcharge, for a total amount of \$10,350,000. In the fall of 2011, the company's new management team and replacements for most of the Board of Governors found internal irregularities in its contracts with Chad dating to 2009. In particular, a \$2 million consulting contract with a company controlled by the Chadian ambassador's wife was found in Griffiths' internal documents, as well as an offer to her and several officials to purchase four million shares of the company in return for preferential treatment to secure lucrative energy properties in Chad. The company reported these irregularities and admitted to the bribery, which lead to the aforementioned guilty plea and fine. The resulting fine is the largest paid to date under the CFPOA. Proceedings to forfeit the proceeds of this offence are ongoing.
- **Niko Resources Ltd.** – Niko Resources Ltd. is a publicly traded company based in Calgary, Alberta. On June 24, 2011, the company entered a guilty plea in the Court of Queen's Bench in Calgary for one count of bribery under paragraph 3(1)(b) of the CFPOA, covering the period of February 1, 2005 to June 30, 2005. The company admitted that, through its subsidiary Niko Bangladesh, it provided the use of a vehicle (which cost \$190,984 CDN) in May 2005 to AKM Mosharraf Hossain, then the Bangladeshi State Minister for Energy and Mineral Resources, in order to influence the Minister in his dealings with Niko Bangladesh. In June 2005, Niko Resources Ltd. paid travel and accommodation expenses for the same Minister to travel from Bangladesh to Calgary to attend the GO EXPO oil and gas exposition, and improperly paid approximately \$5,000 CDN for the Minister to travel to New York and Chicago to visit his family. As a result of the conviction, Niko Resources Ltd. was fined \$8.26 million CDN plus the 15% Victim Fine Surcharge, totalling \$9,499,000.00 CDN. In addition, the company placed under a Probation Order, which puts the company under the Court's supervision for three years to ensure that audits are completed to examine the company's compliance with the CFPOA.
- **Hydro-Kleen Group Inc.** – Hydro-Kleen Group Inc., based out of Red Deer, Alberta, entered a guilty plea in the Court of Queen's Bench in Red Deer on January 10, 2005 to one count of bribery under paragraph 3(1)(a) of the CFPOA and was ordered to

pay a fine of \$25,000 CDN. Along with its president and an employee, the company had been charged under the CFPOA with, among other things, two counts of bribing a U.S. immigration officer who worked at the Calgary International Airport. The charges against the director and the officer of the company were stayed. The U.S. immigration officer pleaded guilty in July 2002 to accepting secret commissions under subparagraph 426(1)(a)(ii) of Canada's *Criminal Code*. He received a six-month sentence and was subsequently deported to the United States.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Paragraph 426(1)(a) of the *Criminal Code* provides:

426. (1) Every one commits an offence who

(a) directly or indirectly, corruptly gives, offers or agrees to give or offer to an agent or to anyone for the benefit of the agent — or, being an agent, directly or indirectly, corruptly demands, accepts or offers or agrees to accept from any person, for themselves or another person — any reward, advantage or benefit of any kind as consideration for doing or not doing, or for having done or not done, any act relating to the affairs or business of the agent's principal, or for showing or not showing favour or disfavour to any person with relation to the affairs or business of the agent's principal; or

....

(2) Every one commits an offence who is knowingly privy to the commission of an offence under subsection (1).

(3) A person who commits an offence under this section is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(4) In this section, “agent” includes an employee, and “principal” includes an employer.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

In relation to the first case in Canada under the *Corruption of Foreign Public Officials Act*, **Hydro-Kleen Group Inc.** –the foreign public official, a U.S. immigration officer, who was bribed, plead guilty to the *Criminal Code* offence of receiving secret commissions.

Regarding the related statistical data, please refer to the Table provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Please note Canada’s Declaration upon depositing its instrument of ratification of the Convention:

“It is the understanding of the Government of Canada that in relation to Article 17 the word ‘diversion’ means embezzlement and misappropriation, which constitute the criminal offences of theft and fraud under current Canadian law.”

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

122

322

334

380

Section 122 provides:

122. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

Section 322 provides:

322. (1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent

(a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;

(b) to pledge it or deposit it as security;

(c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or

(d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.

(2) A person commits theft when, with intent to steal anything, he moves it or causes it to move or to be moved, or begins to cause it to become movable.

(3) A taking or conversion of anything may be fraudulent notwithstanding that it is effected without secrecy or attempt at concealment.

(4) For the purposes of this Act, the question whether anything that is converted is taken for the purpose of conversion, or whether it is, at the time it is converted, in the lawful possession of the person who converts it is not material.

(5) For the purposes of this section, a person who has a wild living creature in captivity shall be deemed to have a special property or interest in it while it is in captivity and after it has escaped from captivity.

Section 334 provides:

334. Except where otherwise provided by law, every one who commits theft

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the property stolen is a testamentary instrument or the value of what is stolen exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of what is stolen does not exceed five thousand dollars.

Section 380 provides:

380. (1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,

(a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of the subject-matter of the offence does not exceed five thousand dollars.

(1.1) When a person is prosecuted on indictment and convicted of one or more offences referred to in subsection (1), the court that imposes the sentence shall impose a minimum punishment of imprisonment for a term of two years if the total value of the subject-matter of the offences exceeds one million dollars.

(2) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, with intent to defraud, affects the public market price of

stocks, shares, merchandise or anything that is offered for sale to the public is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Regarding the related statistical data, please refer to the Table provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 18 Trading in influence

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

121(1)(a)(i)

121(1)(e)

123

Subparagraph 121(1)(a)(i) provides:

121. (1) Every one commits an offence who

(a) directly or indirectly

(i) gives, offers or agrees to give or offer to an official or to any member of his family, or to any one for the benefit of an official, or

....

a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(iii) the transaction of business with or any matter of business relating to the government, or

(iv) a claim against Her Majesty or any benefit that Her Majesty is authorized or is entitled to bestow,

whether or not, in fact, the official is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;

Paragraph 121(1)(e) provides:

121. (1) Every one commits an offence who

....

(e) directly or indirectly gives or offers, or agrees to give or offer, to a minister of the government or an official, or to anyone for the benefit of a minister or an official, a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence, or an act or omission, by that minister or official, in connection with

(i) anything mentioned in subparagraph (a)(iii) or (iv), or

(ii) the appointment of any person, including themselves, to an office; or

Section 123 provides:

123. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years who directly or indirectly gives, offers or agrees to give or offer to a municipal official or to anyone for the benefit of a municipal official — or, being a municipal official, directly or indirectly demands, accepts or offers or agrees to accept from any person for themselves or another person — a loan, reward, advantage or benefit of any kind as consideration for the official

(a) to abstain from voting at a meeting of the municipal council or a committee of the council;

- (b) to vote in favour of or against a measure, motion or resolution;
- (c) to aid in procuring or preventing the adoption of a measure, motion or resolution; or
- (d) to perform or fail to perform an official act.

(2) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years who influences or attempts to influence a municipal official to do anything mentioned in paragraphs (1)(a) to (d) by

- (a) suppression of the truth, in the case of a person who is under a duty to disclose the truth;
- (b) threats or deceit; or
- (c) any unlawful means.

(3) In this section, “municipal official” means a member of a municipal council or a person who holds an office under a municipal government.

The French version of the *Criminal Code* is available at the following link:
<http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was noted during the country visit that the maximum penalty for these offences is 5 years in prison.

Article 18 Trading in influence

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

121(1)(a)(ii)

121(1)(c)

121(1)(d)

122

123

Subparagraph 121(1)(a)(ii) provides:

121. (1) Everyone commits an offence who

(a) directly or indirectly

....

(ii) being an official, demands, accepts or offers or agrees to accept from any person for himself or another person,

a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(iii) the transaction of business with or any matter of business relating to the government, or

(iv) a claim against Her Majesty or any benefit that Her Majesty is authorized or is entitled to bestow,

whether or not, in fact, the official is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;

Paragraph 121(1)(c) provides:

121. (1) Every one commits an offence who

....

(c) being an official or employee of the government, directly or indirectly demands, accepts or offers or agrees to accept from a person who has dealings

with the government a commission, reward, advantage or benefit of any kind for themselves or another person, unless they have the consent in writing of the head of the branch of government that employs them or of which they are an official;

Paragraph 121(1)(d) provides:

121. (1) Every one commits an offence who

....

(d) having or pretending to have influence with the government or with a minister of the government or an official, directly or indirectly demands, accepts or offers or agrees to accept, for themselves or another person, a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(i) anything mentioned in subparagraph (a)(iii) or (iv), or

(ii) the appointment of any person, including themselves, to an office;

Section 122 provides:

122. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

Section 123 provides:

123. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years who directly or indirectly gives, offers or agrees to give or offer to a municipal official or to anyone for the benefit of a municipal official — or, being a municipal official, directly or indirectly demands, accepts or offers or agrees to accept from any person for themselves or another person — a loan, reward, advantage or benefit of any kind as consideration for the official

(a) to abstain from voting at a meeting of the municipal council or a committee of the council;

(b) to vote in favour of or against a measure, motion or resolution;

(c) to aid in procuring or preventing the adoption of a measure, motion or resolution; or

(d) to perform or fail to perform an official act.

(2) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years who influences or attempts to influence a municipal official to do anything mentioned in paragraphs (1)(a) to (d) by

(a) suppression of the truth, in the case of a person who is under a duty to disclose the truth;

(b) threats or deceit; or

(c) any unlawful means.

(3) In this section, “municipal official” means a member of a municipal council or a person who holds an office under a municipal government.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Section 122 of the *Criminal Code* provides:

122. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. During the country visit, Canada affirmed that Section 122 would be applicable to all conduct outlined in article 19 of UNCAC. In addition, Canada provided the following supplemental information and a relevant case:

Article 19 - Abuse of Functions

Where the allegations relate to a breach of trust, it must be shown that the accused did or failed to do an act contrary to the duty imposed by statute, regulation, employment, contract or official directive in connection with his office: *R. v. Perreault* (1992), 75 C.C.C. (3d) 425 (Que. C.A.).

In *R. v. Boulanger*, [2006] 2 S.C.R. 49, the Supreme Court of Canada noted that the offence applies to acts or omissions and that the “purpose of the offence of misfeasance in public office, now known as the s. 122 offence of breach of trust by a public officer, can be traced back to the early authorities that recognize that public officers are entrusted with powers and duties for the public benefit. The public is entitled to expect that public officials entrusted with these powers and responsibilities exercise them for the public benefit. Public officials are therefore made answerable to the public in a way that private actors may not be.” The Court concluded “that the offence of breach of trust by a public officer will be established where the Crown proves beyond a reasonable doubt the following elements:

1. The accused is an official;
2. The accused was acting in connection with the duties of his or her office;
3. The accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office;
4. The conduct of the accused represented a serious and marked departure from the standards expected of an individual in the accused's position of public trust; and
5. The accused acted with the intention to use his or her public office for a purpose other than the public good, for example, for a dishonest, partial, corrupt, or oppressive purpose.”

An example of the application of the breach of trust offence can be found in *R. v. McKitka*, [1982] B.C.J. No. 2244 (B.C.C.A.). In that case, the mayor of the District of Surrey was convicted for breach of trust for misleading someone as to the use and value of his property and by endeavouring to obtain the property for himself.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

Canada indicated that it had not implemented this provision of the Convention.

Please note Canada's Declaration upon depositing its instrument of ratification of the Convention:

"Article 20 provides that the obligation of a State Party to criminalize illicit enrichment shall be 'subject to its constitution and the fundamental principles of its legal system.' An offence of illicit enrichment is incompatible with the Constitution of Canada, more specifically with the Canadian Charter of Rights and Freedoms, and the fundamental principles of the Canadian legal system. Canada will therefore not create the offence of illicit enrichment."

The country under review cited the following laws:

The *Canadian Charter of Rights and Freedoms* is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/Charter/>

The French version of the *Charter* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/Charte/>

Canada provided the following case:

In *R. v. Fisher* (1994), 88 C.C.C. (3d) 103, the Ontario Court of Appeal determined that the words in paragraph 121(1)(c) of the *Criminal Code* ("the proof of which lies on him") should be deleted for violating the presumption of innocence under section 11(d) of the *Charter*.

No statistical information was provided.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention by virtue of its Declaration noted above.

Article 21 Bribery in the private sector

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Paragraph 426(1)(a) of the *Criminal Code* provides:

426. (1) Every one commits an offence who

(a) directly or indirectly, corruptly gives, offers or agrees to give or offer to an agent or to anyone for the benefit of the agent — or, being an agent, directly or indirectly, corruptly demands, accepts or offers or agrees to accept from any person, for themselves or another person — any reward, advantage or benefit of any kind as consideration for doing or not doing, or for having done or not done, any act relating to the affairs or business of the agent's principal, or for showing or not showing favour or disfavour to any person with relation to the affairs or business of the agent's principal; or

....

(2) Every one commits an offence who is knowingly privy to the commission of an offence under subsection (1).

(3) A person who commits an offence under this section is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(4) In this section, “agent” includes an employee, and “principal” includes an employer.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 21 Bribery in the private sector

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Paragraph 426(1)(a) of the *Criminal Code* provides:

426. (1) Every one commits an offence who

(a) directly or indirectly, corruptly gives, offers or agrees to give or offer to an agent or to anyone for the benefit of the agent — or, being an agent, directly or indirectly, corruptly demands, accepts or offers or agrees to accept from any person, for themselves or another person — any reward, advantage or benefit of any kind as consideration for doing or not doing, or for having done or not done, any act relating to the affairs or business of the agent's principal, or for showing or not showing favour or disfavour to any person with relation to the affairs or business of the agent's principal; or

....

(2) Every one commits an offence who is knowingly privy to the commission of an offence under subsection (1).

(3) A person who commits an offence under this section is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(4) In this section, “agent” includes an employee, and “principal” includes an employer.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Please note Canada’s declaration in respect of Article 17 of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

322

332

334

336

380

Section 322 provides:

322. (1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent

(a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;

(b) to pledge it or deposit it as security;

(c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or

(d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.

(2) A person commits theft when, with intent to steal anything, he moves it or causes it to move or to be moved, or begins to cause it to become movable.

(3) A taking or conversion of anything may be fraudulent notwithstanding that it is effected without secrecy or attempt at concealment.

(4) For the purposes of this Act, the question whether anything that is converted is taken for the purpose of conversion, or whether it is, at the time it is converted, in the lawful possession of the person who converts it is not material.

(5) For the purposes of this section, a person who has a wild living creature in captivity shall be deemed to have a special property or interest in it while it is in captivity and after it has escaped from captivity.

Section 334 provides:

334. Except where otherwise provided by law, every one who commits theft

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the property stolen is a testamentary instrument or the value of what is stolen exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of what is stolen does not exceed five thousand dollars.

Section 332 provides:

332. (1) Every one commits theft who, having received, either solely or jointly with another person, money or valuable security or a power of attorney for the sale of real or personal property, with a direction that the money or a part of it, or the proceeds or a part of the proceeds of the security or the property shall be applied to a purpose or paid to a person specified in the direction, fraudulently and contrary to the direction applies to any other purpose or pays to any other person the money or proceeds or any part of it.

(2) This section does not apply where a person who receives anything mentioned in subsection (1) and the person from whom he receives it deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account between them, unless the direction is in writing.

Section 336 provides:

336. Every one who, being a trustee of anything for the use or benefit, whether in whole or in part, of another person, or for a public or charitable purpose, converts, with intent to defraud and in contravention of his trust, that thing or any part of it to a use that is not authorized by the trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Section 380 provides:

380. (1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,

(a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of the subject-matter of the offence does not exceed five thousand dollars.

(1.1) When a person is prosecuted on indictment and convicted of one or more offences referred to in subsection (1), the court that imposes the sentence shall impose a minimum punishment of imprisonment for a term of two years if the total value of the subject-matter of the offences exceeds one million dollars.

(2) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, with intent to defraud, affects the public

market price of stocks, shares, merchandise or anything that is offered for sale to the public is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was noted during the country visit that “fraudulently” is understood to mean with deceit or with the intention to deceive, which is adequate for the purpose of meeting the requirements of the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Section 462.31 of the *Criminal Code* provides:

462.31 (1) Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with

intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

(a) the commission in Canada of a designated offence; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

(2) Every one who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) is guilty of an offence punishable on summary conviction.

(3) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under subsection (1) if the peace officer or person does any of the things mentioned in that subsection for the purposes of an investigation or otherwise in the execution of the peace officer's duties.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Please see the response to previous question.

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

354

355

462.31

Sections 354 and 355 provide:

354. (1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from

(a) the commission in Canada of an offence punishable by indictment; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

(2) In proceedings in respect of an offence under subsection (1), evidence that a person has in his possession a motor vehicle the vehicle identification number of which has been wholly or partially removed or obliterated or a part of a motor vehicle being a part bearing a vehicle identification number that has been wholly or partially removed or obliterated is, in the absence of any evidence to the contrary, proof that the motor vehicle or part, as the case may be, was obtained, and that such person had the motor vehicle or part, as the case may be, in his possession knowing that it was obtained,

(a) by the commission in Canada of an offence punishable by indictment; or

(b) by an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

(3) For the purposes of subsection (2), “vehicle identification number” means any number or other mark placed on a motor vehicle for the purpose of distinguishing the motor vehicle from other similar motor vehicles.

(4) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under this section by reason only that the peace officer or person possesses property or a thing or the proceeds of property or a thing mentioned in subsection (1) for the purposes of an investigation or otherwise in the execution of the peace officer’s duties.

355. Every one who commits an offence under section 354

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of the subject-matter of the offence does not exceed five thousand dollars.

Section 462.31 provides:

462.31 (1) Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or

a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

(a) the commission in Canada of a designated offence; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

(2) Every one who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) is guilty of an offence punishable on summary conviction.

(3) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under subsection (1) if the peace officer or person does any of the things mentioned in that subsection for the purposes of an investigation or otherwise in the execution of the peace officer's duties.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the

commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

21

22

24

463

464

465

Section 21 provides:

21. (1) Every one is a party to an offence who

- (a) actually commits it;
- (b) does or omits to do anything for the purpose of aiding any person to commit it; or
- (c) abets any person in committing it.

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

Section 22 provides:

22. (1) Where a person counsels another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled is a party to that

offence, notwithstanding that the offence was committed in a way different from that which was counselled.

(2) Every one who counsels another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling that the person who counselled knew or ought to have known was likely to be committed in consequence of the counselling.

(3) For the purposes of this Act, “counsel” includes procure, solicit or incite.

Section 24 provides:

24. (1) Every one who, having an intent to commit an offence, does or omits to do anything for the purpose of carrying out the intention is guilty of an attempt to commit the offence whether or not it was possible under the circumstances to commit the offence.

(2) The question whether an act or omission by a person who has an intent to commit an offence is or is not mere preparation to commit the offence, and too remote to constitute an attempt to commit the offence, is a question of law.

Section 463 provides:

463. Except where otherwise expressly provided by law, the following provisions apply in respect of persons who attempt to commit or are accessories after the fact to the commission of offences:

(a) every one who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, on conviction, an accused is liable to be sentenced to imprisonment for life is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years;

(b) every one who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, on conviction, an accused is liable to imprisonment for fourteen years or less is guilty of an indictable offence and liable to imprisonment for a term that is one-half of the longest term to which a person who is guilty of that offence is liable;

(c) every one who attempts to commit or is an accessory after the fact to the commission of an offence punishable on summary conviction is guilty of an offence punishable on summary conviction; and

(d) every one who attempts to commit or is an accessory after the fact to the commission of an offence for which the offender may be prosecuted by indictment or for which he is punishable on summary conviction

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding a term that is one-half of the longest term to which a person who is guilty of that offence is liable, or

(ii) is guilty of an offence punishable on summary conviction.

Section 464 provides:

464. Except where otherwise expressly provided by law, the following provisions apply in respect of persons who counsel other persons to commit offences, namely,

(a) every one who counsels another person to commit an indictable offence is, if the offence is not committed, guilty of an indictable offence and liable to the same punishment to which a person who attempts to commit that offence is liable; and

(b) every one who counsels another person to commit an offence punishable on summary conviction is, if the offence is not committed, guilty of an offence punishable on summary conviction.

Section 465 provides:

465. (1) Except where otherwise expressly provided by law, the following provisions apply in respect of conspiracy:

(a) every one who conspires with any one to commit murder or to cause another person to be murdered, whether in Canada or not, is guilty of an indictable offence and liable to a maximum term of imprisonment for life;

(b) every one who conspires with any one to prosecute a person for an alleged offence, knowing that he did not commit that offence, is guilty of an indictable offence and liable

(i) to imprisonment for a term not exceeding ten years, if the alleged offence is one for which, on conviction, that person would be liable to be sentenced to imprisonment for life or for a term not exceeding fourteen years, or

(ii) to imprisonment for a term not exceeding five years, if the alleged offence is one for which, on conviction, that person would be liable to imprisonment for less than fourteen years;

(c) every one who conspires with any one to commit an indictable offence not provided for in paragraph (a) or (b) is guilty of an indictable offence and liable to the same punishment as that to which an accused who is guilty of that offence would, on conviction, be liable; and

(d) every one who conspires with any one to commit an offence punishable on summary conviction is guilty of an offence punishable on summary conviction.

(2) [Repealed, 1985, c. 27 (1st Supp.), s. 61]

(3) Every one who, while in Canada, conspires with any one to do anything referred to in subsection (1) in a place outside Canada that is an offence under the laws of that place shall be deemed to have conspired to do that thing in Canada.

(4) Every one who, while in a place outside Canada, conspires with any one to do anything referred to in subsection (1) in Canada shall be deemed to have conspired in Canada to do that thing.

(5) Where a person is alleged to have conspired to do anything that is an offence by virtue of subsection (3) or (4), proceedings in respect of that offence may, whether or not that person is in Canada, be commenced in any territorial division in Canada, and the accused may be tried and punished in respect of that offence in the same manner as if the offence had been committed in that territorial division.

(6) For greater certainty, the provisions of this Act relating to

(a) requirements that an accused appear at and be present during proceedings, and

(b) the exceptions to those requirements,

apply to proceedings commenced in any territorial division pursuant to subsection (5).

(7) Where a person is alleged to have conspired to do anything that is an offence by virtue of subsection (3) or (4) and that person has been tried and dealt with outside Canada in respect of the offence in such a manner that, if the person had been tried and dealt with in Canada, he would be able to plead *autrefois acquit*, *autrefois convict* or pardon, the person shall be deemed to have been so tried and dealt with in Canada.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (a)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

462.3

462.31

Section 462.3 provides in part:

462.3 (1) In this Part,

....

“designated offence”

“designated offence” means

- (a) any offence that may be prosecuted as an indictable offence under this or any other Act of Parliament, other than an indictable offence prescribed by regulation, or
- (b) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a);

Section 462.31 provides:

462.31 (1) Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

- (a) the commission in Canada of a designated offence; or
 - (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.
- (2) Every one who commits an offence under subsection (1)
- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
 - (b) is guilty of an offence punishable on summary conviction.

(3) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under subsection (1) if the peace officer or person does any of the things mentioned in that subsection for the purposes of an investigation or otherwise in the execution of the peace officer's duties.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. During the country visit, Canada clarified that not only does the money laundering offence apply to the proceeds of all designated offences but that it also applies to the proceeds of any act or omission committed outside of the territory of Canada which, had they been committed in Canada, would have been an offence.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (b)

2. For purposes of implementing or applying paragraph 1 of this article:

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

See comments above.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. Canada clarified during the country visit that all UNCAC offences are indictable offences in Canada.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

See comments above.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Same comment as the one provided for the article 23, subparagraph 2 (a).

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. Canada clarified during the country visit that this was complied with on 2 October 2007 upon deposit of the instrument of ratification.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

Canada indicated that they had not implemented this provision of the Convention.

Same comment as the one provided for the article 23, subparagraph 2 (a).

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. Canada clarified that a person can be convicted of both money laundering and the underlying predicate offence(s).

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

Section 354 provides:

354. (1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from

(a) the commission in Canada of an offence punishable by indictment; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

(2) In proceedings in respect of an offence under subsection (1), evidence that a person has in his possession a motor vehicle the vehicle identification number of which has been wholly or partially removed or obliterated or a part of a motor vehicle being a part bearing a vehicle identification number that has been wholly or partially removed or obliterated is, in the absence of any evidence to the contrary, proof that the motor vehicle or part, as the case may be, was obtained, and that such person had the motor vehicle or part, as the case may be, in his possession knowing that it was obtained,

(a) by the commission in Canada of an offence punishable by indictment; or

(b) by an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

(3) For the purposes of subsection (2), “vehicle identification number” means any number or other mark placed on a motor vehicle for the purpose of distinguishing the motor vehicle from other similar motor vehicles.

(4) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under this section by reason only that the peace officer or person possesses property or a thing or the proceeds of property or a thing mentioned in subsection (1) for the purposes of an investigation or otherwise in the execution of the peace officer’s duties.

Section 462.31 provides:

462.31 (1) Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

(a) the commission in Canada of a designated offence; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

(2) Every one who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) is guilty of an offence punishable on summary conviction.

(3) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under subsection (1) if the peace officer or person does any of the things mentioned in that subsection for the purposes of an investigation or otherwise in the execution of the peace officer's duties.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. Canada noted that the most relevant reference was Section 462.31 above.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

139

423

423.1

Section 2, in part, provides:

“justice system participant”

“justice system participant” means

(a) a member of the Senate, of the House of Commons, of a legislative assembly or of a municipal council, and

(b) a person who plays a role in the administration of criminal justice, including

(i) the Minister of Public Safety and Emergency Preparedness and a Minister responsible for policing in a province,

(ii) a prosecutor, a lawyer, a member of the Chambre des notaires du Québec and an officer of a court,

(iii) a judge and a justice,

(iv) a juror and a person who is summoned as a juror,

(v) an informant, a prospective witness, a witness under subpoena and a witness who has testified,

(vi) a peace officer within the meaning of any of paragraphs (b), (c), (d), (e) and (g) of the definition “peace officer”,

(vii) a civilian employee of a police force,

(viii) a person employed in the administration of a court,

(viii.1) a public officer within the meaning of subsection 25.1(1) and a person acting at the direction of such an officer,

(ix) an employee of the Canada Revenue Agency who is involved in the investigation of an offence under an Act of Parliament,

(ix.1) an employee of the Canada Border Services Agency who is involved in the investigation of an offence under an Act of Parliament,

(x) an employee of a federal or provincial correctional service, a parole supervisor and any other person who is involved in the administration of a sentence under the supervision of such a correctional service and a person who conducts disciplinary hearings under the *Corrections and Conditional Release Act*, and

(xi) an employee and a member of the National Parole Board and of a provincial parole board;

Section 139 provides:

139. (1) Every one who wilfully attempts in any manner to obstruct, pervert or defeat the course of justice in a judicial proceeding,

(a) by indemnifying or agreeing to indemnify a surety, in any way and either in whole or in part, or

(b) where he is a surety, by accepting or agreeing to accept a fee or any form of indemnity whether in whole or in part from or in respect of a person who is released or is to be released from custody,

is guilty of

(c) an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(d) an offence punishable on summary conviction.

(2) Every one who wilfully attempts in any manner other than a manner described in subsection (1) to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

(3) Without restricting the generality of subsection (2), every one shall be deemed wilfully to attempt to obstruct, pervert or defeat the course of justice who in a judicial proceeding, existing or proposed,

(a) dissuades or attempts to dissuade a person by threats, bribes or other corrupt means from giving evidence;

(b) influences or attempts to influence by threats, bribes or other corrupt means a person in his conduct as a juror; or

(c) accepts or obtains, agrees to accept or attempts to obtain a bribe or other corrupt consideration to abstain from giving evidence, or to do or to refrain from doing anything as a juror.

Section 423 provides:

423. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,

(a) uses violence or threats of violence to that person or his or her spouse or common-law partner or children, or injures his or her property;

(b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;

(c) persistently follows that person;

(d) hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;

(e) with one or more other persons, follows that person, in a disorderly manner, on a highway;

(f) besets or watches the place where that person resides, works, carries on business or happens to be; or

(g) blocks or obstructs a highway.

(2) A person who attends at or near or approaches a dwelling-house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section.

Section 423.1 provides:

423.1 (1) No person shall, without lawful authority, engage in conduct referred to in subsection (2) with the intent to provoke a state of fear in

(a) a group of persons or the general public in order to impede the administration of criminal justice;

(b) a justice system participant in order to impede him or her in the performance of his or her duties; or

(c) a journalist in order to impede him or her in the transmission to the public of information in relation to a criminal organization.

(2) The conduct referred to in subsection (1) consists of

(a) using violence against a justice system participant or a journalist or anyone known to either of them or destroying or causing damage to the property of any of those persons;

(b) threatening to engage in conduct described in paragraph (a) in Canada or elsewhere;

(c) persistently or repeatedly following a justice system participant or a journalist or anyone known to either of them, including following that person in a disorderly manner on a highway;

(d) repeatedly communicating with, either directly or indirectly, a justice system participant or a journalist or anyone known to either of them; and

(e) besetting or watching the place where a justice system participant or a journalist or anyone known to either of them resides, works, attends school, carries on business or happens to be.

(3) Every person who contravenes this section is guilty of an indictable offence and is liable to imprisonment for a term of not more than fourteen years.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. During the country visit, Canada provided the following supplemental information and example:

Article 25 – Obstruction

Subsection 139(2) of the *Criminal Code* provides that every one who wilfully attempts in any manner other than a manner described in subsection (1) to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Subsection 139(3) gives some illustrative examples of obstruction of justice without restricting the scope of conduct covered by subsection 139(2).

In *R. v. Hearn* (1989), 48 C.C.C. (3d) 376 (Nfld. C.A.), the accused and his defence counsel asked a third party to give false testimony with a view to having the accused found not guilty of the charge against him. During the course of the accused's trial, the third party told the police what had been done. The third party did not give evidence at the accused's trial. The accused was convicted at trial and after the trial both he and his lawyer were charged with obstructing justice. At trial on the obstruction of justice charge, the two accused were acquitted on the grounds that the testimony allegedly counselled by them would not have had any bearing on the result of the trial and that, therefore, there would have been no obstruction had the informant actually testified. The appeal of this decision was allowed and a new trial was ordered. The Court of Appeal (per Goodridge, C.J.N.) indicated, in discussing subsection 127(2) [now s. 139(2)] of the *Criminal Code*, that the "gravamen of the offence under s. 127 is the wilful attempt to obstruct justice. It does not matter that the attempt was unsuccessful or, even, that it does not have the potential for success. When there is a wilful attempt, however misguided, to influence the outcome of a trial improperly the offence is complete. ...On a charge of wilfully attempting to obstruct justice by counselling false testimony in a pending trial, if the evidence reveals a guilty mind and a wilful act designed to fulfill the intention of the guilty mind, it matters not that the intention could not be satisfied by the act undertaken." In his concurring reasons for judgment, Morgan, J.A. noted that the general offence of obstruction is left undefined. He stated that, "The particular acts or conduct that amount to a criminal offence or attempt thereof may take many different forms. To amount to an attempt to pervert or obstruct the course of justice

there has to be evidence of a course of conduct that had the propensity to defeat the course of conduct and was so intended.”

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

2

129

139

423

423.1

Section 2 in part provides:

“justice system participant”

“justice system participant” means

(a) a member of the Senate, of the House of Commons, of a legislative assembly or of a municipal council, and

(b) a person who plays a role in the administration of criminal justice, including

- (i) the Minister of Public Safety and Emergency Preparedness and a Minister responsible for policing in a province,
- (ii) a prosecutor, a lawyer, a member of the Chambre des notaires du Québec and an officer of a court,
- (iii) a judge and a justice,
- (iv) a juror and a person who is summoned as a juror,
- (v) an informant, a prospective witness, a witness under subpoena and a witness who has testified,
- (vi) a peace officer within the meaning of any of paragraphs (b), (c), (d), (e) and (g) of the definition “peace officer”,
- (vii) a civilian employee of a police force,
- (viii) a person employed in the administration of a court,
- (viii.1) a public officer within the meaning of subsection 25.1(1) and a person acting at the direction of such an officer,
- (ix) an employee of the Canada Revenue Agency who is involved in the investigation of an offence under an Act of Parliament,
- (ix.1) an employee of the Canada Border Services Agency who is involved in the investigation of an offence under an Act of Parliament,
- (x) an employee of a federal or provincial correctional service, a parole supervisor and any other person who is involved in the administration of a sentence under the supervision of such a correctional service and a person who conducts disciplinary hearings under the *Corrections and Conditional Release Act*, and
- (xi) an employee and a member of the National Parole Board and of a provincial parole board;

Section 129 provides:

129. Every one who

(a) resists or wilfully obstructs a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer,

(b) omits, without reasonable excuse, to assist a public officer or peace officer in the execution of his duty in arresting a person or in preserving the peace, after having reasonable notice that he is required to do so, or

(c) resists or wilfully obstructs any person in the lawful execution of a process against lands or goods or in making a lawful distress or seizure,

is guilty of

(d) an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(e) an offence punishable on summary conviction.

Section 139 provides:

139. (1) Every one who wilfully attempts in any manner to obstruct, pervert or defeat the course of justice in a judicial proceeding,

(a) by indemnifying or agreeing to indemnify a surety, in any way and either in whole or in part, or

(b) where he is a surety, by accepting or agreeing to accept a fee or any form of indemnity whether in whole or in part from or in respect of a person who is released or is to be released from custody,

is guilty of

(c) an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(d) an offence punishable on summary conviction.

(2) Every one who wilfully attempts in any manner other than a manner described in subsection (1) to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

(3) Without restricting the generality of subsection (2), every one shall be deemed wilfully to attempt to obstruct, pervert or defeat the course of justice who in a judicial proceeding, existing or proposed,

(a) dissuades or attempts to dissuade a person by threats, bribes or other corrupt means from giving evidence;

(b) influences or attempts to influence by threats, bribes or other corrupt means a person in his conduct as a juror; or

(c) accepts or obtains, agrees to accept or attempts to obtain a bribe or other corrupt consideration to abstain from giving evidence, or to do or to refrain from doing anything as a juror.

Section 423 provides:

423. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain

from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,

(a) uses violence or threats of violence to that person or his or her spouse or common-law partner or children, or injures his or her property;

(b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;

(c) persistently follows that person;

(d) hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;

(e) with one or more other persons, follows that person, in a disorderly manner, on a highway;

(f) besets or watches the place where that person resides, works, carries on business or happens to be; or

(g) blocks or obstructs a highway.

(2) A person who attends at or near or approaches a dwelling-house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section.

Section 423.1 provides:

423.1 (1) No person shall, without lawful authority, engage in conduct referred to in subsection (2) with the intent to provoke a state of fear in

(a) a group of persons or the general public in order to impede the administration of criminal justice;

(b) a justice system participant in order to impede him or her in the performance of his or her duties; or

(c) a journalist in order to impede him or her in the transmission to the public of information in relation to a criminal organization.

(2) The conduct referred to in subsection (1) consists of

(a) using violence against a justice system participant or a journalist or anyone known to either of them or destroying or causing damage to the property of any of those persons;

(b) threatening to engage in conduct described in paragraph (a) in Canada or elsewhere;

(c) persistently or repeatedly following a justice system participant or a journalist or anyone known to either of them, including following that person in a disorderly manner on a highway;

(d) repeatedly communicating with, either directly or indirectly, a justice system participant or a journalist or anyone known to either of them; and

(e) besetting or watching the place where a justice system participant or a journalist or anyone known to either of them resides, works, attends school, carries on business or happens to be.

(3) Every person who contravenes this section is guilty of an indictable offence and is liable to imprisonment for a term of not more than fourteen years.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Canada provided cases as examples of implementation

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 26 Liability of legal persons

Paragraph 1

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Section 2 of the *Criminal Code*

Section 22.2 of the *Criminal Code*

Section 2 in part provides:

“organization”

“organization” means

(a) a public body, body corporate, society, company, firm, partnership, trade union or municipality, or

(b) an association of persons that

(i) is created for a common purpose,

(ii) has an operational structure, and

(iii) holds itself out to the public as an association of persons;

“representative”

“representative”, in respect of an organization, means a director, partner, employee, member, agent or contractor of the organization;

“senior officer”

“senior officer” means a representative who plays an important role in the establishment of an organization’s policies or is responsible for managing an important aspect of the organization’s activities and, in the case of a body corporate, includes a director, its chief executive officer and its chief financial officer;

Section 22.2 provides:

22.2 In respect of an offence that requires the prosecution to prove fault — other than negligence — an organization is a party to the offence if, with the intent at least in part to benefit the organization, one of its senior officers

(a) acting within the scope of their authority, is a party to the offence;

(b) having the mental state required to be a party to the offence and acting within the scope of their authority, directs the work of other representatives of the organization so that they do the act or make the omission specified in the offence; or

(c) knowing that a representative of the organization is or is about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

There are not yet any reported cases of the use of this provision.
Canada didn’t provide any statistical data.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was noted during the country visit that additional tools are available to address this provision.

Article 26 Liability of legal persons

Paragraph 2

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Please see comments above.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. During the country visit, Canada made reference to Section 22.2, noted in responses to articles 34 and 35 of UNCAC.

Article 26 Liability of legal persons

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

In the Canadian context, it is a common law principle that criminal liability of legal persons does not preclude that of a natural person. In Canada, there is no obligation to charge a legal person or an individual jointly with the same offence. Each can be charged and prosecuted separately, and prosecuting the legal person does not necessitate prosecuting the individual, and vice-versa.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 26 Liability of legal persons

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Part XXIII of the *Criminal Code* sets out various sentence options and principles of sentencing which the court must apply in determining a fit sentence. Sentencing in Canadian criminal courts is an individualized process in which sentencing judges consider a number of sentencing objectives, such as deterrence, denunciation and rehabilitation, in order to fashion a fit sentence which is proportionate to the seriousness of the offence and the offender's degree of blameworthiness. In particular, section 718 of the *Code* provides that the fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that denounce unlawful conduct, deter the offender and other persons from committing offences, separate offenders from society, where necessary, assist in rehabilitating offenders, provide reparations from harm done to victims or to the community, and/or promote a sense of responsibility in offenders, and acknowledge the harm done to victims and to the community.

According to the fundamental principle of sentencing as stated in the *Criminal Code*, a fit sentence is one that is proportionate to the gravity of the offence and the degree of responsibility of the offender (section 718.1).

An element of a proportionate sentence involves the application of the principle of parity; that is, that the sentence imposed is similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

The determination of a fit sentence also involves a careful balancing of the aggravating and mitigating factors applicable in each case.

In order for the proportionality principle to be observed, a sentencing judge must ensure that the sentence imposed is similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

Section 718.21 contains a list of aggravating and mitigating sentencing factors for judges to consider when sentencing an organization, which is defined to include a corporation. For instance, a sentencing judge must take into consideration any advantage realized by the organization as a result of the commission of the offence as well as the degree of planning involved in carrying out the offence and the duration and complexity of the offence.

Section 22.2 of the *Criminal Code* renders an organization liable for the offence that was committed. Organizations cannot be imprisoned, so the sentence imposed on an organization will be in the form of a fine. Indictable offences in the *Criminal Code* generally do not have a maximum amount for fines, so fines can be in whatever amount the sentencing court considers appropriate as a fit sentence (section 735). In addition to the imposition of a fine on an organization, a sentencing court may also make a probation order against an organization, and such probation orders may include conditions (section 732.1).

Please refer to the following sections of the *Criminal Code*:

718

718.02

718.1

718.2

718.21

718.3

732.1

732.2

733.1

735

Section 718 provides:

718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;

- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

Section 718.02 provides:

718.02 When a court imposes a sentence for an offence under subsection 270(1), section 270.01 or 270.02 or paragraph 423.1(1)(b), the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

Section 718.1 provides:

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Section 718.2 provides:

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,
 - (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,
 - (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
 - (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
 - (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or
 - (v) evidence that the offence was a terrorism offence

shall be deemed to be aggravating circumstances;

- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

Section 718.21 provides:

718.21 A court that imposes a sentence on an organization shall also take into consideration the following factors:

(a) any advantage realized by the organization as a result of the offence;

(b) the degree of planning involved in carrying out the offence and the duration and complexity of the offence;

(c) whether the organization has attempted to conceal its assets, or convert them, in order to show that it is not able to pay a fine or make restitution;

(d) the impact that the sentence would have on the economic viability of the organization and the continued employment of its employees;

(e) the cost to public authorities of the investigation and prosecution of the offence;

(f) any regulatory penalty imposed on the organization or one of its representatives in respect of the conduct that formed the basis of the offence;

(g) whether the organization was — or any of its representatives who were involved in the commission of the offence were — convicted of a similar offence or sanctioned by a regulatory body for similar conduct;

(h) any penalty imposed by the organization on a representative for their role in the commission of the offence;

(i) any restitution that the organization is ordered to make or any amount that the organization has paid to a victim of the offence; and

(j) any measures that the organization has taken to reduce the likelihood of it committing a subsequent offence.

Section 718.3 provides:

718.3 (1) Where an enactment prescribes different degrees or kinds of punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence.

(2) Where an enactment prescribes a punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence, but no punishment is a minimum punishment unless it is declared to be a minimum punishment.

(3) Where an accused is convicted of an offence punishable with both fine and imprisonment and a term of imprisonment in default of payment of the fine is not specified in the enactment that prescribes the punishment to be imposed, the imprisonment that may be imposed in default of payment shall not exceed the term of imprisonment that is prescribed in respect of the offence.

(4) The court or youth justice court that sentences an accused may direct that the terms of imprisonment that are imposed by the court or the youth justice court or that result from the operation of subsection 734(4) or 743.5(1) or (2) shall be served consecutively, when

(a) the accused is sentenced while under sentence for an offence, and a term of imprisonment, whether in default of payment of a fine or otherwise, is imposed;

(b) the accused is found guilty or convicted of an offence punishable with both a fine and imprisonment and both are imposed;

(c) the accused is found guilty or convicted of more than one offence, and

(i) more than one fine is imposed,

(ii) terms of imprisonment for the respective offences are imposed, or

(iii) a term of imprisonment is imposed in respect of one offence and a fine is imposed in respect of another offence; or

(d) subsection 743.5(1) or (2) applies.

Section 732.1 provides:

732.1 (1) In this section and section 732.2,

“change”

“change”, in relation to optional conditions, includes deletions and additions;

“optional conditions”

“optional conditions” means the conditions referred to in subsection (3) or (3.1).

(2) The court shall prescribe, as conditions of a probation order, that the offender do all of the following:

(a) keep the peace and be of good behaviour;

(b) appear before the court when required to do so by the court; and

(c) notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.

(3) The court may prescribe, as additional conditions of a probation order, that the offender do one or more of the following:

(a) report to a probation officer

(i) within two working days, or such longer period as the court directs, after the making of the probation order, and

(ii) thereafter, when required by the probation officer and in the manner directed by the probation officer;

(b) remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the probation officer;

(c) abstain from

(i) the consumption of alcohol or other intoxicating substances, or

(ii) the consumption of drugs except in accordance with a medical prescription;

(d) abstain from owning, possessing or carrying a weapon;

(e) provide for the support or care of dependants;

(f) perform up to 240 hours of community service over a period not exceeding eighteen months;

(g) if the offender agrees, and subject to the program director's acceptance of the offender, participate actively in a treatment program approved by the province;

(g.1) where the lieutenant governor in council of the province in which the probation order is made has established a program for curative treatment in relation to the consumption of alcohol or drugs, attend at a treatment facility, designated by the lieutenant governor in council of the province, for assessment and curative treatment in relation to the consumption by the offender of alcohol or drugs that is recommended pursuant to the program;

(g.2) where the lieutenant governor in council of the province in which the probation order is made has established a program governing the use of an alcohol ignition interlock device by an offender and if the offender agrees to participate in the program, comply with the program; and

(h) comply with such other reasonable conditions as the court considers desirable, subject to any regulations made under subsection 738(2), for protecting society and for facilitating the offender's successful reintegration into the community.

(3.1) The court may prescribe, as additional conditions of a probation order made in respect of an organization, that the offender do one or more of the following:

(a) make restitution to a person for any loss or damage that they suffered as a result of the offence;

(b) establish policies, standards and procedures to reduce the likelihood of the organization committing a subsequent offence;

(c) communicate those policies, standards and procedures to its representatives;

(d) report to the court on the implementation of those policies, standards and procedures;

(e) identify the senior officer who is responsible for compliance with those policies, standards and procedures;

(f) provide, in the manner specified by the court, the following information to the public, namely,

(i) the offence of which the organization was convicted,

(ii) the sentence imposed by the court, and

(iii) any measures that the organization is taking — including any policies, standards and procedures established under paragraph (b) — to reduce the likelihood of it committing a subsequent offence; and

(g) comply with any other reasonable conditions that the court considers desirable to prevent the organization from committing subsequent offences or to remedy the harm caused by the offence.

(3.2) Before making an order under paragraph (3.1)(b), a court shall consider whether it would be more appropriate for another regulatory body to supervise the development or implementation of the policies, standards and procedures referred to in that paragraph.

(4) A probation order may be in Form 46, and the court that makes the probation order shall specify therein the period for which it is to remain in force.

(5) The court that makes a probation order shall

(a) cause a copy of the order to be given to the offender;

(b) explain the conditions of the order set under subsections (2) to (3.1) and the substance of section 733.1 to the offender;

(c) cause an explanation to be given to the offender of the procedure for applying under subsection 732.2(3) for a change to the optional conditions and of the substance of subsections 732.2(3) and (5); and

(d) take reasonable measures to ensure that the offender understands the order and the explanations.

(6) For greater certainty, a failure to comply with subsection (5) does not affect the validity of the probation order.

Section 732.2 provides:

732.2 (1) A probation order comes into force

(a) on the date on which the order is made;

(b) where the offender is sentenced to imprisonment under paragraph 731(1)(b) or was previously sentenced to imprisonment for another offence, as soon as the offender is released from prison or, if released from prison on conditional release, at the expiration of the sentence of imprisonment; or

(c) where the offender is under a conditional sentence order, at the expiration of the conditional sentence order.

(2) Subject to subsection (5),

(a) where an offender who is bound by a probation order is convicted of an offence, including an offence under section 733.1, or is imprisoned under paragraph 731(1)(b) in default of payment of a fine, the order continues in force except in so far as the sentence renders it impossible for the offender for the time being to comply with the order; and

(b) no probation order shall continue in force for more than three years after the date on which the order came into force.

(3) A court that makes a probation order may at any time, on application by the offender, the probation officer or the prosecutor, require the offender to appear before it and, after hearing the offender and one or both of the probation officer and the prosecutor,

(a) make any changes to the optional conditions that in the opinion of the court are rendered desirable by a change in the circumstances since those conditions were prescribed,

(b) relieve the offender, either absolutely or on such terms or for such period as the court deems desirable, of compliance with any optional condition, or

(c) decrease the period for which the probation order is to remain in force,

and the court shall thereupon endorse the probation order accordingly and, if it changes the optional conditions, inform the offender of its action and give the offender a copy of the order so endorsed.

(4) All the functions of the court under subsection (3) may be exercised in chambers.

(5) Where an offender who is bound by a probation order is convicted of an offence, including an offence under section 733.1, and

(a) the time within which an appeal may be taken against that conviction has expired and the offender has not taken an appeal,

(b) the offender has taken an appeal against that conviction and the appeal has been dismissed, or

(c) the offender has given written notice to the court that convicted the offender that the offender elects not to appeal the conviction or has abandoned the appeal, as the case may be,

in addition to any punishment that may be imposed for that offence, the court that made the probation order may, on application by the prosecutor, require the offender to appear before it and, after hearing the prosecutor and the offender,

(d) where the probation order was made under paragraph 731(1)(a), revoke the order and impose any sentence that could have been imposed if the passing of sentence had not been suspended, or

(e) make such changes to the optional conditions as the court deems desirable, or extend the period for which the order is to remain in force for such period, not exceeding one year, as the court deems desirable,

and the court shall thereupon endorse the probation order accordingly and, if it changes the optional conditions or extends the period for which the order is to remain in force, inform the offender of its action and give the offender a copy of the order so endorsed.

(6) The provisions of Parts XVI and XVIII with respect to compelling the appearance of an accused before a justice apply, with such modifications as the circumstances require, to proceedings under subsections (3) and (5).

Section 733.1 provides:

733.1 (1) An offender who is bound by a probation order and who, without reasonable excuse, fails or refuses to comply with that order is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding eighteen months, or to a fine not exceeding two thousand dollars, or both.

(2) An accused who is charged with an offence under subsection (1) may be tried and punished by any court having jurisdiction to try that offence in the place where the offence is alleged to have been committed or in the place where the accused is found, is arrested or is in custody, but where the place where the accused is found, is arrested or is in custody is outside the province in which the offence is alleged to have been committed, no proceedings in respect of that offence shall be instituted in that place without the consent of the Attorney General of that province.

Section 735 provides:

735. (1) An organization that is convicted of an offence is liable, in lieu of any imprisonment that is prescribed as punishment for that offence, to be fined in an amount, except where otherwise provided by law,

(a) that is in the discretion of the court, where the offence is an indictable offence; or

(b) not exceeding one hundred thousand dollars, where the offence is a summary conviction offence.

(1.1) A court that imposes a fine under subsection (1) or under any other Act of Parliament shall make an order that clearly sets out

- (a) the amount of the fine;
- (b) the manner in which the fine is to be paid;
- (c) the time or times by which the fine, or any portion of it, must be paid; and
- (d) any other terms respecting the payment of the fine that the court deems appropriate.

(2) Section 734.6 applies, with any modifications that are required, when an organization fails to pay the fine in accordance with the terms of the order.

The French version of the *Criminal Code* is available at the following link:
<http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Canada provided cases as examples of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

21

22

Section 21 provides:

21. (1) Every one is a party to an offence who

(a) actually commits it;

(b) does or omits to do anything for the purpose of aiding any person to commit it; or

(c) abets any person in committing it.

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

Section 22 provides:

22. (1) Where a person counsels another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled.

(2) Every one who counsels another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling that the person who counselled knew or ought to have known was likely to be committed in consequence of the counselling.

(3) For the purposes of this Act, “counsel” includes procure, solicit or incite.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 27 Participation and attempt

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The Criminal Code which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Sections 24 and 463 of the Criminal Code

Section 24 provides:

24. (1) Every one who, having an intent to commit an offence, does or omits to do anything for the purpose of carrying out the intention is guilty of an attempt to commit the offence whether or not it was possible under the circumstances to commit the offence.

(2) The question whether an act or omission by a person who has an intent to commit an offence is or is not mere preparation to commit the offence, and too remote to constitute an attempt to commit the offence, is a question of law.

Section 463 provides:

463. Except where otherwise expressly provided by law, the following provisions apply in respect of persons who attempt to commit or are accessories after the fact to the commission of offences:

(a) every one who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, on conviction, an accused is liable to be sentenced to imprisonment for life is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years;

(b) every one who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, on conviction, an accused is liable to imprisonment for fourteen years or less is guilty of an indictable offence and liable to imprisonment for a term that is one-half of the longest term to which a person who is guilty of that offence is liable;

(c) every one who attempts to commit or is an accessory after the fact to the commission of an offence punishable on summary conviction is guilty of an offence punishable on summary conviction; and

(d) every one who attempts to commit or is an accessory after the fact to the commission of an offence for which the offender may be prosecuted by indictment or for which he is punishable on summary conviction

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding a term that is one-half of the longest term to which a person who is guilty of that offence is liable, or

(ii) is guilty of an offence punishable on summary conviction.

The French version of the Criminal Code is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Canada provided cases as examples of implementation

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 27 Participation and attempt

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

21

22

24

463

464

465

Section 21 provides:

21. (1) Every one is a party to an offence who

(a) actually commits it;

(b) does or omits to do anything for the purpose of aiding any person to commit it; or

(c) abets any person in committing it.

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

Section 22 provides:

22. (1) Where a person counsels another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled.

(2) Every one who counsels another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling that the person who counselled knew or ought to have known was likely to be committed in consequence of the counselling.

(3) For the purposes of this Act, “counsel” includes procure, solicit or incite.

Section 24 provides:

24. (1) Every one who, having an intent to commit an offence, does or omits to do anything for the purpose of carrying out the intention is guilty of an attempt to commit the offence whether or not it was possible under the circumstances to commit the offence.

(2) The question whether an act or omission by a person who has an intent to commit an offence is or is not mere preparation to commit the offence, and too remote to constitute an attempt to commit the offence, is a question of law.

Section 463 provides:

463. Except where otherwise expressly provided by law, the following provisions apply in respect of persons who attempt to commit or are accessories after the fact to the commission of offences:

(a) every one who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, on conviction, an accused is liable to be sentenced to imprisonment for life is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years;

(b) every one who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, on conviction, an accused is liable to imprisonment for fourteen years or less is guilty of an indictable offence and liable to imprisonment for a term that is one-half of the longest term to which a person who is guilty of that offence is liable;

(c) every one who attempts to commit or is an accessory after the fact to the commission of an offence punishable on summary conviction is guilty of an offence punishable on summary conviction; and

(d) every one who attempts to commit or is an accessory after the fact to the commission of an offence for which the offender may be prosecuted by indictment or for which he is punishable on summary conviction

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding a term that is one-half of the longest term to which a person who is guilty of that offence is liable, or

(ii) is guilty of an offence punishable on summary conviction.

Section 464 provides:

464. Except where otherwise expressly provided by law, the following provisions apply in respect of persons who counsel other persons to commit offences, namely,

(a) every one who counsels another person to commit an indictable offence is, if the offence is not committed, guilty of an indictable offence and liable to the same punishment to which a person who attempts to commit that offence is liable; and

(b) every one who counsels another person to commit an offence punishable on summary conviction is, if the offence is not committed, guilty of an offence punishable on summary conviction.

Section 465 provides:

465. (1) Except where otherwise expressly provided by law, the following provisions apply in respect of conspiracy:

(a) every one who conspires with any one to commit murder or to cause another person to be murdered, whether in Canada or not, is guilty of an indictable offence and liable to a maximum term of imprisonment for life;

(b) every one who conspires with any one to prosecute a person for an alleged offence, knowing that he did not commit that offence, is guilty of an indictable offence and liable

(i) to imprisonment for a term not exceeding ten years, if the alleged offence is one for which, on conviction, that person would be liable to be sentenced to imprisonment for life or for a term not exceeding fourteen years, or

(ii) to imprisonment for a term not exceeding five years, if the alleged offence is one for which, on conviction, that person would be liable to imprisonment for less than fourteen years;

(c) every one who conspires with any one to commit an indictable offence not provided for in paragraph (a) or (b) is guilty of an indictable offence and liable to the same punishment as that to which an accused who is guilty of that offence would, on conviction, be liable; and

(d) every one who conspires with any one to commit an offence punishable on summary conviction is guilty of an offence punishable on summary conviction.

(2) [Repealed, 1985, c. 27 (1st Supp.), s. 61]

(3) Every one who, while in Canada, conspires with any one to do anything referred to in subsection (1) in a place outside Canada that is an offence under the laws of that place shall be deemed to have conspired to do that thing in Canada.

(4) Every one who, while in a place outside Canada, conspires with any one to do anything referred to in subsection (1) in Canada shall be deemed to have conspired in Canada to do that thing.

(5) Where a person is alleged to have conspired to do anything that is an offence by virtue of subsection (3) or (4), proceedings in respect of that offence may, whether or not that person is in Canada, be commenced in any territorial division in Canada, and the accused may be tried and punished in respect of that offence in the same manner as if the offence had been committed in that territorial division.

(6) For greater certainty, the provisions of this Act relating to

(a) requirements that an accused appear at and be present during proceedings, and

(b) the exceptions to those requirements,

apply to proceedings commenced in any territorial division pursuant to subsection (5).

(7) Where a person is alleged to have conspired to do anything that is an offence by virtue of subsection (3) or (4) and that person has been tried and dealt with outside Canada in respect of the offence in such a manner that, if the person had been tried and dealt with in Canada, he would be able to plead *autrefois acquit*, *autrefois convict* or pardon, the person shall be deemed to have been so tried and dealt with in Canada.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 28 Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Criminal offences are presumed to include a mental element of fault (or *mens rea*) where none is specified unless there is a clear indication to the contrary. Criminal offences require the prosecution to prove a positive state of mind, such as intent, either as an inference from the nature of the act committed or by additional evidence.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. Canada clarified during the country visit that the mental state of the accused may be inferred from objective factual circumstances as a matter of common law, and provided the following supplemental information:

For example, in *R. v. Boulanger*, [2006] 2 S.C.R. 49, the Supreme Court of Canada held (per McLachlin, C.J.) (at paragraph 57): “As with any offence, the *mens rea* is inferred from the circumstances.” Another example is *R. v. Hinchey*, [1996] 3 S.C.R. 1128, where the Supreme Court of Canada (per Cory, J.) (at paragraph 110) observed: “Whether or not an accused had the necessary subjective *mens rea* or mental state of blameworthiness required to commit a specific crime can of course be inferred from the actions and words of the accused.”

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

In Canada, there is no statute of limitations for indictable offences identified in this Questionnaire Response.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following information:

OFFENCES	SECTIONS	MAXIMUM PUNISHMENT
Bribery of Officers	Section 120 of the <i>Criminal Code</i>	14 years
Frauds on the Government	Section 121 of the <i>Criminal Code</i>	5 years
Breach of Trust by Public Officer	Section 122 of the <i>Criminal Code</i>	5 years
Municipal Corruption	Section 123 of the <i>Criminal Code</i>	5 years
Offences Relating to Public or Peace Officer	Section 129 of the <i>Criminal Code</i>	2 years
Obstructing Justice	Section 139 of the <i>Criminal Code</i>	10 years
Theft	Section 322 of the <i>Criminal Code</i>	10 years
Punishment for Theft	Section 334 of the <i>Criminal Code</i>	10 years
Possession of Property Obtained by Crime	Section 354 of the <i>Criminal Code</i>	10 years
Punishment	Section 355 of the <i>Criminal Code</i>	10 years
Fraud	Section 380 of the <i>Criminal Code</i>	14 years
Intimidation	Section 423 of the <i>Criminal Code</i>	5 years
Intimidation of a Justice System Participant	Section 423.1 of the <i>Criminal Code</i>	14 years
Threats and Retaliation against Employees	Section 425.1 of the <i>Criminal Code</i>	5 years
Secret Commissions	Section 426 of the <i>Criminal Code</i>	5 years
Laundering Proceeds of Crime	Section 462.31 of the <i>Criminal Code</i>	10 years
Bribing a foreign public official	Section 3 of the <i>Corruption of Foreign Public Officials Act</i>	14 years

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

(In addition to response for article 26 paragraph 4)

The maximum sentences set out in the *Criminal Code* are intended to reflect a Parliamentary statement about the gravity of the offence. The maximum sentence applicable will also depend on whether the offence is prosecuted by indictment or by summary conviction. The *Criminal Code* also contains some mandatory minimum penalties, for example in fraud cases where the amount of the fraud is in excess of \$1M dollars.

Notwithstanding the maximum penalty prescribed, a sentence must respect the fundamental principle of sentencing, as set out in section 718.1 of the *Criminal Code*, that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Please refer to the following sections of the *Criminal Code*:

718.1

718.2

718.21

718.3

Section 718.1 provides:

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Section 718.2 provides:

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,

(ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or

(v) evidence that the offence was a terrorism offence

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

Section 718.21 provides:

718.21 A court that imposes a sentence on an organization shall also take into consideration the following factors:

(a) any advantage realized by the organization as a result of the offence;

(b) the degree of planning involved in carrying out the offence and the duration and complexity of the offence;

(c) whether the organization has attempted to conceal its assets, or convert them, in order to show that it is not able to pay a fine or make restitution;

(d) the impact that the sentence would have on the economic viability of the organization and the continued employment of its employees;

(e) the cost to public authorities of the investigation and prosecution of the offence;

(f) any regulatory penalty imposed on the organization or one of its representatives in respect of the conduct that formed the basis of the offence;

(g) whether the organization was — or any of its representatives who were involved in the commission of the offence were — convicted of a similar offence or sanctioned by a regulatory body for similar conduct;

(h) any penalty imposed by the organization on a representative for their role in the commission of the offence;

(i) any restitution that the organization is ordered to make or any amount that the organization has paid to a victim of the offence; and

(j) any measures that the organization has taken to reduce the likelihood of it committing a subsequent offence.

Section 718.3 provides:

718.3 (1) Where an enactment prescribes different degrees or kinds of punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence.

(2) Where an enactment prescribes a punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence, but no punishment is a minimum punishment unless it is declared to be a minimum punishment.

(3) Where an accused is convicted of an offence punishable with both fine and imprisonment and a term of imprisonment in default of payment of the fine is not specified in the enactment that prescribes the punishment to be imposed, the imprisonment that may be imposed in default of payment shall not exceed the term of imprisonment that is prescribed in respect of the offence.

