Overall Score:

81 - Strong

Legal Framework Score:

90 - Strong

Actual Implementation Score:

70 - Weak

Category I. Civil Society, Public Information and Media

I-1. Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

References:
– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, subsection 2(d) freedom of association"
  

– Canada Corporations Act (1970, c. C-32 ), PART II: CORPORATIONS WITHOUT SHARE CAPITAL
  
http://lois.justice.gc.ca/en/showtdm/cs/C-1.8

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.
1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

References:
– Canada Corporations Act (1970, c. C-32), PART II: CORPORATIONS WITHOUT SHARE CAPITAL
  — http://lois.justice.gc.ca/en/showtdm/cs/C-1.8

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

References:
– Canada Corporations Act (1970, c. C-32), PART II: CORPORATIONS WITHOUT SHARE CAPITAL
  — http://lois.justice.gc.ca/en/showtdm/cs/C-1.8

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

100

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0
100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

References:

The HR Council for the Voluntary/Non-profit Sector — [http://www.hrscouncil.ca/council/index_e.cfm](http://www.hrscouncil.ca/council/index_e.cfm)


Democracy Watch’s Web site shows extensive activity engaging in political and policymaking processes — [http://www.dwatch.ca](http://www.dwatch.ca) — as do the following anti-corruption/good governance organizations (for example):

Canadian Civil Liberties Association — [http://www.ccla.org](http://www.ccla.org)


Council of Canadians — [http://www.canadians.org](http://www.canadians.org)

Transparency International Canada — [http://www.transparency.ca](http://www.transparency.ca)
Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:
– Internet search and government of Canada Web site search produced no examples of anti-corruption/good governance civil society organizations being shut down in the past year (or in any recent year)
– Young, Lisa and Joanna Everitt, Advocacy Groups” (Vancouver: UBC Press, 2004)
– The HR Council for the Voluntary/Non-profit Sector — http://www.hrcouncil.ca/council/index_e.cfm

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO
References:
– Internet search and government of Canada Web site search produced no examples of anti-corruption activists being imprisoned in the past year (or any recent years).

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person’s work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned* is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:
– Internet search and government of Canada Web site search produced no examples of anti-corruption/good governance civil society activists being physically harmed.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist’s work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:
– Internet search and government of Canada Web site search produced no examples of anti-corruption/good governance civil society activists being killed.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual’s history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on
4. Can citizens organize into trade unions?

88

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:
– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, subsection 2(d) freedom of association


– Under many provincial labor laws, migrant agriculture workers (including those who enter Canada through a government-sponsored program) are not permitted to organize into trade unions.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

References:
– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, subsection 2(d) freedom of association


– Nine out of 13 jurisdictions in Canada recognize union certifications through the union card sign-up system
Under many provincial labor laws, migrant agriculture workers (including those who enter Canada through a government-sponsored program) are not permitted to organize into trade unions.


According to a 2007 report of the International Labor Organization, COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2008), section on Canada (pages 14-18) — “the legislation in several Canadian provinces/territories does not comply with C.98 and there is no willingness of these provinces to harmonize their laws with the ILO Conventions; (ii) some categories of workers are excluded from the legal framework on the PR (members of the medical, dental, architectural, legal and engineering professions, when employed in their professional capacity, agricultural workers and privately employed domestics); (iii) there is an excessive government intervention in collective bargaining in the private sector, which provides ways for the employer to bypass the union as collective bargaining agent.” — [http://www.ilo.org/public/english/standards/relm/gb/docs/gb298/pdf/baseline-facb.pdf](http://www.ilo.org/public/english/standards/relm/gb/docs/gb298/pdf/baseline-facb.pdf)

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.
NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

100

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:
The Internet, with its essentially completely open registration system (for domain names) and regulation system (for Web site content) in Canada under the Canadian Internet Registration Authority (CIRA — http://www.cira.ca ), allows anyone with a computer and Internet connection to be a print media outlet (obviously in electronic format) within Canada, whether or not their Web site is in Canada.

References:
– Under the Canada Corporations Act (1970, c. C-32 ), media entities can be formed (just like any other corporation is formed) either under PART I: CORPORATIONS WITH SHARE CAPITAL or under PART II: CORPORATIONS WITHOUT SHARE CAPITAL — http://lois.justice.gc.ca/en/showtdm/cs/C-1.8

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.
Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

Comments:
The Internet, with its essentially completely open registration system (for domain names) and regulation system (for Web site content) in Canada under the Canadian Internet Registration Authority (CIRA — http://www.cira.ca ), allows anyone with a computer and Internet connection to be a print media outlet (obviously in electronic format) within Canada, whether or not their Web site is in Canada.

References:
No print media licenses are required.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

References:
No license is required.

100: Licenses are not required or licenses can be obtained within two months.
50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

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Comments:
The Internet, with its essentially completely open registration system (for domain names) and regulation system (for Web site content) in Canada under the Canadian Internet Registration Authority (CIRA — http://www.cira.ca ), allows anyone with a computer and Internet connection to be a print media outlet (obviously in electronic format) within Canada, whether or not their Web site is in Canada.

References:
No license is required.

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100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

63

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

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Comments:
The Internet, with its essentially completely open registration system (for domain names) and regulation system (for Web site content) in Canada under the Canadian Internet Registration Authority (CIRA — http://www.cira.ca ), allows anyone with a computer and Internet connection to be a print media outlet (obviously in electronic format) within Canada, whether or not their Web site is in Canada.
References:


- See also for details on broadcast licenses: http://www.canadabusiness.ca/servlet/ContentServer?cid=1081944212491=en&pagename=CBSC_ON%2Fdisplay&c=Regs

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:
The Internet, with its essentially completely open registration system (for domain names) and regulation system (for Web site content) in Canada under the Canadian Internet Registration Authority (CIRA — http://www.cira.ca ), allows anyone with a computer and Internet connection to be a print media outlet (obviously in electronic format) within Canada, whether or not their Web site is in Canada.

References:

- There is a right of appeal to the Federal Court of Appeal under various sections (with regard to offences and prosecutions of the Radiocommunication Act (R.S., 1985, c. R-2) — http://lois.justice.gc.ca/en/showtdm/cs/R-2

- There is a right of appeal to the Federal Court of Appeal under section 64 of the Telecommunications Act (1993, c. 38)
YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100  75  50  25  0

Comments:
The Internet, with its essentially completely open registration system (for domain names) and regulation system (for Web site content) in Canada under the Canadian Internet Registration Authority (CIRA — http://www.cira.ca ), allows anyone with a computer and Internet connection to be a print media outlet (obviously in electronic format) within Canada, whether or not their Web site is in Canada.

References:

– The CRTC’s application workload (mainly dealing with mergers and takeovers in the broadcast media industry in the past seven years or so, and also with several broad policy issues (e.g. regulation of the Internet) means that applications for new or changed licenses often take several months (for example, most recently, the applications for satellite broadcasting licenses)

-See for details
As TV Industry Enters Shakedown, Bureaucrats Need A Shake Even More"
Deirdre McMurdy
Ottawa Citizen, Aug. 29, 2007, p. A5

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100  75  50  25  0

Comments:
The Internet, with its essentially completely open registration system (for domain names) and regulation system (for Web site content) in Canada under the Canadian Internet Registration Authority (CIRA — http://www.cira.ca ), allows anyone with a
computer and Internet connection to be a print media outlet (obviously in electronic format) within Canada, whether or not their Web site is in Canada.

References:

– The CRTC’s application workload (mainly dealing with mergers and takeovers in the broadcast media industry in the past seven years or so, and also with several broad policy issues (e.g. regulation of the Internet) means that applications for new or changed licenses often take several months (for example, most recently, the applications for satellite broadcasting licenses)

– The CRTC usually holds hearings in the national capital area before issuing new licenses and requires applications to include a detailed business plan that is costly to produce, as it must demonstrate a market for the broadcaster (necessitating market research) and all other financial details.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published online.

References:
– The Internet in Canada has essentially a completely open registration system (for domain names) and regulation system (for Web site content) under the Canadian Internet Registration Authority (CIRA — http://www.cira.ca ) and access to content published online is not restricted.

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:
Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

References:
– The Internet in Canada has essentially a completely open registration system (for domain names) and regulation system (for Web site content) under the Canadian Internet Registration Authority (CIRA — http://www.cira.ca ) and the government does not censor citizens creating content online (except, as noted in the details about this indicator, restrictions on content that violates intellectual property rights, involves direct calls to violence (or hate); or violates obscenity laws (pornography)).

The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.
References:

– The Charter right set out above is limited by Canadian provincial libel and slander laws (they are provincial because of the split of jurisdictional powers under the Canadian Constitution between the federal, provincial and territorial governments) and the common law of libel and slander — generally the laws and the common law allow for not only the defence of truth, but also the defence of “fair comment” (which essentially allows for negative, derogatory opinions to be expressed as long as they are fairly based on facts) and privilege (the importance of reporting the information outweighs the possibility that the reputation of a person or entity may be somewhat damaged by the publication of the information.

See for details the article on libel law the following Web page — http://www.lawsonlundell.com/resources/lawofdefamation.pdf

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:
– Overall, almost all of the media in Canada are accepting low-level corrupt and/or unethical activities (e.g. small gifts from lobbyists, secret lobbying, lobbyists working (on election campaigns, or as informal or formal advisors) for politicians they are lobbying) as practices in Canada’s political system that have always existed and have been widespread (and, therefore, must always exist).

– The Adscam sponsorship scandal and the Gomery Commission Inquiry into the scandal changed media attitudes with regard to political donations (as government money was flowed to political parties through the sponsorship program).

References:
– The government regularly restricts investigations by the media into corruption-related issues by denying information that the media (and the public) have a clear, legal right to see and obtain under the federal Access to Information Act (R.S., 1985, c. A-1) — http://lois.justice.gc.ca/en/showtdm/cs/A-1

See the annual reports of the federal Information Commissioner for details — http://www.infocom.gc.ca/menu-e.asp

– The federal Prime Minister Stephen Harper in 2006 instituted a new system in which reporters were required to submit their names in advance for government news conferences if they wanted to ask a question, and the government official would then select questioners from the list (thereby essentially censoring questioning by the media). In the past, a member of media (changing each news conference) would oversee news conferences and select questioners without government interference.

See for details
Tories Seem To Favour ‘Friendly’ Reporters in Wake of Terror Sweep
Allan Woods,
National Post, June 6, 2006, p.A6
[NOTE: “Tories” is the informal name for the Conservative Party in Canada]

– These and other practices by the federal government, along with other factors (mainly court cases challenging journalists’ right to keep sources confidential) led international press freedom organization Reporters Without Borders to criticize Canada and its press freedom ranking of 16th in the world in 2006 —
In addition, there is an ongoing pattern of the media self-censoring stories about corruption-related issues, in particular simply not covering, or downplaying corrupt or unethical activities by federal politicians, political staff, Cabinet appointees and government employees and/or their corrupt or unethical relationships with lobbyists, and how the government watchdogs (especially the Ethics Commissioner and the Registrar of Lobbyists) address complaints about such unethical activities and relationships.

For example, see the information contained in the following Democracy Watch news releases and the media coverage received at the time as listed on the following Democracy Watch Web page — http://www.dwatch.ca/allmedia.htm

– With regard to the former Ethics Counsellor’s handling of several complaints between 2000 and 2004 (NOTE: the media regularly called the Ethics Counsellor the “Ethics Czar” or “Ethics Watchdog” even though, in fact, the Ethics Counsellor had no investigative powers, nor any power to make rulings, and only advised (and usually defended) the Prime Minister and Cabinet ministers when ethics complaints were filed) — http://www.dwatch.ca/camp/Eight_Ethics_Complaints.html

– With regard to the former Ethics Commissioner’s handling of several ethics complaints between March 2004 and April 2007 (NOTE: the media regularly downplayed the Ethics Commissioner’s complete lack of expertise (no legal training, no experience in law enforcement or quasi-judicial positions) and failed to cover the Commissioner’s refusal to rule on several completely valid complaints (refusals that allowed politicians to continue corrupt or unethical activities) — http://www.dwatch.ca/camp/RelsSep2905.html http://www.dwatch.ca/camp/RelsApr0507.html

– With regard to the federal Registrar of Lobbyists’ handling of several ethics complaints since March 2004 (NOTE: the media regularly downplayed the Registrar’s complete lack of expertise (no legal training, no experience in law enforcement or quasi-judicial positions, and failed to cover the Registrar’s ongoing refusal to comply with a Federal Court order to rule on several completely valid ethics complaints (refusals that allowed politicians and lobbyists to continue corrupt or unethical activities) — http://www.dwatch.ca/camp/RelsSep2905.html http://www.dwatch.ca/camp/RelsJan2507.html

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

References:
There is no public evidence that Canada’s federal (national) government censored at pre-publication stage any corruption-related media stories.

100: The government never prevents publication of controversial corruption-related materials.

75:
The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

90

10a. In law, print media companies are required to disclose their ownership.

YES | NO

Comments:
– The Internet, with its essentially completely open registration system (for domain names) and regulation system (for Web site content) in Canada under the Canadian Internet Registration Authority (CIRA — http://www.cira.ca ), allows anyone with a computer and Internet connection to be a print media outlet (obviously in electronic format) within Canada, whether or not their Web site is in Canada.

– As it is possible to register a domain without disclosing your identity, it is possible to be a print media company in Canada through the Internet and not disclose your ownership.

References:
– Under the Canada Corporations Act (1970, c. C-32 ), media entities can be formed (just like any other corporation is formed) either under PART I: CORPORATIONS WITH SHARE CAPITAL or under PART II: CORPORATIONS WITHOUT SHARE CAPITAL, and in either case their legally required annual filings with the federal government must detail their owners (if they have share capital/shareholders) or board members (if a non-profit corporation owns the publication)
  — http://lois.justice.gc.ca/en/showtdm/cs/C-1.8

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

Comments:
– The Internet, with its essentially completely open registration system (for domain names) and regulation system (for Web site content) in Canada under the Canadian Internet Registration Authority (CIRA — http://www.cira.ca ), allows anyone with a computer and Internet connection to be a print media outlet (obviously in electronic format) within Canada, whether or not their Web site is in Canada.
As it is possible to register a domain without disclosing your identity, it is possible to be a print media company in Canada through the Internet and not disclose your ownership.

References:

- To obtain a license, a broadcaster must include in the application details concerning the ownership of the broadcast company (many of which are publicly traded companies, and so also list their ownership under the requirements of security laws in Canadian provinces).

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

References:
- Report Card on Canadian News Media by the Canadian Media Research Consortium

Homepage for the Consortium is
http://www.cmrcccrm.ca

- There is no law requiring Canada's media to adhere to strict, professional practices in their reporting (no law such as the Fairness Doctrine" that used to be law in the United States), and no other law other than libel and slander laws in Canadian provinces and court rulings on the common law of libel

See for details the article on libel law the following Web page — http://www.lawsonlundell.com/resources/lawofdefamation.pdf

- There is no effective enforcement of media companies’ internal codes, as all codes are “enforced” by either internal company ombudsmen, or press councils in each province, whose members are chosen by the press.

See for details — http://www.ontpress.com/about/other_councils.asp

or the Canadian Broadcast Standards Council (CBSC), which was created by the Canadian Association of Broadcasters (CAB) http://www.cbsc.ca/english/main/home.htm —

- As a result, as the Report Card on Canadian News media showed, Canadians are very concerned about balance and fairness of the news media in Canada, and also about reporter bias and accountability of the media.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.
Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

Editors and journalists are widely known to sell favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

In practice, during the most recent election, political parties or independent candidates received fair media coverage.

References:
– The only extensive study of media coverage (newspaper only) during the 2005-2006 federal election campaign concluded that media coverage overall was fair.


– The leader of one political party (the Green Party of Canada) that did not have a incumbent candidate, but had registered candidates in almost all of the 308 electoral districts (known colloquially in Canada as ridings) was not allowed by the consortium of broadcast companies that control the televised and radio debates between party leaders to participate in the debate — even though the leader of another party (the Bloc Québécois) that had many incumbent candidates but only registered candidates in one province in Canada, was allowed to participate in the debate.

– Some major newspapers in Canada have a persistent bias in terms of which parties they support in editorial board editorials leading up to election voting day (for example, the National Post supports the Conservatives, the Toronto Star supports the Liberals).

– In addition, the media exaggerated very minor swings in polls in the two months leading up to the election (all the swings were within the margin of error) and failed to mention the percentage of undecided voters in almost all of these stories.


All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

In practice, political parties and candidates have equitable access to state-owned media outlets.
References:
– While some questions are always raised about the coverage provided by the federal-government-owned Canadian Broadcasting Corporation (CBC — http://www.cbc.ca) and its French-language equivalent Radio Canada (http://www.radio-canada.ca), there is no concrete evidence that the media coverage of federal political parties by the CBC and Radio Canada is unequal or unfair.

– Under the Canada Elections Act, all federally registered political parties are charged the same advertising rates in between elections, and also get free TV and radio broadcast time during federal election campaign periods allocated by the Broadcast Arbitrator (an official of the Elections Canada agency) based upon the number of seats held by each party in the House of Commons, the percentage of vote received by each party in the previous election, and the number of candidates each party has registered for the current election.

See details at: http://www.elections.ca/content.asp?section=med&document=index&dir=bra=e&textonly=false

– There are no state-owned print media entities in Canada.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:
In the past year, no journalists investigating corruption have been imprisoned.

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

References:
There were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:
There were no documented cases of journalists being killed because of their work covering corruption-related issues during the past year.

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.
12. Do citizens have a legal right of access to information?

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:
The federal Access to Information Act (ATI Act) has the following key loopholes:
– is does not cover all government/publicly funded institutions;
– government/publicly funded institutions are not required to review and disclose documents regularly by placing them on the Internet;
– government officials are not required to create a written document that records all decisions and actions;
– there is no public interest override (based on a proof-of-harm test) of all access exemptions;
– Cabinet documents are not subject to review by the Information Commissioner to ensure that the exemption that applies to such documents is not abused;
– the federal Information Commissioner does not have the power to order the release of documents (as the commissioner’s in the Canadian provinces of Ontario, Alberta and B.C. have), to order changes to government institutions’ information systems, and to penalize violators of access laws, regulations, policies and rules;
– most of the exemptions and exclusions in the ATI Act are mandatory, and they should be changed into discretionary exemptions, and;
– government institutions (including all Crown corporations, Offices of Parliament, foundations, and organizations that spend taxpayers’ money or perform public functions) are not required to file within six months of completion a copy of any report of public opinion research with the parliamentary Librarian and Archivist (NOTE: the Conservatives promised to Ensure that all government public opinion research is automatically published within six months of the completion of the project” but the Federal Accountability Act (FAA — passed December 2006) only requires some government institutions to file a copy of research conducted by an outside company, which means much research will remain secret).

References:
Access to Information Act (R.S., 1985, c. A-1) —

Office of the Information Commissioner of Canada —
http://www.infocom.gc.ca/menu-e.asp

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO
YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:
The federal Access to Information Act (ATI Act) does not cover all government/publicly funded institutions.

References:

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100  |  75  |  50  |  25  |  0

Comments:
The federal Access to Information Act (ATI Act) requires release of information within 30 days, but many government/publicly funded institutions do not maintain an internal information system that can fulfill access-to-information requests as required by the
Act, and are not effectively required to do so (because the Information Commissioner lacks enforcement powers and resources, especially the power to order the release of documents when a requester complains about delays or abuse of access exemptions.)

NOTE: the Information Commissioners in the Canadian provinces of Ontario, Alberta and B.C. have the power to order the release of documents.

References:

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

References:

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.
Comments:
The Information Commissioner lacks powers and resources to resolve complaints, especially the power to order the release of documents when a requester complains about delays or abuse of access exemptions.

NOTE: the Information Commissioners in the Canadian provinces of Ontario, Alberta and B.C. have the power to order the release of documents.

As a result, requesters' only option is to file an appeal in Federal Court, which usually delays access to a document for one to two years, but can delay access for several years depending on motions and appeals by the government institution.

References:

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

Comments:
The federal Information Commissioner's complaint process takes time, but there is no filing or other fees for the service. The Information Commissioner does not have the power to order the release of documents when a requester complains about delays or abuse of access exemptions.

NOTE: the Information Commissioners in the Canadian provinces of Ontario, Alberta and B.C. have the power to order the release of documents.

As a result, requesters' only option is to file an appeal in Federal Court, which usually delays access to a document for one to two years, but can delay access for several years depending on motions and appeals by the government institution.

References:
Office of the Information Commissioner of Canada Annual Report for Fiscal Year 2006-2007 (covers the period from April 1,
100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100  75  50  25  0

References:

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?
14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:


YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, subsection 4 no longer than five years” and 4(2) “In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.” — http://lois.justice.gc.ca/en/Const/annex_e.html#I

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

100

15a. In practice, all adult citizens can vote.
Comments:
– There is an ongoing problem with people who do not have a residence identifying themselves for the purpose of voter registration and voting, but adequate identification is available, and registration processes are open. The question is how much effort voters in this situation should have to put into registering vs. how active the government should be in ensuring they are registered.

– Bill C-31, passed into law on June 22, 2007, changed sections 143 to 145 of the Canada Elections Act (2000, c. 9) — http://lois.justice.gc.ca/en/showtdm/cs/E-2.01 — to require voters to identify themselves at polling stations with proper identification (subsection 143(2) and regulations to define acceptable identification) or take an oath that they are who they claim to be and also have another, fully and properly identified voter vouch for their identity (subsection 143(3) and (5)). This measure may increase problems for voters as it is a new requirement, but hopefully the list of acceptable identification will be broad enough so as to avoid problems.

References:


100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

References:
– Internet search resulted in no articles or reports of ballot secrecy being violated at the federal level, nor did the review of the Chief of Electoral Officer’s report on the Jan. 23, 2006 federal general election — http://www.elections.ca/content.asp?section=pas&document=index&dir=39ge)=e&textonly=false

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:
50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

References:
– Federal elections have been held at least every five years throughout the history of Canada except in June 1896, October 1935, and June 1945 (which were all about three months over five years since the previous election).

See Elections Canada —
http://www.elections.ca


– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, subsection 4 no longer than five years” and 4(2) “In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.”

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

95

16a. In law, all citizens have a right to form political parties.
References:


YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:
– There is currently an active court challenge of clause 67(4)(b) of the Canada Elections Act which requires a $1,000 (US$1,026) deposit to Elections Canada to be a candidate in a nomination race to become the candidate in a federal election (whether or not the nomination is contested — note, the deposit is refunded by Elections Canada after the required report on the campaign is filed) — the basis of the case is that the requirement violates the Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, section 3 right to be qualified for membership” in the legislatures of the country — http://lois.justice.gc.ca/en/Const/annex_e.html#I — the courts will decide whether this deposit requirement amounts to a legal restriction barring certain individuals (i.e. people with low incomes) from running for political office, or is a “reasonable limit[s] prescribed by law as can be demonstrably justified in a free and democratic society” and is therefore constitutional under section 1 of the Charter

– Based on recent similar cases that successfully challenged, for example, a section of the Canada Elections Act that required a political party to have 50 candidates before it could register as a party, and given that the average annual salary in Canada is approximately $35,000 (US$35,900), I predict that the courts will rule that the $1,000 deposit requirement is too high, but that a lower required amount (e.g. $200 – US$205) would be constitutional

– NOTE: the Senate of Canada is appointed by the Prime Minister of Canada, not elected, on the basis of province (each province of Canada has a constitutional right to a specific number of seats in the Senate) and under section 23 of The Constitution Act, 1867 — http://lois.justice.gc.ca/en/Const/index.html — only Canadians or United Kingdom citizens who are 30 years old or older who own land worth $4,000 (US$4106) or more and who have assets in total worth $4,000 or more than their debts and liabilities are eligible to be appointed to the Senate.

References:


YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.
16c. In practice, all citizens are able to form political parties.

Comments:
– A provision added to the Canada Elections Act by a bill passed in 1999 required parties to have 50 candidates in order to registered as a party, but this requirement was ruled unconstitutional (a violation of the Charter of Rights and Freedoms freedom of association” right) by the Ontario Court of Appeal (and was subsequently removed from the Act).

References:
– Sections 366 to 403 of Division 1 of Part 18 of the Canada Elections Act (2000, c. 9) — http://lois.justice.gc.ca/en/showtdm/cs/E-2.01 — require that a party collect the signatures of 250 voters and have proper officers (Chief Agent, Auditor, Leader) in the application and a stated intent to nominate candidates for office, and so the administrative requirements to forming a federal political party in Canada pose insignificant obstacles.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

References:
– There is currently an active court challenge of clause 67(4)(b) of the Canada Elections Act which requires a $1,000 (US$1,026) deposit to Elections Canada to be a candidate in a nomination race to become the candidate in a federal election (whether or not the nomination is contested — note, the deposit is refunded by Elections Canada after the required report on the campaign is filed) — the basis of the case is that the requirement violates the Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, section 3 right to be qualified for membership” in the legislatures of the country — http://lois.justice.gc.ca/en/Const/annex_e.html#I — the courts will decide whether this deposit requirement amounts to a legal restriction barring certain individuals (ie. people with low incomes) from running for political office, or is a “reasonable limit[s] prescribed by law as can be demonstrably justified in a free and democratic society” and is therefore constitutional under section 1 of the Charter

– Based on recent similar cases that successfully challenged, for example, a section of the Canada Elections Act that required a political party to have 50 candidates before it could register as a party, and given that the average annual salary in Canada is approximately $35,000 (US$35,900), I predict that the courts will rule that the $1,000 deposit requirement is too high, but that a lower required amount (e.g. $200 – US$205) would be constitutional
NOTE: the Senate of Canada is appointed by the Prime Minister of Canada, not elected, on the basis of province (each province of Canada has a constitutional right to a specific number of seats in the Senate) and under section 23 of The Constitution Act, 1867 — http://lois.justice.gc.ca/en/Const/index.html — only Canadians or United Kingdom citizens who are 30 years old or older who own land worth $4,000 (US$4106) or more and who have assets in total worth $4,000 or more than their debts and liabilities are eligible to be appointed to the Senate.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

References:
– An opposition party has always been represented in the federal legislature of Canada since the country was formed in 1867. See Elections Canada — http://www.elections.ca

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity
17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

**References:**


**YES:** A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

**NO:** A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

80

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

**References:**


The Chief Electoral Officer is appointed after consultation with the leaders of all political parties in the federal Parliament, and serves until mandatory retirement age of 65.
NOTE: One ongoing past concern was resolved by the passage of Bill C-2, the Federal Accountability Act, in December 2006. Before the passage of this law, the ruling party Cabinet appointed Returning Officers, who are the front-line people who run polling stations in each riding and are the first level of appeal for any complaints about voters or voting. Under the changes to the Canada Elections Act made by Bill C-2, the Chief Electoral Officer now has the power and mandate to appoint Returning Officers under section 24 of the Act.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

References:

– The Chief Electoral Officer appoints a Commissioner of Elections under section 509 of the Canada Elections Act, whose role is enforcement of the Act (including prosecution through the Director of Public Prosecutions)

– The Chief Electoral Officer also appoints a Broadcasting Arbitrator under section 332 of the Canada Elections Act (if registered political parties’ representatives cannot reach a unanimous decision on the dividing up of free TV and radio broadcast time during a federal election campaign period, and cannot reach a unanimous decision on the choice of the Arbitrator). The Arbitrator determines the free broadcast time each party will receive during the election campaign.

– There are no requirements in law that the Chief Electoral Officer, the Commissioner of Elections, or the Broadcasting Arbitrator have any professional qualifications, and the recently appointed Chief Electoral Officer has no experience heading up an election agency.

NOTE: one ongoing past concern was resolved by the passage of Bill C-2, the Federal Accountability Act, in December 2006. Before the passage of this law, the ruling party Cabinet appointed Returning Officers, who are the front-line people who run polling stations in each riding and are the first level of appeal for any complaints about voters or voting. Under the changes to the Canada Elections Act made by Bill C-2, the Chief Electoral Officer now has the power and mandate to appoint Returning Officers under section 24 of the Act.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.
18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

References:

– The Chief Electoral Officer appoints a Commissioner of Elections under section 509 of the Canada Elections Act, whose role is enforcement of the Act (including prosecution through the Director of Public Prosecutions)

– The Chief Electoral Officer also appoints a Broadcasting Arbitrator under section 332 of the Canada Elections Act (if registered political parties’ representatives cannot reach a unanimous decision on the dividing up of free TV and radio broadcast time during a federal election campaign period, and cannot reach a unanimous decision on the choice of the Arbitrator). The Arbitrator determines the free broadcast time each party will receive during the election campaign.

– There are no requirements in law that the Chief Electoral Officer, the Commissioner of Elections, or the Broadcasting Arbitrator have any professional qualifications, and the recently appointed Chief Electoral Officer has no experience heading up an election agency.

NOTE: one ongoing past concern was resolved by the passage of Bill C-2, the Federal Accountability Act, in December 2006. Before the passage of this law, the ruling party Cabinet appointed Returning Officers, who are the front-line people who run polling stations in each riding and are the first level of appeal for any complaints about voters or voting. Under the changes to the Canada Elections Act made by Bill C-2, the Chief Electoral Officer now has the power and mandate to appoint Returning Officers under section 24 of the Act.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

References:
– Reports after general elections and by-elections (elections held in specific electoral districts vacated for whatever reason by a Member of the House of Commons in between general elections) are made public on a timely basis by the Chief Electoral Officer — http://www.elections.ca/content.asp?section=gen&document=index&dir=re&re2=e&textonly=false
100: Reports are released to the public on a predictable schedule, without exceptions.

75: 

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25: 

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

Comments: 
– The score of 50 is given because it remains largely unknown how Elections Canada has handled (investigated, resolved, corrected, penalized) hundreds of complaints concerning violations of the Canada Elections Act over the past three years, and as a result its enforcement effectiveness cannot be judged.

References: 

– However, since 2000, the Commissioner of Canada Elections has been empowered under the Canada Elections Act to reach compliance agreements with violators (or likely violators) of the Act, and has used this process several times instead of prosecuting and seeking penalties. http://www.elections.ca/content.asp?section=loi&document=index&dir=agr)=e&textonly=false

– Also, in the Enforcement” section of the October 2004 report on the process and results of the June 2004 election, the Chief Electoral Officer reported that 505 complaints had been filed, 389 had been resolved, 116 remained open, and that “As the cases progress, updated statistics on complaints, investigations and prosecutions appear in the Chief Electoral Officer’s periodic reports and publications, as well as on the Elections Canada Web site”. However, details about the 505 complaints (the nature of the complaint, the results of the investigation, the nature of the resolution of the complaint) are not in the report, nor in any other publicly available report from Elections Canada, and the Compliance Agreement and Sentencing Digest Web pages set out above contain details about only a dozen or so cases from 2004. http://www.elections.ca/content.asp?section=gen&document=part2_div9&dir=rep/re2/sta2004)=e&textonly=false#sec96

– When legal limits on federal political donations first came into force on Jan. 1, 2004, there were media reports of donations above the limits during the May-June 2004 federal election, and further media reports that Elections Canada only required the donations to be returned.

– In section 4.2.4 of the Electoral Law Enforcement of the May 2006 report on the process and results of the January 2006 election, the Chief Electoral Officer reported that 329 complaints had been filed, 231 had been resolved, 98 remained open, and that “As cases progress, updated statistics on complaints, compliance agreements and prosecutions appear in the Chief Electoral Officer’s periodic reports and publications”. However, details about the 329 complaints (the nature of the complaint, the results of the investigation, the nature of the resolution of the complaint) are not in the report, nor in any other publicly available report from Elections Canada, and the Compliance Agreement and Sentencing Digest Web pages set out above contain details about only a dozen or so cases from 2006. http://www.elections.ca/content.asp?section=gen&document=part2_div9&dir=rep/re2/sta_2006)=e&textonly=false#p4_24

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.
19. Are elections systems transparent and effective?

96

19a. In practice, there is a clear and transparent system of voter registration.

Comments:
– When the Register was first created after the 2000 federal general election, there were many problems, including a massive error by Elections Canada that duplicated about 1 million names in the Register. Since that error was discovered, and as time has passed, the accuracy of the Register is generally viewed as improved.

References:
– Under Part 4 (sections 44 to 56) of the Canada Elections Act (2000, c. 9) — http://lois.justice.gc.ca/en/showtdm/cs/E-2.01 — there is a Register of Electors (voters) maintained by Elections Canada that is updated by voters registering or indicating changes on their annual tax forms, or census forms, or other forms submitted to government institutions in which the voter can indicate that their information can be shared with Elections Canada to ensure the Register is up-to-date.

– In addition, voters receive a notice of who is registered to vote at the address at which they live early on during each federal election campaign period, and may register or make changes to their registration in advance of an election by submitting a form to Elections Canada, or may also register at the polling station on election voting day if they present adequate identification showing that they are a resident of the electoral district.

– In addition, in electoral districts which have frequent changes to the Register, the Chief Electoral Officer has conducted door-to-door enumeration efforts in an attempt to ensure that the Register is up-to-date.

– An ongoing problem occurs when elections are held in May or September/October, as during those time periods hundreds of thousands of university and college students move cities or provinces (at the end or beginning of the school year) and, as a result, they are often unable to vote as they are registered to vote in the electoral district of their old residence, and/or they do not have adequate identification to prove that they are a resident of their new electoral district (especially given that federal election campaign periods are not required by law to be longer than 35 days). As Bill C-16 passed into law in May 2007 amending the Canada Elections Act (by adding sections 56.1 and 56.2 and making related changes) to fix the date of elections every four years on the Monday of the 3rd week of October (except when a minority government exists and an election results from a vote in the House of Commons against the minority ruling party), this problem is now somewhat solved.

– An ongoing, more difficult problem, is that people without a residence are often also without adequate identification needed to prove that they are residents in an electoral district.

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.
50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

References:
– Under subsection 300(1) (in Part 14) of the Canada Elections Act, judicial recounts are automatic if certain conditions exist — 300. (1) If the difference between the number of votes cast for the candidate with the most votes and the number cast for any other candidate is less than 1/1000 of the votes cast, the returning officer shall make a request to a judge for a recount within four days after the results are validated.”

– Under subsection 301 of the Act, judicial recounts can also be applied for if there is reasonable grounds to believe that ballots have been rejected unjustifiably or counted incorrectly.


– There is no public evidence that applications for judicial recounts of federal election results have been unjustifiably rejected in recent years.

– There was only one automatic recount, and one application for a recount, following the January 2006 federal election.
The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

In practice, the military and security forces remain neutral during elections.

In law, domestic and international election observers are allowed to monitor elections.
YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

10f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

References:

– There have been no publicly reported situations in which observers from other countries or international agencies have observed Canadian federal elections on a significant scale in recent decades (other than the embassies of other countries’ general observation activities).

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers’ activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers’ movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

II-3. Political Financing

20. Are there regulations governing political financing?

100
20a. In law, there are regulations governing private contributions to political parties.

**YES | NO**

**References:**


**YES:** A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

**NO:** A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

**YES | NO**

**Comments:**
As of January 1, 2007, under the Canada Elections Act:
– donations from corporations, unions or organizations of any kind to any party or any type of candidate at any time are prohibited;
– the annual limit on individual donations is decreased from $5,000 to $1,100 (US$5,133 to US$1,130) total to each party;
– the annual limit on individual donations is decreased from $5,000 to $1,100 combined total to each party's nomination race candidates, election candidates, and riding associations;
– the annual limit on individual donations is decreased from $5,000 to $1,100 total to each election candidate who runs as an independent;
– the limit on individual donations is decreased from $5,000 to $1,100 to each candidate during a campaign for the leadership of a party;
– cash donations of more than $20 (US$21) are banned, to ensure that there is a written record of almost all donations.

The limits increase annually on April 1 by the rate of inflation.

As of June 12, 2007, under the Canada Elections Act:
– secret, unlimited donations of money, property or services made directly to candidates in federal elections are banned, and almost all donations of more than $500 (US$513) are required to be disclosed to the Chief Electoral Officer within four months after each election (in the past, unlimited donations were allowed and did not have to be disclosed as long as the candidate did not use the donation for their campaign).

However, secret, unlimited donations of money, property or services are still legal to nomination race candidates, and to political party leadership race candidates, and to trust funds” maintained by constituency associations of political parties (unlimited donations are allowed and do not have to be disclosed as long as the candidate or riding association do not use the donation for an election campaign).

