

**BILL C-48: AN ACT TO AMEND THE CRIMINAL CODE
IN ORDER TO IMPLEMENT THE UNITED NATIONS
CONVENTION AGAINST CORRUPTION**

Penny Becklumb
Law and Government Division

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LEGISLATIVE HISTORY OF BILL C-48

HOUSE OF COMMONS

Bill Stage	Date
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First Reading:	22 March 2007
Second Reading:	30 April 2007
Committee Report:	30 April 2007
Report Stage:	30 April 2007
Third Reading:	30 April 2007

SENATE

Bill Stage	Date
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Royal Assent: 31 May 2007

Statutes of Canada 2007, c.13

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Michel Bédard

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BILL C-48: AN ACT TO AMEND THE CRIMINAL CODE
IN ORDER TO IMPLEMENT THE UNITED NATIONS
CONVENTION AGAINST CORRUPTION*

BACKGROUND

A. Purpose of the Bill

Bill C-48, An Act to amend the Criminal Code in order to implement the United Nations Convention against Corruption, was introduced in the House of Commons and received first reading on 22 March 2007. The bill makes technical amendments to the corruption and offence-related provisions of the *Criminal Code*⁽¹⁾ to allow Canada to ratify and implement the United Nations Convention against Corruption, which came into force in December 2005.

B. Corruption

In general, corruption is understood to be the exploitation of a position of trust, typically in the public sector, in order to realize a private gain, which may or may not be financial. Corruption can take many forms, including bribery, extortion, money laundering, influence peddling, nepotism, patronage and embezzlement.

The consequences of a corrupt regime on the people living under it can be enormous. 'It undermines morality, democracy and good governance; wastes and misallocates resources; harms competitiveness in the private sector; raises the cost of goods and services; slows economic growth; frustrates efforts to alleviate poverty; generates apathy and cynicism, and erodes respect for constituted authority; fosters organized crime and often results in violations of human rights. Corruption also lessens the effectiveness of external aid in developing economies and weakens domestic support for foreign assistance. The problem gains

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) R.S.C. 1985, c. C-46.

in significance in the current climate of economic globalization in which capital, information, people and enterprises are moving ever more freely and rapidly from place to place so that accountability becomes more difficult.’⁽²⁾

Specifically in relation to poverty, corruption ‘takes a toll on economic performance, undermines employment opportunities, and clouds prospects for poverty reduction. Even petty corruption dramatically raises the cost of engaging in productive activities The burden of petty corruption falls disproportionately on poor people For those without money and connections, petty corruption in public health or police services can have debilitating consequences.’⁽³⁾

By its nature, the degree to which corruption exists among a country’s public authorities, and the financial and human toll corruption exacts around the world is difficult to approximate. *Transparency International*, a Berlin-based non-governmental organization, has reported that almost three-quarters of the 163 countries included in its 2006 annual survey face serious perceived levels of domestic corruption. In nearly half of the total, corruption is perceived to be rampant.⁽⁴⁾

This is consistent with earlier findings of the Gallup International Millennium Survey on world opinion, which interviewed 57,000 adults in 60 countries between August and October, 1999. Interviewees were asked to choose words from a list of options to describe how they perceived their government; overwhelmingly, the two most common descriptors chosen were *corrupt* and *bureaucratic*. Only approximately one in ten citizens chose positive options such as *just* and *efficient*.⁽⁵⁾

In light of the extreme and deleterious effect corruption has on human lives, as well as its prevalence in a majority of nations around the world, the United Nations embarked on an international initiative to establish a convention against corruption.

C. The United Nations Convention against Corruption

In 1996, the G8 adopted its Recommendations to Combat Transnational Organized Crime.⁽⁶⁾ Among these recommendations, the G8 stated that ‘states should cooperate towards the successful negotiation of a United Nations Convention against Corruption’ and that

(2) Jack Stilborn and Claude Emery, *Corruption*, prepared 12 January 2005 for the seminar of the U.K. branch of the Commonwealth Parliamentary Association, London, 23-29 January 2007, p. 1.