(4) The court or youth justice court that sentences an accused may direct that the terms of imprisonment that are imposed by the court or the youth justice court or that result from the operation of subsection 734(4) or 743.5(1) or (2) shall be served consecutively, when

(a) the accused is sentenced while under sentence for an offence, and a term of imprisonment, whether in default of payment of a fine or otherwise, is imposed;

(b) the accused is found guilty or convicted of an offence punishable with both a fine and imprisonment and both are imposed;

(c) the accused is found guilty or convicted of more than one offence, and

(i) more than one fine is imposed,

(ii) terms of imprisonment for the respective offences are imposed, or

(iii) a term of imprisonment is imposed in respect of one offence and a fine is imposed in respect of another offence; or

(d) subsection 743.5(1) or (2) applies.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Canada provided cases as examples of implementation

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

In Canada, all citizens are subject to the ordinary laws of general application, both criminal and civil. Although functional immunities apply to certain categories of public officials, including parliamentarians, judges, and members of some administrative bodies, these immunities would not be a barrier to criminal investigation or prosecution relating to corruption.

Parliamentary Privilege

To carry out their duties, federal and provincial legislators enjoy a number of rights and immunities known as "privileges". However, Canadian parliamentarians are not immune from criminal prosecution except for statements made or actions taken in the course of parliamentary proceedings.

Crown Immunity

Under the doctrine of Crown immunity, public officials as Crown agents may be immune from personal liability for acts taken in furtherance of the public purposes that they are statutorily empowered to pursue. However, this immunity does not extend to acts taken outside the lawful ambit of their agency. A Crown agent offering or accepting a bribe, or otherwise engaging in corrupt practices for personal gain would not be acting in the public purposes that he or she is empowered to pursue and could therefore not rely on Crown immunity.

Judicial Immunity

In order to protect their independence, Canadian judges are protected from liability for actions taken in their judicial capacity. However, it is well established that judicial immunity would not protect a judge from criminal prosecution for accepting a bribe. Accepting a bribe could also be a ground for removing a judge from office.

Quasi-Judicial Immunity

Certain public officials, such as members of some administrative tribunals and some police commissioners, have the same immunity as judges, either by statute or as a matter of common law. For instance, the *Immigration and Refugee Protection Act*, s. 156, bars civil and criminal liability against members of the Immigration and Refugee Board for good faith exercise of their functions under the Act. However, involvement in corruption would not be protected by provisions of this kind.

Prosecutorial Discretion

Prosecutors are largely immune from judicial interference in the exercise of their discretion to choose whether or not to prosecute in particular cases. However, this immunity is not absolute: individual prosecutors may be criminally or civilly liable if they have exercised their discretion “maliciously”, for an improper or corrupt purpose.

There are no statutory texts that would pose a barrier to criminal prosecution for corruption.

In terms of immunities and/or jurisdictional or other privileges accorded to public officials, Canada has provided the following case:

In the case of *R. v. Thibault*, a former Lieutenant-Governor of the province of Quebec argued that she was protected by sovereign immunity and could not be prosecuted for acts committed during her tenure. The Superior Court of Quebec did not rule on the sovereign immunity argument as a preliminary matter, instead allowing the case to proceed. An appeal from this decision is scheduled to be argued before the Quebec Court of Appeal on December 12, 2012.

Because the principle that public officials are subject to ordinary criminal law is well established in Canada, there have been no recent examples of measures to implement para. 2 of Art. 30 of the *Convention*.

Regarding Members of Parliament privileges and immunities, please refer to the *House of Commons Procedure and Practice* which is available at the following link:
<http://www.parl.gc.ca/procedure-book-livre/Document.aspx?sbdid=ABBC077A-6DD8-4FBE-A29A-3F73554E63AA&sbpid=1&Language=E&Mode=1>

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. None of the immunities described above extend to criminal liability immunity.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

Canadian prosecutors, as Crown counsel, exercise a wide range of discretion in carrying out their duties in the public interest.

Crown counsel are obliged to exercise independent judgment in making decisions. Because their decision-making powers are delegated to them by the Attorney General, Crown counsel are subject to the same constraints faced by the Attorney General personally in that they are accountable for their decisions and they must consult where required. The independence principle protects a system of decision-making and not the absolute right of an individual prosecutor to do as he or she sees fit. Guidance to federal Crown counsel is provided in the form of the Public Prosecution Service of Canada (PPSC) Deskbook, which is a public document (*See <http://www.ppsc-sppc.gc.ca/eng/fps-sfp/fpd/toc.html>*) as well as confidential practice directives.

For example, a chapter of the Deskbook is dedicated to the decision to prosecute. In addition, there is a specific chapter dedicated to the prosecution of offences under Canada's CFPOA. Both of these chapters encourage Crown counsel to record reasons in writing where a decision is made not to prosecute an offence and to communicate the reasons for such a decision publicly in appropriate circumstances.

Canada provided cases as examples of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

499(1)

499(2)

515 (4)

515(10)(a)

679(3)(b)

679(4)(b)

679(5)

679(5.1)

Conditions that may be imposed by peace officer if accused is released pending trial:

499. (1) Where a person who has been arrested with a warrant by a peace officer is taken into custody for an offence other than one mentioned in section 522, the officer in charge may, if the warrant has been endorsed by a justice under subsection 507(6),

- (a) release the person on the person's giving a promise to appear;

(b) release the person on the person's entering into a recognizance before the officer in charge without sureties in the amount not exceeding five hundred dollars that the officer in charge directs, but without deposit of money or other valuable security; or

(c) if the person is not ordinarily resident in the province in which the person is in custody or does not ordinarily reside within two hundred kilometres of the place in which the person is in custody, release the person on the person's entering into a recognizance before the officer in charge without sureties in the amount not exceeding five hundred dollars that the officer in charge directs and, if the officer in charge so directs, on depositing with the officer in charge such sum of money or other valuable security not exceeding in amount or value five hundred dollars, as the officer in charge directs.

(2) In addition to the conditions for release set out in paragraphs (1)(a), (b) and (c), the officer in charge may also require the person to enter into an undertaking in Form 11.1 in which the person, in order to be released, undertakes to do one or more of the following things:

(a) to remain within a territorial jurisdiction specified in the undertaking;

(b) to notify a peace officer or another person mentioned in the undertaking of any change in his or her address, employment or occupation;

(c) to abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the undertaking, or from going to a place specified in the undertaking, except in accordance with the conditions specified in the undertaking;

(d) to deposit the person's passport with the peace officer or other person mentioned in the undertaking;

(e) to abstain from possessing a firearm and to surrender any firearm in the possession of the person and any authorization, licence or registration certificate or other document enabling that person to acquire or possess a firearm;

(f) to report at the times specified in the undertaking to a peace officer or other person designated in the undertaking;

(g) to abstain from

(i) the consumption of alcohol or other intoxicating substances, or

(ii) the consumption of drugs except in accordance with a medical prescription; and

(h) to comply with any other condition specified in the undertaking that the officer in charge considers necessary to ensure the safety and security of any victim of or witness to the offence.

Conditions that may be imposed by justice if accused is released pending trial:

s. 515

4) The justice may direct as conditions under subsection (2) that the accused shall do any one or more of the following things as specified in the order:

- (a) report at times to be stated in the order to a peace officer or other person designated in the order;
- (b) remain within a territorial jurisdiction specified in the order;
- (c) notify the peace officer or other person designated under paragraph (a) of any change in his address or his employment or occupation;
- (d) abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, or refrain from going to any place specified in the order, except in accordance with the conditions specified in the order that the justice considers necessary;
- (e) where the accused is the holder of a passport, deposit his passport as specified in the order;
- (e.1) comply with any other condition specified in the order that the justice considers necessary to ensure the safety and security of any victim of or witness to the offence; and
- (f) comply with such other reasonable conditions specified in the order as the justice considers desirable.

Re Considerations on release pending trial:

s. 515 (10) For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:

- (a) where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;
- (b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and
- (c) if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including
 - (i) the apparent strength of the prosecution's case,
 - (ii) the gravity of the offence,
 - (iii) the circumstances surrounding the commission of the offence, including whether a firearm was used, and
 - (iv) the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment or, in the case of an offence that involves, or whose subject-matter is, a firearm, a minimum punishment of imprisonment for a term of three years or more.

Re Considerations on release pending appeal of conviction or sentence:

s. 679 (3) In the case of an appeal referred to in paragraph (1)(a) or (c), the judge of the court of appeal may order that the appellant be released pending the determination of his appeal if the appellant establishes that

- (a) the appeal or application for leave to appeal is not frivolous;
- (b) he will surrender himself into custody in accordance with the terms of the order; and
- (c) his detention is not necessary in the public interest.

(4) In the case of an appeal referred to in paragraph (1)(b), the judge of the court of appeal may order that the appellant be released pending the determination of his appeal or until otherwise ordered by a judge of the court of appeal if the appellant establishes that

- (a) the appeal has sufficient merit that, in the circumstances, it would cause unnecessary hardship if he were detained in custody;
- (b) he will surrender himself into custody in accordance with the terms of the order; and
- (c) his detention is not necessary in the public interest.

(5) Where the judge of the court of appeal does not refuse the application of the appellant, he shall order that the appellant be released

(a) on his giving an undertaking to the judge, without conditions or with such conditions as the judge directs, to surrender himself into custody in accordance with the order, or

(b) on his entering into a recognizance

- (i) with one or more sureties,
- (ii) with deposit of money or other valuable security,
- (iii) with both sureties and deposit, or
- (iv) with neither sureties nor deposit,

in such amount, subject to such conditions, if any, and before such justice as the judge directs, and the person having the custody of the appellant shall, where the appellant complies with the order, forthwith release the appellant.

(5.1) The judge may direct that the undertaking or recognizance referred to in subsection (5) include the conditions described in subsections 515(4), (4.1) and (4.2) that the judge considers desirable.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Canada provided cases as examples of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was noted that ensuring the appearance in court of the accused person is a critical component of decisions concerning release.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

Paragraphs 4(a) and 101(a) of the *Corrections and Conditional Release Act*.

- <http://laws-lois.justice.gc.ca/eng/acts/C-44.6/>

Corrections and Conditional Release Act (S.C. 1992, c. 20)

4. The principles that guide the Service in achieving the purpose referred to in section 3 are as follows:

(a) the sentence is carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, the nature and gravity of the offence, the degree of responsibility of the offender, information from the trial or sentencing process, the release policies of and comments from the National Parole Board and information obtained from victims, offenders and other components of the criminal justice system;

101. The principles that guide the Board [Parole Board of Canada] and the provincial parole boards in achieving the purpose of conditional release are as follows:

(a) parole boards take into consideration all relevant available information, including the stated reasons and recommendations of the sentencing judge, the nature and gravity of the offence, the degree of responsibility of the offender, information from the trial or sentencing process and information obtained from victims, offenders and other components of the criminal justice system, including assessments provided by correctional authorities;

Canada provided the following examples of implementation:

Both the nature and gravity of the offence is taken into account in several aspects of the correctional process. These factors are used when determining the security classification of the offender (paragraph 17 of the Corrections and Conditional Release Regulations) and in risk assessment tools. They are also considered in the process by which the Parole Board of Canada examines cases of offenders eligible for various types of conditional release as well as those offenders who have reached their statutory release date (at the 2/3 point of their sentence). At this time CSC can refer offenders to the Parole Board for detention until the expiration of their sentence, if certain criteria are met.

Regarding the related statistical data, please see the *Corrections and Conditional Release Statistical Overview 2011* on the Public Safety Canada web site at the following link:

- <http://www.publicsafety.gc.ca/res/cor/rep/2011-ccrso-eng.aspx>

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

A public servant who has been accused of any criminal offence (including corruption) may be removed, suspended or reassigned by the deputy head of the organization depending on the nature and seriousness of the alleged offence and pending the outcome of the investigation into the allegation. Paragraph 12(1)(c) of the *Financial Administration Act* provides deputy heads with the authority to establish standards of discipline and set penalties, including termination of employment, suspension, demotion and financial penalties that may be applied to breaches of discipline or misconduct.

In addition, the *Criminal Code* provides that when a person is convicted of corruption-based offences, that person may not contract with Her Majesty or to receive any benefit under a contract between Her Majesty and any other person or to hold office under Her Majesty. The same applies to legal persons with the understanding that legal persons cannot hold office.

The presumption of innocence applies to all criminal matters and everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice in accordance with the *Canadian Charter of Rights and Freedoms*.

<http://laws-lois.justice.gc.ca/eng/Const/page-15.html>

Section 750 of the Criminal Code

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Canadian Charter of Rights and Freedoms is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>

Financial Administration Act

- <http://laws-lois.justice.gc.ca/PDF/F-11.pdf>

Financial Administration Act

12. (1) Subject to paragraphs 11.1(1)(f) and (g), every deputy head in the core public administration may, with respect to the portion for which he or she is deputy head,

- (a) determine the learning, training and development requirements of persons employed in the public service and fix the terms on which the learning, training and development may be carried out;
- (b) provide for the awards that may be made to persons employed in the public service for outstanding performance of their duties, for other meritorious achievement in relation to their duties or for inventions or practical suggestions for improvements;
- (c) establish standards of discipline and set penalties, including termination of employment, suspension, demotion to a position at a lower maximum rate of pay and financial penalties;
- (d) provide for the termination of employment, or the demotion to a position at a lower maximum rate of pay, of persons employed in the public service whose performance, in the opinion of the deputy head, is unsatisfactory;
- (e) provide for the termination of employment, or the demotion to a position at a lower maximum rate of pay, of persons employed in the public service for reasons other than breaches of discipline or misconduct; and
- (f) provide for the termination of employment of persons to whom an offer of employment is made as the result of the transfer of any work, undertaking or

business from the core public administration to anybody or corporation that is not part of the core public administration.

(2) Subject to any terms and conditions that the Governor in Council may direct, every deputy head of a separate agency, and every deputy head designated under paragraph 11(2)(b), may, with respect to the portion of the federal public administration for which he or she is deputy head,

- (a) determine the learning, training and development requirements of persons employed in the public service and fixing the terms on which the learning, training and development may be carried out;
- (b) provide for the awards that may be made to persons employed in the public service for outstanding performance of their duties, for other meritorious achievement in relation to their duties or for inventions or practical suggestions for improvements;
- (c) establish standards of discipline and set penalties, including termination of employment, suspension, demotion to a position at a lower maximum rate of pay and financial penalties; and
- (d) provide for the termination of employment, or the demotion to a position at a lower maximum rate of pay, of persons employed in the public service for reasons other than breaches of discipline or misconduct.

For cause

(3) Disciplinary action against, or the termination of employment or the demotion of, any person under paragraph (1)(c), (d) or (e) or (2)(c) or (d) may only be for cause.

Canadian Charter of Rights and Freedoms

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[...}

9. Everyone has the right not to be arbitrarily detained or imprisoned.

10. Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons therefor;
- (b) to retain and instruct counsel without delay and to be informed of that right; and
- (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

11. Any person charged with an offence has the right

- (a) to be informed without unreasonable delay of the specific offence;
- (b) to be tried within a reasonable time;
- (c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
- (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- (e) not to be denied reasonable bail without just cause;

- (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
- (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
- (h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
- (i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Criminal Code

750. (1) Where a person is convicted of an indictable offence for which the person is sentenced to imprisonment for two years or more and holds, at the time that person is convicted, an office under the Crown or other public employment, the office or employment forthwith becomes vacant.

(2) A person to whom subsection (1) applies is, until undergoing the punishment imposed on the person or the punishment substituted therefor by competent authority or receives a free pardon from Her Majesty, incapable of holding any office under the Crown or other public employment, or of being elected or sitting or voting as a member of Parliament or of a legislature or of exercising any right of suffrage.

(3) No person who is convicted of

(a) an offence under section 121, 124 or 418,

(b) an offence under section 380 committed against Her Majesty, or

(c) an offence under paragraph 80(1)(d), subsection 80(2) or section 154.01 of the Financial Administration Act,

has, after that conviction, capacity to contract with Her Majesty or to receive any benefit under a contract between Her Majesty and any other person or to hold office under Her Majesty.

(4) A person to whom subsection (3) applies may, at any time before a pardon is granted or issued to the person under section 4.1 of the Criminal Records Act, apply to the Governor in Council for the restoration of one or more of the capacities lost by the person by virtue of that subsection.

(5) Where an application is made under subsection (4), the Governor in Council may order that the capacities lost by the applicant by virtue of subsection (3) be restored to that applicant in whole or in part and subject to such conditions as the Governor in Council considers desirable in the public interest.

(6) Where a conviction is set aside by competent authority, any disability imposed by this section is removed.

The French version of the *Criminal Code* is available at the following link:
<http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

The French version of the *Canadian Charter of Rights and Freedoms* is available at the following link:

<http://laws-lois.justice.gc.ca/fra/Const/page-15.html>

Regarding the related statistical data, please refer to the Table provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (a)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Section 750 of the *Criminal Code* provides:

750. (1) Where a person is convicted of an indictable offence for which the person is sentenced to imprisonment for two years or more and holds, at the time that person is convicted,

an office under the Crown or other public employment, the office or employment forthwith becomes vacant.

(2) A person to whom subsection (1) applies is, until undergoing the punishment imposed on the person or the punishment substituted therefor by competent authority or receives a free pardon from Her Majesty, incapable of holding any office under the Crown or other public employment, or of being elected or sitting or voting as a member of Parliament or of a legislature or of exercising any right of suffrage.

(3) No person who is convicted of

(a) an offence under section 121, 124 or 418,

(b) an offence under section 380 committed against Her Majesty, or

(c) an offence under paragraph 80(1)(d), subsection 80(2) or section 154.01 of the *Financial Administration Act*,

has, after that conviction, capacity to contract with Her Majesty or to receive any benefit under a contract between Her Majesty and any other person or to hold office under Her Majesty.

(4) A person to whom subsection (3) applies may, at any time before a pardon is granted or issued to the person under section 4.1 of the *Criminal Records Act*, apply to the Governor in Council for the restoration of one or more of the capacities lost by the person by virtue of that subsection.

(5) Where an application is made under subsection (4), the Governor in Council may order that the capacities lost by the applicant by virtue of subsection (3) be restored to that applicant in whole or in part and subject to such conditions as the Governor in Council considers desirable in the public interest.

(6) Where a conviction is set aside by competent authority, any disability imposed by this section is removed.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Canada didn't provide any case of implementation but referred to the Table provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (b)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Section 750 of the *Criminal Code* provides:

750. (1) Where a person is convicted of an indictable offence for which the person is sentenced to imprisonment for two years or more and holds, at the time that person is convicted, an office under the Crown or other public employment, the office or employment forthwith becomes vacant.

(2) A person to whom subsection (1) applies is, until undergoing the punishment imposed on the person or the punishment substituted therefor by competent authority or receives a free pardon from Her Majesty, incapable of holding any office under the Crown or other public employment, or of being elected or sitting or voting as a member of Parliament or of a legislature or of exercising any right of suffrage.

(3) No person who is convicted of

(a) an offence under section 121, 124 or 418,

(b) an offence under section 380 committed against Her Majesty, or

(c) an offence under paragraph 80(1)(d), subsection 80(2) or section 154.01 of the *Financial Administration Act*,

has, after that conviction, capacity to contract with Her Majesty or to receive any benefit under a contract between Her Majesty and any other person or to hold office under Her Majesty.

(4) A person to whom subsection (3) applies may, at any time before a pardon is granted or issued to the person under section 4.1 of the *Criminal Records Act*, apply to the Governor in Council for the restoration of one or more of the capacities lost by the person by virtue of that subsection.

(5) Where an application is made under subsection (4), the Governor in Council may order that the capacities lost by the applicant by virtue of subsection (3) be restored to that applicant in whole or in part and subject to such conditions as the Governor in Council considers desirable in the public interest.

(6) Where a conviction is set aside by competent authority, any disability imposed by this section is removed.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

To demonstrate the implementation of the provision under review, Canada provided cases and statistics were provided by Statistics Canada, CCJS.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

Financial Administration Act, s. 12(1)(c)

- <http://laws-lois.justice.gc.ca/eng/acts/F-11/page-1.html#docCont>

Financial Administration Act, s. 12(1)(c)

12. (1) Subject to paragraphs 11.1(1)(f) and (g), every deputy head in the core public administration may, with respect to the portion for which he or she is deputy head,

.... (c) establish standards of discipline and set penalties, including termination of employment, suspension, demotion to a position at a lower maximum rate of pay and financial penalties;....

Regarding examples of implementation and related disciplinary cases, Canada stated that:

The Values and Ethics Code for the Public Sector and each departmental code of conduct have been established as terms and conditions of employment, therefore breaches of the codes are subject to disciplinary measures, up to and including termination of employment.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 30 Prosecution, adjudication and sanctions

Paragraph 9

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

Article 30 Prosecution, adjudication and sanctions

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

Corrections and Conditional Release Act.

- <http://laws-lois.justice.gc.ca/eng/acts/C-44.6/>

Sections 3 and 3.1 and 100 and 100.1 of the *Corrections and Conditional Release Act* indicates that reintegration of offenders as law abiding citizens as one of the main purposes of the federal correctional system and of the Parole Board of Canada. This purpose is coupled with the protection of society being the paramount consideration for both organizations.

Corrections and Conditional Release Act (S.C. 1992, c. 20)

4. The principles that guide the Service in achieving the purpose referred to in section 3 are as follows:

(a) the sentence is carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, the nature and gravity of the offence, the degree of responsibility of the offender, information from the trial or sentencing process, the release policies of and comments from the National Parole Board and information obtained from victims, offenders and other components of the criminal justice system;

100. The purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens.

100.1 The protection of society is the paramount consideration for the Board and the provincial parole boards in the determination of all cases.

Canada provided the following examples of implementation:

The mandate of the Correctional Service of Canada as described above is directed at all offenders convicted by the courts and who receive a sentence of 2 years to life, regardless of the offence committed.

The Correctional Plan is the roadmap established upon admission to the Correctional Service that identifies the offender's risks and needs and the various ways to address these issues. As such, programs that address the issues that led to the offender's conviction are available to all offenders who wish to benefit from them. They include, among others, programs addressing substance abuse and violence. Programs are also designed to meet the specific needs of populations such as women or Aboriginal peoples.

As each offender reaches his/her eligibility date for various types of conditional release, the Correctional Service prepares a detailed report using ongoing assessments of risk, and by assessing the offender's progress and adherence to his/her Correctional Plan. Based on these assessments, the Correctional Service then makes recommendations to the Parole Board of Canada (PBC), which is the decision-maker for release.

Eligibility dates for release are established in legislation and both CSC and PBC must respect the legislated dates.

Canada provided cases as examples of implementation

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

462.3

462.37(1)(2)

Criminal Code

Section 462.3 provides in part:

462.3 (1) In this Part,

....

“designated offence”

“designated offence” means

(a) any offence that may be prosecuted as an indictable offence under this or any other Act of Parliament, other than an indictable offence prescribed by regulation, or

(b) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a);

....

“proceeds of crime”

“proceeds of crime” means any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of

(a) the commission in Canada of a designated offence, or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

Section 462.37 provides:

462.37 (1) Subject to this section and sections 462.39 to 462.41, where an offender is convicted, or discharged under section 730, of a designated offence and the court imposing sentence on the offender, on application of the Attorney General, is satisfied, on a balance of probabilities, that any property is proceeds of crime and that the designated offence was committed in relation to that property, the court shall order that the property be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law.

(2) Where the evidence does not establish to the satisfaction of the court that the designated offence of which the offender is convicted, or discharged under section 730, was committed in relation to property in respect of which an order of forfeiture would otherwise be made under subsection (1) but the court is satisfied, beyond a reasonable doubt, that that property is proceeds of crime, the court may make an order of forfeiture under subsection (1) in relation to that property.

(2.01) A court imposing sentence on an offender convicted of an offence described in subsection (2.02) shall, on application of the Attorney General and subject to this section and sections 462.4 and 462.41, order that any property of the offender that is identified by the Attorney General in the application be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law if the court is satisfied, on a balance of probabilities, that

(a) within 10 years before the proceedings were commenced in respect of the offence for which the offender is being sentenced, the offender engaged in a pattern of criminal activity for the purpose of directly or indirectly receiving a material benefit, including a financial benefit; or

(b) the income of the offender from sources unrelated to designated offences cannot reasonably account for the value of all the property of the offender.

(2.02) The offences are the following:

(a) a criminal organization offence punishable by five or more years of imprisonment; and

(b) an offence under section 5, 6 or 7 of the Controlled Drugs and Substances Act — or a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to an offence under those sections — prosecuted by indictment.

(2.03) A court shall not make an order of forfeiture under subsection (2.01) in respect of any property that the offender establishes, on a balance of probabilities, is not proceeds of crime.

(2.04) In determining whether the offender has engaged in a pattern of criminal activity described in paragraph (2.01)(a), the court shall consider

(a) the circumstances of the offence for which the offender is being sentenced;

(b) any act or omission — other than an act or omission that constitutes the offence for which the offender is being sentenced — that the court is satisfied, on a balance of probabilities, was committed by the offender and constitutes an offence punishable by indictment under any Act of Parliament;

(c) any act or omission that the court is satisfied, on a balance of probabilities, was committed by the offender and is an offence in the place where it was committed and, if committed in Canada, would constitute an offence punishable by indictment under any Act of Parliament; and

(d) any other factor that the court considers relevant.

(2.05) A court shall not determine that an offender has engaged in a pattern of criminal activity unless the court is satisfied, on a balance of probabilities, that the offender committed, within the period referred to in paragraph (2.01)(a),

(a) acts or omissions — other than an act or omission that constitutes the offence for which the offender is being sentenced — that constitute at least two serious offences or one criminal organization offence;

(b) acts or omissions that are offences in the place where they were committed and, if committed in Canada, would constitute at least two serious offences or one criminal organization offence; or

(c) an act or omission described in paragraph (a) that constitutes a serious offence and an act or omission described in paragraph (b) that, if committed in Canada, would constitute a serious offence.

(2.06) Nothing in subsection (2.01) shall be interpreted as preventing the Attorney General from making an application under subsection (1) in respect of any property.

(2.07) A court may, if it considers it in the interests of justice, decline to make an order of forfeiture against any property that would otherwise be subject to forfeiture under subsection (2.01). The court shall give reasons for its decision.

(2.1) An order may be issued under this section in respect of property situated outside Canada, with any modifications that the circumstances require.

(3) If a court is satisfied that an order of forfeiture under subsection (1) or (2.01) should be made in respect of any property of an offender but that the property or any part of or interest in the

property cannot be made subject to an order, the court may, instead of ordering the property or any part of or interest in the property to be forfeited, order the offender to pay a fine in an amount equal to the value of the property or the part of or interest in the property. In particular, a court may order the offender to pay a fine if the property or any part of or interest in the property

- (a) cannot, on the exercise of due diligence, be located;
- (b) has been transferred to a third party;
- (c) is located outside Canada;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty.

(4) Where a court orders an offender to pay a fine pursuant to subsection (3), the court shall

(a) impose, in default of payment of that fine, a term of imprisonment

- (i) not exceeding six months, where the amount of the fine does not exceed ten thousand dollars,
- (ii) of not less than six months and not exceeding twelve months, where the amount of the fine exceeds ten thousand dollars but does not exceed twenty thousand dollars,
- (iii) of not less than twelve months and not exceeding eighteen months, where the amount of the fine exceeds twenty thousand dollars but does not exceed fifty thousand dollars,
- (iv) of not less than eighteen months and not exceeding two years, where the amount of the fine exceeds fifty thousand dollars but does not exceed one hundred thousand dollars,
- (v) of not less than two years and not exceeding three years, where the amount of the fine exceeds one hundred thousand dollars but does not exceed two hundred and fifty thousand dollars,
- (vi) of not less than three years and not exceeding five years, where the amount of the fine exceeds two hundred and fifty thousand dollars but does not exceed one million dollars, or
- (vii) of not less than five years and not exceeding ten years, where the amount of the fine exceeds one million dollars; and

(b) direct that the term of imprisonment imposed pursuant to paragraph (a) be served consecutively to any other term of imprisonment imposed on the offender or that the offender is then serving.

(5) Section 736 does not apply to an offender against whom a fine is imposed pursuant to subsection (3).

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Canada provided cases as examples of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was notable that Canada permits the imposition of a fine as outlined above, with graduated imprisonment penalties upon default.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (b)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

2

490.1

Criminal Code

Section 2 provides:

2. In this Act,

“offence-related property” means any property, within or outside Canada,

(a) by means or in respect of which an indictable offence under this Act or the *Corruption of Foreign Public Officials Act* is committed,

(b) that is used in any manner in connection with the commission of such an offence,
or

(c) that is intended to be used for committing such an offence;

Section 490.1 provides:

490.1 (1) Subject to sections 490.3 to 490.41, if a person is convicted of an indictable offence under this Act or the *Corruption of Foreign Public Officials Act* and, on application of the Attorney General, the court is satisfied, on a balance of probabilities, that any property is offence-related property and that the offence was committed in relation to that property, the court shall

(a) where the prosecution of the offence was commenced at the instance of the government of a province and conducted by or on behalf of that government, order that the property be forfeited to Her Majesty in right of that province and disposed of by the Attorney General or Solicitor General of that province in accordance with the law; and

(b) in any other case, order that the property be forfeited to Her Majesty in right of Canada and disposed of by the member of the Queen's Privy Council for Canada that may be designated for the purpose of this paragraph in accordance with the law.

(1.1) [Repealed, 2001, c. 41, s. 130]

(2) Subject to sections 490.3 to 490.41, if the evidence does not establish to the satisfaction of the court that the indictable offence under this Act or the *Corruption of Foreign Public Officials Act* of which a person has been convicted was committed in relation to property in respect of which an order of forfeiture would otherwise be made under subsection (1) but the court is satisfied, beyond a reasonable doubt, that the property is offence-related property, the court may make an order of forfeiture under subsection (1) in relation to that property.

(2.1) An order may be issued under this section in respect of property situated outside Canada, with any modifications that the circumstances require.

(3) A person who has been convicted of an indictable offence under this Act or the *Corruption of Foreign Public Officials Act*, or the Attorney General, may appeal to the court of appeal from an order or a failure to make an order under subsection (1) as if the appeal were an appeal against the sentence imposed on the person in respect of the offence.

The French version of the Criminal Code is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Canada provided cases as examples of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 31 Freezing, seizure and confiscation

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

and

Freezing Assets of Corrupt Foreign Officials Act (S.C. 2011, c. 10):

- <http://laws-lois.justice.gc.ca/eng/acts/F-31.6/index.html>

Please refer to the following sections of the *Criminal Code*:

462.32

462.33

487

490.8

and

Freezing Assets of Corrupt Foreign Officials Act (S.C. 2011, c. 10):

4.

Section 462.32 provides:

462.32 (1) Subject to subsection (3), if a judge, on application of the Attorney General, is satisfied by information on oath in Form 1 that there are reasonable grounds to believe that there is in any building, receptacle or place, within the province in which the judge has jurisdiction or any other province, any property in respect of which an order of forfeiture may be made under subsection 462.37(1) or (2.01) or 462.38(2), in respect of a designated offence alleged to have been committed within the province in which the judge has jurisdiction, the judge may issue a warrant authorizing a person named in the warrant or a peace officer to search the building, receptacle or place for that property and to seize that property and any other property in respect of which that person or peace officer believes, on reasonable grounds, that an order of forfeiture may be made under that subsection.

(2) An application for a warrant under subsection (1) may be made *ex parte*, shall be made in writing and shall include a statement as to whether any previous applications have been made under subsection (1) with respect to the property that is the subject of the application.

(2.1) Subject to subsection (2.2), a warrant issued pursuant to subsection (1) may be executed anywhere in Canada.

(2.2) Where a warrant is issued under subsection (1) in one province but it may be reasonably expected that it is to be executed in another province and the execution of the warrant would require entry into or on the property of any person in the other province, a judge in the other province may, on *ex parte* application, confirm the warrant, and when the warrant is so confirmed it shall have full force and effect in that other province as though it had originally been issued in that province.

(3) Subsections 487(2) to (4) and section 488 apply, with such modifications as the circumstances require, to a warrant issued under this section.

(4) Every person who executes a warrant issued by a judge under this section shall

(a) detain or cause to be detained the property seized, taking reasonable care to ensure that the property is preserved so that it may be dealt with in accordance with the law;

(b) as soon as practicable after the execution of the warrant but within a period not exceeding seven days thereafter, prepare a report in Form 5.3, identifying the property seized and the location where the property is being detained, and cause the report to be filed with the clerk of the court; and

(c) cause a copy of the report to be provided, on request, to the person from whom the property was seized and to any other person who, in the opinion of the judge, appears to have a valid interest in the property.

(4.1) Subject to this or any other Act of Parliament, a peace officer who has seized anything under a warrant issued by a judge under this section may, with the written consent of the Attorney General, on being issued a receipt for it, return the thing seized to the person lawfully entitled to its possession, if

(a) the peace officer is satisfied that there is no dispute as to who is lawfully entitled to possession of the thing seized;

(b) the peace officer is satisfied that the continued detention of the thing seized is not required for the purpose of forfeiture; and

(c) the thing seized is returned before a report is filed with the clerk of the court under paragraph (4)(b).

(5) Before issuing a warrant under this section in relation to any property, a judge may require notice to be given to and may hear any person who, in the opinion of the judge, appears to have a valid interest in the property unless the judge is of the opinion that giving such notice before the issuance of the warrant would result in the disappearance, dissipation or reduction in value of the property or otherwise affect the property so that all or a part thereof could not be seized pursuant to the warrant.

(6) Before issuing a warrant under this section, a judge shall require the Attorney General to give such undertakings as the judge considers appropriate with respect to the payment of damages or costs, or both, in relation to the issuance and execution of the warrant.

Section 462.33 provides:

462.33 (1) The Attorney General may make an application in accordance with subsection (2) for a restraint order under subsection (3) in respect of any property.

(2) An application made under subsection (1) for a restraint order under subsection (3) in respect of any property may be made *ex parte* and shall be made in writing to a judge and be accompanied by an affidavit sworn on the information and belief of the Attorney General or any other person deposing to the following matters, namely,

(a) the offence or matter under investigation;

(b) the person who is believed to be in possession of the property;

(c) the grounds for the belief that an order of forfeiture may be made under subsection 462.37(1) or (2.01) or 462.38(2) in respect of the property;

(d) a description of the property; and

(e) whether any previous applications have been made under this section with respect to the property.

(3) A judge who hears an application for a restraint order made under subsection (1) may — if the judge is satisfied that there are reasonable grounds to believe that there exists, within the province in which the judge has jurisdiction or any other province, any property in respect of which an order of forfeiture may be made under subsection 462.37(1) or (2.01) or 462.38(2), in respect of a designated offence alleged to have been committed within the province in which the judge has jurisdiction — make an order prohibiting any person from disposing of, or otherwise dealing with any interest in, the property specified in the order otherwise than in the manner that may be specified in the order.

(3.01) Subsections 462.32(2.1) and (2.2) apply, with such modifications as the circumstances require, in respect of a restraint order.

(3.1) A restraint order may be issued under this section in respect of property situated outside Canada, with any modifications that the circumstances require.

(4) An order made by a judge under subsection (3) may be subject to such reasonable conditions as the judge thinks fit.

(5) Before making an order under subsection (3) in relation to any property, a judge may require notice to be given to and may hear any person who, in the opinion of the judge, appears to have a valid interest in the property unless the judge is of the opinion that giving such notice before making the order would result in the disappearance, dissipation or reduction in value of the property or otherwise affect the property so that all or a part thereof could not be subject to an order of forfeiture under subsection 462.37(1) or (2.01) or 462.38(2).

(6) An order made under subsection (3) shall be made in writing.

(7) Before making an order under subsection (3), a judge shall require the Attorney General to give such undertakings as the judge considers appropriate with respect to the payment of damages or costs, or both, in relation to

(a) the making of an order in respect of property situated within or outside Canada; and

(b) the execution of an order in respect of property situated within Canada.

(8) A copy of an order made by a judge under subsection (3) shall be served on the person to whom the order is addressed in such manner as the judge directs or as may be prescribed by rules of court.

(9) A copy of an order made under subsection (3) shall be registered against any property in accordance with the laws of the province in which the property is situated.

(10) An order made under subsection (3) remains in effect until

(a) it is revoked or varied under subsection 462.34(4) or revoked under paragraph 462.43(a);

(b) it ceases to be in force under section 462.35; or

(c) an order of forfeiture or restoration of the property is made under subsection 462.37(1) or (2.01), 462.38(2) or 462.41(3) or any other provision of this or any other Act of Parliament.

(11) Any person on whom an order made under subsection (3) is served in accordance with this section and who, while the order is in force, acts in contravention of or fails to comply with the order is guilty of an indictable offence or an offence punishable on summary conviction.

Section 487 provides:

487. (1) A justice who is satisfied by information on oath in Form 1 that there are reasonable grounds to believe that there is in a building, receptacle or place

(a) anything on or in respect of which any offence against this Act or any other Act of Parliament has been or is suspected to have been committed,

(b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence, or will reveal the whereabouts of a person who is believed to have committed an offence, against this Act or any other Act of Parliament,

(c) anything that there are reasonable grounds to believe is intended to be used for the purpose of committing any offence against the person for which a person may be arrested without warrant, or

(c.1) any offence-related property,

may at any time issue a warrant authorizing a peace officer or a public officer who has been appointed or designated to administer or enforce a federal or provincial law and whose duties include the enforcement of this Act or any other Act of Parliament and who is named in the warrant

(d) to search the building, receptacle or place for any such thing and to seize it, and

(e) subject to any other Act of Parliament, to, as soon as practicable, bring the thing seized before, or make a report in respect thereof to, the justice or some other justice for the same territorial division in accordance with section 489.1.

(2) If the building, receptacle or place is in another territorial division, the justice may issue the warrant with any modifications that the circumstances require, and it may be executed in the other territorial division after it has been endorsed, in Form 28, by a justice who has jurisdiction in that territorial division. The endorsement may be made on the original of the warrant or on a copy of the warrant transmitted by any means of telecommunication.

(2.1) A person authorized under this section to search a computer system in a building or place for data may

(a) use or cause to be used any computer system at the building or place to search any data contained in or available to the computer system;

(b) reproduce or cause to be reproduced any data in the form of a print-out or other intelligible output;

(c) seize the print-out or other output for examination or copying; and

(d) use or cause to be used any copying equipment at the place to make copies of the data.

(2.2) Every person who is in possession or control of any building or place in respect of which a search is carried out under this section shall, on presentation of the warrant, permit the person carrying out the search

(a) to use or cause to be used any computer system at the building or place in order to search any data contained in or available to the computer system for data that the person is authorized by this section to search for;

(b) to obtain a hard copy of the data and to seize it; and

(c) to use or cause to be used any copying equipment at the place to make copies of the data.

(3) A search warrant issued under this section may be in the form set out as Form 5 in Part XXVIII, varied to suit the case.

(4) An endorsement that is made in accordance with subsection (2) is sufficient authority to the peace officers or public officers to whom the warrant was originally directed, and to all peace officers within the jurisdiction of the justice by whom it is endorsed, to execute the warrant and to deal with the things seized in accordance with section 489.1 or as otherwise provided by law.

Section 490.8 provides:

490.8 (1) The Attorney General may make an application in accordance with this section for a restraint order under this section in respect of any offence-related property.

(2) An application made under subsection (1) for a restraint order in respect of any offence-related property may be made *ex parte* and shall be made in writing to a judge and be accompanied by an affidavit sworn on the information and belief of the Attorney General or any other person deposing to the following matters:

- (a) the indictable offence to which the offence-related property relates;
- (b) the person who is believed to be in possession of the offence-related property; and
- (c) a description of the offence-related property.

(3) Where an application for a restraint order is made to a judge under subsection (1), the judge may, if satisfied that there are reasonable grounds to believe that the property is offence-related property, make a restraint order prohibiting any person from disposing of, or otherwise dealing with any interest in, the offence-related property specified in the order otherwise than in the manner that may be specified in the order.

(3.1) A restraint order may be issued under this section in respect of property situated outside Canada, with any modifications that the circumstances require.

(4) A restraint order made by a judge under this section may be subject to any reasonable conditions that the judge thinks fit.

(5) A restraint order made under this section shall be made in writing.

(6) A copy of a restraint order made under this section shall be served on the person to whom the order is addressed in any manner that the judge making the order directs or in accordance with the rules of the court.

(7) A copy of a restraint order made under this section shall be registered against any property in accordance with the laws of the province in which the property is situated.

(8) A restraint order made under this section remains in effect until

- (a) an order is made under subsection 490(9) or (11), 490.4(3) or 490.41(3) in relation to the property; or
- (b) an order of forfeiture of the property is made under section 490 or subsection 490.1(1) or 490.2(2).

(9) Any person on whom a restraint order made under this section is served in accordance with this section and who, while the order is in force, acts in contravention of or fails to comply with the order is guilty of an indictable offence or an offence punishable on summary conviction.

Freezing Assets of Corrupt Officials Act

4. (1) If a foreign state, in writing, asserts to the Government of Canada that a person has misappropriated property of the foreign state or acquired property inappropriately by virtue of their office or a personal or business relationship and asks the Government of Canada to freeze property of the person, the Governor in Council may

(a) make any orders or regulations with respect to the restriction or prohibition of any of the activities referred to in subsection (3) in relation to the person's property that the Governor in Council considers necessary; and

(b) by order, cause to be seized, frozen or sequestered in the manner set out in the order any of the person's property situated in Canada.

(2) The Governor in Council may make the order or regulation only if the Governor in Council is satisfied that

(a) the person is, in relation to the foreign state, a politically exposed foreign person;

(b) there is internal turmoil, or an uncertain political situation, in the foreign state; and

(c) the making of the order or regulation is in the interest of international relations.

(3) Orders and regulations may be made under paragraph (1)(a) with respect to the restriction or prohibition of any of the following activities, whether carried out in or outside Canada:

(a) the dealing, directly or indirectly, by any person in Canada or Canadian outside Canada in any property, wherever situated, of the politically exposed foreign person;

(b) the entering into or facilitating, directly or indirectly, by any person in Canada or Canadian outside Canada, of any financial transaction related to a dealing referred to in paragraph (a); and

(c) the provision by any person in Canada or Canadian outside Canada of financial services or other related services in respect of property of the politically exposed foreign person.

The French version of the *Criminal Code* and the *Freezing Assets of Corrupt Officials Act* is available at the following links:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>
- <http://laws-lois.justice.gc.ca/fra/lois/F-31.6/index.html>

Canada provided cases as examples of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was clarified during the country visit that there are no exceptions in the Freezing Assets of Corrupt Officials Act, and it extends to directly held assets as well as assets held by relatives and other persons.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Seized Property Management Act* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/S-8.3/index.html>

Section 3 of the *Seized Property Management Act*

3. The purposes of this Act are

(a) to authorize the Minister to provide consultative and other services to law enforcement agencies in relation to the seizure or restraint of property in connection with designated offences, or property that is or may be proceeds of crime or offence-related property;

(b) to authorize the Minister to manage certain property

(i) seized in connection with designated offences,

(ii) seized pursuant to a warrant issued under section 83.13 or 462.32 of the *Criminal Code*,

(iii) restrained pursuant to a restraint order made under section 83.13, 462.33 or 490.8 of the *Criminal Code* or section 14 of the *Controlled Drugs and Substances Act*, or

(iv) forfeited under subsection 14(5), seized under subsection 18(1) or paid under subsection 18(2) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;

(c) to authorize the Minister to manage and dispose of property referred to in paragraph (b), and property that is proceeds of crime or offence-related property, when such property is forfeited to Her Majesty; and

(d) where property referred to in paragraph (c) is forfeited to Her Majesty and disposed of, or where a fine is imposed pursuant to subsection 462.37(3) of the *Criminal Code*, to provide authority for the sharing, in certain circumstances, of the proceeds of disposition therefrom or the fine, as the case may be, with jurisdictions the law enforcement agencies of which participated in the investigations of the offences that led to the forfeiture or the imposition of the fine.

The French version of the *Seized Property Management Act* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/S-8.3/page-2.html>

Canada provided cases and statistics.

Please refer to the Tenth Report of the Seized Property Management Act by the House of Commons Standing Committee on Government Operations and Estimates online at:

- <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=1156445&Language=E&Mode=1&Parl=37&Ses=2>

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 31 Freezing, seizure and confiscation

Paragraph 4

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:
<http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Section 462.37 of the *Criminal Code*

Subsection 462.37(3) provides:

462.37 (3) If a court is satisfied that an order of forfeiture under subsection (1) or (2.01) should be made in respect of any property of an offender but that the property or any part of or interest in the property cannot be made subject to an order, the court may, instead of ordering the property or any part of or interest in the property to be forfeited, order the offender to pay a fine in an amount equal to the value of the property or the part of or interest in the property. In particular, a court may order the offender to pay a fine if the property or any part of or interest in the property

- (a) cannot, on the exercise of due diligence, be located;
- (b) has been transferred to a third party;
- (c) is located outside Canada;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Canada provided cases as examples of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was clarified during the country visit that “proceeds of crime” includes property that was purchased by the direct proceeds of crime. In addition, non-conviction-based forfeiture can occur in circumstances where a person has been charged and it has been proven beyond a reasonable doubt that the proceeds or property were obtained as the result of a criminal offence.

Article 31 Freezing, seizure and confiscation

Paragraph 5

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers

relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Please see the response in relation Subparagraph 1(a) of article 31.

Canada provided cases as examples of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. Please refer to the response to paragraph 1(a) of article 31, above.

Article 31 Freezing, seizure and confiscation

Paragraph 6

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Please see the response in relation to Subparagraph 1(a) of article 31.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was noted that such derivative income would fall within the definition of “proceeds of crime”, outlined above.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Please refer to the following sections of the *Criminal Code*:

487

487.012

Section 487 provides:

487. (1) A justice who is satisfied by information on oath in Form 1 that there are reasonable grounds to believe that there is in a building, receptacle or place

(a) anything on or in respect of which any offence against this Act or any other Act of Parliament has been or is suspected to have been committed,

(b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence, or will reveal the whereabouts of a person who is believed to have committed an offence, against this Act or any other Act of Parliament,

(c) anything that there are reasonable grounds to believe is intended to be used for the purpose of committing any offence against the person for which a person may be arrested without warrant, or

(c.1) any offence-related property,

may at any time issue a warrant authorizing a peace officer or a public officer who has been appointed or designated to administer or enforce a federal or provincial law and whose duties include the enforcement of this Act or any other Act of Parliament and who is named in the warrant

(d) to search the building, receptacle or place for any such thing and to seize it, and

(e) subject to any other Act of Parliament, to, as soon as practicable, bring the thing seized before, or make a report in respect thereof to, the justice or some other justice for the same territorial division in accordance with section 489.1.

(2) If the building, receptacle or place is in another territorial division, the justice may issue the warrant with any modifications that the circumstances require, and it may be executed in the other territorial division after it has been endorsed, in Form 28, by a justice who has jurisdiction in that territorial division. The endorsement may be made on the original of the warrant or on a copy of the warrant transmitted by any means of telecommunication.

(2.1) A person authorized under this section to search a computer system in a building or place for data may

- (a) use or cause to be used any computer system at the building or place to search any data contained in or available to the computer system;
- (b) reproduce or cause to be reproduced any data in the form of a print-out or other intelligible output;
- (c) seize the print-out or other output for examination or copying; and
- (d) use or cause to be used any copying equipment at the place to make copies of the data.

(2.2) Every person who is in possession or control of any building or place in respect of which a search is carried out under this section shall, on presentation of the warrant, permit the person carrying out the search

- (a) to use or cause to be used any computer system at the building or place in order to search any data contained in or available to the computer system for data that the person is authorized by this section to search for;
- (b) to obtain a hard copy of the data and to seize it; and
- (c) to use or cause to be used any copying equipment at the place to make copies of the data.

(3) A search warrant issued under this section may be in the form set out as Form 5 in Part XXVIII, varied to suit the case.

(4) An endorsement that is made in accordance with subsection (2) is sufficient authority to the peace officers or public officers to whom the warrant was originally directed, and to all peace officers within the jurisdiction of the justice by whom it is endorsed, to execute the warrant and to deal with the things seized in accordance with section 489.1 or as otherwise provided by law.

Section 487.012 provides:

487.012 (1) A justice or judge may order a person, other than a person under investigation for an offence referred to in paragraph (3)(a),

- (a) to produce documents, or copies of them certified by affidavit to be true copies, or to produce data; or
- (b) to prepare a document based on documents or data already in existence and produce it.

(2) The order shall require the documents or data to be produced within the time, at the place and in the form specified and given

- (a) to a peace officer named in the order; or
- (b) to a public officer named in the order, who has been appointed or designated to administer or enforce a federal or provincial law and whose duties include the enforcement of this or any other Act of Parliament.

(3) Before making an order, the justice or judge must be satisfied, on the basis of an *ex parte* application containing information on oath in writing, that there are reasonable grounds to believe that

(a) an offence against this Act or any other Act of Parliament has been or is suspected to have been committed;

(b) the documents or data will afford evidence respecting the commission of the offence; and

(c) the person who is subject to the order has possession or control of the documents or data.

(4) The order may contain any terms and conditions that the justice or judge considers advisable in the circumstances, including terms and conditions to protect a privileged communication between a lawyer and their client or, in the province of Quebec, between a lawyer or a notary and their client.

(5) The justice or judge who made the order, or a judge of the same territorial division, may revoke, renew or vary the order on an *ex parte* application made by the peace officer or public officer named in the order.

(6) Sections 489.1 and 490 apply, with any modifications that the circumstances require, in respect of documents or data produced under this section.

(7) Every copy of a document produced under this section, on proof by affidavit that it is a true copy, is admissible in evidence in proceedings under this or any other Act of Parliament and has the same probative force as the original document would have if it had been proved in the ordinary way.

(8) Copies of documents produced under this section need not be returned.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Canada provided cases as examples of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was noted that while the use of a search warrant is one option available to investigators and prosecutors, a production order under section 487.012 could also be sought. The relevant standard of proof is the same.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other

property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Subsection 462.37(2.01) of the *Criminal Code*

Subsection 462.37(2.01) provides:

462.37 (1) Subject to this section and sections 462.39 to 462.41, where an offender is convicted, or discharged under section 730, of a designated offence and the court imposing sentence on the offender, on application of the Attorney General, is satisfied, on a balance of probabilities, that any property is proceeds of crime and that the designated offence was committed in relation to that property, the court shall order that the property be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law.

(2) Where the evidence does not establish to the satisfaction of the court that the designated offence of which the offender is convicted, or discharged under section 730, was committed in relation to property in respect of which an order of forfeiture would otherwise be made under subsection (1) but the court is satisfied, beyond a reasonable doubt, that that property is proceeds of crime, the court may make an order of forfeiture under subsection (1) in relation to that property.

(2.01) A court imposing sentence on an offender convicted of an offence described in subsection (2.02) shall, on application of the Attorney General and subject to this section and sections 462.4 and 462.41, order that any property of the offender that is identified by the Attorney General in the application be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law if the court is satisfied, on a balance of probabilities, that

(a) within 10 years before the proceedings were commenced in respect of the offence for which the offender is being sentenced, the offender engaged in a pattern of criminal activity for the purpose of directly or indirectly receiving a material benefit, including a financial benefit; or

(b) the income of the offender from sources unrelated to designated offences cannot reasonably account for the value of all the property of the offender.

(2.02) The offences are the following:

(a) a criminal organization offence punishable by five or more years of imprisonment; and

(b) an offence under section 5, 6 or 7 of the *Controlled Drugs and Substances Act* — or a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to an offence under those sections — prosecuted by indictment.

(2.03) A court shall not make an order of forfeiture under subsection (2.01) in respect of any property that the offender establishes, on a balance of probabilities, is not proceeds of crime.

(2.04) In determining whether the offender has engaged in a pattern of criminal activity described in paragraph (2.01)(a), the court shall consider

(a) the circumstances of the offence for which the offender is being sentenced;

(b) any act or omission — other than an act or omission that constitutes the offence for which the offender is being sentenced — that the court is satisfied, on a balance of probabilities, was committed by the offender and constitutes an offence punishable by indictment under any Act of Parliament;

(c) any act or omission that the court is satisfied, on a balance of probabilities, was committed by the offender and is an offence in the place where it was committed and, if committed in Canada, would constitute an offence punishable by indictment under any Act of Parliament; and

(d) any other factor that the court considers relevant.

(2.05) A court shall not determine that an offender has engaged in a pattern of criminal activity unless the court is satisfied, on a balance of probabilities, that the offender committed, within the period referred to in paragraph (2.01)(a),

(a) acts or omissions — other than an act or omission that constitutes the offence for which the offender is being sentenced — that constitute at least two serious offences or one criminal organization offence;

(b) acts or omissions that are offences in the place where they were committed and, if committed in Canada, would constitute at least two serious offences or one criminal organization offence; or

(c) an act or omission described in paragraph (a) that constitutes a serious offence and an act or omission described in paragraph (b) that, if committed in Canada, would constitute a serious offence.

(2.06) Nothing in subsection (2.01) shall be interpreted as preventing the Attorney General from making an application under subsection (1) in respect of any property.

(2.07) A court may, if it considers it in the interests of justice, decline to make an order of forfeiture against any property that would otherwise be subject to forfeiture under subsection (2.01). The court shall give reasons for its decision.

(2.1) An order may be issued under this section in respect of property situated outside Canada, with any modifications that the circumstances require.

(3) If a court is satisfied that an order of forfeiture under subsection (1) or (2.01) should be made in respect of any property of an offender but that the property or any part of or interest in the property cannot be made subject to an order, the court may, instead of ordering the property or any part of or interest in the property to be forfeited, order the offender to pay a fine in an amount equal to the value of the property or the part of or interest in the property. In particular, a court may order the offender to pay a fine if the property or any part of or interest in the property

(a) cannot, on the exercise of due diligence, be located;

(b) has been transferred to a third party;

(c) is located outside Canada;

(d) has been substantially diminished in value or rendered worthless; or

(e) has been commingled with other property that cannot be divided without difficulty.

(4) Where a court orders an offender to pay a fine pursuant to subsection (3), the court shall

(a) impose, in default of payment of that fine, a term of imprisonment

(i) not exceeding six months, where the amount of the fine does not exceed ten thousand dollars,

(ii) of not less than six months and not exceeding twelve months, where the amount of the fine exceeds ten thousand dollars but does not exceed twenty thousand dollars,

(iii) of not less than twelve months and not exceeding eighteen months, where the amount of the fine exceeds twenty thousand dollars but does not exceed fifty thousand dollars,

(iv) of not less than eighteen months and not exceeding two years, where the amount of the fine exceeds fifty thousand dollars but does not exceed one hundred thousand dollars,

(v) of not less than two years and not exceeding three years, where the amount of the fine exceeds one hundred thousand dollars but does not exceed two hundred and fifty thousand dollars,

(vi) of not less than three years and not exceeding five years, where the amount of the fine exceeds two hundred and fifty thousand dollars but does not exceed one million dollars, or

(vii) of not less than five years and not exceeding ten years, where the amount of the fine exceeds one million dollars; and

(b) direct that the term of imprisonment imposed pursuant to paragraph (a) be served consecutively to any other term of imprisonment imposed on the offender or that the offender is then serving.

(5) Section 736 does not apply to an offender against whom a fine is imposed pursuant to subsection (3).

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was clarified that in the proceedings outlined above, there is always the option for the defendant to demonstrate the lawful origin of the proceeds. With regard to habitual or repeat offenders, the court may order the forfeiture of all relevant property, and the defendant would then carry the burden to prove the lawful origin on the property in order to avoid execution of the forfeiture.

Article 31 Freezing, seizure and confiscation

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

and

Freezing Assets of Corrupt Foreign Officials Act (S.C. 2011, c. 10):

- <http://laws-lois.justice.gc.ca/PDF/F-31.6.pdf>

Please refer to the following sections of the *Criminal Code*:

462.34

462.41

462.42

462.43

462.45

and

17. All secured and unsecured rights and interests in any property that is the subject of an order or regulation made under section 4 that are held by a person, other than the politically exposed foreign person who is the subject of the order or regulation, are entitled to the same ranking that they would have been entitled to had the order or regulation not been made.

Criminal Code:

Section 462.34 provides:

462.34 (1) Any person who has an interest in property that was seized under a warrant issued pursuant to section 462.32 or in respect of which a restraint order was made under subsection 462.33(3) may, at any time, apply to a judge

- (a) for an order under subsection (4); or
- (b) for permission to examine the property.

(2) Where an application is made under paragraph (1)(a),

(a) the application shall not, without the consent of the Attorney General, be heard by a judge unless the applicant has given to the Attorney General at least two clear days notice in writing of the application; and

(b) the judge may require notice of the application to be given to and may hear any person who, in the opinion of the judge, appears to have a valid interest in the property.

(3) A judge may, on an application made to the judge under paragraph (1)(b), order that the applicant be permitted to examine property subject to such terms as appear to the judge to be necessary or desirable to ensure that the property is safeguarded and preserved for any purpose for which it may subsequently be required.

(4) On an application made to a judge under paragraph (1)(a) in respect of any property and after hearing the applicant and the Attorney General and any other person to whom notice was given pursuant to paragraph (2)(b), the judge may order that the property or a part thereof be returned to the applicant or, in the case of a restraint order made under subsection 462.33(3), revoke the order, vary the order to exclude the property or any interest in the property or part thereof from the application of the order or make the order subject to such reasonable conditions as the judge thinks fit,

(a) if the applicant enters into a recognizance before the judge, with or without sureties, in such amount and with such conditions, if any, as the judge directs and, where the judge considers it appropriate, deposits with the judge such sum of money or other valuable security as the judge directs;

(b) if the conditions referred to in subsection (6) are satisfied; or

(c) for the purpose of

(i) meeting the reasonable living expenses of the person who was in possession of the property at the time the warrant was executed or the order was made or any person who, in the opinion of the judge, has a valid interest in the property and of the dependants of that person,

(ii) meeting the reasonable business and legal expenses of a person referred to in subparagraph (i), or

(iii) permitting the use of the property in order to enter into a recognizance under Part XVI,

if the judge is satisfied that the applicant has no other assets or means available for the purposes set out in this paragraph and that no other person appears to be the lawful owner of or lawfully entitled to possession of the property.

(5) For the purpose of determining the reasonableness of legal expenses referred to in subparagraph (4)(c)(ii), a judge shall hold an *in camera* hearing, without the presence of the Attorney General, and shall take into account the legal aid tariff of the province.

(5.1) For the purpose of determining the reasonableness of expenses referred to in paragraph (4)(c), the Attorney General may

(a) at the hearing of the application, make representations as to what would constitute the reasonableness of the expenses, other than legal expenses; and

(b) before or after the hearing of the application held *in camera* pursuant to subsection (5), make representations as to what would constitute reasonable legal expenses referred to in subparagraph (4)(c)(ii).

(5.2) The judge who made an order under paragraph (4)(c) may, and on the application of the Attorney General shall, tax the legal fees forming part of the legal expenses referred to in subparagraph (4)(c)(ii) and, in so doing, shall take into account

(a) the value of property in respect of which an order of forfeiture may be made;

(b) the complexity of the proceedings giving rise to those legal expenses;

(c) the importance of the issues involved in those proceedings;

(d) the duration of any hearings held in respect of those proceedings;

(e) whether any stage of those proceedings was improper or vexatious;

(f) any representations made by the Attorney General; and

(g) any other relevant matter.

(6) An order under paragraph (4)(b) in respect of property may be made by a judge if the judge is satisfied

(a) where the application is made by

(i) a person charged with a designated offence, or

(ii) any person who acquired title to or a right of possession of that property from a person referred to in subparagraph (i) under circumstances that give rise to a reasonable inference that the title or right was transferred from that person for the purpose of avoiding the forfeiture of the property,

that a warrant should not have been issued pursuant to section 462.32 or a restraint order under subsection 462.33(3) should not have been made in respect of that property, or

(b) in any other case, that the applicant is the lawful owner of or lawfully entitled to possession of the property and appears innocent of any complicity in a designated offence or of any collusion in relation to such an offence, and that no other person appears to be the lawful owner of or lawfully entitled to possession of the property,

and that the property will no longer be required for the purpose of any investigation or as evidence in any proceeding.

(7) Sections 354, 355.2 and 355.4 do not apply to a person who comes into possession of any property that, by virtue of an order made under paragraph (4)(c), was returned to any person after having been seized or was excluded from the application of a restraint order made under subsection 462.33(3).

(8) A recognizance entered into pursuant to paragraph (4)(a) may be in Form 32.

Section 462.41 provides:

462.41 (1) Before making an order under subsection 462.37(1) or (2.01) or 462.38(2) in relation to any property, a court shall require notice in accordance with subsection (2) to be given to and may hear any person who, in the opinion of the court, appears to have a valid interest in the property.

(2) A notice given under subsection (1) shall

(a) be given or served in such manner as the court directs or as may be prescribed by the rules of the court;

(b) be of such duration as the court considers reasonable or as may be prescribed by the rules of the court; and

(c) set out the designated offence charged and a description of the property.