**References:**
YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

| YES | NO |

Comments:
As of Jan. 1, 2007, under the Canada Elections Act, donations from corporations, unions or organizations of any kind to any party or any type of candidate at any time are prohibited.

As of June 12, 2007, under the Canada Elections Act:
— secret, unlimited donations of money, property or services made directly to candidates in federal elections are banned, and almost all donations of more than $500 (US$513) are required to be disclosed to the Chief Electoral Officer within four months after each election (in the past, unlimited donations were allowed and did not have to be disclosed as long as the candidate did not use the donation for their campaign).

However, secret, unlimited donations of money, property or services are still legal to nomination race candidates, and to political party leadership race candidates, and to trust funds “maintained by constituency associations of political parties (unlimited donations are allowed and do not have to be disclosed as long as the candidate or riding association do not use the donation for an election campaign).

References:
Canada Elections Act (2000, c. 9) —


YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

| YES | NO |

Comments:
The limits are based on the number of voters in a constituency, and increase annually on April 1 by the rate of inflation, and are approximately $1 (US$1) per voter.
YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:
As of June 12, 2007, under the Canada Elections Act:
– secret, unlimited donations of money, property or services made directly to candidates in federal elections are banned, and almost all donations of more than $500 (US$513) will have to be disclosed to the Chief Electoral Officer within 4 months after each election (in the past, unlimited donations were allowed and did not have to be disclosed as long as the candidate did not use the donation for their campaign).

However, secret, unlimited donations of money, property or services are still legal to nomination race candidates, and to political party leadership candidates (unlimited donations are allowed and do not have to be disclosed as long as the candidate does not use the donation for their campaign).

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor’s name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO
Comments:
Elections Canada has the power to audit candidates’ finances, but not parties’ finances, and given that the parties hire their own auditors, their actual, effective independence is open to question.

References:

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES  |  NO

References:
Elections Canada — http://www.elections.ca/home.asp

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

63

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual’s ability to financially support a candidate or political party.

Comments:
As of June 12, 2007, under the Canada Elections Act:
– secret, unlimited donations of money, property or services made directly to candidates in federal elections are banned, and almost all donations of more than $500 (US$513) are required to be disclosed to the Chief Electoral Officer within four months after each election (in the past, unlimited donations were allowed and did not have to be disclosed as long as the candidate did not use the donation for their campaign).
In addition, spending by third party (non-political party) groups on paid advertising that supports a political party or candidate, or supports the platform of a political party or candidate, is limited during election campaign periods to $172,400 (US$176,990) annually, and $3,400 (US$3,490) within the geographical bounds of any constituency association (the limits increase annually on April 1st by the inflation rate).

However, secret, unlimited donations of money, property or services are still legal to nomination race candidates, and to political party leadership race candidates, and to trust funds maintained by constituency associations of political parties (unlimited donations are allowed and do not have to be disclosed as long as the candidate or riding association do not use the donation for an election campaign).

In addition, loans to political parties, constituency associations and candidates are not limited, and only political parties are required under the Canada Elections Act to disclose the amount and terms of loans. In between election campaign periods, there are no limits on spending by third parties (non-political parties) in direct or indirect support of political parties and/or constituency associations, and the limits on third party advertising that apply during election campaign periods do not apply during political party leadership campaign periods.

**References:**

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100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

---

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company’s ability to financially support a candidate or political party.

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**Comments:**
As of June 12, 2007, under the Canada Elections Act:
– secret, unlimited donations of money, property or services made directly to candidates in federal elections are banned, and almost all donations of more than $500 (US$513) are required to be disclosed to the Chief Electoral Officer within 4 months after each election (in the past, unlimited donations were allowed and did not have to be disclosed as long as the candidate did not use the donation for their campaign).

However, secret, unlimited donations of money, property or services are still legal to nomination race candidates, and to political party leadership race candidates, and to trust funds maintained by constituency associations of political parties (unlimited donations are allowed and do not have to be disclosed as long as the candidate or riding association do not use the donation for an election campaign). Donations of volunteer labor are not tracked (identity of volunteer and number of hours volunteered) nor disclosed to Elections Canada, allowing corporations, unions and other organizations to give unpaid leave to employees to volunteer for political parties and candidates, but then pay them when the return for the time they took to volunteer.
In addition, loans to political parties, constituency associations, and candidates are not limited, and only political parties are required under the Canada Elections Act to disclose the amount and terms of loans.

References:
Democracy Watch’s April 2006 analysis of Bill C-2, the Federal Accountability Act”
— http://www.dwatch.ca/camp/SummaryOfLoopholes.html

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

**21c.** In practice, the limits on total party expenditures are effective in regulating a political party’s ability to fund campaigns or politically-related activities.

| 100 | 75 | 50 | 25 | 0 |

Comments:
Elections Canada (the federal regulatory agency) does not have the power to audit political party finances, and parties choose their own auditors, and as a result it is open to parties to hide excess spending.

References:
Democracy Watch’s analysis of Bill C-2, the Federal Accountability Act”:
http://www.dwatch.ca/camp/SummaryOfLoopholes.html

**100:** Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

**25:**
0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:
Before 2005, the practice of Elections Canada was to neither confirm nor deny the existence of any investigations. Media attention about this practice in 2004-2005 led Elections Canada to begin to announce whether it had launched an investigation, but the announcements made in 2005 were all investigations of opposition parties.

In addition, Elections Canada does not have the power to audit the finances of political parties nor of riding associations, which limits its ability to initiate or complete investigations in the area of political finances.

References:
Elections Canada —
http://www.elections.ca/home.asp

Statutory reports section on following Elections Canada Web page: http://www.elections.ca/content.asp?section=pub&document=index&dir=onl)=e&textonly=false

Commissioner of Canada Elections on following Elections Canada Web page:
http://www.elections.ca/intro.asp?section=loi&document=index)=e

Democracy Watch’s analysis of Bill C-2, the Federal Accountability Act":
http://www.dwatch.ca/camp/SummaryOfLoopholes.html

100: The agency or entity aggressively starts investigations into allegations of wrongdoing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, thought limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:
Elections Canada usually only requires that illegal donations (usually donations above the legal limits) be returned, and does not usually prosecute nor penalize violators of the law.
References:
Elections Canada —
http://www.elections.ca/home.asp

Statutory reports section on following Elections Canada Web page: http://www.elections.ca/content.asp?
section=pub&document=index&dir=onl)=e&textonly=false

Commissioner of Canada Elections on following Elections Canada Web page:
http://www.elections.ca/intro.asp?section=loi&document=index)=e

Democracy Watch's analysis of Bill C-2, the Federal Accountability Act*:
http://www.dwatch.ca/camp/SummaryOfLoopholes.html

| 100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders. |
| 75: |
| 50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments. |
| 25: |
| 0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power. |

21f. In practice, contributions to political parties and candidates are audited.

| 100 | 75 | 50 | 25 | 0 |

Comments:
Political parties and constituency associations and candidates are required by the Canada Elections Act to provide their audited annual (parties and riding associations) and campaign (candidates) financial statements to Elections Canada, but Elections Canada does not have the power under the Act, nor the mandate, to audit the parties' and riding associations' statements, and does not audit all candidates' statements. As a result, it is very possible for parties, associations and candidates to submit an inaccurate financial statement.

References:
Elections Canada (federal regulatory agency) Web page re: law on political finances — http://www.elections.ca/intro.asp?
section=fin&document=index)=e

Statutory reports section on following Elections Canada Web page: http://www.elections.ca/content.asp?
section=pub&document=index&dir=onl)=e&textonly=false

Democracy Watch's analysis of Bill C-2, the Federal Accountability Act*:
http://www.dwatch.ca/camp/SummaryOfLoopholes.html

| 100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party. |
| 75: |
Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

**22. Can citizens access records related to political financing?**

67

In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

**Comments:**
Political parties are required by the Canada Elections Act to disclose their donations quarterly, but their expenses only annually.

Constituency associations are required by the Canada Elections Act to disclose their donations and expenditures only annually.

Nomination race and election candidates are required by the Canada Elections Act to disclose their donations and expenditures only four-six months after the day of the nomination vote, or election vote.

Political party leadership race candidates are required by the Canada Elections Act to disclose their donations 30 days before the date of the party leadership vote, and then every week during the last 30 days leading up to the vote.

As of June 12, 2007, under the Canada Elections Act:
– secret, unlimited donations of money, property or services made directly to candidates in federal elections are banned, and almost all donations of more than $500 (US$513) are required to be disclosed to the Chief Electoral Officer within 4 months after each election (in the past, unlimited donations were allowed and did not have to be disclosed as long as the candidate did not use the donation for their campaign).

However, secret, unlimited donations of money, property or services are still legal to nomination race candidates, and to political party leadership race candidates, and to trust funds* maintained by constituency associations of political parties (unlimited donations are allowed and do not have to be disclosed as long as the candidate or riding association do not use the donation for an election campaign).

In addition, loans to political parties, constituency associations, and candidates are not limited, and only political parties are required under the Canada Elections Act to disclose the amount and terms of loans.

**References:**

Democracy Watch’s April 2006 analysis of Bill C-2, the Federal Accountability Act“: [http://www.dwatch.ca/camp/SummaryOfLoopholes.html](http://www.dwatch.ca/camp/SummaryOfLoopholes.html)

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:
Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regularly withheld from public disclosure.

In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

Comments:
Political parties are required by the Canada Elections Act to disclose their donations quarterly, but their expenses only annually.
Constituency associations are required by the Canada Elections Act to disclose their donations and expenditures only annually.
Nomination race and election candidates are required by the Canada Elections Act to disclose their donations and expenditures only four-six months after the day of the nomination vote, or election vote.
Political party leadership race candidates are required by the Canada Elections Act to disclose their donations 30 days before the date of the party leadership vote, and then every week during the last 30 days leading up to the vote.

As of June 12, 2007, under the Canada Elections Act:
– secret, unlimited donations of money, property or services made directly to candidates in federal elections are banned, and almost all donations of more than $500 (US$513) are required to be disclosed to the Chief Electoral Officer within 4 months after each election (in the past, unlimited donations were allowed and did not have to be disclosed as long as the candidate did not use the donation for their campaign).

However, secret, unlimited donations of money, property or services are still legal to nomination race candidates, and to political party leadership race candidates, and to trust funds” maintained by constituency associations of political parties (unlimited donations are allowed and do not have to be disclosed as long as the candidate or riding association do not use the donation for an election campaign).

In addition, loans to political parties, constituency associations, and candidates are not limited, and only political parties are required under the Canada Elections Act to disclose the amount and terms of loans.

References:
Democracy Watch’s April 2006 analysis of Bill C-2, the Federal Accountability Act”:
http://www.dwatch.ca/camp/SummaryOfLoopholes.html

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.
22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:
Elections Canada maintains online registries of donations that are updated reasonably soon after data is received from political parties, constituency associations and candidates. The registries are fully searchable for no cost.

References:

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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Category III. Government Accountability

III-1. Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES | NO
YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

81

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

References:
– Under the rules of the House of Commons, there is a daily Question Period* during which members of the opposition parties may question ministers.

– The current Prime Minister and Cabinet, elected in January 2006, implemented a process for news conferences changing existing practice in which a journalist would chair the news conference and select questioners from amongst the media in attendance to a system in which members of the media have to sign up on a list, and then the Prime Minister or Cabinet minister chooses from the list which member of the media will be allowed to ask a question.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely sensor such sessions.

24b. In law, the judiciary can review the actions of the executive.
YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100  75  50  25  0

References:
– The score of 75 is given based on a definition of judiciary” that includes administrative tribunals (agencies, boards, commissions).

– While no fully substantiated evidence exists showing that Canadian courts make partisan rulings or are unwilling to take on politically sensitive issues, there is some fully substantiated evidence that Canadian courts are occasionally unable to enforce their judgments that apply to the executive branch (Cabinet of ministers) of the federal government. See, for example, the judicial review of the Registrar of Lobbyists by Democracy Watch at: http://www.dwatch.ca/camp/RelsJan2507.html

– There is also fully substantiated evidence that various administrative tribunals that have addressed executive branch (Cabinet of ministers) decisions and actions make partisan rulings, are unwilling to take on politically sensitive issues and are occasionally unable to enforce their judgments. See, for example, the summary of federal Ethics Commissioner Bernard Shapiro’s record between March 2004 and April 2007 at: http://www.dwatch.ca/camp/RelsApr0507.html

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to relay upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on
instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

References:
– There is no evidence that the Order-in-Council power of the Canadian federal Cabinet (legal name is Governor-in-Council) has been used in more than a very few cases to avoid constitutionally or legally required legislative approval. However, the score of 75 is given because during the June 2006 to June 2007 time period, the federal Cabinet ordered that the Canada Wheat Board (CWB) end its monopoly on the sale of barley. The order was challenged in Federal Court by the CWB and the Court ruled on July 31, 2007, that the Cabinet must seek the approval of Parliament (the federal legislature) to make this change to the CWB. The federal Cabinet has appealed to the Federal Court of Appeal.

See Canadian Press wire article summarizing the situation at: http://canadianpress.google.com/article/ALeqM5iBWdO8urtQdlsAncJhGn1NzsFswww

See another summary article by the Canadian Broadcasting Corporation (CBC) at: http://www.cbc.ca/canada/saskatchewan/story/2007/08/30/barley-ritz.html

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

100

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

References:
– Criminal Code (R.S., 1985, c. C-46) —
YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

59

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:
– The $10,000 threshold for the disclosure of assets is too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than $10,000 (although receiving some of these gifts (for example, from a lobbyist) is technically illegal under the Act). The gap in disclosure of assets worth less than $10,000 is especially serious because the Ethics Commissioner between March 2004 and April 2007 never audited even one of the statement of assets of any member of the executive.

References:
– Conflict of Interest and Post-Employment Code for Public Officer Holders — most assets worth more than $10,000 (US$10,266) are required to be disclosed to the Ethics Commissioner, with a partial list of assets made public — http://www.pae.gc.ca/icie-ccie/en/archives/ethics_commissioner/conflicts/tcp_2006.asp
– Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — most assets worth more than $10,000 must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public —

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:
– Conflict of Interest and Post-Employment Code for Public Officer Holders — most assets worth more than $10,000 (US$10,266) are required to be disclosed to the Ethics Commissioner, with a partial list of assets made public — http://www.parl.gc.ca/ciec-ccie/en/archives/ethics_commissioner/conflicts/tcp_2006.asp

– Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — most assets worth more than $10,000 must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public —

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:
– Conflict of Interest and Post-Employment Code for Public Officer Holders — most assets worth more than $10,000 (US$10,266) are required to be disclosed to the Ethics Commissioner, with a partial list of assets made public — http://www.parl.gc.ca/ciec-ccie/en/archives/ethics_commissioner/conflicts/tcp_2006.asp

– Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — most assets worth more than $10,000 must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public —

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.
NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

Comments:
– The new Conflict of Interest Act (first in force July 9, 2007) does not give the new Conflict of Interest and Ethics Commissioner (appointed on July 9, 2007) the clear power to conduct audits of asset disclosures (or liability disclosures), but does give the Commissioner the general mandate of administering the Act, which (in law) implies that the Commissioner has the power to conduct audits.

– Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007). Most assets worth more than $10,000 (US$10,266) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.

– Hopefully the Commissioner will, finally, enforce the asset and liability disclosure requirement properly by conducting at least random audits of disclosure forms.

References:
– Office of the Conflict of Interest and Ethics Commissioner —

The Commissioner had no explicit power to executive branch asset disclosures under the old Conflict of Interest and Post-Employment Code for Public Officer Holders — http://www.parl.gc.ca/ciec-ccie/en/archives/ethics_commissioner/conflicts/tcp_2006.asp, but the Code did give the Ethics Commissioner (Bernard Shapiro) the general power in law to administer the Code and he very likely could have conducted audits with this power.

– Office of the Conflict of Interest and Ethics Commissioner —

The Commissioner has no explicit power to executive branch asset disclosures, and the Commissioner (Bernard Shapiro) from March 2004 to April 2007 did not conduct any audits. The new Commissioner appointed on July 9, 2007, may conduct audits under the general power in law (the Conflict of Interest Act) to administer the Act.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO
References:

NOTE: If and when the new Lobbying Act comes into force (it passed Parliament in December 2006 but is awaiting proclamation by Cabinet before it comes into force), the post-employment measures in the Code will be replaced by post-employment provisions in the Lobbying Act.

– Conflict of Interest Act (2006, c. 9, s. 2) — http://lois.justice.gc.ca/en/showtdm/cs/C-36.65

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

| 100 | 75 | 50 | 25 | 0 |

Comments:
– Hopefully, with a new Conflict of Interest and Ethics Commissioner appointed on July 9, 2007, and (hopefully) soon a new, more independent and empowered Commissioner of Lobbying in place (replacing the current Registrar of Lobbyists), the cooling off periods will actually be enforced.

References:

NOTE: If and when the new Lobbying Act comes into force (it passed Parliament in December 2006 but is awaiting proclamation by Cabinet before it comes into force), the post-employment measures in the Code will be replaced by post-employment provisions in the Lobbying Act (five-year cooling off period for ministers and senior government officials with policy-making power) and in the Conflict of Interest Act ( 2006, c. 9, s. 2 ) for other ministerial staff (one-year cooling off period). http://lois.justice.gc.ca/en/showtdm/cs/C-36.65

– Democracy Watch's (2005) court challenge of the Ethics Commissioner documented cases of the Commissioner allowing Cabinet ministers to become lobbyists before their cooling off period of two years was completed, and the Commissioner refusing to provide public reasons as to why the minister had been allowed to become a lobbyist.

See details at:
http://www.dwatch.ca/RelSep2005.html

There is no evidence that the Commissioner enforced the cooling off period effectively during his term from March 2004 to April 2007.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:
50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

References:
– The Ethics Commissioner from March 2004 to April 2007 never issued an interpretation bulletin or any other public ruling concerning gifts and hospitality, and there were several examples annually of members of Parliament (House of Commons and Senate) accepting gifts from interest groups and/or registered lobbyists during this three-year period.

See details in Democracy Watch’s news release — http://dwatch.ca/camp/RelsJun2207.html


100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.
Comments:
– The new Conflict of Interest Act (first in force July 9, 2007) does not give the new Conflict of Interest and Ethics Commissioner (appointed on July 9, 2007) the clear power to conduct audits of asset disclosures (or liability disclosures), but does give the Commissioner the general mandate of administering the Act, which (in law) implies that the Commissioner has the power to conduct audits. Hopefully the Commissioner will, finally, enforce the asset and liability disclosure requirement properly by conducting at least random audits of disclosure forms.

References:
– The Ethics Commissioner between March 2004 and April 2007 never audited even one of the statement of assets of any member of the executive branch of the federal government.

– Office of the Conflict of Interest and Ethics Commissioner —


The Code did give the Ethics Commissioner (Bernard Shapiro) the general power in law to administer the Code and he very likely could have conducted audits with this power.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

83

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:
Public Registry for Public Office Holders (Public Office Holders are required to disclose their assets and liabilities to the Conflict of Interest and Ethics Commissioner within 120 days of being appointed as a Public Office Holder) —
http://www.parl.gc.ca/ciec-ccie/PublicSearch/PublicSearch.aspx

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.
27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

Comments:
– Cabinet ministers, their staff, senior public servants are given four months (120 days) to disclose assets and liabilities to the Conflict of Interest and Ethics Commissioner, which is too long a period for them to be in position as a public office holder with no disclosure of their assets and liabilities. Also, Cabinet ministers, their staff, senior public servants can easily hide large gifts they receive from lobbyists or others trying to influence them because they only have to disclose assets worth $10,000 (US$10,266) or more every four months to the Ethics Commissioner. The disclosure should be required for assets worth $1,000 or more, with updates on changes required within 30 days.

References:
– Partial asset and liability information can be found by searching the online Public Registry for Public Office Holders (Public Office Holders are required to disclose their assets and liabilities to the Conflict of Interest and Ethics Commissioner within 120 days of being appointed as a Public Office Holder). — http://www.parl.gc.ca/ciec-ccie/PublicSearch/PublicSearch.aspx

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

References:
– Partial asset and liability information can be found by searching (for free) the online Public Registry for Public Office Holders. (Public Office Holders are required to disclose their assets and liabilities to the Conflict of Interest and Ethics Commissioner within 120 days of being appointed as a Public Office Holder). — http://www.parl.gc.ca/ciec-ccie/PublicSearch/PublicSearch.aspx

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:
Records impose a financial burden on citizens, journalists, or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

References:
– The federal Ethics Commissioner from March 2004 to April 2007 never issued an interpretation bulletin or any other public ruling concerning the use of government funds or government property for ruling party activities.

See details in Democracy Watch’s news release — http://www.dwatch.ca/camp/RelsApr0507.html

– Although it did not occur during the study period of June 2006 to June 2007, investigations and criminal charges and prosecutions did occur relating to the so-called Adscam sponsorship scandal, in which the previous federal Liberal Party government from 1996 to 1999 funneled more than $150 million (US$154 million) mainly into advertising agencies (mainly in the province of Quebec) to pay supposedly for advertising of the federal government at events and sponsorship of those events.


Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability
29. Can members of the legislature be held accountable for their actions?

92

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:
– The Constitution Act, 1987, section 91, subsection 92A(3), section 94A, and section 95 set out the jurisdiction of the federal Canadian Parliament, and the federal courts and/or provincial superior courts can review the laws passed by the federal Parliament if they exceed Parliament's constitutionally defined jurisdiction — http://lois.justice.gc.ca/en/Const/c1867_e.html#judicature

– The Constitution Act, 1982, Part 1 The Canadian Charter of Rights and Freedoms, section 24 states that Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances. — http://lois.justice.gc.ca/en/Const/annex_e.html#I

– Canadian federal government's guide to the Charter — http://www.canadianheritage.gc.ca/progs/odp-hrp/canada/freedom_e.cfm


– Federal Courts Act (R.S., 1985, c. F-7), subsection 2(1) definition of “federal board, commission or other tribunal” defines which federal government institutions can be reviewed by the court — http://lois.justice.gc.ca/en/showtdm/cs/F-7

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:
– The score of 75 is given in part because a score of 100 is impossible to give as there is a split opinion in Canada concerning the aggressiveness, fairness, and non-partisanship of the federal Canadian judiciary, and likely opinion will always be split as each ruling of the judiciary engenders support or opposition depending, of course, on the ruling. At the same time, all evidence points to the conclusion that the Canadian federal judiciary is responsive (given the resources made available to it, and scheduling difficulties that exist in all courts).
100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

<table>
<thead>
<tr>
<th>29c. In law, are members of the national legislature subject to criminal proceedings?</th>
</tr>
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<tbody>
<tr>
<td>YES</td>
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</tbody>
</table>

**References:**


**YES:** A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

**NO:** A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

<table>
<thead>
<tr>
<th>30a. In law, members of the national legislature are required to file an asset disclosure form.</th>
</tr>
</thead>
</table>

**References:**

– Bibliography of academic articles about the Supreme Court of Canada and the Charter — [http://www.scc-csc.gc.ca/AboutCourt/Bibliography/index_e.asp](http://www.scc-csc.gc.ca/AboutCourt/Bibliography/index_e.asp)


– Charter Committee on Poverty Issues litigation Web page — [http://www.equalityrights.org/ccpi/cases](http://www.equalityrights.org/ccpi/cases)
Comments:
– The $10,000 threshold for the disclosure of assets is too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than $10,000 (although receiving some of these gifts (for example, from a lobbyist) is technically illegal under the Act). The gap in disclosure of assets worth less than $10,000 is especially serious because the Ethics Commissioner between March 2004 and April 2007 never audited even one of the statement of assets of any member of the House of Commons, and the Senate Ethics Officer has also never audited any statement of any senator.

References:
– Conflict of Interest Code for Members of the House of Commons (first in force in October 2004) — most assets worth more than $10,000 (US$10,266) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public — [http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm](http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm)

– Conflict of Interest Code for Senators (first in force in March 2005) — most assets worth more than $10,000 must be disclosed to the Senate Ethics Officer, who keeps the contents of the form confidential — [http://sen.parl.gc.ca/seo-cse/eng/Code-e.html](http://sen.parl.gc.ca/seo-cse/eng/Code-e.html)

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

References:

YES: A YES score is earned if there are regulations restricting national legislators’ ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:
– Neither the Ethics Commissioner (Bernard Shapiro) from March 2004 to April 2007 nor the Senate Ethics Officer from February
2005 ongoing (Jean T. Fournier) have issued any rulings that set out clear lines (based on the general rules in both codes) defining what kind of gifts, and from whom, are legal under the Codes.

References:

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

Comments:
– Neither code gives the Commissioner or the Officer the clear power to conduct audits of asset disclosures (or liability disclosures), but both have the general mandate of administering the codes, which (in law) implies that they have the power to conduct audits.

– The gap in disclosure of assets worth less than $10,000 is very serious because the Ethics Commissioner between March 2004 and April 2007 never audited even one of the statement of assets of any member of the House of Commons, and the Senate Ethics Officer has also never audited any statement of any senator.

References:
– Conflict of Interest Code for Members of the House of Commons (first in force in October 2004) — most assets (and liabilities) worth more than $10,000 must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public. http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm
– Conflict of Interest Code for Senators (first in force in March 2005) — most assets (and liabilities) worth more than $10,000 (US$10,266) must be disclosed to the Senate Ethics Officer, who keeps the contents of the form confidential. http://sen.parl.gc.ca/seo-cse/eng/Code-e.html

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.
References:
– There are no cooling off periods for members of the legislature (House of Commons or Senate) nor for their staff.

– Conflict of Interest Code for Members of the House of Commons (first in force in October 2004)  
  — http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm


100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

References:
– The Ethics Commissioner from March 2004 to April 2007 never issued an interpretation bulletin or any other public ruling concerning gifts and hospitality, and there were several examples annually of members of Parliament (House of Commons and Senate) accepting gifts from interest groups and/or registered lobbyists during this three-year period/

See details in Democracy Watch’s news release — http://dwatch.ca/camp/RelsJun2207.html


– Conflict of Interest Code for Members of the House of Commons (first in force in October 2004)  
  — http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm


100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.
The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

In practice, national legislative branch asset disclosures are audited.

Comments:
– Hopefully, with a new Conflict of Interest and Ethics Commissioner appointed on July 9, 2007, auditing will now occur of the asset (and liability) disclosures of the members of the House of Commons. The Senate Ethics Officer, who is under the control of a committee of senators, is not expected to begin auditing the asset (and liability) disclosures of senators any time soon.

References:
– The Ethics Commissioner between March 2004 and April 2007 never audited even one of the statement of assets of any member of the House of Commons, and the Senate Ethics Officer has also never audited any statement of any senator

– Conflict of Interest and Ethics Commissioner — http://www.parl.gc.ca/ciec-ccie/

– Senate Ethics Officer — http://sen.parl.gc.ca/seo-cse/default.htm

– Conflict of Interest Code for Members of the House of Commons(first in force in October 2004) — most assets (and liabilities) worth more than $10,000 (US$10,266) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public. http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm

– Conflict of Interest Code for Senators (first in force in March 2005) — most assets (and liabilities) worth more than $10,000 must be disclosed to the Senate Ethics Officer, who keeps the contents of the form confidential — http://sen.parl.gc.ca/seo-cse/eng/Code-e.html

– Neither code gives the Commissioner or the Officer the clear power to conduct audits of asset disclosures (or liability disclosures), but both have the general mandate of administering the codes, which (in law) implies that they have the power to conduct audits.

– The gap in disclosure of assets worth less than $10,000 is very serious because the Ethics Commissioner between March 2004 and April 2007 never audited even one of the statement of assets of any member of the House of Commons, and the Senate Ethics Officer has also never audited any statement of any senator.

Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.
Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

25

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES  |  NO

Comments:
– A No answer is given because the assets (and liabilities) of both Members of the House of Commons and Senators worth less than $10,000 are not disclosed, the asset (and liability) disclosure of Members of the House of Commons is kept partially confidential, and the asset (and liability) disclosures of senators are kept fully confidential.

References:
– Conflict of Interest Code for Members of the House of Commons (first in force in October 2004) — most assets worth more than $10,000 (US$10,266) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public — http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm

– Conflict of Interest Code for Senators (first in force in March 2005) — most assets worth more than $10,000 must be disclosed to the Senate Ethics Officer, who keeps the contents of the form confidential — http://sen.parl.gc.ca/seo-cse/eng/Code-e.html

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100  |  75  |  50  |  25  |  0

Comments:
– Members of the House of Commons and Senate are given four months (120 days) to disclose assets and liabilities to the Conflict of Interest and Ethics Commissioner, which is too long a period for them to be in position as a public office holder with no disclosure of their assets and liabilities. Also, Members of the House of Commons and the Senate can easily hide large gifts they receive from lobbyists or others trying to influence them because they only have to disclose assets worth $10,000 or more every four months to the Ethics Commissioner (or Senate Ethics Officer). Disclosure should be required for assets worth $1,000 (US$1,026) or more, with updates on changes required within 30 days.

References:
– Conflict of Interest Code for Members of the House of Commons (first in force in October 2004) — most assets worth more than $10,000 (US$10,266) must be disclosed to the Conflict of Interest and Ethics Commissioner within 120 days of taking the oath of
office, with a partial list of assets made public.
http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm

– Conflict of Interest Code for Senators (first in force in March 2005) — most assets worth more than $10,000 must be disclosed to the Senate Ethics Officer within 120 days of being appointed a senator, who keeps the contents of the form confidential.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:
– A score of 50 is given because there is no public disclosure of the asset and liability forms for senators.

References:
– Conflict of Interest Code for Members of the House of Commons(first in force in October 2004) — most assets worth more than $10,000 (US$10,266) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.
http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm


– Conflict of Interest Code for Senators (first in force in March 2005) — most assets worth more than $10,000 must be disclosed to the Senate Ethics Officer, who keeps the contents of the form confidential — http://sen.parl.gc.ca/seo-cse/eng/Code-e.html

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?
32a. In law, citizens can access records of legislative processes and documents.

| YES | NO |

References:
– Publication of Statutes Act (R.S., 1985, c. S-21) —

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

| 100 | 75 | 50 | 25 | 0 |

References:
– They are made public on the Parliament of Canada Web site within days of sessions taking place, bills being introduced, reports being tabled —

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.
References:
– They are made public on the Parliament of Canada Web site and can be obtained at no cost

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

62

III-3. Judicial Accountability

33. Are judges appointed fairly?

17

33a. In law, there is a transparent procedure for selecting national-level judges.

Comments:
– After the most recent appointment of a Justice to the Supreme Court of Canada (Marshall Rothstein was appointed on March 1, 2006) a parliamentary committee held a public hearing to ask Mr. Rothstein basic questions about his legal experience. This hearing resulted essentially from ongoing, and somewhat growing, pressure on the federal and provincial governments to make the judicial appointment process more transparent and public.

– The Federal Accountability Act (passed into law on Dec. 12, 2006) contains provisions (which must be proclaimed into law by the Federal Cabinet (and as of Sept. 10, 2007 had not been proclaimed) that change the federal Lobbyists Registration Act (1985, c. 44 (4th Supp.)) — [http://lois.justice.gc.ca/en/showtdm/cs/L-12.4](http://lois.justice.gc.ca/en/showtdm/cs/L-12.4) — into the Lobbying Act and that establish a Commissioner of Lobbyists to replace the current Registrar of Lobbyists; the Registrar acts in a quasi-judicial capacity when enforcing the Lobbyists’ Code of Conduct, but has no independence in law from the federal Cabinet (the Registrar can be dismissed at any time for any reason, has only delegated power over office budget and staff), whereas the Commissioner of Lobbyists (if established) will have independence through a fixed term of office (dismissal only for cause) and control over budget and staff, but will not have a public appointment process.

– The Federal Accountability Act (passed into law on Dec. 12, 2006) contains provisions that change the federal Salaries Act (R.S., 1985, c. S-3) to give the Federal Cabinet the power to create a Public Appointments Commission (as of Sept. 10, 2007, the federal Cabinet had not created the Commission and had given no indication that it ever intended to create the Commission); the Commission is given the legal mandate to ensure that all Cabinet appointments are made through processes that are widely made public and conducted in a fair, open and transparent manner and that the appointments are based on merit”.

References:
– In law, there is no established public process for federal judicial appointments (nor are there, in law, public processes for the appointment of the heads or members of the many quasi-judicial, administrative tribunals, agencies, boards and commissions that enforce various specialized federal Canadian laws.

See details about some of these quasi-judicial entities further below:

– The Parliament of Canada has the power under The Constitution Act, 1867 (section 101 — http://lois.justice.gc.ca/en/Const/index.html) to provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada and used this power to establish the Supreme Court of Canada (first established in 1875 by an Act of Parliament — now under the Supreme Court Act, R.S.C. 1985, c. S-26), the Federal Court of Canada and the Federal Court of Appeal (first established as the Exchequer Court of Canada in 1871, then expanded in jurisdiction to become the Federal Court of Canada in 1971 — now under the Federal Courts Act, R.S.C. 1985, c. F-7), and the Tax Court of Canada (established in 1983 under the Tax Court of Canada Act, R.S.C. 1985, c. T-2)

– The federal Cabinet of ministers (legal name is the “Governor in Council” and Cabinet ministers (who are not required to be elected politicians) are appointed to Cabinet by the elected Prime Minister) has the power to appoint justices of the Supreme Court of Canada (subsection 4(2) of the Supreme Court Act, R.S.C. 1985, c. S-26 — http://lois.justice.gc.ca/en/showtdm/cs/S-26), justices of the Federal Court of Canada and the Federal Court of Appeal (section 5.2 of the Federal Courts Act, R.S.C. 1985, c. F-7 — http://lois.justice.gc.ca/en/showtdm/cs/F-7), and the Tax Court of Canada (subsection 4(2) of the Tax Court of Canada Act, R.S.C. 1985, c. T-2 — http://lois.justice.gc.ca/en/showtdm/cs/T-2)

– The Governor General of Canada has the power under The Constitution Act, 1867 (section 96 — http://lois.justice.gc.ca/en/Const/index.html) to appoint the superior court judges in Canadian provinces (trial court and court of appeal) which are courts that have jurisdiction over any matter that is not specifically reserved for the Federal Court of Canada. The Governor General has this constitutional power as the representative in Canada of the British monarchy (currently Queen Elizabeth II) but, as with the other Governor General constitutional powers, this power is not used or exercised in any way at any time that defies the ruling party in Parliament (and has not been used or exercised in this way for decades) — as a result, the federal Cabinet actually decides who is appointed to these provincial superior courts under the federal Judges Act (R.S., 1985, c. J-1) — http://lois.justice.gc.ca/en/showtdm/cs/J-1

– Military judges are appointed without any public process by the federal Cabinet under Part III, subsection 165.21(1) of the National Defence Act (R.S., 1985, c. N-5) — http://lois.justice.gc.ca/en/showtdm/cs/N-5 — from amongst “officers who are barristers or advocates of at least 10 years standing at the bar of a province to be military judges.”

– The provincial governments only have the power to appoint provincial court (trial court) judges.

– The federal Cabinet also appoints the members of many administrative tribunals (agencies, boards, commissions), and while they are not judges or courts, the members of the tribunals make legally binding rulings that interpret and apply Canadian federal laws. The appointment process for some of these tribunals is as follows:

– Subsection 26(2) “The membership of the board of directors must reflect a range of backgrounds and disciplines relevant to the Agency’s objectives.”

– The President and Executive Vice-President of the Canada Border Services Agency are appointed without any public process by the federal Cabinet under section 7 of the Canada Border Services Agency Act (2005, c. 38) — http://lois.justice.gc.ca/en/showtdm/cs/C-1.4

– The members of the Board of Management of the Canada Revenue Agency are appointed without any public process by the federal Cabinet from a list of nominees submitted by each province under section 15, and the Chair of the Board of Management and Commissioner and Deputy Commissioner of the Agency also without any public process by the Cabinet under sections 25 and 26, of the Canada Revenue Agency Act (1999, c. 17) — http://lois.justice.gc.ca/en/showtdm/cs/C-10.11
– Subsection 16(1) “The directors must be persons who, in the opinion of the Governor in Council, have the experience and the capacity required for discharging their functions.”

– The President and Executive Vice-president of the Canadian Food Inspection Agency are appointed without any public process by the federal Cabinet under section 5 of the Canadian Food Inspection Agency Act (1997, c. 6) — http://lois.justice.gc.ca/en/showtdm/cs/C-16.5
The Agency is responsible for the enforcement of the Agriculture and Agri-Food Administrative Monetary Penalties Act, Canada Agricultural Products Act, Feeds Act, Fertilizers Act, Fish Inspection Act, Health of Animals Act, Meat Inspection Act, Plant Breeders Rights Act, Plant Protection Act and Seeds Act, and Consumer Packaging and Labelling Act and the Food and Drugs Act as they relate to food.