(3) The World Bank, *World Development Report 2000/2001*, Washington, D.C., 2000, p. 102.

(4) See <http://www.transparency.org/>.

(5) See <http://www.gallup-international.com/>.

(6) See <http://www.justice.gc.ca/en/news/g8/doc1.html> and http://ec.europa.eu/justice_home/fsj/crime/structures/fsj_crime_structures_en.htm.

‘states should adopt effective legislative and regulatory measures to combat corruption, establish standards of good governance, promote legitimate commercial and financial conduct, and develop cooperation mechanisms to curb corrupt practices.’

On 4 December 2000, the General Assembly of the United Nations resolved⁽⁷⁾ that an effective international legal instrument against corruption was desirable. An Ad Hoc Committee was established to negotiate the instrument⁽⁸⁾ to ‘strengthen the existing capacity of countries to counter corruption and create that capacity for those countries which do not yet possess it.’⁽⁹⁾

The text of the Convention against Corruption was negotiated during seven sessions held between January 2002 and October 2003, before it was adopted by the General Assembly on 31 October 2003⁽¹⁰⁾ and opened for signature by Member States. A high-level political signing conference held in Mérida, Mexico, from 9 to 11 December 2003 was attended by representatives of more than 120 governments.

After signing the Convention, Member States must bring their practices into line with the terms of the Convention and obtain national ratification. By its own terms,⁽¹¹⁾ the Convention entered into force on 14 December 2005, 90 days after it was ratified by the 30th state.⁽¹²⁾ To date, there are 140 signatories to the Convention, **102** of whom have ratified it.⁽¹³⁾ **Canada signed the Convention on 21 May 2004, and ratified it on 2 October 2007 following the coming-into-force of Bill C-48.**

(7) Resolution 55/61.

(8) The Ad Hoc Committee for the Negotiation of a Convention against Corruption was supported by the United Nations Office on Drugs and Crime (UNODC) in Vienna, Austria.

(9) United Nations, *First Meeting to Discuss Draft International Convention against Corruption*, News release UNIS/CP/402, 22 January 2002.

(10) Resolution 58/4.

(11) See article 68(1) of the Convention.

(12) See United Nations, *Convention against Corruption ratified by 30th state, Will enter into force 14 December 2005*, News release L/T/4389, 15 September 2005, <http://www.un.org/News/Press/docs/2005/lt4389.doc.htm>. The first 30 ratifying states were, in alphabetical order: Algeria, Belarus, Benin, Brazil, Croatia, Djibouti, Ecuador, Egypt, El Salvador, France, Honduras, Hungary, Jordan, Kenya, Libya, Madagascar, Mauritius, Mexico, Namibia, Nigeria, Paraguay, Peru, Romania, Sierra Leone, South Africa, Sri Lanka, Togo, Turkmenistan, Uganda, and the United Republic of Tanzania.

(13) Information current to April 2007. For more current information, see the UN Internet site, http://www.unodc.org/unodc/crime_signatures_corruption.html.

The UN Convention against Corruption has been described as ‘the most important international initiative against corruption in the world today.’⁽¹⁴⁾ As described in a UN Press Release,⁽¹⁵⁾ highlights of the Convention include:

Prevention. Corruption can be prosecuted after the fact, but, first and foremost, it requires prevention. An entire chapter of the Convention is dedicated to prevention, with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anti-corruption bodies, and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards that promote efficiency, transparency, and recruitment based on merit. Once recruited, public servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public procurement. Those, who use public services, must expect a high standard of conduct from their public servants. Preventing public corruption also requires an effort from all members of society at large. For these reasons, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it.

Criminalization. The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. In some cases, States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and ‘laundering’ of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic areas of private-sector corruption.

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- (14) Department of Justice, *Minister of Justice Announces Proposed Amendments to the Criminal Code to Allow Canada to Ratify and Implement the UN Convention Against Corruption*, News release, Ottawa, 22 March 2007, http://www.justice.gc.ca/en/news/nr/2007/doc_31993.html.
- (15) United Nations, *Consensus Reached on UN Convention against Corruption*, News release SOC/CP/270, 2 October 2003, <http://www.unis.unvienna.org/unis/pressrels/2003/cp447.html>.