(3) Where a court is satisfied that any person, other than

(a) a person who is charged with, or was convicted of, a designated offence, or

(b) a person who acquired title to or a right of possession of that property from a person referred to in paragraph (a) under circumstances that give rise to a reasonable inference that the title or right was transferred for the purpose of avoiding the forfeiture of the property,

is the lawful owner or is lawfully entitled to possession of any property or any part thereof that would otherwise be forfeited pursuant to subsection 462.37(1) or (2.01) or 462.38(2) and that the person appears innocent of any complicity in an offence referred to in paragraph (a) or of any collusion in relation to such an offence, the court may order that the property or part thereof be returned to that person.

Section 462.42 provides:

462.42 (1) Any person who claims an interest in property that is forfeited to Her Majesty under subsection 462.37(1) or (2.01) or 462.38(2) may, within thirty days after the forfeiture, apply by notice in writing to a judge for an order under subsection (4) unless the person is

(a) a person who is charged with, or was convicted of, a designated offence that resulted in the forfeiture; or

(b) a person who acquired title to or a right of possession of the property from a person referred to in paragraph (a) under circumstances that give rise to a reasonable inference that the title or right was transferred from that person for the purpose of avoiding the forfeiture of the property.

(2) The judge to whom an application is made under subsection (1) shall fix a day not less than thirty days after the date of filing of the application for the hearing thereof.

(3) An applicant shall serve a notice of the application made under subsection (1) and of the hearing thereof on the Attorney General at least fifteen days before the day fixed for the hearing.

(4) Where, on the hearing of an application made under subsection (1), the judge is satisfied that the applicant is not a person referred to in paragraph (1)(a) or (b) and appears innocent of any complicity in any designated offence that resulted in the forfeiture or of any collusion in relation to any such offence, the judge may make an order declaring that the interest of the applicant is not affected by the forfeiture and declaring the nature and extent of the interest.

(5) An applicant or the Attorney General may appeal to the court of appeal from an order under subsection (4) and the provisions of Part XXI with respect to procedure on appeals apply, with such modifications as the circumstances require, to appeals under this subsection.

(6) The Attorney General shall, on application made to the Attorney General by any person who has obtained an order under subsection (4) and where the periods with respect to the taking of appeals from that order have expired and any appeal from that order taken under subsection (5) has been determined,

(a) direct that the property or the part thereof to which the interest of the applicant relates be returned to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

Section 462.43 provides:

462.43 (1) Where property has been seized under a warrant issued pursuant to section 462.32, a restraint order has been made under section 462.33 in relation to any property or a recognizance has been entered into pursuant to paragraph 462.34(4)(a) in relation to any property and a judge, on application made to the judge by the Attorney General or any person having an interest in the property or on the judge's own motion, after notice given to the Attorney General and any other person having an interest in the property, is satisfied that the property will no longer be required for the purpose of section 462.37, 462.38 or any other provision of this or any other Act of Parliament respecting forfeiture or for the purpose of any investigation or as evidence in any proceeding, the judge

(a) in the case of a restraint order, shall revoke the order;

(b) in the case of a recognizance, shall cancel the recognizance; and

(c) in the case of property seized under a warrant issued pursuant to section 462.32 or property under the control of a person appointed pursuant to paragraph 462.331(1)(a),

(i) if possession of it by the person from whom it was taken is lawful, shall order that it be returned to that person,

(ii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is known, shall order that it be returned to the lawful owner or the person who is lawfully entitled to its possession, or

(iii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is not known, may order that it be forfeited to Her Majesty, to be disposed of as the Attorney General directs, or otherwise dealt with in accordance with the law.

(2) An order may be issued under this section in respect of property situated outside Canada, with any modifications that the circumstances require.

Section 462.45 provides:

462.45 Despite anything in this Part, the operation of an order of forfeiture or restoration of property under subsection 462.34(4), 462.37(1) or (2.01), 462.38(2) or 462.41(3) or section 462.43 is suspended pending

(a) any application made in respect of the property under any of those provisions or any other provision of this or any other Act of Parliament that provides for the restoration or forfeiture of such property,

(b) any appeal taken from an order of forfeiture or restoration in respect of the property,
or

(c) any other proceeding in which the right of seizure of the property is questioned,

and property shall not be disposed of within thirty days after an order of forfeiture is made under any of those provisions.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>
- *Freezing Assets of Corrupt Foreign Officials Act (S.C. 2011, c. 10)* [online: <http://laws-lois.justice.gc.ca/PDF/F-31.6.pdf>]

Regarding examples of implementation, Canada provided the following cases:

Section 462.41

In *R v. Beaulieu Estate*, [2001] N.B.J. No. 415, the Court found that section 462.34 of the *Criminal Code* permits the judge to find that any person has a valid interest in the seized property and that this section does not limit the time frame during which the person can acquire the interest. This section is intended to confer a wide discretionary power upon the court, to be exercised for the benefit of an executrix of the person in possession of the property in question at the time of seizure.

In *Wilson et al. and the Queen*, [1993] O.J. No. 2523, the Court found that innocent third parties can have their property interests in forfeitable property protected prior to forfeiture by seeking an order under section 462.41 directing the return of property to the innocent third party. That order would be made at the forfeiture hearing and before the property is ordered forfeited. To ensure that the accused does not profit from such an order, the sentencing judge can impose an equivalent fine under the authority of section 462.37 of the *Criminal Code*.

Section 462.42

In *Lumen Inc. v. Canada (Attorney General)*, [1997] Q.J. No. 2149, the Court found that under section 462.42 of the *Criminal Code*, the claimant must establish there has been no complicity or collusion with respect to the offence that resulted in the forfeiture and that the interest obtained by the claimant was not obtained in questionable circumstances. Furthermore, the claimant must also establish an interest in the property subject to forfeiture. Thus, there is an onus on a claimant to establish a claim that goes beyond that of an ordinary unsecured creditor, but rather constitutes an interest that attaches to the property itself.

In *Wilson et al. and the Queen*, [1993] O.J. No. 2523, the Court found that an order under section 462.42 of the *Criminal Code* in favour of a third party claiming an interest in the forfeited property cannot be balanced by an equivalent fine imposed on the accused. Under this section, the judge has the discretion to decline to make an order in favour of the third party even if the preconditions of the section are met. Where relief from forfeiture is granted to a third party, the offender may profit from his or her crime to the extent of the relief allowed to the third party.

Section 462.43 and Section 462.45

In *R v. Beaulieu Estate*, [2001] N.B.J. No. 415, the Court found that section 462.34 of the *Criminal Code* permits the judge to find that any person has a valid interest in the seized property and that this section does not limit the time frame during which the person can acquire the interest. This section is intended to confer a wide discretionary power upon the court, to be exercised for the benefit of an executrix of the person in possession of the property in question at the time of seizure. The Court refused to express any opinion on the scope of an application of section 462.45.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 31 Freezing, seizure and confiscation

Paragraph 10

10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 32 Protection of witnesses, experts and victims

Paragraph 1

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

The *Witness Protection Program Act* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/W-11.2/index.html>

Witness protection is an important law enforcement tool in the fight against corruption. A variety of mechanisms exist in Canada to protect vulnerable witnesses. These include a series of legal protective measures that may be used in court to protect vulnerable witnesses during their testimony (see, in particular sections 486 to 486.3 and section 486.5 of the *Criminal Code*). As well, sections 714.1-714.4 of the *Criminal Code* authorize a witness to provide evidence by means of audio or video technology, from either within Canada or outside Canada, where deemed appropriate by the court, and section 539 of the *Criminal Code* authorizes the restriction of the publication of evidence taken at a preliminary inquiry.

Various other *Criminal Code* offences apply to protect witnesses, experts, victims and other persons such as the offences of intimidation of a justice system participant (section 423.1) and obstructing justice (subsections 139(2) and (3)). Section 2 of the *Criminal Code* defines a “justice system participant”. Such participants include prosecutors, lawyers, judges, police officers, court administrative staff and jurors, as well as informants, prospective witnesses and witnesses.

Canada's federal *Witness Protection Program Act* governs the Witness Protection Program which is administered by the Royal Canadian Mounted Police. It provides for the assistance to persons who are providing evidence or information, or otherwise participating in an inquiry, investigation or prosecution of an offence. Protection under the Witness Protection Program may include relocation, accommodation, change of identity, counselling and financial support to ensure the witness's security or to facilitate the witness's re-establishment or ability to become self-sufficient. In addition, a few provinces have established, or plan to establish, provincial Witness Protection Acts.

Please refer to the following sections of the *Criminal Code*:

2

139

423

423.1

486 to 486.3

486.5 and 486.6

The *Witness Protection Program Act* can be accessed in full at:

- <http://laws-lois.justice.gc.ca/PDF/W-11.2.pdf>

Criminal Code

Section 2 provides in part :

“justice system participant”

“justice system participant” means

- (a) a member of the Senate, of the House of Commons, of a legislative assembly or of a municipal council, and
- (b) a person who plays a role in the administration of criminal justice, including
 - (i) the Minister of Public Safety and Emergency Preparedness and a Minister responsible for policing in a province,
 - (ii) a prosecutor, a lawyer, a member of the Chambre des notaires du Québec and an officer of a court,
 - (iii) a judge and a justice,
 - (iv) a juror and a person who is summoned as a juror,
 - (v) an informant, a prospective witness, a witness under subpoena and a witness who has testified,
 - (vi) a peace officer within the meaning of any of paragraphs (b), (c), (d), (e) and (g) of the definition “peace officer”,
 - (vii) a civilian employee of a police force,
 - (viii) a person employed in the administration of a court,
 - (viii.1) a public officer within the meaning of subsection 25.1(1) and a person acting at the direction of such an officer,
 - (ix) an employee of the Canada Revenue Agency who is involved in the investigation of an offence under an Act of Parliament,
 - (ix.1) an employee of the Canada Border Services Agency who is involved in the investigation of an offence under an Act of Parliament,

(x) an employee of a federal or provincial correctional service, a parole supervisor and any other person who is involved in the administration of a sentence under the supervision of such a correctional service and a person who conducts disciplinary hearings under the *Corrections and Conditional Release Act*, and

(xi) an employee and a member of the National Parole Board and of a provincial parole board;

Obstructing justice

139. (1) Every one who wilfully attempts in any manner to obstruct, pervert or defeat the course of justice in a judicial proceeding,

(a) by indemnifying or agreeing to indemnify a surety, in any way and either in whole or in part, or

(b) where he is a surety, by accepting or agreeing to accept a fee or any form of indemnity whether in whole or in part from or in respect of a person who is released or is to be released from custody,

is guilty of

(c) an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(d) an offence punishable on summary conviction.

(2) Every one who wilfully attempts in any manner other than a manner described in subsection (1) to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

(3) Without restricting the generality of subsection (2), every one shall be deemed wilfully to attempt to obstruct, pervert or defeat the course of justice who in a judicial proceeding, existing or proposed,

(a) dissuades or attempts to dissuade a person by threats, bribes or other corrupt means from giving evidence;

(b) influences or attempts to influence by threats, bribes or other corrupt means a person in his conduct as a juror; or

(c) accepts or obtains, agrees to accept or attempts to obtain a bribe or other corrupt consideration to abstain from giving evidence, or to do or to refrain from doing anything as a juror.

Intimidation

423. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain

from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,

(a) uses violence or threats of violence to that person or his or her spouse or common-law partner or children, or injures his or her property;

(b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;

(c) persistently follows that person;

(d) hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;

(e) with one or more other persons, follows that person, in a disorderly manner, on a highway;

(f) besets or watches the place where that person resides, works, carries on business or happens to be; or

(g) blocks or obstructs a highway.

(2) A person who attends at or near or approaches a dwelling-house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section.

Intimidation of a justice system participant or a journalist

423.1 (1) No person shall, without lawful authority, engage in conduct referred to in subsection (2) with the intent to provoke a state of fear in

(a) a group of persons or the general public in order to impede the administration of criminal justice;

(b) a justice system participant in order to impede him or her in the performance of his or her duties; or

(c) a journalist in order to impede him or her in the transmission to the public of information in relation to a criminal organization.

(2) The conduct referred to in subsection (1) consists of

(a) using violence against a justice system participant or a journalist or anyone known to either of them or destroying or causing damage to the property of any of those persons;

(b) threatening to engage in conduct described in paragraph (a) in Canada or elsewhere;

(c) persistently or repeatedly following a justice system participant or a journalist or anyone known to either of them, including following that person in a disorderly manner on a highway;

(d) repeatedly communicating with, either directly or indirectly, a justice system participant or a journalist or anyone known to either of them; and

(e) besetting or watching the place where a justice system participant or a journalist or anyone known to either of them resides, works, attends school, carries on business or happens to be.

(3) Every person who contravenes this section is guilty of an indictable offence and is liable to imprisonment for a term of not more than fourteen years.

Order restricting publication of evidence taken at preliminary inquiry

539. (1) Prior to the commencement of the taking of evidence at a preliminary inquiry, the justice holding the inquiry

(a) may, if application therefor is made by the prosecutor, and

(b) shall, if application therefor is made by any of the accused,

make an order directing that the evidence taken at the inquiry shall not be published in any document or broadcast or transmitted in any way before such time as, in respect of each of the accused,

(c) he or she is discharged, or

(d) if he or she is ordered to stand trial, the trial is ended.

(2) Where an accused is not represented by counsel at a preliminary inquiry, the justice holding the inquiry shall, prior to the commencement of the taking of evidence at the inquiry, inform the accused of his right to make application under subsection (1).

(3) Every one who fails to comply with an order made pursuant to subsection (1) is guilty of an offence punishable on summary conviction.

(4) [Repealed, 2005, c. 32, s. 18]

Exclusion of public in certain cases

486. (1) Any proceedings against an accused shall be held in open court, but the presiding judge or justice may order the exclusion of all or any members of the public from the court room for all or part of the proceedings if the judge or justice is of the opinion that such an order is in the interest of public morals, the maintenance of order or the proper administration of justice or is necessary to prevent injury to international relations or national defence or national security.

(2) For the purposes of subsection (1), the “proper administration of justice” includes ensuring that

(a) the interests of witnesses under the age of eighteen years are safeguarded in all proceedings; and

(b) justice system participants who are involved in the proceedings are protected.

(3) If an accused is charged with an offence under section 151, 152, 153, 153.1, 155 or 159, subsection 160(2) or (3) or section 163.1, 171, 172, 172.1, 173, 212, 271, 272, 273, 279.01, 279.011, 279.02 or 279.03 and the prosecutor or the accused applies for an order under subsection (1), the judge or justice shall, if no such order is made, state, by reference to the circumstances of the case, the reason for not making an order.

486.1 (1) In any proceedings against an accused, the judge or justice shall, on application of the prosecutor, of a witness who is under the age of eighteen years or of a witness who has a mental or physical disability, order that a support person of the witness' choice be permitted to be present and to be close to the witness while the witness testifies, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice.

(2) In any proceedings against an accused, the judge or justice may, on application of the prosecutor or a witness, order that a support person of the witness' choice be permitted to be present and to be close to the witness while the witness testifies if the judge or justice is of the opinion that the order is necessary to obtain a full and candid account from the witness of the acts complained of.

(2.1) An application referred to in subsection (1) or (2) may be made, during the proceedings, to the presiding judge or justice or, before the proceedings begin, to the judge or justice who will preside at the proceedings.

(3) In making a determination under subsection (2), the judge or justice shall take into account the age of the witness, whether the witness has a mental or physical disability, the nature of the offence, the nature of any relationship between the witness and the accused, and any other circumstance that the judge or justice considers relevant.

(4) The judge or justice shall not permit a witness to be a support person unless the judge or justice is of the opinion that doing so is necessary for the proper administration of justice.

(5) The judge or justice may order that the support person and the witness not communicate with each other while the witness testifies.

(6) No adverse inference may be drawn from the fact that an order is, or is not, made under this section.

486.2 (1) Despite section 650, in any proceedings against an accused, the judge or justice shall, on application of the prosecutor, of a witness who is under the age of eighteen years or of a witness who is able to communicate evidence but may have difficulty doing so by reason of a mental or physical disability, order that the witness testify outside the court room or behind a screen or other device that would allow the witness not to see the accused, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice.

(2) Despite section 650, in any proceedings against an accused, the judge or justice may, on application of the prosecutor or a witness, order that the witness testify outside the court room or behind a screen or other device that would allow the witness not to see the accused if the judge

or justice is of the opinion that the order is necessary to obtain a full and candid account from the witness of the acts complained of.

(2.1) An application referred to in subsection (1) or (2) may be made, during the proceedings, to the presiding judge or justice or, before the proceedings begin, to the judge or justice who will preside at the proceedings.

(3) In making a determination under subsection (2), the judge or justice shall take into account the factors referred to in subsection 486.1(3).

(4) Despite section 650, if an accused is charged with an offence referred to in subsection (5), the presiding judge or justice may order that any witness testify

(a) outside the court room if the judge or justice is of the opinion that the order is necessary to protect the safety of the witness; and

(b) outside the court room or behind a screen or other device that would allow the witness not to see the accused if the judge or justice is of the opinion that the order is necessary to obtain a full and candid account from the witness of the acts complained of.

(5) The offences for the purposes of subsection (4) are

(a) an offence under section 423.1, 467.11, 467.12 or 467.13, or a serious offence committed for the benefit of, at the direction of, or in association with, a criminal organization;

(b) a terrorism offence;

(c) an offence under subsection 16(1) or (2), 17(1), 19(1), 20(1) or 22(1) of the *Security of Information Act*; or

(d) an offence under subsection 21(1) or section 23 of the *Security of Information Act* that is committed in relation to an offence referred to in paragraph (c).

(6) If the judge or justice is of the opinion that it is necessary for a witness to testify in order to determine whether an order under subsection (2) or (4) should be made in respect of that witness, the judge or justice shall order that the witness testify in accordance with that subsection.

(7) A witness shall not testify outside the court room under subsection (1), (2), (4) or (6) unless arrangements are made for the accused, the judge or justice and the jury to watch the testimony of the witness by means of closed-circuit television or otherwise and the accused is permitted to communicate with counsel while watching the testimony.

(8) No adverse inference may be drawn from the fact that an order is, or is not, made under this section.

486.3 (1) In any proceedings against an accused, on application of the prosecutor or a witness who is under the age of eighteen years, the accused shall not personally cross-examine the witness, unless the judge or justice is of the opinion that the proper administration of justice requires the accused to personally conduct the cross-examination. The judge or justice shall appoint counsel to conduct the cross-examination if the accused does not personally conduct the cross-examination.

(2) In any proceedings against an accused, on application of the prosecutor or a witness, the accused shall not personally cross-examine the witness if the judge or justice is of the opinion that, in order to obtain a full and candid account from the witness of the acts complained of, the accused should not personally cross-examine the witness. The judge or justice shall appoint counsel to conduct the cross-examination if the accused does not personally conduct the cross-examination.

(3) In making a determination under subsection (2), the judge or justice shall take into account the factors referred to in subsection 486.1(3).

(4) In any proceedings in respect of an offence under section 264, on application of the prosecutor or the victim of the offence, the accused shall not personally cross-examine the victim unless the judge or justice is of the opinion that the proper administration of justice requires the accused to personally conduct the cross-examination. The judge or justice shall appoint counsel to conduct the cross-examination if the accused does not personally conduct the cross-examination.

(4.1) An application referred to in subsection (1), (2) or (4) may be made, during the proceedings, to the presiding judge or justice or, before the proceedings begin, to the judge or justice who will preside at the proceedings.

(5) No adverse inference may be drawn from the fact that counsel is, or is not, appointed under this section.

486.5 (1) Unless an order is made under section 486.4, on application of the prosecutor, a victim or a witness, a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is satisfied that the order is necessary for the proper administration of justice.

(2) On application of a justice system participant who is involved in proceedings in respect of an offence referred to in subsection 486.2(5) or of the prosecutor in those proceedings, a judge or justice may make an order directing that any information that could identify the justice system participant shall not be published in any document or broadcast or transmitted in any way if the judge or justice is satisfied that the order is necessary for the proper administration of justice.

(3) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice if it is not the purpose of the disclosure to make the information known in the community.

(4) An applicant for an order shall

(a) apply in writing to the presiding judge or justice or, if the judge or justice has not been determined, to a judge of a superior court of criminal jurisdiction in the judicial district where the proceedings will take place; and

(b) provide notice of the application to the prosecutor, the accused and any other person affected by the order that the judge or justice specifies.

(5) An applicant for an order shall set out the grounds on which the applicant relies to establish that the order is necessary for the proper administration of justice.

(6) The judge or justice may hold a hearing to determine whether an order should be made, and the hearing may be in private.

(7) In determining whether to make an order, the judge or justice shall consider

(a) the right to a fair and public hearing;

(b) whether there is a real and substantial risk that the victim, witness or justice system participant would suffer significant harm if their identity were disclosed;

(c) whether the victim, witness or justice system participant needs the order for their security or to protect them from intimidation or retaliation;

(d) society's interest in encouraging the reporting of offences and the participation of victims, witnesses and justice system participants in the criminal justice process;

(e) whether effective alternatives are available to protect the identity of the victim, witness or justice system participant;

(f) the salutary and deleterious effects of the proposed order;

(g) the impact of the proposed order on the freedom of expression of those affected by it; and

(h) any other factor that the judge or justice considers relevant.

(8) An order may be subject to any conditions that the judge or justice thinks fit.

(9) Unless the judge or justice refuses to make an order, no person shall publish in any document or broadcast or transmit in any way

(a) the contents of an application;

(b) any evidence taken, information given or submissions made at a hearing under subsection (6); or

(c) any other information that could identify the person to whom the application relates as a victim, witness or justice system participant in the proceedings.

486.6 (1) Every person who fails to comply with an order made under subsection 486.4(1), (2) or (3) or 486.5(1) or (2) is guilty of an offence punishable on summary conviction.

(2) For greater certainty, an order referred to in subsection (1) applies to prohibit, in relation to proceedings taken against any person who fails to comply with the order, the publication in any document or the broadcasting or transmission in any way of information that could identify a victim, witness or justice system participant whose identity is protected by the order.

714.1 A court may order that a witness in Canada give evidence by means of technology that permits the witness to testify elsewhere in Canada in the virtual presence of the parties and the court, if the court is of the opinion that it would be appropriate in all the circumstances, including

- (a) the location and personal circumstances of the witness;
- (b) the costs that would be incurred if the witness had to be physically present; and
- (c) the nature of the witness' anticipated evidence.

714.2 (1) A court shall receive evidence given by a witness outside Canada by means of technology that permits the witness to testify in the virtual presence of the parties and the court unless one of the parties satisfies the court that the reception of such testimony would be contrary to the principles of fundamental justice.

(2) A party who wishes to call a witness to give evidence under subsection (1) shall give notice to the court before which the evidence is to be given and the other parties of their intention to do so not less than ten days before the witness is scheduled to testify.

714.3 The court may order that a witness in Canada give evidence by means of technology that permits the parties and the court to hear and examine the witness elsewhere in Canada, if the court is of the opinion that it would be appropriate, considering all the circumstances including

- (a) the location and personal circumstances of the witness;
- (b) the costs that would be incurred if the witness had to be physically present;
- (c) the nature of the witness' anticipated evidence; and
- (d) any potential prejudice to either of the parties caused by the fact that the witness would not be seen by them.

714.4 The court may receive evidence given by a witness outside Canada by means of technology that permits the parties and the court in Canada to hear and examine the witness, if the court is of the opinion that it would be appropriate, considering all the circumstances including

- (a) the nature of the witness' anticipated evidence; and
- (b) any potential prejudice to either of the parties caused by the fact that the witness would not be seen by them.

714.5 The evidence given under section 714.2 or 714.4 shall be given

- (a) under oath or affirmation in accordance with Canadian law;
- (b) under oath or affirmation in accordance with the law in the place in which the witness is physically present; or
- (c) in any other manner that demonstrates that the witness understands that they must tell the truth.

714.6 When a witness who is outside Canada gives evidence under section 714.2 or 714.4, the evidence is deemed to be given in Canada, and given under oath or affirmation in

accordance with Canadian law, for the purposes of the laws relating to evidence, procedure, perjury and contempt of court.

714.7 A party who wishes to call a witness to give evidence by means of the technology referred to in section 714.1, 714.2, 714.3 or 714.4 shall pay any costs associated with the use of the technology.

714.8 Nothing in sections 714.1 to 714.7 is to be construed as preventing a court from receiving evidence by means of the technology referred to in sections 714.1 to 714.4 if the parties so consent.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

The French version of the *Witness Protection Program Act* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/W-11.2/index.html>

Regarding the examples of implementation, Canada provided the following case:

R. v. Reynolds (1010), 260 CCC (On.CA) – where charges are laid under subsection 139(3), the Crown must show direct linkage between the threats made to the witness and the witness' refusal to testify.

The statistics provided are based on the services provided by the Royal Canadian Mounted Police between April 1, 2010 and March 31, 2011. Protectees include individuals from RCMP cases, protectees referred by other Canadian police services and foreign protectees under subsection 14(2) of the Witness Protection Act. Protection given under subsection 14(2) is on a cost-recovery basis, including the related expenses of RCMP personnel.

In order to not jeopardize the integrity of the Program, or the safety of any individual within the Program, statistics have been provided on the most relevant areas of the Program, without details concerning individual cases. As such, details pertaining to the duration of protection are not available.

Regarding the witness protection programme, Canada provided the following information:

In the period 2011-2012, the RCMP considered a total number of one hundred and eight cases for admission purposes. Thirty protectees were admitted to the Program, of which twenty-seven were granted a secure name change. Of these, twenty-six protectees accepted in the Program resulted from RCMP cases. In addition, the RCMP provided assistance to other Canadian law enforcement agencies during the last year, as provided for under paragraph 6(1)(a) of the Act. The force admitted four protectees into the Program on behalf of other Canadian law enforcement agencies. The assistance provided by the RCMP in these instances is mostly related to securing federal documentation. The responsibility for protective measures for these protectees rests with the requesting agencies.

Eleven cases were provided with alternative methods of protection. Alternative methods of protection are provided in cases where individuals refuse to be admitted into the Witness

Protection Program or fail to meet the criteria for admission into the Program. Some of the reasons stated for the refusals include the conditions imposed and an unwillingness to relocate.

Fluctuations related to admissions from year to year are largely due to: i) law enforcement activities during the fiscal year, ii) single protectees, rather than those with dependents, being admitted to the Program, and iii) variables outside the administration of the RCMP Witness Protection Program.

Figures for 2009-2010, 2010-2011 and 2011-2012 are provided below:

Statistical Summary of WPP Cases - Fiscal Years -

Number of	2009-2010	2010-2011	2011-2012
Total Number of RCMP Cases assessed for the program:	125*	106	108
Total Number of Protectees accepted in the WPP:	20	16	30
-other law enforcement agencies	(8)	(2)	(4)
-RCMP	(12)	(14)	(26)
Total secure identity change:	17	15	27
Voluntary Terminations:	9	8	8
Involuntary Terminations:	3	5	2
Refusal of protection by witnesses:	30	28	18
Lawsuits filed in court and complaints with the Commission for Public Complaints against the RCMP in relation to the program:	6**	4	3
Alternate methods of protection:	31	17	11

* 170 individuals were assessed for the program which equated to 125 cases.

** 2 Complaints withdrawn

Canada does not have an estimated cost per person, but the total cost of the administration of the Program for the reporting year was \$9.147M, which includes wages for personnel, expenses, travel costs, administrative and protectee relocation expenses. The cost breaks down as follows:

RCMP Expenditures 2011-2012

<i>1) RCMP Compensation:</i>	<i>\$4,528,423.18</i>
<i>2) Public Servant Compensation:</i>	<i>\$553,885.74</i>
<i>3) Other Police Department Secondment:</i>	<i>\$255,301.85</i>
<i>4) Travel:</i>	<i>\$467,372.61</i>
<i>5) Administration:</i>	<i>\$349,539.79</i>
<i>6) Witness Protection Expenses:</i>	<i>\$1,735,840.10</i>
<i>7) Miscellaneous:</i>	<i>\$1,243,767.95</i>
<i>8) Civil Litigation Costs:</i>	<i>\$13,472.00</i>
<i>Total:</i>	<i>\$9,147, 603.22</i>

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (a)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Please see the previous responses to this article of the Convention.

The RCMP has developed a clear policy consistent with the *Witness Protection Program Act* and requires each of its division to designate a Witness Protection Program Coordinator (WPPC) to coordinate protection measures in accordance with the Act.

The country under review provided the following laws:

The *Witness Protection Program Act* and the annual report are available at the following links:

- <http://laws-lois.justice.gc.ca/PDF/W-11.2.pdf>
- <http://www.publicsafety.gc.ca/abt/dpr/le/wppa2011-12-eng.aspx>

Witness Protection Program Act, ss. 8 -13

Deemed terms of protection agreement

8. A protection agreement is deemed to include an obligation

(a) on the part of the Commissioner, to take such reasonable steps as are necessary to provide the protection referred to in the agreement to the protectee; and

(b) on the part of the protectee,

(i) to give the information or evidence or participate as required in relation to the inquiry, investigation or prosecution to which the protection provided under the agreement relates,

(ii) to meet all financial obligations incurred by the protectee at law that are not by the terms of the agreement payable by the Commissioner,

(iii) to meet all legal obligations incurred by the protectee, including any obligations regarding the custody and maintenance of children,

(iv) to refrain from activities that constitute an offence against an Act of Parliament or that might compromise the security of the protectee, another protectee or the Program, and

(v) to accept and give effect to reasonable requests and directions made by the Commissioner in relation to the protection provided to the protectee and the obligations of the protectee.

Termination of protection

9. (1) The Commissioner may terminate the protection provided to a protectee if the Commissioner has evidence that there has been

(a) a material misrepresentation or a failure to disclose information relevant to the admission of the protectee to the Program; or

(b) a deliberate and material contravention of the obligations of the protectee under the protection agreement.

Notification of proposed termination

(2) The Commissioner shall, before terminating the protection provided to a protectee, take reasonable steps to notify the protectee and allow the protectee to make representations concerning the matter.

10. Where a decision is taken

(a) to refuse to admit a witness to the Program, the Commissioner shall provide the law enforcement agency or international criminal court or tribunal that recommended the admission or, in the case of a witness recommended by the Force, the witness, with written reasons to enable the agency, court, tribunal or witness to understand the basis for the decision; or

(b) to terminate protection without the consent of a protectee, the Commissioner shall provide the protectee with written reasons to enable the protectee to understand the basis for the decision.

PROTECTION OF IDENTITY

11. (1) Subject to this section, no person shall knowingly disclose, directly or indirectly, information about the location or a change of identity of a protectee or former protectee.

(2) Subsection (1) does not apply

(a) to a protectee or former protectee who discloses information about the protectee or former protectee if the disclosure does not endanger the safety of another protectee or former protectee and does not compromise the integrity of the Program; or

(b) to a person who discloses information that was disclosed to the person by a protectee or former protectee if the disclosure does not endanger the safety of the protectee or former protectee or another protectee or former protectee and does not compromise the integrity of the Program.

(3) Information about the location or a change of identity of a protectee or former protectee may be disclosed by the Commissioner

(a) with the consent of the protectee or former protectee;

(b) if the protectee or former protectee has previously disclosed the information or acted in a manner that results in the disclosure;

(c) if the disclosure is essential in the public interest for purposes such as

(i) the investigation of a serious offence where there is reason to believe that the protectee or former protectee can provide material information or evidence in relation to, or has been involved in the commission of, the offence,

(ii) the prevention of the commission of a serious offence, or

(iii) national security or national defence; or

(d) in criminal proceedings where the disclosure is essential to establish the innocence of a person.

(4) A disclosure of information made to a person under this section does not authorize the person to disclose the information to anyone else.

(5) The Commissioner shall, before disclosing information about a person in the circumstances referred to in paragraph (3)(b), (c) or (d), take reasonable steps to notify the person and allow the person to make representations concerning the matter.

(6) Subsection (5) does not apply if, in the opinion of the Commissioner, the result of notifying the person would impede the investigation of an offence.

Factors to be considered

12. The following factors shall be considered in determining whether information about a person should be disclosed under section 11:

(a) the reasons for the disclosure;

(b) the danger or adverse consequences of the disclosure in relation to the person and the integrity of the Program;

(c) the likelihood that the information will be used solely for the purpose for which the disclosure is made;

(d) whether the need for the disclosure can be effectively met by another means; and

(e) whether there are effective means available to prevent further disclosure of the information.

Use of new identity

13. A person whose identity has been changed as a consequence of the protection provided under the Program shall not be liable or otherwise punished for making a claim that the new identity is and has been the person's only identity.

In order to not jeopardize the integrity of the Program, or the safety of any individual within the Program, statistics have been provided on the most relevant areas of the Program, without details concerning individual cases.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (b)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Please see the responses previously given for this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:
<http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Canada's *Criminal Code* provides procedural and evidentiary rules that allow witnesses and experts to give testimony in a manner that ensures their safety, including through the use of videoconferencing.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

The list of cases provided below is not exhaustive; it provides a few examples of situations where the courts have endorsed the use of the protective measures provided in the *Criminal Code*.

Canada provided the following cases:

Witness safety (s. 486.2(4))

R. v. Allen, [2007] O.J. No. 1353 (when physical safety of a witness is at risk) <http://www.lexisnexis.com/ca/legal/docview/getDocForCuiReq?lni=4NJP-SV00-TWVB-315C&csi=280717&oc=00240&perma=true>

In this case, the Crown presented an application under section 714.1 of the *Criminal Code* to allow two witnesses to testify by video link at a preliminary inquiry hearing. The first witness had been granted immunity and was in a witness protection program. There was also reliable information that a “hit” had been placed on his head. The second witness was the accused’s ex-girlfriend and sought not to disclose her place of residence for safety reasons.

The charges involved organized crime and fitted within the parameters of subsection 486.2(5) in the *Criminal Code*.

At paragraph 15, B.W. Duncan J. noted that: “[...] where Parliament has authorized the use of new technology to address a problem, courts should not hesitate to embrace it, where appropriate. There should be no bias in favour of doing things the traditional way. Here the court has been given a tool that provides a perfect solution to the problem of witness safety. I would think that, before a court refuses to use it, there must be some very substantial downside to doing so.”

He explained that the burden on the Crown in that section is not heavy because “The court owes a duty to protect witnesses. No witness should have to risk his life to testify. If there is any possibility of harm, the court should find that necessity has been established.” (paragraph 17). He also mentioned that he would “interpret the section as meaning that if the court is satisfied that some measure is necessary to protect the safety of the witness, then video-link evidence is one alternative that the court may employ. It should be seen as the equal of other measures and can be used by itself, or in conjunction with traditional measures – or not at all” (paragraph 18).

The court concluded that there was no significant negative impact on the rights of the accused in proceeding by video-link for the first witness. The court dismissed the application for the second witness because there had been no real threat made against her and she had already testified in person.

R.v.Allen,

2007, ONCJ 209

<http://canlii.org/en/on/oncj/doc/2007/2007oncj209/2007oncj209.html>

This decision provides, at paragraphs 30-37, a detailed postscript of the court’s observations after receiving evidence by video-link from the witness mentioned in the previous case (*R. v. Allen*, [2007] O.J. No. 1353). The court concluded that “In substance, it was the equal of having the witness in court and, as mentioned, in one respect it was even superior. In my view, the use of the video technology in this case had no negative impact on the proceedings”.

R.v.Ragan,

2008, ABQB 58

<http://canlii.org/en/ab/abqb/doc/2008/2008abqb658/2008abqb658.html>

In this case, the accused was charged with conspiracy to commit murder and assault. The Crown sought an order under s. 714.1 to allow the witness, who was shot during the commission of the offence, to give “virtual evidence” via video link.

The court found that application to give evidence via video-link based on concerns for witness safety fall under section 486.2 of the *Criminal Code*. At paragraph 36, the court mentioned that the alleged offence was not among those enumerated at subsection 486.2(5) and that section 714.1 does not apply because there were not any legitimate health concerns for the witness.

After providing a thorough review of section 714.1 case law, Justice Topolniski mentioned “I do not share the enthusiasm expressed by some other courts about allowing virtual presence testimony in cases where the nature of the evidence is contentious and credibility assessment is an important feature of the case. In those circumstances, courts should be reluctant to deprive the trier of fact of seeing the witness physically present in the courtroom. Compelling evidence would have to be presented to satisfy me otherwise. The Crown in the present case has not produced compelling evidence for testimonial accommodation. Mr. Bissett is a critical witness. His evidence is controversial and credibility will be highly contested. Compounding the credibility assessment is that a jury, inexperienced in the fine points of making such assessments, will be undertaking the task. It is also a factor that, even with the best of cautions against prohibited reasoning, the jury might infer from Mr. Bissett testifying by video link that the accused was connected with his shooting.” (paragraphs 57-58).

At paragraph 61, the court concluded by dismissing the application: “In brief, while I am satisfied that the technology would be adequate to permit a free-flowing cross-examination and that the right to face one’s accuser can be met by virtual presence, I am in no way satisfied that the health of this critical witness, whose credibility must be assessed by a jury, is such that it warrants testimonial accommodation. Alternate measures can be taken to assuage Mr. Bissett’s anxiety.”

R. v. Hainnu, 2011 NUCJ 14 (right to face-to-face confrontation is not absolute)
<http://www.lexisnexis.com/ca/legal/docview/getDocForCuiReq?lni=53DB-0HM1-DYH1-F309&csi=281030&oc=00240&perma=true>

Application by the Crown to allow two 15 year old complainants to testify by videoconferencing in proceedings involving four accused. The charges involved multiple sex offences against the complainants, who were now receiving treatment. The complainant’s psychologist testified that the complainants were being closely monitored for depression and suicidal ideas and that having to testify in the same room as the defendants would significantly impact their emotional state.

In its decision, the Court dealt with many concerns raised by counsel for the defendants. One of them had to do with the integrity of the proposed examination site: “A degree of common sense must prevail. This Court will jealously guard the right of any accused to a fair trial within those limits contemplated by law. This Court is not about to allow videoconferencing by Skype from a busy high school cafeteria. It will not allow any witness to be subject to distractions while testifying, whether speaking in court or out. The videoconferencing location must be secure. The

Court expects the undivided attention of any witness as he or she testifies. This is so whether the person is physically present in court or ‘virtually present’ by means of a videoconferencing link.”

The Crown’s application was granted on the basis that the accused’s right to face-to-face confrontation is not absolute. The Court elected to decide the merits of the Crown application on the basis of section 714.1 alone, but mentioned that the Crown should have also directed its mind to the provisions of section 486.2, which deals with the protection of vulnerable witnesses. The court stated: “By virtue of the latest amendments to the *Criminal Code*, these 15 year old witnesses now have a presumptive right to testify by way of videoconferencing in “any proceedings against an accused” (section 486.2(1)). This right applies equally to preliminary inquiries and trials. The Court still has the discretion to order personal attendance for testimonial purposes, but may do so only where the Judge is of the opinion that the use of a testimonial aid would “interfere with the proper administration of justice”.

To address violent in-court conduct from the accused and prevent further hardship for the victim, in the context of a sentencing hearing:

R. v. T.P.S., 2003 YKSC 52

<http://canlii.org/en/yk/yksc/doc/2003/2003yksc52/2003yksc52.html>

In this decision, the Court considered the interpretation of section 714.1 of the *Criminal Code* for the purposes of a sentencing hearing. The accused had behaved violently in the courtroom to the extent that he had been ordered to appear with shackles and manacles. The judge noted that the power of the Court in a section 714.1 application “is not limited to the enumerated factors set out, but rather the court can take into account that it would be appropriate in all of the circumstances”. The Court mentioned that the witness was residing outside the Yukon and found that “her personal circumstances as a victim, her emotional trauma and what she saw and heard in the courtroom strongly support her appearance by video in the sentencing hearing. It is difficult to imagine more serious circumstances”. The witness was therefore allowed to testify by videoconference.

Child witness:

R.v.Osmond,
2010, CanLII, 6535 (NLPC)

<http://canlii.org/en/nl/nlpc/doc/2010/2010canlii6535/2010canlii6535.html>

The Crown applied, pursuant to section 714.1 of the *Criminal Code*, for an order allowing a six year old witness to testify by video link from elsewhere in the province. The Court stated that factors to be considered include:

- The hardship which might be caused to the witness if he had to be present in person, including any potential impact on the witness’ health; and
- If his or her presence will result in an attempt to intimidate the witness.

No statistics are available.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 32 Protection of witnesses, experts and victims

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

The RCMP has several agreements with other States regarding the relocation of persons. Numbers and statistics are not made available.

Please see the Witness Protection Program Act, s. 14

The *Witness Protection Program Act* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/W-11.2/index.html>

AGREEMENTS AND ARRANGEMENTS WITH OTHER JURISDICTIONS

Commissioner's agreements

14. (1) The Commissioner may enter into an agreement

(a) with a law enforcement agency to enable a witness who is involved in activities of the law enforcement agency to be admitted to the Program;

(b) with the Attorney General of a province in respect of which an arrangement has been entered into under section 20 of the Royal Canadian Mounted Police Act to enable a witness who is involved in activities of the Force in that province to be admitted to the Program; and

(c) with any provincial authority in order to obtain documents and other information that may be required for the protection of a protectee.

(2) The Minister may enter into a reciprocal arrangement with the government of a foreign jurisdiction to enable a witness who is involved in activities of a law enforcement agency in that jurisdiction to be admitted to the Program, but no such person may be admitted to Canada

pursuant to any such arrangement without the consent of the Minister of Citizenship and Immigration nor admitted to the Program without the consent of the Minister.

(3) The Minister may enter into an arrangement with an international criminal court or tribunal to enable a witness who is involved in activities of that court or tribunal to be admitted to the Program, but no such person may be admitted to Canada pursuant to any such arrangement without the consent of the Minister of Citizenship and Immigration, nor admitted to the Program without the consent of the Minister.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 32 Protection of witnesses, experts and victims

Paragraph 4

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

The measures described above apply to victims insofar as they are witnesses. Please note that this response focuses on the evidentiary measures to permit witnesses and victims to provide testimony.

The physical protection of victims and witnesses is the responsibility of provincial enforcement agencies, and of the RCMP where they provide contract policing services. Consistent with the objective of protecting victim safety, numbers of victims who have received physical protection or relocation are not public information.

Testimonial Aids:

The *Criminal Code* includes testimonial aids and other measures that make it easier for vulnerable victims and witnesses to provide their testimony in criminal court. Testimonial aids, (including screens, close-circuit television, video-recorded evidence, the use of a voice amplifier), publication bans, exclusion of witnesses, and support persons in the courts are being used in the provinces and territories to varying degrees to assist young child and youth victims

and witnesses of crime to testify. These aids have been available for child victims and witnesses since 1988.

Amendments to these provisions as well as provisions in the *Canada Evidence Act* regarding the capacity of child victims and witnesses to testify came into effect in January 2006. The amendments to the *Criminal Code* provide victims and witnesses under the age of eighteen years with greater certainty that the testimonial aids will be available during their testimony and make testimonial aids available to vulnerable adult victims and witnesses. Testimonial aids include:

- Allowing victims and witnesses to testify outside the courtroom by closed-circuit TV or behind a screen which would allow the witness not to see the accused;
- Having a support person present while victims and witnesses testify in order to make them more comfortable; and
- Appointing a lawyer to conduct the cross-examination of victims and witnesses when the accused is self-represented.

Specifically, the 2006 reforms created three categories of victims/witnesses and applicable tests for the use of these aids:

- **child victims/witnesses under 18 years or victims/witnesses with a disability**, for whom the test is: upon application, use of the aid shall be permitted unless it would interfere with the proper administration of justice;
- **victims of criminal harassment**: in cases involving criminal harassment, the judge must appoint a counsel to conduct the cross-examination of the victim upon application upon application, unless it would interfere with the proper administration of justice; and
- **other vulnerable victims and witnesses** for whom the test is: upon application, use of the aid shall be permitted where, based on the surrounding circumstances including the nature of the offence and any relationship between the victim and the accused, any physical or mental disability, or any other relevant circumstance, the victim would be unable to provide a full and candid account without the testimonial aid.

Publication Bans:

The principle of openness is one of the hallmarks of the Canadian criminal justice system. As a general rule, all proceedings take place in open court and the names of witnesses, victims and accused persons are made public. There are instances in which the law makes an exception but these exceptions must be made with the proper administration of justice in mind — avoiding simple embarrassment or inconvenience are not sufficient reasons to justify a publication ban.

The *Criminal Code* provides that the judge may make an order to protect the identity of any victim or witness, or any information that could disclose his or her identity, if the judge is satisfied that the order is “necessary for the proper administration of justice.”

The *Criminal Code* provides guidance for judges to assist them in determining whether to order a publication ban in non-sexual offences. The judge must take into consideration any relevant factors, including:

- the right of the accused person to a fair and public hearing;
- whether there is a real and substantial risk that the victim or witness would suffer significant harm if his or her identity were to be disclosed;
- the availability of effective alternatives to protect the identity of the victim or witness; and
- the impact of the proposed order on the freedom of expression of those affected by it.

The *Criminal Code* sets out the steps for seeking out a publication ban:

- The victim or witness must make an application or request for a publication ban in writing. It is essential for the victim or witnesses to indicate why he/she needs this type of protection;
- The victim or witness makes the application to the judge who will be hearing the case. If a judge has not yet been assigned to the case, the victim or witness may make the request to any superior court judge in the jurisdiction;
- The Crown prosecutor, the accused and any other person that may be affected by the publication ban must be notified about the application. The judge will decide whether the notice should be provided to the media or others that may be affected. For example, local newspapers would need to know, because a publication ban would restrict how they report on the trial or proceedings; and
- The judge may hold a hearing to consider the request for the publication ban. At the hearing, the victim or witness has an opportunity to say why the order is necessary for him or her. The Crown prosecutor, the accused, the media or other parties who are affected by the order may also speak.

A hearing to decide whether to order a publication ban may be held in private, rather than in open court. The hearing is generally less formal than a trial. The victim or witness requesting the publication ban can speak for themselves or a lawyer can speak on their behalf. Where the judge agrees that a publication ban is necessary to protect the identity of the victim or witness, the judge will order the ban. The order may have certain terms or conditions attached — for example, it may be effective only for a fixed period of time.

Please refer to the following sections of the *Criminal Code*:

486

486.1

486.2

486.3

486.5

486.6

Section 486 provides:

486. (1) Any proceedings against an accused shall be held in open court, but the presiding judge or justice may order the exclusion of all or any members of the public from the court room for all or part of the proceedings if the judge or justice is of the opinion that such an order is in the interest of public morals, the maintenance of order or the proper administration of justice or is necessary to prevent injury to international relations or national defence or national security.

(2) For the purposes of subsection (1), the “proper administration of justice” includes ensuring that

(a) the interests of witnesses under the age of eighteen years are safeguarded in all proceedings; and

(b) justice system participants who are involved in the proceedings are protected.

(3) If an accused is charged with an offence under section 151, 152, 153, 153.1, 155 or 159, subsection 160(2) or (3) or section 163.1, 171, 172, 172.1, 173, 212, 271, 272, 273, 279.01, 279.011, 279.02 or 279.03 and the prosecutor or the accused applies for an order under subsection (1), the judge or justice shall, if no such order is made, state, by reference to the circumstances of the case, the reason for not making an order.

Section 486.1 provides:

486.1 (1) In any proceedings against an accused, the judge or justice shall, on application of the prosecutor, of a witness who is under the age of eighteen years or of a witness who has a mental or physical disability, order that a support person of the witness’ choice be permitted to be present and to be close to the witness while the witness testifies, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice.

(2) In any proceedings against an accused, the judge or justice may, on application of the prosecutor or a witness, order that a support person of the witness’ choice be permitted to be present and to be close to the witness while the witness testifies if the judge or justice is of the opinion that the order is necessary to obtain a full and candid account from the witness of the acts complained of.

(2.1) An application referred to in subsection (1) or (2) may be made, during the proceedings, to the presiding judge or justice or, before the proceedings begin, to the judge or justice who will preside at the proceedings.

(3) In making a determination under subsection (2), the judge or justice shall take into account the age of the witness, whether the witness has a mental or physical disability, the nature of the

offence, the nature of any relationship between the witness and the accused, and any other circumstance that the judge or justice considers relevant.

(4) The judge or justice shall not permit a witness to be a support person unless the judge or justice is of the opinion that doing so is necessary for the proper administration of justice.

(5) The judge or justice may order that the support person and the witness not communicate with each other while the witness testifies.

(6) No adverse inference may be drawn from the fact that an order is, or is not, made under this section.

Section 486.2 provides:

486.2 (1) Despite section 650, in any proceedings against an accused, the judge or justice shall, on application of the prosecutor, of a witness who is under the age of eighteen years or of a witness who is able to communicate evidence but may have difficulty doing so by reason of a mental or physical disability, order that the witness testify outside the court room or behind a screen or other device that would allow the witness not to see the accused, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice.

(2) Despite section 650, in any proceedings against an accused, the judge or justice may, on application of the prosecutor or a witness, order that the witness testify outside the court room or behind a screen or other device that would allow the witness not to see the accused if the judge or justice is of the opinion that the order is necessary to obtain a full and candid account from the witness of the acts complained of.

(2.1) An application referred to in subsection (1) or (2) may be made, during the proceedings, to the presiding judge or justice or, before the proceedings begin, to the judge or justice who will preside at the proceedings.

(3) In making a determination under subsection (2), the judge or justice shall take into account the factors referred to in subsection 486.1(3).

(4) Despite section 650, if an accused is charged with an offence referred to in subsection (5), the presiding judge or justice may order that any witness testify

(a) outside the court room if the judge or justice is of the opinion that the order is necessary to protect the safety of the witness; and

(b) outside the court room or behind a screen or other device that would allow the witness not to see the accused if the judge or justice is of the opinion that the order is necessary to obtain a full and candid account from the witness of the acts complained of.

(5) The offences for the purposes of subsection (4) are

(a) an offence under section 423.1, 467.11, 467.12 or 467.13, or a serious offence committed for the benefit of, at the direction of, or in association with, a criminal organization;

(b) a terrorism offence;

(c) an offence under subsection 16(1) or (2), 17(1), 19(1), 20(1) or 22(1) of the *Security of Information Act*; or

(d) an offence under subsection 21(1) or section 23 of the *Security of Information Act* that is committed in relation to an offence referred to in paragraph (c).

(6) If the judge or justice is of the opinion that it is necessary for a witness to testify in order to determine whether an order under subsection (2) or (4) should be made in respect of that witness, the judge or justice shall order that the witness testify in accordance with that subsection.

(7) A witness shall not testify outside the court room under subsection (1), (2), (4) or (6) unless arrangements are made for the accused, the judge or justice and the jury to watch the testimony of the witness by means of closed-circuit television or otherwise and the accused is permitted to communicate with counsel while watching the testimony.

(8) No adverse inference may be drawn from the fact that an order is, or is not, made under this section.

Section 486.3 provides:

486.3 (1) In any proceedings against an accused, on application of the prosecutor or a witness who is under the age of eighteen years, the accused shall not personally cross-examine the witness, unless the judge or justice is of the opinion that the proper administration of justice requires the accused to personally conduct the cross-examination. The judge or justice shall appoint counsel to conduct the cross-examination if the accused does not personally conduct the cross-examination.

(2) In any proceedings against an accused, on application of the prosecutor or a witness, the accused shall not personally cross-examine the witness if the judge or justice is of the opinion that, in order to obtain a full and candid account from the witness of the acts complained of, the accused should not personally cross-examine the witness. The judge or justice shall appoint counsel to conduct the cross-examination if the accused does not personally conduct the cross-examination.

(3) In making a determination under subsection (2), the judge or justice shall take into account the factors referred to in subsection 486.1(3).

(4) In any proceedings in respect of an offence under section 264, on application of the prosecutor or the victim of the offence, the accused shall not personally cross-examine the victim unless the judge or justice is of the opinion that the proper administration of justice requires the accused to personally conduct the cross-examination. The judge or justice shall appoint counsel to conduct the cross-examination if the accused does not personally conduct the cross-examination.

(4.1) An application referred to in subsection (1), (2) or (4) may be made, during the proceedings, to the presiding judge or justice or, before the proceedings begin, to the judge or justice who will preside at the proceedings.

(5) No adverse inference may be drawn from the fact that counsel is, or is not, appointed under this section.

Section 486.5 provides:

486.5 (1) Unless an order is made under section 486.4, on application of the prosecutor, a victim or a witness, a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is satisfied that the order is necessary for the proper administration of justice.

(2) On application of a justice system participant who is involved in proceedings in respect of an offence referred to in subsection 486.2(5) or of the prosecutor in those proceedings, a judge or justice may make an order directing that any information that could identify the justice system participant shall not be published in any document or broadcast or transmitted in any way if the judge or justice is satisfied that the order is necessary for the proper administration of justice.

(3) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice if it is not the purpose of the disclosure to make the information known in the community.

(4) An applicant for an order shall

(a) apply in writing to the presiding judge or justice or, if the judge or justice has not been determined, to a judge of a superior court of criminal jurisdiction in the judicial district where the proceedings will take place; and

(b) provide notice of the application to the prosecutor, the accused and any other person affected by the order that the judge or justice specifies.

(5) An applicant for an order shall set out the grounds on which the applicant relies to establish that the order is necessary for the proper administration of justice.

(6) The judge or justice may hold a hearing to determine whether an order should be made, and the hearing may be in private.

(7) In determining whether to make an order, the judge or justice shall consider

(a) the right to a fair and public hearing;

(b) whether there is a real and substantial risk that the victim, witness or justice system participant would suffer significant harm if their identity were disclosed;

(c) whether the victim, witness or justice system participant needs the order for their security or to protect them from intimidation or retaliation;

(d) society's interest in encouraging the reporting of offences and the participation of victims, witnesses and justice system participants in the criminal justice process;

(e) whether effective alternatives are available to protect the identity of the victim, witness or justice system participant;

(f) the salutary and deleterious effects of the proposed order;

(g) the impact of the proposed order on the freedom of expression of those affected by it; and

(h) any other factor that the judge or justice considers relevant.

(8) An order may be subject to any conditions that the judge or justice thinks fit.

(9) Unless the judge or justice refuses to make an order, no person shall publish in any document or broadcast or transmit in any way

(a) the contents of an application;

(b) any evidence taken, information given or submissions made at a hearing under subsection (6); or

(c) any other information that could identify the person to whom the application relates as a victim, witness or justice system participant in the proceedings.

Section 486.6 provides:

486.6 (1) Every person who fails to comply with an order made under subsection 486.4(1), (2) or (3) or 486.5(1) or (2) is guilty of an offence punishable on summary conviction.

(2) For greater certainty, an order referred to in subsection (1) applies to prohibit, in relation to proceedings taken against any person who fails to comply with the order, the publication in any document or the broadcasting or transmission in any way of information that could identify a victim, witness or justice system participant whose identity is protected by the order.

The French version of the *Criminal Code* is available at the following link:

<http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Canada provided the following examples of implementation:

Research was initiated in 2006 by the Department of Justice Canada to better understand how the 2006 amendments were working. The results, published in the 2009 Victims of Crime Research Digest, are entitled “Facilitating Testimony for Child Victims and Witnesses” and can be found at the following link: http://canada.justice.gc.ca/eng/pi/rs/rep-rap/rd-rr/rd09_2-rr09_2/rd09_2.pdf

This research focused on cases observed between June 2006 and April 2008 in the cities of Edmonton and Toronto. In that period in Edmonton, the most common testimonial aid involved the use of a support person escorting the child to the witness stand (91%) and remaining with the child at the stand (85% of cases). A support person was requested for 88% of the children and ordered by the judge 86% of the time. Other common testimonial aids included the use of a witness screen (85%), the ordering of a publication ban (78%), and the use of a voice amplifier (77%). The use of closed-circuit television was implemented in 25% of the cases.

In the same period in Toronto, the most common testimonial aid used involved the exclusion of witnesses (91%). Other common testimonial aids implemented included the ordering of a publication ban (70%), the use of a voice amplifier (65%), and the use of a witness screen (40%). The use of closed-circuit television was implemented for 24% of the children. A support person was requested for 64% of the children and ordered by the judge 54% of the time.

Regarding the protection programme, see the answer provided below article 32 paragraph 1.

Slightly more than 100 candidates are referred to the program each year. The number of candidates assessed does not necessarily reflect the number of persons, victims or otherwise, who are admitted to the program.

The information on the number of victims who have been permitted to give testimony is not available.

The information regarding the number of victims relocated has not been made available publicly.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 32 Protection of witnesses, experts and victims

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Canada has fully implemented this article of the Convention through the following *Criminal Code* sections:

- Testimonial Aids: 486, 486.1, 486.2 and 486.3;
- Publication Bans: 486.5, 486.6; and
- Victim Impact Statements: 722.

Victim Impact Statements:

A victim impact statement is a written statement that describes the harm or loss suffered by the victim of an offence. The court considers the statement when the offender is sentenced.

The victim impact statement is intended to give victims of crime a voice in the criminal justice system; it allows victims to participate in the sentencing of the offender by explaining to the court and the offender, in their own words, how the crime has affected them.

The Criminal Code currently requires the court to consider a victim impact statement at the time of sentencing an offender. The victim impact statement describes the harm done to or loss suffered by the victim of the offence. The form of the statement must be in accordance with procedures established by a victim impact statement program designated by the Lieutenant Governor in Council of the province.

The judge is required to ask, before imposing a sentence, whether the victim has been informed of the opportunity to prepare a victim impact statement. The victim is permitted to read an impact statement at the time of sentencing if he or she wishes to do so and adjournments to permit a victim to prepare a statement or to submit other evidence to the court about the impact of the crime may be provided.

Victim impact information is also considered in other proceedings. Where the accused person is found not criminally responsible on account of mental disorder, a court or Review Board will determine the appropriate disposition for the accused. The Criminal Code provides that the court or Review Board must consider the victim impact statement describing the harm done or loss suffered as a result of the crime. The Criminal Code allows victims to read their victim impact statements aloud in appropriate circumstances.

Victims may also present victim impact statements, either orally or in writing, at Parole Board of Canada hearings. The Department of Justice Canada provides financial assistance to victims in order to facilitate this testimony. The Department of Justice's Victims Fund offers financial assistance to registered victims who wish to attend hearings for the offender who harmed them in order to help victims participate more fully in the criminal justice system.

The Standing Up for Victims of White-Collar Crime Act came into force on November 1, 2011 to permit the court to receive a Community Impact Statement in fraud cases that would describe the losses suffered as a result of the fraud perpetrated against a particular community, such as a neighborhood, an association or a seniors' group.

Please refer to the following sections of the *Criminal Code*:

380.3

722

Section 380.3 provides:

380.3 (1) When an offender is convicted, or is discharged under section 730, of an offence referred to in subsection 380(1), the court that sentences or discharges the offender, in addition to any other measure imposed on the offender, shall consider making a restitution order under section 738 or 739.

(2) As soon as practicable after a finding of guilt and in any event before imposing the sentence, the court shall inquire of the prosecutor if reasonable steps have been taken to provide the victims with an opportunity to indicate whether they are seeking restitution for their losses, the amount of which must be readily ascertainable.

(3) On application of the prosecutor or on its own motion, the court may adjourn the proceedings to permit the victims to indicate whether they are seeking restitution or to establish their losses, if the court is satisfied that the adjournment would not interfere with the proper administration of justice.

(4) Victims may indicate whether they are seeking restitution by completing Form 34.1 in Part XXVIII or a form approved for that purpose by the Lieutenant Governor in Council of the province where the court has jurisdiction or by using any other method approved by the court, and, if they are seeking restitution, shall establish their losses, the amount of which must be readily ascertainable, in the same manner.

(5) If a victim seeks restitution and the court decides not to make a restitution order, it shall give reasons for its decision and shall cause those reasons to be stated in the record.

Section 722 provides:

722. (1) For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged pursuant to section 730 in respect of any offence, the court shall consider any statement that may have been prepared in accordance with subsection (2) of a victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

(2) A statement referred to in subsection (1) must be

(a) prepared in writing in the form and in accordance with the procedures established by a program designated for that purpose by the lieutenant governor in council of the province in which the court is exercising its jurisdiction; and

(b) filed with the court.

(2.1) The court shall, on the request of a victim, permit the victim to read a statement prepared and filed in accordance with subsection (2), or to present the statement in any other manner that the court considers appropriate.

(3) Whether or not a statement has been prepared and filed in accordance with subsection (2), the court may consider any other evidence concerning any victim of the offence for the purpose of

determining the sentence to be imposed on the offender or whether the offender should be discharged under section 730.

(4) For the purposes of this section and section 722.2, “victim”, in relation to an offence,

(a) means a person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence; and

(b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in subsection (1), includes the spouse or common-law partner or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependent of that person.