– The members of the Canadian Human Rights Commission are appointed without any public process by the federal Cabinet under subsection 26(1), and the members of the Canadian Human Rights Tribunal under sections 48.1 and 48.2, of the Canadian Human Rights Act (R.S., 1985, c. H-6) — http://lois.justice.gc.ca/en/showtdm/cs/H-6


– The members of the Canadian Transportation Accident Investigation and Safety Board members are appointed without any public process by the federal Cabinet under subsection 4(1) of the Canadian Transportation Accident Investigation and Safety Board Act (1989, c. 3) — http://lois.justice.gc.ca/en/showtdm/cs/C-23.4

– Subsection 4(2) “The Governor in Council shall appoint as members persons who, in the opinion of the Governor in Council, are collectively knowledgeable about air, marine, rail and pipeline transportation.”

– The members of the Competition Tribunal are appointed without any public process by the federal Cabinet on the recommendation of the Minister of Justice under section 3 of the Competition Tribunal Act (1985, c. 19 (2nd Supp.)) — http://lois.justice.gc.ca/en/showtdm/cs/C-36.4

– The Conflict of Interest and Ethics Commissioner is appointed without any public process by the federal Cabinet under section 81 of the Parliament of Canada Act (R.S., 1985, c. P-1) — http://lois.justice.gc.ca/en/showtdm/cs/P-1


The Commissioner must be (a) a former judge of a superior court in Canada or of any other court whose members are appointed under an Act of the legislature of a province; (b) a former member of a federal or provincial board, commission or tribunal who, in the opinion of the Governor in Council, has demonstrated expertise in one or more of the following: (i) conflicts of interest, (ii) financial arrangements, (iii) professional regulation and discipline, or (iv) ethics; or (c) a former Senate Ethics Officer or former Ethics Commissioner.

– The members of the Immigration and Refugee Board (which rules on whether immigration and refugee applications are valid) are appointed without any public process by the federal Cabinet under section 153 of the Immigration and Refugee Protection Act (2001, c. 27) — http://lois.justice.gc.ca/en/showtdm/cs/I-2.5


– The Deputy Chairperson of the Immigration Appeal Division and a majority of the Assistant Deputy Chairpersons of that Division and at least 10 per cent of the members of the Divisions referred to in subsection (1) must be members of at least five years standing at the bar of a province or notaries of at least five years standing at the Chambre des notaires du Québec.”

– The members of the newly created Public Servants Disclosure Protection Tribunal (which rules on complaints about retaliation taken against public servant “whistleblowers” filed with the Tribunal by the Public Sector Integrity Commissioner) will be appointed without any public process by the federal Cabinet under section 20.7 of the Public Servants Disclosure Protection Act (2005, c. 46) — http://lois.justice.gc.ca/en/showtdm/cs/P-31.9

– The members of the Public Service Commission (which, in addition to making appointments and hearings itself, also conducts audits and also investigates and rules on complaints about non-merit-based appointments) are appointed without any public process by the federal Cabinet under subsection 4(5), and members of the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission’s rulings) are appointed without any public process by the federal Cabinet under sections 88 and 90 of the Public Service Employment Act (2003, c. 22, ss. 12, 13) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01

– The members of the Public Service Labour Relations Board (which rules on various federal public service labour matters as set out in collective bargaining agreements) are appointed without any public process by the federal Cabinet under sections 12 and 18 of the Public Service Labour Relations Act (2003, c. 22, s. 2) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.3

– Under clause 18(1)(e), members of the Board must “have knowledge of or experience in labour relations”
– The Superintendent of Financial Institutions (who has the power to make binding orders about financial institution’s activities as they relate to overall solvency) is appointed without any public process by the federal Cabinet under section 5 of the Office of the Superintendent of Financial Institutions Act (1985, c. 18 (3rd Supp.)) — http://lois.justice.gc.ca/en/showtdm/cs/O-2.7

– The members of the Transportation Appeal Tribunal of Canada (which is the appeal body for rulings made under six different federal transportation laws) are appointed without any public process by the federal Cabinet under section 3 of the Transportation Appeal Tribunal of Canada Act (2001, c. 29) — http://lois.justice.gc.ca/en/showtdm/cs/T-18.5

Members of the Tribunal must “in the opinion of the Governor in Council, collectively have expertise in the transportation sectors in respect of which the federal government has jurisdiction.”

– The members (full-time and temporary) of the Veterans Review and Appeal Board (which is the appeal body under the Pension Act or the Canadian Forces Members and Veterans Re-establishment and Compensation Act) are appointed without any public process by the federal Cabinet under sections 4 to 6 of the Veterans Review and Appeal Board Act (1995, c. 18) — http://lois.justice.gc.ca/en/showtdm/cs/V-1.6

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100  |  75  |  50  |  25  |  0

Comments:
– The score of 50 is given because for almost all national-level quasi-judicial entities (agencies, boards, commissions and tribunals) there are no specific required professional criteria for appointees, and even if there is in many cases whether someone fulfills the criteria is at the discretion of the federal Cabinet (of politicians, known as the Governor in Council”).

– There are also many examples of non-qualified people appointed to these quasi-judicial entities mainly because there are no requirements in law that people appointed to head or be members of these entities have specific professional skills or knowledge (for example, federal Ethics Commissioner Bernard Shapiro (who was in the position between March 2004 and April 2007), and Registrar of Lobbyists Michael Nelson (who began serving in the position in March 2004 and was still serving as of September 10, 2007) both had no experience in ethics rules or law enforcement, even though they were appointed to quasi-judicial positions). For details, see Democracy Watch’s April 5, 2007 news release about the Ethics Commissioner — http://www.dwatch.ca/camp/RelApr0507.html


– While under Bill C-2 (the so-called “Federal Accountability Act”) the new position of Conflict of Interest and Ethics Commissioner (replacing the Ethics Commissioner position) does have professional criteria for the appointee, the yet to be proclaimed into law “Lobbying Act” creates the position of Commissioner of Lobbying (to replace the Registrar of Lobbyists) but does not require that appointees fulfill any specific professional criteria.


To give the Federal Cabinet the power to create a Public Appointments Commission (as of Sept. 10, 2007, the federal Cabinet had not created the Commission and had given no indication that it ever intended to create the Commission); the Commission is given the legal mandate to ensure that all Cabinet appointments are made through processes that are “widely made public and conducted in a fair, open and transparent manner and that the appointments are based on merit.”
References:
– The federal Cabinet (legal name is the Governor in Council) has the power to appoint justices of the Supreme Court of Canada (subsection 4(2) of the Supreme Court Act, R.S.C. 1985, c. S-26 — http://lois.justice.gc.ca/en/showtdm/cs/S-26) but under subsection 5 to be eligible to be appointed you must be a judge already of a superior court of a province, or, for a period of 10 years, been a member of the bar in any province (a barrister or advocate).

– The federal Cabinet also has the power to appoint justices of the Federal Court of Canada and the Federal Court of Appeal (section 5.2 of the Federal Courts Act, R.S.C. 1985, c. F-7 — http://lois.justice.gc.ca/en/showtdm/cs/F-7) but under section 5.3 to be eligible to be appointed you must be a judge already, or, for a period of 10 years, have been a member of the bar in any province (a barrister or advocate) and/or a member of the bar who has held a full-time position exercising functions of a judicial nature.

– The federal Cabinet also has the power to appoint justices to the Tax Court of Canada (subsection 4(2) of the Tax Court of Canada Act, R.S.C. 1985, c. T-2 — http://lois.justice.gc.ca/en/showtdm/cs/T-2) but under subsection 4(3) to be eligible to be appointed you must be a judge already, or, for a period of 10 years, have been a member of the bar in any province (a barrister or advocate) and/or a member of the bar who has held a full-time position exercising functions of a judicial nature.

– The federal Cabinet also decides who is appointed to provincial superior courts (trial courts and courts of appeal) but under section 3 of the federal Judges Act (R.S., 1985, c. J-1) to be eligible you must have, for a period of 10 years, have been a member of the bar in any province (a barrister or advocate) and/or a member of the bar who has held a full-time position exercising functions of a judicial nature — http://lois.justice.gc.ca/en/showtdm/cs/J-1

– Military judges are appointed without any public process by the federal Cabinet under Part III, subsection 165.21(1) of the National Defence Act (R.S., 1985, c. N-5) — http://lois.justice.gc.ca/en/showtdm/cs/N-5 from amongst “officials who are barristers or advocates of at least 10 years standing at the bar of a province to be military judges.”

– The federal Cabinet also has the power to appoint the members of many administrative tribunals (agencies, boards, commissions), and while they are not judges or courts, the members of the tribunals make legally binding rulings that interpret and apply Canadian federal laws. The appointment criteria (if any exists) for some of these tribunals is as follows:
– Subsection 26(2) “The membership of the board of directors must reflect a range of backgrounds and disciplines relevant to the Agency’s objectives”

– The President and Executive Vice-President of the Canada Border Services Agency are appointed without any public process or required professional criteria by the federal Cabinet under section 7 of the Canada Border Services Agency Act (2005, c. 38) — http://lois.justice.gc.ca/en/showtdm/cs/C-1.4

– The members of the Board of Management of the Canada Revenue Agency are appointed without any public process by the federal Cabinet from a list of nominees submitted by each province under section 15, and the Chair of the Board of Management and Commissioner and Deputy Commissioner of the Agency also without any public process by the Cabinet under sections 25 and 26, of the Canada Revenue Agency Act (1999, c. 17) — http://lois.justice.gc.ca/en/showtdm/cs/C-10.11
– Subsection 16(1) “The directors must be persons who, in the opinion of the Governor in Council, have the experience and the capacity required for discharging their functions”

– The President and Executive Vice-president of the Canadian Food Inspection Agency are appointed without any public process or required professional criteria by the federal Cabinet under section 5 of the Canadian Food Inspection Agency Act (1997, c. 6) — http://lois.justice.gc.ca/en/showtdm/cs/C-16.5
The Agency is responsible for the enforcement of the Agriculture and Agri-Food Administrative Monetary Penalties Act, Canada Agricultural Products Act, Feeds Act, Fertilizers Act, Fish Inspection Act, Health of Animals Act, Meat Inspection Act, Plant Breeders Rights Act, Plant Protection Act and Seeds Act, and Consumer Packaging and Labelling Act and the Food and Drugs Act as they relate to food.

– The members of the Canadian Human Rights Commission are appointed without any required professional criteria by the federal Cabinet under subsection 26(1), and the ), and the members of the Canadian Human Rights Tribunal are appointed under sections 48.1 and 48.2 (with the requirement under subsection 48.1(2) that “Persons appointed as members of the Tribunal must have experience, expertise and interest in, and sensitivity to, human rights”), of the Canadian Human Rights Act (R.S., 1985, c. C-11).

– The federal Cabinet also has the power to appoint justices to the Tax Court of Canada (subsection 4(2) of the Tax Court of Canada Act, R.S.C. 1985, c. T-2 — http://lois.justice.gc.ca/en/showtdm/cs/T-2) but under subsection 4(3) to be eligible to be appointed you must be a judge already, or, for a period of 10 years, have been a member of the bar in any province (a barrister or advocate) and/or a member of the bar who has held a full-time position exercising functions of a judicial nature.

– The federal Cabinet also decides who is appointed to provincial superior courts (trial courts and courts of appeal) but under section 3 of the federal Judges Act (R.S., 1985, c. J-1) to be eligible you must have, for a period of 10 years, have been a member of the bar in any province (a barrister or advocate) and/or a member of the bar who has held a full-time position exercising functions of a judicial nature — http://lois.justice.gc.ca/en/showtdm/cs/J-1

– Military judges are appointed without any public process by the federal Cabinet under Part III, subsection 165.21(1) of the National Defence Act (R.S., 1985, c. N-5) — http://lois.justice.gc.ca/en/showtdm/cs/N-5 from amongst “officials who are barristers or advocates of at least 10 years standing at the bar of a province to be military judges.”

– The federal Cabinet also has the power to appoint the members of many administrative tribunals (agencies, boards, commissions), and while they are not judges or courts, the members of the tribunals make legally binding rulings that interpret and apply Canadian federal laws. The appointment criteria (if any exists) for some of these tribunals is as follows:
– Subsection 26(2) “The membership of the board of directors must reflect a range of backgrounds and disciplines relevant to the Agency’s objectives”

– The President and Executive Vice-President of the Canada Border Services Agency are appointed without any public process or required professional criteria by the federal Cabinet under section 7 of the Canada Border Services Agency Act (2005, c. 38) — http://lois.justice.gc.ca/en/showtdm/cs/C-1.4

– The members of the Board of Management of the Canada Revenue Agency are appointed without any public process by the federal Cabinet from a list of nominees submitted by each province under section 15, and the Chair of the Board of Management and Commissioner and Deputy Commissioner of the Agency also without any public process by the Cabinet under sections 25 and 26, of the Canada Revenue Agency Act (1999, c. 17) — http://lois.justice.gc.ca/en/showtdm/cs/C-10.11
– Subsection 16(1) “The directors must be persons who, in the opinion of the Governor in Council, have the experience and the capacity required for discharging their functions”

– The President and Executive Vice-president of the Canadian Food Inspection Agency are appointed without any public process or required professional criteria by the federal Cabinet under section 5 of the Canadian Food Inspection Agency Act (1997, c. 6) — http://lois.justice.gc.ca/en/showtdm/cs/C-16.5
The Agency is responsible for the enforcement of the Agriculture and Agri-Food Administrative Monetary Penalties Act, Canada Agricultural Products Act, Feeds Act, Fertilizers Act, Fish Inspection Act, Health of Animals Act, Meat Inspection Act, Plant Breeders Rights Act, Plant Protection Act and Seeds Act, and Consumer Packaging and Labelling Act and the Food and Drugs Act as they relate to food.

– The members of the Canadian Human Rights Commission are appointed without any required professional criteria by the federal Cabinet under subsection 26(1), and the ), and the members of the Canadian Human Rights Tribunal are appointed under sections 48.1 and 48.2 (with the requirement under subsection 48.1(2) that “Persons appointed as members of the Tribunal must have experience, expertise and interest in, and sensitivity to, human rights”), of the Canadian Human Rights Act (R.S., 1985, c. H-6) — http://lois.justice.gc.ca/en/showtdm/cs/H-6

– The members of the Canadian International Trade Tribunal are appointed without any public process or required professional criteria by the federal Cabinet under section 3 of the Canadian International Trade Tribunal Act (1985, c. 47 (4th Supp.)) — http://lois.justice.gc.ca/en/showtdm/cs/C-16.3

– The members of the Canadian Nuclear Safety Commission are appointed without any public process or required professional criteria by the federal Cabinet under section 10 of the Nuclear Safety and Control Act (1997, c. 9) — http://lois.justice.gc.ca/en/showtdm/cs/N-28.3
– The members of the Canadian Radio-television and Telecommunications Commission are appointed without a public process or independent confirmation process or required professional criteria by the federal Cabinet under section 3 of the Canadian Radio-television and Telecommunications Commission Act (R.S., 1985, c. C-22) — http://lois.justice.gc.ca/en/showtdm/cs/C-22

– The members of the Canadian Transportation Accident Investigation and Safety Board members are appointed without any public process by the federal Cabinet under subsection 4(1) of the Canadian Transportation Accident Investigation and Safety Board Act (1989, c. 3) — http://lois.justice.gc.ca/en/showtdm/cs/C-23.4
– Subsection 4(2) “The Governor in Council shall appoint as members persons who, in the opinion of the Governor in Council, are collectively knowledgeable about air, marine, rail and pipeline transportation.”

– The members of the Competition Tribunal are appointed without any public process or required professional criteria by the federal Cabinet on the recommendation of the Minister of Justice under section 3 of the Competition Tribunal Act (1985, c. 19 (2nd Supp.)) — http://lois.justice.gc.ca/en/showtdm/cs/C-36.4

– The Conflict of Interest and Ethics Commissioner is appointed without any public process by the federal Cabinet under section 81 of the Parliament of Canada Act (R.S., 1985, c. P-1) — http://lois.justice.gc.ca/en/showtdm/cs/P-1
– Under subsection 81(2) of the Parliament of Canada Act (R.S., 1985, c. P-1) — http://lois.justice.gc.ca/en/showtdm/cs/P-1 — the Commissioner must be “(a) a former judge of a superior court in Canada or of any other court whose members are appointed under an Act of the legislature of a province; (b) a former member of a federal or provincial board, commission or tribunal who, in the opinion of the Governor in Council, has demonstrated expertise in one or more of the following: (i) conflicts of interest, (ii) financial arrangements, (iii) professional regulation and discipline, or (iv) ethics; or (c) a former Senate Ethics Officer or former Ethics Commissioner.”

– The members of the Immigration and Refugee Board (which rules on whether immigration and refugee applications are valid) are appointed without any public process by the federal Cabinet under section 153 of the Immigration and Refugee Protection Act (2001, c. 27) — http://lois.justice.gc.ca/en/showtdm/cs/I-2.5
– Under subsection 153(4) of the Immigration and Refugee Protection Act (2001, c. 27)
  http://lois.justice.gc.ca/en/showtdm/cs/I-2.5 — “The Deputy Chairperson of the Immigration Appeal Division and a majority of the Assistant Deputy Chairpersons of that Division and at least 10 per cent of the members of the Divisions referred to in subsection (1) must be members of at least five years standing at the bar of a province or notaries of at least five years standing at the Chambre des notaires du Québec.”

– The members of the newly created Public Servants Disclosure Protection Tribunal (which rules on complaints about retaliation taken against public servant “whistleblowers” filed with the Tribunal by the Public Sector Integrity Commissioner) will be appointed without any public process by the federal Cabinet, chosen from amongst members of the Federal Court of Canada, under section 20.7 of the Public Servants Disclosure Protection Act (2005, c. 46) — http://lois.justice.gc.ca/en/showtdm/cs/P-31.9

– The members of the Public Service Commission (which, in addition to making appointments and hirings itself, also conducts audits and also investigates and rules on complaints about non-merit-based appointments) are appointed without any public process or required professional criteria by the federal Cabinet under subsection 4(5), and members of the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission’s rulings) are appointed without any public process or required professional criteria by the federal Cabinet under sections 88 and 90 of the Public Service Employment Act (2003, c. 22, ss. 12, 13) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01

– The members of the Public Service Labour Relations Board (which rules on various federal public service labour matters as set out in collective bargaining agreements) are appointed without any public process by the federal Cabinet under sections 12 and 18 of the Public Service Labour Relations Act ( 2003, c. 22, s. 2 ) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.3
– Under clause 18(1)(e), members of the Board must “have knowledge of or experience in labour relations”

– The Superintendent of Financial Institutions (who has the power to make binding orders about financial institution’s activities as they relate to overall solvency) is appointed without any public process or required professional criteria by the federal Cabinet under section 5 of the Office of the Superintendent of Financial Institutions Act (1985, c. 18 (3rd Supp.))

– The members of the Transportation Appeal Tribunal of Canada (which is the appeal body for rulings made under six different federal transportation laws) are appointed without any public process by the federal Cabinet under section 3 of the Transportation Appeal Tribunal of Canada Act (2001, c. 29) — http://lois.justice.gc.ca/en/showtdm/cs/T-18.5
– Under subsection 3(1) of the Transportation Appeal Tribunal of Canada Act (2001, c. 29)
  http://lois.justice.gc.ca/en/showtdm/cs/T-18.5 — members of the Tribunal must “in the opinion of the Governor in Council, collectively have expertise in the transportation sectors in respect of which the federal government has jurisdiction.”

– The members (full-time and temporary) of the Veterans Review and Appeal Board (which is the appeal body under the Pension Act or the Canadian Forces Members and Veterans Re-establishment and Compensation Act) are appointed without any public process or required professional criteria by the federal Cabinet under sections 4 to 6 of the Veterans Review and Appeal Board Act ( 1995, c. 18 ) — http://lois.justice.gc.ca/en/showtdm/cs/V-1.6

– An unpublished academic study found that, between 1989 and 2003, 30 per cent of judges appointed were very likely donors to the governing political party whose leader appointed them, while only five per cent were very likely donors to parties other than the governing party.
These findings match the percentages found in an earlier academic study — “Judicial Selection in Canada: A Look at Patronage in Federal Appointments since 1988” (2006) Troy Riddell (University of Guelph), Lori Hausegger (Boise State University) and Matthew Hennigar (Brock University) — http://www.cpsa-acsp.ca/papers-2006/Riddell.pdf

| 100: | National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator. |
| 75: | |
| 50: | Most national-level judges selected meet these qualifications, with some exceptions. |
| 25: | |
| 0: | National-level judges are often unqualified due to lack of training or experience. |

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:
– After the most recent appointment of a Justice to the Supreme Court of Canada (Marshall Rothstein was appointed on March 1, 2006) a parliamentary committee held a public hearing to ask Mr. Rothstein basic questions about his legal experience. This hearing resulted essentially from ongoing, and somewhat growing, pressure on the federal and provincial governments to make the judicial appointment process more transparent and public.

– The Federal Accountability Act (passed into law on Dec. 12, 2006) contains provisions (which must be proclaimed into law by the Federal Cabinet (and as of September 10, 2007 had not been proclaimed) that change the federal Lobbyists Registration Act (1985, c. 44 (4th Supp.)) — http://lois.justice.gc.ca/en/showtdm/cs/L-12.4 — into the Lobbying Act and that establish a Commissioner of Lobbyists to replace the current Registrar of Lobbyists. The Registrar acts in a quasi-judicial capacity when enforcing the Lobbyists’ Code of Conduct, but has no independence in law from the federal Cabinet (the Registrar can be dismissed at any time for any reason, has only delegated power over office budget and staff), whereas the Commissioner of Lobbyists (if established) will have independence through a fixed term of office (dismissal only for cause) and control over budget and staff, but will not have a public appointment process.


– The Federal Accountability Act (passed into law on Dec. 12, 2006) contains provisions that change the federal Salaries Act (R.S., 1985, c. S-3) — http://lois.justice.gc.ca/en/showtdm/cs/S-3 — to give the Federal Cabinet the power to create a Public Appointments Commission (as of Sept. 10, 2007, the federal Cabinet had not created the Commission and had given no indication that it ever intended to create the Commission). The Commission is given the legal mandate to ensure that all Cabinet appointments are made through processes that are widely made public and conducted in a fair, open and transparent manner and that the appointments are based on merit.”

References:
– In law, there is no established public process for federal judicial appointments (nor are there, in law, public processes for the appointment of the heads or members of the many quasi-judicial, administrative tribunals, agencies, boards and commissions that enforce various specialized federal Canadian laws.

See details about some of these quasi-judicial entities further below:

– The Parliament of Canada has the power under The Constitution Act, 1867 (section 101 — http://lois.justice.gc.ca/en/Const/index.html ) to provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada” and used this power to establish the Supreme Court of Canada (first established in 1875 by an Act of Parliament — now under the Supreme Court Act, R.S.C. 1985, c. S-26), the Federal Court of Canada and the Federal Court of Appeal (first established as the Exchequer Court of Canada in 1871, then expanded in jurisdiction to become the Federal Court of Canada in 1971 — now under
The federal Cabinet of ministers (legal name is the "Governor in Council" and Cabinet ministers (who are not required to be elected politicians) are appointed to Cabinet by the elected Prime Minister) has the power to appoint justices of the Supreme Court of Canada (subsection 4(2) of the Supreme Court Act, R.S.C. 1985, c. S-26 — https://lois.justice.gc.ca/en/showtdm/cs/S-26 ), justices of the Federal Court of Canada and the Federal Court of Appeal (section 5.2 of the Federal Courts Act, R.S.C. 1985, c. F-7 — https://lois.justice.gc.ca/en/showtdm/cs/F-7 ), and the Tax Court of Canada (subsection 4(2) of the Tax Court of Canada Act, R.S.C. 1985, c. T-2 — https://lois.justice.gc.ca/en/showtdm/cs/T-2 )

The Governor General of Canada has the power under The Constitution Act, 1867 (section 96 — https://lois.justice.gc.ca/en/Const/index.html ) to appoint the superior court judges in Canadian provinces (trial court and court of appeal) which are courts that have jurisdiction over any matter that is not specifically reserved for the Federal Court of Canada. The Governor General has this constitutional power as the representative in Canada of the British monarchy (currently Queen Elizabeth II) but, as with the other Governor General constitutional powers, this power is not used or exercised in any way at any time that defies the ruling party in Parliament (and has not been used or exercised in this way for decades) — as a result, the federal Cabinet actually decides who is appointed to these provincial superior courts under the federal Judges Act (R.S., 1985, c. J-1) — https://lois.justice.gc.ca/en/showtdm/cs/J-1

Military judges are appointed without any public process by the federal Cabinet under Part III, subsection 165.21(1) of the National Defence Act (R.S., 1985, c. N-5) — https://lois.justice.gc.ca/en/showtdm/cs/N-5 — from amongst "officers who are barristers or advocates of at least 10 years standing at the bar of a province to be military judges."

The provincial governments only have the power to appoint provincial court (trial court) judges.

The federal Cabinet also appoints the members of many administrative tribunals (agencies, boards, commissions), and while they are not judges or courts, the members of the tribunals make legally binding rulings that interpret and apply Canadian federal laws. The appointment process for some of these tribunals is as follows:

- Subsection 26(2) "The membership of the board of directors must reflect a range of backgrounds and disciplines relevant to the Agency's objectives."

The President and Executive Vice-President of the Canada Border Services Agency are appointed without any public process by the federal Cabinet under section 7 of the Canada Border Services Agency Act (2005, c. 36) — https://lois.justice.gc.ca/en/showtdm/cs/C-1.4

The members of the Board of Management of the Canada Revenue Agency are appointed without any public process by the federal Cabinet from a list of nominees submitted by each province under section 15, and the Chair of the Board of Management and Commissioner and Deputy Commissioner of the Agency also without any public process by the Cabinet under sections 25 and 26, of the Canada Revenue Agency Act (1999, c. 17 ) — https://lois.justice.gc.ca/en/showtdm/cs/C-10.11
- Subsection 16(1) "The directors must be persons who, in the opinion of the Governor in Council, have the experience and the capacity required for discharging their functions."

The President and Executive Vice-president of the Canadian Food Inspection Agency are appointed without any public process by the federal Cabinet under section 5 of the Canadian Food Inspection Agency Act (1997, c. 6) — https://lois.justice.gc.ca/en/showtdm/cs/C-16.5

The Agency is responsible for the enforcement of the Agriculture and Agri-Food Administrative Monetary Penalties Act, Canada Agricultural Products Act, Feeds Act, Fertilizers Act, Fish Inspection Act, Health of Animals Act, Meat Inspection Act, Plant Breeders Rights Act, Plant Protection Act and Seeds Act, and Consumer Packaging and Labelling Act and the Food and Drugs Act as they relate to food.

The members of the Canadian Human Rights Commission are appointed without any public process by the federal Cabinet under subsection 26(1), and the members of the Canadian Human Rights Tribunal under sections 48.1 and 48.2, of the Canadian Human Rights Act (R.S., 1985, c. H-6) — https://lois.justice.gc.ca/en/showtdm/cs/H-6

The members of the Canadian International Trade Tribunal are appointed without any public process by the federal Cabinet under section 3 of the Canadian International Trade Tribunal Act (1985, c. 47 (4th Supp.)) — https://lois.justice.gc.ca/en/showtdm/cs/C-18.3


The members of the Canadian Transportation Accident Investigation and Safety Board members are appointed without any public process by the federal Cabinet under subsection 4(1) of the Canadian Transportation Accident Investigation and Safety Board Act (1989, c. 3) — http://lois.justice.gc.ca/en/showtdm/cs/C-23.4

Subsection 4(2) “The Governor in Council shall appoint as members persons who, in the opinion of the Governor in Council, are collectively knowledgeable about air, marine, rail and pipeline transportation.”

The members of the Competition Tribunal are appointed without any public process by the federal Cabinet on the recommendation of the Minister of Justice under section 3 of the Competition Tribunal Act (1985, c. 19 (2nd Supp.)) — http://lois.justice.gc.ca/en/showtdm/cs/C-36.4

The Conflict of Interest and Ethics Commissioner is appointed without any public process by the federal Cabinet under section 81 of the Parliament of Canada Act (R.S., 1985, c. P-1) — http://lois.justice.gc.ca/en/showtdm/cs/P-1


The members of the Immigration and Refugee Board (which rules on whether immigration and refugee applications are valid) are appointed without any public process by the federal Cabinet under section 153 of the Immigration and Refugee Protection Act (2001, c. 27) — http://lois.justice.gc.ca/en/showtdm/cs/I-2.5

Under subsection 153(4) of the Immigration and Refugee Protection Act (2001, c. 27) — http://lois.justice.gc.ca/en/showtdm/cs/I-2.5 “The Deputy Chairperson of the Immigration Appeal Division and a majority of the Assistant Deputy Chairpersons of that Division and at least 10 per cent of the members of the Divisions referred to in subsection (1) must be members of at least five years standing at the bar of a province or notaries of at least five years standing at the Chambre des notaires du Québec.”

The members of the newly created Public Servants Disclosure Protection Tribunal (which rules on complaints about retaliation taken against public servant “whistleblowers” filed with the Tribunal by the Public Sector Integrity Commissioner) will be appointed without any public process by the federal Cabinet, chosen from amongst members of the Federal Court of Canada, under section 29.7 of the Public Servants Disclosure Protection Act (2005, c. 46) — http://lois.justice.gc.ca/en/showtdm/cs/P-31.9

The members of the Public Service Commission (which, in addition to making appointments and hirings itself, also conducts audits and also investigates and rules on complaints about non-merit-based appointments) are appointed without any public process by the federal Cabinet under subsection 4(5), and members of the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission’s rulings) are appointed without any public process by the federal Cabinet under sections 88 and 90 of the Public Service Employment Act (2003, c. 22, ss. 12, 13) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01

The members of the Public Service Labour Relations Board (which rules on various federal public service labour matters as set out in collective bargaining agreements) are appointed without any public process by the federal Cabinet under sections 12 and 18 of the Public Service Labour Relations Act (2003, c. 22, s. 2 ) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.3

Under clause 18(1)(e), members of the Board must “have knowledge of or experience in labour relations”

The Superintendent of Financial Institutions (who has the power to make binding orders about financial institution’s activities as they relate to overall solvency) is appointed without any public process by the federal Cabinet under section 5 of the Office of the Superintendent of Financial Institutions Act (1985, c. 18 (3rd Supp.)) — http://lois.justice.gc.ca/en/showtdm/cs/O-2.7

The members of the Transportation Appeal Tribunal of Canada (which is the appeal body for rulings made under six different federal transportation laws) are appointed without any public process by the federal Cabinet under section 3 of the Transportation Appeal Tribunal of Canada Act (2001, c. 29) — http://lois.justice.gc.ca/en/showtdm/cs/T-18.5


Members of the Tribunal must “in the opinion of the Governor in Council, collectively have expertise in the transportation sectors in respect of which the federal government has jurisdiction.”

The members (full-time and temporary) of the Veterans Review and Appeal Board (which is the appeal body under the Pension Act or the Canadian Forces Members and Veterans Re-establishment and Compensation Act) are appointed without any public process by the federal Cabinet under sections 4 to 6 of the Veterans Review and Appeal Board Act (1995, c. 18) — http://lois.justice.gc.ca/en/showtdm/cs/V-1.6

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.
34. Can members of the judiciary be held accountable for their actions?

YES  |  NO

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

References:
– The statutes creating courts and administrative tribunals, as well as the common law rulings, require that national judges (including administrative tribunals) give reasons for their decisions (for example, section 15 of the Citizenship Act (R.S., 1985, c. C-29) — states that there is an obligation to give reasons for a decision when a citizenship judge rejects an application).

– The only exception is that the Supreme Court of Canada (SCC) does not give reasons when it refuses to hold a hearing on an appeal application (in which case, the ruling is essentially upheld by the SCC, without the SCC giving its own reasons for upholding the ruling).

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

References:
– The statutes creating courts and administrative tribunals, as well as the common law rulings, require that national judges (including administrative tribunals) give reasons for their decisions (for example, section 15 of the Citizenship Act (R.S., 1985, c. C-29) — states that there is an obligation to give reasons for a decision when a citizenship judge rejects an application).

– The only exception is that the Supreme Court of Canada (SCC) does not give reasons when it refuses to hold a hearing on an appeal application (in which case, the ruling is essentially upheld by the SCC, without the SCC giving its own reasons for upholding the ruling). However, at times administrative tribunals especially do not give reasons that adequately explain the basis of their decisions, and this failure to give adequate reasons is often the basis of applications to courts for a judicial review of the decision.

For example, see Democracy Watch's September 2005 court challenge of the federal Ethics Commissioner and the federal Registrar of Lobbyists for their failure to give adequate reasons for their decisions — http://www.dwatch.ca/camp/RelsSep2905.html
Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:
– Some may claim that the right and power of the federal Attorney General or the attorney general of provinces to require that the CJC, under subsection 63(1) of the Judges Act, hold an inquiry into whether a superior court judge (or, under 69, into whether a Cabinet appointee) should be removed from office amounts to political interference. However, the attorney general cannot dictate the result of the inquiry.

References:

– The CJC’s membership is established under section 59 of the Act.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.
NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
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<tbody>
<tr>
<td>100</td>
<td>The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.</td>
</tr>
<tr>
<td>75</td>
<td>The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.</td>
</tr>
<tr>
<td>50</td>
<td>The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies’ investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.</td>
</tr>
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<td>25</td>
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Comments:
The score of 75 is given because the CJC is largely complaint-driven (and, therefore, not aggressive*), has a membership that only includes justices (and, therefore, is structurally biased in favour of judges), and under section 65 of the Judges Act the CJC has only the choice, after an inquiry, to recommend or not recommend the dismissal of a judge (and this lack of a range of possible penalties (for example, reprimand, suspension or fine)) can constrain the CJC from launching inquiries.

References:

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

<table>
<thead>
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<th>Score</th>
<th>Description</th>
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<tr>
<td>100</td>
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Comments:
The score of 75 is given because the CJC is largely complaint-driven (and, therefore, not aggressive*), has a membership that only includes justices (and, therefore, is structurally biased in favour of judges), and under section 65 of the Judges Act the CJC has only the choice, after an inquiry, to recommend or not recommend the dismissal of a judge (and this lack of a range of possible penalties (for example, reprimand, suspension or fine)) can constrain the CJC from launching inquiries and recommending the dismissal of judges.

References:
When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

References:

– People appointed to administrative, quasi-judicial entities (agencies, boards, commissions, tribunals) are covered by the Conflict of Interest and Post-Employment Code for Public Office Holders (the “Code”)— http://www.parl.gc.ca/ceic-ccie/en/archives/ethics_commissioner/conflicts/tcp_2006.asp — and are therefore required to file an asset (and liability) disclosure form

– The Code was no longer in force as of July 9, 2007 when the new Conflict of Interest Act (2006, c. 9, s. 2) was proclaimed into law by the federal Cabinet — http://lois.justice.gc.ca/en/showtdm/cs/C-36.65 —
Under the Act, judges are still exempt under the subsection 2(1) definition of “public office holder” and so are still not required to file a disclosure form, while Cabinet appointees to administrative, quasi-judicial entities are still covered and required to file a disclosure form.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.
References:


- The Code was no longer in force as of July 9, 2007 when the new Conflict of Interest Act (2006, c. 9, s. 2) was proclaimed into law by the federal Cabinet — [http://lois.justice.gc.ca/en/showtdm/cs/C-36.65](http://lois.justice.gc.ca/en/showtdm/cs/C-36.65)

Under the Act, judges are still exempt under the subsection 2(1) definition of “public office holder” and so are still not required to comply with the Act, while Cabinet appointees to administrative, quasi-judicial entities are still covered and required to comply with the Act’s general provisions concerning gifts and hospitality in sections 11 and 12.