International cooperation. Countries agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries are also required to undertake measures, which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

Asset-recovery. In a major breakthrough, countries agreed on asset-recovery, which is stated explicitly as ‘a fundamental principle of the Convention’ This is a particularly important issue for many developing countries, where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments. Reaching agreement on this chapter has involved intensive negotiations, as the needs of countries seeking the illicit assets had to be reconciled with the legal and procedural safeguards of the countries whose assistance is sought. Several provisions specify how cooperation and assistance will be rendered. In particular, in the case of embezzlement of public funds, the confiscated property would be returned to the State requesting it; in the case of proceeds of any other offence covered by the Convention, the property would be returned providing the proof of ownership or recognition of the damage caused to a requesting State; in all other cases, priority consideration would be given to the return of confiscated property to the requesting State, to the return of such property to the prior legitimate owners, or to compensation of the victims. Effective asset-recovery provisions will support the efforts of countries to redress the worst effects of corruption, while sending, at the same time, a message to corrupt officials that there will be no place to hide their illicit assets.

DESCRIPTION AND ANALYSIS

The bill makes the following changes to the *Criminal Code* in order for Canada to meet the requirements of the Convention against Corruption and become a party to it:

- Various provisions⁽¹⁶⁾ are amended to provide for the forfeiture of property used in the commission of an indictable offence under the *Corruption of Foreign Public Officials Act*⁽¹⁷⁾ (clauses 1, 8-11).

(16) The definition of “offence-related property” in section 2, as well as sections 490.1, 490.2, 490.4 and 490.41.

(17) S.C. 1998, c. 34.

- The definition of ‘official’⁽¹⁸⁾ used in relation to corruption offences under Part IV of the *Criminal Code* is amended, consistent with case law,⁽¹⁹⁾ to make it clear that ‘official’ includes a person elected to discharge a public duty, not only a person appointed (clause 2).
- Existing corruption provisions⁽²⁰⁾ are amended to clarify the point that an act of corruption may be direct or indirect, and that it is not necessary that the person who commits the corrupt act receive the benefit derived from the act (clauses 3-7).

Housekeeping amendments are also made to several of the above sections to make them neutral with respect to gender.

The bill **came into force when it received Royal Assent on 31 May 2007. Canada subsequently ratified the Convention on 2 October 2007.**

COMMENTARY

Predictably, the introduction of Bill C-48 **was not** controversial. One might expect broad support for internationally endorsed measures aimed at curbing corrupt practices by public authorities. **The following is an excerpt from the debates on Bill C-48 at second reading in the Senate:**⁽²¹⁾

The United Nations Convention against Corruption is the first comprehensive and global anti-corruption treaty. Canada has been a strong supporter of the convention since the beginning of the process. We took an active and leading role during the preparatory stages and the negotiation of the treaty. Since the convention was adopted by the UN General Assembly in October 2003, Canada has provided expertise and financial support to the UN secretariat and to other countries in order to encourage and assist them in ratifying and fully implementing the convention.

While the UN convention is the first comprehensive global instrument of its kind, Canada is already a state party to several regional and more specific treaties dealing with corruption.

(18) Section 118.

(19) For example, see *R. v. Sheets*, [1971] S.C.R. 614.

(20) Sections 119-121, 123 and 426.

(21) *Senate, Debates*, 1st Session, 39th Parliament, 9 May 2007, p. 2319 (Senator Raynell Audreychuk).

Canada has been a party to the Inter-American Convention against Corruption, under the auspices of the Organization of American States, since June 2000. We have also been a party to the United Nations Convention against Transnational Organized Crime, which deals with the transnational and organized crime aspects of corruption. As well, we have been a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions since 1998.

Since we ratified these international legal instruments, officials have been actively engaged in supporting them through monitoring activities and the delivery of assistance to other states parties that have requested it.

Canada's ratification of the United Nations Convention against Corruption will be an important and logical extension of its international commitments in the global fight against corruption.