The French version of the Criminal Code is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Canada provided the following examples of implementation:

A research paper published by the Department of Justice entitled “Victim Impact Statements at Sentencing: Judicial Experiences and Perceptions (http://canada.justice.gc.ca/eng/pi/rs/rep-rap/2006/rr06_vic3/rr06_vic3.pdf) found that:

- Only a minority of all victims submit a victim impact statement;
- Few victims request oral delivery of a victim impact statement, but those that do find it beneficial;
- Obstacles remain to the systemic use of statements;
- Most victims who submit a victim impact statement report being more satisfied with sentencing; and
- Judges report that victim impact statements are useful, particularly in cases dealing with violence.

This research was based on surveys conducted in three provinces, British Columbia, Alberta and in Manitoba.

Canada provided cases as examples of implementation.

Consistent with the objective of protecting victim safety, numbers of victims who have received physical protection or relocation are not public information.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was clarified during the country visit that the study from 2006 cited above does

not necessary represent the official position of the Government of Canada, and is provided for information only.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

The *Public Servants Disclosure Protection Act*:

- <http://laws-lois.justice.gc.ca/eng/acts/P-31.9/index.html>

The texts cited are:

Section 425.1 of the *Criminal Code*

The *Public Servants Disclosure Protection Act*

Section 425.1 of the *Criminal Code* provides:

425.1 (1) No employer or person acting on behalf of an employer or in a position of authority in respect of an employee of the employer shall take a disciplinary measure against, demote, terminate or otherwise adversely affect the employment of such an employee, or threaten to do so,

(a) with the intent to compel the employee to abstain from providing information to a person whose duties include the enforcement of federal or provincial law, respecting an offence that the employee believes has been or is being committed contrary to this or any other federal or provincial Act or regulation by the employer or an officer or employee of the employer or, if the employer is a corporation, by one or more of its directors; or

(b) with the intent to retaliate against the employee because the employee has provided information referred to in paragraph (a) to a person whose duties include the enforcement of federal or provincial law.

(2) Any one who contravenes subsection (1) is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding five years; or
- (b) an offence punishable on summary conviction.

The French version of the *Criminal Code* is available at the following link:
<http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

The French version of the *Public Servants Disclosure Protection Act* which is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/P-31.9/index.html>

Canada provided the following examples of implementation:

Public Servants Disclosure Protection Act:

- The Office of the Public Sector Integrity Commissioner was established in 2007 to receive disclosures of wrongdoing and complaints of reprisal.
- All departments in the core federal public service have either established processes for disclosure of wrongdoing or declared under subsection 10(4) of the Act that it is not practical to apply such processes given the size of their organization and would refer their employees to the Commissioner.
- Annual reports on the function of the Act are available at <http://www.tbs-sct.gc.ca/ve/pda-eng.asp>; <http://www.tbs-sct.gc.ca/ve/pda-fra.asp> .

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

During the country visit, it was noted that the PSDPA also covers private sector actors who make complaints against officials in the public sector. In addition, Canada provided the following supplemental information regarding the PSDPA:

Overview of *Public Servants Disclosure Protection Act (PSDPA)*

- <http://www.tbs-sct.gc.ca/ve/oaal-fra.asp>

Overview of the Public Servants Disclosure Protection Act

The *Public Servants Disclosure Protection Act* (PSDPA) gives federal public sector employees and others a secure and confidential process for disclosing serious wrongdoing in the workplace, as well as protection from acts of reprisal. It is part of the Government of Canada's ongoing commitment to promoting ethical practices in the public sector. What is wrongdoing under the new law?

Wrongdoing relates to serious violations that go against the public interest, such as:

- violating any Act of Parliament or any Act of the legislatures of the provinces;
- misusing public funds or public assets;
- gross mismanagement;
- doing something—or failing to do something—that creates a substantial and specific danger to the health, safety or life of persons or to the environment; or
- seriously breaching the Treasury Board or your organization's code of conduct.

Who is covered by the PSDPA?

The PSDPA covers all employees in federal departments and agencies, most Crown corporations and the RCMP.

The PSDPA also provides protection for people outside the public sector (such as external contractors) when they provide information about wrongdoing in, or related to, the federal public sector.

How do I report a wrongdoing?

Employees have a choice of three secure and confidential channels for making a protected disclosure. Within their organization, employees may make a protected disclosure to their supervisor or their organization's designated Senior Officer for Disclosure. To access this process, employees should refer to their organization's own internal disclosure procedures.

Employees may also make a protected disclosure to the independent Public Sector Integrity Commissioner, as may employees whose organization does not have a Senior Officer for Disclosure.

Employees, or employees whose organization does not have a Senior Officer for Disclosure, do not have to use the internal disclosure process in their organization before going to the Integrity Commissioner.

How am I protected from acts of reprisal?

For starters, the disclosure process is confidential so your identity is protected in accordance with the Act.

In addition, if you are the subject of an act of reprisal, you can make a complaint to the Integrity Commissioner within 60 days. This can lead to a settlement or corrective action ordered by a special tribunal, such as compensation or disciplinary action against the guilty parties.

Acts of reprisal include any disciplinary measures such as demotion, termination of employment and any other action or threat that adversely affects employment or working conditions.

What happens if wrongdoing is found?

If wrongdoing is found as a result of an investigation, a report with recommendations is provided to the chief executive of your organization (e.g. the Deputy Minister) who has the authority to take appropriate action, including disciplinary measures such as suspensions, demotions or termination of employment. Other sanctions may apply as required by law.

For internal disclosures, the chief executive must provide public access to information describing the wrongdoing and any corrective action taken. The Integrity Commissioner must also report to Parliament within 60 days of finding a wrongdoing.

For more information

For more information, please visit the Resources on the *Public Servants Disclosure Protection Act* section of the Treasury Board of Canada Secretariat's website <http://www.tbs-sct.gc.ca/ve/pda-eng.asp> or visit the Public Sector Integrity Canada website at **Error! Hyperlink reference not valid..**

Within the private sector, whistleblowers rights are protected by a variety of different laws. The provinces of Saskatchewan and New Brunswick have specific provisions in their employment standards legislation that prohibit employers from discharging, threatening to discharge or discriminating against an employee, because the employee has reported or proposed to report to a lawful authority any activity that is or is likely to result in an offence under any provincial or federal legislation, or has testified or may be called to testify in an investigation pursuant to provincial or federal legislation. In those provinces and territories without specific whistleblower provisions, private sector employees are protected by unfair termination provisions in employment standards acts, under the common law, and by legislation governing human rights and occupational health and safety. Lastly, all private sector employers are subject to s. 425.1 of the Criminal Code, which makes it a criminal offence for an employer, or anyone acting on behalf of an employer, or a person in a position of authority over an employee, to take disciplinary action, demote, terminate, adversely affect an employee's employment, or threaten any of these things, in order to force an employee to refrain from providing information to law enforcement officials about the commission of an offence by his or her employer or by an officer, director or employee of the employer.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

Statutory shareholder remedies

Canadian corporate statutes provide statutory remedies for corporate shareholders. These remedies are procedural in nature and are “designed to protect the individual shareholder from the twin oppressors of managerial power and majority rule” and allow the courts to force compliance with the rules set out in the corporate constitution.

Judicial review of administrative action

Corruption necessarily implies acting for an improper purpose and in bad faith. Where a person exercising statutory authority acts for an improper purpose or in bad faith, his or her decisions or actions can be challenged in court by way of an application for judicial review. Judicial review, as the Supreme Court of Canada noted in *Dunsmuir v. New-Brunswick*:

... is the means by which the courts supervise those who exercise statutory powers, to ensure that they do not overstep their legal authority. The function of judicial review is therefore to ensure the legality, the reasonableness and the fairness of the administrative process and its outcomes.

The remedies available in judicial review are: the quashing of a decision and the return of the matter to the decision-maker to decide the matter in accordance with the Court’s decision; *mandamus* to compel performance of a public law duty; a declaration of the applicable law; and prohibition. Public law, in general, and judicial review in particular, is not intended to redress or enforce private legal rights. It is for that reason that damages are not available on judicial review.

Processes regulating government contracts

At the federal level, the legal framework governing government contracts include a number of federal statutes and regulations, international and domestic agreements as well as policies, directives and guidelines.

Most recently, Public Works and Government Service Canada (PWGSC) has taken steps to protect taxpayers from fraudulent companies who seek to do business with the Government of

Canada. In accordance with the Government of Canada's commitment to strengthening accountability in procurement and real property transactions, PWGSC has implemented new measures that restrict suppliers convicted of certain offences being awarded government of Canada contracts. (See the News Release announcing these measures, effective July 11, 2012.)

- <http://news.gc.ca/web/article-eng.do?mthd=tp&ctr.page=1&nid=685719&ctr.tp1D=1>

As part of this effort, PWGSC has extended the list of offences, which render companies and individuals ineligible to bid on contracts, to include the following:

- section 462.31 (*Laundering proceeds of crime*) or sections 467.11 to 467.13 (*Participation in activities of criminal organization*) of the *Criminal Code*,
- section 239 (*False or deceptive statements*) of the *Income Tax Act*,
- section 327 (*False or deceptive statements*) of the *Excise Tax Act*,
- section 3 (*Bribing a foreign public official*) of the *Corruption of Foreign Public Officials Act*,
- section 5 (*Trafficking in substance*), section 6 (*Importing and exporting*), or section 7 (*Production of substance*) of the *Controlled Drugs and Substance Act*.

The new offences are added to the existing list for solicitations:

- paragraph 80(1)(d) (*False entry, certificate or return*), subsection 80(2) (*Fraud against Her Majesty*) or section 154.01 (*Fraud against Her Majesty*) of the *Financial Administration Act*
- section 121 (*Frauds on the government and Contractor subscribing to election fund*), section 124 (*Selling or Purchasing Office*), section 380 (*Fraud*) for fraud committed against Her Majesty or section 418 (*Selling defective stores to Her Majesty*) of the *Criminal Code*
- section 45 (*Conspiracies, agreements or arrangements between competitors*), 46 (*Foreign directives*) 47 (*Bid rigging*), 49 (*Agreements or arrangements of federal financial institutions*), 52 (*False or misleading representation*), 53 (*Deceptive notice of winning a prize*) under the *Competition Act*
- Payment of a contingency fee to a person to whom the section 5 of the *Lobbying Act* applies.

These measures impact all contracts and procurement instruments put in place by PWGSC. In addition, both the new and existing lists of offences also apply to PWGSC real property transactions, such as leasing agreements, letting of space, and acquisition and disposal of Crown-owned properties.

These measures will also allow the department to terminate future contracts and leases with companies or individuals that are convicted before the end of their contract or lease.

The process set out in the Public Servants Disclosure Protection Act (PSDPA)

The PSDPA gives federal public sector employees “a secure and confidential process for disclosing serious wrongdoing in the workplace, as well as protection from acts of reprisal. It is part of the Government of Canada's ongoing commitment to promoting ethical practices in the public sector.” Wrongdoing, for the purposes of the PSDPA, relates to serious violations that go against the public interest and would extend to corruption and corrupted practices. It includes:

- The violation of any Act of Parliament or any Act of the legislatures of the provinces
- The misuse of public funds or public assets;
- Gross mismanagement;
- Doing something—or failing to do something—that creates a substantial and specific danger to the health, safety or life of persons or to the environment; or
- A serious breach of the applicable codes of conduct.

The disclosure process is confidential and the identity of the complainant is protected. In addition, if a complainant is the subject of an act of reprisal, he or she can make a complaint to the Integrity Commissioner. This process can lead to a settlement or corrective action, such as compensation or disciplinary action against the guilty parties. Acts of reprisal include any disciplinary measures such as demotion, termination of employment and any other action or threat that adversely affects employment or working conditions.

If wrongdoing is found as a result of an investigation, a report with recommendations is provided to the chief executive of the complainant’s organization, usually the Deputy Minister. Based on these recommendations, the CEO can take appropriate action, including disciplinary measures such as suspensions, demotions or termination of employment. Other sanctions may apply as required by law.

Restitution:

Sections 738 to 741.2 of the *Criminal Code* govern the imposition of restitution orders. Restitution orders are in keeping with the principles of sentencing, which state that a sentence is to “provide reparations for harm done to a victim or to the community” (paragraph 718(e)) and that a sentence should “promote a sense of responsibility in offenders and an acknowledgement of the harm done to victims and to the community” (paragraph 718(f)).

Restitution orders may be “stand alone” orders or ordered as a condition of probation or a conditional sentence. Section 738 of the *Criminal Code* authorizes the imposition of a “stand alone” restitution order in three circumstances:

- to cover the cost of the loss, destruction, or damage of the property of any person as a result of the commission of an offence;

- to cover all readily ascertainable pecuniary damages, including loss of income or support, to any person who has suffered bodily or psychological harm as the result of the commission of an offence; and
- to cover the cost of all actual and reasonable expenses incurred by a member of the offender's household associated with a person having to move out of that household to cover temporary housing, food, childcare, and transportation in the case of bodily harm or threat of bodily harm.

Section 739 authorizes the court to order an offender to pay restitution to a person who has, in good faith, purchased property which was obtained as a result of the commission of an offence when the property is returned to its rightful owner or to a person who, in good faith, loaned money to an offender on the security of stolen property. Section 740 states that a restitution order shall be given priority over an order for the forfeiture of property or a fine. Restitution may also be ordered as a condition of a probation order under section 732.1 or as a condition of a conditional sentence under section 742.3.

If the offender fails to pay restitution as ordered, section 741 allows a victim to whom restitution is owed to file the restitution order in civil court in order to have it enforced as a civil judgment.

In *R. v. Zelensky*, [1978] 2 S.C.R. 940), the Supreme Court of Canada made it clear that restitution orders fall under the federal government's criminal law power only because they are part of the sentencing process. The Supreme Court further clarified that restitution orders are only appropriate when the amount of the loss is easy to calculate and not in great dispute (*R. v. Fitzgibbon*, [1990] 1 S.C.R. 1005). Criminal courts are not an appropriate forum for awarding damages for pain and suffering or for determining complicated issues regarding the assessment of damages. These matters must be settled in civil courts.

Additionally, the offender's ability to pay, although not determinative, is a factor that is considered by the judge when determining whether a restitution order is appropriate. When the court orders restitution as a term of probation, it must first ensure that the offender may reasonably make the payment during the term of probation as non-payment will result in a breach of the probation order. If the offender fails to pay the full amount of the restitution order, the victim must use civil enforcement methods to collect the amount owing.

The article entitled "Understanding Restitution" published in the 2009 – Issue No.2 of the Victims of Crime Research Digest (http://canada.justice.gc.ca/eng/pi/rs/rep-rap/rd-rr/rd09_2-rr09_2/rd09_2.pdf) provides the following statistical information (p.14):

Statistics on restitution are available from the Adult Criminal Court Survey, which is administered by the Canadian Centre for Justice Statistics of Statistics Canada. These data are limited, however, to the number of orders each year by offence type and by jurisdiction. No data are collected on a national scale on the value of the orders or on the amount collected. Individual jurisdictions maintain some information on number of orders and payment details; however, the detail and quality of these data vary considerably across the country. We know that in 1994-1995, a total of 11,017 restitution

orders were made, which represented 4.6% of the total 242,011 guilty cases. In 2006-2007, a total of 7,490 orders were made, which represented 3.1% of the total 242,988 guilty cases. The majority of restitution orders are made for property crimes. In 2006-2007, 80% of all orders were made in cases of property crimes.

Please refer to the following sections of the *Criminal Code*:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/>

380.3

738

739

740

741

Financial Administration Act (R.S.C., 1985, c. F-11),

- <http://laws-lois.justice.gc.ca/PDF/F-11.pdf>

80(1)(d),

80(2),

154.01

Overview of *Public Servants Disclosure Protection Act (PSDPA)*

- <http://www.tbs-sct.gc.ca/ve/oaal-eng.asp>.

Canada's Financial Administration Act:

Section 80(1)(d)(False entry, certificate, or return)

80. (1) Every officer or person acting in any office or employment connected with the collection, management or disbursement of public money who (d) wilfully makes or signs any false entry in any book, or wilfully makes or signs any false certificate or return in any case in which it is the duty of that officer or person to make an entry, certificate or return.

Section 80(2) (Fraud against Her Majesty)

(2) Every officer or person acting in any office or employment connected with the collection, management or disbursement of public money who, by deceit, falsehood or other fraudulent means, defrauds Her Majesty of any money, securities, property or service is guilty of an indictable offence and liable on conviction,

(a) if the amount of the money or the value of the securities, property or service does not exceed \$5,000, to a fine not exceeding \$5,000 and to imprisonment for a term not exceeding five years; or

(b) if the amount of the money or the value of the securities, property or service exceeds \$5,000, to a fine not exceeding that amount or that value and to imprisonment for a term not exceeding fourteen years.

Section 154.01 (Fraud against Her Majesty)

154.01 (1) A director, officer or employee of a Crown corporation who, by deceit, falsehood or other fraudulent means, in connection with the collection, management or disbursement of money belonging to the corporation, defrauds the corporation of any money, securities, property or service is guilty of an indictable offence and liable on conviction

(a) if the amount of the money or the value of the securities, property or service does not exceed \$5,000, to a fine not exceeding \$5,000 and to imprisonment for a term not exceeding five years; or

(b) if the amount of the money or the value of the securities, property or service exceeds \$5,000, to a fine not exceeding that amount or that value and to imprisonment for a term not exceeding fourteen years.

Criminal Code

Section 380.3 provides:

380.3 (1) When an offender is convicted, or is discharged under section 730, of an offence referred to in subsection 380(1), the court that sentences or discharges the offender, in addition to any other measure imposed on the offender, shall consider making a restitution order under section 738 or 739.

(2) As soon as practicable after a finding of guilt and in any event before imposing the sentence, the court shall inquire of the prosecutor if reasonable steps have been taken to provide the victims with an opportunity to indicate whether they are seeking restitution for their losses, the amount of which must be readily ascertainable.

(3) On application of the prosecutor or on its own motion, the court may adjourn the proceedings to permit the victims to indicate whether they are seeking restitution or to establish their losses, if the court is satisfied that the adjournment would not interfere with the proper administration of justice.

(4) Victims may indicate whether they are seeking restitution by completing Form 34.1 in Part XXVIII or a form approved for that purpose by the Lieutenant Governor in Council of the province where the court has jurisdiction or by using any other method approved by the court, and, if they are seeking restitution, shall establish their losses, the amount of which must be readily ascertainable, in the same manner.

(5) If a victim seeks restitution and the court decides not to make a restitution order, it shall give reasons for its decision and shall cause those reasons to be stated in the record.

Section 738 provides:

738. (1) Where an offender is convicted or discharged under section 730 of an offence, the court imposing sentence on or discharging the offender may, on application of the Attorney General or on its own motion, in addition to any other measure imposed on the offender, order that the offender make restitution to another person as follows:

(a) in the case of damage to, or the loss or destruction of, the property of any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount not exceeding the replacement value of the property as of the date the order is imposed, less the value of any part of the property that is returned to that person as of the date it is returned, where the amount is readily ascertainable;

(b) in the case of bodily or psychological harm to any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount not exceeding all pecuniary damages incurred as a result of the harm, including loss of income or support, if the amount is readily ascertainable;

(c) in the case of bodily harm or threat of bodily harm to the offender's spouse or common-law partner or child, or any other person, as a result of the commission of the offence or the arrest or attempted arrest of the offender, where the spouse or common-law partner, child or other person was a member of the offender's household at the relevant time, by paying to the person in question, independently of any amount ordered to be paid under paragraphs (a) and (b), an amount not exceeding actual and reasonable expenses incurred by that person, as a result of moving out of the offender's household, for temporary housing, food, child care and transportation, where the amount is readily ascertainable; and

(d) in the case of an offence under section 402.2 or 403, by paying to a person who, as a result of the offence, incurs expenses to re-establish their identity, including expenses to replace their identity documents and to correct their credit history and credit rating, an amount that is not more than the amount of those expenses, to the extent that they are reasonable, if the amount is readily ascertainable.

(2) The lieutenant governor in council of a province may make regulations precluding the inclusion of provisions on enforcement of restitution orders as an optional condition of a probation order or of a conditional sentence order.

Section 739 provides:

739. Where an offender is convicted or discharged under section 730 of an offence and

(a) any property obtained as a result of the commission of the offence has been conveyed or transferred for valuable consideration to a person acting in good faith and without notice, or

(b) the offender has borrowed money on the security of that property from a person acting in good faith and without notice,

the court may, where that property has been returned to the lawful owner or the person who had lawful possession of that property at the time the offence was committed, order the offender to pay as restitution to the person referred to in paragraph (a) or (b) an amount not exceeding the amount of consideration for that property or the total amount outstanding in respect of the loan, as the case may be.

Section 740 provides:

740. Where the court finds it applicable and appropriate in the circumstances of a case to make, in relation to an offender, an order of restitution under section 738 or 739, and

(a) an order of forfeiture under this or any other Act of Parliament may be made in respect of property that is the same as property in respect of which the order of restitution may be made, or

(b) the court is considering ordering the offender to pay a fine and it appears to the court that the offender would not have the means or ability to comply with both the order of restitution and the order to pay the fine,

the court shall first make the order of restitution and shall then consider whether and to what extent an order of forfeiture or an order to pay a fine is appropriate in the circumstances.

Section 741 provides:

741. (1) Where an amount that is ordered to be paid under section 732.1, 738, 739 or 742.3, is not paid without delay, the person to whom the amount was ordered to be paid may, by filing the order, enter as a judgment the amount ordered to be paid in any civil court in Canada that has jurisdiction to enter a judgment for that amount, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

(2) All or any part of an amount that is ordered to be paid under section 738 or 739 may be taken out of moneys found in the possession of the offender at the time of the arrest of the offender if the court making the order, on being satisfied that ownership or right to possession of those moneys is not disputed by claimants other than the offender, so directs.

The French version of the following laws is available at the following links:

Criminal Code is

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Financial Administration Act (R.S.C., 1985, c. F-11),

- <http://laws-lois.justice.gc.ca/PDF/F-11.pdf>

Overview of *Public Servants Disclosure Protection Act (PSDPA)*

- <http://www.tbs-sct.gc.ca/ve/oaal-fra.asp>

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. In addition, reference was made to the information provided in response to article 33 above.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention

The country under review provided the following laws:

The *Civil Code of Quebec* is available at the following link:

http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/CCQ_1991/CCQ1991_A.html

In Canada, measures exist in the civil law to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings claiming compensation from those responsible for the damage. Except in the province of Quebec where the rules of civil liability are set out in the *Civil Code of Quebec* (C.c.Q.), the relevant legal rules are provided by the common law.

In Quebec, civil extra contractual liability is governed by s. 1457 C.c.Q. and arises where a defendant has committed a fault, the plaintiff has suffered harm, and there is a causal link between the fault of the defendant and the harm suffered by the plaintiff. A fault is a breach of the rules of conduct that are applicable in a given situation, according to the circumstances, usage or the law. A fault need not be intentional to trigger extra contractual liability. However in practice, the intent to harm and the seriousness of the particular breach of the rules of conduct will be taken into account by courts. In addition, intent to harm can lead to punitive damages.

Corruption is, by definition, a breach of applicable rules of conduct. A victim of corruption in Quebec could therefore seek compensation under subsection 1457 C.c.Q. from the person who has engaged in acts of corruption, provided that he or she can establish that the defendant's action caused him or her harm. In addition to compensatory damages, punitive damages may be available where the conduct at issue is sufficiently outrageous.

At common law, there is no specific tort of corruption. Nevertheless, there are a number of other torts that cover a wide range of circumstances that would allow victims of corruption to seek compensation. Some torts are exclusively available against public officials. Others are available against public officials as well as against people or entities in the private sector. Considering that corruption involves intent to act for an improper purpose, the list below identifies intentional torts. Provable economic losses can be recovered in all the various kinds of tort claims listed below. Punitive damages may also be awarded where the facts of the case are sufficiently outrageous.

Torts available exclusively against public officials

- Misfeasance in public office

This tort, also known as the tort of abuse of public office, can be brought for “intentional acts of wrongdoing by public officials that have harmed the economic or other interests of private persons.” The Supreme Court of Canada has identified two distinguishing elements for this tort:

- (i) Deliberate unlawful conduct in the exercise of public functions; and
- (ii) Awareness that the conduct is unlawful and likely to injure the plaintiff.”

Courts do not require that a specific intent to injure is established, and a defendant’s blatant disregard of the unlawfulness and consequences of his or her conduct can sustain a misfeasance claim.

- Malicious Prosecution

This tort is designed to remedy damage suffered by a person as a result of having been unjustifiably prosecuted. It could be relevant in the context of corruption where a person is prosecuted unjustifiably in order to procure an advantage to either the prosecutor or a third party. This cause of action has four requirements that were set out by the Supreme Court of Canada in *Nelles v. Ontario*:

- (i) The proceedings must have been initiated by the defendant;
- (ii) The proceedings must have terminated in favour of the plaintiff;
- (iii) The plaintiff must show that the proceedings were instituted without reasonable cause; and
- (iv) The defendant must have acted with malice or for an improper purpose.

A claim is malicious prosecution usually involves the unjustifiable institution of criminal proceedings against a person. Other types of legal proceedings which can result in economic losses can also be the basis of a claim for malicious prosecution such as, for example, petitioning for a person’s bankruptcy. The weight of authority, however, seems to be against bringing a claim for malicious prosecution in respect of “ordinary” civil proceedings.

Other torts available against private persons and entities as well as against public officials

- Conspiracy

Another tort that may provide a cause of action to compensate for damage suffered as a result of corrupt activity is the tort of conspiracy. This tort takes two principal forms. These are:

- (1) Conspiracy to injure - where two or more persons join forces to effect an unlawful purpose, namely to cause injury to the plaintiff. This form of the tort requires a plaintiff to establish that the predominant purpose of the defendants was to cause injury to the plaintiff.
- (2) Conspiracy to use unlawful means - where two or more persons combine in the use of unlawful means, causing the plaintiff to suffer damage as a result.

It is not enough for a plaintiff to demonstrate that the defendants were well aware that damage to the plaintiff was an inevitable consequence of their actions.

- Deceit

The tort of deceit “is based on a false representation made by one person to another, whereby damage is caused to the other”. The plaintiff must prove that the defendant made the false representation knowingly, or without belief in its truth, or with reckless disregard of its truth or falsity, with the intention that the plaintiff should act upon it. A representation will generally consist of written or spoken words, but any conduct meant to mislead may also be enough. Active concealment by conduct, whereby the plaintiff is prevented from getting information which he or she otherwise would have obtained, can be a sufficient misrepresentation even though no positive misrepresentation is actually made. A statement not made directly to the plaintiff, but to a person in the plaintiff’s presence can ground a claim in deceit if made in order to induce the plaintiff to act.

- Intimidation

The tort of intimidation involves the defendant using an unlawful threat successfully to compel another to act, or refrain from acting, in a way that will cause harm to the plaintiff. “A two party intimidation occurs where the threats are directed against the plaintiff, who suffers damages as a result of the threats. A three party intimidation occurs where the threats are directed at a third party and where, as a result of these threats, the plaintiff’s interests are damaged.” The case law in relation to intimidation suggests that the threat does not necessarily have to involve violence.

- Interference with Contractual Relations

The scope of the tort of interference with contractual relations sanctions various types of conduct which involve the interference by the defendant with a contractual relationship

between the plaintiff and a third party. It is confined to conduct which is intended to procure a breach of the contract. Mere negligence having that result will not suffice. It applies to existing and binding contracts and will only provide a remedy where the contract has been breached, not when the impact on contractual performance falls short of an actual breach. Breach of contract can either be induced directly, or indirectly.

- *Interference with Economic Interests by Unlawful Means*

This has developed as a general tort intended to apply in a wide range of circumstances to enable claimants to protect their economic interests. In order to bring a successful action a claimant must be able to prove that there has been interference with the claimant's economic interests by unlawful means that was intended to injure the claimant and that caused actual injury. This is a relatively new tort and some of its features require to be clarified, such as the type of unlawful means necessary to establish it and what defences are available to counter it. Unlawful means for the purpose of this tort is likely to extend to the doing of anything that one is not entitled to do under either the civil or criminal law.

Remedies under the Canadian Charter of Rights and Freedoms

The provincial and federal governments must comply with the *Canadian Charter of Rights and Freedoms* (Charter), and if an official's corrupt act breached a right guaranteed by the Charter, this would be actionable without the need to otherwise establish the existence of a tort at common law or a fault under the Quebec Civil Code. In *Vancouver (City) v. Ward*, the Supreme Court of Canada held that subsection 24(1) of the Charter is broad enough to include the remedy of constitutional damages for breach of a plaintiff's Charter rights if such remedy is found to be appropriate and just in the circumstances of a particular case. There is however very little case law on Charter damages.

Section 1457 of the *Civil Code of Quebec* provides:

Every person has a duty to abide by the rules of conduct which lie upon him, according to the circumstances, usage or law, so as not to cause injury to another.

Where he is endowed with reason and fails in this duty, he is responsible for any injury he causes to another person by such fault and is liable to reparation for the injury, whether it be bodily, moral or material in nature.

He is also liable, in certain cases, to reparation for injury caused to another by the act or fault of another person or by the act of things in his custody.

The French version of the *Code civil du Québec* is available at the following link:

http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/CCQ_1991/CCQ1991.html

Canada provided the following cases:

Relevant Case law

With respect to actions framed in either contract or tort, it is not the state that is bringing the action to deal with the bribery, but rather a private party. For example, in the recent decision of *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.* (1998), 40 O.R. (3d) 229 (Ont. Gen. Div.), affirmed by the Supreme Court of Canada, [2001] 2 S.C.R. 983, the individual defendant and a corporation he owned were held liable on the basis of the tort of civil conspiracy and the tort of unlawful interference with economic relations. The individual defendant bribed an employee of a company to which the plaintiff acted as supplier, resulting in a loss of business to the plaintiff.

It is difficult to easily identify individual cases, because actions can be brought under the torts that we have identified in a wide range of circumstances and these will not all necessarily relate to damage resulting from corrupt activities. However, two lawsuits were filed last May on behalf of investors in a Canadian company (SNC-Lavalin), alleging that the company's directors are liable for the firm's falling stock price because of the scandal surrounding questionable payments to secure contracts abroad. The suit alleges that the company made \$56 million of improper payments to foreign agents and that those payments had been authorized by the company's former CEO. It is alleged that the company violated securities law by misrepresenting that it had adequate controls and procedures to ensure accurate disclosure and financial reporting.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

The corruption of foreign public officials is specifically referenced in the mandate of the RCMP Commercial Crime Program. Current RCMP policy specifically identifies the Corruption of

Foreign Public Officials Act (CFPOA) as a responsibility of the Commercial Crime Branch. The RCMP has the capability to track CFPOA cases being handled by the Force and expects that credible allegations reported to other law enforcement agencies or other Canadian officials, including those in foreign missions, will continue to be reported through to the RCMP.

Royal Canadian Mounted Police Act (R.S.C., 1985, c. R-10)

- <http://laws-lois.justice.gc.ca/PDF/R-10.pdf>

To link to the RCMP website for anti-corruption, please consult:

- <http://www.rcmp-grc.gc.ca/ccb-sddc/international-corrup-eng.htm>

Royal Canadian Mounted Police Act (R.S.C., 1985, c. R-10), s. 9.1.

QUALIFICATIONS

9.1 (1) Subject to subsection (2), no person shall be appointed to be a member unless that person is a Canadian citizen, is of good character and has the necessary physical qualities and, in the case of a member other than an officer, that person meets such other qualifications for appointment to the Force as the Commissioner may, by rule, prescribe.

(2) When no person who meets the qualifications described in subsection (1) is available for appointment as a member, any person who is not a Canadian citizen but meets the other qualifications described in that subsection that are applicable to that person may be appointed to be a member.

Canada provided the following examples of implementation:

Canada currently has 15 dedicated RCMP anti-corruption officials. In February 2005, the Royal Canadian Mounted Police (RCMP) appointed a commissioned officer to provide functional oversight of all RCMP anti-corruption programs. The corruption of foreign public officials is specifically referenced in the RCMP Commercial Crime Program's mandate, which includes major fraud cases and corruption offences. Current RCMP policy specifically identifies the CFPOA as a Commercial Crime Branch responsibility. The RCMP has the capability to track CFPOA cases being handled by the Force and credible allegations reported to other law enforcement agencies or Canadian foreign missions will continue to be reported through to the RCMP. The role of the officer is to manage the RCMP anti-corruption program and provide support to the two new specialized international anti-corruption units (see below). The support includes policy framework, human and financial resource monitoring, legal environment monitoring, departmental reporting, and coordination of investigations, intelligence gathering and intelligence processing.

In 2008, the RCMP established the International Anti-Corruption Unit, comprised of two seven-person teams based in Ottawa and Calgary, respectively. Each team is commanded by a Staff Sergeant who reports to the Officer in Charge of the Commercial Crime Section in their respective locations. Officers in Charge report through the RCMP's usual reporting channels

however are to consult with the Commercial Crime Branch on International Anti-Corruption Unit investigations. Their mandate includes carrying out investigations of Canada's CFPOA, related *Criminal Code* offences and assisting foreign enforcement agencies or foreign governments with requests for international assistance (asset recoveries and extraditions). To this end, the units investigate allegations that a Canadian person or business has bribed, offered or agreed to bribe a foreign public official, allegations that a foreign person has bribed a Canadian public official that may have international repercussions, and allegations that a foreign public official has secreted or laundered money in, or through, Canada.

The RCMP Anti-Corruption units have also established a point of contact within the Department of Justice's International Assistance Group to ensure that priority is given to requests for mutual legal assistance in corruption matters. Similarly, the RCMP continues to prioritize the establishment of procedures and mechanisms for information sharing within Government about suspected cases of corruption.

The RCMP also promotes its work by developing educational resources for external partner using information pamphlets and posters that describe the RCMP's work and the negative effects of corruption for distribution and presentation to Canadian missions abroad.

Enforcement: There are currently 35 ongoing investigations under the CFPOA, and there have been three convictions under the CFPOA to date. There are two cases in which charges have been laid but not yet concluded. There have been no acquittals to date.

The convictions are as follows:

Griffiths Energy International Inc. – On January 14, 2013, Calgary-based Griffiths Energy International Inc. pled guilty in the Court of Queen's Bench in Calgary for one count of bribery under paragraph 3(1)(b) of the CFPOA for having paid a \$2 million bribe to Chadian ambassador's wife to secure exclusive rights to explore and develop oil and gas reserves in Chad. The company was given a \$10.35 million fine. Notably, the company self-declared after a new management team was appointed at Griffiths in the summer of 2011, along with replacements for most of the Board of Governors. In the fall of 2011, while undertaking due diligence for a pending Initial Public Offering (IPO) bid, the company found internal irregularities in its contracts with Chad between August 20, 2009 and February 9th, 2011. A \$2 million consulting contract with a company controlled by the Chadian ambassador's wife was found in Griffiths' internal documents, as well as an offer to her and several members of the country's staff to purchase 4 million shares of the company.

Niko Resources Ltd. – Niko Resources Ltd. is a publicly traded company based in Calgary, Alberta. On June 24, 2011, the company entered a guilty plea in the Court of Queen's Bench in Calgary for one count of bribery under paragraph 3(1)(b) of the CFPOA, covering the period of February 1, 2005 to June 30, 2005. The company admitted that, through its subsidiary Niko Bangladesh, it provided the use of a vehicle (which cost \$190,984 CDN) in May 2005 to AKM

Mosharraf Hossain, then the Bangladeshi State Minister for Energy and Mineral Resources, in order to influence the Minister in his dealings with Niko Bangladesh. In June 2005, Niko Resources Ltd. paid travel and accommodation expenses for the same Minister to travel from Bangladesh to Calgary to attend the GO EXPO oil and gas exposition, and improperly paid approximately \$5,000 CDN for the Minister to travel to New York and Chicago to visit his family.

As a result of the conviction, Niko Resources Ltd. was fined \$9,499,000 CDN and placed under a Probation Order, which puts the company under the Court's supervision for three years to ensure that audits are completed to examine the company's compliance with the CFPOA.

Hydro-Kleen Group Inc. – Hydro-Kleen Group Inc., based out of Red Deer, Alberta, entered a guilty plea in the Court of Queen's Bench in Red Deer on January 10, 2005 to one count of bribery under paragraph 3(1)(a) of the CFPOA and was ordered to pay a fine of \$25,000 CDN. Along with its president and an employee, the company had been charged under the CFPOA with, among other things, two counts of bribing a U.S. immigration officer who worked at the Calgary International Airport. The charges against the director and the officer of the company were stayed. The U.S. immigration officer pleaded guilty in July 2002 to accepting secret commissions under subparagraph 426(1)(a)(ii) of Canada's *Criminal Code*. He received a six-month sentence and was subsequently deported to the United States.

The cases where charges have been laid but not yet concluded are as follows:

Mr. Nazir Karigar – On May 28, 2010, the RCMP laid charges against Mr. Nazir Karigar under paragraph 3(1)(b) of the CFPOA for allegedly making a payment to an Indian government official to facilitate the execution of a multi-million dollar contract for the supply of a security system by Cryptometrics, a Canadian high-tech firm. This matter is currently before a Canadian court.

Padma Bridge Case – In relation to the awarding of a contract for the supervision and consultancy services for the construction of the PADMA multipurpose Bridge in Bangladesh, on February 29, 2012, the RCMP's "A" Division International Anti-corruption Unit arrested two former SNC Lavalin employees. Both were later released on the condition that they remain in Canada and promise to appear in court. On April 11, 2012, the RCMP laid charges at the Downtown Toronto Courthouse (Ontario) against two former employees of SNC Lavalin. Ramesh SHAH of Oakville, Ontario, and Mohammad ISMAIL of Mississauga, Ontario, have been charged jointly with one count under paragraph 3 (1) b) of the *Corruption of Foreign Public Officials Act*.

The charge reads as follows:

Between December 1st 2009 and September 1st 2011, in Oakville and elsewhere in the Province of Ontario, and in Bangladesh, did, in order to obtain or retain an advantage in

the course of business of SNC International Inc, directly or indirectly offer, or agree to give or offer a reward, advantage or benefit of any kind to foreign public officials of the Republic of Bangladesh or to any person for the benefit of foreign public officials of the Republic of Bangladesh to induce the officials to use their position to influence acts or decisions of the Republic of Bangladesh for which the officials perform duties or functions in particular the awarding of a contract for the supervision and consultancy services for the construction of the PADMA multipurpose Bridge and did thereby commit an indictable offence contrary to paragraph 3 (1) b) of the Corruption of Foreign Public Officials Act.

The investigation is on-going and the matter is currently before a Canadian court.

Canada provided information on the measures adopted to ensure the independence of the specialized body as followed:

The Royal Canadian Mounted Police is organized under the authority of the *RCMP Act*. In accordance with the Act, it is headed by the Commissioner, who, under the direction of the Minister of Public Safety, has the control and management of the Force and all matters connected therewith. The independence of the RCMP Anti-Corruption Unit is ensured by existing human resource methods and policies within the RCMP. Members are selected based on their extensive experience in investigations in general or for their specific experiences with special investigative techniques. For example, members of the Calgary team all have a financial crime investigative background with experiences in market, fraud, and proceeds of crime investigations, while the Ottawa team has a more diversified investigative background. All positions have to date been staffed from within the RCMP and with the exception of one Investigative Assistant per team all other positions are filled by police officers.

Common law, Constitutional law, the *Royal Canadian Mounted Police Act* and the *Criminal Code* give the police in Canada the direction and ability to detect, investigate, and initiate criminal prosecutions. Content found in Part IV of the *Criminal Code* supports this independence. Further, the police officers staffing the IACU's are governed by the common law, *Criminal Code* and *RCMP Act* legal obligations, their independence is ensured.

Canada provided information on how staff is selected and trained:

General information on recruitment to the RCMP can be obtained online at:

- <http://www.rcmp-grc.gc.ca/recruiting-recrutement/rec/requirements-exigences-eng.htm>

Training– Due to the specialized nature of its work, the RCMP includes the issue of foreign bribery generally and the CFPOA, in particular, in its training of all RCMP liaison officers before they depart for overseas assignments. These workshops are now being attended by police officers from other countries to exchange and adopt best practices with their investigations.

In accordance with its enforcement mandate, specific reference is made to the corruption of foreign public officials in the Commercial Crime Program mandate to raise awareness of this responsibility among investigators. In addition, orientation manuals have been completed for the unit covering the CFPOA and the various contacts and their roles. The establishment in 2010 of a logic model and measurements for the unit further complements these training efforts and promotes the unit's work. In addition, the two RCMP International Anti-Corruption Units participate in yearly anti-corruption training and awareness workshops.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. During the country visit, it was clarified that the RCMP recently went through a period of restructuring to provide a better quality service for fighting corruption abroad. Under the new structure, there are three teams: serious and organized crime, national security, and financial integrity. Corruption cases are investigated by the "Sensitive Investigations Unit," which permits more investigation experts to be available for corruption investigations than under the previous structure, and promotes investigation agility and flexibility. The Unit has personnel deployed to offices in Ottawa and Calgary.

In addition, Canada provided the following supplemental information during the country visit:

FINTRAC is an essential component of the financial investigations aspects and the money laundering aspects of case investigations, including with corruption.

- Enforcement - Until the recent 2013 Federal Policing Re-engineering, the corruption of foreign public officials was referenced in the mandate of the former RCMP Commercial Crime Program. The International Anti-Corruption Program is now managed under the umbrella of the RCMP Federal Policing Support Services, Federal Coordination Centre (FCC). There is an Inspector and two Sergeants in the FCC who provide subject matter expertise internally and externally to national and international partners as well as government departments. The RCMP has the capability to track all CFPOA cases being handled nationally and expects that credible allegations reported to other law enforcement agencies or other Canadian officials, including those in foreign missions, will continue to be reported to the RCMP as the law enforcement body with exclusive authority to lay charges under the CFPOA.

In 2008, the RCMP established the International Anti-Corruption Unit, comprised of two seven-person teams based in Ottawa and Calgary, respectively. With the 2013 Federal Policing Re-engineering, both teams retained their locations and base complement of personnel. Ottawa is now referred to as the National Division and the team is part of the Sensitive & International Investigations Section. The National Division has a Superintendent in charge of 115 personnel divided into four investigative teams and one quick response team. Similarly, Calgary RCMP has a Superintendent in charge with approximately 130 personnel divided into four Federal Policing Investigative Teams. Respecting corruption, the investigative teams are charged with investigating:

- allegations that a Canadian person or business has bribed offered or agreed to bribe a foreign public official;
- allegations that a foreign person has bribed a Canadian public official;
- allegations that a foreign public official has secreted or laundered money in, or through, Canada.

In addition, the investigative teams assist foreign states in tracing alleged proceeds of corruption in response to requests for assistance. Due to the serious repercussions that allegations of corruption can have for business transactions and international relations, they are taken very seriously by the RCMP and treated with the utmost confidence for reasons of privacy and ensuring the integrity of investigations.

Article 37 Cooperation with law enforcement authorities

Paragraph 1

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

For reporting purposes, the RCMP provides phone numbers for International Anti-Corruption for both the Calgary (403) 699-2550 and Ottawa (613) 993-6884 locations.

In addition, measures are in place and have been successful to assist other countries under other breaches of criminal law. Notably, Section 462.47 of the *Criminal Code* is intended to encourage informants to come forward regarding proceeds of crime or designated offences.

Given that it is often difficult to obtain cooperation from criminals or accomplices in tracing proceeds of crime, measures have been put in place to provide incentives for cooperation. In particular, nominees and others providing support to the criminal may not be charged if they cooperate with the Proceeds of Crime or Money laundering investigations. Further, plea bargains, reduced sentences and stays of proceedings are done in cooperation with legal counsel and the courts to obtain cooperation.

If a subject is charged with an offence and authorities are seeking forfeiture of property but the actual property is not available because it cannot be located; has been transferred to a third party; is located outside Canada; has diminished in value; or, is commingled with other property – section 462.37(3-4) of the Criminal Code provides that a fine may be ordered in lieu of confiscations. If the fine is not paid then an additional mandatory jail sentence, to be served consecutively to any other time, can be imposed. For example, possible sentences of 5 to 10 years are available if the amount of proceeds (assets) is over 1 million dollars. The lengthy jail sentence under this section has been a factor in subjects disclosing assets, in some instances.

Criminal Code, ss. 462-.37 and 462.47

Fine instead of forfeiture

(3) If a court is satisfied that an order of forfeiture under subsection (1) or (2.01) should be made in respect of any property of an offender but that the property or any part of or interest in the property cannot be made subject to an order, the court may, instead of ordering the property or any part of or interest in the property to be forfeited, order the offender to pay a fine in an amount equal to the value of the property or the part of or interest in the property. In particular, a court may order the offender to pay a fine if the property or any part of or interest in the property

- (a) cannot, on the exercise of due diligence, be located;
- (b) has been transferred to a third party;
- (c) is located outside Canada;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty.

(4) Where a court orders an offender to pay a fine pursuant to subsection (3), the court shall

- (a) impose, in default of payment of that fine, a term of imprisonment
 - (i) not exceeding six months, where the amount of the fine does not exceed ten thousand dollars,
 - (ii) of not less than six months and not exceeding twelve months, where the amount of the fine exceeds ten thousand dollars but does not exceed twenty thousand dollars,
 - (iii) of not less than twelve months and not exceeding eighteen months, where the amount of the fine exceeds twenty thousand dollars but does not exceed fifty thousand dollars,

(iv) of not less than eighteen months and not exceeding two years, where the amount of the fine exceeds fifty thousand dollars but does not exceed one hundred thousand dollars,

(v) of not less than two years and not exceeding three years, where the amount of the fine exceeds one hundred thousand dollars but does not exceed two hundred and fifty thousand dollars,

(vi) of not less than three years and not exceeding five years, where the amount of the fine exceeds two hundred and fifty thousand dollars but does not exceed one million dollars, or

(vii) of not less than five years and not exceeding ten years, where the amount of the fine exceeds one million dollars; and

(b) direct that the term of imprisonment imposed pursuant to paragraph (a) be served consecutively to any other term of imprisonment imposed on the offender or that the offender is then serving.

No civil or criminal liability incurred by informants

462.47 For greater certainty but subject to section 241 of the *Income Tax Act*, a person is justified in disclosing to a peace officer or the Attorney General any facts on the basis of which that person reasonably suspects that any property is proceeds of crime or that any person has committed or is about to commit a designated offence.

To protect the integrity of investigation and not disclose investigation tactics, examples of implementation are not made public.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was clarified during the country visit that a person who falsely or maliciously reports an allegation of corruption would be subject to the same potential consequences as someone who gives false evidence to the court, similar to a perjury offence. In addition, a charge of obstruction of justice would be available against persons who provide false information to law enforcement.

Article 37 Cooperation with law enforcement authorities

Paragraph 2

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention

Canada cited the following applicable measures:

Although not expressly addressed in Part XXIII of the *Criminal Code*, as a matter of common law, the courts usually treat the cooperation with the authorities during the investigation or post-arrest phase as a mitigating factor in the determination of a fit sentence. An accused who cooperates with authorities in the investigation of an associate may enjoy mitigation of either the charges laid or the sentence sought. As well, a timely guilty plea, as an expression of remorse and the offender assuming responsibility for the commission of the offence, will also be considered a mitigating factor for sentencing purposes.

Canada provided cases as examples of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was noted that mitigation of a sentence would be left to the discretion of the court. Section 718.2 of the *Criminal Code* addresses sentencing principles, including aggravating or mitigating circumstances.

Article 37 Cooperation with law enforcement authorities

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

The ability to enter into immunity agreements is part of Canadian law. The authority to enter into such agreements is not set out in statute but rather is derived from the common law.

While the overarching principle is that those who have violated the law should be held accountable for their crimes, the policy of granting immunity in limited cases is based on a

recognition that it is sometimes in the public interest to provide immunity from prosecution to persons who are willing to give material evidence concerning the commission of an offence. Immunity from prosecution is the exception rather than the norm and is only provided where the information or co-operation is of such value that it is clearly in the public interest not to hold a person accountable for their criminal activity.

The Public Prosecution Service of Canada Deskbook contains a chapter dedicated to Immunity Agreements. The overarching purpose of the policy set out in the Deskbook is to:

- i. set out the applicable criteria in determining whether the Crown should enter into an immunity agreement with someone who may otherwise be exposed to criminal prosecution;
- ii. provide guidelines for Crown counsel on the proper handling of co-operating information-providers both in and out of court;
- iii. differentiate the role of Crown counsel from the role of the investigating agency in the immunity-seeking process.

A checklist of issues to address in an agreement, as well as a sample immunity agreement are also included to ensure that Crown counsel make use of this exceptional tool in a consistent and measured manner.

Despite the absence of any express provision in the *Criminal Code* authorizing the practice of granting immunity, the legal basis of a power to grant immunity has been judicially recognized in a number of decisions. The various ways by which immunity can be conferred by the Crown under Canadian criminal law is described chapter 35 of the Federal Prosecution Service Deskbook, which can be consulted online at:

- <http://www.ppsc-sppc.gc.ca/eng/fps-sfp/fpd/ch35.html>

Canada provided the following examples of implementation:

The various ways by which immunity can be conferred by the Crown under Canadian criminal law is described chapter 35 of the Federal Prosecution Service Deskbook, which can be consulted online at:

- <http://www.ppsc-sppc.gc.ca/eng/fps-sfp/fpd/ch35.html>

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. *Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

In accordance with the *Witness Protection Program Act*, protective measures may be provided to a source/witness and his/her immediate family and associates when a threat assessment indicates danger of intimidation or violence. Protective measures may consist of but are not limited to physical security, maintenance assistance, change of identification and relocation.

See answer at article 32 paragraph 1.

Witness Protection Program Act:

- <http://laws-lois.justice.gc.ca/PDF/W-11.2.pdf>

Canada provided the following examples of implementation:

The *Witness Protection Program Act* annual report describing implementation is available at the following link:

- <http://www.publicsafety.gc.ca/abt/dpr/le/wppa2011-12-eng.aspx>

In order to not jeopardize the integrity of the Program, or the safety of any individual within the Program, statistics have been provided on the most relevant areas of the Program, without details concerning individual cases.

The information on the number of cases where cooperating defendants/offenders have been permitted to give testimony using video or other communications technology is not available

For the number of cooperating defendants/offenders relocated, see question article 32 paragraph 5. The RCMP has several agreements with other States regarding the relocation of persons. Numbers and statistics are not made available.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 37 Cooperation with law enforcement authorities

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

Canada's MLA treaties (or "MLATs") and the Mutual Legal Assistance in Criminal Matters Act provide the means by which Canada may, via the International Assistance Group, facilitate the voluntary cooperation of a witness located in Canada for testimony or other assistance in relation to proceedings abroad, or of a witness located abroad, who might assist competent authorities to depriving offenders of the proceeds of crime and to recovering such proceeds. Notably, Canada's MLATs generally contain a provision which obligates the parties to assist one another in making a person, including a detained person, available to each other for the purposes of criminal proceedings.

In addition and in the absence of an agreement or where an agreement does not cover an offense for which assistance is requested, under sections 6, 7, 40 and 41 of the *Mutual Legal Assistance in Criminal Matters Act*, the Minister of Foreign Affairs may enter administrative arrangement to give effect to requests for assistance. See questions 191 to 221.

Finally, Canada may conclude MOU's between law enforcement authorities relating to investigations. See questions 225 to 232.

Mutual Legal Assistance in Criminal Matters Act

6. (1) If there is no agreement between Canada and a state or entity, or the state's or entity's name does not appear in the schedule, the Minister of Foreign Affairs may, with the agreement of the Minister, enter into an administrative arrangement with the state or entity providing for legal assistance with respect to an investigation specified in the arrangement relating to an act that, if committed in Canada, would be an indictable offence.

(2) If an agreement expressly states that legal assistance may be provided with respect to acts that do not constitute an offence within the meaning of the agreement, the Minister of Foreign Affairs may, in exceptional circumstances and with the agreement of the Minister, enter into an administrative arrangement with the state or entity concerned, providing for legal assistance with respect to an investigation specified in the arrangement relating to an act that, if committed in Canada, would be a contravention of an Act of Parliament or of the legislature of a province.

(3) An administrative arrangement entered into under subsection (1) or (2) may be implemented by the Minister, pursuant to this Act, in the same manner as an agreement.

(4) An administrative arrangement entered into under subsection (1) or (2) has force and effect only for such period not exceeding six months as is specified therein and with respect to the type of legal assistance that is specified therein.

(5) Sections 4 and 5 do not apply in respect of an administrative arrangement entered into under subsection (1) or (2).

(6) In any legal or other proceeding, an administrative arrangement entered into under subsection (1) or (2) and purporting to be signed by the Minister of Foreign Affairs or by a person designated by the Minister of Foreign Affairs is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and proof that it is what it purports to be.

IMPLEMENTATION OF AGREEMENTS IN CANADA

Special Authorization to Come Into Canada

40. (1) The Minister may, in order to give effect to a request of a Canadian competent authority, authorize a person in a state or entity who is inadmissible under the *Immigration and Refugee Protection Act* to come into Canada at a place designated by the Minister and to go to and remain in a place in Canada so designated for the period of time specified by the Minister, and the Minister may make the authorization subject to any conditions that the Minister considers desirable.

(2) The Minister may vary the terms of an authorization granted under subsection (1) and, in particular, may extend the period of time during which the person is authorized to remain in a place in Canada.

(3) A person to whom an authorization is granted under subsection (1) who is found in a place in Canada other than the place designated in the authorization or in any place in Canada after the expiration of the period of time specified in the authorization or who fails to comply with some other condition of the authorization shall, for the purposes of the *Immigration and Refugee Protection Act*, be deemed to be a person who entered Canada as a temporary resident and remains after the period authorized for their stay.

41. (1) A person who is in Canada pursuant to a request to give evidence in a proceeding or to give assistance in relation to an investigation or proceeding

(a) may not be detained, prosecuted or punished in Canada for any act or omission that occurred before the person's departure from the state or entity pursuant to the request;

(b) is not subject to civil process in respect of any act or omission that occurred before the person's departure from the state or entity pursuant to the request; and

(c) may not be required to give evidence in any proceeding in Canada other than the proceeding to which the request relates.

(2) Subsection (1) ceases to apply to a person who is in Canada pursuant to a request when the person leaves Canada or has the opportunity to leave Canada but remains in Canada for a purpose other than fulfilling the request.

Regarding the examples of implementation, Canada provided:

Absent the evidence being given in testimony in public proceedings, evidence from such persons is not made public. To date, there have been no instances where evidence obtained from persons in other states parties in this have resulted in public testimony in relation to corruption-related offences, but the tools for such international cooperation are in place. Rather, the evidence is often gathered in the course of an investigation with cooperation between law enforcement and kept confidential for investigatory purposes.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 38 Cooperation between national authorities

Subparagraph (a)

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed;
or

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

Where public officials have reasonable ground to believe that an offence has been committed as enumerated in articles 15, 21 and 23 of the Convention, they may on their own initiative report

them to law enforcement. As noted in question 136, the *Public Servants Disclosure Protection Act* provides protection to public servants who report wrongdoing.

In addition, a federal public servant is expected to report such offences in accordance with their obligations to serve the public interest by acting with integrity pursuant under the Values and Ethics Code for the Public Sector, which includes:

- 3.1 Acting at all times with integrity and in a manner that will bear the closest public scrutiny, an obligation that may not be fully satisfied by simply acting within the law.
- 3.2 Never using their official roles to inappropriately obtain an advantage for themselves or to advantage or disadvantage others.
- 3.3 Taking all possible steps to prevent and resolve any real, apparent or potential conflicts of interest between their official responsibilities and their private affairs in favour of the public interest.
- 3.4 Acting in such a way as to maintain their employer's trust.

In March 2010, DFAIT adopted the Policy and Procedure for Reporting Allegations of Bribery abroad by Canadians or Canadian Companies, which instructs Canadian missions, including High Commissions and embassy personnel, on the steps that must be taken when allegations arise that a Canadian company or individual has bribed a foreign public official, or other bribery-related offences. The policy is an internal one that has not been released publicly, but it essentially requires that such information in the possession of DFAIT officials be sent to DFAIT Headquarters and passed on to Canadian law enforcement, in accordance with the established procedures. Canada's Trade Commissioner Service (TCS) and departmental legal experts regularly give training to DFAIT officials on this policy and on the importance of reporting. DFAIT has continued to deliver a mandatory, comprehensive four-day training course called "The Global Learning Initiative for Commercial/Economic Staff Abroad" (GLI-2), which instructs participants on their responsibilities regarding the CFPOA, including reporting procedures. In addition, the Values and Ethics division at DFAIT provides training to various stakeholders within DFAIT about reporting offences in the context of the *Public Servants Disclosure Protection Act*.

Respecting law enforcement, the RCMP International Anti-Corruption Unit has participated in numerous anti-corruption awareness programs and developed educational resources for external partners. Notably, the RCMP has developed information pamphlets and posters describing the RCMP's work and the negative effects of corruption for distribution and presentation to Canadian missions abroad. The RCMP includes information on the International Anti-Corruption Unit and its mandate on the RCMP's internal and external websites. The RCMP also reaches out to the media to discuss the Force's work, which has promoted awareness of RCMP activities to prevent and combat corruption.

As a part of this outreach, orientation manuals have been completed for the unit covering the CFPOA and the various contacts and their roles. From September 2011 to August 2012, the RCMP made a number of presentations to external stakeholders, including: twelve presentations by representatives from RCMP National Headquarters to local universities, non-governmental organizations, banks, Trade Commissioners, the Canadian Institute of Mining, and numerous

international associations of experts and professionals; and forty-two presentations by the investigative teams in Calgary and Ottawa to targeted companies conducting business in other countries, law firms, government partners, Canadian professional associations and local universities and colleges.

In addition, the RCMP has liaison officers in DFAIT headquarters and at missions abroad. It has also established a point of contact within the Department of Justice's International Assistance Group to ensure that priority is given to requests for mutual legal assistance in corruption matters. Similarly, the RCMP continues to prioritize the establishment of procedures and mechanisms for information sharing within Government about suspected cases of corruption. Further, law enforcement and policy experts regularly meet informally to share information that may be relevant for law enforcement. Public servants may be interviewed by law enforcement officials to gather evidence to build a case and their materials may be produced at the request of the RCMP to provide evidence, subject to the right to not self-incriminate.

The Values and Ethics Code for the Public Sector can be found online at:

- <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049§ion=text#cha4>

Canada provided the following example of implementation of the CFPOA:

In the case of Niko Resources Ltd., a publicly traded company based in Calgary, Alberta, a DFAIT official reported his suspicions of impropriety to the RCMP, which led to an investigation. As a result, the company entered a guilty plea in the Court of Queen's Bench in Calgary for one count of bribery under paragraph 3(1)(b) of the CFPOA, covering the period of February 1, 2005 to June 30, 2005. The company admitted that, through its subsidiary Niko Bangladesh, it provided the use of a vehicle (which cost \$190,984 CDN) in May 2005 to AKM Mosharraf Hossain, then the Bangladeshi State Minister for Energy and Mineral Resources, in order to influence the Minister in his dealings with Niko Bangladesh. In June 2005, Niko Resources Ltd. paid travel and accommodation expenses for the same Minister to travel from Bangladesh to Calgary to attend the GO EXPO oil and gas exposition, and improperly paid approximately \$5,000 CDN for the Minister to travel to New York and Chicago to visit his family.

As a result of the conviction, Niko Resources Ltd. was fined \$9,499,000 CDN and placed under a Probation Order, which puts the company under the Court's supervision for three years to ensure that audits are completed to examine the company's compliance with the CFPOA.

Canada provided the following information on statistics:

Beyond the statement of facts respecting the NIKO case, which notes that Canada's then ambassador to Bangladesh reported his suspicions that an offence has been committed contrary to article 16 of the Convention, no other information is publicly available. However, we note

that information is regularly provided between authorities as a matter of practice. If FINTRAC's analysis leads it to have reasonable grounds to suspect that information would be relevant to investigating or prosecuting a Money Laundering or Terrorist Financing, FINTRAC must disclose the information designated by subsection 55(7) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act to the relevant police or other law enforcement agency identified under the *Act* (federal, provincial, or municipal). Such cases can include those whereby corruption is the predicate offence.

For further information about Canada's Financial Intelligence Unit's (Financial Transactions and Reports Analysis Centre of Canada [FINTRAC]) mandate to disclose financial intelligence to police and other law enforcement agencies on suspicions of Money Laundering (ML) and Terrorism Financing (TF), please see question 225.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 38 Cooperation between national authorities

Subparagraph (b)

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

See comments above.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

Canada implements these measures through mandatory and voluntary reporting obligations, financial monitoring and outreach activities that raise awareness about corruption matters with the private sector and civil society.

There is no single text that governs how Canada implements such measures in accordance with the Convention. Rather, measures are developed and adopted as necessary to encourage cooperation between the private sector and law enforcement.