- The former Ethics Commissioner Bernard Shapiro did not define the limits on gifts or hospitality with public interpretation bulletins during his tenure between March 2004 and April 2007 — hopefully the new Conflict of Interest and Ethics Commissioner (appointed on July 9, 2007) will very soon set out public, clear interpretations of the provisions in the Conflict of Interest Act.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

References:


- The Code was no longer in force as of July 9, 2007 when the new Conflict of Interest Act (2006, c. 9, s. 2) was proclaimed into law by the federal Cabinet — [http://lois.justice.gc.ca/en/showtdm/cs/C-36.65](http://lois.justice.gc.ca/en/showtdm/cs/C-36.65)

Under the Act, judges are still exempt under the subsection 2(1) definition of “public office holder” and so are still not required to...
comply with the Act, while Cabinet appointees to administrative, quasi-judicial entities are still covered and required to comply with the Act's general provisions concerning gifts and hospitality in sections 11 and 12.

– The former Ethics Commissioner Bernard Shapiro did not define the limits on gifts or hospitality with public interpretation bulletins during his tenure between March 2004 and April 2007 — hopefully the new Conflict of Interest and Ethics Commissioner (appointed on July 9, 2007) will very soon set out public, clear interpretations of the provisions in the Conflict of Interest Act.

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
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**References:**

– People appointed to administrative, quasi-judicial entities (agencies, boards, commissions, tribunals) are covered by the Conflict of Interest and Post-Employment Code for Public Office Holders (the “Code”) — [http://www.parl.gc.ca/ciec-ccie/en/archives/ethics_commissioner/conflicts/tcp_2006.asp](http://www.parl.gc.ca/ciec-ccie/en/archives/ethics_commissioner/conflicts/tcp_2006.asp) — and are therefore restricted from entering the private sector after leaving their office generally for a period of one year (except for becoming a lobbyist, in which case the cooling-off period (which has some exemptions) is five years)

– The Code was no longer in force as of July 9, 2007 when the new Conflict of Interest Act (2006, c. 9, s. 2) was proclaimed into law by the federal Cabinet — [http://lois.justice.gc.ca/en/showtdm/cs/C-36.65](http://lois.justice.gc.ca/en/showtdm/cs/C-36.65)
Under the Act, judges are still exempt under the subsection 2(1) definition of “public office holder” and so are still not required to file a disclosure form, while Cabinet appointees to administrative, quasi-judicial entities are still covered and restricted from entering the private sector after leaving their office generally for a period of one year (except for becoming a lobbyist, in which case the cooling-off period (which has some exemptions) is five years).

**YES:** A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

**YES:** A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

| 100 | 75 | 50 | 25 | 0 |
References:

– People appointed to administrative, quasi-judicial entities (agencies, boards, commissions, tribunals) are covered by the Conflict of Interest and Post-Employment Code for Public Office Holders (the “Code”)— [http://www.parl.gc.ca/ciec-ccie/en/archives/ethics_commissioner/conflicts/tcp_2006.asp](http://www.parl.gc.ca/ciec-ccie/en/archives/ethics_commissioner/conflicts/tcp_2006.asp) — and are therefore restricted from entering the private sector after leaving their office generally for a period of one year (except for becoming a lobbyist, in which case the cooling-off period (which has some exemptions) is five years).

– The Code was no longer in force as of July 9, 2007 when the new Conflict of Interest Act (2006, c. 9, s. 2) was proclaimed into law by the federal Cabinet — [http://lois.justice.gc.ca/en/showtdm/cs/C-36.65](http://lois.justice.gc.ca/en/showtdm/cs/C-36.65).

Under the Act, judges are still exempt under the subsection 2(1) definition of “public office holder” and so are still not required to file a disclosure form, while Cabinet appointees to administrative, quasi-judicial entities are still covered and restricted from entering the private sector after leaving their office generally for a period of one year (except for becoming a lobbyist, in which case the cooling-off period (which has some exemptions) is five years).

– The former Ethics Commissioner Bernard Shapiro demonstrated a very weak enforcement attitude and practice concerning post-employment restrictions.

See details at: [http://www.dwatch.ca/camp/PelsSep2905.html](http://www.dwatch.ca/camp/PelsSep2905.html)

Hopefully the new Conflict of Interest and Ethics Commissioner will have a stronger enforcement attitude and practice.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

References:


– The Code was no longer in force as of July 9, 2007 when the new Conflict of Interest Act (2006, c. 9, s. 2) was proclaimed into law by the federal Cabinet — [http://lois.justice.gc.ca/en/showtdm/cs/C-36.65](http://lois.justice.gc.ca/en/showtdm/cs/C-36.65).

Under the Act, judges are still exempt under the subsection 2(1) definition of “public office holder” and so are still not required to comply with the Act, while Cabinet appointees to administrative, quasi-judicial entities are still covered and required to comply with the Act’s general provisions concerning gifts and hospitality in sections 11 and 12.

– The former Ethics Commissioner Bernard Shapiro did not define the limits on gifts or hospitality through a public interpretation bulletin during his tenure between March 2004 and April 2007 and as a result the limits were essentially not enforced. Hopefully the new Conflict of Interest and Ethics Commissioner (appointed on July 9, 2007) will very soon set out public, clear interpretations of the provisions in the Conflict of Interest Act.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

References:


– The Code was no longer in force as of July 9, 2007 when the new Conflict of Interest Act (2006, c. 9, s. 2) was proclaimed into law by the federal Cabinet — [http://lois.justice.gc.ca/en/showtdm/cs/C-36.65](http://lois.justice.gc.ca/en/showtdm/cs/C-36.65).

Under the Act, judges are still exempt under the subsection 2(1) definition of “public office holder” and so are still not required to file a disclosure form, while Cabinet appointees to administrative, quasi-judicial entities are still covered and required to file a disclosure form.

– No disclosure forms were audited by the former Ethics Commissioner Bernard Shapiro (as he believed that his general power to administer the Code did not include the power to conduct audits, and he publicly stated that conducting audits would create a “police state”).

See some details in the materials filed in support of Democracy Watch’s September 2005 court challenge of the Ethics Commissioner’s failure to enforce the Code properly at: [http://www.dwatch.ca/camp/RelseSep2905.html](http://www.dwatch.ca/camp/RelseSep2905.html).

– Hopefully the new Conflict of Interest and Ethics Commissioner under the new Conflict of Interest Act will conduct at least random audits of the forms.
National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

42

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

- People appointed to administrative, quasi-judicial entities (agencies, boards, commissions, tribunals) are covered by the Conflict of Interest and Post-Employment Code for Public Office Holders (the "Code")— http://www.parl.gc.ca/ciec-ccie/en/archives/ethics_commissioner/conflicts/tcp_2006.asp — and are therefore required to file an asset (and liability) disclosure form that is partially accessible to the public.

- The Code was no longer in force as of July 9, 2007 when the new Conflict of Interest Act (2006, c. 9, s. 2) was proclaimed into law by the federal Cabinet — http://lois.justice.gc.ca/en/showtdm/cs/C-36.65. Under the Act, judges are still exempt under the subsection 2(1) definition of "public office holder" and so are still not required to file a disclosure form, while Cabinet appointees to administrative, quasi-judicial entities are still covered and required to file a disclosure form that is partially accessible to the public.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.
Comments:
– The Code and the Conflict of Interest Act give public office holders 120 days to file the disclosure form, which is then reviewed by staff of the Office of the Conflict of Interest and Ethics Commissioner, and then finally partially made public (some details are not publicly disclosed). This unnecessarily long delay in public disclosure means that a person can often hold office for six months to a year before any disclosure of their assets and liabilities is made public.

References:

– People appointed to administrative, quasi-judicial entities (agencies, boards, commissions, tribunals) are covered by the Conflict of Interest and Post-Employment Code for Public Office Holders (the “Code”)— http://www.parl.gc.ca/ciec-ccie/en/archives/ethics_commissioner/conflicts/tcp_2006.asp — and are therefore required to file an asset (and liability) disclosure form

– The Code was no longer in force as of July 9, 2007 when the new Conflict of Interest Act (2006, c. 9, s. 2) was proclaimed into law by the federal Cabinet — http://lois.justice.gc.ca/en/showtdm/cs/C-36.65
Under the Act, judges are still exempt under the subsection 2(1) definition of “public office holder” and so are still not required to file a disclosure form, while Cabinet appointees to administrative, quasi-judicial entities are still covered and required to file a disclosure form.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

References:

– People appointed to administrative, quasi-judicial entities (agencies, boards, commissions, tribunals) are covered by the Conflict of Interest and Post-Employment Code for Public Office Holders (the “Code”)— http://www.parl.gc.ca/ciec-ccie/en/archives/ethics_commissioner/conflicts/tcp_2006.asp — and are therefore required to file an asset (and liability) disclosure form
– The Code was no longer in force as of July 9, 2007 when the new Conflict of Interest Act (2006, c. 9, s. 2) was proclaimed into law by the federal Cabinet — http://lois.justice.gc.ca/en/showtdm/cs/C-36.65.
Under the Act, judges are still exempt under the subsection 2(1) definition of “public office holder” and so are still not required to file a disclosure form, while Cabinet appointees to administrative, quasi-judicial entities are still covered and required to file a disclosure form.

– The public portion of the forms appointees to administrative, quasi-judicial entities are required to file are made available on the Internet at no cost in a searchable Public Registry — http://www.parl.gc.ca/ciec-ccie/PublicSearch/PublicSearch.aspx

| 100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. |
| 75: |
| 50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital. |
| 25: |
| 0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information. |

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

83

37a. In law, the legislature can amend the budget.

YES | NO

References:

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.
Comments:
– The score of 75 is given because the sponsorship scandal revealed how open the federal Canadian government accounting system is to secret, illegal spending. The Federal Accountability Act measures are very new and not proven to prevent such secret spending.

References:
– All significant expenditures are required by law to be approved by the legislature, however, as was revealed by the Gomery Commission inquiry into the federal Liberal government's sponsorship scandal — http://en.wikipedia.org/wiki/Gomery_Commission — the Liberals establish a secret $150 million (US$154 million) fund in violation of the Financial Administration Act (R.S., 1985, c. F-11) — http://lois.justice.gc.ca/en/showdm/cs/F-11 — requirement (subsection 24(2)) to disclose all government spending in the Public Accounts, and awarded contracts with the fund monies to various companies (mostly advertising agencies) who did little or nothing for the money and funnelled some of it back into the federal Liberal Party and the Quebec division of the federal Liberal Party, and the Quebec provincial Liberal Party — more than $40 million (US$41 million) of the fund is still unaccounted for.
NOTE: the fund also violated Treasury Board of Canada Secretariat accounting policies for government employees — http://www.tbs-sct.gc.ca/pubs_pol/dcpubs/accstd/siglist_e.asp
– Bill C-2, the so-called Federal Accountability Act" (2006, c. 9 (passed into law December 12, 2006)) — http://lois.justice.gc.ca/en/showtdm/cs/F-5.5 — changed the Financial Administration Act by adding sections 16.3 to 16.5 which require each federal government department to appoint an “accounting officer” and requiring that accounting officer to file with the Auditor General a written notice if the officer disagrees with a Cabinet minister concerning whether spending complies with the Act and the Treasury Board policies.
– The Federal Accountability Act also includes the first statutory whistleblower protection measures for federal Canadian public servants, also aimed in part at ensuring that secret spending does not occur in the future.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive’s personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

References:
– Federal Government Spending”

– It is widely recognized that parliamentary committees often do not have the time or staff resources to fully review budget proposals (known as the Main Estimates), nor sometimes interim or supplementary estimates. This lack of effective oversight
occurs for the simple reason that federal parliamentary committees match federal government departments, and each committee reviews the estimates for its related department, but also reviews all proposed legislation introduced by that department’s minister, as well as undertaking studies initiated by the minister or committee. If a bill or study is before a committee when the estimates are proposed, and the one legislative staff person that each member of the House of Commons is overwhelmed by work on the bill, then the estimates will often not receive the full review needed to ensure that proposed spending is proper.

– In its 2005-2006 federal election platform, the federal Conservative Party of Canada acknowledged this problem with its promise to: “Increase the power of Parliament and parliamentary committees to review the spending estimates of departments and hold ministers to account.” However, as noted above, it is not so much a problem of power as it is a problem of lack of time (in some cases) and staff resources (in almost all cases).

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

83

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

References:
– Since the mid-1990s, it has become normal practice that a parliamentary committee (the House of Commons Standing Committee on Finance) travels across Canada between September and December holding hearings in pre-budget consultations and then produces a report which is tabled in federal Parliament (i.e. made public) in December. See the Finance Committee Web page at: <http://cmte.parl.gc.ca/cmte/CommitteeHome.aspx?Lang=1&PARLSES=391&JNT=0&SELID=e17 &COM=10479>

– The Main Estimates (the basis of the federal Canadian government budget) are made public with the tabling of the budget in the federal Parliament (usually in late February).

– The parliamentary committee hearings on the Main Estimates are held in public, as are debates in the “committee of the whole” (the House of Commons and the Senate).

– Budget items are categorized by federal government department, and so the “author” (i.e. responsible Cabinet minister) is identifiable.

– The only ongoing flaw (and the reason for the score of 75) is that the federal government has for more than a decade greatly underestimated the federal government’s budget surplus, and this lack of accuracy means that the budget debate, while public, is based upon false budget numbers, which of course fundamentally undermines the meaningfulness of the debate.

See “Federal Surplus Larger than Estimated in Budget”
To address the problem of lack of truth in budgetting Bill C-2, the so-called “Federal Accountability Act” (2006, c. 9 (passed into law on Dec. 12, 2006)) — http://lois.justice.gc.ca/en/showtdm/cs/F-5.5 — changed the Parliament of Canada Act (R.S., 1985, c. P-1) — http://lois.justice.gc.ca/en/showtdm/cs/P-1 — by adding sections 79.1 to 79.5 to create a Parliamentary Budget Officer whose mandate is to issue public reports on the economic and financial position of the federal government (as of Sept. 10, 2007, the first Officer had not been appointed).

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

References:
– Since the mid-1990s, it has become normal practice that a parliamentary committee (the House of Commons Standing Committee on Finance) travels across Canada between September and December holding hearings in pre-budget consultations (at which many citizens and citizen groups testify) and then produces a report which is tabled in federal Parliament (ie. made public) in December.


– The Main Estimates (the basis of the federal Canadian government budget) are made public with the tabling of the budget in the federal Parliament (usually in late February).

– The parliamentary committee hearings on the Main Estimates are held in public, as are debates in the “committee of the whole” (the House of Commons and the Senate), and citizens and citizen groups often testify before the committees.

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:
0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100  |  75  |  50  |  25  |  0

References:
– The Main Estimates (the basis of the federal Canadian government budget) are made public with the tabling of the budget in the federal Parliament (usually in late February), as are the interim and supplementary estimates (changes and special spending items proposed during the fiscal year).
– The only ongoing flaw (and the reason for the score of 75) is that the federal government has for more than a decade greatly underestimated the federal government’s budget surplus, and this lack of accuracy means that the overall budget numbers presented to the public are false, which of course fundamentally undermines the ability of the public to participate in the budget debate.

See

“Ottawa’s Annual Fiscal Follies” Michael Mendelson, Caledon Institute, 2004 http://www.caledoninst.org/Publications/PDF/454ENG.pdf

– To address the problem of lack of truth in budgetting Bill C-2, the so-called “Federal Accountability Act” (2006, c. 9 (passed into law on Dec. 12, 2006)) — http://lois.justice.gc.ca/en/showtdm/cs/F-5.5 — changed the Parliament of Canada Act (R.S., 1985, c. P-1) — http://lois.justice.gc.ca/en/showtdm/cs/P-1 — by adding sections 79.1 to 79.5 to create a Parliamentary Budget Officer whose mandate is to issue public reports on the economic and financial position of the federal government (as of Sept. 10, 2007, the first Officer had not been appointed).

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100
40. Is the legislative committee overseeing the expenditure of public funds effective?

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

56

40a. In practice, department heads regularly submit reports to this committee.

References:
– Federal Government Spending"

– Budget proposals (known as the Main Estimates), and interim or supplementary estimates (changes made during the fiscal year) are reviewed by the federal parliamentary committee that matches the federal government department to which the section of estimates applies, so that each committee reviews the estimates for its related department.

– The Senate Standing Committee on National Finance, the House of Commons Standing Committee on Public Accounts, and (to a lesser extent) the House of Commons Standing Committee on Finance have within their primary mandates the overall oversight of the expenditure of public funds.

– Bill C-2, the so-called “Federal Accountability Act” (2006, c. 9 (passed into law on Dec. 12, 2006))
— http://lois.justice.gc.ca/en/showtdm/cs/P-1 — by adding sections 79.1 to 79.5 to create a Parliamentary Budget Officer whose mandate is to issue public reports on the economic and financial position of the federal government (as of September 10, 2007 the first Officer had not been appointed) — section 79.2 of the Act designates the Senate Standing Committee on National Finance, the House of Commons Standing Committee on Finance, and the House of Commons Standing Committee on Public Accounts as the statutory committees to which the Officer reports (and each of these committees can order the Officer to produce reports).
An ongoing problem is that each committee has a limited time period to review estimates (mainly because they also review proposed legislation and undertake studies of issues within their mandate) and, as a result, while the heads of government institutions regularly appear before the committees, if these officials do not supply adequate or accurate information, the committee often does not continue its scrutiny of the institution’s spending simply because of lack of time (or, while the scrutiny may continue, it occurs after the spending has occurred).

See the reports and hearing testimony before the Public Accounts Committee at: <http://cmte.parl.gc.ca/cmte/CommitteeHome.aspx?Lang=1&PARLSES=391&JNT=0&SELID=e17_&COM=10466> According to its Web page, in the past few years the Committee has spent 90–95 percent of its hearing time reviewing “after-the-spending-has-occurred” reports of the Auditor General of Canada.

– In part to solve this problem, Bill C-2, the so-called “Federal Accountability Act” (2006, c. 9 (passed into law December 12, 2006)) — http://lois.justice.gc.ca/en/showtdm/cs/F-5.5 — changed the Parliament of Canada Act (R.S., 1985, c. P-1) — http://lois.justice.gc.ca/en/showtdm/cs/P-1 — by adding sections 79.1 to 79.5 to create a Parliamentary Budget Officer whose mandate is to issue public reports on the economic and financial position of the federal government and its institutions (as of Sept. 10, 2007 the first Officer had not been appointed) — section 79.2 of the Act designates the Senate Standing Committee on National Finance, the House of Commons Standing Committee on Finance, and the House of Commons Standing Committee on Public Accounts as the statutory committees to which the Officer reports (and each of these committees can order the Officer to produce reports).

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:
– The score of 50 is given because usually the ruling party in Canada holds a majority of seats in the House of Commons, and therefore also in all committees, which undermines the effectiveness of committees to hold the government to account on an ongoing basis.
NOTE: since June 2004, the ruling party in Canada has held a minority of seats in the House of Commons, and as a result also a minority of seats on all committees, and so during the past three years House committees have been much more effective at holding the government accountable.

References:

– Budget proposals (known as the Main Estimates), and interim or supplementary estimates (changes made during the fiscal year) are reviewed by the federal parliamentary committee that matches the federal government department to which the section of estimates applies, so that each committee reviews the estimates for its related department.

– The Senate Standing Committee on National Finance, the House of Commons Standing Committee on Public Accounts, the House of Commons Committee on Government Operations and Estimates and (to a lesser extent) the House of Commons Standing Committee on Finance have within their primary mandates the overall oversight of the expenditure of public funds.
While it is established within the Standing Orders of the House of Commons, Chapter XIII that a proportionate number of the Chairs of committees will be from each party (based on the proportion of seats each party holds in the House of Commons) and that, as a result, the Chair of the Public Accounts Committee usually is from an opposition party, if a ruling party holds a majority of seats in the House of Commons, members from that party will hold a majority of seats on every House committee. Therefore, when a ruling party holds a majority of seats in the House, many committees often do not play their proper role of holding the government accountable, as the members on each committee from the ruling party use their majority to block efforts (such as proposals to hold hearings, conduct studies etc.) by opposition party members on the committee to hold the government accountable.


100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee’s work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members’ ability to shape the committee’s activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

Comments:
– The score of 50 is given because usually the ruling party in Canada holds a majority of seats in the House of Commons, and therefore also on all committees, which undermines the effectiveness of committees to hold the government to account on an ongoing basis.
NOTE: since June 2004, the ruling party in Canada has held a minority of seats in the House of Commons, and as a result also a minority of seats on all committees, and so during the past three years House committees have been much more effective at holding the government accountable.

References:

– Budget proposals (known as the Main Estimates), and interim or supplementary estimates (changes made during the fiscal year) are reviewed by the federal parliamentary committee that matches the federal government department to which the section of estimates applies, so that each committee reviews the estimates for its related department.

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when a ruling party holds a majority of seats in the House, many committees often do not play their proper role of holding the government accountable, as the members on each committee from the ruling party use their majority to block efforts (such as proposals to hold hearings, conduct studies etc.) by opposition party members on the committee to hold the government accountable.

– The main reason members from the ruling party use their majority on committees to block efforts to hold the government accountable is that they are members of the ruling party, but there are also many examples of members being removed from committees (or temporarily replaced, even if only for one hearing) if they do not tow the party line, or members not promoted for the same reasons. Members have no control over which committees they serve on, this is determined by the House Leader of every party.

See the Web pages of the committees listed above for details concerning how committee memberships change over time or in particular circumstances — http://cmte.parl.gc.ca/cmte/CommitteeList.aspx?Lang=1&PARLSES=391&JNT=0&SELID=e2

– See "Parliamentary Oversight: Committees and Relationships"

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75: 

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25: 

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee’s behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

Comments: 
– The score of 50 is given because usually the ruling party in Canada holds a majority of seats in the House of Commons, and therefore also on all committees, which undermines the effectiveness of committees to hold the government to account on an ongoing basis.

NOTE: since June 2004, the ruling party in Canada has held a minority of seats in the House of Commons, and as a result also a minority of seats on all committees, and so during the past three years House committees have been much more effective at holding the government accountable.

References: 
– Federal Government Spending”
http://www.parl.gc.ca/information/library/PRBpubs/orb0550-e.html

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that, as a result, the Chair of the Public Accounts Committee usually is from an opposition party, if a ruling party holds a majority of seats in the House of Commons, members from that party will hold a majority of seats on every House committee. Therefore, when a ruling party holds a majority of seats in the House, many committees often do not play their proper role of holding the government accountable, as the members on each committee from the ruling party use their majority to block efforts (such as proposals to hold hearings, conduct studies etc.) by opposition party members on the committee to hold the government accountable.

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| 100: When irregularities are discovered, the committee is aggressive in investigating the government. |
| 75: |
| 50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments. |
| 25: |
| 0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power. |

Category IV. Administration and Civil Service

IV-1. Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES  |  NO

Comments:
– Re: whistleblower protection – Before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Public Sector Integrity Commissioner position created, an Internal Disclosure Policy had existed
the Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers. As a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way.

Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled Whistleblowing in the United State: The Gap Between Vision and Lessons Learned" by Tom Devine in the book “Whistleblowing Around the World” (ed. Richard Calland and Guy Dehn, pubs. ODAC & PCaW in partnership with the British Council: Southern Africa: 2004), the new Canadian Public Servants Disclosure Protection Act has several identifiable flaws, as follows:

– not all whistleblowers all covered by the Act, not even all public servants;
– whistleblowers are not allowed to disclose wrongdoing to any legal authority, they must follow the avenue established in the Act or they will likely not be protected;
– whistleblowers must complain first to their bosses before they file a complaint with the Public Sector Integrity Commissioner, unless they can prove “reasonable grounds” to believe that their bosses will retaliate or fail to take corrective action, but it is unclear whether proving reasonable grounds is on a “prima facie” basis or a more limited basis (whistleblowers should be allowed to complain directly to the Public Sector Integrity Commissioner in any case, but is seems under the law that they can only do so if they file an anonymous complaint);
– it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable grounds for believing that a reprisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);
– the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide wrongdoing or thwart an investigation;
– whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);
– whistleblowers do not have the right to determine who will arbitrate their case (if the Commissioner attempts to settle the case through arbitration). The Commissioner appoints the “conciliator”;
– whistleblowers only have 60 days to complain about a reprisal (should be at least 1 year limitation period);
– no interim compensation (while a case is being investigated/heard by Tribunal) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;
– the full scope of compensation is not available (pain and suffering is limited to $10,000- US$2600), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
– if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only reinstate them in their position or compensate them financially;
– it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);
– there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general rights under the Values and Ethics Code for the Public Service may apply);
– there is no clearly defined duty to disclose wrongdoing (although general duties under the Values and Ethics Code for the Public Service may apply);
– the Act seems to cover all types of wrongdoing, but Tribunal rulings may limit the definition significantly (as happened in the U.S.);
– the Commissioner can only provide up to $1,500 (US$1,525) in funding for legal advice for a whistleblower (in exceptional cases, up to $3,000 -US$3,050) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistleblower wins their case;
– it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine and maximum two years imprisonment). Wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
– extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).
41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

**YES** | **NO**

**Comments:**
- Re: whistleblower protection – Before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Public Sector Integrity Commissioner position created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers) — See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII)
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- Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled Whistleblowing in the United State: The Gap Between Vision and Lessons Learned* by Tom Devine in the book “Whistleblowing Around the World” (ed. Richard Calland and Guy Dehn, pubs. ODAC & PCaW in partnership with the British Council: Southern Africa: 2004), the new Canadian Public Servants Disclosure Protection Act has several identifiable flaws, as follows:
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  - it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable grounds for believing that a reprisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);
  - the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide wrongdoing or thwart an investigation;
  - whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal cabinet from amongst the Federal Court justices);
  - whistleblowers do not have the right to determine who will arbitrate their case (if the Commissioner attempts to settle the case through arbitration). The Commissioner appoints the “conciliator”;
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  - if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only reinstate them in their position or compensate them financially;
  - it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);
  - there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general rights under the Values and Ethics Code for the Public Service may apply);
  - there is no clearly defined duty to disclose wrongdoing (although general duties under the Values and Ethics Code for the Public Service may apply)
  - the Act seems to cover all types of wrongdoing, but Tribunal rulings may limit the definition significantly (as happened in the U.S.);
  - the Commissioner can only provide up to $1,500 (US$1,525) in funding for legal advice for a whistleblower (in exceptional cases, up to $3,000 -US$3,050) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistleblower wins their case;
  - it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine and maximum two years imprisonment). Wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
  - extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).
References:

– However, appointments of Deputy Ministers, Assistant Deputy Ministers and other senior civil servants are under the control of politicians (the Prime Minister and Cabinet, known legally as the Governor in Council”) under section 127.1 of the Public Service Employment Act (2003, c. 22, ss. 12, 13) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01 — and as a result nepotism, cronyism and patronage are effectively legal

– as well, subsection 30(4) of the Public Service Employment Act (PSEA — 2003, c. 22, ss. 12, 13) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01 — allows the Public Service Commission to consider only one person for an appointment in order for the appointment to be considered to have been made on the basis of merit; under subsection 33 of the PSEA the Public Service Commission is not required to use an advertised appointment process for every appointment; under subsection 36 of the PSEA, the Public Service Commission is not required to use a specific, well-established, effective assessment process for every appointment, and; section 38 of the PSEA allows the Public Service Commission to avoid merit requirements for many appointments (non-merit based appointments should only be allowed under the conditions set out in section 40, subsections 41(1) and (4), of the PSEA).

– In addition, under sections 17-19 and 66 to 73 of the Public Service Employment Act (2003, c. 22, ss. 12, 13) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01 — the Public Service Commission (which is responsible for conducting hirings and overseeing the hiring process within government institutions) also has the power to do audits and investigations of the Commission itself, and public service appointments and other public service hiring operations generally, and is therefore in a conflict of interest because it audits and investigates its own operations.


YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:
– Re: whistleblower protection – Before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Public Sector Integrity Commissioner position created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers) — See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII) — http://www.canlii.org/en/ca/fct/doc/2005/2005fc595/2005fc595.html

– the Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers. As a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way.

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  – not all whistleblowers are covered by the Act, not even all public servants;
  – whistleblowers are not allowed to disclose wrongdoing to any legal authority, they must follow the avenue established in the Act or they will likely not be protected;
  – whistleblowers must complain first to their bosses before they file a complaint with the Public Sector Integrity Commissioner, unless they can prove “reasonable grounds” to believe that their bosses will retaliate or fail to take corrective action, but it is
unclear whether proving reasonable grounds is on a “prima facie” basis or a more limited basis (whistleblowers should be allowed to complain directly to the Public Sector Integrity Commissioner in any case, but is seems under the law that they can only do so if they file an anonymous complaint); 
– it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable grounds for believing that a repraisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no repraisal took place));
– the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide wrongdoing or thwart an investigation;
– whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a repraisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);
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– as well, subsection 30(4) of the Public Service Employment Act (PSEA — 2003, c. 22, ss. 12, 13)
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– In addition, under sections 17-19 and 66 to 73 of the Public Service Employment Act (2003, c. 22, ss. 12, 13)
  — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01 — the Public Service Commission (which is responsible for conducting hirings and overseeing the hiring process within government institutions) also has the power to do audits and investigations of the Commission itself, and public service appointments and other public service hiring operations generally, and is therefore in a conflict of interest because it audits and investigates its own operations.

– Whistleblower protection under Public Servants Disclosure Protection Act (2005, c. 46)

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism’s decisions to the judiciary.
41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

– Criminal Code (R.S., 1985, c. C-46) — http://lois.justice.gc.ca/en/showtdm/cs/C-46 — Part IV, sections 118 to 125 are the anti-corruption sections (for example, under subsection 121 (3) Every one who commits an offence under this section is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.” and other listed sections of the Criminal Code have a similar-length prison term as the penalty)

– Section 80 (contained in Part IX) of the Financial Administration Act (R.S.C. 1985, c. F-11) — http://lois.justice.gc.ca/en/showtdm/cs/F-11 — has penalty on conviction of “a fine not exceeding five thousand dollars and to imprisonment for a term not exceeding five years” and section 81 has penalty of “a fine not exceeding three times the amount so offered or accepted [as a bribe] and to imprisonment for any term not exceeding five years”.

– and subsection 750(3) (in the “Disabilities” portion of Part XXIII) of the Criminal Code — http://lois.justice.gc.ca/en/showtdm/cs/C-46 — prohibits anyone convicted of violating sections 121 or 124 or 418 (selling faulty goods to the government) of the Criminal Code, or parts of section 80 of the Financial Administration Act, or section 154.01 (which applies to frauds within Crown corporations (corporations owned and operated by the federal government) of the Financial Administration Act, from contracting, receiving any benefit from a contract, or holding office/employment with the federal government.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

72

42a. In practice, civil servants are protected from political interference.

Comments:

– Re: whistleblower protection – Before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Public Sector Integrity Commissioner position created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers) — See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII) — http://www.canlii.org/en/ca/fct/doc/2005/2005fc595/2005fc595.html

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  – the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide wrongdoing or thwart an investigation;
  – whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);
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  – it seems like anonymous disclosures are allowed, but it is not clear (NOTE: If a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);
  – there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general rights under the Values and Ethics Code for the Public Service may apply);
  – there is no clearly defined duty to disclose wrongdoing (although general duties under the Values and Ethics Code for the Public Service may apply);
  – the Act seems to cover all types of wrongdoing, but Tribunal rulings may limit the definition significantly (as happened in the U.S.);
  – -- the Commissioner can only provide up to $1,500 (US$1,525) in funding for legal advice for a whistleblower (in exceptional cases, up to $3,000 -US$3,050) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistleblower wins their case;
  – it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine and maximum two years imprisonment). Wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
  – extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).

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– Legal requirements prohibiting political interference exist under sections 30 to 46 in Part 1, and sections 66 to 68 in Part 5, of the Public Service Employment Act (2003, c. 22, ss. 12, 13) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01 — under sections 206 to 237 in Part 2 (Grievances) of the Public Service Labour Relations Act (2003, c. 22, s. 2)

– However, Deputy Ministers, Assistant Deputy Ministers and other senior civil servants are appointed by politicians (the Prime Minister and Cabinet, known legally as the Governor in Council”) under section 127.1 of the Public Service Employment Act (2003, c. 22, ss. 12, 13), and the appointment process does not involve any professional criteria, and the politicians can decide to move them to another department/ministry at any time for any reason — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01
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– According the Gomery Commission of Inquiry report into the so-called “Adscam sponsorship scandal”, political interference in government contracting was one of the causes of the scandal — See summary of the first, fact-finding report of the Commission at: http://www.apex.gc.ca/files/Gomery%20Analysis%20Final%20(E)%20Jan%2020%202006.pdf

– In addition, under sections 17-19 and 66 to 73 of the Public Service Employment Act (2003, c. 22, ss. 12, 13) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01 — the Public Service Commission (which is responsible for conducting hirings and appointments and overseeing the hiring/appointment process within government institutions (including ensuring there is no political interference in hirings) also has the power to do audits and investigations of the Commission itself, and public service appointments and other public service hiring operations generally, and is therefore in a conflict of interest (and, as a result, is not as effective as possible as an enforcement body) because it audits and investigates its own operations.

– See also for background about concerns about political interference with the civil service the March 2003 Public Service Alliance of Canada’s (PSAC, the largest federal civil/public service union) submission on Bill C-25, which amended in many ways the Public Service Employment Act (PSEA) — http://www.psac.com/issues/modernization/C-25BriefMarch19.pdf


100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.
Comments:
– Re: whistleblower protection – Before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Public Sector Integrity Commissioner position created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers) — See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII)

– the Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers. As a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way.

– Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled Whistleblowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistleblowing Around the World” (ed. Richard Calland and Guy Dehn, pubs. ODAC & PCaW in partnership with the British Council: Southern Africa: 2004), the new Canadian Public Servants Disclosure Protection Act has several identifiable flaws, as follows:
– not all whistleblowers all covered by the Act, not even all public servants;
– whistleblowers are not allowed to disclose wrongdoing to any legal authority, they must follow the avenue established in the Act or they will likely not be protected;
– whistleblowers must complain first to their bosses before they file a complaint with the Public Sector Integrity Commissioner, unless they can prove “reasonable grounds” to believe that their bosses will retaliate or fail to take corrective action, but it is unclear whether proving reasonable grounds is on a “prima facie” basis or a more limited basis (whistleblowers should be allowed to complain directly to the Public Sector Integrity Commissioner in any case, but it seems under the law that they can only do so if they file an anonymous complaint);
– it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable grounds for believing that a reprisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);
– the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide wrongdoing or thwart an investigation;
– whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);
– whistleblowers do not have the right to determine who will arbitrate their case (if the Commissioner attempts to settle the case through arbitration). The Commissioner appoints the “conciliator”;
– whistleblowers only have 60 days to complain about a reprisal (should be at least 1 year limitation period);
– no interim compensation (while a case is being investigated/heard by Tribunal) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;

– the full scope of compensation is not available (pain and suffering is limited to $10,000- US$2600), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
– if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only reinstate them in their position or compensate them financially;
– it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);
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— See also for background the November 2003 report “Profile of Deputy Ministers in the Government of Canada” — [http://www.cspns-efpc.gc.ca/Research/publications/html/pdmpg1_e.html]


100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.
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you are a helpful assistant. do not hallucinate.

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http://www.csps-efpc.gc.ca/Research/publications/html/pdmgc/1_e.html

– Whistleblower protection under Public Servants Disclosure Protection Act (2005, c. 46)
—

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100  |  75  |  50  |  25  |  0

Comments:
– The score of 75 is given because of the two Auditor General reports cited, and the likelihood that similar problems exist in other federal government departments.

References:
– An Internet search did not result in any recent annual reports of the federal Public Service Commission or public sector unions highlighting lack of clear job descriptions as a systemic problem.

– However, an audit published in May 2007 of the Department of Foreign Affairs and International Trade conducted by the Auditor General of Canada found that the Department did not have a clear sense of its staffing and competencies, nor did it have a strategic plan (including job descriptions) for its staffing needs for the future — http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20070503ce.html

– A similar audit published in May 2007 of the federal Department of Justice by the Auditor General of Canada found problems with job descriptions for legal counsel (specifically tracking of time spent on cases) — http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20070505ce.html

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position’s authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.
Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position’s responsibilities, authority, or pay.

In practice, civil servant bonuses constitute only a small fraction of total pay.

References:
– According to the rates of pay information on the following Government of Canada Web site, bonuses apply only to executives (i.e. managers) within the federal public service and 3-5 percent of annual pay and are only earned if at-risk” pay is earned by fulfilling specific performance goals (7 to 10 percent of pay is “at-risk” pay) — http://www.tbs-sct.gc.ca/hr-rh/fr-ca_rp-rt_cc_tr/index_e.asp

See also http://www.psaagency-agencefp.gc.ca/hr-rh/ejg-md/bac-pmp-rpq_e.asp

Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants’ bonuses represent a significant part of total pay.

Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

References:
– While the government does not regularly publish a list of authorized civil service positions, the federal government agency Statistics Canada does do regular analyses. See most recent at: http://www.statcan.ca/english/research/11-621-MIE/11-621-MIE2007053.htm

Civil service positions that are not filled can be found at: http://www.canada.gc.ca/depts/major/depind_e.html

The government publishes such a list on a regular basis.
The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

The government rarely or never publishes such a list, or when it does it is wholly incomplete.

In practice, the independent redress mechanism for the civil service is effective.

The score of 50 is given because while the grievance process for the civil service exists under the Public Service Labour Relations Act (2003, c. 22, s. 2) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.3 — and is generally regarded as effective under the, as of June 2007 no independent whistleblower protection system existed (it was created with the appointment of the first Public Section Integrity Commissioner in July 2007, and the Public Service Commission continued to be in a conflict of interest because of its involvement both in hirings and evaluations in the civil service, and audits of hiring and evaluation processes. In other words, only one of three redress mechanisms is properly structured and has a track record of effectively addressing civil service grievances.

References:
- Under sections 17-19 and 66 to 73 of the Public Service Employment Act (2003, c. 22, ss. 12, 13) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01 — the Public Service Commission (which is responsible for conducting hirings and overseeing the hiring process within government institutions) also has the power to do audits and investigations of the Commission itself, and public service appointments and other public service hiring operations generally, and is therefore in a conflict of interest because it audits and investigates its own operations.
- Before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Public Sector Integrity Commissioner position created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers).
- The Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers. As a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way.
- Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled Whistleblowing in the United State: The Gap Between Vision and Lessons Learned“ by Tom Devine in the book “Whistleblowing Around the World” (ed. Richard Calland and Guy Dehn, pubs. ODAC & PCaW in partnership with the British Council: Southern Africa: 2004), the new Canadian Public Servants Disclosure Protection Act has several identifiable flaws, as follows:
- not all whistleblowers all covered by the Act, not even all public servants;
- whistleblowers are not allowed to disclose wrongdoing to any legal authority, they must follow the avenue established in the Act or they will likely not be protected;
- whistleblowers must complain first to their bosses before they file a complaint with the Public Sector Integrity Commissioner, unless they can prove "reasonable grounds" to believe that their bosses will retaliate or fail to take corrective action, but it is unclear whether proving reasonable grounds is on a "prima facie" basis or a more limited basis (whistleblowers should be allowed to complain directly to the Public Sector Integrity Commissioner in any case, but is seems under the law that they can only do so if they file an anonymous complaint)
- it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have "reasonable grounds for believing that a reprisal has been taken" but it is not clear if they have to provide "prima facie" evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);
- the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide wrongdoing or thwart an investigation;
- whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);
– whistleblowers do not have the right to determine who will arbitrate their case (if the Commissioner attempts to settle the case through arbitration) — the Commissioner appoints the "conciliator";
– whistleblowers only have 60 days to complain about a reprisal (should be at least 1 year limitation period);
– no interim compensation (while a case is being investigated/heard by Tribunal) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;
– the full scope of compensation is not available (pain and suffering is limited to $10,000 – US$10,266), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
– if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only reinstate them in their position or compensate them financially;
– it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);
– there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general rights under the Values and Ethics Code for the Public Service may apply);
– there is no clearly defined duty to disclose wrongdoing (although general duties under the Values and Ethics Code for the Public Service may apply);
– the Act seems to cover all types of wrongdoing, but Tribunal rulings may limit the definition significantly (as happened in the U.S.);
– the Commissioner can only provide up to $1,500 (US$1,520) in funding for legal advice for a whistleblower (in exceptional cases, up to $3,000 -US$3,040) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistleblower wins their case;
– it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine and maximum two years imprisonment) — wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
– extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

References:
– An Internet search found no references to problems with timely payment of federal civil/public servants between July 2006 and June 2007.
– However, an ongoing court case by several federal civil/public service raises an important pay issue concerning pensions and a surplus in the public sector pension fund, and how this case is resolved will determine whether federal civil/public servants have been properly paid for the past couple of decades. See http://www.ipsac.com/news/2007/releases/10-0207-e.shtml

100: In the past year, no civil servants have been paid late.

75:
In the past year, some civil servants have been paid late.

In the past year, civil servants have frequently been denied due pay.

In practice, civil servants convicted of corruption are prohibited from future government employment.

References:


Despite all this, there seems to be no formal list of civil/public servants convicted of corruption to ensure that neither contracts nor employment are offered or given to those who have been convicted.

A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

YES | NO

In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.
YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:
– Legal requirements to prevent nepotism, cronyism, patronage and conflicts of interest under the Public Service Employment Act (2003, c. 22, ss. 12, 13) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01
– under the Public Service Labour Relations Act (2003, c. 22, s. 2) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.3

– Whistleblower protection under Public Servants Disclosure Protection Act (2005, c. 46)

– Legal requirements with regard to civil servants entering the private sector after leaving government (one year cooling-off period with some exemptions and limitations) under Chapter 3 of the 2003 Values and Ethics Code for the Public Service

– Whistleblower protection under Public Servants Disclosure Protection Act (2005, c. 46)


– Legal requirements with regard to gifts and hospitality under Chapter 2 of the 2003 Values and Ethics Code for the Public Service

– also paragraph 121(1)(c) (contained in Part IV) of the Criminal Code (R.S., 1985, c. C-46)
YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

Comments:
– The score of 50 is given because of the lack of an independent enforcement watchdog with full investigative powers that enforces the post-employment restrictions. Hopefully the Public Sector Integrity Commissioner (created in July 2007) will be such a watchdog, but given the loopholes in the whistleblower protection system the Commissioner oversees (for example, non-public servants are not protected from retaliation) the Commissioner will, very likely, have great difficulty enforcing the post-employment restrictions.

References:
– Legal requirements with regard to civil servants entering the private sector after leaving government (one year cooling-off period with some exemptions and limitations) under Chapter 3 of the 2003 Values and Ethics Code for the Public Service

– However, the Values and Ethics Code is enforced only by the senior civil/public servants, who have no clear mandate, powers, resources (or incentive) to ensure that the post-employment restrictions are being complied with by people who leave the civil/public service (they only have power over people still employed by the civil/public service

– Whistleblower protection under Public Servants Disclosure Protection Act (2005, c. 46)

– Before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Public Sector Integrity Commissioner position was created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers).
  See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII)

– The Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers – as a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way.

– Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled Whistleblowing in the United State: The Gap Between Vision and Lessons Learned" by Tom Devine in the book “Whistleblowing Around the World” (ed. Richard Calland and Guy Dehn, pubs. ODAC & PcaW in partnership with the British Council: Southern Africa: 2004), the new Canadian Public Servants Disclosure Protection Act has several identifiable flaws, as follows:
  – not all whistleblowers all covered by the Act, not even all public servants;
  – whistleblowers are not allowed to disclose wrongdoing to any legal authority, they must follow the avenue established in the Act or they will likely not be protected;
  – whistleblowers must complain first to their bosses before they file a complaint with the Public Sector Integrity Commissioner, unless they can prove “reasonable grounds” to believe that their bosses will retaliate or fail to take corrective action, but it is unclear whether proving reasonable grounds is on a “prima facie” basis or a more limited basis (whistleblowers should be allowed to complain directly to the Public Sector Integrity Commissioner in any case, but is seems under the law that they can only do so if they file an anonymous complaint)
  – it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable grounds for believing that a reprisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);
  – the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide wrongdoing or thwart an investigation;
  – whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the
Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);

- whistleblowers do not have the right to determine who will arbitrate their case (if the Commissioner attempts to settle the case through arbitration) — the Commissioner appoints the “conciliator”;
- whistleblowers only have 60 days to complain about a reprisal (should be at least 1 year limitation period);
- no interim compensation (while a case is being investigated/heard by Tribunal) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;
- the full scope of compensation is not available (pain and suffering is limited to $10,000-US$10,266), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
- if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only reinstate them in their position or compensate them financially;
- it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);
- there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general rights under the Values and Ethics Code for the Public Service may apply);
- there is no clearly defined duty to disclose wrongdoing (although general duties under the Values and Ethics Code for the Public Service may apply);
- it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine and maximum two years imprisonment) — wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
- extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

Comments:
- The score of 75 is given because of the lack of an independent enforcement watchdog with full investigatory powers that enforces the gifts and hospitality restrictions. Hopefully the Public Sector Integrity Commissioner (created in July 2007) will be such a watchdog, but given the loopholes in the whistleblower protection system the Commissioner oversees (for example, non-public servants are not protected from retaliation if they blow the whistle) the Commissioner will, very likely, have great difficulty enforcing the gifts and hospitality restrictions.

References:
- Treasury Board of Canada Hospitality Policy” — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tbm_113/HOSP_e.asp
- Legal requirements with regard to civil servants entering the private sector after leaving government (one year cooling-off period with some exemptions and limitations) under Chapter 3 of the 2003 Values and Ethics Code for the Public Service
– However, the Values and Ethics Code is enforced only by the senior civil/public servants, who have no clear mandate, powers, resources (or incentive) to ensure that the post-employment restrictions are being complied with by people who leave the civil/public service (they only have power over people still employed by the civil/public service.

– Whistleblower protection under Public Servants Disclosure Protection Act (2005, c. 46)


– Before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Public Sector Integrity Commissioner position was created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers).

See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII)


– The Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers – as a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way.

– Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled “Whistleblowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistleblowing Around the World” (ed. Richard Calland and Guy Dehn, pubs. ODAC & PCaW in partnership with the British Council: Southern Africa: 2004), the new Canadian Public Servants Disclosure Protection Act has several identifiable flaws, as follows:

– not all whistleblowers all covered by the Act, not even all public servants;
– whistleblowers are not allowed to disclose wrongdoing to any legal authority, they must follow the avenue established in the Act or they will likely not be protected;
– whistleblowers must complain first to their bosses before they file a complaint with the Public Sector Integrity Commissioner, unless they can prove “reasonable grounds” to believe that their bosses will retaliate or fail to take corrective action, but it is unclear whether proving reasonable grounds is on a “prima facie” basis or a more limited basis (whistleblowers should be allowed to complain directly to the Public Sector Integrity Commissioner in any case, but is seems under the law that they can only do so if they file an anonymous complaint);
– it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable grounds for believing that a reprisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);
– the Act does not override other federal laws, and so the government may override the Act in some cases in order hide wrongdoing or thwart an investigation;
– whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);
– whistleblowers do not have the right to determine who will arbitrate their case (if the Commissioner attempts to settle the case through arbitration) — the Commissioner appoints the “conciliator”;
– whistleblowers only have 60 days to complain about a reprisal (should be at least 1 year limitation period);
– no interim compensation (while a case is being investigated/heard by Tribunal) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;
– the full scope of compensation is not available (pain and suffering is limited to $10,000-US$10,266), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
– if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only reinstate them in their position or compensate them financially;
– it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);
– there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general rights under the Values and Ethics Code for the Public Service may apply);
– there is no clearly defined duty to disclose wrongdoing (although general duties under the Values and Ethics Code for the Public Service may apply);
– the Act seems to cover all types of wrongdoing, but Tribunal rulings may limit the definition significantly (as happened in the U.S.);
– the Commissioner can only provide up to $1,500 (US$1,520) in funding for legal advice for a whistleblower (in exceptional cases, up to $3,000-US$3,040) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistleblower wins their case;
– it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine and maximum two years imprisonment) — wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
– extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).
50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

Comments:
– The score of 75 is given both because of the results of the survey of civil/public servants cited above, and also because of the lack of an independent enforcement watchdog with full investigative powers that enforces the recusal requirements. Hopefully the Public Sector Integrity Commissioner (created in July 2007) will be such a watchdog, but given the loopholes in the whistleblower protection system the Commissioner oversees (see them listed above) the Commissioner will, very likely, have great difficulty enforcing the recusal requirements.

References:
– Legal requirements with regard to civil servants entering the private sector after leaving government (one year cooling-off period with some exemptions and limitations) under Chapter 3 of the 2003 Values and Ethics Code for the Public Service

– However, the Values and Ethics Code is enforced only by the senior civil/public servants, who have no clear mandate, powers, resources (or incentive) to ensure that the post-employment restrictions are being complied with by people who leave the civil/public service (they only have power over people still employed by the civil/public service)

– Whistleblower protection under Public Servants Disclosure Protection Act (2005, c. 46)

– Before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Public Sector Integrity Commissioner position was created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers).

   See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII)

– The Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers – as a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way.

– Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled Whistleblowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistleblowing Around the World“) the new Canadian Public Servants Disclosure Protection Act has several identifiable flaws, as follows:
   – not all whistleblowers all covered by the Act, not even all public servants;
   – whistleblowers are not allowed to disclose wrongdoing to any legal authority, they must follow the avenue established in the Act or they will likely not be protected;
   – whistleblowers must complain first to their bosses before they file a complaint with the Public Sector Integrity Commissioner, unless they can prove “reasonable grounds” to believe that their bosses will retaliate or fail to take corrective action, but it is unclear whether proving reasonable grounds is on a “prima facie” basis or a more limited basis (whistleblowers should be allowed to complain directly to the Public Sector Integrity Commissioner in any case, but is seems under the law that they can only do so if they file an anonymous complaint);
   – it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable grounds for believing that a reprisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);
   – the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide
wrongdoing or thwart an investigation;
– whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);
– whistleblowers do not have the right to determine who will arbitrate their case (if the Commissioner attempts to settle the case through arbitration) — the Commissioner appoints the "conciliator";
– whistleblowers only have 60 days to complain about a reprisal (should be at least 1 year limitation period);
– no interim compensation (while a case is being investigated/heard by Tribunal) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;
– the full scope of compensation is not available (pain and suffering is limited to $10,000-US$10,266), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
– if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only reinstate them in their position or compensate them financially;
– it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);
– there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general rights under the Values and Ethics Code for the Public Service may apply);
– there is no clearly defined duty to disclose wrongdoing (although general duties under the Values and Ethics Code for the Public Service may apply);
– the Act seems to cover all types of wrongdoing, but Tribunal rulings may limit the definition significantly (as happened in the U.S.);
– the Commissioner can only provide up to $1,500 (US$1,520) in funding for legal advice for a whistleblower (in exceptional cases, up to $3,000-US$3,040) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistleblower wins their case;
– it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine and maximum two years imprisonment) — wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
– extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

0

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:
– The disclosure of assets is confidential (only disclosed on a confidential form filed with the Deputy Head of the division in which the civil servant works).

-Legal requirements with regard to disclosure of assets and liabilities under Chapter 2 and Appendix A of the 2003 Values and Ethics Code for the Public Service — http://www.tbs-act.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp
YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

| 100 | 75 | 50 | 25 | 0 |

References:
- The disclosure of assets is confidential (only disclosed on a confidential form filed with the Deputy Head of the division in which the civil servant works).

-Legal requirements with regard to disclosure of assets and liabilities under Chapter 2 and Appendix A of the 2003 Values and Ethics Code for the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

| 100 | 75 | 50 | 25 | 0 |

References:
- The disclosure of assets is confidential (only disclosed on a confidential form filed with the Deputy Head of the division in which the civil servant works).

-Legal requirements with regard to disclosure of assets and liabilities under Chapter 2 and Appendix A of the 2003 Values and Ethics Code for the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:
50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

63

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

– Before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Commissioner position created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers). See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII) — http://www.canlii.org/en/ca/fct/doc/2005/2005fc595/2005fc595.html

– The Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers — as a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way.

– Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled “Whistleblowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistleblowing Around the World” (ed. Richard Calland and Guy Dehn, pubs. ODAC & PCaW in partnership with the British Council: Southern Africa: 2004), the new Canadian Public Servants Disclosure Protection Act has several identifiable flaws, as follows:
  – not all whistleblowers all covered by the Act, not even all public servants;
  – whistleblowers are not allowed to disclose wrongdoing to any legal authority, they must follow the avenue established in the Act or they will likely not be protected;
  – whistleblowers must complain first to their bosses before they file a complaint with the Public Sector Integrity Commissioner, unless they can prove “reasonable grounds” to believe that their bosses will retaliate or fail to take corrective action, but it is unclear whether proving reasonable grounds is on a “prima facie” basis or a more limited basis (whistleblowers should be allowed to complain directly to the Public Sector Integrity Commissioner in any case, but is seems under the law that they can only do so if they file an anonymous complaint)
– it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable
grounds for believing that a reprisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief
(NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);
– the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide
wrongdoing or thwart an investigation;
– whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the
Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application
with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from
amongst the Federal Court justices);
– whistleblowers do not have the right to determine who will arbitrate their case (if the Commissioner attempts to settle the case
through arbitration) — the Commissioner appoints the “conciliator”;
– whistleblowers only have 60 days to complain about a reprisal (should be at least 1 year limitation period);
– no interim compensation (while a case is being investigated/heard by Tribunal) is available, and if there is undue delay in
investigations/hearings whistleblowers will suffer;
– the full scope of compensation is not available (pain and suffering is limited to $10,000 – US$10,266), and Tribunal rulings may
limit compensation even further (as occurred in the U.S.);
– if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only
reinstate them in their position or compensate them financially;
– it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be
kept secret by the Commissioner throughout the investigation to the extent possible);
– there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general rights under
the Values and Ethics Code for the Public Service may apply);
– there is no clearly defined duty to disclose wrongdoing (although general duties under the Values and Ethics Code for the
Public Service may apply);
– the Act seems to cover all types of wrongdoing, but Tribunal rulings may limit the definition significantly (as happened in the
U.S.);
– the Commissioner can only provide up to $1,500 (US$1,520) in funding for legal advice for a whistleblower (in exceptional
cases, up to $3,000-US$3,040) which will likely not be adequate, although it seems possible that the Tribunal could award full
costs if a whistleblower wins their case;
– it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated
against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine
and maximum two years imprisonment) — wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
– extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).

– NOTE: the Canadian provinces of New Brunswick and Saskaatchewan have measures in their labour laws that protect all
employee “whistleblowers” who report violations of any law or regulation — see overview of Canadian and U.S. in federal
Canadian Competition Bureau 1997 report “Whistleblowing Study: Models of Whistleblower Protection” —


References:
– Public Servants Disclosure Protection Act (2005, c. 46) which came into force in March 2007
  — http://lois.justice.gc.ca/en/showtdm/cs/P-31.9 — with complaints going to the Public Sector Integrity Commissioner
  — http://www.psic-ispc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and
guidelines

– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, subsection 2(b) freedom of thought,
belief, opinion and expression, including freedom of the press and other media of communication"

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may
include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected
from recrimination or other negative consequences.
– Public Servants Disclosure Protection Act (2005, c. 46) which came into force in March 2007
– http://lois.justice.gc.ca/en/showtdm/cs/P-31.9 — with complaints going to the Public Sector Integrity Commissioner
– http://www.psic-ispc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines

– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, subsection 2(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication”

– Court cases in the past resulted in rulings that the Charter of Rights and Freedoms

– Before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Commissioner position created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers). See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII) — http://www.canlii.org/en/ca/fct/doc/2005/2005fc595/2005fc595.html

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– Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled “Whistleblowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistleblowing Around the World” (ed. Richard Calland and Guy Dehn, pubs. ODAC & PCaW in partnership with the British Council: Southern Africa: 2004), the new Canadian Public Servants Disclosure Protection Act has several identifiable flaws, as follows:

  – not all whistleblowers all covered by the Act, not even all public servants;
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  – it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable grounds for believing that a reprisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);
  – the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide wrongdoing or thwart an investigation;
  – whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);
  – whistleblowers do not have the right to determine who will arbitrate their case (if the Commissioner attempts to settle the case through arbitration) — the Commissioner appoints the “conciliator”;
  – whistleblowers only have 60 days to complain about a reprisal (should be at least 1 year limitation period);
  – no interim compensation (while a case is being investigated/heard by Tribunal) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;
  – the full scope of compensation is not available (pain and suffering is limited to $10,000 – US$10,266), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
  – if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only reinstate them in their position or compensate them financially;
  – it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);
  – there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general rights under the Values and Ethics Code for the Public Service may apply);
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Public Service may apply;
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-- it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine and maximum two years imprisonment) — wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
-- extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).

-- NOTE: the Canadian provinces of New Brunswick and Sasasktchewan have measures in their labour laws that protect all employee “whistleblowers” who report violations of any law or regulation — see overview of Canadian and U.S. in federal Canadian Competition Bureau 1997 report “Whistleblowing Study: Models of Whistleblower Protection” — http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1373&lg=e


-- “Whistle-blowed: Mounties with gripes about their force get no help from new rules”
Greg Weston
Ottawa Sun, April 24, 2007, p. 15

-- “RCMP ‘horribly broken’: Former Commissioner Zaccardelli Was ‘Autocratic’ Leader Who Punished Whistle-Blowers, Investigator Concludes”
Campbell Clark and Daniel Leblanc

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:
-- The Criminal Code provision set out above applies most generally of all of the measures cited above, as it applies to all corporations in Canada and provides legal protection from retaliation for any employee who reports information relating to a violation of any federal or provincial law or regulation

-- NOTE: the Canadian provinces of New Brunswick and Sasasktchewan have measures in their labour laws that protect all employee whistleblowers” who report violations of any law or regulation — see overview of Canadian and U.S. in federal Canadian Competition Bureau 1997 report “Whistleblowing Study: Models of Whistleblower Protection” — http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1373&lg=e

Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled “Whistleblowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistleblowing Around the World” (ed. Richard Calland and Guy Dehn, pubs. ODAC & PCaW in partnership with the British Council: Southern Africa: 2004), the laws that are set out above have several identifiable flaws, as follows:

– there is no set procedure for a whistleblower to file a submission about wrongdoing or complaint about reprisal with the agencies that enforce some (NOTE: only some) of the laws set out above;
– it is not clear in many of the laws whether they override other federal laws, and so the government or a private sector corporation may override the laws in some cases in order to hide wrongdoing or thwart an investigation or to leave a whistleblower unprotected;
– whistleblowers have no clear right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the head of the agency involved in most cases, who then designates an investigator, who then reports back to the head, who then files an application with a tribunal;
– no interim compensation (while a case is being investigated/heard) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;
– it is not clear whether the full scope of compensation is available;
– it seems like anonymous disclosures are allowed under the laws, but it is not clear;
– in many of the laws, there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general employment law rights may apply);
– in many of the laws, there is no clearly defined duty to disclose wrongdoing;
– there is no up-front funding provided for legal counsel for whistleblowers (which makes it highly unlikely that anyone will blow the whistle, unless they are unionized), and;
– extensive education and training of employee rights under the laws is not required by the laws.

References:

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:
– NOTE: the Canadian provinces of New Brunswick and Sasaktchewan have measures in their labour laws that protect all employee whistleblowers* who report violations of any law or regulation.


References:

– sections 147, 147.1 and 148 (in Part II re: occupational health and safety) of the Canada Labour Code (R.S., 1985, c. L-2)

– section 16 (in Part 2) of the Canadian Environmental Protection Act, 1999 (1999, c. 33)


– Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled Whistleblowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistleblowing Around the World” (ed. Richard Calland and Guy Dehn, pubs. ODAC & PCaW in partnership with the British Council: Southern Africa: 2004), the laws that are set out above have several identifiable flaws, as follows:
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– no interim compensation (while a case is being investigated/heard) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;
– it seems like anonymous disclosures are allowed under the laws, but it is not clear;
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– in many of the laws, there is no clearly defined duty to disclose wrongdoing;
– there is no up-front funding provided for legal counsel for whistleblowers (which makes it highly unlikely that anyone will blow the whistle, unless they are unionized), and;
– extensive education and training of employee rights under the laws is not required by the laws.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?
46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

| YES | NO |

Comments:
– the Public Sector Integrity Commissioner position — http://www.psic-ispc.gc.ca — was created in spring 2007, and the first Commissioner was appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers — as a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way.

References:
– Before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Commissioner position created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers) — See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII) — http://www.canlii.org/en/ca/fct/doc/2005/2005fc595/2005fc595.html

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.
- The Public Sector Integrity Commissioner position — http://www.psi-c-ispc.gc.ca — was created in spring 2007, and the first Commissioner was appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers — as a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way. See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII)—http://www.canlii.org/en/ca/fct/doc/2005/2005fc595/2005fc595.html

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100  75  50  25  0

References:
– The Public Sector Integrity Commissioner (PSIC) position — http://www.psic-ispc.gc.ca — was created in spring 2007, and the first Commissioner was appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers. As a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way, nor is it known whether adequate, regular funding will be provided to the PSIC.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100  75  50  25  0
References:
– The Public Sector Integrity Commissioner (PSIC) position — [http://www.psic-ispc.gc.ca] — was created in spring 2007, and the first Commissioner was appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers. As a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way, nor is it known whether the PSIC will act on complaints within a reasonable time period.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

References:
– The Public Sector Integrity Commissioner (PSIC) position — [http://www.psic-ispc.gc.ca] — was created in spring 2007, and the first Commissioner was appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers. As a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way, nor is it known whether the PSIC will initiate investigations (which it has the legal power to do) even if it does not receive a formal complaint.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies’ investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

IV-3. Procurement
48. Is the public procurement process effective?

83

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

– While the Values and Ethics Code is not a regulation, it is a term of employment generally and under the collective bargaining agreements for federal public sector unions, and under Chapter 4 of the Code failure to comply can result in discipline including termination of employment

– Re: whistleblower protection – before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Public Sector Integrity Commissioner position created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers) — See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII)


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— it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable grounds for believing that a reprisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);

— the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide wrongdoing or thwart an investigation;

— whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);

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— whistleblowers only have 60 days to complain about a reprisal (should be at least one year limitation period);

— no interim compensation (while a case is being investigated/heard by Tribunal) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;

— the full scope of compensation is not available (pain and suffering is limited to $10,000-US$10,266), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);

— if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only reinstate them in their position or compensate them financially;

— it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);

— there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general rights under the Values and Ethics Code for the Public Service may apply);

— there is no clearly defined duty to disclose wrongdoing (although general duties under the Values and Ethics Code for the Public Service may apply);

— the Act seems to cover all types of wrongdoing, but Tribunal rulings may limit the definition significantly (as happened in the U.S.);

— the Commissioner can only provide up to $1,500 (US$1,520) in funding for legal advice for a whistleblower (in exceptional
cases, up to $3,000 -US$3,040) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistleblower wins their case;
– it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine and maximum two years imprisonment) — wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
– extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).

References:

– Section 42 (contained in Part III.1) of the Financial Administration Act (R.S., 1985, c. F-11)


– A combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — http://www.pwgsc.gc.ca/acquisitions/text/cndt-cndct/tmd-toc-e.html — to be enforced by the Procurement Ombudsman (who, as of September 2007 had been appointed (Mr. Shahid Minto) but did not have a staffed office, nor regulations nor administrative procedures in place in order to function) — http://www.pwgsc.gc.ca/text/faa/ombudsman_contact-e.html

– Generally, federal politicians are prohibited from being directly involved in contracting-out processes, but they do, of course, usually set the overall framework and terms of reference for spending programs and so are involved in this important way — they are covered by the Criminal Code and Financial Administration Act measures set out above, as well as one or more of the following:
– sections 2, 4 and 14 of the Conflict of Interest Act (2006, c. 9, s. 2) — http://lois.justice.gc.ca/en/showtdm/cs/C-36.65

– sections 2, subsections 3(2) and (3), and sections 8, 11, 13 and 16 of the Conflict of Interest Code for Members of the House of Commons — http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm


– Whistleblower protection under Public Servants Disclosure Protection Act (2005, c. 46)

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:
– Conflict of interest rules for all civil/public servants are set out in Chapter 2 of the 2003 Values and Ethics Code for the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — and while the Values and Ethics Code is not a regulation, it is a term of employment generally and under the collective bargaining agreements for federal public sector unions, and new employees must sign a statement that they are aware of the Code, and under Chapter 4 of the Code failure to comply can result in discipline including termination of employment. However, training of procurement officials is not required by law.
YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

Comments:
– The score of 50 is given for the study period of June 2006 to June 2007 for following reasons (essentially, because of the lack of clear, specific rules that apply to all procurement, and independent, front-line enforcement of the rules, for public procurement officials):

– The Values and Ethics Code is enforced only by the senior civil/public servants, who have a conflicted mandate (and lack incentives) to ensure that conflict of interest requirements are being complied with by people they oversee in the civil/public service (for example, they may be involved themselves in decisions that affect their own personal interests, and as a result may have no incentive to publicize or penalize a civil/public servant they oversee whom is discovered to be involved in decisions that affect their personal interests).

– The Procurement Ombudsman was appointed in September 2007, and so was not functioning during the study period of June 2006 to June 2007, and the Ombudsman does not have full independence (s/he can be dismissed from the position at any time for any reason by a politician (the responsible Cabinet minister)) nor full powers (s/he can only issue reports on the fairness of contracting processes, not order that a process be started over).

– The Code of Conduct for Procurement does not apply to procurement by state-owned companies (legally known in Canada as Crown corporations”).

– Re: whistleblower protection – before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Public Sector Integrity Commissioner position created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers) — See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII)

– The Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner appointed on July 9, 2007 – between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers – as a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way

– Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled “Whistleblowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistleblowing Around the World” (ed. Richard Calland and Guy Dehn, pubs. ODAC & PCaW in partnership with the British Council: Southern Africa: 2004), the new Canadian Public Servants Disclosure Protection Act has several identifiable flaws, as follows:

  – not all whistleblowers all covered by the Act, not even all public servants;
  – whistleblowers are not allowed to disclose wrongdoing to any legal authority, they must follow the avenue established in the Act or they will likely not be protected;
  – whistleblowers must complain first to their bosses before they file a complaint with the Public Sector Integrity Commissioner, unless they can prove “reasonable grounds” to believe that their bosses will retaliate or fail to take corrective action, but it is unclear whether proving reasonable grounds is on a “prima facie” basis or a more limited basis (whistleblowers should be allowed to complain directly to the Public Sector Integrity Commissioner in any case, but is seems under the law that they can only do so if they file an anonymous complaint)
  – it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable grounds for believing that a reprisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);
  – the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide wrongdoing or thwart an investigation;
  – whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);
  – whistleblowers do not have the right to determine who will arbitrate their case (if the Commissioner attempts to settle the case
through arbitration) — the Commissioner appoints the "conciliator";
– whistleblowers only have 60 days to complain about a reprisal (should be at least one year limitation period);
– no interim compensation (while a case is being investigated/heard by Tribunal) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;
– the full scope of compensation is not available (pain and suffering is limited to $10,000-US$10,266), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
– if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only reinstate them in their position or compensate them financially;
– it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);
– there is no clearly defined duty to disclose wrongdoing (although general duties under the Values and Ethics Code for the Public Service may apply);
– there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general rights under the Values and Ethics Code for the Public Service may apply);
– the Act seems to cover all types of wrongdoing, but Tribunal rulings may limit the definition significantly (as happened in the U.S.);
– the Commissioner can only provide up to $1,500 (US$1,520) in funding for legal advice for a whistleblower (in exceptional cases, up to $3,000 -US$3,040) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistleblower wins their case;
– it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine and maximum two years imprisonment) — wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
– extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).

References:
– Legal requirements to prevent conflicts of interest in:
  – sections 118 to 125 (especially section 121) contained in Part IV)) of the Criminal Code (R.S., 1985, c. C-46)
  – section 42 (contained in Part III.1) of the Financial Administration Act (R.S., 1985, c. F-11)
  – And a combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — http://www.pwgsc.gc.ca/acquisitions/text/cndt-cndct/tdm-toc-e.html — to be enforced by the Procurement Ombudsman (who, as of September 2007 had been appointed (Mr. Shahid Minto) but did not have a staffed office, nor regulations nor administrative procedures in place in order to function)
  http://www.pwgsc.gc.ca/text/faa/ombudsman_contact-e.html
  – Whistleblower protection under Public Servants Disclosure Protection Act (2005, c. 46)

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.
YES | NO

Comments:
– The Public Sector Integrity Commissioner office — http://www.psic-ispcc.gc.ca — is newly created (first Commissioner appointed July 9, 2007) with the mandate to investigate complaints from whistleblowers' and resolve violations of the Values and Ethics Code for the Public Service and all other federal government laws, regulations, codes, policies and guidelines.

References:
– Chapter 2 and Appendix A of the Values and Ethics Code for the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — asset and income monitoring for junior government officials is flawed because it is the responsibility of senior government officials (instead of by an independent agency, such as the Conflict of Interest and Ethics Commissioner who has the mandate to monitor the finances of federal Cabinet ministers, their staff, most Cabinet appointees, and senior government officials).

– Generally, federal politicians are prohibited from being directly involved in contracting-out processes, but they do, of course, usually set the overall framework and terms of reference for spending programs and so are involved in this important way. They are required to disclose assets and liabilities and income under one or more (depending on their position) of the following law and codes:


– Conflict of Interest Code for Senators — http://sen.parl.gc.ca/seo-cse/eng/Code-e.html — and the Senate Ethics Officer — http://sen.parl.gc.ca/seo-cse/default.htm — NOTE: under the Conflict of Interest Code for Senators, the Senate Ethics Officer is under the control of a committee of senators, and cannot investigate, hold an inquiry, or issue an inquiry report without the approval of the committee.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

References:

– Clause 6(d) of the Regulations is the exception that applies most directly to allowing sole-source contracting for major procurements, as it allows such non-competitive bidding processes if only one person or firm is capable of performing the contract”.

– This exception was used in June 2006 to award Boeing Inc. a $3.4 billion (US$3.45 billion) contract for military airplanes, even though another company claimed that it had a competitive bid.
“Boeing to get deal worth billions for military transport planes”
Mike Blanchfield and David Pugliese,

“Controversy takes flight on $8.3 billion plan for planes”
by Gloria Galloway,

and in December 2006 to award Lockheed Martin a $4.9 billion contract also for military aircraft

“Angry Airbus demands chance at deal”
by Mike Blanchfield, Ottawa Citizen, December 13, 2006, p.A6;

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“Third aero firm claims defence deal unfair: Alenia says its aircraft should have been taken into account”
by David Pugliese,
Ottawa Citizen, June 15, 2007, p.A5

– See also
“Non-compete contracts increased under Tories: 26% of deals awarded with no bidding: Liberals did so with 14%”
by Glen McGregor, Ottawa Citizen, June 22, 2007, p.A1

[NOTE: “Tories” is the nickname for the Conservative Party of Canada, which has been the ruling party in Canada’s federal government since it won the January 23, 2006 federal election, and “Liberals” refers to the Liberal Party of Canada]

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:
— http://lois.justice.gc.ca/en/showtdm/cs/F-11 — which are repeated under subsection 10.2 of the Treasury Board of Canada Secretariat’s Contracting Policy — http://www.tbs-sct.gc.ca/pubs_pol/dcppubs/Contracting/contractingpol_e.asp — there are exceptions that allow for procurement through sole-sourcing

– Under section 6 of the Regulations, a contracting authority may enter into a contract without soliciting bids where

(a) the need is one of pressing emergency in which delay would be injurious to the public interest;
(b) the estimated expenditure does not exceed
(i) $25,000 (US$25,336),
(ii) $100,000 (US$101,348), where the contract is for the acquisition of architectural, engineering and other services required in respect of the planning, design, preparation or supervision of the construction, repair, renovation or restoration of a work, or
(iii) $100,000, where the contract is to be entered into by the member of the Queens Privy Council for Canada responsible for the Canadian International Development Agency and is for the acquisition of architectural, engineering or other services required in respect of the planning, design, preparation or supervision of an international development assistance program or project;

(c) the nature of the work is such that it would not be in the public interest to solicit bids; or
(d) only one person is capable of performing the contract.”

– clause 6(d) of the Regulations is the exception that applies most directly to allowing sole-source contracting for major procurements, as it allows such non-competitive bidding processes if “only one person or firm is capable of performing the contract”

– This exception was used in June 2006 to award Boeing Inc. a $3.4 billion (US$3.45 billion) contract for military airplanes, even though another company claimed that it had a competitive bid.