This being so, section 40-41 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* established the Financial Transactions and Reports Analysis Centre of Canada:

- <http://laws-lois.justice.gc.ca/PDF/P-24.501.pdf>

Proceeds of Crime (Money Laundering) and Terrorist Financing Act,

40. The object of this Part is to establish an independent agency that
- (a) acts at arm's length from law enforcement agencies and other entities to which it is authorized to disclose information;
 - (b) collects, analyses, assesses and discloses information in order to assist in the detection, prevention and deterrence of money laundering and of the financing of terrorist activities;
 - (c) ensures that personal information under its control is protected from unauthorized disclosure;
 - (d) operates to enhance public awareness and understanding of matters related to money laundering; and
 - (e) ensures compliance with Part 1.
- 2000, c. 17, s. 40;
2001, c. 41, s. 65.

41. (1) There is hereby established the Financial Transactions and Reports Analysis Centre of Canada.

The Centre may exercise powers only as an agent of Her Majesty in right of Canada.

Additionally, sections 9 to 11 of the *Freezing Assets of Corrupt Foreign Officials Act* provide for an ongoing obligation to identify and disclose property believed to be the property of a politically exposed foreign person who is subject to having their assets frozen under the Act.

- <http://laws-lois.justice.gc.ca/PDF/F-31.6.pdf>

Freezing Assets of Corrupt Foreign Officials Act

8. Each of the following entities must determine on a continuing basis whether it is in possession or control of property that they have reason to believe is the property of a politically exposed foreign person who is the subject of an order or regulation made under section 4:

- (a) authorized foreign banks, as defined in section 2 of the *Bank Act*, in respect of their business in Canada or banks to which that Act applies;
- (b) cooperative credit societies, savings and credit unions and caisses populaires regulated by a provincial Act and associations regulated by the *Cooperative Credit Associations Act*;
- (c) foreign companies, as defined in subsection 2(1) of the *Insurance Companies Act*, in respect of their insurance business in Canada;
- (d) companies, provincial companies and societies, as those terms are defined in subsection 2(1) of the *Insurance Companies Act*;
- (e) fraternal benefit societies regulated by a provincial Act in respect of their insurance activities and insurance companies and other entities engaged in the business of insuring risks that are regulated by a provincial Act;
- (f) companies to which the *Trust and Loan Companies Act* applies;
- (g) trust companies regulated by a provincial Act;
- (h) loan companies regulated by a provincial Act;
- (i) entities that engage in any activity described in paragraph 5(h) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* if the activity involves the opening of an account for a client;
- (j) entities authorized under provincial legislation to engage in the business of dealing in securities or to provide portfolio management or investment counselling services; and
- (k) other entities of a prescribed class of entities.

9. (1) Every person in Canada and every Canadian outside Canada must, without delay, disclose to the Commissioner of the Royal Canadian Mounted Police

- (a) the existence of property in their possession or control that they have reason to believe is the property of any politically exposed foreign person who is the subject of an order or regulation under section 4; and
- (b) information about a transaction or proposed transaction in respect of property referred to in paragraph (a).

(2) No criminal or civil proceedings lie against a person for disclosure made in good faith under subsection (1).

Offence and punishment

10. (1) Every person who wilfully contravenes an order or regulation made under section 4
- (a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than five years; or
 - (b) is guilty of an offence punishable on summary conviction and is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than one year, or to both.
- (2) Every person who wilfully contravenes section 8 or 9
- (a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than five years; or
 - (b) is guilty of an offence punishable on summary conviction and is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than one year, or to both.

Financial Transaction and Reports Analysis Centre of Canada (FINTRAC)

FINTRAC, as a supervisor, maintains relationships with reporting entities in the private sector, however the Centre is not an investigative agency and therefore it does not have the power to gather evidence, seize and freeze assets, or lay charges. These powers rest with the police or the other agencies to which FINTRAC makes its disclosures. FINTRAC's Regional Operations and Compliance directorate has responsibility for ensuring compliance with Part 1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA). The obligations included under Part 1 of the Act include reporting, record-keeping, and client identifications provisions, including a requirement for reporting entities to take reasonable measures to determine whether the entity is dealing with a politically exposed foreign person for new or existing accounts or certain electronic funds transfers of \$100,000 or more. FINTRAC ensures compliance with the Act by working with the many businesses and individuals who have obligations under the Act, such as, financial institutions and certain designated non-financial businesses and professions. By improving compliance with the PCMLTFA, FINTRAC strengthens Canada's defences against those who would abuse Canada's financial system and ensure that the Centre continues to receive the transaction reports necessary to produce financial intelligence.

FINTRAC's ability to produce valuable financial intelligence is inextricably linked to a sound compliance program, which relies first and foremost on the information that it obtains from reporting entities. One of the Centre's vital functions is to work with business sectors to ensure that they comply with the requirements of the PCMLTFA to improve the quality of information they send to FINTRAC. The results are better transaction reports from reporting entities, which contributes to the detection and deterrence of money laundering and terrorist financing (ML and TF) activities through FINTRAC's production of financial intelligence products and through the Centre's disclosures.

RCMP

The RCMP International Anti-Corruption Team has participated in anti-corruption training and awareness workshops and has given a series of presentations on their units, their activities and the CFPOA to such organizations as provincial law enforcement, private sector-organized seminars, NGO's, private companies.

The RCMP complements its training by developing additional educational resources. In this respect, it has developed information pamphlets describing the RCMP's work and the negative effects of corruption that are distributed at presentations. A poster was distributed to all embassies and is used during presentations. Further, the RCMP also includes information on the Anti-Corruption Units and their Anti-Corruption mandate on the RCMP's internal and external websites. The RCMP has also reached out to the media to discuss the Force's work.

The Anti-Corruption Team has given hundreds of presentations to both government and business over the last 4 years.

DFAIT

In addition, DFAIT's Trade Commissioners and other personnel at Canadian missions work closely with Canadian companies doing business abroad through the provision of a wide range of services and support. In this respect, Trade Commissioners play a key role in the prevention of foreign bribery through making Canadian clients aware of their obligations under the CFPOA, and through the active promotion of Corporate Social Responsibility (CSR). DFAIT also plays a lead role in representing Canada in outreach efforts with emerging economies regarding corruption and at international anti-corruption forums, such as the Working Group on Bribery, and in coordinating Canada's whole-of-government approach to meeting its international anti-corruption obligations.

Information Sharing –Training – DFAIT continues to provide information and training for its Heads of Mission, Trade Commissioners, and Political Officers on the CFPOA and Canada's international obligations to prevent and combat corruption. During the reporting period, DFAIT has continued to deliver mandatory, comprehensive four-day training course called "The Global Learning Initiative for Commercial/Economic Staff Abroad", which includes training on the obligations of DFAIT employees to report allegations of bribery communicated to them from their business interactions. The Trade Commissioner Service's CSR online training course also includes a CFPOA component which details employee obligations and reporting procedures. In addition, the Values and Ethics pre-posting presentation refers to the CFPOA and to DFAIT's Policy and Procedure for Reporting Allegations of Bribery abroad by Canadians or Canadian Companies. This reference is also part of the Values and Ethics presentations to various stakeholders under the section covering the *Public Servants Disclosure Protection Act*.

Office of the Superintendent of Financial Institutions Canada (OSFI)

- http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?ArticleID=3

The Office of the Superintendent of Financial Institutions Canada (OSFI) works in its capacity as the primary regulator and supervisor of federally regulated deposit-taking institutions, insurance companies, and federally regulated private pension plans to inform financial institutions about persons who have been designated politically exposed foreign persons under Freezing Assets of Corrupt Foreign Officials Act (FACFAO). This facilitates action to freeze the proceeds of corruption consistent with the disclosure obligations under FACFAO, as discussed above.

Regarding information on recent cases in which entities of the private sector have collaborated with national investigating or prosecuting authorities, Canada provided :

Following a change in management and new appointments to its Board of Governors, Calgary-based Griffiths Energy International Inc (GEI) became aware that GEI had paid a bribe to a Chadian public official in order to further the business objectives of GEI and its subsidiaries regarding an oil and gas venture in the Republic of Chad. The company voluntarily disclosed to the RCMP that it had paid a bribe contrary to the CFPOA, plead guilty to the offense before the Provincial Court of Alberta and agreed to pay a \$10.35 million fine on January 14, 2013. GEI was noted to have cooperated with the RCMP and the Public Prosecution Service of Canada to be held accountable under the CFPOA.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was clarified that the provisions above apply not only to financial institutions, but also real estate institutions and other private sector entities in terms of money laundering and the financing of terrorism. Section 462.47 provides protection for persons who report on designated offences against civil or criminal liability. Reference was made to the decision in the Griffiths case.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

Although the RCMP does not have a hot line, the RCMP Anti-Corruption Team has taken strong measures to encourage persons to report offences to it by preparing and distributing posters and

pamphlets as well as developing a web site that provides phone numbers to contact to report a crime.

In addition, the Canadian Anti-Fraud Centre refers information received to the units to the responsible law enforcement unit, including the IACU for CFPOA matters. The RCMP IACU website can be found online at:

- <http://www.rcmp-grc.gc.ca/ottawa/anti-corruption-eng.htm>

and persons may contact the RCMP anti-fraud centre online at:

- <http://www.antifraudcentre-centreantifraude.ca/english/home.html>

In addition, officials for Public Prosecution Service Canada, RCMP, and DFAIT regularly participate in conferences dealing with corruption matters where they discuss the offences in Canadian law that implement Canada's obligations under the UNCAC and the importance of disclosure. Civil society engagement by law enforcement and government officials is a value that underlies much of this work with a view to raising awareness about the law and identifying corrupt activities as defined by UNCAC. In some case, specific measures have been implemented that require persons resident in Canada and national to disclose to the RCMP property in their possession that is associated with a person who has been identified by Canada as a corrupt foreign official. Pursuant to Canada's *Freezing Assets of Corrupt Foreign Officials Act* and its associated regulations there is ongoing identification and disclosure obligation to the RCMP regarding property held be designated persons whose assets are subject to freezing for corruption. See previous related response above.

Please refer to the answer provided under article 39 paragraph 1 for FACFOA.

Regarding the examples of implementation, please see above.

Regarding the report of offences, the RCMP does not comment on how the information is received. All complaints are reviewed, including anonymous complaints.

Financial incentives are not offered.

No information available on anonymous reports.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

There is no bank secrecy legislation in Canada. Legislation regulating banks does not provide obstacles to domestic criminal investigations of offences established in accordance with the Convention

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. The absence of legislation is meant to report that a bank or other financial institutions cannot claim secrecy or confidentiality in determining whether to report suspicious activity or disclose records.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

The *Canada Evidence Act* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-5/index.html>

Generally, Canadian courts have stated that introduction of evidence of prior convictions of an accused risks prejudicing an accused's trial by leading the trier of fact to follow erroneous chains of reasoning or to use the prior conviction for an inappropriate purpose. However, where an accused has put his or her character in issue, section 666 of the *Criminal Code* permits the Crown to

adduce evidence of previous convictions of the accused. This rule could apply whether or not the accused testifies.

Where the accused does testify, section 12 of the *Canada Evidence Act* permits a witness (including the accused) to be asked whether the witness has been previously convicted of an offence. The evidence of past convictions is considered relevant to the credibility of the witness. It is expected that both rules could permit evidence of a past foreign conviction to be introduced. In addition, evidence of a previous conviction in a foreign state could also be introduced in the course of a sentencing hearing.

Section 666 of the *Criminal Code*

Section 12 of the *Canada Evidence Act*

Section 666 of the *Criminal Code* provides:

666. Where, at a trial, the accused adduces evidence of his good character, the prosecutor may, in answer thereto, before a verdict is returned, adduce evidence of the previous conviction of the accused for any offences, including any previous conviction by reason of which a greater punishment may be imposed.

Section 12 of the *Canada Evidence Act* provides:

12. (1) A witness may be questioned as to whether the witness has been convicted of any offence, excluding any offence designated as a contravention under the *Contraventions Act*, but including such an offence where the conviction was entered after a trial on an indictment.

(1.1) If the witness either denies the fact or refuses to answer, the opposite party may prove the conviction.

(2) A conviction may be proved by producing

(a) a certificate containing the substance and effect only, omitting the formal part, of the indictment and conviction, if it is for an indictable offence, or a copy of the summary conviction, if it is for an offence punishable on summary conviction, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court in which the conviction, if on indictment, was had, or to which the conviction, if summary, was returned; and

(b) proof of identity.

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

The French version of the *Canada Evidence Act* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-5/TexteCompleet.html>

Canada didn't provide any case of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. During the country visit, Canada provided the following supplemental information:

Foreign convictions can be taken into account at sentencing as they can assist a sentencing court in evaluating the character of the offender. See, for example, the case of *R. v. D.H.* [1999] S.J. 252 (Sask. Q.B.), in which the Crown prosecutor introduced as evidence, at the sentencing of the accused, the accused's record of convictions in Romanian courts. The previous convictions of the accused referred to in the foreign judgments were found to be admissible and relevant.

Article 42 Jurisdiction

Subparagraph 1 (a)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Subsection 6(2) of the *Criminal Code* provides:

6. (2) Subject to this Act or any other Act of Parliament, no person shall be convicted or discharged under section 730 of an offence committed outside Canada.

Canada has jurisdiction over the offences established in accordance with the Convention when the offence is committed in whole or in part in its territory. To be subject to the jurisdiction of Canadian courts, a significant portion of the activities constituting the offence must take place in Canada. There is a sufficient basis for jurisdiction where there is a real and substantial link between the offence and Canada. In making this assessment, the court must consider all relevant facts that happened in Canada that may legitimately give Canada an interest in prosecuting the offence. Subsequently, the court must then determine whether there is anything in those facts that offends international comity. (See *R. v. Libman* (1985), 21 C.C.C. (3d) 206 (S.C.C.))

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Canada provided cases as examples of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 42 Jurisdiction

Subparagraph 1 (b)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

The country under review provided the following laws:

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

The *Oceans Act* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/O-2.4/page-1.html#h-2>

Please refer to the following sections of the *Criminal Code*:

6(2)

7(1)

477.1(1)(c)

Please refer to section 2 of the *Oceans Act*.

Subsection 6(2) provides:

6(2) Subject to this Act or any other Act of Parliament, no person shall be convicted or discharged under section 730 of an offence committed outside Canada.

Subsection 7(1) provides:

7. (1) Notwithstanding anything in this Act or any other Act, every one who

(a) on or in respect of an aircraft

(i) registered in Canada under regulations made under the *Aeronautics Act*, or

(ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft registered in Canada under those regulations,

while the aircraft is in flight, or

(b) on any aircraft, while the aircraft is in flight if the flight terminated in Canada,

commits an act or omission in or outside Canada that if committed in Canada would be an offence punishable by indictment shall be deemed to have committed that act or omission in Canada.

Paragraph 477.1(1)(c) provides:

477.1 Every person who commits an act or omission that, if it occurred in Canada, would be an offence under a federal law, within the meaning of section 2 of the *Oceans Act*, is deemed to have committed that act or omission in Canada if it is an act or omission

....

(c) that is committed outside Canada on board or by means of a ship registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;

Section 2 of the *Oceans Act* in part provides:

“federal laws”

“federal laws” includes Acts of Parliament, regulations as defined in subsection 2(1) of the *Interpretation Act* and any other rules of law within the jurisdiction of Parliament, but does not include ordinances within the meaning of the *Northwest Territories Act* or laws of the Legislature of Yukon or of the Legislature for Nunavut;

The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

The French version of the *Oceans Act* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/O-2.4/page-1.html>

Canada provided cases as examples of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 42 Jurisdiction

Subparagraph 2 (a)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

Canada indicated that it had not implemented this provision of the Convention.

Please note that Canada issued the following declaration pertaining to this article upon depositing its instrument of ratification of the Convention:

“Article 42(2) provides that a State Party ‘may’ establish jurisdiction based on nationality. Given that Canada has effective and broad territorial jurisdiction over corruption offences, Canada does not intend to extend its jurisdiction in the case of an offence committed by a Canadian national beyond that existing territorial basis of jurisdiction.”

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 42 Jurisdiction

Subparagraph 2 (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had partly implemented this provision of the Convention.

Please also note the responses to the next subparagraph.

Upon depositing its instrument of ratification of the Convention Canada issued the following declaration pertaining to this article:

“Article 42(2) provides that a State Party ‘may’ establish jurisdiction based on nationality. Given that Canada has effective and broad territorial jurisdiction over corruption offences, Canada does not intend to extend its jurisdiction in the case of an offence committed by a Canadian national beyond that existing territorial basis of jurisdiction.”

Notwithstanding the declaration, Canada may exercise jurisdiction as a matter of common law when there is a real and substantial link between the offence and Canada pursuant to the Supreme Court of Canada decision *R. v. Libman* (1985), 21 C.C.C. (3d) 206 (SCC). See subsequent answers in this article.

Canada introduced amendments to the CFPOA on February 5, 2013 that would facilitate prosecution. Section 4 of the *Fighting Foreign Corruption Act* (tabled in the Canadian Senate on February 5, 2013) would allow Canada to take jurisdiction over the offence of foreign bribery under section 3 of the CFPOA, deeming the act or omission to have been committed in Canada if the person committing the act is a Canadian citizen, or a permanent resident as defined in Canada’s *Immigration and Refugee Protection Act* and who is present in Canada after the commission of the act or omission, or a public body, corporation, society, company, firm or partnership that is incorporated, formed or otherwise organized under the laws of Canada or a province.

Section 4 of the *Fighting Foreign Corruption Act* would also extend nationality jurisdiction to the new offence (the new section 4 of the CFPOA) of establishing off-the-books accounts, making transactions that are not recorded in books and records, recording non-existent expenditures, incorrectly entering liabilities, knowingly using false documents, or intentionally destroying books and records, for the purpose of bribing a foreign public official or for hiding that bribe.

It is noted that the UNCAC does not require States Parties to the Convention to take nationality jurisdiction over the crime of foreign bribery.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. As noted above, the proposed amendments to the CFPOA were adopted.

Article 42 Jurisdiction

Subparagraph 2 (c)

2. *Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory;

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention for conspiracy. For the remaining inchoate offences, there is no specific measure, but Canadian jurisprudence states that jurisdiction may exist for the offences if the commission of the offence has a real and substantial link to Canada: *R. v. Libman*, [1985] 2 SCR 178.

The *Criminal Code* which is available at the following link:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

Section 465 of the *Criminal Code* provides:

465. (1) Except where otherwise expressly provided by law, the following provisions apply in respect of conspiracy:

(a) every one who conspires with any one to commit murder or to cause another person to be murdered, whether in Canada or not, is guilty of an indictable offence and liable to a maximum term of imprisonment for life;

(b) every one who conspires with any one to prosecute a person for an alleged offence, knowing that he did not commit that offence, is guilty of an indictable offence and liable

(i) to imprisonment for a term not exceeding ten years, if the alleged offence is one for which, on conviction, that person would be liable to be sentenced to imprisonment for life or for a term not exceeding fourteen years, or

(ii) to imprisonment for a term not exceeding five years, if the alleged offence is one for which, on conviction, that person would be liable to imprisonment for less than fourteen years;

(c) every one who conspires with any one to commit an indictable offence not provided for in paragraph (a) or (b) is guilty of an indictable offence and liable to the same punishment as that to which an accused who is guilty of that offence would, on conviction, be liable; and

(d) every one who conspires with any one to commit an offence punishable on summary conviction is guilty of an offence punishable on summary conviction.

(2) [Repealed, 1985, c. 27 (1st Supp.), s. 61]

(3) Every one who, while in Canada, conspires with any one to do anything referred to in subsection (1) in a place outside Canada that is an offence under the laws of that place shall be deemed to have conspired to do that thing in Canada.

(4) Every one who, while in a place outside Canada, conspires with any one to do anything referred to in subsection (1) in Canada shall be deemed to have conspired in Canada to do that thing.

(5) Where a person is alleged to have conspired to do anything that is an offence by virtue of subsection (3) or (4), proceedings in respect of that offence may, whether or not that person is in Canada, be commenced in any territorial division in Canada, and the accused may be tried and punished in respect of that offence in the same manner as if the offence had been committed in that territorial division.

(6) For greater certainty, the provisions of this Act relating to

(a) requirements that an accused appear at and be present during proceedings, and

(b) the exceptions to those requirements,

apply to proceedings commenced in any territorial division pursuant to subsection (5).

(7) Where a person is alleged to have conspired to do anything that is an offence by virtue of subsection (3) or (4) and that person has been tried and dealt with outside Canada in respect of the offence in such a manner that, if the person had been tried and dealt with in Canada, he would be able to plead *autrefois acquit*, *autrefois convict* or pardon, the person shall be deemed to have been so tried and dealt with in Canada.

The French version of the *Criminal Code* is available at the following link:
<http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

Canada provided cases as examples of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Canada indicated that they had not implemented this provision of the Convention.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. Note that the provision is optional.

Article 42 Jurisdiction

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

Canada didn't specify if it implements the provision under review as unlike some other countries, Canada can extradite its nationals to face criminal prosecution in other countries.

Canada can extradite its nationals to face criminal prosecution in other countries. Subsection 6(1) of the *Charter of Rights and Freedoms* provides that every citizen has the right to remain in Canada. However, extradition is viewed as a constitutionally acceptable limitation on this right, since crime could otherwise go unpunished. As a consequence, Canada can and does extradite its citizens.

The Minister of Justice may extradite a Canadian citizen accused of crime involving conduct that could be prosecuted in Canada as a criminal offence. When deciding whether to prosecute an offence in Canada or to extradite the accused, the International Assistance Group (IAG) will consult with Crown counsel on behalf of the Government of Canada or, if the conduct may be prosecuted under the *Criminal Code*, with the provincial attorney general. The ultimate decision regarding prosecution always rests with the relevant attorney general. The following should be considered at an early stage to determine if prosecution in Canada is a realistic option:

- a. where the impact of the offence was felt or likely to have been felt;
- b. which jurisdiction has the greater interest in prosecuting the offence;
- c. which police force played the major role in the development of the case;
- d. which jurisdiction has laid charges;
- e. which jurisdiction has the most comprehensive case;
- f. which jurisdiction is ready to proceed to trial;
- g. where the evidence is located;
- h. whether the evidence is mobile;
- i. the number of accused involved and whether they can be tried in one place;
- j. in which jurisdiction most of the acts in furtherance of the crime were committed;
- k. the nationality and residence of the accused; and
- l. the severity of the sentence the accused is likely to receive in each jurisdiction.

The Minister's decision concerning extradition will be conveyed by the IAG to the requesting partner.

Sometimes a request to extradite a person accused of crime concerns conduct which could be prosecuted in Canada. Such cases usually involve trans-border crime or crime with a substantial link with Canadian territory. One common example is a conspiracy where some planning and overt acts occur both on Canadian and foreign territory.

In *United States of America v. Cotroni*; *United States of America v. El Zein*¹, the Supreme Court of Canada concluded that even if there is jurisdiction to prosecute in Canada, extradition of a Canadian citizen is not unconstitutional. However, extradition could become unconstitutional if Canadian authorities failed, before extraditing the person, to determine whether prosecution in Canada was a “realistic option”.

The country under review provided the following laws:

Extradition Act (S.C. 1999, c. 18), s. 3.

- <http://laws-lois.justice.gc.ca/PDF/E-23.01.pdf>

See answer to article 44 paragraph 1.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. It was clarified that Canada does not refuse extradition on the sole ground that the subject accused is a national of Canada.

Article 42 Jurisdiction

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this

Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

Since Canada extradites its nationals, a refusal on this basis alone will not occur. Further, Canada's Extradition Act provides a comprehensive legal scheme that recognizes UNCAC as providing a legal basis for extradition so that crimes do not go unpunished. Canada might, however, refuse to extradite an alleged offender where Canada also has jurisdiction to prosecute based on the same conduct as that for which extradition is requested if, in the particular circumstances of a given case, Canada had a stronger interest in the case. The following should be considered at an early stage to determine if prosecution in Canada is a realistic option:

- a. where the impact of the offence was felt or likely to have been felt;
- b. which jurisdiction has the greater interest in prosecuting the offence;
- c. which police force played the major role in the development of the case;
- d. which jurisdiction has laid charges;
- e. which jurisdiction has the most comprehensive case;
- f. which jurisdiction is ready to proceed to trial;
- g. where the evidence is located;
- h. whether the evidence is mobile;
- i. the number of accused involved and whether they can be tried in one place;
- j. in which jurisdiction most of the acts in furtherance of the crime were committed;
- k. the nationality and residence of the accused; and
- l. the severity of the sentence the accused is likely to receive in each jurisdiction.

If these considerations favoured Canada prosecuting the crime, Canada may elect to do so. See response to article 44 for further information.

Extradition Act (S.C. 1999, c. 18)

- <http://laws-lois.justice.gc.ca/PDF/E-23.01.pdf>

47. The Minister may refuse to make a surrender order if the Minister is satisfied that [...]

(d) the conduct in respect of which the request for extradition is made is the subject of criminal proceedings in Canada against the person;

In addition, Canada's mutual legal assistance treaties include provisions respecting the obligation to extradite or prosecute. For example, in the *Treaty on Extradition between Canada and the United States of America*, article 17bis provides:

17(bis) If both contracting Parties have jurisdiction to prosecute the person for the offense for which extradition is sought, the executive authority of the requested State, after

consulting with the executive of the requesting State, shall decide whether to extradite the person or to submit the case to its competent authorities for the purpose of prosecution. In making its decision, the requested State shall consider all relevant factors, including but not limited to:

- (i) The place where the act was committed or intended to be committed or the injury occurred or was intended to occur;
- (ii) The respective interests of the Contracting Parties;
- (iii) The nationality of the victim or the intended victim; and
- (iv) The availability and location of the evidence.

No examples of implementation were provided.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention. The territorial basis for jurisdiction, described above, was noted in this context.

Article 42 Jurisdiction

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

Canada considered that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

The Public Prosecution Service of Canada (PPSC) and the RCMP will as a practice coordinate and consult on criminal matters in respect of the same conduct. Whereas the conduct of an investigation, prosecution or judicial proceeding will be lead in Canada by Canada's interests and respect the principle of judicial independence, PPSC will consider prosecutorial actions in other jurisdictions to determine whether a prosecution should be pursued in Canada and if prosecution is pursued in Canada, how the results can be shared with other jurisdictions. The latter will usually be done via police to police communication to ensure that information is shared effectively in respect of the same conduct. Notably, the RCMP when appropriate will consult other countries to coordinate their actions. As mentioned earlier, the RCMP promotes among our investigators and between police organizations the exchange of information police to police through attendance of yearly workshops with other police forces.

Such coordination is often done as a matter of practice. To this end, Canada recognizes the United Nations Convention Against Corruption (UNCAC) as a legal basis for mutual legal assistance and cooperation between law enforcement as discussed in the responses to article 46 and 48.

Canada provided the following information on the implementation of the provision under review:

Canada does not comment on state to state communication or cooperation between law enforcement. The factors that will influence collaboration include inter alia:

- a. where the impact of the offence was felt or likely to have been felt;
- b. which jurisdiction has the greater interest in prosecuting the offence;
- c. which police force played the major role in the development of the case;
- d. which jurisdiction has laid charges;
- e. which jurisdiction has the most comprehensive case;
- f. which jurisdiction is ready to proceed to trial;
- g. where the evidence is located;
- h. whether the evidence is mobile;
- i. what are the opportunities for collaboration; and
- j. what are the best means for collaboration (bilateral, multilateral).

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Article 42 Jurisdiction

Paragraph 6

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

Canada confirmed that it had implemented this provision of the Convention.

Canada cited the following applicable measures:

Subsection 7(4) of the *Criminal Code* extends Canadian jurisdiction to an act or omission by public service employees committed outside Canada that is an offence in that place and that, if committed in Canada, would be an indictable offence.

In addition, Canada has jurisdiction in respect of offences committed by Canadian military personnel and other persons subject to the Code of Service Discipline pursuant to sections 67, 130 and 132 of the *National Defence Act*.

The Criminal Code, s. 7(4):

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

The National Defence Act, ss 67, 130, 132:

- <http://laws-lois.justice.gc.ca/eng/acts/N-5/index.html>

The Public Service Employment Act, s.2:

- <http://laws-lois.justice.gc.ca/eng/acts/P-33.01/index.html>

Criminal Code:

6(2) Subject to this Act or any other Act of Parliament, no person shall be convicted or discharged under section 730 of an offence committed outside Canada.

[...]

7(4) Everyone who, while employed as an employee within the meaning of the Public Service Employment Act in a place outside Canada, commits an act or omission in that place that is an offence under the laws of that place and that, if committed in Canada, would be an offence punishable by indictment shall be deemed to have committed that act or omission in Canada.

National Defence Act:

67. Subject to section 70, every person alleged to have committed a service offence may be charged, dealt with and tried under the Code of Service Discipline, whether the alleged offence was committed in Canada or outside Canada.

[...]

130. (1) An act or omission

(a) that takes place in Canada and is punishable under Part VII, the Criminal Code or any other Act of Parliament, or

(b) that takes place outside Canada and would, if it had taken place in Canada, be punishable under Part VII, the Criminal Code or any other Act of Parliament,

is an offence under this Division and every person convicted thereof is liable to suffer punishment as provided in subsection (2).

(2) Subject to subsection (3), where a service tribunal convicts a person under subsection (1), the service tribunal shall,

(a) if the conviction was in respect of an offence

(i) committed in Canada under Part VII, the Criminal Code or any other Act of Parliament and for which a minimum punishment is prescribed, or

(ii) committed outside Canada under section 235 of the Criminal Code,

impose a punishment in accordance with the enactment prescribing the minimum punishment for the offence; or

(b) in any other case,

(i) impose the punishment prescribed for the offence by Part VII, the Criminal Code or that other Act, or

(ii) impose dismissal with disgrace from Her Majesty's service or less punishment.

(3) All provisions of the Code of Service Discipline in respect of a punishment of imprisonment for life, for two years or more or for less than two years, and a fine, apply in respect of punishments imposed under paragraph (2)(a) or subparagraph (2)(b)(i).

(4) Nothing in this section is in derogation of the authority conferred by other sections of the Code of Service Discipline to charge, deal with and try a person alleged to have committed any offence set out in sections 73 to 129 and to impose the punishment for that offence described in the section prescribing that offence.

132. (1) An act or omission that takes place outside Canada and would, under the law applicable in the place where the act or omission occurred, be an offence if committed by a person subject to that law is an offence under this Division, and every person who is found guilty thereof is liable to suffer punishment as provided in subsection (2).

(2) Subject to subsection (3), where a service tribunal finds a person guilty of an offence under subsection (1), the service tribunal shall impose the punishment in the scale of punishments that it considers appropriate, having regard to the punishment prescribed by the law applicable in the place where the act or omission occurred and the punishment prescribed for the same or a similar offence in this Act, the Criminal Code or any other Act of Parliament.

(3) All provisions of the Code of Service Discipline in respect of a punishment of imprisonment for life, for two years or more or for less than two years, and a fine, apply in respect of punishments imposed under subsection (2).

(4) Nothing in this section is in derogation of the authority conferred by other sections of the Code of Service Discipline to charge, deal with and try a person alleged to have committed any offence set out in sections 73 to 130 and to impose the punishment for that offence described in the section prescribing that offence.

(5) Where an act or omission constituting an offence under subsection (1) contravenes the customs laws applicable in the place where the offence was committed, any officer appointed under the regulations for the purposes of this section may seize and detain any goods by means of or in relation to which the officer believes on reasonable grounds that the offence was committed and, if any person is convicted of the offence under subsection (1), the goods may, in accordance with regulations made by the Governor in Council, be forfeited to Her Majesty and may be disposed of as provided by those regulations.

Public Service Employment Act defines an employee as follows under section 2 as follows:

a person employed in that part of the public service to which the Commission has exclusive authority to make appointments.

The French version of the Criminal Code is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

The French version of the National Defence Act is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/N-5/TexteCompleet.html>

The French version of the Public Service Employment Act is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/P-33.01/TexteCompleet.html>

Canada provided cases as examples of implementation.

(b) Observations on the implementation of the article

The reviewing experts observed that Canada was in compliance with this provision of the Convention.

Chapter IV. International Cooperation

Article 44 Extradition

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

36. Canada confirmed that it had implemented this provision of the Convention.

37. Corruption offences are extraditable offences if they meet the conditions set out in the relevant extradition agreement, or in the absence of an extradition agreement, the *Extradition Act*. Where the *Extradition Act* applies, article 3 provides as follows:

EXTRADITABLE CONDUCT

General principle

3. (1) A person may be extradited from Canada in accordance with this Act and a relevant extradition agreement on the request of an extradition partner for the purpose of prosecuting the person or imposing a sentence on — or enforcing a sentence imposed on — the person if

(a) subject to a relevant extradition agreement, the offence in respect of which the extradition is requested is punishable by the extradition partner, by imprisoning or otherwise depriving the person of their liberty for a maximum term of two years or more, or by a more severe punishment; and

(b) the conduct of the person, had it occurred in Canada, would have constituted an offence that is punishable in Canada,

(i) in the case of a request based on a specific agreement, by imprisonment for a maximum term of five years or more, or by a more severe punishment, and

(ii) in any other case, by imprisonment for a maximum term of two years or more, or by a more severe punishment, subject to a relevant extradition agreement.

Conduct determinative

(2) For greater certainty, it is not relevant whether the conduct referred to in subsection (1) is named, defined or characterized by the extradition partner in the same way as it is in Canada.

Extradition of a person who has been sentenced

(3) Subject to a relevant extradition agreement, the extradition of a person who has been sentenced to imprisonment or another deprivation of liberty may only be granted if the portion of the term remaining is at least six months long or a more severe punishment remains to be carried out.

38. Canada reported that there have been no cases of conflict based on dual criminality. The issue of dual criminality is dealt with in more detail under Article 44, paragraph 2.

(b) Observations on the implementation of the article

39. The reviewing experts noted that Canada is in compliance with this provision of the Convention. Section 3, sub-paragraph (1) specifically provides that extradition can be carried out where the offence in respect of which the extradition is requested is punishable by the extradition partner and the conduct of the person, had it occurred in Canada, would have constituted an offence that is punishable in Canada.

40. In Canada, extradition is provided for under bilateral and multilateral agreements to which Canada is a party and, in limited circumstances, through a specific agreement under the Extradition Act. Canada has signed 51 bilateral extradition treaties and is also a party to 4 multilateral conventions.

41. During the country visit representatives of civil society indicated that they considered the government of Canada to have fully implemented the requirements of the Convention with regard to Chapter IV. No specific areas had been identified as requiring particular attention.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

42. Canada indicated that they had not implemented this provision of the Convention, citing the relevant provisions of the *Extradition Act*, in particular section 3, subparagraph (2).

43. Canadian law does not permit extradition unless the conduct for which extradition is sought also constitutes an offence in Canada. As such, individuals can be extradited only if the offence of which they are accused or convicted is a crime in both countries – the "dual criminality" test. If the offence is a crime in just one of the countries, no extradition can take place.

44. In addition, extradition is meant to apply to relatively serious crimes. Under Canadian law, the threshold is specific. Canada will not allow anyone to be extradited unless the offence involved could have resulted in a jail sentence of two years or more had it taken place in Canada. In certain cases, the specific crime must also be listed in the relevant treaty.
45. However, it should be noted that Canada takes a flexible approach to dual criminality. It focuses on the alleged or proven acts of the person sought. The dual criminality requirement is deemed fulfilled if the conduct underlying the offence for which extradition is sought is a criminal offence under Canadian law, regardless of whether the offence is categorized in the same manner or denominated by the same terminology and the offence is punishable by a maximum term of imprisonment exceeding the minimum prescribed by the Extradition Act or the relevant agreement. Thus, the conduct is determinative of whether the criminal act constitutes an extraditable offense and not whether the conduct for which person is sought is described the same way in both legal systems of the requesting state and the requested state.
46. With respect to the procedure under Canada's Extradition Act, the extradition judge commits the person sought for extradition pursuant to section 29 of the Act, based on an assessment of the foreign evidence and the corresponding Canadian offence or offences identified in the Authority to Proceed. Following committal, it is the responsibility of the Minister of Justice, pursuant to section 58 of the Act, to determine whether the conduct that the extradition judge found to be criminal according to Canadian law, is the same conduct which underpins the foreign charges.
47. Section 58 of the Act allows the Minister to structure the Surrender Order according to (1) the foreign offences for which extradition is sought, (2) the Canadian offence on which the person was committed, or (3) the conduct on which the person sought is to be surrendered.
48. Historically, the general practice of the Minister of Justice has been to order surrender on the foreign offence or offences on which extradition was requested.
49. Canada provided the following examples of implementation:

Canada (Justice) v. Fischbacher, 2009 SCC 46, [2009] 3 S.C.R. 170

- <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/7821/1/document.do>

In this case, the Supreme Court of Canada confirmed that the test for double criminality is conduct based and accordingly, the extradition judge need only be satisfied that the conduct alleged would constitute a criminal offence in Canada regardless of whether that offence matched the criminal offence in the foreign state. Once the evidence in support of extradition has been found to be sufficient to justify committal in Canada, the Minister of Justice may order surrender on any foreign offence arising from the same evidence.

(b) Observations on the implementation of the article

50. The reviewing experts noted that Canada was in compliance with this provision of the Convention. From both the terms of Article 3 and relevant decisions from the Canadian courts, it is evident that a conduct-based test is applied by Canada when deciding whether to grant the extradition of a requested individual.
51. Article 3, paragraph 2 explicitly provides in this regard that “it is not relevant whether the conduct referred to in subsection (1) is named, defined or characterized by the extradition partner in the same way as it is in Canada”. Furthermore, case-law has confirmed that the test for double criminality is conduct based and accordingly, the extradition judge need only be satisfied that the conduct alleged would constitute a criminal offence in Canada regardless of whether that offence matched the criminal offence in the foreign state.
52. While this provision of the Convention provides that States may extradite in the absence of dual-criminality, this is not a requirement. Furthermore, Canada has demonstrated that a flexible conduct-based test is applied to the dual-criminality test under section 3 of the Extradition Act. Consequently, the reviewing experts consider Canada to be in compliance with this provision of the Convention.

(c) Successes and good practices

53. The reviewing experts noted that Canada takes a flexible approach to the application of the principle of dual criminality, applying a conduct-based test under section 3 of the *Extradition Act*. The reviewing experts considered this to be a good practice in relation to this provision of the Convention.

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

54. Canada considered that it had implemented this provision of the Convention, citing section 59 of the *Extradition Act* which provides:

59. Subject to a relevant extradition agreement, the Minister may, if the request for extradition is based on more than one offence, order the surrender of a person for all the offences even if not all of them fulfil the requirements set out in section 3, if

- a) the person is being surrendered for at least one offence that fulfils the requirements set out in section 3; and

- b) all the offences relate to conduct that, had it occurred in Canada, would have constituted offences that are punishable under the law of Canada.

55. Canada was not able to provide examples of implementation of this provision of the Extradition Act. This was due to the fact that these situations would be quite rare, since requests made to Canada almost invariably are made on the basis of extraditable offences covered by a relevant treaty. In addition, there would be no easy way to track such cases. In any event, the Extradition Act states that this can be done and there is no contradictory case law casting doubt on Canada's ability to do so.

(b) Observations on the implementation of the article

56. Section 59 of the *Extradition Act* clearly matches the requirements of Article 44 paragraph 3 of the Convention and while no examples of implementation can be provided, this is due to a lack of requests of this nature as opposed to any problem in implementation.

57. The reviewing experts therefore noted that Canada were in compliance with this provision of the Convention.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

58. Canada considered that it had implemented this provision of the Convention.

59. Canada recognizes the UNCAC itself as an adequate treaty basis for extradition with other States Parties. While the offences referred to in the UNCAC are not among those listed at s. 46 of the Extradition Act as being excluded from the political exception basis for refusal to extradite, Section 45 of the Extradition Act provides that where an agreement to which Canada is a party is inconsistent with Section 46, the agreement shall prevail. In addition, Section 46 itself provides that conduct that constitutes an offence mentioned in a multilateral extradition agreement for which Canada, as a party, is obliged to extradite, does not constitute an offence of political character. Therefore, with the exception of the UNCAC offence of "illicit enrichment", regarding which Canada has reserved, all of the relevant offences are excluded from the political exception and are therefore extraditable offenses in Canadian law.

60. Nonetheless, the usual requirements for extradition must be met, i.e., dual criminality based on conduct; a specified maximum sentence in accordance with the terms of the Treaty or agreement, or the default minimum of up to 2 years' imprisonment as provided for under section 3 of the Extradition Act.

Extradition Act sections 45 – 46

45. (1) The reasons for the refusal of surrender contained in a relevant extradition agreement, other than a multilateral extradition agreement, or the absence of reasons for refusal in such an agreement, prevail over sections 46 and 47.

Exception — multilateral extradition agreement

(2) The reasons for the refusal of surrender contained in a relevant multilateral extradition agreement prevail over sections 46 and 47 only to the extent of any inconsistency between either of those sections and those provisions.

When order not to be made

46. (1) The Minister shall refuse to make a surrender order if the Minister is satisfied that

- (a) the prosecution of a person is barred by prescription or limitation under the law that applies to the extradition partner;
- (b) the conduct in respect of which extradition is sought is a military offence that is not also an offence under criminal law; or
- (c) the conduct in respect of which extradition is sought is a political offence or an offence of a political character.

Restriction

(2) For the purpose of subparagraph (1)(c), conduct that constitutes an offence mentioned in a multilateral extradition agreement for which Canada, as a party, is obliged to extradite the person or submit the matter to its appropriate authority for prosecution does not constitute a political offence or an offence of a political character. The following conduct also does not constitute a political offence or an offence of a political character:

- (a) murder or manslaughter;
- (b) inflicting serious bodily harm;
- (c) sexual assault;

(d) kidnapping, abduction, hostage-taking or extortion;

(e) using explosives, incendiaries, devices or substances in circumstances in which human life is likely to be endangered or serious bodily harm or substantial property damage is likely to be caused; and

(f) an attempt or conspiracy to engage in, counselling, aiding or abetting another person to engage in, or being an accessory after the fact in relation to, the conduct referred to in any of paragraphs (a) to (e).

61. To the extent that Canada recognizes UNCAC as a legal basis for extradition for offenses designated under UNCAC, Canada had received and undertaken extradition requests submitted under the authority of UNCAC between fellow State Parties.
62. Respecting bilateral agreements, Canada notes that some of its older bilateral extradition agreements contain a list of offences for which extradition may be granted that may not contain specifically by name all of the offences required to be included in such instruments in accordance with UNCAC. Nevertheless, as it is the conduct that is determinative of whether the offense is an extraditable offense and not the description of the conduct, the conduct will generally be captured by a listed offence (fraud, embezzlement, possession of the proceeds of illegal conduct), or, there may be extradition based on the general or “catch all” provision of these older treaties which provides for extradition by the Requested State, even though the offence in question may not form part of the list.
63. By way of example, Article II of the Treaty between Great Britain and Chile, for the Mutual Surrender of Fugitive Criminals (1898): “ ... Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the law of both the Contracting Parties for the time being in force, the grant can be made.”
64. Canada has bilateral extradition treaties with the following countries, which can be consulted at:

- <http://www.treaty-accord.gc.ca/result-resultat.aspx?type=10>

	<u>Entered Into Force/Date d'entrée en vigueur</u>
1. Albania	October 20, 1928
2. Argentina	February 9, 1894
3. Austria* **	October 2, 2000
4. Belgium*	March 17, 1902
5. Bolivia	November 4, 1898
6. Chile	August 22, 1898
7. Colombia	December 16, 1899
8. Cuba	May 22, 1905
9. Czech Republic*	December 15, 1926
10. Denmark* **	February 13, 1979
11. Ecuador*	July 2, 1886

12.	El Salvador	January 13, 1883
13.	Estonia	September 18, 1928
14.	Finland**	February 16, 1985
15.	France* **	December 1, 1989
16.	Germany* **	September 30, 1979 October 23, 2004
17.	Greece*	February 26, 1912
18.	Guatemala	December 13, 1886
19.	Haiti*	February 21, 1876
20.	Hong Kong**	June 13, 1997
21.	Hungary	March 30, 1874
22.	Iceland	July 7, 1873
23.	India	February 10, 1987
24.	Israel	December 19, 1969
25.	Italy**	June 27, 1985
26.	Korea**	January 29, 1995
27.	Latvia*	September 18, 1928
28.	Liberia	March 23, 1894
29.	Lithuania	September 18, 1928
30.	Luxembourg	March 15, 1881
31.	Mexico **	October 21, 1990
32.	Monaco	May 23, 1892
33.	Netherlands	December 1, 1991
34.	Nicaragua*	August 24, 1906
35.	Norway*	October 17, 1873
36.	Panama*	August 26, 1907
37.	Paraguay	July 17, 1911
38.	Peru	May 20, 1907
39.	Philippines**	November 12, 1990
40.	Portugal*	March 19, 1894
41.	Romania	May 21, 1894
42.	San Marino	March 19, 1900
43.	Slovakia	December 15, 1926
44.	South Africa	May 4, 2001
45.	Spain* **	August 15, 1990
46.	Sweden*	October 30, 2001
47.	Switzerland* **	March 19, 1996
48.	Thailand	November 24, 1911
49.	Tonga	November 29, 1879
50.	United States**	March 22, 1976
51.	Uruguay	March 20, 1885

* Does not extradite its nationals

** Death penalty provisions

Bold Listed treaty

(b) Observations on the implementation of the article

65. The reviewing experts noted that Canada were in compliance with this provision of the Convention.
66. Article 44, paragraph 4 provides that all existing extradition treaties will be deemed to include a reference to offences established in accordance with this Convention. This is the case in relation to all existing bilateral and multilateral treaties which Canada has entered into. Consequently, while such agreements do not in all cases refer explicitly to the offences covered by the Convention, such offences will, following ratification of the Convention, be deemed to be included in these agreements. Furthermore, as noted by Canada, ‘catch-all’ provisions such as that highlighted under Article II of the extradition treaty between Great Britain and Chile would in any case permit extradition in relation to such offences.
67. Canada may wish to ensure that those responsible for receiving, processing and evaluating extradition requests are aware of the effect of Article 44, paragraph 4 in deeming the inclusion of UNCAC offences in existing treaties.
68. This paragraph of the Convention furthermore provides that where a State enters into an extradition agreement following ratification of the Convention, such agreements must provide grounds for extradition in relation to offences established in accordance with the Convention. Canada does not appear to have entered into any additional extradition agreements following ratification of the UNCAC.
69. Canada also explicitly provides in Article 46, paragraph 2 of the *Extradition Act* that “conduct that constitutes an offence mentioned in a multilateral extradition agreement.... does not constitute a political offence or an offence of a political character” for the purposes of the Extradition Act. This means that offences established in accordance with the UNCAC will not be considered as political offences and consequently requests for extradition cannot be rejected on such grounds.
70. In light of the above, the reviewing experts consider that Canada is in compliance with this provision of the Convention.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

71. Canada confirmed that it had implemented this provision of the Convention.

72. Canada considers the UNCAC as a legal basis for extradition. As noted above, the *Extradition Act* provides that a person may be extradited in accordance with the Act and a relevant extradition agreement on the request of an extradition partner for the purpose of prosecuting the person or imposing a sentence on — or enforcing a sentence imposed on — the person. Within this legal framework, Canada recognizes the following as relevant extradition agreement:

- bilateral extradition treaties;
- a multilateral convention to which Canada is a party that contains a provision respecting the extradition of persons;
- a specific agreement with a state or entity for the purpose of giving effect to a request for extradition in a particular case (*Extradition Act, section 10*); and
- being designated an extradition partner (*Extradition Act, section 9 and the Schedule to the Act*).

73. Accordingly, state parties to UNCAC constitute extradition partners to a relevant extradition treaty, thereby providing a legal basis for extradition requests under the authority of UNCAC as between states parties and Canada. Section 2 of the Extradition Act provides as follows:

2. The definitions in this section apply in this Act.

“

“extradition agreement” means an agreement that is in force, to which Canada is a party and that contains a provision respecting the extradition of persons, other than a specific agreement.

“extradition partner” means a State or entity with which Canada is party to an extradition agreement, with which Canada has entered into a specific agreement or whose name appears in the schedule.

(b) Observations on the implementation of the article

74. The reviewing experts noted that Canada can use the Convention as a legal basis for extradition. Section 2 of the Extradition Act recognizes “a multilateral convention to which Canada is a party that contains a provision respecting the extradition of persons” as being a relevant extradition agreement for the purposes of the Act. As the United Nations Convention against Corruption is deemed by Canada as coming within this definition, the Convention can be used as a legal basis for extradition where necessary.

75. During the country visit, Canada confirmed that the Convention had in practice been used as a legal basis for extradition on a number of occasions and that officials responsible for administering extradition requests were aware of the ability to use the Convention where no bilateral agreement is in place.

76. Consequently, the reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 44 Extradition

Subparagraph 6 (a)

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(a) Summary of information relevant to reviewing the implementation of the article

77. In its response Canada indicated that under sections 2 and 3 of the Extradition Act, Canada makes extradition conditional on the existence of a treaty. As noted above, Canada recognizes the Convention as an extradition agreement sufficient to establish the legal basis for extradition under domestic Canadian law. Canada informed the Secretary-General of the United Nations as prescribed above. Upon ratification of the Convention, Canada declared:

For the purposes of Article 44 (6), Canada recognizes the Convention as an extradition agreement sufficient to establish the legal basis for extradition under domestic Canadian law.

- http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18&lang=en#8

(b) Observations on the implementation of the article

78. The reviewing experts noted that Canada was in compliance with this provision of the Convention.

Article 44 Extradition

Subparagraph 6 (b)

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

79. See comments above.

(b) Observations on the implementation of the article

80. The reviewing experts noted that Canada had already indicated that, where necessary, it is able to take the Convention as the legal basis for extradition. In addition, Canada has signed 51 bilateral extradition conventions and is also a party to 4 multilateral treaties which have been used in practice to facilitate extradition in a broad range of cases, including corruption cases.

81. The reviewing experts therefore considered Canada to be in compliance with this provision of the Convention.

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

82. Canada confirmed that it had implemented this provision of the Convention.

83. Whereas Canada makes extradition in general conditional on the existence of treaty, it can designate a foreign jurisdiction under the Extradition Act as an extradition partner to whom and from where persons may be extradited for offences under the UNCAC. As noted above in relation to article 44 paragraph 5 of the Convention, the *Extradition Act* provides that a person may be extradited in accordance with the Act and a relevant extradition agreement at the request of an extradition partner. Within this legal framework, Canada may designate an extradition partner with whom it has not concluded a bilateral extradition treaty or is not a fellow state party to multilateral instrument that serves as legal basis of extradition. In addition, the Minister of Foreign Affairs may, with the agreement of the Minister of Justice, enter into a specific agreement with a State or entity for the purpose of giving effect to a request for extradition in a particular case. The Extradition Act sections 9 and 10 provide as follows:

Designated extradition partners

9. (1) The names of members of the Commonwealth or other States or entities that appear in the schedule are designated as extradition partners.

(2) The Minister of Foreign Affairs, with the agreement of the Minister, may, by order, add to or delete from the schedule the names of members of the Commonwealth or other States or entities.

Specific Agreements

10. (1) The Minister of Foreign Affairs may, with the agreement of the Minister, enter into a specific agreement with a State or entity for the purpose of giving effect to a request for extradition in a particular case.

(2) For greater certainty, if there is an inconsistency between this Act and a specific agreement, this Act prevails to the extent of the inconsistency.

(3) A certificate issued by or under the authority of the Minister of Foreign Affairs to which is attached a copy of a specific agreement entered into by Canada and a State or entity is conclusive evidence of the agreement and its contents without proof of the signature or official character of the person appearing to have signed the certificate or agreement.

STATES OR ENTITIES DESIGNATED AS EXTRADITION PARTNERS

1. Antigua and Barbuda
2. Australia
3. The Bahamas
4. **Barbados** *
5. Botswana
6. Costa Rica
7. Ghana
8. Grenada
9. Guyana
10. Jamaica
11. **Japan***
12. Lesotho
13. Maldives
14. Malta
15. Mauritius
16. Namibia
17. Nauru
18. **New Zealand ***
19. Papua New Guinea
20. Singapore
21. Solomon Islands
22. **St. Kitts and Nevis** *
23. St. Lucia
24. **St. Vincent & The Grenadines***
25. Swaziland
26. Trinidad and Tobago
27. **Tuvalu** *
28. United Kingdom of Great Britain and Northern Ireland
29. Vanuatu
30. Zimbabwe

***Countries that are not party to UNCAC.**

(b) Observations on the implementation of the article

84. Under sections 9 and 10 of the *Extradition Act* Canada is able to facilitate extradition in the absence of a bilateral or multilateral treaty. Where these provisions are used as the legal basis for extradition, through the designation of an extradition partner or the adoption of a specific agreement, the general provisions cited above under Article 3 of the Extradition Act regarding offences in relation to which extradition may be granted continue to apply.

85. The reviewing experts therefore noted that Canada were in compliance with this provision of the Convention.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

86. Canada confirmed that it had implemented this provision of the Convention.

87. Section 3 of the *Extradition Act* sets out the minimum penalty requirements for extradition. Subject to a relevant extradition agreement, for a person sought for prosecution or the imposition or enforcement of sentence, the offence for which extradition is requested must be punishable by a maximum term of two years imprisonment or more. However, if the request for extradition is based on a specific agreement, the offence must be punishable by a maximum term of imprisonment of five years or more.

88. Extradition of a person who has been sentenced to imprisonment may only be granted if the remaining portion of the term remaining is at least 6 months.

89. Some of Canada's bilateral extradition treaties provide lesser minimum penalty requirements. For example, under the Extradition Treaty between Canada and the United States of America, the offence for which extradition is sought must be punishable by a term exceeding one year and in cases of a person who has been sentenced, there is no requirement that a minimum term of 6 months remains to be served.

90. In addition, section 46 of the Extradition Act outlines the mandatory grounds of refusal of an extradition request unless modified by a bilateral extradition agreement. It provides that the Minister of Justice shall refuse to order surrender of a person sought for extradition if he/she is satisfied that the conduct in respect of which extradition is sought is a political offence or an offence of a political character. Essentially, all serious violent conduct is excluded from the definition of political offence or offence of a political character. Furthermore, conduct which constitutes an offence mentioned in a multilateral extradition agreement for which Canada, as a party, is obliged to extradite the person or submit the matter to its appropriate authority for prosecution does not constitute a political offence or an offence of a political character.
91. In the case of a bilateral extradition agreement between Canada and the foreign state, only the grounds of refusal as agreed with the foreign state in the bilateral agreement will apply to requests submitted by that state, regardless of the grounds of refusal contained in the Extradition Act. Most of Canada's bilateral extradition agreements provide a mandatory ground of refusal of extradition based on political offence or offence of a political character.
92. Further, Canada does not have the death penalty. Section 44(2) of the Extradition Act provides the Minister of Justice with the discretion to deny surrender if he is satisfied that the conduct in respect of which extradition is made is punishable by death under the laws of the extradition partner. However, in 2001, the Supreme Court of Canada held in *United States of America v. Burns* (2001) 151 C.C.C. (3d) 97 (S.C.C.) that the Minister of Justice is constitutionally required to seek assurances that the death penalty will not be imposed in all but exceptional cases.
93. For citizens, subsection 6(1) of the Canadian Charter of Rights and Freedoms provides that every citizen has the right to remain in Canada. However, extradition is viewed as a constitutionally acceptable limitation on this right, since crime could otherwise go unpunished. As a consequence, Canada can and does extradite its citizens.
94. Sections 44, 45, 46 and 47 of the Extradition Act provide as follows:
44. (1) The Minister [of Justice] shall refuse to make a surrender order if the Minister is satisfied that
- (a) the surrender would be unjust or oppressive having regard to all the relevant circumstances; or
- (b) the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person's position may be prejudiced for any of those reasons.

(2) The Minister may refuse to make a surrender order if the Minister is satisfied that the conduct in respect of which the request for extradition is made is punishable by death under the laws that apply to the extradition partner.

45. (1) The reasons for the refusal of surrender contained in a relevant extradition agreement, other than a multilateral extradition agreement, or the absence of reasons for refusal in such an agreement, prevail over sections 46 and 47.

Exception — multilateral extradition agreement

(2) The reasons for the refusal of surrender contained in a relevant multilateral extradition agreement prevail over sections 46 and 47 only to the extent of any inconsistency between either of those sections and those provisions.

When order not to be made

46. (1) The Minister shall refuse to make a surrender order if the Minister is satisfied that

- (a) the prosecution of a person is barred by prescription or limitation under the law that applies to the extradition partner;
- (b) the conduct in respect of which extradition is sought is a military offence that is not also an offence under criminal law; or
- (c) the conduct in respect of which extradition is sought is a political offence or an offence of a political character.

Restriction

(2) For the purpose of subparagraph (1)(c), conduct that constitutes an offence mentioned in a multilateral extradition agreement for which Canada, as a party, is obliged to extradite the person or submit the matter to its appropriate authority for prosecution does not constitute a political offence or an offence of a political character. The following conduct also does not constitute a political offence or an offence of a political character:

- (a) murder or manslaughter;
- (b) inflicting serious bodily harm;
- (c) sexual assault;
- (d) kidnapping, abduction, hostage-taking or extortion;

(e) using explosives, incendiaries, devices or substances in circumstances in which human life is likely to be endangered or serious bodily harm or substantial property damage is likely to be caused; and

(f) an attempt or conspiracy to engage in, counselling, aiding or abetting another person to engage in, or being an accessory after the fact in relation to, the conduct referred to in any of paragraphs (a) to (e).

47. The Minister may refuse to make a surrender order if the Minister is satisfied that

(a) the person would be entitled, if that person were tried in Canada, to be discharged under the laws of Canada because of a previous acquittal or conviction;

(b) the person was convicted in their absence and could not, on surrender, have the case reviewed;

(c) the person was under the age of 18 years at the time of the offence and the law that applies to them in the territory over which the extradition partner has jurisdiction is not consistent with the fundamental principles governing the Young Offenders Act;

(d) the conduct in respect of which the request for extradition is made is the subject of criminal proceedings in Canada against the person; or

(e) none of the conduct on which the extradition partner bases its request occurred in the territory over which the extradition partner has jurisdiction.

[...]

The Canadian Charter of Rights and Freedoms (1982, c. 11 (U.K.), Schedule B) sections 6(1), and 7

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.
[...]

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

95. If a request is refused at the initial stage, i.e., no Authority to Proceed issued, then the existence of a request will not be disclosed at all. If it is refused at the Ministerial stage, that message is conveyed to the individual concerned, not the general public. Accordingly, the information cannot be disclosed generally due to the confidentiality of state to state communication.

96. Although information cannot be provided on specific requests, grounds for refusal that have been seen in practice include humanitarian considerations such as health where the individual sought is in the final stages of a fatal illness or human rights considerations such as the age of the person at the time the extraditable offence was committed or failure to comply with Canadian law, including the Canadian Charter of Rights and Freedoms or the Extradition Act as described above.

(b) Observations on the implementation of the article

97. The reviewing experts considered that Canada was in compliance with this provision of the Convention.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

98. Canada considered that it had partly implemented this provision of the Convention.

99. In 1999, Canada amended the Extradition Act to permit a more simplified method for seeking extradition from Canada. The amendments enable evidence contained in what is known as a “Record of the Case” to be admitted at the Canadian extradition hearing, if it is certified by a judicial or prosecutorial authority in the manner prescribed by section 33 of the Extradition Act.

100. The record of the case method makes it easier for requesting countries because it permits a summary of the evidence to be admitted in the Canadian extradition hearing, as opposed to depositions of witnesses or the actual reports containing the evidence.

101. A separate document called the “General Legal Statement” which contains information about the requesting state’s law pertaining to the offence(s), the prescription period, and the warrant of arrest, must also be provided. Section 33 of the *Extradition Act* provides as follows:

33(1) The record of the case must include

(a) in the case of a person sought for the purpose of prosecution, a document summarizing the evidence available to the extradition partner for use in the prosecution; and

(b) in the case of a person sought for the imposition or enforcement of sentence,
(i) a copy of the document that records the conviction of the person; and

- (ii) a document describing the conduct for which the person was convicted.
- (2) A record of the case may include other relevant documents, including documents respecting the identification of the person sought for extradition.