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Mike Blanchfield and David Pugliese,

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[NOTE: “Tories” is the nickname for the Conservative Party of Canada, which has been the ruling party in Canada’s federal government since it won the January 23, 2006 federal election, and “Liberals” refers to the Liberal Party of Canada]

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.
### References:


– In September 2007, a new complaint avenue was created with the creation of the Procurement Ombudsman (who, as of September 2007 had been appointed (Mr. Shahid Minto) but did not have a staffed office, nor regulations nor administrative procedures in place in order to function) — [http://www.pwgsc.gc.ca/text/faa/ombudsman_contact-e.html](http://www.pwgsc.gc.ca/text/faa/ombudsman_contact-e.html)

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**YES:** A YES score is earned if there is a formal appeal process for unsuccessful bidders.

**NO:** A NO score is earned if no such process exists.

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48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

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**YES:** A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

**NO:** A NO score is earned if no such process exists.

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48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

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**YES**

References:

– A combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — [http://www.pwgsc.gc.ca/acquisitions/text/cndt-cndct/tdm-toc-e.html](http://www.pwgsc.gc.ca/acquisitions/text/cndt-cndct/tdm-toc-e.html) — including under the Responsibilities of Vendors” section the following provision that legally bars a company that has violated procurement regulations from bidding on contracts:

“a bidder on a contract for the performance of work, the supply of goods or the rendering of services [must] make a declaration
that the bidder has not committed an offence under section 121 (Frauds on the government and Contractor subscribing to election fund), section 124 (Selling or Purchasing Office), section 380 (Fraud) committed against Her Majesty or section 418 (Selling defective stores to Her Majesty) of the Criminal Code of Canada, or under 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.

**YES:** A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

**NO:** A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

**References:**
– A combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — [http://www.pwgsc.gc.ca/acquisitions/text/cndt-cndct/tdm-toc-e.html](http://www.pwgsc.gc.ca/acquisitions/text/cndt-cndct/tdm-toc-e.html) — including under the Responsibilities of Vendors” section a provision that legally bars a company that has violated procurement regulations from bidding on contracts

– While it is not clear whether the federal government maintains specifically a “blacklist” of companies that have violated major procurement regulations, there is both a Chief Risk Officer (Fairness Monitoring and Conflict Management) in the Department of Public Works and Government Services, and (just created in September 2007) a Procurement Ombudsman, who together are charged with ensuring compliance with the Code of Conduct for Procurement (and all of the laws and regulations referred to within the Code), which of course includes ensuring that such companies do not bid on, nor are awarded, any contracts for goods or services.

**100:** A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

**75:**

**50:** A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

**25:**

**0:** There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

92

49a. In law, citizens can access public procurement regulations.
YES | NO

References:
– Sections 118 to 125 (especially section 121) contained in Part IV)) of the Criminal Code (R.S., 1985, c. C-46)

– Section 42 (contained in Part III.1) of the Financial Administration Act (R.S., 1985, c. F-11)


– A combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — http://www.pwgsc.gc.ca/acquisitions/text/cndt-cndct/tdm-toc-e.html — to be enforced by the Procurement Ombudsman (who, as of September 2007 had been appointed (Mr. Shahid Minto) but did not have a staffed office, nor regulations nor administrative procedures in place in order to function) — http://www.pwgsc.gc.ca/text/faa/ombudsman_contact-e.html

– Generally, federal politicians are prohibited from being directly involved in contracting-out processes, but they do, of course, usually set the overall framework and terms of reference for spending programs and so are involved in this important way. They are covered by the Criminal Code and Financial Administration Act measures set out above, as well as one or more of the following:
  – Sections 2, 4 and 14 of the Conflict of Interest Act (2006, c. 9, s. 2) — http://lois.justice.gc.ca/en/showtdm/cs/C-36.65

  – Sections 2, subsections 3(2) and (3), and sections 8, 11, 13 and 16 of the Conflict of Interest Code for Members of the House of Commons — http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm


  – Whistleblower protection under Public Servants Disclosure Protection Act (2005, c. 46)

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

References:
– Disclosure of contracts for goods or services $10,000 (US)10,266)or more in value are required to be disclosed publicly on each federal government department’s website by regulations established under clause 42(1)(e) in Part III.1 of the Financial Administration Act (R.S., 1985, c. F-11) — http://lois.justice.gc.ca/en/showtdm/cs/F-11 — and under the Disclosure of Contracts policy of the Treasury Board of Canada Secretariat — http://www.tbs-sct.gc.ca/pd-dp/df/index_e.asp

– A government-wide Web site for disclosure of contracts worth more than $10,000 is at: http://www.tbs-sct.gc.ca/pd-dp/gr-rg/index_e.asp
YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:
– A combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — [http://www.pwgsc.gc.ca/acquisitions/text/cndt-cndct/tdm-toc-e.html](http://www.pwgsc.gc.ca/acquisitions/text/cndt-cndct/tdm-toc-e.html) — to be enforced by the Procurement Ombudsman (who, as of September 2007 had been appointed (Mr. Shahid Minto) but did not have a staffed office, nor regulations nor administrative procedures in place in order to function) — [http://www.pwgsc.gc.ca/text/faa/ombudsman_contact-e.html](http://www.pwgsc.gc.ca/text/faa/ombudsman_contact-e.html)
– Generally, federal politicians are prohibited from being directly involved in contracting-out processes, but they do, of course, usually set the overall framework and terms of reference for spending programs and so are involved in this important way. They are covered by the Criminal Code and Financial Administration Act measures set out above, as well as one or more of the following:
  – Sections 2, subsections 3(2) and (3), and sections 8, 11, 13 and 16 of the Conflict of Interest Code for Members of the House of Commons — [http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm](http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.
49d. In practice, citizens can access public procurement regulations at a reasonable cost.

References:
– Sections 118 to 125 (especially section 121) contained in Part IV)) of the Criminal Code (R.S., 1985, c. C-46)

– Section 42 (contained in Part III.1) of the Financial Administration Act (R.S., 1985, c. F-11)

– and the Government Contracts Regulations


– A combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — http://www.pwgsc.gc.ca/acquisitions/text/crdt-cndct/tdm-toc-e.html — to be enforced by the Procurement Ombudsman (who, as of September 2007 had been appointed (Mr. Shahid Minto) but did not have a staffed office, nor regulations nor administrative procedures in place in order to function) — http://www.pwgsc.gc.ca/text/faa/ombudsman_contact-e.html

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– Sections 2, subsections 3(2) and (3), and sections 8, 11, 13 and 16 of the Conflict of Interest Code for Members of the House of Commons — http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm


– Whistleblower protection under Public Servants Disclosure Protection Act (2005, c. 46)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.
References:

– Requirements to give public notice of contracts are set out in clauses 10.7.1 to 10.7.17 of Part 10 of the Treasury Board of Canada Secretariat’s Contracting Policy” — http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/Contracting/contractingpol_e.asp


– However, clauses 10.7.13 to 10.7.17 allow for Advance Contract Award Notices (ACANs) to be issued when the government intends to choose one contractor without a competitive bidding process, and only allows other contractors 15 days to submit a bid to compete with the pre-chosen contractor

– There are other exceptions to full notice to all potential bidders also set out in clauses 10.7.18 to 10.7.42. Overall, these loopholes allow for ineffective advertising of major (and, of course, minor) public procurements

– For example:

– Clause 6(d) of the Regulations is the exception that applies most directly to allowing sole-source contracting for major procurements, as it allows such non-competitive bidding processes if “only one person or firm is capable of performing the contract”

– This exception was used in June 2006 to award Boeing Inc. a $3.4 billion (US$3.45 billion) contract for military airplanes, even though another company claimed that it had a competitive bid.

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<tr>
<td>100</td>
<td>There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.</td>
</tr>
<tr>
<td>75</td>
<td>There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.</td>
</tr>
<tr>
<td>50</td>
<td>There is no formal process of advertising major public procurements or the process is superficial and ineffective.</td>
</tr>
</tbody>
</table>

49f. In practice, citizens can access the results of major public procurement bids.

**Comments:**
- The score of 75 is given because the Disclosure of Contracts Web sites are required to be updated only every three months (they should be required to be updated whenever a contract is awarded).

**References:**
- A government-wide Web site for disclosure of contracts worth more than $10,000 is at: [http://www.tbs-sct.gc.ca/pd-dp/gr-rg/index_e.asp](http://www.tbs-sct.gc.ca/pd-dp/gr-rg/index_e.asp)

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>Records of public procurement results are publicly available through a formal process.</td>
</tr>
<tr>
<td>75</td>
<td>Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.</td>
</tr>
<tr>
<td>50</td>
<td>This information is not available to the public through an official process.</td>
</tr>
</tbody>
</table>

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**IV-4. Privatization**
50. Is the privatization process effective?

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:
– All businesses are equally eligible to compete for privatized assets under the Treasury Board of Canada Secretariat’s Directive on the Sale or Transfer of Surplus Real Property — http://www.tbs-sct.gc.ca/pubs_pol/docpubs/aas-gasa/dstsrp-dvbtie/dstsrp-dvbtie_e.asp

– Government assets (known in Canada as Crown assets), other than real estate, for sale can be found at: http://crownassets.pwgsc.gc.ca/main-e.cfm?sidenavcmd=whatsforsale&subcmd=shop


YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:
– While the Values and Ethics Code is not a regulation, it is a term of employment generally and under the collective bargaining agreements for federal public sector unions, and under Chapter 4 of the Code failure to comply can result in discipline including termination of employment.

– Re: whistleblower protection – before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Public Sector Integrity Commissioner position created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked key powers) — See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII) — http://www.canlii.org/en/ca/fct/doc/2005/2005fc595/2005fc595.html

– The Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner was appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers. As a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way.

– Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled Whistleblowing in the United States: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistleblowing Around the World” (ed. Richard Calland and Guy Dehn, pubs. ODAC & PCaW in partnership with the British Council: Southern
Africa: 2004), the new Canadian Public Servants Disclosure Protection Act has several identifiable flaws, as follows:

- not all whistleblowers all covered by the Act, not even all public servants;
- whistleblowers are not allowed to disclose wrongdoing to any legal authority, they must follow the avenue established in the Act or they will likely not be protected;
- whistleblowers must complain first to their bosses before they file a complaint with the Public Sector Integrity Commissioner, unless they can prove “reasonable grounds” to believe that their bosses will retaliate or fail to take corrective action, but it is unclear whether proving reasonable grounds is on a “prima facie” basis or a more limited basis (whistleblowers should be allowed to complain directly to the Public Sector Integrity Commissioner in any case, but is seems under the law that they can only do so if they file an anonymous complaint);
- it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable grounds for believing that a reprisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);
- the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide wrongdoing or thwart an investigation;
- whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);
- whistleblowers do not have the right to determine who will arbitrate their case (if the Commissioner attempts to settle the case through arbitration). The Commissioner appoints the “conciliator”;
- whistleblowers only have 60 days to complain about a reprisal (should be at least one year limitation period);
- no interim compensation (while a case is being investigated/heard by Tribunal) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;
- the full scope of compensation is not available (pain and suffering is limited to $10,000 -US$10,266), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
- if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only reinstate them in their position or compensate them financially;
- it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);
- there is no clearly defined duty to refuse to violate a law, regulations, code, policy or guideline (although general duties under the Values and Ethics Code for the Public Service may apply);
- there is no clearly defined duty to disclose wrongdoing (although general duties under the Values and Ethics Code for the Public Service may apply);
- the Act seems to cover all types of wrongdoing, but Tribunal rulings may limit the definition significantly (as happened in the U.S.);
- the Commissioner can only provide up to $1,500 (US$1,520) in funding for legal advice for a whistleblower (in exceptional cases, up to $3,000-US$3,040) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistleblower wins their case;
- it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine and maximum two years imprisonment) — wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
- extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).

References:
- Sections 118 to 125 (especially section 121) contained in Part IV)) of the Criminal Code (R.S., 1985, c. C-46)
- Section 42 (contained in Part III.1) of the Financial Administration Act (R.S., 1985, c. F-11)
- Generally, federal politicians are prohibited from being directly involved in contracting-out processes, but they do, of course, usually set the overall framework and terms of reference for spending programs and so are involved in this important way — they are covered by the Criminal Code and Financial Administration Act measures set out above, as well as one or more of the following:
  - Sections 2, 4 and 14 of the Conflict of Interest Act (2006, c. 9, s. 2) — http://lois.justice.gc.ca/en/showtdm/cs/C-36.65
  - Sections 2, subsections 3(2) and (3), and sections 8, 11, 13 and 16 of the Conflict of Interest Code for Members of the House of Commons — http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm
- Whistleblower protection under Public Servants Disclosure Protection Act (2005, c. 46)

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil
servers, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:
- The score of 50 is given for the study period of June 2006 to June 2007 for following reasons (essentially, because of the lack of clear, specific rules that apply to privatizations, and independent, front-line enforcement of the rules, for privatization officials):

- There is no independent enforcement of the Directive mentioned above, and in the past, when large-scale privatizations by the federal government of Canada have occurred, specific rules or laws have been passed concerning the privatization, and questions have been raised in specific cases (for example, the privatization of the government's oil company Petro Canada) about the fairness of the privatization process. (Specifically, the selection of the company that handled the sale on behalf of the government)

- The Values and Ethics Code is enforced only by the senior civil/public servants, who have a conflicted mandate (and lack incentives) to ensure that conflict of interest requirements are being complied with by people they oversee in the civil/public service (for example, they may be involved themselves in decisions that affect their own personal interests, and as a result may have no incentive to publicize or penalize a civil/public servant they oversee whom is discovered to be involved in decisions that affect their personal interests).

Re: whistleblower protection — before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Public Sector Integrity Commissioner position created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers) — See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII) — http://www.canlii.org/en/ca/fct/doc/2005/2005fc595/2005fc595.html

- The Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner was appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers. As a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way.

- Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled Whistleblowing in the United States: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistleblowing Around the World” (ed. Richard Calland and Guy Dehn, pubs. ODAC & PCaW in partnership with the British Council: Southern Africa: 2004), the new Canadian Public Servants Disclosure Protection Act has several identifiable flaws, as follows:
  - not all whistleblowers all covered by the Act, not even all public servants;
  - whistleblowers are not allowed to disclose wrongdoing to any legal authority, they must follow the avenue established in the Act or they will likely not be protected;
  - whistleblowers must comply first to their bosses before they file a complaint with the Public Sector Integrity Commissioner, unless they can prove “reasonable grounds” to believe that their bosses will retaliate or fail to take corrective action, but it is unclear whether proving reasonable grounds is on a “prima facie” basis or a more limited basis (whistleblowers should be allowed to complain directly to the Public Sector Integrity Commissioner in any case, but it is unclear under the law that they can only do so if they file an anonymous complaint)
  - it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable grounds for believing that a reprisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);
  - the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide wrongdoing or thwart an investigation;
  - whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);
  - whistleblowers do not have the right to determine who will arbitrate their case (if the Commissioner attempts to settle the case through arbitration). The Commissioner appoints the “conciliator”;
  - whistleblowers only have 60 days to complain about a reprisal (should be at least one year limitation period);
  - no interim compensation (while a case is being investigated/heard by Tribunal) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;
  - the full scope of compensation is not available (pain and suffering is limited to $10,000 -US$10,266), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
  - if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only

- Conflicts of Interest:
  - In practice, conflicts of interest regulations for government officials involved in privatization are not effective.
reinstate them in their position or compensate them financially;
– it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);
– there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general rights under the Values and Ethics Code for the Public Service may apply);
– there is no clearly defined duty to disclose wrongdoing (although general duties under the Values and Ethics Code for the Public Service may apply);
– the Act seems to cover all types of wrongdoing, but Tribunal rulings may limit the definition significantly (as happened in the U.S.);
– the Commissioner can only provide up to $1,500 (US$1,520) in funding for legal advice for a whistleblower (in exceptional cases, up to $3,000-US$3,040) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistleblower wins their case;
– it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine and maximum two years imprisonment) — wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
– extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).

References:
– Legal requirements to prevent conflicts of interest in:
  – Sections 118 to 125 (especially section 121) contained in Part IV)) of the Criminal Code (R.S., 1985, c. C-46)
  – Section 42 (contained in Part III.1) of the Financial Administration Act (R.S., 1985, c. F-11)
  – All businesses are equally eligible to compete for privatized assets under the Treasury Board of Canada Secretariat’s Directive on the Sale or Transfer of Surplus Real Property” — http://www.tbs-sct.gc.ca/pubs_pol/dcpubs/aas-gasa/dstsp-dvtbie/dstsp-dvtbie_e.asp
  – Whistleblower protection under Public Servants Disclosure Protection Act (2005, c. 46)

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.
75:
50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.
25:
0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

95

51a. In law, citizens can access privatization regulations.

YES  |  NO
References:
– All businesses are equally eligible to compete for privatized assets under the Treasury Board of Canada Secretariat's Directive on the Sale or Transfer of Surplus Real Property" — http://www.tbs-sct.gc.ca/pubs_pol/docpubs/aas-gasa/dstsrp-dvtbie/dstsrp-dvtbie_e.asp

– Government assets (known in Canada as Crown assets), other than real estate, for sale can be found at: http://crownassets.pwgsc.gc.ca/main-e.cfm?sidenavcmd=whatsforsale&subcmd=shop


YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

Comments:
– However, there is no independent enforcement of the Directive mentioned above, and in the past, when large-scale privatizations by the federal government of Canada have occurred, specific rules or laws have been passed concerning the privatization, and questions have been raised in specific cases (for example, the privatization of the government's oil company Petro Canada) about the fairness of the privatization process (specifically, the selection of the company that handled the sale on behalf of the government).

– In addition, whistleblower protection under Public Servants Disclosure Protection Act (2005, c. 46) — http://lois.justice.gc.ca/en/showtdm/cs/P-31.9 — was proclaimed into law by the federal Cabinet only in March 2007 and the Public Sector Integrity Commissioner position created; before the Act became law, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the Prime Minister and Cabinet, and also lacked key powers).


– The Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner was appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers. As a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way.

– Based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled Whistleblowing in the United State: The Gap Between Vision and Lessons Learned" by Tom Devine in the book “Whistleblowing Around the World” (ed. Richard Calland and Guy Dehn, pubs. ODAC & PCaW in partnership with the British Council: Southern Africa: 2004), the new Canadian Public Servants Disclosure Protection Act has several identifiable flaws, as follows:
  – not all whistleblowers all covered by the Act, not even all public servants;
  – whistleblowers are not allowed to disclose wrongdoing to any legal authority, they must follow the avenue established in the Act or they will likely not be protected;
  – whistleblowers must complain first to their bosses before they file a complaint with the Public Sector Integrity Commissioner, unless they can prove “reasonable grounds” to believe that their bosses will retaliate or fail to take corrective action, but it is unclear whether proving reasonable grounds is on a “prima facie” basis or a more limited basis (whistleblowers should be allowed to complain directly to the Public Sector Integrity Commissioner in any case, but is seems under the law that they can only do so if they file an anonymous complaint)
  – it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable grounds for believing that a reprisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);
  – the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide wrongdoing or thwart an investigation;
  – whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application
with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);
– whistleblowers do not have the right to determine who will arbitrate their case (if the Commissioner attempts to settle the case through arbitration). The Commissioner appoints the “conciliator”;
– whistleblowers only have 60 days to complain about a reprisal (should be at least one year limitation period);
– no interim compensation (while a case is being investigated/heard by Tribunal) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;
– the full scope of compensation is not available (pain and suffering is limited to $10,000 -US$10,266), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
– if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only reinstate them in their position or compensate them financially;
– it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);
– there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general rights under the Values and Ethics Code for the Public Service may apply);
– there is no clearly defined duty to disclose wrongdoing (although general duties under the Values and Ethics Code for the Public Service may apply);
– the Act seems to cover all types of wrongdoing, but Tribunal rulings may limit the definition significantly (as happened in the U.S.);
– the Commissioner can only provide up to $1,500 (US$1,520) in funding for legal advice for a whistleblower (in exceptional cases, up to $3,000-US$3,040) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistleblower wins their case;
– it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine and maximum two years imprisonment) — wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
– extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).

References:
– All businesses are equally eligible to compete for privatized assets under the Treasury Board of Canada Secretariat’s Directive on the Sale or Transfer of Surplus Real Property” — [http://www.tbs-sct.gc.ca/pubs_pol/dcspubs/aas-gasa/dstsp-dytbie/dstsp-dytbie_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/dcspubs/aas-gasa/dstsp-dytbie/dstsp-dytbie_e.asp) — which includes requirements concerning advertising privatizations

– Government assets (known in Canada as Crown assets), other than real estate, for sale can be found at: [http://crownassets.pwgsc.gc.ca/main-e.cfm?sidenavcmd=whatsforsale&subcmd=shop](http://crownassets.pwgsc.gc.ca/main-e.cfm?sidenavcmd=whatsforsale&subcmd=shop)


100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:
– The legal requirements are set out under the Treasury Board of Canada Secretariat’s Directive on the Sale or Transfer of
YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

<table>
<thead>
<tr>
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<th>75</th>
<th>50</th>
<th>25</th>
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References:
– All businesses are equally eligible to compete for privatized assets under the Treasury Board of Canada Secretariat’s Directive on the Sale or Transfer of Surplus Real Property — [http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/aas-gasa/dstsrp-dvtbie/dstsrp-dvtbie_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/aas-gasa/dstsrp-dvtbie/dstsrp-dvtbie_e.asp)

– Government assets (known in Canada as Crown assets), other than real estate, for sale can be found at: [http://crownassets.pwgsc.gc.ca/main-e.cfm?sidenavcmd=whatsforsale&subcmd=shop](http://crownassets.pwgsc.gc.ca/main-e.cfm?sidenavcmd=whatsforsale&subcmd=shop)


100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

<table>
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<th>25</th>
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References:
– All businesses are equally eligible to compete for privatized assets under the Treasury Board of Canada Secretariat’s Directive on the Sale or Transfer of Surplus Real Property — [http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/aas-gasa/dstsrp-dvtbie/dstsrp-dvtbie_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/aas-gasa/dstsrp-dvtbie/dstsrp-dvtbie_e.asp)
Government assets (known in Canada as Crown assets), other than real estate, for sale can be found at:
http://crownassets.pwgsc.gc.ca/main-e.cfm?sidenavcmd=whatsforsale&subcmd=shop

Government real estate for sale can be found at:

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES  |  NO

Comments:
– The Public Sector Integrity Commissioner position — http://www.psic-ispc.gc.ca — who addresses complaints about public servants (government employees) violating laws, regulations, codes, policies and guidelines, was created in spring 2007 under the Public Servants Disclosure Protection Act (2005, c. 46) — http://lois.justice.gc.ca/en/showtdm/cs/P-31.9 — the first Commissioner appointed on July 9, 2007 under section 39 of the Act. The Commissioner can investigate and attempt to resolve complaints (including by appointing a mediator) and can also apply for a binding order (including compensation for a whistleblower) to the yet-to-be-established Public Servants Disclosure Protection Tribunal (which will be appointed without any public process by the federal Cabinet, chosen from amongst members of the Federal Court of Canada, under section 20.7 of the Public Servants Disclosure Protection Act). Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers.

– Bill C-2, the so-called Federal Accountability Act*, passed into law on Dec. 12, 2006, contains a measure that must be approved by the federal Cabinet to create the position of an independent Commissioner of Lobbyists, to replace the current Registrar of
Lobbyists who is under the control of a Cabinet minister who has the legal power to fire the person holding the Registrar position at any time for any reason — http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home

– The Senate Ethics Officer is under the control of a committee of senators, and cannot investigate or publicly rule on a complaint without the approval of the committee, and so lacks key facets of independence to be an effective public protector — http://sen.parl.gc.ca/seo-cse/default.htm

References:


– Elections Canada — http://www.elections.ca/home.asp — Chief Electoral Officer and Commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws).


– Privacy Commissioner — who investigates complaints about the abuse or disclosure of personal information collected by federal government institutions under the Privacy Act (R.S., 1985, c. P-21) — http://lois.justice.gc.ca/en/showtdm/cs/P-21

– the Public Service Commission (which, in addition to making appointments and hirings itself, also conducts audits and also investigates and rules on complaints about non-merit-based appointments) are appointed without any public process by the federal Cabinet under subsection 4(5), and members of the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission’s rulings) are appointed without any public process by the federal Cabinet under sections 88 and 90 of the Public Service Employment Act (2003, c. 22, ss. 12, 13) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01

– the members of the Public Service Labour Relations Board (which rules on various federal public service labour matters as set out in collective bargaining agreements) are appointed without any public process by the federal Cabinet under sections 12 and 18 of the Public Service Labour Relations Act ( 2003, c. 22, s. 2 ) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.3
– under clause 18(1)(e), members of the Board must have knowledge of or experience in labour relations"

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

64

53a. In law, the ombudsman is protected from political interference.
Comments:
– The Public Sector Integrity Commissioner position — http://www.psic-ispc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines, was created in spring 2007, and the first Commissioner appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers.

– Bill C-2, the so-called Federal Accountability Act”, passed into law on Dec. 12, 2006, contains a measure that must be approved by the federal Cabinet to create the position of an independent Commissioner of Lobbyists, to replace the current Registrar of Lobbyists who is under the control of a Cabinet minister who has the legal power to fire the person holding the Registrar position at any time for any reason — http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home

– The Senate Ethics Officer is under the control of a committee of senators — http://sen.parl.gc.ca/seo-cse/default.htm

References:
All of the following agencies and watchdogs have formal organizational independence in law from the government (i.e. fixed terms in office (usually five-seven years) with dismissal allowed only for cause, effective control of office budget and staffing, adequate (if not full) investigative powers):

– Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent — under the Auditor General Act (R.S., 1985, c. A-17)
– http://lois.justice.gc.ca/en/showtdm/cs/A-17 — appointed to a fixed term of 10 years


– Elections Canada — http://www.elections.ca/home.asp — Chief Electoral Officer and Commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws).


YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.
Bill C-2, the so-called Federal Accountability Act, passed into law on Dec. 12, 2006, contains a measure that must be approved by the federal Cabinet to create the position of an independent Commissioner of Lobbyists, to replace the current Registrar of Lobbyists who is under the control of a Cabinet minister who has the legal power to fire the person holding the Registrar position at any time for any reason — http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home

The Senate Ethics Officer is under the control of a committee of senators — http://sen.parl.gc.ca/seo-cse/default.htm

References:
There is no public evidence that any of the following agencies and watchdogs have experienced political interference:

- Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.


- Elections Canada — http://www.elections.ca/home.asp — Chief Electoral Officer and Commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws).


100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

Comments:
- Through the June 2006 to June 2007 period the Chief Electoral Officer, Information Commissioner, Ethics Commissioner and Public Sector Integrity Officer all resigned their offices, for the following reasons given by them:
  - Chief Electoral Officer (moving on to an international election education career);
  - Ethics Commissioner (retiring as Bill C-2, the Federal Accountability Act* made changes to the position and the conflict of interest rules, and Commissioner did not want to remain in the position — not stated by the Commissioner was the fact that Democracy Watch filed an application in court in September 2005 challenging the Commissioner for systemic bias against enforcing the ethics rules, and the Commissioner likely would have lost the case if he stayed in his position. See details in Democracy Watch's news release about its court challenge of the Ethics Commissioner at: http://www.dwatch.ca/camp/RelsSep2905.html )
– Information Commissioner (7-year term ended, and a new person was appointed as Commissioner, and;
– Public Sector Integrity Officer (the Public Sector Integrity Commissioner position (who addresses complaints about public
servants violating laws, regulations, codes, policies and guidelines) was established by Bill C-2, the “Federal Accountability Act”
which passed into law in December 2006, and the Commissioner position was formally created in spring 2007, and the first
Commissioner was appointed on July 9, 2007. The Commissioner has a fixed term under law of seven years — http://www.psic-
ispc.gc.ca (NOTE: Between November 2001 and spring 2007, the Public Sector Integrity Officer existed with limited
independence and powers, and the Officer left the position when Bill C-2 was close to passing into law).

– Bill C-2, the so-called “Federal Accountability Act”, passed into law on Dec. 12, 2006, contains a measure that must be
approved by the federal Cabinet to create the position of an independent Commissioner of Lobbyists, to replace the current
Registrar of Lobbyists who is under the control of a Cabinet minister who has the legal power to fire the person holding the

– The Senate Ethics Officer is under the control of a committee of senators — http://sen.parl.gc.ca/seo-cse/default.htm

References:
There is no public evidence that any of the following agencies and watchdogs have been removed from their office without
relevant justification:
– Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal
government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines,
and receives value for money spent — the AG has a fixed term under the law of 10 years

– Conflict of Interest and Ethics Commissioner — http://www.parl.gc.ca/ciec-ccie — who enforces the Conflict of Interest Act
and the Conflict of Interest Code for Members of the House of Commons – the Commissioner has a fixed term under the Act of seven
years.

enforce the Canada Elections Act (which include political finance laws) — both positions are guaranteed until mandatory
retirement age of 65.

The Information Commissioner has a fixed term of seven years.

– Commissioner of Official Languages — http://www.ocol-clo.gc.ca — who investigates complaints and has the power to issue
reports and make recommendations concerning the federal government’s compliance with the Official Languages Act (1985, c.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed
without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be
removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

Comments:
– The Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner was appointed on
Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers; Public Sector Integrity Commissioner — http://www.psic-ispc.gc.ca — addresses complaints about public servants violating laws, regulations, codes, policies and guidelines. The Commissioner has a fixed term under law of seven years.

References:
All of the following agencies and watchdogs have a professional, full-time staff:

– Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent. The AG has a fixed term under the law of 10 years.

– Elections Canada — http://www.elections.ca/home.asp — Chief Electoral Officer and Commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws) — both positions are guaranteed until mandatory retirement age of 65

The Information Commissioner has a fixed term of seven years.


– The following agencies do not have full-time, professional staff:

– Conflict of Interest and Ethics Commissioner — http://www.parl.gc.ca/ciec-ccie — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons – the Commissioner has a fixed term under the Act of seven years. The Ethics Commissioner from March 2004 until April 2007 was Bernard Shapiro, who had no legal training, had never been in a similar enforcement position, and who hired the same lawyers to advise him as the Prime Minister and Cabinet ministers used as legal counsel. See details in Democracy Watch’s news release about its court challenge of the Ethics Commissioner at: http://www.dwatch.ca/camp/RelsSep2905.html

Also with regard to the Conflict of Interest and Ethics Commissioner, the new Commissioner (appointed July 9, 2007) must (under changes made by the Federal Accountability Act (which became law in December 2006) keep the same staff as the old Commissioner had, and the staff has demonstrated incompetence and bias in their enforcement practices in the past. See details in Democracy Watch’s news release about its court challenge of the Ethics Commissioner at: http://www.dwatch.ca/camp/RelsSep2905.html

– Bill C-2, the so-called Federal Accountability Act”, passed into law on Dec. 12, 2006, contains a measure that must be approved by the federal Cabinet to create the position of an independent Commissioner of Lobbyists, to replace the current Registrar of Lobbyists who is under the control of a Cabinet minister who has the legal power to fire the person holding the Registrar position at any time for any reason. Between 1988 and March 2004 the Registrar was Howard Wilson, who had no legal training and no experience enforcing any legal regime. In March 2004 he was replaced by new appointee Michael Nelson, who also has no legal training and no experience enforcing any legal regime — http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home

Also with regard to the Registrar of Lobbyists, the to-be-appointed Commissioner of Lobbying must keep the same staff as the current Registrar has, and the staff has demonstrated incompetence and bias in their enforcement practices in the past. See details in Democracy Watch’s 2005 news release about its court challenge of the Registrar at: http://www.dwatch.ca/camp/RelsSep2905.html — and Democracy Watch’s 2007 news release about its second court challenge of the Registrar at: http://www.dwatch.ca/camp/RelsJan2307.html

– The Senate Ethics Officer also has no prior experience in enforcing ethics or similar rules, and is under the control of a committee of senators, and cannot investigate or publicly rule on a complaint without the approval of the committee, and so lacks key facets of independence to be an effective public protector — http://sen.parl.gc.ca/see-cse/default.htm

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:
The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

In practice, agency appointments support the independence of the ombudsman agency (or agencies).

**Comments:**
- The Public Sector Integrity Commissioner position — [http://www.psic-ispc.gc.ca](http://www.psic-ispc.gc.ca) — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines, was created in spring 2007, and the first Commissioner was appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers.

- Bill C-2, the so-called Federal Accountability Act*, passed into law on Dec. 12, 2006, contains a measure that must be approved by the federal Cabinet to create the position of an independent Commissioner of Lobbyists, to replace the current Registrar of Lobbyists who is under the control of a Cabinet minister who has the legal power to fire the person holding the registrar position at any time for any reason. Between 1988 and March 2004 the registrar was Howard Wilson, who had no legal training and no experience enforcing any legal regime. In March 2004 he was replaced by new appointee Michael Nelson, who also has no legal training and no experience enforcing any legal regime — [http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home](http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home)

- Also with regard to the Registrar of Lobbyists, the new Commissioner of Lobbying is required by the Federal Accountability Act to keep the same staff as the registrar currently has, and the staff has demonstrated incompetence and bias in the past.


and in Democracy Watch's news release about its 2006 court challenge of the Registrar at: [http://www.dwcatch.ca/camp/RelsJan2507.html](http://www.dwcatch.ca/camp/RelsJan2507.html)

- The Senate Ethics Officer is under the control of a committee of senators, and cannot investigate or publicly rule on a complaint without the approval of the committee, and so lacks key facets of independence to be an effective public protector — [http://sen.parl.gc.ca/seo-cse/default.htm](http://sen.parl.gc.ca/seo-cse/default.htm)

**References:**
- There is no public evidence that the appointees to any of the following agencies and watchdogs have made appointments that decrease their independence (except the Ethics Commissioner, in 2003-2004):
  - Auditor General of Canada — [http://www.oag-bvg.gc.ca](http://www.oag-bvg.gc.ca) — is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent — the AG has a fixed term under the law of 10 years.

- Conflict of Interest and Ethics Commissioner — [http://www.parl.gc.ca/ciec-ccie](http://www.parl.gc.ca/ciec-ccie) — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons. The Ethics Commissioner from March 2004 until April 2007 was Bernard Shapiro, who had no legal training, had never been in a similar enforcement position, and who hired the same lawyers to advise him as the prime minister and Cabinet ministers at the time used as legal counsel. See details in Democracy Watch's news release about its court challenge of the Ethics Commissioner at: [http://www.dwcatch.ca/camp/RelsSep2905.html](http://www.dwcatch.ca/camp/RelsSep2905.html)

- Also with regard to the Conflict of Interest and Ethics Commissioner, the new commissioner (appointed on July 9, 2007), is required by the Federal Accountability Act to keep the same staff as the old commissioner had, and the staff has demonstrated incompetence in the past.

See details in Democracy Watch's news release about its court challenge of the Ethics Commissioner at: [http://www.dwcatch.ca/camp/RelsSep2905.html](http://www.dwcatch.ca/camp/RelsSep2905.html)

- Elections Canada — [http://www.elections.ca/home.asp](http://www.elections.ca/home.asp) — chief electoral officer and commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws)

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

References:

– The following two agencies and watchdogs receive regular funding:
  – Elections Canada — http://www.elections.ca/home.asp — Chief Electoral Officer and Commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws)


– The following four agencies and watchdogs have shown clearly that they do not have adequate, regular funding by the backlog of open files in their annual reports (or, in the case of the Auditor General, the fact that the Auditor acknowledges that large government spending initiatives are usually audited only once every five years (at most)):
  – Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.


    – See details in Democracy Watch’s 2005 news release about its court challenge of the Registrar at: http://www.dwatch.ca/camp/RelSep2905.html
    and

– The following agency is new as of spring 2007, so its funding track record is not yet known:
  – Public Sector Integrity Commissioner — http://www.psic-ispc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines. The commissioner has a fixed term under law of seven years.
The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

In practice, the ombudsman agency (or agencies) makes publicly available reports.

References:
- The following three agencies and watchdogs make publicly available reports:
  - Elections Canada — [http://www.elections.ca/home.asp](http://www.elections.ca/home.asp) — chief electoral officer and commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws).
The Information commissioner has a fixed term of seven years.
- While the following two agencies and watchdogs make publicly available annual reports, they also are permitted by law to give secret advice (the Conflict of Interest and Ethics Commissioner to politicians, political staff and Cabinet appointees who are covered by ethics rules, and the Registrar of Lobbyists to lobbyists):
  - Conflict of Interest and Ethics Commissioner — [http://www.parl.gc.ca/ciec-ccie](http://www.parl.gc.ca/ciec-ccie) — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons
- The following agency is new as of spring 2007, so its record of making publicly available reports is not yet known:

The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.
The agency (or agencies) or makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

References:
The following four agencies and watchdogs usually initiate investigations when necessary:
– Elections Canada — [http://www.elections.ca/home.asp](http://www.elections.ca/home.asp) — Chief Electoral Officer and Commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws).