102. Though these legislative changes were not enacted to deal with corruption offences in particular, the simplified evidentiary requirements may be used in relation to such offences, while the former method of providing requests in accordance with the particular provisions of bilateral treaties are still available to Requesting States, should these be preferred.
103. Canada highlighted the following cases as demonstrating the application of these simplified procedures:

United States of America v. Ferras; United States of America v. Latty, [2006] 2 S.C.R. 77, 2006 SCC 33

The appellants in these two appeals were ordered extradited to the U.S. to face charges relating to either frauds (Ferras) or trafficking in cocaine (Latty and Wright). The extradition proceedings against them were brought by the "record of the case" method under ss. 32(1) (a) and 33 of the Extradition Act. The records of the case submitted at their committal hearings consisted of unsworn statements from law enforcement agents summarizing the evidence expected to be presented at each trial. The U.S. certified that the evidence was ready for trial and was sufficient to justify prosecution under U.S. law. The appellants alleged that ss. 32(1)(a) and 33 of the Act infringed s. 7 of the Canadian Charter of Rights and Freedoms, as they allowed for the possibility that a person might be extradited on inherently unreliable evidence. In both cases, the extradition judges rejected the constitutional objection and committed the accused for extradition. The Ontario Court of Appeal upheld both decisions. The appellants appealed to the Supreme Court of Canada.

HELD: Appeals dismissed, appellants to be committed for extradition. The provisions of the Act were constitutional. The principles of fundamental justice applicable to an extradition hearing required that the person sought for extradition receive a meaningful judicial determination of whether the case for extradition prescribed in s. 29(1) of the Act had been established; that is, whether there was sufficient evidence to permit a properly instructed jury to convict. The Extradition Act offered two protections: (1) admissibility provisions aimed at establishing threshold reliability; and (2) a requirement that the judge determine the sufficiency of the evidence to establish the legal requirement for extradition. These dual protections offered a fair process that conformed to the fundamental principles of justice. Due to the principles of comity between Canada and the requesting state, certification under the record of the case method raised a presumption that the evidence was reliable. In the present cases, the certifications by the U.S. in compliance with s. 33(3) made the records presumptively reliable and no evidence disclosed any reason to rebut the presumption of reliability. Furthermore, s. 6(1) of the Charter was not engaged at the committal stage of the

extradition process, only the surrender stage. Since the Minister was not required to base a surrender decision on evidence submitted at the committal hearing, s. 6(1) could not be infringed by ss. 32(1)(a) and 33(3) of the Act.

(b) Observations on the implementation of the article

104. The reviewing experts noted that Canada had fully implemented this provision of the Convention. Amendments to the extradition process brought through amendments to the Extradition Act in 1999 have provided for a simplified process as regards the provision of evidence before extradition hearings. Following these amendments, section 32 subparagraph (1)(a) allows for the submission of a “Record of the Case” that has been certified by a judicial or prosecutorial authority. A “Record of the Case” will contain a summary of the evidence available to the extradition partner for use in the prosecution thus allowing a faster analysis of the merits of the case by the court.

105. During the country visit Canadian national officials confirmed that the introduction of “Records of the Case” into extradition proceedings had expedited the extradition process considerably. Officials stated that the average length of time spent to process an extradition case was now one year.

(c) Successes and good practices

106. Through the introduction of simplified evidentiary requirements and processes in the form of the use of “Records of the Case” in extradition proceedings, Canada has been able to reduce the burden on extradition authorities and judicial bodies in the processing of such cases.

107. While these amendments have not been introduced specifically for corruption-related cases they have nevertheless had an impact on the speed with which such cases can be concluded, as it has in relation to all extradition cases. This practice therefore represents a good practice for the purposes of this provision of the Convention.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) **Summary of information relevant to reviewing the implementation of the article**

108. Canada confirmed that it had implemented this provision of the Convention.

109. A request for provisional arrest may be made to Canada in urgent circumstances. Section 11 of the Extradition Act allows States to make a request for provisional arrest to the Minister. Sections 12 to 14 then go on to provide as follows:

Minister's approval of request for provisional arrest

12. The Minister may, after receiving a request by an extradition partner for the provisional arrest of a person, authorize the Attorney General to apply for a provisional arrest warrant, if the Minister is satisfied that

- (a) the offence in respect of which the provisional arrest is requested is punishable in accordance with paragraph 3(1)(a); and
- (b) the extradition partner will make a request for the extradition of the person.

Provisional arrest warrant

13. (1) A judge may, on ex parte application of the Attorney General, issue a warrant for the provisional arrest of a person, if satisfied that there are reasonable grounds to believe that

- (a) it is necessary in the public interest to arrest the person, including to prevent the person from escaping or committing an offence;
- (b) the person is ordinarily resident in Canada, is in Canada or is on the way to Canada; and
- (c) a warrant for the person's arrest or an order of a similar nature has been issued or the person has been convicted.

Contents of the warrant

(2) A provisional arrest warrant must

- (a) name or describe the person to be arrested;
- (b) set out briefly the offence in respect of which the provisional arrest was requested; and

- (c) order that the person be arrested without delay and brought before the judge who issued the warrant or before another judge in Canada.

Execution throughout Canada

(3) A provisional arrest warrant may be executed anywhere in Canada without being endorsed.

Discharge if no proceedings

14. (1) A person who has been provisionally arrested, whether detained or released on judicial interim release, must be discharged

- (a) when the Minister notifies the court that an authority to proceed will not be issued under section 15;
- (b) if the provisional arrest was made pursuant to a request made under an extradition agreement that contains a period within which a request for extradition must be made and the supporting documents provided,
 - (i) when the period has expired and the extradition partner has not made the request or provided the documents, or
 - (ii) when the request for extradition has been made and the documents provided within the period but the Minister has not issued an authority to proceed before the expiry of 30 days after the expiry of that period; or
- (c) if the provisional arrest was not made pursuant to a request made under an extradition agreement or was made pursuant to an extradition agreement that does not contain a period within which a request for extradition must be made and the supporting documents provided,
 - (i) when 60 days have expired after the provisional arrest and the extradition partner has not made the request or provided the documents, or
 - (ii) when the request for extradition has been made and the documents provided within 60 days but the Minister has not issued an authority to proceed before the expiry of 30 additional days.

Extension

(2) On application of the Attorney General, a judge

- (a) may extend a period referred to in subsection (1); or

- (b) shall, in the case of a person arrested on the request of the International Criminal Court, extend a period referred to in subsection (1) for the period specified by the Attorney General, not to exceed 30 days.

Release of person

- (3) In extending a period under subsection (2), the judge may also grant the person judicial interim release or vary the conditions of their judicial interim release.
110. Upon provisional arrest, the person is brought before a judge of the Superior Court of the province or territory where the arrest was made for a bail hearing. The judge shall order the release, with or without conditions, or detention in custody of the person in accordance with sections 17 and 18 of the *Extradition Act*.
- 17.** (1) A person who is arrested under section 13 or 16 is to be brought before a judge or a justice within twenty-four hours after the person is arrested, but if no judge or no justice is available during this time, the person shall be brought before a judge or a justice as soon as possible.
- (2) The justice before whom a person is brought under subsection (1) shall order that the person be detained in custody and brought before a judge.
- 18.** (1) The judge before whom a person is brought following arrest under section 13 or 16 shall
- (a) if the person has been arrested on the request of the International Criminal Court, order the detention in custody of the person unless
 - (i) the person shows cause, in accordance with subsection 522(2) of the *Criminal Code*, that their detention in custody is not justified, and
 - (ii) the judge is satisfied that, given the gravity of the alleged offence, there are urgent and exceptional circumstances that justify release — with or without conditions — and that the person will appear as required; or
 - (b) in any other case, order the release, with or without conditions, or detention in custody of the person.
- (1.1) An application for judicial interim release in respect of a person referred to in paragraph (1)(a) shall, at the request of the Attorney General, be adjourned to await receipt of the recommendations of the Pre-Trial Chamber of the International Criminal Court. If the recommendations are not received within six days, the judge may proceed to hear the application.
- (1.2) If the Pre-Trial Chamber of the International Criminal Court submits recommendations, the judge shall consider them before rendering a decision.

- (2) A decision respecting judicial interim release may be reviewed by a judge of the court of appeal and that judge may:
- (a) confirm the decision;
 - (b) vary the decision; or
 - (c) substitute any other decision that, in the judge's opinion, should have been made.

111. Information on recent court or other cases in which a person whose extradition was sought from Canada and who was taken into custody is not available. However, although not related to UNCAC offences, Canadian law provides a comprehensive system for ensuring that extradition requests can be met. In the recent *Mugesera v. Canada (Minister of Citizenship and Immigration)* [2012] F.C.J. No. 1, decision, the Federal Court of Canada upheld a decision to extradite a person to Rwanda to stand trial for war crimes and crimes against humanity. The history of the case and the appeals decided in this case provide a strong overview of the strength of Canadian law in relation to extradition matters and can be found online at:

- <http://decisions.fct-cf.gc.ca/en/2012/2012fc32/2012fc32.html>

(b) Observations on the implementation of the article

112. The reviewing experts noted that sections 12 to 18 of the Extradition Act provide a detailed set of provisions allowing for the provisional arrest of an individual following the receipt of a request from an extradition partner. In order for provisional arrest to be granted, Ministerial approval must first be given to the request, followed by the application for arrest by the Attorney General.

113. The reviewing experts considered that, in light of the detailed legislative framework in this area, Canada had fully implemented this provision of the Convention.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each

other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

114. Canada confirmed that it had implemented this provision of the Convention.

115. Citizenship is not a bar to extradition in Canada. However, when a Canadian citizen is sought for conduct that could be prosecuted in Canada, it is necessary to consider whether a Canadian prosecution ought to be preferred over extradition. This is because section 6(1) of the Canadian Charter of Rights and Freedoms provides that “[e]very citizen of Canada has the right to enter, remain in and leave Canada”. The Supreme Court of Canada held in *United States of America v Cotroni*; *United States of America v El Zein*, [1989] 1 SCR 1469, that the extradition of a Canadian citizen is a prima facie infringement of his or her right to remain in Canada as guaranteed by s. 6(1) of the *Canadian Charter of Rights and Freedoms* (Schedule B to the Canada Act 1982, (UK) 1982, c-11, hereafter “Charter”). However, the court concluded that extradition may be a reasonable limit on that right when considering the “importance of the objectives sought by an extradition – the investigation, prosecution, repression and punishment of both national and transnational crime for the protection of the public.” In determining whether the presumptive s. 6(1) violation is saved by s. 1 of the Charter, the Supreme Court of Canada concluded that the Canadian prosecuting authorities must give “due weight” to a Canadian citizen’s right to remain in Canada by conducting a good faith analysis of whether prosecution in Canada would be “equally effective” to prosecution in the state requesting extradition.

116. Based on this law and as a matter of policy, the Minister of Justice may extradite a Canadian citizen accused of crime involving conduct that could be prosecuted in Canada as a criminal offence. When deciding whether to prosecute an offence in Canada or to extradite the accused, the International Assistance Group (IAG) will consult with the relevant Canadian prosecuting authority. The ultimate decision regarding prosecution always rests with the relevant attorney general. The following should be considered at an early stage to determine if prosecution in Canada is a realistic option:

- a. where the impact of the offence was felt or likely to have been felt;
- b. which jurisdiction has the greater interest in prosecuting the offence;
- c. which police force played the major role in the development of the case;
- d. which jurisdiction has laid charges;
- e. which jurisdiction has the most comprehensive case;
- f. which jurisdiction is ready to proceed to trial;
- g. where the evidence is located;
- h. whether the evidence is mobile;
- i. the number of accused involved and whether they can be tried in one place;
- j. in which jurisdiction most of the acts in furtherance of the crime were committed;
- k. the nationality and residence of the accused; and
- l. the severity of the sentence the accused is likely to receive in each jurisdiction.

117. The Minister's decision concerning extradition will be conveyed by the IAG to the requesting partner.
118. Consequently, the treaty-based duty to extradite or prosecute or “*aut dedere aut judicare*” has no application in Canada, since they extradite their own nationals. Thus, unlike some countries which do not extradite their nationals and must take some alternative action (i.e. to consider prosecuting themselves), decisions in Canada to not extradite would be based on a decision to prosecute instead based on a *Cotroni* analysis described below. Therefore the rule is automatically applied. There are very few decisions in which domestic prosecution was ultimately found to be an effective equivalent to extradition.
119. Canada provided the following cases as evidence of its ability and willingness to extradite its own nationals where appropriate.

United States of America v Cotroni; United States of America v El Zein, [1989] 1 SCR 1469

This was an appeal from a decision of the Quebec Court of Appeal, which allowed an appeal from the dismissal of an application for habeas corpus. (See 87 DRS P16-337). C was a Canadian citizen who was arrested pursuant to a warrant under the Extradition Act. The United States requested his extradition on a charge of conspiring to distribute heroin. All the actions relating to the alleged offence took place in Canada. The extradition judge ordered C's committal. C then applied for habeas corpus, but his application was dismissed. The Court of Appeal quashed the order for committal, holding that C's extradition contravened s. 6(1) of the Canadian Charter of Rights and Freedoms. Section 6(1) provided that "Every citizen of Canada has the right to . . . remain in . . . Canada". Two constitutional questions were posed in this appeal: (1) Does the surrender of a Canadian citizen to a foreign state constitute an infringement of his right under s. 6(1) of the Charter? (2) Was the surrender of C in the circumstances of this case a reasonable limit on his rights under s. 1 of the Charter?

HELD (Two diss.): The appeal was allowed; both constitutional questions were answered in the affirmative. Rights under the Charter were to be interpreted generously. Section 6(1) was phrased in broad terms; it did not apply merely to protect a person from exile or banishment. It guaranteed the right to remain in Canada. Extradition *prima facie* did infringe that right. However, the impact of extradition was not severe. Extradition was an important factor in the protection of the public against crime. It also served to bring fugitives from justice to a proper determination of their guilt or evidence. There was nothing wrong in surrendering criminals to another country even when they could be charged in Canada. The location of witnesses and evidence, and the impact of the offence, made the United States a reasonable venue for the charging of C in this case. C's right to remain in Canada had been infringed as little as possible. The discretionary aspect of extradition was consistent with Charter requirements of fundamental justice. The objectives sought to be met by extradition

legislation, the control of crime, were pressing and substantial. Extradition was rationally connected with the objectives, and impaired the accused's rights proportionally with the importance of the objectives to be met. Therefore, the test under s. 1 of the Charter was met, and the infringement of the right to remain in Canada was justified.

(b) Observations on the implementation of the article

120. The reviewing experts noted that as Canada is permitted to extradite its own nationals under the *Extradition Act*, the treaty-based duty to extradite or prosecute or “*aut dedere aut judicare*” was not applicable in this case. While a decision could be taken to refuse extradition in such cases, this would be based on a decision that to prosecute domestically would be more effective. This is in line with the *Cotroni* decision outlined above.
121. In practice, Canada has noted that there are very few decisions in which domestic prosecution is ultimately found to be an effective equivalent to extradition, meaning that in the majority of cases extradition of the requested Canadian national is facilitated.
122. The reviewing experts therefore considered that Canada was in compliance with this provision of the Convention.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

123. Canada confirmed that it had implemented this provision of the Convention. In this regard, Canada cited its response in relation to article 44 paragraph 11 above. Canada extradites its nationals, and does not require that the person be returned to Canada to serve the sentence imposed.

(b) Observations on the implementation of the article

124. The reviewing experts considered that Canada had fully implemented this provision of the Convention.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

125. Canada confirmed that it had implemented this provision of the Convention. In this regard Canada cited its response in relation to article 44 paragraph 11 above. Canada extradites its nationals, and does not require that the person be returned to Canada to serve the sentence imposed.

(b) Observations on the implementation of the article

126. The reviewing experts considered that Canada had fully implemented this provision of the Convention.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

127. Canada confirmed that it had implemented this provision of the Convention, citing in particular the Extradition Act and the Canadian Charter of Rights and Freedoms.
128. The Extradition Act and Charter apply to protect the rights of all persons sought for extradition from Canada. Notably, the Charter ensures fairness during legal proceedings, particularly in criminal cases. The rights to habeas corpus, or the right to challenge being

detained or held, and to be presumed innocent until proven guilty – always recognized as part of Canadian law – are guaranteed in the constitution.

129. No one can be deprived of the right to liberty and security of his or her person except through proper legal procedures. This includes protections against unreasonable searches and seizures, against police using excessive force, even when a search or seizure is authorized by law. It also includes protection against being detained or arrested arbitrarily. The Charter also protects against arbitrary actions by law enforcement agencies. It guarantees the rights to be told why one is being arrested or detained, to consult a lawyer without delay, to be informed of this right, and to have a court determine quickly whether the detention is lawful.
130. As all Canadian law must be consistent with the Charter, the Extradition Act necessarily guarantees due process and fair treatment at all stages in the proceedings, including the right to be brought before a judge, the right to know the offence underlying the basis for the extradition process, the right to have an extradition hearing and access to appeal mechanisms challenging a decision on extradition. Judicial proceedings for extraditions are subject to strict rules of evidence and court procedure.
131. The following provisions of the Canadian Charter of Rights and Freedoms have application in criminal matters in Canada:

Canadian Charter of Rights and Freedoms, ss.7-14.

- <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or detention

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right;
and

- (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right

- (a) to be informed without unreasonable delay of the specific offence;
- (b) to be tried within a reasonable time;
- (c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
- (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- (e) not to be denied reasonable bail without just cause;
- (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
- (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
- (h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
- (i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Treatment or punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-crimination

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

Interpreter

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

(b) Observations on the implementation of the article

132. The reviewing experts noted that both the Extradition Act and extradition proceedings brought under it must be in compliance with both the Constitution of Canada and the Canadian Charter of Rights and Freedoms. Within these core constitutional documents, key safeguards are put in place as regards due process and fair treatment during trial.

133. Specifically, sections 7 to 14 of the Canadian Charter of Rights and Freedoms provides, inter alia, protection against arbitrary detention, the right to not be subjected to cruel and unusual treatment, the right to be secure against unreasonable search, and the right to an interpreter where the individual does not speak the language in which the proceedings are conducted.

134. All of these constitutional guarantees apply equally to Canadian citizens and non-Canadians in the territory of Canada who are subject to extradition proceedings. Consequently, the reviewing experts considered that Canada was in compliance with this provision of the Convention.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

135. Canada considered that it had implemented this provision of the Convention.

136. Pursuant to s. 44(1)(b) of the Extradition Act the Minister of Justice must refuse to surrender a person sought for extradition if he/she is satisfied that extradition is sought for the purpose of prosecuting the person sought on these grounds.

44.(1) The Minister [of Justice] shall refuse to make a surrender order if the Minister is satisfied that
(a) the surrender would be unjust or oppressive having regard to all the relevant circumstances; or

(b) the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person's position may be prejudiced for any of those reasons.

(b) Observations on the implementation of the article

137. The reviewing experts noted section 44(1)(b) of the Extradition Act closely mirrors the wording of this provision of the Convention. Consequently, the reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

138. Canada confirmed that it had implemented this provision of the Convention.

139. Also citing its response to article 44 paragraph 1, Canada noted that where the conduct for which extradition is sought (a) would be criminal had it occurred in Canada and (b) meets the minimum penalty threshold, extradition may be granted. Canada cited section 3 of the Extradition Act (see above), noting that there is no bar or exception for fiscal matters present in this provision or elsewhere in the Act.

(b) Observations on the implementation of the article

140. The reviewing experts considered that Canada was in compliance with this provision of the Convention.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

141. Canada confirmed that it had implemented this provision of the Convention.

142. As a practice, Canada consults with states requesting extradition to provide them with an opportunity to provide opinion, documents and any other material required to substantiate a request for extradition. Canada's central authority assesses the information provided in support of a request for extradition and will consult with the requesting state and ask them to provide supplementary information where there are deficiencies in the request to ensure that the request meets the requirements of Canadian law for extradition. In this way, the requesting state has ample opportunity to provide information relevant to its request before it is submitted to the Minister of Justice to issue the authority to proceed. The Minister may, after receiving a request for extradition and being satisfied that the conditions set out in paragraph 3(1)(a) and subsection 3(3) of the *Extradition Act* are met in respect of one or more offences mentioned in the request, issue an authority to proceed that authorizes the Attorney General to seek, on behalf of the extradition partner, a court order for the committal of the person under section 29 of the *Extradition Act*. Canada cited sections 11, 12 and 15 of the *Extradition Act*.

Minister's Power to Receive Requests: Request to go to Minister

11. (1) A request by an extradition partner for the provisional arrest or extradition of a person shall be made to the Minister.

(2) A request by an extradition partner for the provisional arrest of a person may also be made to the Minister through Interpol.

Minister's approval of request for provisional arrest

12. The Minister may, after receiving a request by an extradition partner for the provisional arrest of a person, authorize the Attorney General to apply for a provisional arrest warrant, if the Minister is satisfied that

(a) the offence in respect of which the provisional arrest is requested is punishable in accordance with paragraph 3(1)(a); and

(b) the extradition partner will make a request for the extradition of the person.

Authority to Proceed

Minister's power to issue

15. (1) The Minister may, after receiving a request for extradition and being satisfied that the conditions set out in paragraph 3(1)(a) and subsection 3(3) are met in respect of one or more offences mentioned in the request, issue an authority to proceed that authorizes the Attorney General to seek, on behalf of the extradition partner, an order of a court for the committal of the person under section 29.

Competing requests

(2) If requests from two or more extradition partners are received by the Minister for the extradition of a person, the Minister shall determine the order in which the requests will be authorized to proceed.

Contents of authority to proceed

(3) The authority to proceed must contain

- (a) the name or description of the person whose extradition is sought;
- (b) the name of the extradition partner; and
- (c) the name of the offence or offences under Canadian law that correspond to the alleged conduct of the person or the conduct in respect of which the person was convicted, as long as one of the offences would be punishable in accordance with paragraph 3(1)(b).

Copy of authority to proceed

(4) A copy of an authority to proceed produced by a means of telecommunication that produces a writing has the same probative force as the original for the purposes of this Part.

143. Canada noted that due to confidentiality of state-to-state communications, no details could be provided on the specific cases of these interactions. Consultations between Canada and the requesting state, seeking to complete or supplement requests for extradition, occur on a daily basis.

(b) Observations on the implementation of the article

144. The reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

145. Canada considered that it had implemented this provision of the Convention.

146. Canada made reference to its answers to article 44 paragraph 4 and paragraph 7, which indicate that Canada is a party to 51 bilateral extradition agreements and has designated the following countries as extradition partners under the Extradition Act.

147. Antigua and Barbuda; Australia; The Bahamas; Barbados; Botswana; Costa Rica; Ghana; Grenada; Guyana; the ICTR; the ICTY; Jamaica; Japan; Lesotho; Maldives; Malta; Mauritius; Namibia; Nauru; New Zealand; Papua New Guinea; Singapore; Solomon Islands; South Africa; St. Kitts & Nevis; St. Lucia; St. Vincent & The Grenadines; Swaziland; Trinidad & Tobago; Tuvalu; United Kingdom of Great Britain and Northern Ireland; Vanuatu; Zimbabwe.

148. Canada's bilateral extradition treaties can be consulted online at:

- <http://www.treaty-accord.gc.ca/result-resultat.aspx?type=10>

(b) Observations on the implementation of the article

149. The reviewing experts noted that Canada has entered into a wide range of bilateral and multilateral agreements to carry out or enhance the effectiveness of extradition. Furthermore, note was taken that Canada is also able to use the UN Convention against Corruption as a legal basis for extradition where it does not have an existing bilateral or multilateral agreement in place with a State.

150. Consequently, the reviewing experts considered that Canada was in compliance with this provision of the Convention.

(d) Challenges, where applicable

151. Canada has indicated that it does not have any specific implementation challenges in relation to this article of the Convention.

(e) Technical assistance needs

152. Canada has indicated that it does not require any form of technical assistance in relation to this article of the Convention.

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in

accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

153. Canada considered that it had implemented this provision of the Convention, citing a range of multilateral and bilateral agreements entered into that provide a legal basis for the transfer to their territory of persons sentenced to imprisonment for criminal offences. These instruments are listed below:

Convention on the Transfer of Sentenced Persons (Council of Europe, Strasbourg, 21.III.1983)

- <http://conventions.coe.int/Treaty/en/Treaties/Html/112.htm>

Scheme for the Transfer of Convicted Offenders within the Commonwealth

- http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7BBF5E0493-DE14-43D6-A5E8-7641447B2CB1%7D_convicted_criminals.pdf

Inter-American Convention on Serving Criminal Sentences abroad

- <http://www.oas.org/juridico/english/treaties/a-57.html>

154. The list of countries with which Canada has bilateral treaties for the transfer of prisoners is found on the web site of the Correctional Service of Canada (CSC) at the following link:

- <http://www.csc-scc.gc.ca/text/prgrm/intransfer/aggr-eng.shtml>

155. Countries with which Canada currently has bilateral transfer of offender treaties includes: Argentina, Barbados, Bolivia, Brazil, Cuba, Dominican Republic, Egypt, France (accessing territories: Guadeloupe, St. Pierre & Miquelon), Mexico, Mongolia, Morocco, Peru, Thailand, United States (accessing states: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington State, West Virginia, Wisconsin, Wyoming; Accessing territory: Puerto Rico) and Venezuela.

156. Details are available on/via the CSC web site:

- <http://www.csc-scc.gc.ca/text/prgrm/intransfer/multilateral-eng.shtml#1>

157. Below are the data related to foreign nationals in federal custody and deportations/extraditions. The chart below is a snapshot taken on April 15, 2012. On that date, CSC had 859 individuals incarcerated, 168 under supervision and 7 whose supervision had been suspended, for a total of 1034 individuals who were identified as foreign nationals. There have been 361 individuals released for deportation or extradition over the last approximately 30 years.

Current Status	Non-Canadian	Dual Citizenship	Unknown Citizenship	Grand Total
Incarcerated	758	37	64	859
Supervised (in the community)	140	15	13	168
Suspended/temporary detention	3	2	2	7
Sub-total	901	54	79	1034
Released for purposes of deportation/extradition	359	0	2	361
Grand Total	1260	54	81	1395

SOURCE: CSC Data Warehouse, 2012-04-15; information source: Performance Management

158. In CSC, foreign nationals under federal jurisdiction (i.e. sentences of 2 years to life) include non-Canadians, those with dual citizenship and those with unknown citizenship.

(b) Observations on the implementation of the article

159. The reviewing experts noted that this provision of the Convention is non-mandatory and provides that States may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment. The reviewing experts further noted that Canada has entered into a broad range of bilateral and multilateral agreements on the transfer of sentenced persons.

160. Furthermore, Canada had demonstrated through statistics provided to the reviewing experts that these treaties had been used in practice to facilitate the transfer of sentenced persons from Canada.

161. During the country visit, reviewing experts requested further information regarding the definition of a Canadian national for the purposes of domestic legislation in relation to international cooperation. It was confirmed that an individual of Canadian nationality by birth or naturalization would be considered as Canadian for the purposes of the above legislation. It was further confirmed that the conditions applied in order to be able to transfer a sentenced person to Canada under the International Transfer of Offenders Act are that a person must be a Canadian citizen, must have exhausted all appeal mechanisms in the foreign jurisdiction, must have been found guilty of an offence for conduct that would also have been an offence were it to be have conducted in Canada and that the sentence is a form of sentence that can be administered in Canada (i.e. no death penalty or hard labor sentences can be transferred.)

162. In light of the number of agreements entered into by Canada in this area and the evidence provided of the use of such agreements in practice the reviewing experts considered Canada to be in compliance with this provision of the Convention.

(d) Challenges, where applicable

163. Canada indicated that it does not have any implementation challenges in relation to this provision of the Convention at present.

(e) Technical assistance needs

164. Canada has indicated that it does not require any forms of technical assistance in relation to this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

165. Canada confirmed that it had implemented this provision of the Convention.

166. The *Mutual Legal Assistance in Criminal Matters Act* (R.S., 1985, c. 30) is the legislative authority for the provision mutual legal assistance, which is available online at:

- <http://laws-lois.justice.gc.ca/PDF/M-13.6.pdf>

167. The central authority for MLA in Canada is the Department of Justice, International Assistance Group (IAG). The IAG has established a primary point of contact within its section to ensure that priority is given to requests for MLA in corruption cases for UNCAC.

168. A foreign state may request assistance from Canada in the gathering of evidence or the enforcement of some criminal orders (seizure orders, confiscation orders, fines) through three separate routes: (i) treaty and convention requests, (ii) letters rogatory (court issued non-treaty letter of request) and (iii) non-treaty requests. In rare circumstances, Canada may enter into an administrative arrangement with a non-treaty country to give effect to an individual request for assistance, for a time-limited period. The widest assistance can be provided for treaty or convention requests. More limited assistance is available for letters rogatory and non-treaty requests.

(i) Requests Made Under a Treaty/Convention

169. Requests made under a treaty or convention, and which seek court-ordered assistance, are executed under Canada's *Mutual Legal Assistance in Criminal Matters Act*, which is Canada's domestic legislation that implements bilateral and multilateral mutual legal assistance (MLA) treaties and sets forth the procedure for the execution of foreign requests made to Canada ("incoming requests"). The Act gives Canadian courts the power to issue orders to gather evidence for a requesting State, including by search warrant; to locate a person who is suspected of having committed an offence in the requesting State; and to enforce orders of seizure and confiscation. The Act permits assistance to be rendered at any stage of a criminal matter, from investigation to appeal.
170. In most cases, before issuing a court order to give effect to a request for assistance, the Canadian court must be satisfied, on reasonable grounds, that an offence has been committed and that the evidence sought from Canada will be found in Canada. Therefore, when seeking assistance that requires the issuance of compulsory measures (e.g. production orders, search warrants, orders compelling statements/testimony), a requesting country must provide Canada with sufficient and clear information to establish a connection between the foreign investigation/prosecution and the evidence or assistance requested.

(ii) Letters Rogatory Requests (Court-Issued Non-Treaty Requests)

171. Where there is no treaty/convention in place between Canada and the requesting State, it is still possible for the requesting State to seek some court-ordered assistance from Canada. Under the Canada Evidence Act, orders compelling witnesses to give evidence (including by video-link) and to produce records can be issued at the request of a foreign state. However, this mechanism requires that two essential conditions be met: (1) that there be a criminal matter pending before the foreign judge, court or tribunal; and (2) that the foreign judicial body wishes to obtain the evidence sought (i.e. the request must be made by the foreign judge, court or tribunal). It is important that this be clearly stated in the letters rogatory request. In addition, the request should include information that indicates how the evidence sought is relevant to the foreign proceedings.

(iii) Non-Treaty Letters of Request

172. To the extent possible, Canada will also execute non-treaty requests for assistance, as well as those that do not satisfy the requirements of the Canada Evidence Act (i.e. letters rogatory requests). However, the assistance that is generally available in response to a non-treaty letter of request is voluntary in nature (e.g. taking voluntary statements from persons; obtaining publicly available documents; or serving documents).
173. This *Mutual Legal Assistance Act in Criminal Matters* provides for legal assistance in criminal matters from other countries that have a treaty with Canada, thus enabling Canada to assist partner states seeking assistance in the investigation, prosecution and suppression of

crimes, including acts of corruption. There are bilateral treaties in place, with Argentina, The Bahamas, Mexico, Peru, Trinidad and Tobago, the United States of America and Uruguay. Under the Act, measures of assistance available to foreign states include order for the gathering of documentary and physical evidence pursuant to either “evidence gathering orders” or search warrants, as well as warrants available under the Criminal Code may be obtained pursuant to a request from a treaty or convention partner. The legislation also allows Canada to (1) compel statements or testimony from a witness located in Canada, including those provided via video link to the foreign proceedings; (2) order the examination of a place or site in Canada; (3) lend court exhibits; and (4) transfer detained persons on consent to a requesting state to give evidence or to assist with the foreign investigation. In addition, Canada notes that it “has the ability to assist in the enforcement of foreign fines, and, to some extent, foreign restraint, seizure and forfeiture orders.” Canada also states that assistance is provided on an informal police-to-police basis, usually through Interpol channels. These occur in the cases where the assistance sought does not require the issuance of a court process.

174. Finally, Canada notes that corruption is an intelligence priority for the Royal Canadian Mounted Police Criminal Intelligence Program and is the subject of regular monitoring, research and assessment. Execution of incoming MLA requests in relation to corruption are processed by the IAG and may be executed by the RCMP International Anti-Corruption Unit, if no Canadian court order is required for execution (e.g. interviewing a suspect in Canada). In this regard, the Royal Canadian Mounted Police has Liaison Officers posted abroad. They are involved in many areas of law enforcement, including the fight against corruption. Moreover, the Royal Canadian Mounted Police is the Interpol agent for Canada, working with the other Interpol Countries.

175. In addition, Canada has 35 bilateral mutual legal assistance treaties, which can be found online at:

- <http://www.treaty-accord.gc.ca/search-recherche.aspx?type=1&page=TLB>

176. These treaties include:

- Treaty between the Government of Canada and the Government of the Argentina Republic on Mutual Assistance in Criminal Matters;
- Treaty between Canada and the Republic of Austria on Mutual Assistance in Criminal Matters;
- Treaty between the Government of Canada and the Government of the Commonwealth of the Bahamas on Mutual Legal Assistance in Criminal Matters;
- Treaty between the Government of Canada and the Government of the Kingdom of Belgium on Mutual Legal Assistance in Criminal Matters;
- Treaty between the Government of Canada and the Government of the Federative Republic of Brazil on Mutual Legal Assistance in Criminal Matters;
- Treaty between Canada and the People’s Republic of China on Mutual Legal Assistance in Criminal Matters;
- Treaty between Canada and the Czech Republic on Mutual Assistance in Criminal Matters;

- Treaty between the Government of Canada and the Government of the Republic of France on Mutual Assistance in Penal Matters;
- Treaty between Canada and the Federal Republic of Germany on Mutual Assistance in Criminal Matters;
- Treaty between the Government of Canada and the Government of the Hellenic Republic on Mutual Legal Assistance in Criminal Matters;
- Agreement between the Government of Canada and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on Mutual Legal Assistance in Criminal Matters;
- Treaty between Canada and the Republic of Hungary on Mutual Assistance in Criminal Matters;
- Treaty between the Government of Canada and the Government of the Republic of India on Mutual Assistance in Criminal Matters;
- Treaty between the Government of Canada and the Government of the State of Israel on Mutual Legal Assistance in Criminal Matters;
- Treaty between Canada and the Republic of Italy on Mutual Assistance in Criminal Matters;
- Treaty between Canada and the Republic of Korea on Mutual Assistance in Criminal Matters;
- Treaty between the Government of Canada and the Government of the United Mexican States on Mutual Legal Assistance in Criminal Matters;
- Treaty between Canada and the Kingdom of the Netherlands on Mutual Assistance in Criminal Matters;
- Treaty between the Government of Canada and the Government of the Kingdom of Norway on Mutual Legal Assistance in Criminal Matters;
- Treaty between the Government of Canada and the Government of the Republic of Peru on Mutual Legal Assistance in Criminal Matters;
- Treaty between Canada and the Republic of Poland on Mutual Legal Assistance in Criminal Matters;
- Treaty between the Government of Romania on Mutual Legal Assistance in Criminal Matters;
- Treaty between Canada and the Russian Federation on Mutual Legal Assistance in Criminal Matters;
- Treaty between the Government of Canada and the Government of the Republic of South Africa on Mutual Legal Assistance in Criminal Matters;
- Treaty between Canada and Spain on Mutual Assistance in Criminal Matters;
- Treaty between the Government of Canada and the Government of Sweden on Mutual Assistance in Criminal Matters;
- Treaty between Canada and the Swiss Confederation on Mutual Assistance in Criminal Matters;
- Treaty between the Government of Canada and the Government of the Kingdom of Thailand on Mutual Legal Assistance in Criminal Matters;

- Treaty between the Government of Canada and the Government of the Republic of Trinidad and Tobago on Mutual Legal Assistance in Criminal Matters;
- Treaty between Canada and Ukraine on Mutual Assistance in Criminal Matters;
- A Treaty between the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Assistance in Criminal Matters (Drug Trafficking);
- Treaty between Canada and the Oriental Republic of Uruguay on Mutual Legal Assistance in Criminal Matters.

177. In addition to the United Nations Convention against Corruption, which Canada recognizes as a legal basis for mutual legal assistance, Canada is also a party, *inter alia*, to the following multilateral conventions which contain mutual legal assistance obligations:

- Inter-American Convention on Mutual Legal Assistance in Criminal Matters;
- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- United Nations Convention against Transnational Organized Crime

178. Canada did not provide any statistics or case examples as regards the provision of mutual legal assistance under the legal framework outlined above.

(b) Observations on the implementation of the article

179. The reviewing experts noted that The Mutual Legal Assistance in Criminal Matters Act is the key legislative authority for the provision of mutual legal assistance in Canada, serving to implement bilateral and multilateral mutual legal assistance (MLA) treaties to which Canada is a party and setting forth the procedure for the execution of foreign requests made to Canada.

180. The reviewing experts further noted that Canada is presently party to 35 bilateral and 4 multilateral treaties aimed at facilitating mutual legal assistance. Canada also recognizes the Convention against Corruption as a legal basis for mutual legal assistance and, during the country visit, noted it had been used in practice as the legal basis for MLA in relation to corruption cases.

181. The central authority for mutual legal assistance in Canada is the Department of Justice, International Assistance Group (IAG) and the Secretary-General of the United Nations has been informed of this in accordance with article 46, paragraph 13 of the Convention. The IAG has also established a primary point of contact within its section to ensure that priority is given to requests for assistance in corruption cases for the Convention against Corruption. Canada accepts requests for assistance in both English and French.

182. The reviewing experts also noted that Canada had commented in the self-assessment checklist that: “In most cases, before issuing a court order to give effect to a request for

assistance, the Canadian court must be satisfied, on reasonable grounds, that an offence has been committed and that the evidence sought from Canada will be found in Canada.”

183. In this regard, during the country visit, reviewing experts noted that the amount of supporting evidence and documentation required to be provided by authorities from other States in order to benefit from mutual legal assistance provided by the Canadian authorities could be viewed as burdensome. Canada recognized that, due to the constitutional framework in which the MLA process operates, a significant amount of factual information is required from States parties in order to give effect to some types of requests for assistance that require the issuing of a court order, such as the production of bank records or the freezing of assets.
184. Information required where a court order will be needed will include a full description of the specific evidence or information sought from the Canadian authorities, the place in Canada where evidence is believed to be located, how the requesting authorities are aware of the existence of the information sought, and a description of the nexus between the evidence or information requested and the commission of the alleged offence. It was further noted that the amount of information sought from requesting States had been raised as a concern by some in the past.
185. However, it was recognized by the reviewing experts that significant steps had been taken by the Canadian authorities, through the production of guidance and other awareness-raising activities, to assist States in meeting these evidentiary requirements. It was also emphasized that such information is generally only required where a court order is required where, for example, coercive measures need to be taken in order to obtain the relevant information or evidence.
186. In light of the information provided, the reviewing experts therefore considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

187. Canada considered that it had implemented this provision of the Convention.
188. Noting Canada’s response in article 26 paragraph 1 and 2, legal persons can be held criminally liable under Canadian law. The concept of “persons” includes both natural and

legal persons. Accordingly, there is no bar to rendering MLA for requests relating to criminal matters in respect of legal persons. Further, it is a common law principle that criminal liability of legal persons does not preclude that of a natural person. In Canada, there is no obligation to charge a legal person or an individual jointly with the same offence. Each can be charged and prosecuted separately, and prosecuting the legal person does not necessitate prosecuting the individual, and vice-versa.

189. Relevant domestic legislation cited in this regard by Canada was as follows:

Mutual Legal Assistance in Criminal Matters Act, R.S.C., 1985, c. 30 (4th Supp.)

- <http://laws-lois.justice.gc.ca/PDF/M-13.6.pdf>

Criminal Code, s. 2 & 22.2

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

190. Canada noted that due to the confidentiality of State-to-State communications, no information can be provided regarding specific examples of the application of these provisions.

(b) Observations on the implementation of the article

191. The reviewing experts noted that under Canadian law, legal persons can be held criminally liable in relation to corruption offences. Consequently, any assistance sought by other States parties in relation to the investigation or prosecution of legal persons can be facilitated under the legal framework outlined in Canada's response to article 46, paragraph 1. Canada did not however provide any specific examples of cases in which such assistance has been provided.

192. The reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Subparagraph 3 (a-i)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*

- (g) *Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) *Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) *Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(a) Summary of information relevant to reviewing the implementation of the article

193. Canada confirmed that it had implemented this provision of the Convention.

194. Canadian mutual legal assistance legislation, bilateral MLA treaties and multilateral treaties authorizing the provision of MLA provides a comprehensive system that authorizes Canadian authorities to provide for these forms of assistance. The following pieces of legislation were cited as providing the legal basis for the forms of assistance covered under this provision of the Convention. Below, Canada highlights the individual forms of assistance and the specific relevant domestic legislative provisions.

Seized Property Management Act (S.C. 1993, c. 37)

- <http://laws-lois.justice.gc.ca/PDF/S-8.3.pdf>

Proceeds of Crime (Money Laundering) and Terrorist Financing Act - S.C. 2000, c. 17

- <http://laws-lois.justice.gc.ca/PDF/P-24.501.pdf>

Freezing Assets of Corrupt Foreign Officials Act

- <http://laws-lois.justice.gc.ca/eng/acts/F-31.6/index.html>.

Mutual Legal Assistance in Criminal Matters Act, R.S.C., 1985, c. 30 (4th Supp.)

- <http://laws-lois.justice.gc.ca/PDF/M-13.6.pdf>

195. The following provisions of the *Mutual Legal Assistance in Criminal Matters Act* provide the mechanism by which the following assistance can be given:

- (a) Taking evidence or statements from person,
- (e) Providing information, evidentiary items and expert evaluations,
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records and
- (h) Facilitating the voluntary appearance of persons in the requesting State Party

Mutual Legal Assistance in Criminal Matters Act

Approval of request to obtain evidence

17. (1) When the Minister approves a request of a state or entity to obtain, by means of an order of a judge, evidence regarding an offence, the Minister shall provide a competent authority with any documents or information necessary to apply for the order.

Application for order

(2) The competent authority who is provided with the documents or information shall apply ex parte for an order for the gathering of evidence to a judge of the province in which the competent authority believes part or all of the evidence may be found.

Evidence-gathering order

18. (1) A judge to whom an application is made under subsection 17(2) may make an order for the gathering of evidence, where he is satisfied that there are reasonable grounds to believe that

(a) an offence has been committed; and

(b) evidence of the commission of the offence or information that may reveal the whereabouts of a person who is suspected of having committed the offence will be found in Canada.

(2) An order made under subsection (1) must provide for the manner in which the evidence is to be obtained in order to give effect to the request mentioned in subsection 17(1) and may

(a) order the examination, on oath or otherwise, of a person named therein, order the person to attend at the place fixed by the person designated under paragraph (c) for the examination and to remain in attendance until he is excused by the person so designated, order the person so named, where appropriate, to make a copy of a record or to make a record from data and to bring the copy or record with him, and order the person so named to bring with him any record or thing in his possession or control, in order to produce them to the person before whom the examination takes place;

(b) order a person named therein to make a copy of a record or to make a record from data and to produce the copy or record to the person designated under paragraph (c), order the person to produce any record or thing in his possession or control to the person so designated and provide, where appropriate, for any affidavit or certificate that, pursuant to the request, is to accompany any copy, record or thing so produced;

(c) designate a person before whom the examination referred to in paragraph (a) is to take place or to whom the copies, records, things, affidavits and certificates mentioned in paragraph (b) are to be produced; and

(d) order a person named in it to answer any question and to produce any record or thing to the person designated under paragraph (c) in accordance with the laws of evidence and procedure in the state or entity that presented the request.

(3) For greater certainty, under paragraph (2)(c), a judge who makes an order under subsection (1) may designate himself or herself — either alone or with another person, including another judge — or may designate another person, including another judge.

Order effective throughout Canada

(4) An order made under subsection (1) may be executed anywhere in Canada.

Terms and conditions of order

(5) An order made under subsection (1) may include any terms or conditions that the judge considers desirable, including those relating to the protection of the interests of the person named therein and of third parties.

(6) The judge who made the order under subsection (1) or another judge of the same court may vary its terms and conditions.

Refusal to comply

(7) A person named in an order made under subsection (1) may refuse to answer any question or to produce a record or thing to the person designated under paragraph (2)(c) if

(a) answering the question or producing the record or thing would disclose information that is protected by the Canadian law of non-disclosure of information or privilege;

(b) requiring the person to answer the question or to produce the record or thing would constitute a breach of a privilege recognized by a law in force in the state or entity that presented the request; or

(c) answering the question or producing the record or thing would constitute the commission by the person of an offence against a law in force in the state or entity that presented the request.

Execution of order to be completed

(8) If a person refuses to answer a question or to produce a record or thing, the person designated under paragraph (2)(c)

(a) may, if he or she is a judge of a Canadian or foreign court, make immediate rulings on any objections or issues within his or her jurisdiction; or

(b) shall, in any other case, continue the examination and ask any other question or request the production of any other record or thing mentioned in the order.

Statement of reasons for refusal

(9) A person named in an order made under subsection (1) who, under subsection (7), refuses to answer one or more questions or to produce certain records or things shall, within seven days, give to the person designated under paragraph (2)(c), unless that person has already ruled on the objection under paragraph (8)(a), a detailed statement in writing of the reasons on which the person bases the refusal to answer each question that the person refuses to answer or to produce each record or thing that the person refuses to produce.

Expenses

(10) A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the judge who made the order.

19. (1) A person designated pursuant to paragraph 18(2)(c) in an order made under subsection 18(1) shall make a report to the judge who made the order or another judge of the same court, accompanied by

(a) a transcript of every examination held pursuant to the order;

(b) a general description of every record or thing produced to the person pursuant to the order and, if the judge so requires, a record or thing itself; and

(c) a copy of every statement given under subsection 18(9) of the reasons for a refusal to answer any question or to produce any record or thing.

(2) The person designated pursuant to paragraph 18(2)(c) shall send a copy of the report to the Minister forthwith after it is made.

(3) If any reasons contained in a statement given under subsection 18(9) are based on the Canadian law of non-disclosure of information or privilege, a judge to whom a report is made shall determine whether those reasons are well-founded, and, if the judge determines that they are, that determination shall be mentioned in any order that the judge makes under section 20, but if the judge determines that they are not, the judge shall order that the person named in the order made under subsection 18(1) answer the questions or produce the records or things.

Refusals based on foreign law

(4) A copy of every statement given under subsection 18(9) that contains reasons that purport to be based on a law that applies to the state or entity shall be appended to any order that the judge makes under section 20.

Sending abroad

20. (1) A judge to whom a report is made under subsection 19(1) may order that there be sent to the state or entity the report and any record or thing produced, as well as a copy of the order accompanied by a copy of any statement given under subsection 18(9) that contains reasons that purport to be based on a law that applies to the state or entity, as well as any determination of the judge made under subsection 19(3) that the reasons contained in a statement given under subsection 18(9) are well-founded.

Terms and conditions

(2) An order made under subsection (1) may include any terms or conditions that the judge considers desirable, after having considered any representations of the Minister, the competent authority, the person who produced any record or thing to the person designated under paragraph 18(2)(c) and any person who claims to have an interest in any record or thing so produced, including terms and conditions

(a) necessary to give effect to the request mentioned in subsection 17(1);

(b) with respect to the preservation and return to Canada of any record or thing so produced; and

(c) with respect to the protection of the interests of third parties.

Further execution

(3) The execution of an order made under subsection 18(1) that was not completely executed because of a refusal, by reason of a law that applies to the state or entity, to answer one or more questions or to produce certain records or things to the person designated under paragraph 18(2)(c) may be continued, unless a ruling has already been made on the objection under paragraph 18(8)(a), if a court of the state or entity or a person designated by the state or entity determines that the reasons are not well-founded and the state or entity so advises the Minister.

Leave of judge required

(4) No person named in an order made under subsection 18(1) whose reasons for refusing to answer a question or to produce a record or thing are determined, in accordance with subsection (3), not to be well-founded, or whose objection has been ruled against under paragraph 18(8)(a), shall, during the continued execution of the order or ruling, refuse to answer that question or to produce that record or thing to the person designated under paragraph 18(2)(c), except with the permission of the judge who made the order or ruling or another judge of the same court.

Terms and conditions

21. No record or thing that has been ordered under section 20 to be sent to the state or entity mentioned in subsection 17(1) shall be so sent until the Minister is satisfied that the state or entity has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

Contempt of court

22. (1) A person named in an order made under subsection 18(1) commits a contempt of court if the person refuses to answer a question or to produce a record or thing to the person designated under paragraph 18(2)(c) after a judge has ruled against the objection under paragraph 18(8)(a).

Contempt of court

(2) If no ruling has been made under paragraph 18(8)(a), a person named in an order made under subsection 18(1) commits a contempt of court if the person refuses to answer a question or to produce a record or thing to the person designated under paragraph 18(2)(c)

(a) without giving the detailed statement required by subsection 18(9); or

(b) if the person so named was already asked the same question or requested to produce the same record or thing and the reasons on which that person based the earlier refusal were determined not to be well-founded by

(i) a judge, if the reasons were based on the Canadian law of non-disclosure of information or privilege, or

(ii) a court of the state or entity or by a person designated by the state or entity, if the reasons were based on a law that applies to the state or entity.

Approval of request to obtain evidence by video link, etc.

22.1 (1) If the Minister approves a request of a state or entity to compel a person to provide evidence or a statement regarding an offence by means of technology that permits the virtual presence of the person in the territory over which the state or entity has jurisdiction, or that permits the parties and the court to hear and examine the witness, the Minister shall provide a competent authority with any documents or information necessary to apply for the order.

Application for order

(2) The competent authority who is provided with the documents or information shall apply ex parte to a judge of the province in which the person may be found for an order for the taking of the evidence or statement from the person under subsection (1).

Order for video link, etc.

22.2 (1) The judge may make the order if satisfied that there are reasonable grounds to believe that

(a) an offence has been committed; and

(b) the state or entity believes that the person's evidence or statement would be relevant to the investigation or prosecution of the offence.

(2) An order made under subsection (1) shall order the person

(a) to attend at the place fixed by the judge for the taking of the evidence or statement by means of the technology and to remain in attendance until the person is excused by the authorities of the state or entity;

(b) to answer any questions put to the person by the authorities of the state or entity or by any person authorized by those authorities, in accordance with the law that applies to the state or entity;

(c) to make a copy of a record or to make a record from data and to bring the copy or record, when appropriate; and

(d) to bring any record or thing in his or her possession or control, when appropriate, in order to show it to the authorities by means of the technology.

Order effective throughout Canada

(3) An order made under subsection (1) may be executed anywhere in Canada.

Terms and conditions of order

(4) An order made under subsection (1) may include any terms or conditions that the judge considers desirable, including those relating to the protection of the interests of the person named in it and of third parties.

Variation

(5) The judge who made the order under subsection (1) or another judge of the same court may vary its terms and conditions.

Expenses

(6) A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the judge who made the order.

Other laws about witnesses to apply

22.3 For greater certainty, when a witness gives evidence or a statement pursuant to an order made under section 22.2, the evidence or statement shall be given as though the witness were physically before the court or tribunal outside Canada, for the purposes of the laws relating to evidence and procedure but only to the extent that giving the evidence would not disclose information otherwise protected by the Canadian law of non-disclosure of information or privilege.

Contempt of court in Canada

22.4 When a witness gives evidence under section 22.2, the Canadian law relating to contempt of court applies with respect to a refusal by the person to answer a question or to produce a record or thing as ordered by the judge under that section.

Arrest warrant

23. (1) The judge who made the order under subsection 18(1) or section 22.2 or another judge of the same court may issue a warrant for the arrest of the person named in the order where the judge is satisfied, on an information in writing and under oath, that

- (a) the person did not attend or remain in attendance as required by the order or is about to abscond;
- (b) the order was personally served on the person; and
- (c) in the case of an order made under subsection 18(1), the person is likely to give material evidence and, in the case of an order under section 22.2, the state or entity believes that the testimony of the person would be relevant to the prosecution of the offence.

Warrant effective throughout Canada

(2) A warrant issued under subsection (1) may be executed anywhere in Canada by any peace officer.

Order

(3) A peace officer who arrests a person in execution of a warrant issued under subsection (1) shall, without delay, bring the person or cause the person to be brought before the judge who issued the warrant or another judge of the same court who may, to ensure compliance with the order made under subsection 18(1) or section 22.2, order that the person be detained in custody or released on recognizance, with or without sureties.

(4) A person who is arrested in execution of a warrant issued under subsection (1) is entitled to receive, on request, a copy of the information on which the warrant was issued.

196. The following provisions of the *Mutual Legal Assistance in Criminal Matters Act* provide the mechanism by which the following assistance can be given:

- (b) Effecting service of judicial documents

Mutual Legal Assistance in Criminal Matters Act

Foreign records

36. (1) In a proceeding with respect to which Parliament has jurisdiction, a record or a copy of the record and any affidavit, certificate or other statement pertaining to the record made by a person who has custody or knowledge of the record, sent to the Minister by a

state or entity in accordance with a Canadian request, is not inadmissible in evidence by reason only that a statement contained in the record, copy, affidavit, certificate or other statement is hearsay or a statement of opinion.

(2) For the purpose of determining the probative value of a record or a copy of a record admitted in evidence under this Act, the trier of fact may examine the record or copy, receive evidence orally or by affidavit, or by a certificate or other statement pertaining to the record in which a person attests that the certificate or statement is made in conformity with the laws that apply to a state or entity, whether or not the certificate or statement is in the form of an affidavit attested to before an official of the state or entity, including evidence as to the circumstances in which the information contained in the record or copy was written, stored or reproduced, and draw any reasonable inference from the form or content of the record or copy.

Foreign things

37. In a proceeding with respect to which Parliament has jurisdiction, a thing and any affidavit, certificate or other statement pertaining to the thing made by a person in a state or entity as to the identity and possession of the thing from the time it was obtained until its sending to a competent authority in Canada by the state or entity in accordance with a Canadian request, are not inadmissible in evidence by reason only that the affidavit, certificate or other statement contains hearsay or a statement of opinion.

Status of certificate

38. (1) An affidavit, certificate or other statement mentioned in section 36 or 37 is, in the absence of evidence to the contrary, proof of the statements contained therein without proof of the signature or official character of the person appearing to have signed the affidavit, certificate or other statement.

(2) Unless the court decides otherwise, in a proceeding with respect to which Parliament has jurisdiction, no record or copy thereof, no thing and no affidavit, certificate or other statement mentioned in section 36 or 37 shall be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced seven days notice, excluding holidays, of that intention, accompanied by a copy of the record, copy, affidavit, certificate or other statement and unless, in the case of a thing, the party intending to produce it has made it available for inspection by the party against whom it is intended to be produced during the five days following a request by that party that it be made so available.

Service abroad

39. The service of a document in the territory over which the state or entity has jurisdiction may be proved by affidavit of the person who served it.

197. The following provisions of the *Mutual Legal Assistance in Criminal Matters Act* and *Freezing Assets of Corrupt Foreign Officials Act* provide the mechanism by which the following assistance can be given:

(c) Search and Seizure and Freezing

198. Under the *Freezing Assets of Corrupt Foreign Officials Act* (FACFOA), the Government of Canada may issue orders or regulations that freeze the assets or restrain property¹ of a foreign state's former leaders and senior officials if the following preconditions are met:

1. The foreign state asserts in writing to the Government of Canada that a person has misappropriated property of the foreign state or acquired property inappropriately by virtue of their office or a personal or business relationship.
2. The written assertion asks the Government of Canada to freeze property of the person.
3. The circumstances associated with the request demonstrate to the Government of Canada's satisfaction that:
 - the person is, in relation to the foreign state, a politically exposed foreign person²;
 - there is internal turmoil, or an uncertain political situation, in the foreign state; and
 - the making of the order or regulation is in the interest of international relations.

¹ Property is understood to mean any real, personal, movable or immovable property.

² For greater certainty, a "politically exposed foreign person" is defined under FACFOA to mean a person who holds or has held one of the following offices or positions in or on behalf of a foreign state and includes any person who, for personal or business reasons, is or was closely associated with such a person, including a family member:

- (a) head of state or head of government;
- (b) member of the executive council of government or member of a legislature;
- (c) deputy minister or equivalent rank;
- (d) ambassador or attaché or counsellor of an ambassador;
- (e) military officer with a rank of general or above;
- (f) president of a state-owned company or a state-owned bank;
- (g) head of a government agency;
- (h) judge;
- (i) leader or president of a political party represented in a legislature; or
- (j) holder of any prescribed office or position.

199. If these conditions are met, the Government of Canada may issue an order or regulation that lists and designates the person in question as someone with whom Canadians may not engage in the following activities, whether carried out in or outside Canada:

- the dealing, directly or indirectly, in any property, wherever situated, of a listed politically exposed foreign person;
- the entering into or facilitating, directly or indirectly, any financial transaction related to a dealing, directly or indirectly, in any property, wherever situated, of a listed politically exposed foreign person; and
- the provision of any financial services or other related services in respect of any property of a listed politically exposed foreign person.

200. In addition to restricting and prohibiting dealing with the properties of corrupt foreign officials, their associates and their family members, FACFOA further provides that Canadians and financial entities must disclose to the Royal Canadian Mounted Police whether they have property possession or control of property of person who is the subject of an order or regulation. As such, property associated with a politically exposed foreign person can be identified and frozen at the request of the foreign state on an ongoing basis for the duration of the order or the regulation, which is five years with the possibility of renewal.

201. While FACFOA does authorize the Government to seize property, seizure cannot occur unless the property is identified as a proceed of crime. As described above, however, it is not necessary to establish that the property is a proceed of crime in order for it to be frozen under FACFOA. Rather, the freeze ensures that the property remains in Canada to give the foreign state the time it needs to pursue its investigations and gather evidence to support a formal request for the seizure and forfeiture of such assets. For more detailed information, review the Act and its regulations at <http://laws-lois.justice.gc.ca/eng/acts/F-31.6/index.html>.

Mutual Legal Assistance in Criminal Matters Act

FOREIGN ORDERS FOR RESTRAINT, SEIZURE AND FORFEITURE OF PROPERTY IN CANADA

Orders for restraint or seizure

9.3 (1) When a written request is presented to the Minister by a state or entity, other than the International Criminal Court referred to in section 9.1, for the enforcement of an order for the restraint or seizure of property situated in Canada issued by a court of criminal jurisdiction of the state or entity, the Minister may authorize the Attorney General of Canada or an attorney general of a province to make arrangements for the enforcement of the order.

(2) On receipt of an authorization, the Attorney General of Canada or an attorney general of a province may file a copy of the order with the superior court of criminal jurisdiction of the province in which the property that is the subject of the order is believed to be located. On being filed, the order shall be entered as a judgment of that court and may be executed anywhere in Canada.

(3) Before filing an order, the Attorney General of Canada or an attorney general of a province must be satisfied that

(a) the person has been charged with an offence within the jurisdiction of the state or entity; and

(b) the offence would be an indictable offence if it were committed in Canada.

(4) On being filed,

(a) an order for the seizure of proceeds of crime may be enforced as if it were a warrant issued under subsection 462.32(1) of the Criminal Code;

(b) an order for the restraint of proceeds of crime may be enforced as if it were an order made under subsection 462.33(3) of the Criminal Code;

(c) an order for the seizure of offence-related property may be enforced as if it were a warrant issued under subsection 487(1) of the Criminal Code or subsection 11(1) of the Controlled Drugs and Substances Act, as the case may be; and

(d) an order for the restraint of offence-related property may be enforced as if it were an order made under subsection 490.8(3) of the Criminal Code or subsection 14(3) of the Controlled Drugs and Substances Act, as the case may be.

(5) When an order is filed under subsection (2), a copy of any amendments made to the order may be filed in the same way as the order, and the amendments do not, for the purpose of this Act, have effect until they are registered.

Orders of forfeiture

9.4 (1) When a written request is presented to the Minister by a state or entity, other than the International Criminal Court referred to in section 9.1, for the enforcement of an order of forfeiture of property situated in Canada issued by a court of criminal jurisdiction of the state or entity, the Minister may authorize the Attorney General of Canada or an attorney general of a province to make arrangements for the enforcement of the order.

Grounds for refusal of request

(2) The Minister shall refuse the request if he or she

- (a) has reasonable grounds to believe that the request has been made for the purpose of punishing a person by reason of their race, sex, sexual orientation, religion, nationality, ethnic origin, language, colour, age, mental or physical disability or political opinion;
- (b) is of the opinion that enforcement of the order would prejudice an ongoing proceeding or investigation;
- (c) is of the opinion that enforcement of the order would impose an excessive burden on the resources of federal, provincial or territorial authorities;
- (d) is of the opinion that enforcement of the order might prejudice Canada's security, national interest or sovereignty; or
- (e) is of the opinion that refusal of the request is in the public interest.

Filing of order

(3) On receipt of an authorization, the Attorney General of Canada or an attorney general of a province may file a copy of the order with the superior court of criminal jurisdiction of the province in which all or part of the property that is the subject of the order is believed to be located. On being filed, the order shall be entered as a judgment of that court and may be executed anywhere in Canada.

Deemed filing

(4) An order that is filed under subsection (3) by an attorney general of a province is deemed to be filed by the Attorney General of Canada.

Conditions

(5) Before filing an order, the Attorney General of Canada or an attorney general of a province must be satisfied that

- (a) the person has been convicted of an offence within the jurisdiction of the state or entity;
- (b) the offence would be an indictable offence if it were committed in Canada; and
- (c) the conviction and the order are not subject to further appeal.

Effect of registered order

(6) From the date it is filed under subsection (3), subject to subsection (4),

- (a) an order of forfeiture of proceeds of crime has the same effect as if it were an order under subsection 462.37(1) or 462.38(2) of the Criminal Code; and

(b) an order for the forfeiture of offence-related property has the same effect as if it were an order under subsection 490.1(1) or 490.2(2) of the Criminal Code or subsection 16(1) or 17(2) of the Controlled Drugs and Substances Act, as the case may be.

(7) When an order is filed under subsection (3), a copy of any amendments made to the order may be filed in the same way as the order, and the amendments do not, for the purpose of this Act, have effect until they are registered.

(8) When an order has been filed under subsection (3),

(a) an order of forfeiture of proceeds of crime shall not be executed before notice in accordance with subsection 462.41(2) of the Criminal Code has been given to any person who, in the opinion of the court, appears to have a valid interest in the property; and

(b) an order of forfeiture of offence-related property shall not be executed before

(i) notice in accordance with subsection 490.41(2) of the Criminal Code or section 19.1(2) of the Controlled Drugs and Substances Act has been given to any person who resides in a dwelling-house that is offence-related property and who is a member of the immediate family of the person charged with or convicted of the offence in relation to which property would be forfeited, and

(ii) notice in accordance with subsection 490.4(2) of the Criminal Code or subsection 19(2) of the Controlled Drugs and Substances Act has been given to any person who, in the opinion of the court, appears to have a valid interest in the property.

Application of Criminal Code

(9) Subsection 462.41(3) and section 462.42 of the Criminal Code apply, with any modifications that the circumstances require, to a person who claims an interest in proceeds of crime, and subsections 490.4(3) and 490.41(3) and section 490.5 of the Criminal Code and subsections 19(3) and 20(4) of the Controlled Drugs and Substances Act apply, with any modifications that the circumstances require, to a person who claims an interest in offence-related property.

Presumption

(10) A person who is convicted of an offence in relation to which an order of forfeiture is issued by a court of criminal jurisdiction of a state or entity is deemed to be a person referred to in paragraph 462.41(3)(a) or 462.42(1)(a) of the Criminal Code.

Seized Property Management Act applies

(11) The provisions of the Seized Property Management Act apply in respect of all property forfeited under this section.

SEARCH AND SEIZURE

10. The Criminal Code applies, with any modifications that the circumstances require, in respect of a search or a seizure under this Act, except to the extent that the Criminal Code is inconsistent with this Act.

Approval of request for investigative measures

11. (1) When the Minister approves a request of a state or entity to have a search or a seizure, or the use of any device or investigative technique or other procedure or the doing of any other thing to be described in a warrant, carried out regarding an offence, the Minister shall provide a competent authority with any documents or information necessary to apply for a search warrant or other warrant.

Application for warrant

(2) The competent authority who is provided with the documents or information shall apply ex parte for a search warrant or other warrant to a judge of the province in which the competent authority believes that evidence may be found.

Issuance of search warrant

12. (1) A judge of a province to whom an application is made under subsection 11(2) may issue a search warrant authorizing a peace officer named therein to execute it anywhere in the province, where the judge is satisfied by statements under oath that there are reasonable grounds to believe that

(a) an offence has been committed;

(b) evidence of the commission of the offence or information that may reveal the whereabouts of a person who is suspected of having committed the offence will be found in a building, receptacle or place in the province; and

(c) it would not, in the circumstances, be appropriate to make an order under subsection 18(1).

Conditions

(2) A judge who issues a search warrant under subsection (1) may subject the execution of the warrant to any conditions that the judge considers desirable, including conditions relating to the time or manner of its execution.

Hearing re execution

(3) A judge who issues a search warrant under subsection (1) shall fix a time and place for a hearing to consider the execution of the warrant as well as the report of the peace officer concerning its execution.

Contents of warrant

(4) A search warrant issued under subsection (1) may be in Form 5 in Part XXVIII of the Criminal Code, varied to suit the case, and must

(a) set out the time and place for the hearing mentioned in subsection (3);

(b) state that, at that hearing, an order will be sought for the sending to the state or entity of the records or things seized in execution of the warrant; and

(c) state that every person from whom a record or thing is seized in execution of the warrant and any person who claims to have an interest in a record or thing so seized has the right to make representations at the hearing before any order is made concerning the record or thing.

Execution

(5) A peace officer who executes a search warrant issued under subsection (1) shall, before entering the place or premises to be searched or as soon as practicable thereafter, give a copy of the warrant to any person who is present and appears to be in charge of the place or premises.

Affixing a copy

(6) A peace officer who, in any unoccupied place or premises, executes a search warrant issued under subsection (1) shall, on entering the place or premises or as soon as practicable thereafter, cause a copy of the warrant to be affixed in a prominent place within the place or premises.

Seizure of other things

13. A peace officer who executes a warrant issued under section 12 may in addition seize anything that he believes on reasonable grounds will afford evidence of, has been obtained by or used in or is intended to be used in, the commission of an offence against an Act of Parliament, and sections 489.1 to 492 of the Criminal Code apply in respect of anything seized pursuant to this section.

Other warrants

13.1 (1) A judge of the province to whom an application is made under subsection 11(2) may, in a manner provided for by the Criminal Code, issue a warrant, other than a warrant referred to in section 12, to use any device or other investigative technique or do anything described in the warrant that would, if not authorized, constitute an unreasonable search or seizure in respect of a person or a person's property.

(2) A warrant issued under subsection (1) may be obtained, issued and executed in the manner prescribed by the Criminal Code, with any modifications that the circumstances may require.

(3) Despite subsection (2), subsections 12(3) and (4) and sections 14 to 16 apply in respect of a warrant issued under subsection (1), and any sections of the Criminal Code inconsistent with those provisions do not apply.

Report

14. (1) A peace officer who executes a warrant issued under section 12 shall, at least five days before the time of the hearing to consider its execution, file with the court of which the judge who issued the warrant is a member a written report concerning the execution of the warrant and including a general description of the records or things seized, other than a thing seized under section 13.

(2) The peace officer shall send a copy of the report to the Minister forthwith after its filing.

Sending abroad

15. (1) At the hearing to consider the execution of a warrant issued under section 12, after having considered any representations of the Minister, the competent authority, the person from whom a record or thing was seized in execution of the warrant and any person who claims to have an interest in the record or thing so seized, the judge who issued the warrant or another judge of the same court may

(a) where the judge is not satisfied that the warrant was executed according to its terms and conditions or where the judge is satisfied that an order should not be made under paragraph (b), order that a record or thing seized in execution of the warrant be returned to

(i) the person from whom it was seized, if possession of it by that person is lawful, or

(ii) the lawful owner or the person who is lawfully entitled to its possession, if the owner or that person is known and possession of the record or thing by the person from whom it was seized is unlawful; or

(b) in any other case, order that a record or thing seized in execution of the warrant be sent to the state or entity mentioned in subsection 11(1) and include in the order any terms and conditions that the judge considers desirable, including terms and conditions

(i) necessary to give effect to the request mentioned in that subsection,

(ii) with respect to the preservation and return to Canada of any record or thing seized, and

(iii) with respect to the protection of the interests of third parties.

Requiring record, etc., at hearing

(2) At the hearing mentioned in subsection (1), the judge may require that a record or thing seized in execution of the warrant be brought before him.

Terms and conditions

16. No record or thing seized that has been ordered under section 15 to be sent to the state or entity mentioned in subsection 11(1) shall be so sent until the Minister is satisfied that the state or entity has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

202. The following provision of the *Mutual Legal Assistance in Criminal Matters Act* provides the mechanism by which the following assistance can be given:

(d) Examining Objects and Sites

23.1 (1) When the Minister approves a request of a state or entity to examine a place or site in Canada regarding an offence, including by means of the exhumation and examination of a grave, the Minister shall provide a competent authority with any documents or information necessary to apply for an order.

(2) The competent authority that is provided with the documents or information shall apply ex parte for an order for the examination of a place or site to a judge of the province in which the place or site is located.

(3) An order may include any terms or conditions that the judge considers desirable, including those relating to the time and manner of its execution, and a requirement for notice.

203. With respect to item (g) *Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes*, as discussed above, checking corporate records, performing surveillance, taking witness statements, obtaining production orders and search warrants are all useful tools at Canada's disposal to assist in the tracing of the proceeds of crime or instrumentalities. In addition, Sections 9.3 and 9.4 of the *Mutual Legal Assistance in Criminal Matters Act* allow Canada to enforce foreign orders for the restraint or forfeiture of assets in certain circumstances.

204. In addition, Canada has implemented measures under the Criminal Code's Proceeds of Crime provisions, the Proceeds of Crime (Money Laundering) & Terrorist Financing Act and the Controlled Drugs & Substances Act that allow Canadian authorities to identify and trace assets. To this end, the Proceeds of Crime Branch of the RCMP investigates money laundering and targets the proceeds of organized crime for seizure under Part XII.2 of the Criminal Code of Canada. The Branch has 256 members and support staff in 19 Proceeds of Crime (POC) units, 12 of which are Integrated Proceeds of Crime (IPOC) units that include members of other police forces, the Canada Revenue Agency, the Department of Justice, Forensic Accountants and Seized Property Management personnel. There are also 43 members in 5 Money Laundering teams located in Vancouver, Calgary, Toronto, Ottawa and Montreal. To date, the Branch has seized over \$243 million worth of criminal assets since 2000.

205. Due to the confidentiality of State-to-State communications, Canada indicated that it could not provide specific information regarding requests for the types of mutual legal assistance referred to in this provision of the Convention.

(b) Observations on the implementation of the article

206. The reviewing experts noted the broad range of assistance that can be provided by Canada to requesting States under the provisions of the Mutual Legal Assistance in Criminal Matters Act in addition to the Proceeds of Crime (Money Laundering) & Terrorist Financing Act and the Criminal Code's Proceeds of Crime provisions.

207. The range of assistance that Canada is able to provide under these provisions clearly covers the types of assistance addressed under article 46 paragraph, subparagraph 3 (a-i). Further, during the country visit Canada confirmed that the above legislation allow Canadian courts to give effect to freezing orders made in foreign jurisdictions. Confiscation orders cannot however be made on the basis of an investigation conducted by foreign law enforcement bodies, there must be a court order that has already been made or a supplemental investigation conducted by Canadian authorities before the freezing order is made by a Canadian court.

208. It was further outlined by Canadian officials during the country visit that a self-reporting mechanism exists under the above legislation that requires those in Canada who become aware that they have had dealings with frozen assets to report immediately to the relevant authorities. It was also confirmed that a court in Canada is able to order the confiscation of assets abroad.

209. In light of the information provided the reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Subparagraph 3 (j-k)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

210. Canada considered that it had implemented this provision of the Convention.

211. In addition to sections, 9.3, 9.4, 12-15, and 18-23 of the Mutual Legal Assistance in Criminal Matters Act, Canada also implements its obligations pursuant to the article 46(3)(j) and (k).
212. Regarding international requests, on March 23, 2011, the Governor in Council passed the Freezing Assets of Corrupt Foreign Officials Act and the Freezing Assets of Corrupt Foreign Officials (Tunisia and Egypt) Regulations to freeze the assets or property of politically exposed foreign persons at the written request of a foreign state, where the Governor-in-Council has determined that the foreign state is in a state of turmoil or political uncertainty, and where the making of an order or regulation is in the interest of international relations. The Regulations give effect to written requests from Tunisia and Egypt, which have recently experienced political upheaval, to freeze assets of their former leaders and senior officials or their associates and family members suspected of having misappropriated state funds, or obtained property inappropriately as a result of their office or family, business or personal connections.
213. The Regulations create a mechanism by which the assets of the politically exposed foreign person listed in the Regulations can be administratively frozen by prohibiting the following activities by anyone in Canada:
- to deal, directly or indirectly, in any property, wherever situated, of a listed politically exposed foreign person;
 - to enter into or facilitate, directly or indirectly, any financial transaction related to a dealing referred to in point (1);
 - to provide financial services or other related services in respect of any property of a listed politically exposed foreign person.
214. The names of all these persons are public and available in Schedules 1 and 2 to the Regulations, which can be found at: <http://laws-lois.justice.gc.ca/eng/acts/F-31.6/>
215. All the assets of the persons listed in the Regulations are subject to freezing. To this end, the Freezing Assets of Corrupt Foreign Officials Act provides that financial entities as well as Canadians, both within Canada and outside Canada, shall determine and disclose to the RCMP the existence of property in their control and possession that they have reason to believe is the property of a politically exposed foreign person who is the subject of an order or regulation under FACFO.
216. It is important to note that, to date, no assets have been seized. Rather, they have been frozen and will be held safe for a maximum of five years, allowing the governments of Tunisia or Egypt to pursue their investigations and gather evidence to support a formal request for the seizure and forfeiture of these assets.
217. In addition, the government may implement under its *United Nations Act* whatever measures are necessary to implement decisions of the United Nations Security Council,

including freezing the assets of specific persons. The government may also take certain actions pursuant to Special Economic Measures Act to designate and freeze assets to address situations where there has been a call for economic sanctions by an international organization of states, or where there has been a grave breach of international peace and security that has resulted or is likely to result in an international crisis. Like FACFOA, the government may pass regulations under these laws that require every person in Canada and every Canadian outside Canada to disclose to the RCMP whether they are in possession or control of property owned or controlled by or on behalf of a designated person. In addition, financial entities may be required to determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of a designated person.

218. For a detailed description of the recovery of assets from Canada, please consult the guide that Canada published in September 2012, “Canada Asset Recovery Tools: A Practical Guide” online at:

- <http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery>

219. Canada cited the following domestic legislation relevant to the implementation of this provision of the Convention.

Special Economic Measures Act (S.C. 1992, c. 17)

- <http://laws-lois.justice.gc.ca/PDF/S-14.5.pdf>

United Nations Act (R.S.C., 1985, c. U-2)

- <http://laws-lois.justice.gc.ca/PDF/U-2.pdf>
- <http://laws-lois.justice.gc.ca/eng/acts/U-2/index.html>

Seized Property Management Act (S.C. 1993, c. 37)

- <http://laws-lois.justice.gc.ca/PDF/S-8.3.pdf>

Proceeds of Crime (Money Laundering) and Terrorist Financing Act - S.C. 2000, c. 17

- <http://laws-lois.justice.gc.ca/PDF/P-24.501.pdf>

Freezing Assets of Corrupt Foreign Officials Act

- <http://laws-lois.justice.gc.ca/eng/acts/F-31.6/index.html>.

220. Due to the confidentiality of State-to-State communications, Canada indicated that it could not provide information regarding responses to specific MLA requests. Measures taken by Canada to freeze assets under FACFOA for international requests can be consulted online at: http://www.international.gc.ca/sanctions/tunisia_egypt-tunisie_egypte.aspx?lang=eng&view=d

(b) Observations on the implementation of the article

221. The reviewing experts noted the information provided by Canada outlining the introduction of specific legislative instruments aimed at facilitating the freezing of assets linked with the former regimes in Tunisia and Egypt. The experts further noted that this legislation did not authorize the seizure of such assets but allows for their freezing for up to five years in order to provide Tunisian and Egyptian authorities with the time to formulate formal requests for seizure under the Mutual Legal Assistance in Criminal Matters Act and relevant bilateral or multilateral agreements.
222. During the country visit it was noted that the application of these Regulations had resulted in the freezing of \$ 2,600,000 Canadian dollars in assets.
223. In light of the information provided the reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 4

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

224. Canada confirmed that it had implemented this provision of the Convention.
225. Where the RCMP is conducting its investigations that implicate criminal activity in foreign jurisdictions, it may transmit information on a police to police basis voluntarily without prior request where it deems that such information would relate to criminal matters in another state. As the RCMP also performs the investigation functions of an FIU, it has access to a wide range of information that may implicate multiple jurisdictions.
226. In addition, agreements can be made with foreign jurisdictions to transmit such information. Canada cited the following legislation.

Customs Act (R.S.C., 1985, c. 1 (2nd Supp.))

“officer” means a person employed in the administration or enforcement of this Act, the *Customs Tariff* or the *Special Import Measures Act* and includes any member of the Royal Canadian Mounted Police;

Proceeds of Crime (Money Laundering) and Terrorist Financing Act (S.C. 2000, c. 17)

2. The definitions in this section apply in this Act.

“officer” has the same meaning as in subsection 2(1) of the *Customs Act*.

[...]

36. (1) Subject to this section and subsection 12(1) of the *Privacy Act*, no official shall disclose the following:

- (a) information set out in a report made under subsection 12(1), whether or not it is completed;
- (b) any other information obtained for the purposes of this Part; or
- (c) information prepared from information referred to in paragraph (a) or (b).

(1.1) An officer who has reasonable grounds to suspect that the information referred to in subsection (1) is relevant to determining whether a person is a person described in sections 34 to 42 of the *Immigration and Refugee Protection Act* or is relevant to an offence under any of sections 117 to 119, 126 or 127 of that Act may use that information.

(2) An officer who has reasonable grounds to suspect that information referred to in subsection (1) would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence may disclose the information to the appropriate police force.

(3) An officer may disclose to the Centre (FINTRAC) information referred to in subsection (1) if the officer has reasonable grounds to suspect that it would be of assistance to the Centre in the detection, prevention or deterrence of money laundering or of the financing of terrorist activities.

(3.1) If an officer decides to disclose information under subsection (2) or (3), the officer shall record in writing the reasons for the decision.

(4) An official may disclose information referred to in subsection (1) for the purpose of exercising powers or performing duties and functions under this Part.

(5) Subject to section 36 of the *Access to Information Act* and sections 34 and 37 of the *Privacy Act*, an official is required to comply with a subpoena, an order for production of documents, a summons or any other compulsory process only if it is issued in the course of

- (a) criminal proceedings under an Act of Parliament that have been commenced by the laying of an information or the preferring of an indictment; or
- (b) any legal proceedings that relate to the administration or enforcement of this Part.

(6) In this section and section 37, “official” means a person who obtained or who has or had access to information referred to in subsection (1) in the course of exercising powers or performing duties and functions under this Part.

Use of information

37. No official shall use information referred to in subsection 36(1) for any purpose other than exercising powers or performing duties and functions under this Part.

AGREEMENTS FOR EXCHANGE OF INFORMATION

Agreements with foreign states

38. (1) The Minister, with the consent of the Minister designated for the purpose of section 42, may enter into an agreement or arrangement in writing with the government of a foreign state, or an institution or agency of that state, that has reporting requirements similar to those set out in this Part, whereby

(a) information set out in reports made under subsection 12(1) in respect of currency or monetary instruments imported into Canada from that state will be provided to a department, institution or agency of that state that has powers and duties similar to those of the Canada Border Services Agency in respect of the reporting of currency or monetary instruments; and

(b) information contained in reports in respect of currency or monetary instruments imported into that state from Canada will be provided to the Canada Border Services Agency.

Information sent under an agreement

(2) When an agreement or arrangement referred to in subsection (1) is in effect with a foreign state or an institution or agency of that state and a person fulfils the reporting requirements of that state in respect of currency or monetary instruments that are imported into that state from Canada, the person is deemed to have fulfilled the requirements set out in section 12 in respect of the exportation of the currency or monetary instruments.

Information received by the Centre

(3) The information received under an agreement or arrangement referred to in subsection (1) shall be sent to the Centre and, for the purposes of any provision of this Act dealing with the confidentiality of information or the collection or use of information by the Centre, is deemed to be information set out in a report made under section 12.

Agreements with foreign states

38.1 The Minister, with the consent of the Minister designated for the purpose of section 42, may enter into an agreement or arrangement in writing with the government of a foreign state, or an institution or agency of that state, that has powers and duties similar to those of the Canada Border Services Agency, whereby the Canada Border Services Agency may, if it has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence, provide

information set out in a report made under section 20 to that government, institution or agency.

227. While details cannot be disclosed, the RCMP Anti-corruption Units on multiple occasions have contacted law enforcement in other jurisdictions with regards to their investigations. The Units have travelled to other countries at the invitation of our colleagues to discuss files and share information about our investigations. This approach has been very successful. In some instances, our hosts have initiated their own investigation based on our information, in other instances they have been able to reciprocate by sharing information they had already gathered.

(b) Observations on the implementation of the article

228. The reviewing experts noted the information provided by Canada demonstrating the ability of the RCMP to proactively provide law enforcement agencies in foreign jurisdictions with information where they believe it may be of assistance in relation to a corruption or other form of investigation.

229. As noted below in relation to the implementation of Article 48 UNCAC, the RCMP has also recently concluded a memorandum of understanding with Australia, the United Kingdom of Great Britain and Northern Ireland and the United States of America on the establishment of an International Foreign Bribery Task Force which will strengthen existing cooperative networks between the participants and outline the conditions under which relevant information can be shared. During the country visit, representatives of the RCMP confirmed that this MoU was already being used in practice for the exchange of information.

230. In light of the information provided the reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 5

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If,

in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

231. Canada considered that it had implemented this provision of the Convention.

232. In Canada, the existence and nature of requests for assistance are subject to confidentiality. Disclosure may only be made of the request when a court file has been opened in Canada and the file has not been ordered sealed by the court. Further, evidence obtained pursuant to a request for assistance or shared without a request can only be used for the purposes stated in the request for assistance unless there is consent to its further use.

233. It is a generally accepted principle internationally that there must be disclosure to the accused of relevant information in Court proceedings. Disclosure is part of public court proceedings in Canada. The management of such disclosure is discussed between officials in the Requesting and Requested states as a matter of practice to ensure that all relevant points are addressed and resolved.

234. Canada cited the following legislative provisions as being relevant to the implementation of this provision of the Convention.

Mutual Legal Assistance in Criminal Matters Act (R.S., 1985, c. 30) :

3. (1) In the event of any inconsistency between the provisions of this Act and the provisions of another Act of Parliament, other than the provisions of an Act prohibiting the disclosure of information or prohibiting its disclosure except under certain conditions, the provisions of this Act prevail to the extent of the inconsistency.

Preservation of informal arrangements

(2) Nothing in this Act or an agreement shall be construed so as to abrogate or derogate from an arrangement or practice respecting cooperation between a Canadian competent authority and a foreign or international authority or organization.

[...]

Privilege for Foreign Records

44. (1) Subject to subsection 38(2), a record sent to the Minister by a state or entity in accordance with a Canadian request is privileged and no person shall disclose to anyone the record or its purport or the contents of the record or any part of it before the record, in compliance with the conditions on which it was so sent, is made public or disclosed in the course or for the purpose of giving evidence.

(2) No person in possession of a record mentioned in subsection (1) or of a copy thereof, or who has knowledge of any information contained in the record, shall be required, in connection with any legal proceedings, to produce the record or copy or to give evidence relating to any information that is contained therein.

235. Canada did not provide any specific examples of implementation of these domestic provisions.

(b) Observations on the implementation of the article

236. The reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 6

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

237. No information was provided by Canada.

(b) Observations on the implementation of the article

238. The reviewing experts had no observations in relation to this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 7

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

(a) Summary of information relevant to reviewing the implementation of the article

239. No information was provided by Canada.

(b) Observations on the implementation of the article

240. The reviewing experts noted the information provided below by Canada with regard to the information required by Canada in order to give effect to mutual legal assistance requests and the request form developed by Canada to facilitate the provision of relevant information by requesting States.
241. The reviewing experts had no further observations in relation to this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

242. Canada considered that it had implemented this provision of the Convention. Please see answer to article 40 noting that there is no bank secrecy legislation in Canada. As such, this is not a ground upon which Canada would decline to render mutual legal assistance.

(b) Observations on the implementation of the article

243. The reviewing experts noted that as there is no bank secrecy legislation in place in Canada this would not provide grounds for refusal of a mutual legal assistance request. In light of this the reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Subparagraph 9 (a)

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(a) Summary of information relevant to reviewing the implementation of the article

244. Canada confirmed that it had implemented this provision of the Convention.

245. Canada is generally able to assist even in the absence of dual criminality. As a general rule, dual criminality is not required. In fact, Canada's model mutual legal assistance treaty does not include a dual criminality clause and Canada does not seek to include dual criminality as a requirement in its mutual legal assistance treaties. However, a treaty may create exceptions in specific cases. Where dual criminality is required in a mutual legal assistance treaty, the relevant clauses take a flexible approach to this requirement and deem it to be fulfilled as long as the conduct underlying the offence for which cooperation is sought is a criminal offence under Canadian law, regardless of whether the offence is categorized in the same manner or denominated by the same terminology in the requesting State.

246. The *Mutual Legal Assistance in Criminal Matters Act* (R.S., 1985, c. 30) implements Canada's legislative authority for the provision mutual legal assistance, which is available online at:

- <http://laws-lois.justice.gc.ca/PDF/M-13.6.pdf>

247. Canada indicated that due to confidentiality of state-to-state communications, no details could be provided on the specifics of these interactions. Nonetheless, Canada has 35 bilateral mutual legal assistance treaties, which can be found online at:

- <http://www.treaty-accord.gc.ca/search-recherche.aspx?type=1&page=TLB>

(b) Observations on the implementation of the article

248. The reviewing experts noted that Canada does not ordinarily require dual criminality in order to provide mutual legal assistance, including where coercive measures are required. While certain exceptions to this general rule exist in some bilateral treaties, a flexible conduct-based test is applied in such cases.

249. In light of the information provided the reviewing experts considered Canada to be in compliance with this provision of the Convention.

(c) Successes and good practices

250. Canada has demonstrated that it is able to provide mutual legal assistance even in the absence of dual criminality. This permits Canadian authorities to provide assistance such as the issuing of arrest warrants, the search and seizure of property and the non-voluntary taking of statements where the request for assistance comes in relation to conduct, which would not be a crime in Canada. The reviewing experts noted that this represented a flexible approach to the provision of mutual legal assistance and noted it as a good practice.

Article 46 Mutual legal assistance

Subparagraph 9 (b)

9.(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

251. Canada confirmed that it had implemented this provision of the Convention.

252. As Canada does not require dual criminality as a basis for rendering MLA, it does not as a general rule decline request of mutual legal assistance in the absence of dual criminality and will therefore render such assistance, including for coercive measures as discussed above through Canada's Mutual Legal Assistance in Criminal Matters Act. These measures requiring a Canadian Court order for their execution are by definition, coercive, including production orders, search warrants, the non-voluntary taking of a statement.

253. The *Mutual Legal Assistance in Criminal Matters Act* (R.S., 1985, c. 30) implements Canada's is the legislative authority for the provision mutual legal assistance, which is available online at:

- <http://laws-lois.justice.gc.ca/PDF/M-13.6.pdf>

254. Under the MLA in Criminal Matters Act, provisions are made for coercive measures, which are described in the Act, including:

- Fines (section 9)
- Search and Seizure (Section 10-12)
- Arrest warrants (section 23)
- Transfers of Detainee (section 24-29)
- Non-voluntary taking of statements (sections 22.2.-22.3)

255. Canada indicated that due to confidentiality of state-to-state communication, no details can be provided on the specifics of these interactions.

(b) Observations on the implementation of the article

256. See the reviewing experts comments in relation to subparagraph 9(a)

(c) Successes and good practices

257. Canada has demonstrated that it is able to provide mutual legal assistance even in the absence of dual criminality. This permits Canadian authorities to provide assistance such as the issuing of arrest warrants, the search and seizure of property and the non-voluntary taking of statements where the request for assistance comes in relation to conduct, which would not be a crime in Canada. The reviewing experts noted that this represented a flexible approach to the provision of mutual legal assistance and noted it as a good practice.

Article 46 Mutual legal assistance

Subparagraph 9 (c)

9. (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

258. Canada confirmed that it had implemented this provision of the Convention.

259. Canada is able to provide a broad range of assistance even in the absence of dual criminality. Please see comments in relation to subparagraphs 9 (a and b). Canada again noted that due to confidentiality of state-to-state communications, no details can be provided on the specifics of these interactions.

(b) Observations on the implementation of the article

260. See the reviewing experts comments in relation to subparagraph 9(a)

(c) Successes and good practices

261. Canada has demonstrated that it is able to provide mutual legal assistance even in the absence of dual criminality. This permits Canadian authorities to provide assistance such as the issuing of arrest warrants, the search and seizure of property and the non-voluntary taking of statements where the request for assistance comes in relation to conduct, which would not be a crime in Canada. The reviewing experts noted that this represented a flexible approach to the provision of mutual legal assistance and noted it as a good practice.

Article 46 Mutual legal assistance

Subparagraph 10 (a)

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to

offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(a) Summary of information relevant to reviewing the implementation of the article

262. Canada considered that it had implemented this provision of the Convention.

263. Under the Mutual Legal Assistance in Criminal Matters Act, only detained persons serving a sentence may be transferred. In addition, Canada may compel a detained person to provide evidence by video link for proceedings abroad.

Mutual Legal Assistance in Criminal Matters Act

24. (1) When the Minister approves a request of a state or entity to have a detained person who is serving a term of imprisonment in Canada transferred to the state or entity, the Minister shall provide a competent authority with any documents or information necessary to apply for a transfer order.

(2) The competent authority who is provided with the documents or information shall apply for a transfer order to a judge of the province in which the person is detained.

(3) An application made under subsection (2) must

- (a) state the name of the detained person;
- (b) state the place of confinement of the detained person;
- (c) designate a person or class of persons into whose custody the detained person is sought to be delivered;
- (d) state the place to which the detained person is sought to be transferred;
- (e) state the reasons why the detained person is sought to be transferred; and
- (f) specify a period of time at or before the expiration of which the detained person is to be returned.

25. (1) If the judge to whom an application is made under subsection 24(2) is satisfied, having considered, among other things, any documents filed or information given in support of the application, that the detained person consents to the transfer and that the state or entity has requested the transfer for a fixed period, the judge may make a transfer order.

(2) A judge to whom an application is made under subsection 24(2) may order that the detained person be brought before him so that that person may be examined with respect to the transfer.

(3) A transfer order made under subsection (1) must

- a) set out the name of the detained person and his place of confinement;

- b) order the person who has custody of the detained person to deliver him into the custody of a person who is designated in the order or who is a member of a class of persons so designated;
 - c) order the person receiving the detained person into custody under paragraph (b) to take him or her to the state or entity and, on the return of the detained person to Canada, to return that person to the place of confinement where he or she was when the order was made;
 - d) state the reasons for the transfer; and
 - e) fix the period of time at or before the expiration of which the detained person must be returned.
- (4) A transfer order made under subsection (1) may include any terms or conditions that the judge making it considers desirable, including those relating to the protection of the interests of the detained person.
26. For the purposes of Parts I and II of the *Corrections and Conditional Release Act* and the *Prisons and Reformatory Act*, a detained person who is not in the place of confinement from which he was delivered pursuant to a transfer order shall be deemed to be in that place of confinement and to have applied himself industriously to the program of the place of confinement, as long as he remains in custody pursuant to the transfer order and is of good behaviour.
27. A judge who made a transfer order or another judge of the same court may vary its terms and conditions.
28. A copy of a transfer order made under subsection 25(1) and of an order varying it made under section 27 shall be delivered, by the competent authority who applied for the order, to the Minister and to the person in whose custody the detained person was when the transfer order was made.
29. Sections 24 to 28 do not apply in respect of a person who, at the time the request mentioned in subsection 24(1) is presented, is a young person within the meaning of the *Youth Criminal Justice Act*.
264. Canada indicated that due to confidentiality of state-to-state communications, no details can be provided on the specifics of these interactions.

(b) Observations on the implementation of the article

265. The reviewing experts noted that under section 24 of the *Mutual Legal Assistance in Criminal Matters Act*, Canada is able to transfer a detained person to another State in order to provide assistance in a criminal investigation. Section 25, subparagraph 1 of that legislation provides that a judge receiving a transfer order from the requesting state may order a transfer where he is satisfied “that the detained person consents to the transfer”.

266. During the country visit, Canadian officials commented that these legislative provisions are applied in practice but that due to confidentiality requirements specific cases could not be cited.

267. In light of the information provided the reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Subparagraph 10 (b)

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

268. See comments above.

(b) Observations on the implementation of the article

269. See the comments from the reviewing experts in relation to subparagraph 10(a).

Article 46 Mutual legal assistance

Subparagraph 11

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party

from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

270. Canada considered that it had implemented this provision of the Convention.

271. The Mutual Legal Assistance in Criminal Matters Act (R.S., 1985, c. 30), sections 40-42 provide as follows:

40. (1) The Minister may, in order to give effect to a request of a Canadian competent authority, authorize a person in a state or entity who is inadmissible under the Immigration and Refugee Protection Act to come into Canada at a place designated by the Minister and to go to and remain in a place in Canada so designated for the period of time specified by the Minister, and the Minister may make the authorization subject to any conditions that the Minister considers desirable.

(2) The Minister may vary the terms of an authorization granted under subsection (1) and, in particular, may extend the period of time during which the person is authorized to remain in a place in Canada.

(3) A person to whom an authorization is granted under subsection (1) who is found in a place in Canada other than the place designated in the authorization or in any place in Canada after the expiration of the period of time specified in the authorization or who fails to comply with some other condition of the authorization shall, for the purposes of the Immigration and Refugee Protection Act, be deemed to be a person who entered Canada as a temporary resident and remains after the period authorized for their stay.

41. (1) A person who is in Canada pursuant to a request to give evidence in a proceeding or to give assistance in relation to an investigation or proceeding

(a) may not be detained, prosecuted or punished in Canada for any act or omission that occurred before the person's departure from the state or entity pursuant to the request;

(b) is not subject to civil process in respect of any act or omission that occurred before the person's departure from the state or entity pursuant to the request; and

(c) may not be required to give evidence in any proceeding in Canada other than the proceeding to which the request relates.

(2) Subsection (1) ceases to apply to a person who is in Canada pursuant to a request when the person leaves Canada or has the opportunity to leave Canada but remains in Canada for a purpose other than fulfilling the request.

42. (1) When the Minister, in order to give effect to a request of a Canadian competent authority, authorizes a person who is detained in a state or entity to be transferred to Canada for a period of time specified by the Minister, a judge of the province to which the person is to be transferred may make an order for the detention of the person anywhere in Canada and for the return of the person to the state or entity.

(2) An order made under subsection (1) is paramount to any order made, in respect of anything that occurred before the person is transferred to Canada, by a Canadian court, a judge of a Canadian court, a Canadian justice of the peace or any other person who has power in Canada to compel the appearance of another person.

(3) The judge who made the detention order or another judge of the same court may vary its terms and conditions and, in particular, may extend the duration of the detention.

272. Canada indicated that due to the confidentiality of state-to-state communications, Canada cannot provide examples of implementation.

(b) Observations on the implementation of the article

273. The reviewing experts noted the implementation measures cited by Canada in relation to this provision of the Convention. With regard to Article 46, subparagraph 11 (d) of the Convention, the reviewing experts further noted section 26 of the Mutual Legal Assistance in Criminal Matters Act which provides that the time spent by a person subject to a transfer order under the Act will be counted towards the completion of their sentence.

274. In light of the information provided the reviewing experts considered Canada to be in compliance with this provision of the Convention.

(c) Successes and good practices

Article 46 Mutual legal assistance

Paragraph 12

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or

convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

275. Canada confirmed that it had implemented this provision of the Convention. Canada cited the Mutual Legal Assistance in Criminal Matters Act (R.S., 1985, c. 30) s. 42 in this regard.

42. (1) When the Minister, in order to give effect to a request of a Canadian competent authority, authorizes a person who is detained in a state or entity to be transferred to Canada for a period of time specified by the Minister, a judge of the province to which the person is to be transferred may make an order for the detention of the person anywhere in Canada and for the return of the person to the state or entity.

(2) An order made under subsection (1) is paramount to any order made, in respect of anything that occurred before the person is transferred to Canada, by a Canadian court, a judge of a Canadian court, a Canadian justice of the peace or any other person who has power in Canada to compel the appearance of another person.

(3) The judge who made the detention order or another judge of the same court may vary its terms and conditions and, in particular, may extend the duration of the detention.

276. Canada indicated that due to the confidentiality of state-to-state communications, it could not provide examples of implementation.

(b) Observations on the implementation of the article

277. The reviewing experts consider that Canada is in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or

approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

278. Canada confirmed that it had implemented this provision of the Convention.

279. Counsel in the International Assistance Group of the Department of Justice are the delegates of the Minister of Justice and carry out the functions assigned to the Minister as central authority under the Mutual Legal Assistance in Criminal Matters Act. Requests for mutual legal assistance sent through diplomatic channels or Interpol are forwarded to Canada's central authority (the International Assistance Group) as a practice. The Mutual Legal Assistance in Criminal Matters Act (R.S., 1985, c. 30) s. 7 provides as follows:

7.(1) The Minister is responsible for the implementation of every agreement and the administration of this Act.

(2) When a request is presented to the Minister by a state or entity or a Canadian competent authority, the Minister shall deal with the request in accordance with the relevant agreement and this Act.

280. Canada, when it ratified UNCAC, declared as follows:

Article 46 (13): For the purposes of Article 46 (13), Canada designates the International Assistance Group of the Department of Justice of Canada as the central authority for all requests for mutual legal assistance under the Convention. Address: 284 Wellington Street, Ottawa, ON. KIA 0H8, Phone: (613) 957-4832.

281. Canada noted that due to the confidentiality of state-to-state communications, Canada was not able to provide examples of implementation.

(b) Observations on the implementation of the article

282. The reviewing experts noted that Canada was in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

283. Canada confirmed that it had implemented this provision of the Convention. When Canada ratified UNCAC, it declared as follows:

For the purposes of Article 46 (14), Canada accepts English or French as the languages to be used in all requests for mutual legal assistance that Canada receives under the Convention.

284. Canada notified the Secretary-General of the United Nations as prescribed above.

(b) Observations on the implementation of the article

285. The reviewing experts noted that Canada was in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 15

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

(a) Summary of information relevant to reviewing the implementation of the article

286. Canada confirmed that it had implemented this provision of the Convention.

287. Canada treats each request for mutual legal assistance on a case-by-case basis and will request directly from the requesting state any additional information required to give effect to a request for mutual legal assistance in accordance with Canadian law. While it is not possible to comment on the details of such communications, many requests for additional information relate to the provision of evidence and other details to address deficiencies in the request.

288. As a matter of practice in dealing with a request for mutual legal assistance, counsel from Canada's central authority assigned to a mutual legal assistance request solicit additional information from the requesting state to develop and give effect to a request for assistance.

289. To facilitate request for assistance, Canada's central authority prepared a model request for mutual legal assistance, which it shares with requesting countries. The model reads as follows:

OFFICIAL REQUEST TO CANADA BY _____ FOR TREATY ASSISTANCE (TREATY ARTICLE)

REQUEST FOR ASSISTANCE

INTRODUCTION

The (set out the name of the competent prosecuting and/or investigating competent authority) is investigating alleged violations of criminal laws, namely: (set out the offences, i.e. fraud, forgery, drug trafficking, money laundering, etc.), contrary to (identify the relevant legislation). These violations are alleged to have been committed by (identify as precisely as possible the subjects of the investigation or prosecution, including: name, date of birth, address, etc.)

In relation to this investigation or prosecution, (identify the competent authority) requires assistance (briefly describe nature of evidence requested i.e. obtaining certified copies of documents; taking statements; obtaining telephone toll records etc.) This assistance is required because (describe, generally, why evidence is needed i.e. as evidence for use in the anticipated prosecution, to identify alleged co-conspirators, to trace the proceeds of the alleged criminal activity, etc.)

SUMMARY OF THE LAW

In this section, identify and set out the full text of all relevant provisions under investigation and/or prosecution

For example: The relevant statutory provisions are set out below.

Title of offence (for example, Fraud)

Section number____ of the (relevant legislation)____states that:
(provide full text in one of Canada's official languages)

SUMMARY OF INVESTIGATION AND ALLEGATIONS

This section should briefly describe the theory of the case; that is the nature of the investigation or proceedings and a summary of the relevant allegations. Since the applicable standard for obtaining most Canadian court orders is “reasonable grounds to believe”, the requesting country should provide not only a conclusion with respect to a particular suspect or other aspect of the case, but also some basis for the conclusion. It should be possible for a Canadian judge to objectively conclude that there is a reasonable basis for an order authorizing the particular investigative measures (search warrant, compelled statement, etc.) requested. The judge's conclusion cannot be based on mere speculation. In all cases, the particular source of information needs to be identified. In more critical areas, the source needs to be specified with a greater degree of detail, i.e. by name or function, e.g. “the bank manager at XYZ Bank has told investigators etc.”

This section should include the following information:

- (a) where possible, the identity, nationality and location of proposed witnesses;
- (b) in the case of requests to take evidence from a person, a clear indication of whether the person is a subject of the investigation or simply a witness;
- (c) in the case of requests to take evidence from a person, a clear indication of the grounds to believe that the witness will have relevant evidence and reason the evidence is useful to your investigation;
- (d) where documentary evidence is requested, a clear indication of the grounds to believe that the documents will provide evidence of the commission of the alleged offence (e.g., bank records from date A to date B because fraud can be shown to have occurred during the same period) and the relevance of this evidence to your investigation;
- (e) In Canada a mutual legal assistance request for a search warrant will only be judicially authorised if an evidence gathering order would be inappropriate. Consequently, reasons why a search warrant is required as opposed to an order requesting the production of evidence must be clearly explained. For search warrants the grounds to believe that such execution will yield the evidence sought should be clearly conveyed; and
- (f) if you are asking for the restraint of funds you believe represent proceeds of crime, ensure that an objectively reasonable basis for believing that these funds constitute proceeds of crime is set out in the request. For instance, it is not sufficient to simply state that Mr. X is a drug trafficker and that all accounts related to him directly or indirectly are to be restrained; a reasonable basis must be provided to believe that X is a drug dealer (e.g., observed carrying out

transactions, convicted of offences, etc.) and that the accounts in question substantially contain proceeds of crime (e.g., Mr. X has no other source of income, he is the sole authorized account-holder, etc.) from the alleged offences.

REQUEST PORTION

The competent authority [*insert name of competent authority*] requires the following assistance:

This section should set out, in specific terms, exactly what you are seeking to obtain, including certification requirements under your country's law.

- (a) where documentary evidence is requested, to the extent possible, identify the particular documents sought (i.e.: bank records for a specified period, signature cards, account opening statements, etc.)
- (b) where necessary, set out the details of any particular procedure or requirement that the you wish to be followed and reasons i.e. if you would like the Canadian authority to authenticate/certify the copies of the bank records, you should append a draft "fill-in-the-blanks" affidavit/certificate for our use;
- (c) in the case of requests to take evidence from a person, clearly:
 - indicate whether investigators/prosecutors/judicial officials from the requesting country intend to take the statement themselves and why or simply be present (if so, identify the persons who will travel with name, title)
 - Provide a list of questions, if the statement is to be taken by officials of the requested State, (since Canadian officials will not know for sure what questions and answers are relevant under the law of the requesting State);
 - include instructions as to whether sworn or affirmed statements are required and whether a verbatim transcript of the statement is required (such a record may generate extraordinary expenses under the relevant treaty);
 - if the witness will be asked or compelled to provide documents in the course of his testimony, a list of such documents or at least a clear description of the categories of relevant documents should be provided.
- (d) if you are asking to have search warrants executed, identify precisely the location to be searched and as precisely as possible the evidence or the category of evidence to be seized;
- (e) where the restraint of assets is sought, please restrict yourself to asking for the restraint of assets demonstrated (....with respect to which there is a reasonable basis to believe,...) to represent the proceeds of crime;

(f) where you ask for real or physical evidence, please specify if any analysis will be done and specify commitment, if any, to returning the evidence;

(g) if you are asking Canada to lend you exhibits from its judicial proceedings, please provide as much detail as possible concerning the current location of the exhibits (i.e. the address of the courthouse or police station) and the proceedings in which they were used and undertake to return such exhibits when proceedings in your country have been concluded.

CERTIFICATION

Ideally, a form should be included to meet the formal requirements of the requesting State to render admissible the evidence sought via the request. If not, a clear description of the formal requirements should be provided. It must be understood that if no form is provided, the certification requirements of the requesting State may not be satisfied.

TIME CONSTRAINTS

Please identify any time limit within which compliance with the request is desired and the reason for the time constraints (e.g., a trial date or statutory limitation period, etc.). Simply marking the matter as urgent will not be very helpful since there are often a very significant number of other requests marked “urgent”. If you face limitation periods, please set out the precise dates and highlight such dates in the covering letter, as well.

CONFIDENTIALITY

If confidentiality is required, that requirement and the reasons for it should be expressly set out. It is Canada's position that all requests for assistance to and from Canada are confidential State-to-State communications. However, as a practical matter, it is recognized that the process of executing the request in the Canada may require its disclosure. For instance, a copy of the request may be filed in open court in support of an application to gather evidence, or the request may be provided to those from whom evidence is requested. Canadian law generally favours openness and transparency in its proceedings. The need to depart from this approach will have to be justified before a Canadian judge. Particularly sensitive requests should be identified when submitted to the International Assistance Group and the grounds for confidentiality provided, so that confidentiality concerns can be discussed. If confidentiality is a paramount concern, such that the requesting State would prefer to forego execution if confidentiality cannot be guaranteed, this should be clearly stated.

CONTACT NAMES

(The signature block should always be on the same page as this part of the request)

In order to expedite the execution of your request, you should include the names and contact numbers for key Canadian and foreign law enforcement/prosecution authorities familiar with the file. You should include your name and contact number in the event the Canadian authority wishes to contact you for the purpose of clarification or obtaining additional information.

Dated at , this of

UNODC

In addition, Canada initiated and contributed to the development of the ROMA-LYON GROUP REQUESTING MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS FROM G8 COUNTRIES A STEP-BY-STEP GUIDE, which can be found online at:

- http://www.coe.int/t/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf

(b) Observations on the implementation of the article

290. The reviewing experts noted that Canada's central authority has developed a model request for MLA, which it shares with requesting countries so as to ensure that the information provided in the initial request is sufficient for action to be taken on the basis of the request. It was further noted that the information sought by Canada in this model form addressed all of the categories of information covered under Article 46, paragraph 15 of the Convention.
291. The reviewing experts again noted that the amount of supporting evidence and documentation required to be provided by authorities from other States in order to benefit from mutual legal assistance provided by the Canadian authorities could be viewed as burdensome. Canada recognized that, due to the constitutional framework in which the mutual legal assistance process operates, a significant amount of factual information is required from States parties in order to give effect to some types of requests for assistance that require the issuing of a court order, such as the production of bank records or the freezing of assets.
292. Information required where a court order will be needed will include a full description of the specific evidence or information sought from the Canadian authorities, the place in Canada where evidence is believed to be located, how the requesting authorities are aware of the existence of the information sought, and a description of the nexus between the evidence or information requested and the commission of the alleged offence. It was further noted that the amount of information sought from requesting States had been raised as a concern by some in the past.
293. However, it was recognized by the reviewing experts that significant steps had been taken by the Canadian authorities, through the production of guidance and other awareness-raising activities, to assist States in meeting these evidentiary requirements. It was also emphasized that such information is generally only required where a court order is required where, for example, coercive measures need to be taken in order to obtain the relevant information or evidence.
294. In light of the information provided, the reviewing experts therefore considered Canada to be in compliance with this provision of the Convention.

(c) Successes and good practices

295. The reviewing experts noted that Canada had developed a template mutual legal assistance request to be used by States parties seeking to make requests to Canada for mutual legal assistance. This was considered as helping to ensure that requests made by States to Canada for such assistance are done in the proper format and contain the information required for a decision to be taken by the Canadian authorities. The reviewing experts considered this to be a good practice.

Article 46 Mutual legal assistance

Paragraph 16

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

296. See the information provided above by Canada in relation to Article 46, paragraph 15.

(b) Observations on the implementation of the article

297. The reviewing experts noted that Canada indicated in its response that it will seek additional information where it is considered necessary in order to facilitate a request. The reviewing experts therefore considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

298. Canada considered that it had implemented this provision of the Convention.

299. Canada gives high priority to requests for mutual legal assistance as a practice and has played an active role in responding to request for mutual legal assistance under UNCAC. In this respect, the Government of Canada created a position in its UNCAC central authority, the International Assistance Group at the Department of Justice, specifically tasked with handling requests for mutual legal assistance under UNCAC among other corruption matters, including extradition and asset recovery. In addition, following the ratification of UNCAC, the RCMP established, in 2008, the International Anti-Corruption Unit, comprised of two seven-person teams based in Ottawa and Calgary, respectively.

300. The unit is charged with investigating allegations that a Canadian person or business has bribed, offered or agreed to bribe a foreign public official, allegations that a foreign person has bribed a Canadian public official that may have international repercussions, and allegations that a foreign public official has secreted or laundered money in, or through, Canada. The unit also deals with requests for international assistance. The RCMP provides functional oversight of the unit and anti-corruption enforcement activities through a commissioned officer at RCMP National Headquarters.

301. Although the Mutual Legal Assistance in Criminal Matters Act provides a comprehensive framework for dealing with request with mutual legal assistance, Canada can only act in accordance with its domestic law. Notably, the Canadian Charter of Rights and Freedoms guarantees certain rights and freedoms as part of Canada's constitution, which is the supreme law of Canada. Accordingly, any actions taken by Canadian authorities in relation to a foreign request will be governed by the Charter. The most relevant provisions are the following:

Section 8: the right of any person to be secure against unreasonable search and seizure;

Section 11(c): the right of any person charged with a criminal offence not to be compelled to be a witness in proceedings against him or her in respect of that offence; and

Section 13: the right of any person not to have any incriminating evidence given in a proceeding used against him or her in any other proceeding, except in the case of false testimony.

Sections 11(c) and 13 are of particular note, since in many other legal systems suspected and charged persons can be required to make statements. In Canada, suspected and charged persons cannot be required to give statements unless the requesting state provides the witness with use and derivative use immunity from prosecution.

302. Canada indicated that due to the confidentiality of state-to-state communication, no information can be provided on examples of implementation.

(b) Observations on the implementation of the article

303. The reviewing experts noted the implementation measures cited by Canada in relation to this provision of the Convention, noting in particular the measures adopted by Canada to put in place specialized staff with experience of dealing with UNCAC-related requests in the central authority with responsibility for dealing with mutual legal assistance matters.

304. During the country visit, reviewing experts asked whether any provisions in domestic Canadian law had ever acted as an impediment or restriction on the execution of a mutual legal assistance request. Canadian officials confirmed that this can sometimes be the case, citing in particular their inability to compel a statement to be provided by an individual due

to their constitutional right to silence when being questioned. This request had often been received from States parties with Canadian officials having to explain that compelling an individual to provide a statement is not possible under Canadian law.

305. In addition, and as noted above, Canadian courts are not able to provide an order authorizing the use of wiretapping on the basis of a foreign request. However, as a general rule, Canadian officials confirmed that the vast majority of requests in relation to mutual legal assistance cases put before the courts for authorization by the judiciary are approved.
306. As regards confidentiality, it was confirmed that where a request for mutual legal assistance is refused at an early stage by the Minister then the fact that the request is made is not made public. All communications between the requesting officials and Canadian authorities are also confidential.
307. In light of the information provided, the reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

308. Canada permits hearings of individuals mentioned above to take place by videoconference as described above.
309. Under sections 22.1-22.4 of Canada's *Mutual Legal Assistance in Criminal Matters Act*, the Minister is authorized to approve requests to obtain evidence by video link or other means of technology that will allow for evidence to be given virtually without the witness being physically present at the hearing.

Mutual Legal Assistance in Criminal Matters Act, ss. 22.1-22.4

22.1 (1) If the Minister approves a request of a state or entity to compel a person to provide evidence or a statement regarding an offence by means of technology that permits the virtual presence of the person in the territory over which the state or entity has jurisdiction, or that permits the parties and the court to hear and examine the

witness, the Minister shall provide a competent authority with any documents or information necessary to apply for the order.

(2) The competent authority who is provided with the documents or information shall apply ex parte to a judge of the province in which the person may be found for an order for the taking of the evidence or statement from the person under subsection (1).

22.2 (1) The judge may make the order if satisfied that there are reasonable grounds to believe that

- (a) an offence has been committed; and
- (b) the state or entity believes that the person's evidence or statement would be relevant to the investigation or prosecution of the offence.

(2) An order made under subsection (1) shall order the person

- (a) to attend at the place fixed by the judge for the taking of the evidence or statement by means of the technology and to remain in attendance until the person is excused by the authorities of the state or entity;
- (b) to answer any questions put to the person by the authorities of the state or entity or by any person authorized by those authorities, in accordance with the law that applies to the state or entity;
- (c) to make a copy of a record or to make a record from data and to bring the copy or record, when appropriate; and
- (d) to bring any record or thing in his or her possession or control, when appropriate, in order to show it to the authorities by means of the technology.

(3) An order made under subsection (1) may be executed anywhere in Canada.

(4) An order made under subsection (1) may include any terms or conditions that the judge considers desirable, including those relating to the protection of the interests of the person named in it and of third parties.

(5) The judge who made the order under subsection (1) or another judge of the same court may vary its terms and conditions.

(6) A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the judge who made the order.

22.3 For greater certainty, when a witness gives evidence or a statement pursuant to an order made under section 22.2, the evidence or statement shall be given as though the witness were physically before the court or tribunal outside Canada, for the purposes of the laws relating to evidence and procedure but only to the extent that giving the evidence would not disclose information otherwise protected by the Canadian law of non-disclosure of information or privilege.

22.4 When a witness gives evidence under section 22.2, the Canadian law relating to contempt of court applies with respect to a refusal by the person to answer a question or to produce a record or thing as ordered by the judge under that section.

310. Due to the confidentiality of state-to-state communication, Canada cannot provide examples of implementation.

(b) Observations on the implementation of the article

311. The reviewing experts noted that under the section 22 of the Mutual Legal Assistance in Criminal Matters Act, Canadian courts are able to authorize the provision of evidence via video link. During the country visit, Canadian officials confirmed that this ability had been used in practice in a number of cases but due to confidentiality concerns were not able to cite specific examples.

312. In light of the information provided, the reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

313. Canada considered that it had implemented this provision of the Convention.

314. In Canada, the existence and nature of requests for assistance are subject to confidentiality. Disclosure may only be made of the request when a court file has been opened in Canada and the file has not been ordered sealed by the court. Further, evidence obtained pursuant to a request for assistance can only be used for the purposes stated in the request for assistance unless Canada consents to its further use.

315. Similarly, with respect to non-treaty requests, no evidence obtained pursuant to the request can be disclosed or used, except for the purpose of the proceedings to which the request relates.

316. As noted, a request for assistance is a confidential communication between state authorities who are familiar with mutual assistance. The document in its entirety is intended to convey clearly to the foreign authorities the allegations under investigation or subject to prosecution and the nature of the assistance sought, in order that the foreign authorities can effectively provide the assistance. Central authority counsel will review requests with this context in mind.
317. In reviewing requests for assistance, counsel operate on the assumption that the Requesting Authority has prepared and submitted the draft request in good faith and has described the relevant investigation or prosecution accurately and honestly in the draft request. If counsel have reason to believe this assumption is incorrect, counsel will inform the Director of the Central Authority so that further dialogue may be initiated to clarify any concerns.
318. Canada also referred to the information it had provided in relation to article 46 paragraph 5, outlined above. Documents received in Canada pursuant to a Canadian request are privileged. Section 44 of the *Mutual Legal Assistance in Criminal Matters Act* provides as follows:
44. (1) Subject to subsection 38(2), a record sent to the Minister by a state or entity in accordance with a Canadian request is privileged and no person shall disclose to anyone the record or its purport or the contents of the record or any part of it before the record, in compliance with the conditions on which it was so sent, is made public or disclosed in the course or for the purpose of giving evidence.
- (2) No person in possession of a record mentioned in subsection (1) or of a copy thereof, or who has knowledge of any information contained in the record, shall be required, in connection with any legal proceedings, to produce the record or copy or to give evidence relating to any information that is contained therein.
319. Canada noted that due to the confidentiality of state-to-state communications, it could not provide examples of implementation.

(b) Observations on the implementation of the article

320. The reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

321. Canada confirmed that it had implemented this provision of the Convention.

322. As stated earlier in article 46 paragraph 5, in Canada, the existence and nature of requests for assistance are subject to confidentiality. Disclosure may only be made of the request when a court file has been opened in Canada and the file has not been ordered sealed by the court. Further, evidence obtained pursuant to a request for assistance can only be used for the purposes stated in the request for assistance unless Canada consents to its further use. Should Canada not be able to comply with the request for confidentiality or would have inadvertently breach confidentiality, it would inform as a practice the requesting state party that supplied the information.

323. Due to confidentiality of state-to-state communications, Canada could not comment on specific cases of implementation.

(b) Observations on the implementation of the article

324. As noted above, it was confirmed during the country visit that where a request for mutual legal assistance is refused at an early stage by the Minister then the fact that the request is made is not made public. All communications between the requesting officials and Canadian authorities are also confidential.

325. The reviewing experts noted that Canada was in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Subparagraph 21 (a)

21. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;*
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, order public or other essential interests;*
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

(a) Summary of information relevant to reviewing the implementation of the article

326. Canada confirmed that it had implemented this provision of the Convention.

327. As noted above, Canada can only act in accordance with its domestic law, which includes numerous provisions for the protection of human rights, public order, national sovereignty and due process of the law. Should a request be deemed deficient or contrary to the laws of Canada, it will be refused, and the requesting state will be advised.

328. By way of example, under section 9.4(2) of the Mutual Legal Assistance in Criminal Matters Act, the Minister of Justice may refuse a request for forfeiture if he or she:

- (a) has reasonable grounds to believe that the request has been made for the purpose of punishing a person by reason of their race, sex, sexual orientation, religion, nationality, ethnic origin, language, colour, age, mental or physical disability or political opinion;
- (b) is of the opinion that enforcement of the order would prejudice an ongoing proceeding or investigation;
- (c) is of the opinion that enforcement of the order would impose an excessive burden on the resources of federal, provincial or territorial authorities;
- (d) is of the opinion that enforcement of the order might prejudice Canada's security, national interest or sovereignty; or
- (e) is of the opinion that refusal of the request is in the public interest.

329. For all other matters, Canada can only provide assistance to the extent that it is consistent with Canadian law, including the Canadian Charter of Rights and Freedoms as discussed in questions 207, and other applicable laws governing privacy, due process, human rights, immigration status, among others.

330. Canada indicated that due to confidentiality of state-to-state communications, examples of implementation could not be provided.

(b) Observations on the implementation of the article

331. The reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

332. Canada considered that it had implemented this provision of the Convention. Canada does not refuse requests on the sole ground that the offence involves fiscal matters.

(b) Observations on the implementation of the article

333. The reviewing experts noted that Canada was in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

334. Canada confirmed that it had implemented this provision of the Convention. As a matter of practice, reasons are provided for any refusal of mutual legal assistance. Due to the confidentiality of state-to-state communications, examples of implementation cannot be provided.

(b) Observations on the implementation of the article

335. The reviewing experts noted that Canada was in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

336. Canada considered that it had implemented this provision of the Convention.

337. As a matter of practice, Canada works to meet all deadlines associated with requests for mutual legal assistance. Canada's central authority at the Department of Justice has attributed high importance to requests to assistance under UNCAC and has sent officials to meet with officials in requesting states and by clarifying in detail the requirement of Canadian law to give effect to request for assistance. In this regard, Canadian officials

provide hands-on assistance to requested states in the drafting of specific requests for assistance.

338. Canada engages with requesting states parties and works to meet deadlines in consultation with the requesting states parties as a matter of best practice. Canada acknowledges receipts of requests for assistance upon their arrival. Where the request for mutual legal assistance is sent to the Department of Foreign Affairs and International Trade, it is forwarded to Canada's central authority at the Department of Justice's within days of receipt and often on the same day as it was received. In turn, the Department of Foreign Affairs and International Trade responds to requests for assistance by informing the requesting state party that its request has been received and transmitted to the appropriate authority. Where the request for mutual legal assistance is sent directly to Canada's central authority at the Department of Justice, the request is assigned to a counsel within the International Assistance Group who actions the request to the extent possible in accordance with Canadian law. As a practice, the request is acknowledged and follow-up questions may be asked as required. Given that each request must be considered on a case-by-case basis and will often involve judicial proceedings, the time required to completely action a request can vary.

(b) Observations on the implementation of the article

339. During the country visit, the reviewing experts asked whether any statistics existed demonstrating the average time spent to respond to a request for mutual legal assistance. While such information was not provided, Canadian officials confirmed, in accordance with their response to the self-assessment checklist outlined above, that a proactive approach is taken to working with other State authorities in order to give effect to mutual legal assistance requests as soon as possible in accordance with this article of the Convention.