The following two agencies and watchdogs have a very poor record over the past three years of failing to initiate investigations when necessary:


The following agency is new as of spring 2007, so its record of initiating investigations is not yet known:

The agency aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The agency is fair in its application of this power.

The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.
The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

References:
– None of the following agencies and watchdogs have the power to penalize offenders:
  – Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent. If a violation of the Act is suspected, the Auditor General is required to refer the matter to the police.

  – Conflict of Interest and Ethics Commissioner — http://www.parl.gc.ca/ciec-ccie — who enforces the Conflict of Interest Act (new as of July 2007) and the Conflict of Interest Code for Members of the House of Commons (NOTE: a new Conflict of Interest Commissioner was appointed on July 9, 2007). Before July 9, 2007, the Commissioner did not have the power to penalize offenders, only to recommend penalties. As of July 9, 2007, the Commissioner has the power to penalize offenders of the Conflict of Interest Act (which applies to the prime minister, Cabinet ministers, some ministerial staff, and some Cabinet appointees) only a maximum of $500 (US$505), and continues to have the power to recommend penalties for members of the House of Commons.


  and Democracy Watch’s April 2007 news release about the Commissioner’s overall record between March 2004 and April 2007: http://www.dwwatch.ca/camp/RelApr0507.html


  Under the Act, the Commissioner only has the power to make recommendations.


  – The following two agencies and watchdogs have a very poor record of penalizing offenders:
  – Elections Canada — http://www.elections.ca/home.asp — Chief Electoral Officer and Commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws). The CEO and Commissioner usually only require offenders to correct their actions (return illegal donations, correct incorrect financial statements, etc.

  – Registrar of Lobbyists — http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home — if the Registrar suspects that the Lobbyists Registration Act is being violated, the Registrar is required under the Act to refer the matter to the police. The Registrar has the power to find a lobbyist guilty of violating the Lobbyists’ Code of Conduct (which came into force in 1997), but the only penalty is a public report stating that the lobbyist has violated the Code (only one lobbyist has been found guilty of violating the Code, in spring 2007, despite allegations that more than 20 lobbyists have violated the Code)

  — See details in Democracy Watch’s 2005 news release about its court challenge of the Registrar at: http://www.dwwatch.ca/camp/RelSep2905.html

  and


The following agency is new as of spring 2007, so its record of penalizing offenders is not yet known:
– Public Sector Integrity Commissioner — http://www.psic-ispc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines — the Commissioner (first appointed on July 9, 2007) is required by law to file a report with a tribunal (still to be created) and the tribunal will impose penalties (if any).
The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

In practice, the government acts on the findings of the ombudsman agency (or agencies).

References:
– The findings of the following agency are usually acted upon by the federal government and federal parties:
  – Elections Canada — [http://www.elections.ca/home.asp](http://www.elections.ca/home.asp) — Chief Electoral Officer and Commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws).

– The findings of the following agencies and watchdogs are often ignored by the federal government, as can be seen in their annual reports and other reports issued by them:
  – Auditor General of Canada — [http://www.oag-bvg.gc.ca](http://www.oag-bvg.gc.ca) — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent. If a violation of the Act is suspected, the Auditor General is required to refer the matter to the police.


– The following agency have made very few findings or policy change recommendations:
  – Conflict of Interest and Ethics Commissioner — [http://www.parl.gc.ca/CIIE-coic](http://www.parl.gc.ca/CIIE-coic) — who enforces the Conflict of Interest Act (new as of July 2007) and the Conflict of Interest Code for Members of the House of Commons (NOTE: a new Conflict of Interest Commissioner was appointed on July 9, 2007). Before July 9, 2007, the Commissioner did not have the power to penalize offenders, only to recommend penalties, and the Commissioner made very few findings or policy recommendations. As of July 9, 2007, the Commissioner has the power to penalize offenders of the Conflict of Interest Act (which applies to the prime minister, Cabinet ministers, some ministerial staff, and some Cabinet appointees) only a maximum of $500 (US$505), and continues to have the power to recommend penalties for members of the House of Commons. See details in Democracy Watch’s 2005 news release about its court challenge of the Commissioner at: [http://www.dwatch.ca/camp/RelsSep2905.html](http://www.dwatch.ca/camp/RelsSep2905.html) and Democracy Watch’s April 2007 news release about the Commissioner’s overall record between March 2004 and April 2007: [http://www.dwatch.ca/camp/RelApr0507.html](http://www.dwatch.ca/camp/RelApr0507.html)

  – Registrar of Lobbyists — [http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.net/en/home](http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.net/en/home) — if the Registrar suspects that the Lobbyists Registration Act is being violated, the Registrar is required under the Act to refer the matter to the police. The Registrar has the power to find a lobbyist guilty of violating the Lobbyists’ Code of Conduct (which came into force in 1997), but the only penalty is a public report stating that the lobbyist has violated the Code (only one lobbyist has been found guilty of violating the Code, in spring 2007, despite allegations that more than 20 lobbyists have violated the Code) — See details in Democracy Watch’s 2005 news release about its court challenge of the Registrar at: [http://www.dwatch.ca/camp/RelsSep2905.html](http://www.dwatch.ca/camp/RelsSep2905.html) and Democracy Watch’s 2007 news release about its second court challenge of the Registrar at: [http://www.dwatch.ca/camp/RelsJan2507.html](http://www.dwatch.ca/camp/RelsJan2507.html)
The following agency is new as of spring 2007, so government’s record of acting on its findings is not yet known (NOTE: the Commissioner position was created in response to the recommendation of the Public Sector Integrity Officer (PSIO), a position that existed from late 2001 until 2007 when the Commissioner position was created):

Public Sector Integrity Commissioner — http://www.psic-ispc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines — the Commissioner (first appointed on July 9, 2007) is required by law to file a report with a tribunal (still to be created) and the tribunal will impose penalties (if any).

100: Ombudsman’s reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman’s reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

References:

– The following two agencies and watchdogs act on citizen complaints within a reasonable time period, mainly because they receive regular, adequate funding:

  – Elections Canada — http://www.elections.ca/home.asp — Chief Electoral Officer and Commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws).


  – The following agencies have shown clearly that they do not act on citizen complaints within a reasonable time period (mainly because it does not have adequate, regular funding) by the backlog of open files in its annual report (or, in the Auditor General’s case, the Auditor’s acknowledgement that it only audits large government spending initiatives at most every five years (and longer for smaller spending initiatives).

  – Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.


  The Information Commissioner has a fixed term of seven years.

  – The following two agencies have shown clearly, by the backlog of open files in their annual report, that they do not act on citizen complaints within a reasonable time period (in part because they do not have adequate, regular funding, but also in part because they have a very weak enforcement attitude) :


and

Democracy Watch’s April 2007 news release about the Commissioner’s overall record between March 2004 and April 2007 at: http://www.dwatch.ca/camp/RelsApr0507.html


– The following agency is new as of spring 2007, so its responsiveness track record is not yet known:

– Public Sector Integrity Commissioner — http://www.psic-ispc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines — the Commissioner has a fixed term under law of seven years.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

58

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

– The following three agencies and watchdogs are required by law to make their reports publicly available:

– Auditor General of Canada — http://www.oag-bvg.gc.ca — is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.

– Elections Canada — http://www.elections.ca/home.asp — Chief Electoral Officer and Commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws).

The Information Commissioner has a fixed term of seven years.


– While the following two agencies and watchdogs are also required by law to make their annual reports and investigation/inquiry reports publicly available, they also are permitted by law to give secret advice (the Conflict of Interest and Ethics Commissioner to politicians, political staff and Cabinet appointees who are covered by ethics rules, and the Registrar of Lobbyists to lobbyists) and if they reject a complaint they usually do not make their rejection decision document available to the public online or in any other format (they are not required to do so by law), and so they usually send it only to the complainant:

See details in Democracy Watch’s 2005 news release about its court challenge of the Commissioner
at: http://www.dwatch.ca/camp/RelSep2905.html
and
in Democracy Watch’s April 2007 news release about the Commissioner’s overall record from March 2004 to April 2007 at: http://www.dwatch.ca/camp/RelApr0507.html


– The following agency is new as of spring 2007, and it is expected that it will make its annual and other reports available online at no cost:
– Public Sector Integrity Commissioner — http://www.psic-ispc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100  |  75  |  50  |  25  |  0

References:
The following agencies and watchdogs annual reports for each fiscal year (April 1 to March 31 annually) are often not tabled in Parliament by the Cabinet minister responsible for the agency (the process which makes them public) for several months after the end of the fiscal year, and sometimes the minister tables their annual or investigative reports at a time that is politically opportunistic (for example, late on a Friday afternoon, or in the middle of summer, when the media are unlikely to pay attention to the report):
– Auditor General of Canada — http://www.oag-bvg.gc.ca — is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.
NOTE: the Auditor General issues quarterly reports on various audits on days and at times that are chosen by the Auditor General

– Elections Canada — http://www.elections.ca/home.asp — Chief Electoral Officer and Commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws)

The Information Commissioner has a fixed term of seven years.


– The following two agencies follow the same pattern in terms of the release of reports as the agencies set out above, and they also are permitted by law to give secret advice (the Conflict of Interest and Ethics Commissioner to politicians, political staff and Cabinet appointees who are covered by ethics rules, and the Registrar of Lobbyists to lobbyists) and if they reject a complaint they often do not make their rejection decision document available to the public online or in any other format, and send it only to the complainant:
See details in Democracy Watch’s 2005 news release about its court challenge of the Commissioner at: http://www.dwatch.ca/camp/RelSep2905.html
and
in Democracy Watch’s April 2007 news release about the Commissioner’s overall record from March 2004 to April 2007 at: http://www.dwatch.ca/camp/RelApr0507.html
See details in Democracy Watch’s 2005 news release about its court challenge of the Registrar at: http://www.dwatch.ca/camp/RelsSep2905.html
and

– The following agency is new as of spring 2007, and it is expected that it will make its annual and other reports available online at no cost:
– Public Sector Integrity Commissioner — http://www.psic-ispc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines.

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<td>Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.</td>
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<tr>
<td>0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.</td>
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54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

References:
All of the following agencies and watchdogs annual reports and other reports are available online at no cost:
– Auditor General of Canada — http://www.oag-bvg.gc.ca — is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.

NOTE: the Auditor General issues quarterly reports on various audits on days and at times that are chosen by the Auditor General

– Elections Canada — http://www.elections.ca/home.asp — Chief Electoral Officer and Commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws)

The Information Commissioner has a fixed term of seven years.


– The following two agencies annual reports and other reports are also available online at no cost, but they also are permitted by law to give secret advice (the Conflict of Interest and Ethics Commissioner to politicians, political staff and Cabinet appointees who are covered by ethics rules, and the Registrar of Lobbyists to lobbyists) and if they reject a complaint they often do not make their rejection decision document available online, only sending it to the complainant:
See details in Democracy Watch’s 2005 news release about its court challenge of the Commissioner at: http://www.dwatch.ca/camp/RelsSep2905.html

See details in Democracy Watch’s 2005 news release about its court challenge of the Registrar
at: http://www.dwatch.ca/camp/RelSep2905.html
and

– The following agency is new as of spring 2007, and it is expected that it will make its annual and other reports available online at no cost:
– Public Sector Integrity Commissioner — http://www.psic-ispc.gc.ca — addresses complaints about public servants violating laws, regulations, codes, policies and guidelines.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:
– There are some federal government institutions (mainly quasi-governmental institutions such as funding bodies) that are not subject to auditing by the Auditor General.

References:
YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

81

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:
– There are some federal government institutions (mainly quasi-governmental institutions such as funding bodies) that are not subject to auditing by the Auditor General.

References:
– Auditor General of Canada — http://www.oag-bvg.gc.ca — has control over office budget and activities, and cannot be ordered to, or prohibited from, auditing any government institution or program under sections 5 to 14 of the Auditor General Act (R.S., 1985, c. A-17) — http://lois.justice.gc.ca/en/showtdm/cs/A-17
Under section 3 of the Act, it is appointed to a fixed term of 10 years or until auditor reaches the age of 65 years.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 75 50 25 0

References:
The Auditor has a fixed term of office of 10 years (or until Auditor reaches the age of 65 years) and can only be dismissed for cause.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.
The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

The director of the agency can be removed at the will of political leadership.

In practice, the audit agency has a professional, full-time staff.

By the Auditor's own admission in quarterly reports, lack of resources mean that most government institutions and spending are audited only once every five years or even more rarely (for programs not spending a significant amount of the government's annual budget).

Internet search produced no reports, articles or media stories about the lack of professionalism by Auditor General staff.

The agency has staff sufficient to fulfill its basic mandate.

The agency has limited staff that hinders it ability to fulfill its basic mandate.

The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

In practice, audit agency appointments support the independence of the agency.

The Auditor has a fixed term of office of 10 years and can only be dismissed for cause.

An Internet search produced no articles or media stories expressing any concerns about the independence of the federal Auditor General.
100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

References:
– The Auditor General has shown clearly that they do not have adequate, regular funding by the backlog of open files in their annual reports, and the fact that the Auditor acknowledges that large government spending initiatives are usually audited only once every five years (at most), and that many smaller spending initiatives have never been audited:
– Auditor General of Canada — http://www.oag-bvg.gc.ca — is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

References:
– The Auditor General issues quarterly reports on completed audits, but has shown clearly that they do not have adequate, regular funding by the backlog of open files in their annual reports, and the fact that the Auditor acknowledges that large government spending initiatives are usually audited only once every five years (at most), and that many smaller spending initiatives have never been audited.

56e. In practice, the audit agency receives regular funding.

References:
– The Auditor General has shown clearly that they do not have adequate, regular funding by the backlog of open files in their annual reports, and the fact that the Auditor acknowledges that large government spending initiatives are usually audited only once every five years (at most), and that many smaller spending initiatives have never been audited:
– Auditor General of Canada — http://www.oag-bvg.gc.ca — is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.

56f. In practice, the audit agency makes regular public reports.

References:
– The Auditor General issues quarterly reports on completed audits, but has shown clearly that they do not have adequate, regular funding by the backlog of open files in their annual reports, and the fact that the Auditor acknowledges that large government spending initiatives are usually audited only once every five years (at most), and that many smaller spending initiatives have never been audited.
Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

56g. In practice, the government acts on the findings of the audit agency.

Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.
References:
– Auditor General of Canada — http://www.oag-bvg.gc.ca — is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.

– The Auditor General has full power to determine the timing and pace of its investigations, but does face calls from the legislature (usually opposition parties) to conduct audits, and does face resistance from the executive in terms of auditing investigations (mainly because the Auditor does not have the power to penalize such resistance).

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

100

57a. In law, citizens can access reports of the audit agency.

YES | NO

References:
Final reports must be made public.

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.
100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

References:
Reports are made available on the Internet at no cost as they are released.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

References:
Reports are made available on the Internet at no cost as they are released.
58. In law, is there a national tax collection agency?

100

59. Is the tax collection agency effective?

88

References:

– The Agency does not have the resources needed to keep the amount of unpaid taxes at a reasonable level, according to an audit by the Auditor General of Canada made public in 2006 — http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20060508ce.html

– The Agency does not have the resources to address the issue of offshore tax avoidance schemes, according to an audit by the Auditor General of Canada — http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20070207ce.html — made public in February 2007;

In the budget for fiscal year 2007-2008 the government admitted that the Agency needed more resources in this area, and committed in the International Tax Fairness Initiative” section of the budget to “Provide more resources to the Canada Revenue Agency to strengthen their audit and enforcement activities” — http://www.budget.gc.ca/2007/bp/bpc5ee.html
– The Agency has only 40 auditors who only have the capacity annually to audit 1,000 of the more than 80,000 charities in Canada, according to the Toronto Star — http://www.thestar.com/comment/article/269298 — This is a potentially serious lack of resources given concerns about charities being involved in financing groups involved in illegal or violent activities in other countries.

See article on this issue at: http://www.canada.com/topics/news/world/story.html?id=316ef6b2-01c5-4bf5-9a5e-d331c3140754&k=52246

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:
– An extensive Internet search found no evidence that the Canada Revenue Agency has faced threats of cuts to its regular funding.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

75
References:
– An extensive Internet search found no examples of discrimination in the enforcement of tax laws by the Canada Revenue Agency.

– However, the following problems have been identified concerning the uniformity of enforcement of tax laws by the Canada Revenue Agency:
– The Agency does not have the resources needed to keep the amount of unpaid taxes at a reasonable level, according to an audit by the Auditor General of Canada made public in 2006 — http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20060508ce.html

– The Agency does not have the resources to address the issue of offshore tax avoidance schemes, according to an audit by the Auditor General of Canada — http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20070207ce.html — made public in February 2007;


In the budget for fiscal year 2007-2008 the government admitted that the Agency needed more resources in this area, and committed in the International Tax Fairness Initiative” section of the budget to ”Provide more resources to the Canada Revenue Agency to strengthen their audit and enforcement activities” — http://www.budget.gc.ca/2007/bp/bpc5ee.html

– The Agency has only 40 auditors who only have the capacity annually to audit 1,000 of the more than 80,000 charities in Canada, according to the Toronto Star — http://www.thestar.com/comment/article/269298

This is a potentially serious lack of resources given concerns about charities being involved in financing groups involved in illegal or violent activities in other countries.

See article on this issue at: http://www.canada.com/topics/news/world/story.html?id=316ef6b2-01c5-4bf5-9a5e-d331c3140754&k=52246

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES  |  NO

References:
– Responsibility for customs and excise is shared between:
– Canada Revenue Agency established and operating under the Canada Revenue Agency Act (1999, c. 17)

and
62. Is the customs and excise agency effective?

88

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:
– Overall, it is highly questionable whether the borders of Canada could ever be effectively monitored, given that the borders are among the longest in the world, and in many cases span remote, sparsely populated areas

References:

– Serious questions have been raised about the training, knowledge and professionalism of some of the staff of the Canada Border Services Agency (specifically students hired for part-time positions during the summer months, and some of those students who are hired full-time after their summer posting) in a report by CBC News

– The Auditor General of Canada also raised found problems with the training of Agency staff, specifically in the area of values and ethics, and with the practices of the Agency, specifically in contracting practices, in an audit made public in November 2006

– In January 2007, Canadian airports also raised concerns about the consistency of Agency staffing levels across the province of Ontario — http://www.marketwire.com/mw/release.do?id=630119

– An extensive Internet search found no other publicly identified problems with the staff of the Agency.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.
63. In practice, are customs and excise laws enforced uniformly and without discrimination?

75

References:
– An audit made public in June 2006 by the federal Canadian Privacy Commissioner found that the Agency does not have needed personal information management systems in place to ensure fair treatment and proper identification of travellers — http://www.privcom.gc.ca/information/pub/ar-vr/cbsa_060620_e.asp

– A lawsuit was filed in January 2007 against the Agency, among others, concerning racial profiling over several past years by Agency staff — http://www.stopracialprofiling.ca


100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:
Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:
The first Commissioner was appointed on July 9, 2007, under section 39 of the Act. The Commissioner can investigate and attempt to resolve complaints (including by appointing a mediator) and can also apply for a binding order (including compensation for a whistleblower) to the yet-to-be-established Public Servants Disclosure Protection Tribunal (which will be appointed without any public process by the federal Cabinet, chosen from amongst members of the Federal Court of Canada, under section 20.7 of the Public Servants Disclosure Protection Act). Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers.

– Bill C-2, the so-called Federal Accountability Act”, passed into law on Dec. 12, 2006, contains a measure that must be approved by the federal Cabinet to create the position of an independent Commissioner of Lobbyists, to replace the current Registrar of Lobbyists who is under the control of a Cabinet minister who has the legal power to fire the person holding the Registrar position at any time for any reason — http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home

References:
– In Canada, state-owned enterprises are generally known as Crown corporations”.

– There is not one agency that oversees Crown corporations; instead, as with most federal government institutions, the following agencies and commissioners oversee the conduct and performance of Crown corporations:

– Conflict of Interest and Ethics Commissioner — http://www.parl.gc.ca/ciec-ccie — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons. NOTE: many Crown corporations are required to have their own ethics rules, and so are not covered by the Conflict of Interest Act

NOTE: some Crown corporations are exempt from the Act (as of Sept. 1, 2007, 50 government institutions (mainly Crown corporations) were added to the list of federal government institutions covered by the Act as a result of the passage on Dec. 12, 2006, of the Federal Accountability Act (2006, c. 9) — http://lois.justice.gc.ca/en/showtdm/cs/F-5.5


– Privacy Commissioner — who investigates complaints about the abuse or disclosure of personal information collected by federal government institutions under the Privacy Act (R.S., 1985, c. P-21) — http://lois.justice.gc.ca/en/showtdm/cs/P-21

– The Public Service Commission (which, in addition to making appointments and hirings itself, also conducts audits and also investigates and rules on complaints about non-merit-based appointments) are appointed without any public process by the federal Cabinet under subsection 4(5), and members of the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission’s rulings) are appointed without any public process by the federal Cabinet under sections 88 and 90 of the Public Service Employment Act (2003, c. 22, ss. 12, 13) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01

– The members of the Public Service Labour Relations Board (which rules on various federal public service labour matters as set out in collective bargaining agreements) are appointed without any public process by the federal Cabinet under sections 12 and 18 of the Public Service Labour Relations Act (2003, c. 22, s. 2) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.3

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:
– The Public Sector Integrity Commissioner position — http://www.psic-ispc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines, was created in spring 2007, and the first Commissioner was appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers.

– Bill C-2, the so-called Federal Accountability Act*, passed into law on Dec. 12, 2006, contains a measure that must be approved by the federal Cabinet to create the position of an independent Commissioner of Lobbyists, to replace the current Registrar of Lobbyists who is under the control of a Cabinet minister who has the legal power to fire the person holding the Registrar position at any time for any reason — http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home

References:
All of the following agencies and watchdogs have formal organizational independence in law from the government (ie. fixed terms in office (usually five-seven years) with dismissal allowed only for cause, effective control of office budget and staffing, adequate (if not full) investigative powers):

– Conflict of Interest and Ethics Commissioner — http://www.parl.gc.ca/ciec-ccie — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons


YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:
– The Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner was appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers; Public Sector Integrity Commissioner — http://www.psic-ispc.gc.ca — addresses complaints about public servants violating laws, regulations, codes, policies and guidelines. The Commissioner has a fixed term under law of seven years.

References:
All of the following agencies and watchdogs have a professional, full-time staff:

– Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent. The AG has a fixed term under the law of 10 years


The Information Commissioner has a fixed term of seven years.


– The following agencies do not have full-time, professional staff:
– Conflict of Interest and Ethics Commissioner — http://www.parl.gc.ca/ciec-ccie — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons – the Commissioner has a fixed term under the Act of seven years. The Ethics Commissioner from March 2004 until April 2007 was Bernard Shapiro, who had no legal training, had never been in a similar enforcement position, and who hired the same lawyers to advise him as the Prime Minister and Cabinet ministers used as legal counsel.

See details in Democracy Watch’s news release about its court challenge of the Ethics Commissioner at: http://www.dwatch.ca/camp/RelcSep2905.html

– Also with regard to the Conflict of Interest and Ethics Commissioner, the new Commissioner (appointed on July 9, 2007) must (under changes made by the Federal Accountability Act (which became law in December 2006) keep the same staff as the old Commissioner had, and the staff has demonstrated incompetence and bias in their enforcement practices in the past. See details in Democracy Watch’s news release about its court challenge of the Ethics Commissioner at: http://www.dwatch.ca/camp/RelcSep2905.html

– Bill C-2, the so-called Federal Accountability Act", passed into law on Dec. 12, 2006, contains a measure that must be approved by the federal Cabinet to create the position of an independent Commissioner of Lobbyists, to replace the current Registrar of
Lobbyists who is under the control of a Cabinet minister who has the legal power to fire the person holding the Registrar position at any time for any reason. Between 1988 and March 2004 the Registrar was Howard Wilson, who had no legal training and no experience enforcing any legal regime. In March 2004, he was replaced by new appointee Michael Nelson, who also has no legal training and no experience enforcing any legal regime — http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home

– Also with regard to the Registrar of Lobbyists, the to-be-appointed Commissioner of Lobbying must keep the same staff as the current Registrar has, and the staff has demonstrated incompetence and bias in their enforcement practices in the past. See details in Democracy Watch’s 2005 news release about its court challenge of the Registrar at: http://www.dwatch.ca/camp/RelsSep2905.html and Democracy Watch’s 2007 news release about its second court challenge of the Registrar at: http://www.dwatch.ca/camp/RelsJan2507.html

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

References:
– The following agency receives regular funding:

– The following four agencies and watchdogs have shown clearly that they do not have adequate, regular funding by the backlog of open files in their annual reports (or, in the case of the Auditor General, the fact that the Auditor acknowledges that large government spending initiatives are usually audited only once every five years (at most)):
  – Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.


  The Information Commissioner has a fixed term of seven years.


  – The following agency is new as of spring 2007, so its funding track record is not yet known:
    – Public Sector Integrity Commissioner — http://www.psic-ispcc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines. The Commissioner has a fixed term under law of seven years.
100: The agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

References:
The following three agencies and watchdogs usually initiate investigations when necessary:


– The following two agencies and watchdogs have a very poor record over the past three years of failing to initiate investigations when necessary:


– The following agency is new as of spring 2007, so its record of initiating investigations is not yet known:

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:
The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

References:
– None of the following agencies and watchdogs have the power to penalize offenders:
  – Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent. If a violation of the Act is suspected, the Auditor General is required to refer the matter to the police.
  
  – Conflict of Interest and Ethics Commissioner — http://www.parl.gc.ca/ciec-ccie — who enforces the Conflict of Interest Act (new as of July 2007) and the Conflict of Interest Code for Members of the House of Commons. (NOTE: a new Conflict of Interest Commissioner was appointed on July 9, 2007). Before July 9, 2007, the Commissioner did not have the power to penalize offenders, only to recommend penalties. As of July 9, 2007, the Commissioner has the power to penalize offenders of the Conflict of Interest Act (which applies to the Prime Minister, Cabinet ministers, some ministerial staff, and some Cabinet appointees) only a maximum of $500 (US$505), and continues to have the power to recommend penalties for members of the House of Commons.
  
  
  and
  
  Democracy Watch’s April 2007 news release about the Commissioner’s overall record between March 2004 and April 2007: http://www.dwatch.ca/camp/RelApr0507.html

  Under the Act, the Commissioner only has the power to make recommendations.


  The following agency has a very poor record of penalizing offenders:
  – Registrar of Lobbyists — http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home — if the Registrar suspects that the Lobbyists Registration Act is being violated, the Registrar is required under the Act to refer the matter to the police. The Registrar has the power to find a lobbyist guilty of violating the Lobbyists’ Code of Conduct (which came into force in 1997), but the only penalty is a public report stating that the lobbyist has violated the Code (only one lobbyist has been found guilty of violating the Code, in spring 2007, despite allegations that more than 20 lobbyists have violated the Code).
  
  See details in Democracy Watch’s 2005 news release about its court challenge of the Registrar at: http://www.dwatch.ca/camp/RelSep2905.html
  
  and
  

  The following agency is new as of spring 2007, so its record of penalizing offenders is not yet known:
  – Public Sector Integrity Commissioner — http://www.psic-ispc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines. The Commissioner (first appointed on July 9, 2007) is required by law to file a report with a tribunal (still to be created) and the tribunal will impose penalties (if any).
When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

95

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:
– State-owned companies (legal name in Canada is Crown corporations”) are required to produce a publicly available annual report that includes financial records under sections 149 to 152 (contained in Part X) of the Financial Administration Act (R.S., 1985, c. F-11) — http://lois.justice.gc.ca/en/showtdm/cs/F-11

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:
– State-owned companies (legal name in Canada is Crown corporations”) are required to produce a publicly available annual report that includes financial records under sections 149 to 152 (contained in Part X) of the Financial Administration Act (R.S., 1985, c. F-11) — http://lois.justice.gc.ca/en/showtdm/cs/F-11

– An Internet search produced no examples of Crown corporations not producing an annual report including financial records.
The independent government agency Auditor General of Canada conducts audits of Crown corporations (although the Auditor has the discretion to delegate auditing to auditors the corporation may select), and as a result there is usually not an issue of timeliness of audits. See information at: [http://www.oag-bvg.gc.ca/domino/reports.nsf/html/200611ad_e.html](http://www.oag-bvg.gc.ca/domino/reports.nsf/html/200611ad_e.html) and at: [http://www.oag-bvg.gc.ca/domino/reports.nsf/html/200611ac_e.html](http://www.oag-bvg.gc.ca/domino/reports.nsf/html/200611ac_e.html)

**100:** State-owned companies always disclose financial data, which is generally accurate and up to date.

**75:**

**50:** State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

**25:**

**0:** Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

| 100 | 75 | 50 | 25 | 0 |

References:


The independent government agency Auditor General of Canada conducts audits of Crown corporations (although the Auditor has the discretion to delegate auditing to third-party auditors the corporation may select), and as a result there is usually not an issue of timeliness of audits. See information at: [http://www.oag-bvg.gc.ca/domino/reports.nsf/html/200611ad_e.html](http://www.oag-bvg.gc.ca/domino/reports.nsf/html/200611ad_e.html) and at: [http://www.oag-bvg.gc.ca/domino/reports.nsf/html/200611ac_e.html](http://www.oag-bvg.gc.ca/domino/reports.nsf/html/200611ac_e.html)

**100:** Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

**75:**

**50:** Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

**25:**

**0:** State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.
References:
– State-owned companies (legal name in Canada is Crown corporations”) are required to produce a publicly available annual report that includes financial records under sections 149 to 152 (contained in Part X) of the Financial Administration Act (R.S., 1985, c. F-11) — http://lois.justice.gc.ca/en/showtdm/cs/F-11

– These records are generally available on-line.

– However, Crown corporations are not required to file their annual reports with the responsible Cabinet minister until three months after the end of the corporation’s fiscal year and the responsible minister does not have to disclose the annual reports to the public for another 15 days. As a result, there is some delay in the public’s access to up-to-date financial records.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.
67. Are business licenses available to all citizens?

67a. In law, anyone may apply for a business license.

**YES** | **NO**

References:
- Anyone can set up a business as an unincorporated self-employed person or sole proprietorship in many fields, and incorporation can be done on-line or in writing. See details at: [http://www.canadabusiness.ca/servlet/ContentServer?pagename=CBSC_ON%2Fdisplay)=en&cid=1081944192533&c=Regs](http://www.canadabusiness.ca/servlet/ContentServer?pagename=CBSC_ON%2Fdisplay)=en&cid=1081944192533&c=Regs)

- However, many businesses require licenses (most of which are controlled by Canadian provinces, not the federal government, as a result of the division of powers within the Canadian constitution). See details at: [http://www.canadabusiness.ca/servlet/ContentServer?cid=1108986667460)=en&pagename=CBSC_ON%2Fdisplay&c=GuideFactSheet](http://www.canadabusiness.ca/servlet/ContentServer?cid=1108986667460)=en&pagename=CBSC_ON%2Fdisplay&c=GuideFactSheet)

- Municipalities also may have license requirements or regulations for some businesses. See details at: [http://www.canadabusiness.ca/servlet/ContentServer?cid=1177385490784)=en&pagename=CBSC_ON%2Fdisplay&c=GuideFactSheet](http://www.canadabusiness.ca/servlet/ContentServer?cid=1177385490784)=en&pagename=CBSC_ON%2Fdisplay&c=GuideFactSheet)

- Businesses that the federal government licenses are limited in number (and usually require as a limitation that applicants have a good business record” to be licensed) and include: banks (under the Bank Act); life and health insurance companies (under the Insurance Companies Act), trust companies (under the Trust Companies Act); mining companies (under the Mining Act); broadcast companies (under the Broadcasting Act); phone companies (under the Telecommunications Act); fishery companies (under the Fisheries Act); transportation (under the Transportation Act)


- Overall, however, no particular group or category of citizens are excluded in law from applying for a business license.

**YES:** A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.
NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

67b. In law, a complaint mechanism exists if a business license request is denied.

YES  |  NO

References:
See details at:
http://www.canadabusiness.ca/servlet/ContentServer?cid=1108986667460=en&pagename=CBSC_ON%2Fdisplay&c=GuideFactSheet

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

References:
– Business licensing through the processes set out below takes about a month (for smaller businesses) but for larger businesses (banks, broadcasting companies) can take about one year (see Web sites listed below for details).

– Anyone can set up a business as an unincorporated self-employed person or sole proprietorship in many fields, and incorporation can be done on-line or in writing. See details at:
http://www.canadabusiness.ca/servlet/ContentServer?pagename=CBSC_ON%2Fdisplay=en&cid=1081944192533&c=Regs

– However, many businesses require licenses (most of which are controlled by Canadian provinces, not the federal government, as a result of the division of powers within the Canadian constitution). See details at:
http://www.canadabusiness.ca/servlet/ContentServer?cid=1108986667460=en&pagename=CBSC_ON%2Fdisplay&c=GuideFactSheet

– Municipalities also may have license requirements or regulations for some businesses. See details at:
http://www.canadabusiness.ca/servlet/ContentServer?cid=1177385490784=en&pagename=CBSC_ON%2Fdisplay&c=GuideFactSheet

– Businesses that the federal government licenses are limited in number (and usually require as a limitation that applicants have a good business record” to be licensed) and include: banks (under the Bank Act); life and health insurance companies (under the Insurance Companies Act), trust companies (under the Trust Companies Act); mining companies (under the Mining Act); broadcast companies (under the Broadcasting Act); phone companies (under the Telecommunications Act); fishery companies (under the Fisheries Act); transportation (under the Transportation Act)

– Also, the federal government licenses importing and exporting. See details at:
It regulates intellectual property (patents, trademarks and copyright). See details at: http://www.canadabusiness.ca/servlet/ContentServer?
pagename=CBSC_ON/CBSC_WebPage/CBSC_WebPage_Temp&c=CBSC_WebPage&cid=1176175891937=en

The federal government does regulate several business sectors that it does not license (mainly in terms of food and product safety). See details at: http://www.canadabusiness.ca/servlet/ContentServer?
pagename=CBSC_ON/CBSC_WebPage/CBSC_WebPage_Temp&c=CBSC_WebPage&cid=1176175889642=en

| 100: Licenses are not required, or licenses can be obtained within roughly one week. |
| 75: |
| 50: Licensing is required and takes around one month. Some groups may be delayed up to three months |
| 25: |
| 0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses. |

In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

References:
– Some licensing fees for setting up businesses through the processes set out below are high in Canada, the main purpose being to ensure that the applicant has the resources to succeed in the business sector (such as banking, broadcasting, fishery, telecommunications companies). These licensing fees are criticized as unjustifiable barriers to competition. See for background the following submission to a parliamentary committee: http://www.cfib.ca/legis/national/pdf/5125.PDF

– Anyone can set up a business as an unincorporated self-employed person or sole proprietorship in many fields, and incorporation can be done on-line or in writing. See details at: http://www.canadabusiness.ca/servlet/ContentServer?pagename=CBSC_ON%2Fdisplay=en&cid=1081944192533&c=Regs

– However, many businesses require licenses (most of which are controlled by Canadian provinces, not the federal government, as a result of the division of powers within the Canadian constitution). See details at: http://www.canadabusiness.ca/servlet/ContentServer?
cid=1108986667460=en&pagename=CBSC_ON%2Fdisplay&c=GuideFactSheet

– Municipalities also may have license requirements or regulations for some businesses. See details at: http://www.canadabusiness.ca/servlet/ContentServer?
cid=1177385490784=en&pagename=CBSC_ON%2Fdisplay&c=GuideFactSheet

– Businesses that the federal government licenses are limited in number (and usually require as a limitation that applicants have a good business record to be licensed) and include: banks (under the Bank Act); life and health insurance companies (under the Insurance Companies Act), trust companies (under the Trust Companies Act); mining companies (under the Mining Act); broadcast companies (under the Broadcasting Act); phone companies (under the Telecommunications Act); fishery companies (under the Fisheries Act); transportation (under the Transportation Act)

– Also, the federal government licenses importing and exporting. See details at: http://www.canadabusiness.ca/servlet/ContentServer?
pagename=CBSC_ON/CBSC_WebPage/CBSC_WebPage_Temp&c=CBSC_WebPage&cid=1176175893260=en

– It regulates intellectual property (patents, trademarks and copyright). See details at: http://www.canadabusiness.ca/servlet/ContentServer?
pagename=CBSC_ON/CBSC_WebPage/CBSC_WebPage_Temp&c=CBSC_WebPage&cid=1176175891937=en
The federal government does regulate several business sectors that it does not license (mainly in terms of food and product safety). See details at: http://www.canadabusiness.ca/servlet/ContentServer?pagename=CBSC_ON/CBSC_WebPage/CBSC_WebPage_Temp&c=CBSC_WebPage&cid=1176175889642=en

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

– See for details under Labelling" and “Specific Regulations” at: http://www.canadabusiness.ca/servlet/ContentServer?pagename=CBSC_ON/CBSC_WebPage/CBSC_WebPage_Temp&c=CBSC_WebPage&cid=1176175889642=en

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO
YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:
– See for details under Labelling” and “Specific Regulations” at:

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

75

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:
– However, due to limited resources in every inspection department, of course the choice is made to inspect larger businesses more because of the greater potential for those businesses to create large problems through non-compliance. Another choices is to give larger businesses more time to comply after a problem is found because of the disruption that shutting down such a business could have in the marketplace.