340. It was further acknowledged during the country visit that, due to the frequent need for court orders to give effect to mutual legal assistance requests, the ability to process such requests will vary depending on the speed with which the courts are able to consider and decide on the requests put before them by the Minister.

341. In light of the information provided, the reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

342. Canada considered that it had implemented this provision of the Convention.

343. Requests for mutual legal assistance may be postponed or refused if they interfere with ongoing proceedings. The *Mutual Legal Assistance Act in Criminal Matter* provides expressly in section 9.4(2) that orders of forfeiture may be refused by the Minister of Justice if the enforcement of the order would prejudice an ongoing proceeding or investigation.

344. As Canada does not require dual criminality as a basis for rendering mutual legal assistance, it should be noted that matters involving requests for mutual legal assistance will not implicate domestic proceedings at all so this issue will not arise. Absent the express provision respecting forfeiture orders, which is designed to protect proceeds of crime within Canada, other matters are considered on a case by case basis to ensure the effective administration of justice within Canada where there is overlap between a mutual legal assistance request and domestic proceedings in Canada. In addition, it should also be noted that police to police communication and sharing of information between law enforcement authorities can occur where authorities in Canada and the requesting state party are investigating a common matter. As such, ongoing proceedings in both Canada and the requesting state party may facilitate cooperation between police authorities.

Mutual Legal Assistance in Criminal Matters Act:

9.4 (1) When a written request is presented to the Minister by a state or entity, other than the International Criminal Court referred to in section 9.1, for the enforcement of an order of forfeiture of property situated in Canada issued by a court of criminal jurisdiction of the state or entity, the Minister may authorize the Attorney General of Canada or an attorney general of a province to make arrangements for the enforcement of the order.

Grounds for refusal of request

(2) The Minister shall refuse the request if he or she
[...]

(b) is of the opinion that enforcement of the order would prejudice an ongoing proceeding or investigation;

(b) Observations on the implementation of the article

345. The reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether

assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

346. Canada confirmed that it had implemented this provision of the Convention. While this matter was not explicitly provided for in domestic legislation, as a matter of practice, consultations take place with foreign authorities with a view to completing the request and/or to determining whether and how the request may be executed before a decision is taken to refuse a request.

347. Canada indicated they could not comment on examples of implementation due to the confidentiality of state-to-state communications.

(b) Observations on the implementation of the article

348. The reviewing experts noted that Canada were in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

349. Canada considered that it had implemented this provision of the Convention.

350. Canada has implemented such measures for persons who are in Canada pursuant to a request to give evidence under the *Mutual Legal Assistance in Criminal Matters Act*.

Mutual Legal Assistance in Criminal Matters Act

41. (1) A person who is in Canada pursuant to a request to give evidence in a proceeding or to give assistance in relation to an investigation or proceeding

- (a) may not be detained, prosecuted or punished in Canada for any act or omission that occurred before the person's departure from the state or entity pursuant to the request;
- (b) is not subject to civil process in respect of any act or omission that occurred before the person's departure from the state or entity pursuant to the request; and
- (c) may not be required to give evidence in any proceeding in Canada other than the proceeding to which the request relates.

Limitation

(2) Subsection (1) ceases to apply to a person who is in Canada pursuant to a request when the person leaves Canada or has the opportunity to leave Canada but remains in Canada for a purpose other than fulfilling the request.

(b) Observations on the implementation of the article

351. The reviewing experts noted that the Mutual Legal Assistance in Criminal Matters Act, section 41(1) provided the protections required under this provision of the Convention. Consequently, the reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

352. Canada confirmed that it had implemented this provision of the Convention.

353. Under the Mutual Legal Assistance in Criminal Matters Act, costs can be shared. Such measures can also be negotiated into bilateral MLA treaties and they can also be the subject of agreement on a case by case basis for MLA as matters arise. Consultation is a regular tool used in mutual legal assistance to resolve such matters.

Mutual Legal Assistance in Criminal Matters Act

17. (1) When the Minister approves a request of a state or entity to obtain, by means of an order of a judge, evidence regarding an offence, the Minister shall provide a competent authority with any documents or information necessary to apply for the order.

(2) The competent authority who is provided with the documents or information shall apply *ex parte* for an order for the gathering of evidence to a judge of the province in which the competent authority believes part or all of the evidence may be found.

18. (1) A judge to whom an application is made under subsection 17(2) may make an order for the gathering of evidence, where he is satisfied that there are reasonable grounds to believe that

(a) an offence has been committed; and

(b) evidence of the commission of the offence or information that may reveal the whereabouts of a person who is suspected of having committed the offence will be found in Canada.

[...]

(10) A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the judge who made the order.

(b) Observations on the implementation of the article

354. During the country visit, Canada confirmed that under usual practice they would facilitate requests for mutual legal assistance free of charge. Where a particular request will necessitate significant expenditures discussions will be held with the requesting State regarding potential cost-sharing, as provided for under the Mutual Legal Assistance in Criminal Matters Act.

355. The reviewing experts therefore considered Canada to be in compliance with this provision of the Convention.

Article 46 Mutual legal assistance

Subparagraph 29 (a)

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(a) Summary of information relevant to reviewing the implementation of the article

356. Canada confirmed that it had implemented this provision of the Convention. Canada does not refuse to disclose documents that are publically available. The provision of public documents is done as a practice and does not need legal authority.

(b) Observations on the implementation of the article

357. The reviewers considered that Canada had implemented this provision of the Convention.

Article 46 Mutual legal assistance

Subparagraph 29 (b)

29. The requested State Party:

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

358. Canada considered that it had implemented this provision of the Convention.

359. To the extent that such documents can be provided for the purposes of giving effect to requests for mutual legal assistance requests they are provided with the understanding that they will be held in confidence and used only for the purpose of giving effect to the request for assistance.

Mutual Legal Assistance in Criminal Matters Act:

Privilege

44. (1) Subject to subsection 38(2), a record sent to the Minister by a state or entity in accordance with a Canadian request is privileged and no person shall disclose to anyone the record or its purport or the contents of the record or any part of it before the record, in compliance with the conditions on which it was so sent, is made public or disclosed in the course or for the purpose of giving evidence.

(2) No person in possession of a record mentioned in subsection (1) or of a copy thereof, or who has knowledge of any information contained in the record, shall be required, in connection with any legal proceedings, to produce the record or copy or to give evidence relating to any information that is contained therein.

(b) Observations on the implementation of the article

360. The reviewing experts considered that Canada had implemented this provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

361. Canada considered that it had implemented this provision of the Convention, citing its response to article 46, paragraph 1.

(b) Observations on the implementation of the article

362. The reviewing experts noted the broad range of multilateral and bilateral agreements Canada had entered into in relation to the provision of mutual legal assistance, as outlined in the preceding sections of the report.

363. The reviewing experts considered Canada to be in compliance with this provision of the Convention.

(e) Technical assistance needs

364. Canada indicated that it did not require any forms of technical assistance in order to implement this provision of the Convention.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

365. Canada confirmed that it had implemented this provision of the Convention.

366. Crown prosecutors in Canada always have the discretion as to whether or not to prosecute assuming there is a reasonable prospect of conviction. It could conceivably be in the public interest not to prosecute if a prosecution in relation to the same offence was proceeding in

another country. Nonetheless, the enforcement of an offense established in accordance with the Convention is determined on the basis of whether there is a viable case in Canada with the requisite evidence and a basis to assert jurisdiction if the offense had a transnational character that allowed for parallel prosecutions to take place in a different jurisdiction.

367. In such cases, an accused could make a plea of *autrefois* citing the parallel proceedings as a basis for not continuing with the matter in Canada. These matters would be considered on a case-by-case basis by the presiding court before determining whether the matter could proceed in Canada. Thus, the proceeding would not so much be transferred as there would be an election to decline to prosecute where another jurisdiction was doing so for the same offence. It should be noted that legal cooperation and mutual legal assistance mechanisms can be used for cases in other jurisdictions to obtain evidence from Canada and enforce orders in Canada even if there is an election to not proceed in Canada.

(b) Observations on the implementation of the article

368. The reviewing experts noted the information provided by Canada in relation to this provision of the Convention. Specifically, the reviewing experts took note of the discretion available to prosecutors in Canada to not take forward a case where there is not a reasonable prospect of conviction. As part of this discretion, prosecutors may take into account that parallel proceedings in another jurisdiction are underway and therefore elect not to prosecute where such proceedings are ongoing.

369. The reviewing experts however did not consider this an example of actively transferring criminal proceedings but rather merely a decision not to prosecute in order that proceedings elsewhere can be taken forward. A specific legal basis to transfer ongoing criminal proceedings is not in place and as such the transfer of criminal proceedings is not carried out in practice.

370. During the country visit, Canada noted that in order to allow for a case to be taken forward in the most appropriate jurisdiction, dialogue is held with officials in other States. Information such as documents and other forms of evidence can also be provided. As there is no limitation period applicable in Canada, officials noted that even where a case is taken forward in another jurisdiction and is unsuccessful, the case could then be taken up by Canadian courts. It was confirmed however that there is no actual legal mechanism to give jurisdiction to another State that does not have it or to formally receive jurisdiction from another State.

371. In light of the information provided, and noting the non-mandatory nature of Article 47, the reviewing experts consider Canada to be in compliance with this provision of the Convention.

(e) Technical assistance needs

372. Canada indicated that it does not require any forms of technical assistance in relation to the implementation of this article of the Convention.

Article 48 Law enforcement cooperation

Subparagraph 1 (a)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(a) Summary of information relevant to reviewing the implementation of the article

373. Canada considered that it had implemented this provision of the Convention.

374. In addition to the provision of mutual legal assistance, Canadian law enforcement works to establish lines of communication to facilitate secure and rapid exchange of information. These measures include establishing secure databases and police to police communication. In this regard, Canada cited the following laws.

Section 3(2) of the *Mutual Legal Assistance in Criminal Matters Act* provides that:

(2) Nothing in this Act or an agreement shall be construed so as to abrogate or derogate from an arrangement or practice respecting cooperation between a Canadian competent authority and a foreign or international authority or organization.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, ss. 54-66

- <http://laws-lois.justice.gc.ca/PDF/P-24.501.pdf>

375. Offences related to corruption are mainly found in the Criminal Code, the Corruption of Foreign Public Officials Act, and the Freezing Assets of Corrupt Foreign Officials Act.

376. The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) has a mandate to disclose financial intelligence to police and other law enforcement agencies on suspicions of money laundering and terrorist financing.

377. Under the authority of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA), FINTRAC receives and analyzes voluntary information submitted by police and other law enforcement agencies about their investigations of money

laundering and terrorist financing. These reports often identify the predicate offence as a source of the suspected ML activity. If FINTRAC, based on the analysis and assessment of this information as well as other information collected and reports received, has reasonable grounds to suspect that the resultant designated information would be relevant to investigating or prosecuting a money laundering and terrorist financing offence, FINTRAC must disclose that information to the relevant police and to other law enforcement agency identified under the Act. Such cases can include those whereby corruption is the predicate offence.

378. Under the authority of Sections 54 and 66 of the PCMLTFA, FINTRAC may enter into agreements related to the collection of information relevant to its mandate from databases maintained for the purposes of law enforcement and intelligence. FINTRAC has access to such databases through MOU agreements. This, in turn, plays a key role in supporting the delivery of financial intelligence to law enforcement partners. Further, FINTRAC ensures optimal communications with its partners through secure electronic transmissions wherever possible. These provisions can be accessed online at:

- <http://laws-lois.justice.gc.ca/PDF/P-24.501.pdf>

379. Canada provided a number of specific examples of implementation of the above legislative provisions. From April 1, 2010 – March 31, 2011, 34 money laundering cases, suspected to be related to corruption according to the voluntary information received from law enforcement, were disclosed by FINTRAC. These disclosures helped law enforcement and intelligence agencies in Canada and foreign financial intelligence units in their money laundering investigations. In assessing the 34 disclosed corruption related cases, there were several “themes” FINTRAC was able to highlight in terms of the type of corruption activity suspected to have occurred, the main players involved in the case, if the case was domestic (within Canada) or international and what kinds of sectors, businesses and methods were most commonly suspected of being used to launder funds related to alleged corruption offences. These themes, as well as more detailed methods and typologies derived from FINTRAC’s disclosures suspected to be related to corruption, are further discussed below.

380. The RCMP Officer in charge (OIC) of Anti-Corruption is a central point of coordination for Government agencies in regards to enforcement. Insofar as databases are used as a general resource and not specific to a specific offence, links are easily made with other criminal activities. The RCMP does not comment on ongoing cases.

(b) Observations on the implementation of the article

381. The reviewing experts noted the information provided by Canada in relation to this provision of the Convention. This information demonstrated a strong legal framework and the practical application of those laws so as to facilitate information sharing between the Canadian government and foreign authorities in relation to offences of money laundering and terrorist financing. In sharing information on money-laundering offences, the Canadian government also receives and provides information on predicate offences, including corruption. In the financial year 2010/2011 there were 34 cases relating to acts of corruption

in relation to which information was received by Financial Transactions and Reports Analysis Centre of Canada. This information is then passed on to relevant law enforcement authorities for their action.

382. During the country visit representatives of FINTRAC noted that, on the international stage, they only exchange information with other Financial Intelligence Units (FIUs). FINTRAC requires an MOU in order for them to provide and receive information from foreign FIUs. The Egmont Principles For Information Exchange Between Financial Intelligence Units are adhered to in transferring such information. It was further noted that the type and quality of the information that can be provided by foreign FIUs varies due to local legislations and the different ways each one is designed to operate. For example, the ability to obtain company ownership information that accompanies financial transaction information can vary from jurisdiction to jurisdiction. .
383. It was further noted that FINTRAC does not have investigatory powers, but analyses financial transactions along with other information suspected to be relevant to money laundering and terrorist financing, such as classified reports and information provided by international partners. Where there is a suspicion that a specific offence may have occurred, such as corruption related money-laundering activities, the relevant information will be passed to the appropriate law enforcement agency. This information cannot however be exchanged entirely freely between FINTRAC and law enforcement agencies. Such agencies do not, for example, have direct access to the data provided by FINTRAC. In order for information to be disclosed a certain threshold must be passed. There must be reasonable grounds to suspect that the information is relevant to the investigation or prosecution of a money laundering or terrorism activity financing offence. A formal list of indicators is used to assess whether this threshold has been met. FINTRAC has never been successfully challenged on the basis that this threshold has not been met.
384. During the country visit, officials from FINTRAC confirmed it receives and analyses intelligence from certain government organizations and police related to money laundering or terrorist activity financing. Such intelligence may include information related to ancillary crimes such as corruption offences. Based on this this analysis, FINTRAC will disclose to prescribed recipients, such as law enforcement, once it meets the threshold of reasonable grounds to suspect that the information is relevant to the investigation or prosecution of a money laundering or terrorism activity financing offence. Disclosures may also be relevant to ancillary crimes such as corruption offences. The Minister of Finance is responsible for FINTRAC under pursuant to section 42 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act..
385. As regards international investigations of corruption offences, the RCMP has jurisdiction to investigate all such offences. During the country visit, RCMP representatives noted that a restructuring of staff resources was taking place at present, following an assessment which took place two years ago. In the previous system, specialized investigation units were developed dealing with money laundering, drugs and other specific crimes. Such an approach was not however viewed as being effective in addressing transnational organised crime. Overly specialized staff did not reflect the nature of transnational crime in which all cases

will involve elements of a number of different offences. Consequently, opportunities were missed to disrupt organisations by focusing too much on specific areas by individual teams.

386. In response, a new system has been introduced with three streams within federal policing, including the financial integrity stream. RCMP officials noted that they considered this system as being more effective.
387. To further enhance cooperation in law enforcement, the RCMP has 37 liaison officers deployed worldwide, with this number soon to be expanded. Combined with the establishment of the International Anti-Corruption Team at the RCMP. Representatives of the RCMP stated that this provides a strong institutional framework for international cooperation in investigations.
388. The specific role of the liaison officers is to establish working relationships with national counterparts, become well-versed in domestic legislation of the country in which they are placed and facilitate both law-enforcement to law-enforcement cooperation and more formal mutual legal assistance requests. During the country visit representatives of the RCMP confirmed that due to the success of the existing programme this was now being expanded.
389. Furthermore, the RCMP has recently concluded a memorandum of understanding with Australia, the United Kingdom of Great Britain and Northern Ireland and the United States of America on the establishment of an International Foreign Bribery Task Force which will strengthen existing cooperative networks between the participants and outline the conditions under which relevant information can be shared. During the country visit, representatives of the RCMP confirmed that this MoU was already being used in practice for the exchange of information.
390. RCMP representatives also confirmed that informal police-to-police cooperation was also common practice and was widely used by their officers. It was noted that Canada takes a more flexible approach to the informal sharing of information between law enforcement authorities and that there had been specific cases where the RCMP has requested information from another State as to whether there had been any allegations made in relation to a specific company but the relevant State had been unable to provide the information without a formal agreement in place. It was noted that in practice it is the Department of Foreign Affairs that receives requests for cooperation or information-sharing from foreign law enforcement bodies and these are then passed to the appropriate officials in the RCMP.
391. Limitations placed on the ability to share information were noted as including cases in which there are concerns that the sharing of information may lead to human rights abuses or lead to the enforcement of the death penalty against an individual.
392. In light of the above information the reviewing experts considered Canada to be in compliance with this provision of the Convention.

(c) Successes and good practices

393. Canada has recently adopted a multilateral memorandum of understanding that allows it to more effectively exchange information and provide mutual legal assistance to participating States.

Article 48 Law enforcement cooperation

Subparagraph 1 (b)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(a) Summary of information relevant to reviewing the implementation of the article

394. Canada confirmed that it had implemented this provision of the Convention.

395. The RCMP cooperates with other State Parties in conducting inquiries either police to police or through the MLA process. See answer at article 46 paragraph 4.

396. In addition, FINTRAC can disclose designated information to a foreign financial intelligence unit with which it has an MOU for that purpose. Money laundering, terrorism financing and corruption often take on an international component. In addition to suspicious transaction reports (STRs), FINTRAC receives reports from financial institutions and other prescribed reporting entities of international electronic funds transfers (EFTs) for amounts of CAD\$10,000 or more, as well as reports of large cash transactions of CAD\$10,000 or more. FINTRAC's analysis of EFT reports have provided useful information on the transfer of funds across jurisdictions, into or out of Canada in a single transaction or in two or more transactions that together total CAD \$10,000 or more.

397. Subsection 56.1(2) of the PCMLTFA authorizes FINTRAC to disclose designated information to an institution or agency of a foreign state that has powers and duties similar to those of the Centre, if:

(a) the Centre has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering offence or a

terrorist activity financing offence, or an offence that is substantially similar to either offence; and

(b) the Centre has, in accordance with subsection 56(2), entered into an agreement or arrangement with that institution or agency regarding the exchange of such information.

398. As of August 2012, FINTRAC has 80 Memoranda of Understanding (MOUs), which allow the Centre to exchange tactical information with foreign financial intelligence units, as per the conditions of each MOU. Regarding specific examples of implementation, Canada cited its responses to article 48 paragraph 1 (a) and (d).

(b) Observations on the implementation of the article

399. The reviewing experts noted the information provided by Canada and, with reference to the analysis provided above in relation to Article 48, subparagraph 1(a), considered that Canada is in compliance with this provision of the Convention.

Article 48 Law enforcement cooperation

Subparagraph 1 (c)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(a) Summary of information relevant to reviewing the implementation of the article

400. Canada confirmed that it had implemented this provision of the Convention.

401. Items may be shared for analytical and investigative purpose through Mutual Legal Assistance or through an applicable MOU. Notably, section 17 and 30 of the *Mutual Legal Assistance in Criminal Matters Act* allows for the lending of exhibits and use of evidence abroad.

Mutual Legal Assistance in Criminal Matters Act (R.S.C., 1985, c. 30 (4th Supp.))

Evidence for Use Abroad

Approval of request to obtain evidence

17. (1) When the Minister approves a request of a state or entity to obtain, by means of an order of a judge, evidence regarding an offence, the Minister shall provide a

competent authority with any documents or information necessary to apply for the order.

(2) The competent authority who is provided with the documents or information shall apply *ex parte* for an order for the gathering of evidence to a judge of the province in which the competent authority believes part or all of the evidence may be found.

18. (1) A judge to whom an application is made under subsection 17(2) may make an order for the gathering of evidence, where he is satisfied that there are reasonable grounds to believe that

(a) an offence has been committed; and

(b) evidence of the commission of the offence or information that may reveal the whereabouts of a person who is suspected of having committed the offence will be found in Canada.

(2) An order made under subsection (1) must provide for the manner in which the evidence is to be obtained in order to give effect to the request mentioned in subsection 17(1) and may

(a) order the examination, on oath or otherwise, of a person named therein, order the person to attend at the place fixed by the person designated under paragraph (c) for the examination and to remain in attendance until he is excused by the person so designated, order the person so named, where appropriate, to make a copy of a record or to make a record from data and to bring the copy or record with him, and order the person so named to bring with him any record or thing in his possession or control, in order to produce them to the person before whom the examination takes place;

(b) order a person named therein to make a copy of a record or to make a record from data and to produce the copy or record to the person designated under paragraph (c), order the person to produce any record or thing in his possession or control to the person so designated and provide, where appropriate, for any affidavit or certificate that, pursuant to the request, is to accompany any copy, record or thing so produced;

(c) designate a person before whom the examination referred to in paragraph (a) is to take place or to whom the copies, records, things, affidavits and certificates mentioned in paragraph (b) are to be produced; and

(d) order a person named in it to answer any question and to produce any record or thing to the person designated under paragraph (c) in accordance with the laws of evidence and procedure in the state or entity that presented the request.

(3) For greater certainty, under paragraph (2)(c), a judge who makes an order under subsection (1) may designate himself or herself — either alone or with another person, including another judge — or may designate another person, including another judge.

(4) An order made under subsection (1) may be executed anywhere in Canada.

(5) An order made under subsection (1) may include any terms or conditions that the judge considers desirable, including those relating to the protection of the interests of the person named therein and of third parties.

(6) The judge who made the order under subsection (1) or another judge of the same court may vary its terms and conditions.

(7) A person named in an order made under subsection (1) may refuse to answer any question or to produce a record or thing to the person designated under paragraph (2)(c) if

(a) answering the question or producing the record or thing would disclose information that is protected by the Canadian law of non-disclosure of information or privilege;

(b) requiring the person to answer the question or to produce the record or thing would constitute a breach of a privilege recognized by a law in force in the state or entity that presented the request; or

(c) answering the question or producing the record or thing would constitute the commission by the person of an offence against a law in force in the state or entity that presented the request.

(8) If a person refuses to answer a question or to produce a record or thing, the person designated under paragraph (2)(c)

(a) may, if he or she is a judge of a Canadian or foreign court, make immediate rulings on any objections or issues within his or her jurisdiction; or

(b) shall, in any other case, continue the examination and ask any other question or request the production of any other record or thing mentioned in the order.

Statement of reasons for refusal

(9) A person named in an order made under subsection (1) who, under subsection (7), refuses to answer one or more questions or to produce certain records or things shall, within seven days, give to the person designated under paragraph (2)(c), unless that person has already ruled on the objection under paragraph (8)(a), a detailed statement in writing of the reasons on which the person bases the refusal to answer each question that the person refuses to answer or to produce each record or thing that the person refuses to produce.

Expenses

(10) A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the judge who made the order.

[...]

Lending Exhibits

30. (1) When the Minister approves the request of a state or entity to have an exhibit that was admitted in evidence in a proceeding in respect of an offence in a court in Canada lent to the state or entity, the Minister shall provide a competent authority with any documents or information necessary to apply for a loan order.

(2) After having given reasonable notice to the attorney general of the province where the exhibit sought to be lent to the state or entity mentioned in subsection (1) is located and to the parties to the proceeding, the competent authority who is provided with the documents or information shall apply for a loan order to the court that has possession of the exhibit.

(3) An application made under subsection (2) must

- (a) contain a description of the exhibit requested to be lent;
- (b) designate a person or class of persons to whom the exhibit is sought to be given;
- (c) state the reasons for the request, as well as contain a description of any tests that are sought to be performed on the exhibit and a statement of the place where the tests will be performed;
- (d) state the place or places to which the exhibit is sought to be removed; and
- (e) specify a period of time at or before the expiration of which the exhibit is to be returned.

(b) Observations on the implementation of the article

402. The reviewing experts noted section 30 of the Mutual Legal Assistance in Criminal Matters Act, which permits the lending of exhibits for the use of law enforcement authorities in foreign jurisdictions. The reviewing experts therefore considered Canada to be in full compliance with this provision of the Convention.

Article 48 Law enforcement cooperation

Subparagraph 1 (d)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(a) **Summary of information relevant to reviewing the implementation of the article**

403. Canada confirmed that it had implemented this provision of the Convention.

404. Subsection 56.1(2) of the PCMLTFA authorizes FINTRAC to disclose designated information to an institution or agency of a foreign state that has powers and duties similar to those of the Centre, if

(a) the Centre has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering offence or a terrorist activity financing offence, or an offence that is substantially similar to either offence; and

(b) the Centre has, in accordance with subsection 56(2), entered into an agreement or arrangement with that institution or agency regarding the exchange of such information.

405. Section 58 of the PCMLTFA stipulates that:

(1) FINTRAC may:

(a) inform persons and entities that have provided a report under section 7, 7.1 or 9, or a report referred to in section 9.1, about measures that have been taken with respect to reports under those sections

(b) conduct research into trends and developments in the area of money laundering and the financing of terrorist activities and improved ways of detecting, preventing and deterring money laundering and the financing of terrorist activities; and

(c) undertake measures to inform the public, persons and entities referred to in section 5, authorities engaged in the investigation and prosecution of money laundering offences and terrorist activity financing offences, and others, with respect to

(i) their obligations under this Act,

(ii) the nature and extent of money laundering inside and outside Canada,

(ii.1) the nature and extent of the financing of terrorist activities inside and outside Canada, and

(iii) measures that have been or might be taken to detect, prevent and deter money laundering and the financing of terrorist activities inside and outside Canada, and the effectiveness of those measures.

Limitation

(2) The Centre may not disclose any information that would directly or indirectly identify an individual who provided a report or information to the Centre, or a person or an entity about whom a report or information was provided

406. In the context of this enabling legislation, and to assist in fulfilling Canada's international commitments to participate in the fight against money laundering and terrorist financing

activities, FINTRAC has contributed to international papers and projects on money laundering and corruption, including the Egmont Operational Working Group Project on Corruption and the FATF report on 'Laundering the Proceeds of Corruption', published in July 2011.

407. In addition to these international contributions, FINTRAC has undertaken an analysis of the 34 money laundering cases suspected to be related to corruption disclosed in fiscal year 2010/2011. This analysis helped the Centre identify suspected money laundering methods and trends present in the case disclosures.
408. FINTRAC found that the most common suspected corruption activity identified in law enforcement information triggering those 34 money laundering cases involved individuals suspected by law enforcement of giving bribes or kickbacks to officials or businesses in order to win contracts. Cases of suspected embezzlement of corporate funds were also regularly identified in law enforcement information. Several industries, both domestically and internationally, appeared to be affected by this corrupt activity, including the construction industry, government sector and natural resources or mining industry.
409. More than half (56%) of FINTRAC's money laundering case disclosures suspected to be related to corruption involved Politically Exposed Persons (PEPs), where they were either subjects of disclosures or the beneficiaries of the funds. The remainder of the cases involved suspected organized crime groups or individuals and businesses not associated to any organized crime group. According to information provided by our partners, almost 60% of our cases involved suspected corruption activity conducted abroad while the rest of our cases involved alleged domestic corruption activity.
410. FINTRAC observed that with international cases, most financial transactions involved electronic fund transfers (EFTs) to and from various individuals or businesses in other countries. Domestic money laundering cases related to corruption also involved several EFTs but the main financial transactions conducted were large cash deposits and withdrawals, purchases of bank drafts, currency exchanges and casino transactions. Furthermore, the majority of financial transactions were conducted through financial deposit-taking institutions (such as banks or credit unions) while the rest were conducted through either casinos or money services businesses (MSBs) such as currency exchange dealers or remittance/funds transmitters. Lawyers, trust accounts or trust companies, and non-profit organizations such as charities or foundations were also used in the suspected money laundering schemes related to corruption. A lawyer or law office was involved in at least 10 cases. Twenty-eight of the suspected corruption cases involved a business or multiple businesses. FINTRAC observed that next to construction companies, financial businesses such as holding companies or investment companies were the second most commonly used type of business in alleged corruption-linked money laundering activity. Other businesses used also included import/export companies, consumer goods businesses, and mining/excavation businesses.

411. The RCMP shares best practices with other police forces. Every year workshops are held where investigations are shared and discussed between police officers. The information discussed at these workshops is confidential.

(b) Observations on the implementation of the article

412. The reviewing experts noted the information provided by Canada which demonstrated significant efforts on the part of the Canadian government to analytically assess the information sent to and from FINTRAC as part of its work under the PCMLTFA.

413. The reviewing experts noted that the statutory powers provided to the FINTRAC under the PCMLTFA allow it to disclose relevant information to a similar overseas body where the information would be relevant to the investigation or prosecution of a money-laundering or terrorism offence and where an agreement or arrangement is in place with the State with whom FINTRAC would like to share the information.

414. FINTRAC representatives also confirmed during the country visit that paragraph 55(7)(e) in the PCMLTFA allows FINTRAC to include, as part of its disclosures to law enforcement and designated recipients, indicators of a money laundering offence or a terrorist activity financing offence. Section 58 of the PCMLTFA also allows FINTRAC to conduct research into trends and developments in the area of money laundering, the financing of terrorist activities and their predicate offences such as corruption.. Specific statistics or examples were not provided in this regard.

415. In light of the above information, the reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 48 Law enforcement cooperation

Subparagraph 1 (e)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(a) Summary of information relevant to reviewing the implementation of the article

416. Canada considered that it had implemented this provision of the Convention.

417. The RCMP has 37 liaison officers deployed worldwide. Officers are all trained with the CFPOA. The RCMP also has a liaison officer operating within various government agencies

to facilitate the sharing of information. As previously mentioned, the International Anti-Corruption Team liaises with other police agencies worldwide.

(b) Observations on the implementation of the article

418. The reviewing experts noted the information provided above by Canada in relation to this provision of the Convention and recognised in particular the posting of 37 Liaison Officers of the RCMP in government agencies in foreign jurisdictions.

419. In light of the above information the reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 48 Law enforcement cooperation

Subparagraph 1 (f)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

420. Canada confirmed that it had implemented this provision of the Convention.

421. The PCMLTFA governs with whom, when and how FINTRAC is able to exchange information. Part 3, Section 56.1 authorizes that the Centre may disclose designated information to an institution or agency of a foreign state or of an international organization established by the governments of foreign states that has powers and duties similar to those of the Centre, if

- a) the Centre has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering offence or a terrorist activity financing offence, or an offence that is substantially similar to either offence; and
- b) the Minister has, in accordance with subsection 56(1), entered into an agreement or arrangement with that foreign state or international organization regarding the exchange of such information.

422. The Centre can disclose financial intelligence related to a suspicion of ML or TF proactively to appropriate recipients. Here, analysis can be initiated by triggers such as

suspicious transaction reports (STRs), open source information and by detecting patterns of transactions.

423. The RCMP has an open source unit and conducts intelligence looking for red flags to detect corrupt activities covered by the convention.

(b) Observations on the implementation of the article

424. The reviewing experts noted that the PCMLTFA allows for information to be shared by FINTRAC where there is a suspicion of the offences of money-laundering or terrorism. Consequently, FINTRAC is able to be proactive in the sharing of information where it considers this would be relevant to a potential or actual investigation. The reviewing experts considered that such practices would in some cases assist in the early identification of corruption-related offences.

425. The reviewing experts therefore considered Canada to be in compliance with this provision of the Convention.

Article 48 Law enforcement cooperation

Paragraph 2

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

426. Canada indicated that it was in compliance with this provision of the Convention.
427. Canada has concluded MOU's with law enforcement agencies for joint investigations but stated that it could not comment on activities carried out under such MOU's as they involve ongoing investigations or disclose investigative methods. Canada confirmed, however, that the RCMP is negotiating a multilateral MOU with foreign agency partners on the establishment of the International Foreign Bribery Task Force.
428. Under this MOU, the four countries will actively participate in anti-corruption initiatives in various international fora, including the Organization for Economic Co-operation and Development (OECD) the United Nations (UN), the Commonwealth and the G-7 This MOU

will serve to strengthen existing cooperative network between the participants and outline the conditions under which the information can be shared between participants.

429. It is proposed under this MOU that participants may make Annexes to the MOU in relation to specific areas of cooperation such as specific investigations.

430. It was furthermore stated by Canada that while the UNCAC is recognized as a basis for legal cooperation and that MOU's can formalize such cooperation, it is also noted that MOU's can be time consuming to negotiate and much cooperation can be obtained informally via the establishment of strong contacts. The RCMP noted that it has experienced good cooperation between law enforcement agencies without requiring a formalized agreement. Exchange of information between State parties has not been a hindrance to their investigations; to the contrary, cooperation was noted as being very good.

431. An MOU between the RCMP and a foreign agency partner concerning a joint investigation into allegations of anti-corruption of foreign public officials is also in the final stages of negotiation. The purpose of the MOU is to jointly investigate allegations of corruption and to cooperate in all aspects of the investigation and prosecution should charges result. Canada considers the Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention.

(b) Observations on the implementation of the article

432. The reviewing experts noted the recent adoption by the RCMP of an MoU with Australia, the United Kingdom of Great Britain and Northern Ireland and the United States of America on the establishment of an International Foreign Bribery Task Force which they considered will strengthen existing cooperative networks between the participants and outline the conditions under which relevant information can be shared.

433. Canada has also indicated that while MoUs have been put in place where considered necessary, reliance is often placed on informal information-sharing and the development of strong working relationships with counterparts from other law enforcement agencies given the time-consuming nature of adopting formal agreements.

434. The reviewing experts considered Canada to be in compliance with this provision of the Convention.

Article 48 Law enforcement cooperation

Paragraph 3

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

435. Canada considered that it had implemented this provision of the Convention.
436. The RCMP can investigate crimes committed through modern technology and cooperation between authorities can be facilitated through a variety of modern technology, including secure databases, secure lines of communication and other appropriate technology.
437. The RCMP can investigate offences using a sophisticated management tool referred to as Evidence and Reports (E&R). This software program was developed exclusively by the RCMP to meet the needs of major case investigations. The program has incorporated the principles of Major Case Management. The E&R program contains a comprehensive task management facility which enables file supervisors to assign tasks to investigators and track the progress of each task.
438. E&R is able to display multi-media files such as photographs, video clips and audio files. As well documents may be scanned or imported directly into E&R. This tool facilitates the identification of evidence to better present the information in court.

(b) Observations on the implementation of the article

439. The reviewing experts noted the information provided by Canada in relation to this provision of the Convention.
440. The reviewing experts noted the information provided by Canada as demonstrating the use of modern technology in the management of complex investigations and the efficient presentation of evidence in relation to corruption and other organized crime offences. Furthermore, Canada indicated in its response that the RCMP can investigate crimes committed through modern technology.
441. Canadian officials also indicated during the country visit that it was part of an international cyber-crime working group which meets twice a year to discuss best practices and common challenges in the detection, investigation and prosecution of cyber-crime offences.
442. The reviewing experts considered Canada to be in compliance with this provision of the Convention.

(d) Challenges, where applicable

443. Canada did not identify any specific challenges in relation to the implementation of this provision of the Convention.

(e) Technical assistance needs

444. Canada indicated that it did not require any form of technical assistance in relation to the implementation of this article of the Convention.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

445. Canada considered that it had implemented this provision of the Convention.

446. The potential for joint investigations are evaluated on a case-by-case basis. In some cases, as discussed above, arrangements are made to coordinate investigations involving multiple jurisdictions. The MOU with the foreign agency partners referenced previously contains provisions regarding joint management of the investigation and processes to make decisions about where charges should be laid and respect for national laws within each jurisdiction.

447. As regards texts, examples of implementation and information on all joint investigations and joint investigative bodies, Canada referred to the answer to article 48 paragraph 2.

(b) Observations on the implementation of the article

448. The reviewing experts noted the current efforts being made by the government of Canada to agree both multilateral and bilateral MoUs with other States parties so as to provide a legal basis for the joint management of investigations. The experts furthermore noted that a specific agreement was presently being negotiated which would facilitate a joint investigation into allegations of anti-corruption of foreign public officials is also in the final stages of negotiation. The purpose of the MOU is to jointly investigate allegations of corruption and to cooperate in all aspects of the investigation and prosecution should charges result.

449. Furthermore, during the country visit, it was noted that the potential for joint investigations is evaluated on a case-by-case basis. They are most often conducted on the basis of a memorandum of understanding or exchange of letters between the RCMP and a foreign agency partner. Such joint investigations can however also be conducted without a formal agreement and this has been the case recently in relation to an offence which was jointly investigated with law enforcement officials from the United States.

450. In light of the above information the reviewing experts considered that Canada is in compliance with this provision of the Convention.

(c) Successes and good practices

451. Canada adopts a flexible approach to the establishment of joint investigations with law enforcement bodies from other States parties and has conducted such joint investigations in practice.

(d) Challenges, where applicable

452. Canada indicated that it does not currently have any specific implementation challenges in relation to this provision of the Convention.

(e) Technical assistance needs

453. Canada has indicated that it does not require any forms of technical assistance in relation to the implementation of this provision of the Convention.

Article 50 Special investigative techniques

Paragraph 1

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

(a) Summary of information relevant to reviewing the implementation of the article

454. Canada considered that it had implemented this provision of the Convention.

455. In Canadian law, there is no separate legislative framework that applies to special investigative techniques (SITs). Law enforcement in Canada is covered under the general legal framework of criminal law, as well as under legislation governing the establishment and conduct of police forces and other enforcement agencies. Within this framework, specific kinds of SITs are subject to specific legal requirements. It should be emphasized, as well, that laws providing for SITs, and law enforcement activity in using SITs, are subject to review by the courts under the *Canadian Charter of Rights and Freedoms* and in respect of compliance with other general requirements, such as those that govern abuse of process.

456. Some SITs, in Canada, such as general undercover police operations, non-intrusive police observation techniques, and use of informants are not subject to specific provisions of statutory law addressing when and how they can be used. Nevertheless, general legal standards and common law requirements apply. As noted, police actions are subject to the *Canadian Charter of Rights and Freedoms*. Common law (judicially-imposed) standards,

such as the abuse of process doctrine, also come into play: police conduct which is unacceptable as an abuse of process is that which violates a community's sense of decency and fair play and police use of such abusive techniques may lead to a judicial staying of proceedings against the accused. It further should be noted that the use of SITs such as undercover operations are also governed by internal police policy and procedures. In addition, comprehensive administration and accountability provisions addressing law enforcement activity is provided by laws addressing the establishment and organization of police forces, codes of conduct, and internal discipline (deontology), and public complaints.

457. Certain other SITs under Canadian law do have detailed provisions requiring prior judicial authorization. These include, for example, interception of private communications and searches. Judicial authorization requirements also apply to additional special procedures such as the taking of DNA samples, installation of tracking devices and installation of devices recording telephone numbers dialed (and the numbers from which calls are received).
458. In respect of SITs in which police would engage in illegal conduct, the Supreme Court of Canada has ruled that police have no inherent immunity from liability for unlawful conduct committed in good faith during the course of an investigation. The Supreme Court further noted that if immunity were necessary, it was for Parliament to provide for it. On its face, this restrictive principle could apply, depending on the circumstances, to certain SITs. Parliament has, however, adopted certain provisions allowing law enforcement officers to engage in conduct that would otherwise be illegal for the purpose of investigations and enforcement, subject to controls and limitations. For example, measures under the *Criminal Code* provide a limited justification for designated law enforcement officers – and others acting at their direction – for acts and omissions that would otherwise be offences. The justification includes a fundamental requirement of “reasonable and proportional” conduct.
459. Three factors are set out as relevant to determining reasonableness and proportionality: the nature of the act or omission, the nature of the investigation, and the reasonable availability of other means for carrying out enforcement duties. Certain conduct that would otherwise be an offence is justified only if a public officer has the prior written authorization of a senior official responsible for law enforcement or in exigent circumstances. Certain other conduct, such as the intentional causing of death or bodily harm, obstruction of justice, or conduct that would violate the sexual integrity of an individual, are not justified. Part VI of the *Criminal Code* of Canada regulates the interception of private communications for law enforcement purposes. It strikes a balance between the interests of the needs of law enforcement to investigate serious crimes and individual's reasonable expectation of privacy. The provisions in Part VI cover a wide variety of circumstances, including: interception to prevent bodily harm (section 184.1); consent interceptions (section 184.2); consent by means of telecommunications (section 184.3); conventional wiretap authorizations (section 186); authority to intercept in exceptional circumstances without prior court authorization (section 184.4); upon *ex parte* application authorization granted for a period up to 36 hours where urgency requires (section 188).
460. In addition to wiretap authorities, there are other electronic surveillance authorities: surreptitious electronic video surveillance (section 487.01); number recorder warrants

(section 492.2); electronic tracking warrants (section 492.1). Certain other exemptions and exceptions for specific law enforcement SITs that would otherwise be illegal are provided by separate legal provisions. For example, the *Controlled Drugs and Substances Act (Police Enforcement) Regulations* governs the use of controlled deliveries and reverse stings in drug investigations. Provisions of the *Criminal Code* provide exceptions, respectively, for possession of property obtained by crime and for money laundering where this is done by a law enforcement officer – or a person acting under the direction of a law enforcement officer – for the purpose of an investigation or otherwise in the execution of the law enforcement officer’s duties.

461. Canada made reference to the following sections of the Criminal Code as being relevant to this provision of the Convention: 184.1, 184.2, 184.4, 186, 188, 487.01.

INTERCEPTION OF COMMUNICATIONS

184.1 (1) An agent of the state may intercept, by means of any electro-magnetic, acoustic, mechanical or other device, a private communication if

(a) either the originator of the private communication or the person intended by the originator to receive it has consented to the interception;

(b) the agent of the state believes on reasonable grounds that there is a risk of bodily harm to the person who consented to the interception; and

(c) the purpose of the interception is to prevent the bodily harm.

(2) The contents of a private communication that is obtained from an interception pursuant to subsection (1) are inadmissible as evidence except for the purposes of proceedings in which actual, attempted or threatened bodily harm is alleged, including proceedings in respect of an application for an authorization under this Part or in respect of a search warrant or a warrant for the arrest of any person.

(3) The agent of the state who intercepts a private communication pursuant to subsection (1) shall, as soon as is practicable in the circumstances, destroy any recording of the private communication that is obtained from an interception pursuant to subsection (1), any full or partial transcript of the recording and any notes made by that agent of the private communication if nothing in the private communication suggests that bodily harm, attempted bodily harm or threatened bodily harm has occurred or is likely to occur.

For the purposes of this section, “agent of the state” means

(a) a peace officer; and

(b) a person acting under the authority of, or in cooperation with, a peace officer.

184.2 (1) A person may intercept, by means of any electro-magnetic, acoustic, mechanical or other device, a private communication where either the originator of the private communication or the person intended by the originator to receive it has consented to the interception and an authorization has been obtained pursuant to subsection (3).

(2) An application for an authorization under this section shall be made by a peace officer, or a public officer who has been appointed or designated to administer or enforce any federal or provincial law and whose duties include the enforcement of this or any other Act of Parliament, *ex parte* and in writing to a provincial court judge, a judge of a superior court of criminal jurisdiction or a judge as defined in section 552, and shall be accompanied by an affidavit, which may be sworn on the information and belief of that peace officer or public officer or of any other peace officer or public officer, deposing to the following matters:

(a) that there are reasonable grounds to believe that an offence against this or any other Act of Parliament has been or will be committed;

(b) the particulars of the offence;

(c) the name of the person who has consented to the interception;

(d) the period for which the authorization is requested; and

(e) in the case of an application for an authorization where an authorization has previously been granted under this section or section 186, the particulars of the authorization.

(3) An authorization may be given under this section if the judge to whom the application is made is satisfied that

(a) there are reasonable grounds to believe that an offence against this or any other Act of Parliament has been or will be committed;

(b) either the originator of the private communication or the person intended by the originator to receive it has consented to the interception; and

(c) there are reasonable grounds to believe that information concerning the offence referred to in paragraph (a) will be obtained through the interception sought.

(4) An authorization given under this section shall

(a) state the offence in respect of which private communications may be intercepted;

(b) state the type of private communication that may be intercepted;

(c) state the identity of the persons, if known, whose private communications are to be intercepted, generally describe the place at which private communications may be intercepted, if a general description of that place can be given, and generally describe the manner of interception that may be used;

(d) contain the terms and conditions that the judge considers advisable in the public interest; and

(e) be valid for the period, not exceeding sixty days, set out therein.

184.3 (1) Notwithstanding section 184.2, an application for an authorization under subsection 184.2(2) may be made *ex parte* to a provincial court judge, a judge of a superior court of criminal jurisdiction or a judge as defined in section 552, by telephone

or other means of telecommunication, if it would be impracticable in the circumstances for the applicant to appear personally before a judge.

(2) An application for an authorization made under this section shall be on oath and shall be accompanied by a statement that includes the matters referred to in paragraphs 184.2(2)(a) to (e) and that states the circumstances that make it impracticable for the applicant to appear personally before a judge.

(3) The judge shall record, in writing or otherwise, the application for an authorization made under this section and, on determination of the application, shall cause the writing or recording to be placed in the packet referred to in subsection 187(1) and sealed in that packet, and a recording sealed in a packet shall be treated as if it were a document for the purposes of section 187.

(4) For the purposes of subsection (2), an oath may be administered by telephone or other means of telecommunication.

(5) An applicant who uses a means of telecommunication that produces a writing may, instead of swearing an oath for the purposes of subsection (2), make a statement in writing stating that all matters contained in the application are true to the knowledge or belief of the applicant and such a statement shall be deemed to be a statement made under oath.

(6) Where the judge to whom an application is made under this section is satisfied that the circumstances referred to in paragraphs 184.2(3)(a) to (c) exist and that the circumstances referred to in subsection (2) make it impracticable for the applicant to appear personally before a judge, the judge may, on such terms and conditions, if any, as are considered advisable, give an authorization by telephone or other means of telecommunication for a period of up to thirty-six hours.

(7) Where a judge gives an authorization by telephone or other means of telecommunication, other than a means of telecommunication that produces a writing,

(a) the judge shall complete and sign the authorization in writing, noting on its face the time, date and place at which it is given;

(b) the applicant shall, on the direction of the judge, complete a facsimile of the authorization in writing, noting on its face the name of the judge who gave it and the time, date and place at which it was given; and

(c) the judge shall, as soon as is practicable after the authorization has been given, cause the authorization to be placed in the packet referred to in subsection 187(1) and sealed in that packet.

(8) Where a judge gives an authorization by a means of telecommunication that produces a writing, the judge shall

(a) complete and sign the authorization in writing, noting on its face the time, date and place at which it is given;

(b) transmit the authorization by the means of telecommunication to the applicant, and the copy received by the applicant shall be deemed to be a facsimile referred to in paragraph (7)(b); and

(c) as soon as is practicable after the authorization has been given, cause the authorization to be placed in the packet referred to in subsection 187(1) and sealed in that packet.

184.4 A peace officer may intercept, by means of any electro-magnetic, acoustic, mechanical or other device, a private communication where

(a) the peace officer believes on reasonable grounds that the urgency of the situation is such that an authorization could not, with reasonable diligence, be obtained under any other provision of this Part;

(b) the peace officer believes on reasonable grounds that such an interception is immediately necessary to prevent an unlawful act that would cause serious harm to any person or to property; and

(c) either the originator of the private communication or the person intended by the originator to receive it is the person who would perform the act that is likely to cause the harm or is the victim, or intended victim, of the harm.

186. (1) An authorization under this section may be given if the judge to whom the application is made is satisfied

(a) that it would be in the best interests of the administration of justice to do so; and

(b) that other investigative procedures have been tried and have failed, other investigative procedures are unlikely to succeed or the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures.

(1.1) Notwithstanding paragraph (1)(b), that paragraph does not apply where the judge is satisfied that the application for an authorization is in relation to

(a) an offence under section 467.11, 467.12 or 467.13;

(b) an offence committed for the benefit of, at the direction of or in association with a criminal organization; or

(c) a terrorism offence.

(2) No authorization may be given to intercept a private communication at the office or residence of a solicitor, or at any other place ordinarily used by a solicitor and by other solicitors for the purpose of consultation with clients, unless the judge to whom the application is made is satisfied that there are reasonable grounds to believe that the solicitor, any other solicitor practising with him, any person employed by him or any

other such solicitor or a member of the solicitor's household has been or is about to become a party to an offence.

(3) Where an authorization is given in relation to the interception of private communications at a place described in subsection (2), the judge by whom the authorization is given shall include therein such terms and conditions as he considers advisable to protect privileged communications between solicitors and clients.

(4) An authorization shall

(a) state the offence in respect of which private communications may be intercepted;

(b) state the type of private communication that may be intercepted;

(c) state the identity of the persons, if known, whose private communications are to be intercepted, generally describe the place at which private communications may be intercepted, if a general description of that place can be given, and generally describe the manner of interception that may be used;

(d) contain such terms and conditions as the judge considers advisable in the public interest; and

(e) be valid for the period, not exceeding sixty days, set out therein.

(5) The Minister of Public Safety and Emergency Preparedness or the Attorney General, as the case may be, may designate a person or persons who may intercept private communications under authorizations.

(5.1) For greater certainty, an authorization that permits interception by means of an electro-magnetic, acoustic, mechanical or other device includes the authority to install, maintain or remove the device covertly.

(5.2) On an *ex parte* application, in writing, supported by affidavit, the judge who gave an authorization referred to in subsection (5.1) or any other judge having jurisdiction to give such an authorization may give a further authorization for the covert removal of the electro-magnetic, acoustic, mechanical or other device after the expiry of the original authorization

(a) under any terms or conditions that the judge considers advisable in the public interest; and

(b) during any specified period of not more than sixty days.

(6) Renewals of an authorization may be given by a judge of a superior court of criminal jurisdiction or a judge as defined in section 552 on receipt by him or her of an *ex parte* application in writing signed by the Attorney General of the province in which the application is made or the Minister of Public Safety and Emergency Preparedness — or an agent specially designated in writing for the purposes of section 185 by the Minister or the Attorney General, as the case may be — accompanied by an affidavit of a peace officer or public officer deposing to the following matters:

(a) the reason and period for which the renewal is required,

(b) full particulars, together with times and dates, when interceptions, if any, were made or attempted under the authorization, and any information that has been obtained by any interception, and

(c) the number of instances, if any, on which, to the knowledge and belief of the deponent, an application has been made under this subsection in relation to the same authorization and on which the application was withdrawn or no renewal was given, the date on which each application was made and the name of the judge to whom each application was made,

and supported by such other information as the judge may require.

(7) A renewal of an authorization may be given if the judge to whom the application is made is satisfied that any of the circumstances described in subsection (1) still obtain, but no renewal shall be for a period exceeding sixty days.

188. (1) Notwithstanding section 185, an application made under that section for an authorization may be made *ex parte* to a judge of a superior court of criminal jurisdiction, or a judge as defined in section 552, designated from time to time by the Chief Justice, by a peace officer specially designated in writing, by name or otherwise, for the purposes of this section by

(a) the Minister of Public Safety and Emergency Preparedness, if the offence is one in respect of which proceedings, if any, may be instituted by the Government of Canada and conducted by or on behalf of the Attorney General of Canada, or

(b) the Attorney General of a province, in respect of any other offence in the province,

if the urgency of the situation requires interception of private communications to commence before an authorization could, with reasonable diligence, be obtained under section 186.

(2) Where the judge to whom an application is made pursuant to subsection (1) is satisfied that the urgency of the situation requires that interception of private communications commence before an authorization could, with reasonable diligence, be obtained under section 186, he may, on such terms and conditions, if any, as he considers advisable, give an authorization in writing for a period of up to thirty-six hours.

(4) In this section, “Chief Justice” means

(a) in the Province of Ontario, the Chief Justice of the Ontario Court;

(b) in the Province of Quebec, the Chief Justice of the Superior Court;

(c) in the Provinces of Nova Scotia and British Columbia, the Chief Justice of the Supreme Court;

(d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Chief Justice of the Court of Queen’s Bench;

(e) in the Provinces of Prince Edward Island and Newfoundland, the Chief Justice of the Supreme Court, Trial Division; and

(f) in Yukon, the Northwest Territories and Nunavut, the senior judge within the meaning of subsection 22(3) of the *Judges Act*.

(5) The trial judge may deem inadmissible the evidence obtained by means of an interception of a private communication pursuant to a subsequent authorization given under this section, where he finds that the application for the subsequent authorization was based on the same facts, and involved the interception of the private communications of the same person or persons, or related to the same offence, on which the application for the original authorization was based.

SURREPTITIOUS ELECTRONIC VIDEO SURVEILLANCE

487.01 (1) A provincial court judge, a judge of a superior court of criminal jurisdiction or a judge as defined in section 552 may issue a warrant in writing authorizing a peace officer to, subject to this section, use any device or investigative technique or procedure or do any thing described in the warrant that would, if not authorized, constitute an unreasonable search or seizure in respect of a person or a person's property if

(a) the judge is satisfied by information on oath in writing that there are reasonable grounds to believe that an offence against this or any other Act of Parliament has been or will be committed and that information concerning the offence will be obtained through the use of the technique, procedure or device or the doing of the thing;

(b) the judge is satisfied that it is in the best interests of the administration of justice to issue the warrant; and

(c) there is no other provision in this or any other Act of Parliament that would provide for a warrant, authorization or order permitting the technique, procedure or device to be used or the thing to be done.

(2) Nothing in subsection (1) shall be construed as to permit interference with the bodily integrity of any person.

(3) A warrant issued under subsection (1) shall contain such terms and conditions as the judge considers advisable to ensure that any search or seizure authorized by the warrant is reasonable in the circumstances.

(4) A warrant issued under subsection (1) that authorizes a peace officer to observe, by means of a television camera or other similar electronic device, any person who is engaged in activity in circumstances in which the person has a reasonable expectation of privacy shall contain such terms and conditions as the judge considers advisable to ensure that the privacy of the person or of any other person is respected as much as possible.

(5) The definition "offence" in section 183 and sections 183.1, 184.2, 184.3 and 185 to 188.2, subsection 189(5), and sections 190, 193 and 194 to 196 apply, with such

modifications as the circumstances require, to a warrant referred to in subsection (4) as though references in those provisions to interceptions of private communications were read as references to observations by peace officers by means of television cameras or similar electronic devices of activities in circumstances in which persons had reasonable expectations of privacy.

(5.1) A warrant issued under subsection (1) that authorizes a peace officer to enter and search a place covertly shall require, as part of the terms and conditions referred to in subsection (3), that notice of the entry and search be given within any time after the execution of the warrant that the judge considers reasonable in the circumstances.

(5.2) Where the judge who issues a warrant under subsection (1) or any other judge having jurisdiction to issue such a warrant is, on the basis of an affidavit submitted in support of an application to vary the period within which the notice referred to in subsection (5.1) is to be given, is satisfied that the interests of justice warrant the granting of the application, the judge may grant an extension, or a subsequent extension, of the period, but no extension may exceed three years.

(6) Subsections 487(2) and (4) apply, with such modifications as the circumstances require, to a warrant issued under subsection (1).

(7) Where a peace officer believes that it would be impracticable to appear personally before a judge to make an application for a warrant under this section, a warrant may be issued under this section on an information submitted by telephone or other means of telecommunication and, for that purpose, section 487.1 applies, with such modifications as the circumstances require, to the warrant.

TRACKING WARRANT

492.1 (1) A justice who is satisfied by information on oath in writing that there are reasonable grounds to suspect that an offence under this or any other Act of Parliament has been or will be committed and that information that is relevant to the commission of the offence, including the whereabouts of any person, can be obtained through the use of a tracking device, may at any time issue a warrant authorizing a peace officer or a public officer who has been appointed or designated to administer or enforce a federal or provincial law and whose duties include the enforcement of this Act or any other Act of Parliament and who is named in the warrant

(a) to install, maintain and remove a tracking device in or on anything, including a thing carried, used or worn by any person; and

(b) to monitor, or to have monitored, a tracking device installed in or on anything.

(2) A warrant issued under subsection (1) is valid for the period, not exceeding sixty days, mentioned in it.

(3) A justice may issue further warrants under this section.

(4) For the purposes of this section, “tracking device” means any device that, when installed in or on anything, may be used to help ascertain, by electronic or other means, the location of anything or person.

(5) On *ex parte* application in writing supported by affidavit, the justice who issued a warrant under subsection (1) or a further warrant under subsection (3) or any other justice having jurisdiction to issue such warrants may authorize that the tracking device be covertly removed after the expiry of the warrant

(a) under any terms or conditions that the justice considers advisable in the public interest; and

(b) during any specified period of not more than sixty days.

NUMBER RECORDER WARRANT

492.2 (1) A justice who is satisfied by information on oath in writing that there are reasonable grounds to suspect that an offence under this or any other Act of Parliament has been or will be committed and that information that would assist in the investigation of the offence could be obtained through the use of a number recorder, may at any time issue a warrant authorizing a peace officer or a public officer who has been appointed or designated to administer or enforce a federal or provincial law and whose duties include the enforcement of this Act or any other Act of Parliament and who is named in the warrant

(a) to install, maintain and remove a number recorder in relation to any telephone or telephone line; and

(b) to monitor, or to have monitored, the number recorder.

(2) When the circumstances referred to in subsection (1) exist, a justice may order that any person or body that lawfully possesses records of telephone calls originated from, or received or intended to be received at, any telephone give the records, or a copy of the records, to a person named in the order.

(3) Subsections 492.1(2) and (3) apply to warrants and orders issued under this section, with such modifications as the circumstances require.

(4) For the purposes of this section, “number recorder” means any device that can be used to record or identify the telephone number or location of the telephone from which a telephone call originates, or at which it is received or is intended to be received.

462. The French version of the *Criminal Code* is available at the following link:

- <http://laws-lois.justice.gc.ca/fra/lois/C-46/index.html>

463. No statistics were provided by Canada as to the number of investigations in which controlled delivery or other special investigation techniques had been used.

(b) Observations on the implementation of the article

464. The reviewing experts noted that the Canadian Criminal Code permits the use of special investigative techniques, including all those specifically referred to in the Convention. Specifically, it was noted by the reviewing experts that Criminal Code allows for the RCMP to intercept messages or telephone calls between individuals through wiretaps. This information can also be shared with foreign law enforcement agencies
465. The reviewing experts therefore considered Canada to be in compliance with this provision of the Convention.

Article 50 Special investigative techniques

Paragraph 2

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

(a) Summary of information relevant to reviewing the implementation of the article

466. Canada considered that it had implemented this provision of the Convention.
467. As discussed in article 48 paragraph 2, RCMP is negotiating a multilateral MOU with foreign agency partners on the establishment of the International Foreign Bribery Task Force. Whereas the MOU will serve primarily to strengthen existing cooperative network between the participants and outline the conditions under which the information can be shared between participants, it is anticipated that participants may make Annexes to the MOU in relation to specific areas of cooperation such as specific investigations.
468. The RCMP does not comment on its investigative techniques. When appropriate the RCMP will make the necessary arrangements to use special investigative techniques at the international level as it does with other criminal investigations.
469. Canada does not comment on special investigative techniques and how they affected recent cases.

(b) Observations on the implementation of the article

470. Noting the non-mandatory nature of this provision of the Convention and the efforts by Canada to negotiate new agreements for cooperation between law enforcement authorities in

relation to corruption offences, the reviewing experts considered that Canada was in compliance with this provision of the Convention.

471. During the country visited that Canada has also sought to assist other States by offering to conduct a needs assessment aimed at identifying the ways in which that State could better make use of special investigative techniques during their investigations.

Article 50 Special investigative techniques

Paragraph 3

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

(a) Summary of information relevant to reviewing the implementation of the article

472. Canada confirmed that it had implemented this provision of the Convention.

473. As a matter of practice, the RCMP considers the need for SIT at the international level in cooperation with relevant authorities on a case by case basis. No examples of implementation, including instances when decisions to use special investigative techniques at the international level made on a case-by-case basis were provided.

(b) Observations on the implementation of the article

474. The reviewing experts considered that Canada was in compliance with this provision of the Convention.

Article 50 Special investigative techniques

Paragraph 4

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

475. Canada considered that it had implemented this provision of the Convention. As this is an investigative technique no additional information is being provided.

(b) Observations on the implementation of the article

476. The reviewing experts considered that Canada was in compliance with this provision of the Convention.

(d) Challenges, where applicable

477. Canada indicated that it did not have any specific implementation challenges in relation to this article of the Convention.

(e) Technical assistance needs

478. Canada has indicated that it does not require any technical assistance in relation to the implementation of the article under review.