– See for background the Canadian Public Health Association Web site —
http://www.cpha.ca

– See, for example of uneven inspection standards, the following background information from Environment Probe:
Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

However, due to limited resources in every inspection department, of course the choice is made to inspect larger businesses more because of the greater potential for those businesses to create large problems through non-compliance. Another choices is to give larger businesses more time to comply after a problem is found because of the disruption that shutting down such a business could have in the marketplace.

See, for examples of concerns about this type of uneven enforcement of public environmental standards, the Web Sites of the groups in the Canadian Environmental Network at: http://www.cen-rce.org
In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner. However, due to limited resources in every inspection department, of course the choice is made to inspect larger businesses more because of the greater potential for those businesses to create large problems through non-compliance. Another choice is to give larger businesses more time to comply after a problem is found because of the disruption that shutting down such a business could have in the marketplace.

An extensive Internet search found no blatant examples during the study period of uneven inspection patterns for enforcement of public health standards.

Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. Anti-Corruption Law

Is there legislation criminalizing corruption?

In law, attempted corruption is illegal.
YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

References:


YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:


YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

– Subsections 80(a) and (f) and section 81 (contained in Part IX) of the Financial Administration Act (R.S.C. 1985, c. F-11) — http://lois.justice.gc.ca/en/showtdm/cs/F-11
YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:
– Subsections 80(a) and (f) and section 81 (contained in Part IX) of the Financial Administration Act (R.S.C. 1985, c. F-11) — http://lois.justice.gc.ca/en/showtdm/cs/F-11

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

References:

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO
YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

References:
– Section 4 of the Conflict of Interest Act (2006, c. 9, s. 2) — http://lois.justice.gc.ca/en/showtdm/cs/C-36.65
– Section 2, subsections 3(2) and (3), sections 8, 10 and 11 of the Conflict of Interest Code for Members of the House of Commons — http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | NO

References:
YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:
– Sections 465 to 467.2 (contained in Part XIII) of the Criminal Code (R.S., 1985, c. C-46)

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:
– Under the Conflict of Interest Code for Senators, the Senate Ethics Officer is under the control of a committee of senators, and cannot investigate, hold an inquiry, or issue an inquiry report without the approval of the committee.

– Bill C-2, the so-called Federal Accountability Act*, passed into law on Dec. 12, 2006, contains a measure that must be approved by the federal Cabinet to create the position of an independent Commissioner of Lobbyists, to replace the current Registrar of Lobbyists who is under the control of a Cabinet minister who has the legal power to fire the person holding the Registrar position at any time for any reason — http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home
The Public Sector Integrity Commissioner office — http://www.psic-ispc.gc.ca — is newly created (first Commissioner appointed on July 9, 2007) with the mandate to investigate complaints from "whistleblowers" and resolve violations of the Values and Ethics Code for the Public Service and all other federal government laws, regulations, codes, policies and guidelines.

References:
- Senate Ethics Officer — http://sen.parl.gc.ca/seo-cse/default.htm — who enforces the Conflict of Interest Code for Senators
- Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.
- Royal Canadian Mounted Police (RCMP), the national police force — http://www.rcmp-grc.gc.ca

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

58

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:
- Under the Conflict of Interest Code for Senators, the Senate Ethics Officer is under the control of a committee of senators, and cannot investigate, hold an inquiry, or issue an inquiry report without the approval of the committee.

- Bill C-2, the so-called Federal Accountability Act*, passed into law on Dec. 12, 2006, contains a measure that must be approved by the federal Cabinet to create the position of an independent Commissioner of Lobbyists, to replace the current Registrar of Lobbyists who is under the control of a Cabinet minister who has the legal power to fire the person holding the Registrar position at any time for any reason — http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home

- The Public Sector Integrity Commissioner office — http://www.psic-ispc.gc.ca — is newly created (first Commissioner appointed on July 9, 2007) with the mandate to investigate complaints from "whistleblowers" and resolve violations of the Values and Ethics Code for the Public Service and all other federal government laws, regulations, codes, policies and guidelines.
References:


– Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.


YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

References:
– There is no public evidence that the following agencies have been interfered with by federal politicians or their staff:
– Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.


– There is public evidence that the following agencies have been interfered with by federal politicians and their staff:

See details in the following September 2005 Democracy Watch news release — http://www.dwatch.ca/camp/RelsSep2905.html

– Senate Ethics Officer — http://sen.parl.gc.ca/seo-cse/default.htm — who enforces the Conflict of Interest Code for Senators — http://sen.parl.gc.ca/seo-cse/eng/Code-e.html — under the Conflict of Interest Code for Senators, the Senate Ethics Officer is under the control of a committee of senators, and cannot investigate, hold an inquiry, or issue an inquiry report without the approval of the committee.

– Bill C-2, the so-called Federal Accountability Act*, passed into law on Dec. 12, 2006, contains a measure that must be approved by the federal Cabinet to create the position of an independent Commissioner of Lobbyists, to replace the current Registrar of Lobbyists who is under the control of a Cabinet minister who has the legal power to fire the person holding the Registrar position at any time for any reason — http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home — See details in the following January 2007 Democracy Watch news release — http://www.dwatch.ca/camp/RelsJan2507.htm
The following agency is newly created and so has no track record to judge concerning political interference:

- the Public Sector Integrity Commissioner office — [http://www.psic-ispc.gc.ca](http://www.psic-ispc.gc.ca) — is newly created (first Commissioner was appointed on July 9, 2007) with the mandate to investigate complaints from “whistleblowers” and resolve violations of the Values and Ethics Code for the Public Service and all other federal government laws, regulations, codes, policies and guidelines.

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

References:

- The head of the following agencies serves a fixed term of office (or until retirement) and cannot be removed during their term in office without relevant justification:
  - Auditor General of Canada — [http://www.oag-bvg.gc.ca](http://www.oag-bvg.gc.ca) — fixed term of 10 years — is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent, under the Auditor General Act
  
  

  Under the Conflict of Interest Code for Senators, the Senate Ethics Officer is under the control of a committee of senators, and cannot investigate, hold an inquiry, or issue an inquiry report without the approval of the committee.

  - the Public Sector Integrity Commissioner office — [http://www.psic-ispc.gc.ca](http://www.psic-ispc.gc.ca) — is newly created (first Commissioner was appointed on July 9, 2007) with a renewable fixed term of five years and the mandate to investigate complaints from whistleblowers” and resolve violations of the Values and Ethics Code for the Public Service and all other federal government laws, regulations, codes, policies and guidelines.


  - The head of the following agencies can be removed from office by the federal Cabinet of politicians at any time for any reason:
    - Bill C-2, the so-called “Federal Accountability Act”, passed into law on Dec. 12, 2006, contains a measure that must be approved by the federal Cabinet to create the position of an independent Commissioner of Lobbyists, to replace the current Registrar of Lobbyists who is under the control of a Cabinet minister who has the legal power to fire the person holding the Registrar position at any time for any reason — [http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home](http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home) — See details in the following January 2007 Democracy Watch news release — [http://www.dwatch.ca/camo/Relis Jan2507.html](http://www.dwatch.ca/camo/Relis Jan2507.html)
Under section 43 of the Act head of FINTRAC appointed by minister of Finance to a term of five years and can be dismissed at any time for any reason.

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

50: The director(s) can be removed at the will of political leadership.

25: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

Comments:
The Commissioner must be (as of July 9, 2007, when this provision became law), (a) a former judge of a superior court in Canada or of any other court whose members are appointed under an Act of the legislature of a province; (b) a former member of a federal or provincial board, commission or tribunal who, in the opinion of the Governor in Council, has demonstrated expertise in one or more of the following: (i) conflicts of interest, (ii) financial arrangements, (iii) professional regulation and discipline, or (iv) ethics; or (c) a former Senate Ethics Officer or former Ethics Commissioner."

– While under Bill C-2 (the so-called “Federal Accountability Act”) the new position of Conflict of Interest and Ethics Commissioner (replacing the Ethics Commissioner position) does have professional criteria for the appointee, the yet to be proclaimed into law “Lobbying Act” creates the position of Commissioner of Lobbying (to replace the Registrar of Lobbyists) but does not require that appointees fulfill any specific professional criteria.

– The Federal Accountability Act (passed into law on Dec. 12, 2006) contains provisions that change the federal Salaries Act (R.S., 1985, c. S-3) — http://lois.justice.gc.ca/en/showtdm/cs/S-3 — to give the Federal Cabinet the power to create a Public Appointments Commission (as of Sept. 10, 2007, the federal Cabinet had not created the Commission and had given no indication that it ever intended to create the Commission); the Commission is given the legal mandate to ensure that all Cabinet appointments are made through processes that are “widely made public and conducted in a fair, open and transparent manner and that the appointments are based on merit”

– The members of the newly created Public Servants Disclosure Protection Tribunal (which rules on complaints about retaliation taken against public servant “whistleblowers” filed with the Tribunal by the Public Sector Integrity Commissioner) will be appointed without any public process by the federal Cabinet, chosen from amongst members of the Federal Court of Canada, under section 20.7 of the Public Servants Disclosure Protection Act (2005, c. 46) — http://lois.justice.gc.ca/en/showtdm/cs/P-31.9

– The members of the newly created Public Servants Disclosure Protection Tribunal (which rules on complaints about retaliation taken against public servant “whistleblowers” filed with the Tribunal by the Public Sector Integrity Commissioner) will be appointed without any public process by the federal Cabinet, chosen from amongst members of the Federal Court of Canada, under section 20.7 of the Public Servants Disclosure Protection Act (2005, c. 46) — http://lois.justice.gc.ca/en/showtdm/cs/P-31.9

– The members of the Public Service Commission (which, in addition to making appointments and hirings itself, also conducts audits and also investigates and rules on complaints about non-merit-based appointments) are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), and members of the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission’s rulings) are appointed without any public process or professional criteria by the federal Cabinet under sections 88 and 90 of the Public Service Employment Act (2003, c. 22, ss. 12, 13) — http://lois.justice.gc.ca/en/showtdm/cs/P-33.01

References:
– There are also many examples of non-qualified people appointed to the anti-corruption agencies, mainly because there are no requirements in law that people appointed to head or be members of these entities have specific professional skills or knowledge
For example, federal Ethics Commissioner Bernard Shapiro (who was in the position between March 2004 and April 2007), and Registrar of Lobbyists Michael Nelson (who began serving in the position in March 2004 and was still serving as of September 10, 2007) both had no experience in ethics rules or law enforcement, even though they were appointed to quasi-judicial positions.

For details, see Democracy Watch’s April 5, 2007 news release about the Ethics Commissioner — [http://www.dwatch.ca/camp/RelApr0507.html](http://www.dwatch.ca/camp/RelApr0507.html) and Democracy Watch’s January 25, 2007 news release about the Registrar — [http://www.dwatch.ca/camp/RelsJan2507.html](http://www.dwatch.ca/camp/RelsJan2507.html)

- The Senate Ethics Officer is appointed by senators without any public process or professional criteria required, and is under the control of a committee of senators, and cannot investigate or publicly rule on a complaint without the approval of the committee, and so lacks key facets of independence to be an effective public protector — [http://sen.parl.gc.ca/seo-cse/default.htm](http://sen.parl.gc.ca/seo-cse/default.htm)


The current Commissioner William Elliott (appointed in spring 2007) is a career public servant with experience in public and national security agencies, but no experience as a police officer. The appointment has created significant public controversy and concern also amongst RCMP officers.

- Financial Transactions Reports Analysis Centre of Canada (FINTRAC) — [http://www.fintrac.gc.ca/intro_e.asp](http://www.fintrac.gc.ca/intro_e.asp) which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. P-24.501) — under section 43 of the Act head of FINTRAC appointed by minister of Finance to a term of five years and can be dismissed at any time for any reason, and it is not required that the head of Fintrac fulfill specific professional criteria.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

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**References:**

- As the annual reports and other reports of all of the anti-corruption agencies make clear, none of them have adequate staff to fulfill their legally mandated responsibilities of enforcing anti-corruption laws. See annual reports on Web sites referenced below:

- The following anti-corruption agency has a professional, full-time staff:
  - Auditor General of Canada — [http://www.oag-bvg.gc.ca](http://www.oag-bvg.gc.ca) — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent. The AG has a fixed term under the law of 10 years.
Serious questions have been raised about the professionalism of the following anti-corruption agency:

- Royal Canadian Mounted Police (RCMP), the national police force — http://www.rcmp-grc.gc.ca — RCMP Commissioner is usually a career RCMP officer and serves until retirement and fulfills mandate under the Royal Canadian Mounted Police Act (R.S., 1985, c. R-10) — http://lois.justice.gc.ca/en/showtdm/cs/R-10 — the current Commissioner William Elliott (appointed in spring 2007) is a career public servant with experience in public and national security agencies, but no experience as a police officer. The appointment has created significant public controversy and concern amongst RCMP officers.

The following agencies do not have full-time, professional staff:

- Conflict of Interest and Ethics Commissioner — http://www.parl.gc.ca/ciec-ccie — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons. The Commissioner has a fixed term under the Act of seven years. The Ethics Commissioner from March 2004 until April 2007 was Bernard Shapiro, who had no legal training, had never been in a similar enforcement position, and who hired the same lawyers to advise him as the prime minister and Cabinet ministers used as legal counsel.


- Also with regard to the Conflict of Interest and Ethics Commissioner, the new Commissioner (appointed on July 9, 2007) must (under changes made by the Federal Accountability Act (which became law in December 2006) keep the same staff as the old Commissioner had, and the staff has demonstrated incompetence and bias in their enforcement practices in the past .


- Bill C-2, the so-called Federal Accountability Act*, passed into law on Dec. 12, 2006, contains a measure that must be approved by the federal Cabinet to create the position of an independent Commissioner of Lobbyists, to replace the current Registrar of Lobbyists who is under the control of a Cabinet minister who has the legal power to fire the person holding the Registrar position at any time for any reason. Between 1988 and March 2004 the Registrar was Howard Wilson, who had no legal training and no experience enforcing any legal regime. In March 2004 he was replaced by new appointee Michael Nelson, who also has no legal training and no experience enforcing any legal regime — http://www.orl-bdl.gc.ca/epic/site/lobbyist-lobbyiste.nsf/en/home

- Also with regard to the Registrar of Lobbyists, the to-be-appointed Commissioner of Lobbying must keep the same staff as the current Registrar has, and the staff has demonstrated incompetence and bias in their enforcement practices in the past.


and


- The Senate Ethics Officer also has no prior experience in enforcing ethics or similar rules, and is under the control of a committee of senators, and cannot investigate or publicly rule on a complaint without the approval of the committee, and so lacks key facets of independence to be an effective public protector — http://sen.parl.gc.ca/seo-cse/default.htm

- The following anti-corruption agencies are new, and so the professionalism and adequacy of their staff is not yet determined:


Under section 43 of the Act head of FINTRAC appointed by minister of Finance to a term of five years and can be dismissed at any time for any reason, and it is not required that the head of Fintrac fulfill specific professional criteria.

- The Public Sector Integrity Commissioner office — http://www.psic-ispc.gc.ca — is newly created (first Commissioner was appointed on July 9, 2007) with the mandate to investigate complaints from “whistleblowers” and resolve violations of the Values and Ethics Code for the Public Service and all other federal government laws, regulations, codes, policies and guidelines.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.
References:
– The following four anti-corruption agencies have shown clearly that they do not have adequate, regular funding by the backlog of open files in their annual reports (or, in the case of the Auditor General, the fact that the Auditor acknowledges that large government spending initiatives are usually audited only once every five years (at most)):
  – Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.
    See Democracy Watch’s September 2005 news release at: http://www.dwatch.ca/camp/RelSep2905.html
    See details in Democracy Watch’s 2005 news release about its court challenge of the Registrar at: http://www.dwatch.ca/camp/RelSep2905.html
    and
  – Royal Canadian Mounted Police (RCMP), the national police force — http://www.rcmp-grc.gc.ca — has acknowledged in reports that it does not have adequate resources to enforce white-collar crime measures (including government anti-corruption measures, namely cases for investigation referred to the RCMP by FINTRAC (see information below about FINTRAC).
  – The following three anti-corruption agencies are relatively new, so their funding track records are not yet determined:
      Under section 43 of the Act head of FINTRAC appointed by minister of Finance to a term of five years and can be dismissed at any time for any reason, and it is not required that the head of Fintrac fulfill specific professional criteria.
    – Public Sector Integrity Commissioner — http://www.psic-ispc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines. The Commissioner has a fixed term under law of seven years.
    – The Senate Ethics Officer also has no prior experience in enforcing ethics or similar rules, and is under the control of a committee of senators, and cannot investigate or publicly rule on a complaint without the approval of the committee, and so lacks key facets of independence to be an effective public protector — http://sen.parl.gc.ca/seo-cse/default.htm

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency’s funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.
References:
- The following four anti-corruption agencies make regular public reports, but also have a backlog of open files (according to their annual reports or, in the case of the Auditor General, the fact that the Auditor acknowledges that large government spending initiatives are usually audited only once every five years (at most)):
  - Royal Canadian Mounted Police (RCMP), the national police force — [http://www.rcmp-grc.gc.ca](http://www.rcmp-grc.gc.ca) — has acknowledged in reports that it does not have adequate resources to enforce white-collar crime measures (including government anti-corruption measures, namely cases for investigation referred to the RCMP by FINTRAC (see information below about FINTRAC).

- The following three anti-corruption agencies are relatively new, so their track records in issuing reports are not yet determined:
  - Public Sector Integrity Commissioner — [http://www.psic-ispic.gc.ca](http://www.psic-ispic.gc.ca) — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines. The Commissioner has a fixed term under law of seven years.
  - The Senate Ethics Officer also has no prior experience in enforcing ethics or similar rules, and is under the control of a committee of senators, and cannot investigate or publicly rule on a complaint without the approval of the committee, and so lacks key facets of independence to be an effective public protector — [http://sen.parl.gc.ca/seo-cse/default.htm](http://sen.parl.gc.ca/seo-cse/default.htm)

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<td>100:</td>
<td>The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.</td>
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<td>50:</td>
<td>The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.</td>
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<td>0:</td>
<td>The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.</td>
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72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.
References:
– The following two anti-corruption agencies have sufficient powers to penalize offenders:
  – Royal Canadian Mounted Police (RCMP), the national police force — http://www.rcmp-grc.gc.ca While the RCMP has sufficient investigative powers, it has acknowledged in reports that it does not have adequate resources to enforce white-collar crime measures (including government anti-corruption measures, namely cases for investigation referred to the RCMP by FINTRAC (see information below about FINTRAC).
    FINTRAC has sufficient investigative powers, but as a relatively new agency its track record in using those powers is not yet determined.

– The following two anti-corruption agencies do not have the sufficient powers to penalize offenders:
  – Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent. If a violation of the Act is suspected, the Auditor General is required to refer the matter to the police.
  – Conflict of Interest and Ethics Commissioner — http://www.parl.gc.ca/ciec-ccie — who enforces the Conflict of Interest Act (new as of July 2007) and the Conflict of Interest Code for Members of the House of Commons. (NOTE: a new Conflict of Interest Commissioner was appointed on July 9, 2007). Before July 9, 2007, the Commissioner did not have the power to penalize offenders, only to recommend penalties. As of July 9, 2007, the Commissioner has the power to penalize offenders of the Conflict of Interest Act (which applies to the prime minister, Cabinet ministers, some ministerial staff, and some Cabinet appointees) only a maximum of $500 (US$505), and continues to have the power to recommend penalties for members of the House of Commons.

and
Democracy Watch’s April 2007 news release about the Commissioner’s overall record between March 2004 and April 2007: http://www.dwatch.ca/camp/RelApr0507.html

– The following two anti-corruption agencies have a very poor record of bringing charges to the point of penalizing offenders:
  – Elections Canada — http://www.elections.ca/home.asp — Chief Electoral Officer and Commissioner of Canada Elections enforce the Canada Elections Act (which include political finance laws). The CEO and Commissioner usually only require offenders to correct their actions (return illegal donations, correct incorrect financial statements, etc.)
    If the Registrar suspects that the Lobbyists Registration Act is being violated, the Registrar is required under the Act to refer the matter to the police. The Registrar has the power to find a lobbyist guilty of violating the Lobbyists’ Code of Conduct (which came into force in 1997), but the only penalty is a public report stating that the lobbyist has violated the Code (only one lobbyist has been found guilty of violating the Code, in spring 2007, despite allegations that more than 20 lobbyists have violated the Code).
    — See details in Democracy Watch’s 2005 news release about its court challenge of the Registrar at: http://www.dwatch.ca/camp/RelSep2905.html
    and

The following agency is new as of spring 2007, so its record of bringing charges to the point of penalizing offenders is not yet determined:
– Public Sector Integrity Commissioner — http://www.psic-pspc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines. The Commissioner(first appointed on July 9, 2007) is required by law to file a report with a tribunal (still to be created) and the tribunal will impose penalties (if any).

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.
In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

References:
The following anti-corruption agency usually initiate investigations when necessary:

– The following two agencies and watchdogs have a very poor record over the past three years of failing to initiate investigations when necessary:
– Conflict of Interest and Ethics Commissioner — [http://www.parl.gc.ca/ciec-ccie](http://www.parl.gc.ca/ciec-ccie) — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons (NOTE: a new Conflict of Interest Commissioner was appointed on July 9, 2007).

and


and


– Because of the nature of their investigations (police investigations which are never disclosed unless charges are laid), the track record in initiating investigations of the following two anti-corruption agencies have sufficient powers to penalize offenders:
– Royal Canadian Mounted Police (RCMP), the national police force — [http://www.rcmp-grc.gc.ca](http://www.rcmp-grc.gc.ca) While the RCMP has sufficient investigative powers, it has acknowledged in reports that it does not have adequate resources to enforce white-collar crime measures (including government anti-corruption measures, namely cases for investigation referred to the RCMP by FINTRAC (see information below about FINTRAC).


FINTRAC has sufficient investigative powers, but as a relatively new agency its track record in using those powers is not yet determined.

– The following agency is new as of spring 2007, so its record of initiating investigations is not yet known:

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.
73. Can citizens access the anti-corruption agency?

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

References:
The following anti-corruption agency usually act on complaints in a timely way (although self-admitted lack of adequate staff and resources does cause delays in some cases):
– Auditor General of Canada — http://www.oag-bvg.gc.ca — who is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations, and its own spending codes, policies and guidelines, and receives value for money spent.

– The following two agencies and watchdogs have a very poor record over the past three years of acting on complaints in a timely manner:
  – Conflict of Interest and Ethics Commissioner — http://www.parl.gc.ca/ciec-ccie — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons. (NOTE: a new Conflict of Interest Commissioner was appointed on July 9, 2007).
  See details in Democracy Watch’s 2005 news release about its court challenge of the Commissioner at: http://www.dwatch.ca/camp/RelsSep2905.html
  and
  Democracy Watch’s April 2007 news release about the Commissioner’s overall record between March 2004 and April 2007: http://www.dwatch.ca/camp/RelsApr0507.html

  — See details in Democracy Watch’s 2005 news release about its court challenge of the Registrar at: http://www.dwatch.ca/camp/RelsSep2905.html

– Because of the nature of their investigations (police investigations which are never disclosed unless charges are laid), the track record of acting on complaints for the following two anti-corruption agencies have sufficient powers to penalize offenders:
  While the RCMP has sufficient investigative powers, it has acknowledged in reports that it does not have adequate resources to enforce white-collar crime measures (including government anti-corruption measures, namely cases for investigation referred to the RCMP by FINTRAC (see information below about FINTRAC).

  FINTRAC has sufficient investigative powers, but as a relatively new agency its track record in using those powers is not yet determined.

– The following agency is new as of spring 2007, so its record of acting on complaints is not yet known:
  – Public Sector Integrity Commissioner — http://www.psic-ispc.gc.ca — who addresses complaints about public servants violating laws, regulations, codes, policies and guidelines.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.
The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

Comments:
– The score of 50 is given because the Public Servants Disclosure Protection Act does not ensure that citizens who file complaints are protected from retaliation (it does not even ensure all federal public servants are protected); the Act is flawed in many other ways, and; the Act came into force in March 2007, and so there is no track record concerning whether citizens will be protected in any way effectively from retaliation if they blow the whistle on federal government wrongdoing.

– As a result, while there is a constitutional right to freedom of expression, whether citizens are actually free (ie. free from potential harm) to complain to federal agencies about federal government wrongdoing remains to be seen.

References:
– Public Servants Disclosure Protection Act (2005, c. 46) which came into force in March 2007
— http://lois.justice.gc.ca/en/showtdm/cs/P-31.9 — with complaints going to the Public Sector Integrity Commissioner

NOTE: citizens (non-public servants) can file complaints with the Commissioner, but the Act does not protect them from retaliation by the federal government if they do so (for example, suppliers of goods and services to the federal government are not protected if they report corruption). The Act also has several other flaws (see list further below in this sources section).

– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, subsection 2(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication"
— http://lois.justice.gc.ca/en/Const/annex_e.html#

– Court cases in the past resulted in rulings that the Charter of Rights and Freedoms
— http://lois.justice.gc.ca/en/Const/annex_e.html# — “freedom of expression” right covers those who blow the whistle on government actions or decisions that endanger the public, but these cases did not result in effective protection of “whistleblowers” because they were still on their own (sometimes aided by their union) facing retaliation for their actions, no matter how justified.
See leading cases Haydon v. Canada (T.D.), 2000 CanLII 16081 (F.C.)
Haydon v. Canada (Treasury Board) (F.C.), 2004 FC 749 (CanLII)
and
Chopra v. Canada (Treasury Board), 2006 FCA 295 (CanLII)

– Before the Public Servants Disclosure Protection Act was proclaimed into law by the federal Cabinet in March 2007 and the Commissioner position created, an Internal Disclosure Policy had existed since November 2001, enforced by the Public Sector Integrity Officer (which was not a legislated position, and as a result lacked independence from the prime minister and Cabinet, and also lacked key powers) .
See problems with PSIO ruled on, for example, in case Chopra v. Canada (Attorney General), 2005 FC 595 (CanLII)

– The Public Sector Integrity Commissioner position was created in spring 2007, and the first Commissioner was appointed on July 9, 2007. Between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and powers. As a result, while the protection processes exist, they are still not well-established or well-known, nor is their effectiveness determined in any way.

– based upon the U.S. 20-year experience with a legislated whistleblower protection system (as documented in chapter entitled “Whistleblowing in the United State: The Gap Between Vision and Lessons Learned“ by Tom Devine in the book “Whistleblowing Around the World“ (ed. Richard Calland and Guy Dehn, pubs. ODAC & PCaW in partnership with the British Council: Southern Africa: 2004), the new Canadian Public Servants Disclosure Protection Act has several identifiable flaws, as follows:
– not all whistleblowers all covered by the Act, not even all public servants;
– whistleblowers are not allowed to disclose wrongdoing to any legal authority, they must follow the avenue established in the Act
or they will likely not be protected;
– it is not clear that protection covers the full scope of reprisals (whistleblowers can file a complaint if they have “reasonable grounds for believing that a reprisal has been taken” but it is not clear if they have to provide “prima facie” evidence of their belief (NOTE: full protection would entail shifting the burden of proof to the employer to prove that no reprisal took place);
– the Act does not override other federal laws, and so the government may override the Act in some cases in order to hide wrongdoing or thwart an investigation;
– whistleblowers have no right to a jury trial (they must file their submission re: wrongdoing or complaint about a reprisal with the Commissioner, who then designates an investigator, who then reports back to the Commissioner, who then files an application with the Public Servants Disclosure Protection Tribunal (made up of three to seven judges chosen by the federal Cabinet from amongst the Federal Court justices);
– whistleblowers do not have the right to determine who will arbitrate their case (if the Commissioner attempts to settle the case through arbitration); the Commissioner appoints the “conciliator”;
– whistleblowers only have 60 days to complain about a reprisal (should be at least 1 year limitation period);
– no interim compensation (while a case is being investigated/heard by Tribunal) is available, and if there is undue delay in investigations/hearings whistleblowers will suffer;
– the full scope of compensation is not available (pain and suffering is limited to $10,000 – US$10,266), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
– if a whistleblowers has been fired, they cannot win preference in transferring to another government job, the Tribunal can only reinstate them in their position or compensate them financially;
– it seems like anonymous disclosures are allowed, but it is not clear (NOTE: if a person blows the whistle, their identity must be kept secret by the Commissioner throughout the investigation to the extent possible);
– there is no clearly defined right to refuse to violate a law, regulations, code, policy or guideline (although general rights under the Values and Ethics Code for the Public Service may apply);
– there is no clearly defined duty to disclose wrongdoing (although general duties under the Values and Ethics Code for the Public Service may apply);
– the Act seems to cover all types of wrongdoing, but Tribunal rulings may limit the definition significantly (as happened in the U.S.);
– the Commissioner can only provide up to $1,500 (US$1,520) in funding for legal advice for a whistleblower (in exceptional cases, up to $3,000-US$3,040) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistleblower wins their case;
– it seems like the Tribunal can make orders for corrective action and penalties for those who have done wrong or retaliated against whistleblowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to $10,000 fine and maximum two years imprisonment) — wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
– extensive education and training of employee rights under the Act is not required by the Act (but will hopefully occur).

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

69

VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

75

74a. In law, there is a general right of appeal.
Comments:

– Serious concerns have been raised by human rights groups in Canada about the security certificate process enacted into law in 2001-2002, which allows the federal government to detain a person for national security reasons for up to four months, and to prosecute them, without having to produce evidence to the person, their legal counsel, or publicly. See for example the Amnesty International (Canada) news release at: http://www.amnesty.ca/take_action/actions/canada_certificates.php

– In February 2007, the Supreme Court of Canada ruled unanimously that the security certificate measure was unconstitutional and gave the federal government one year to change it. See information in the following Amnesty International (Canada) news release at: http://www.amnesty.ca/resource_centre/news/view.php?load=arcview&article=3881&c=Resource+Centre+News

– The federal government proposed in October 2007 to change the security certificate process by establishing a Special Advocate to represent persons held under security certificates. See reaction from Amnesty International (Canada) to this proposal at: http://www.amnesty.ca/resource_centre/news/view.php?load=arcview&article=4099&c=Resource+Centre+News

References:

– The Parliament of Canada has the power under The Constitution Act, 1867 (section 101 — http://lois.justice.gc.ca/en/Const/index.html) to provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada and used this power to establish the Supreme Court of Canada (first established in 1875 by an Act of Parliament — now under the Supreme Court Act, R.S.C. 1985, c. S-26), the Federal Court of Canada and the Federal Court of Appeal (first established as the Exchequer Court of Canada in 1871, then expanded in jurisdiction to become the Federal Court of Canada in 1971 — now under the Federal Courts Act, R.S.C. 1985, c. F-7), and the Tax Court of Canada (established in 1983 under the Tax Court of Canada Act, R.S.C. 1985, c. T-2).

– The right of appeal for decisions by quasi-judicial, administrative tribunals (and agencies, boards and commissions) is defined (usually fairly broadly) in the acts set out above.
References:
– No information on the website of the Federal Court of Appeal with regard to length of waiting time for appeals — http://www.fca-caf.gc.ca

– According to the Office of the Registrar of the Supreme Court of Canada (SCC) Over 90% of leave applications are processed within six months of filing.” — http://www.tbs-sct.gc.ca/dpr-rmr/0506/SC-CS/sc-cs02_e.asp

– According to the Canadian Human Rights Commission, in 2006 “Compared to 2002, the average age of complaints has dropped from 25 months to 9.5 months, only 5 percent of complaints are over two years old compared to 27 percent, and the number of cases presented to Commissioners for decision rose by 77 percent.” — http://www.chrc-ccdp.ca/whats_new/default-en.asp?id=409&content_type=2

– According to the Immigration Appeal Division “Increased productivity allowed the IAD to finalize approximately 30 percent more appeals in 2003-04 and 2004-05 than was the case in 2002-03. However, despite maintaining this high finalization rate for the first three quarters of 2005-06, the total number of appeals filed has continued to exceed the number of appeals finalized. The result is that in each of the past three years, IAD finalizations have failed to keep pace with the number of appeals filed. This has resulted in a large and growing pending inventory, which by March 2006 reached 9,000 cases. The situation is particularly serious when one considers the fact that the pending inventory is continuing to grow despite the IAD’s significant productivity gains and a smaller than anticipated increase in appeals filed in 2005. This underscores the fact that the IAD’s pending inventory is not a problem that will resolve itself. Rather, only a concerted and unified effort by the IRB will enable it to make the fundamental changes necessary to address the challenges before it. Both the pending inventory and the growing number of appeals filed have contributed to an increase in the IAD’s average case processing time. A peak of 10.7 months was reached in August 2005, which is significantly higher than the six- to eight-month range that characterized all regions from 1999 to early 2004.” — http://www.irb-cisr.gc.ca/en/about/tribunals/iad/innovation/plan_e.htm

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

References:
– Papers presented to the Canadian Forum on Civil Justice 2006 national conference


– “Self-Representation Creating Chaos in Courts: Chief Justice”
100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

100

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:
– An Internet search resulted in no public evidence of exceptional cases where legal codes were ignored or political interference, bribery, cronyism or other flaws affected judgments in the criminal system between June 2006 and June 2007.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

75

76. In practice, are judicial decisions enforced by the state?
References:
See details in Democracy Watch’s 2005 news release about its court challenge of the Registrar at: [http://www.dwatch.ca/camp/RelsSep2905.html](http://www.dwatch.ca/camp/RelsSep2905.html)
and Democracy Watch’s 2007 news release about its second court challenge of the Registrar at: [http://www.dwatch.ca/camp/RelsJan2507.html](http://www.dwatch.ca/camp/RelsJan2507.html)

Briefly, the Registrar of Lobbyists (whose legal counsel is a lawyer from the federal Department of Justice) has delayed complying with a July 2004 Federal Court ruling for more than two years because it involves investigating and ruling on complaints about relationships alleged to be unethical between Cabinet ministers and lobbyists.

| 100: | Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state. |
| 75: | |
| 50: | Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement. |
| 25: | |
| 0: | Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions. |

77. Is the judiciary able to act independently?

69

77a. In law, the independence of the judiciary is guaranteed.

References:
– Under The Constitution Act, 1867 (subsection 99(1) — [http://lois.justice.gc.ca/en/Const/index.html](http://lois.justice.gc.ca/en/Const/index.html) the Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons” or (under subsection 99(2)) upon reaching the age of 75 years.

– The Parliament of Canada has the power under The Constitution Act, 1867 (section 101 — [http://lois.justice.gc.ca/en/Const/index.html](http://lois.justice.gc.ca/en/Const/index.html) to “provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada” and used this power to establish the Supreme Court of Canada (first established in 1875 by an Act of Parliament — now under the Supreme Court Act, R.S.C. 1985, c. S-26), the Federal Court of Canada and the Federal Court of Appeal (first established as the Exchequer Court of Canada in 1871, then expanded in jurisdiction to become the Federal Court of Canada in 1971 — now under the Federal Courts Act, R.S.C. 1985, c. F-7), and the Tax Court of Canada (established in 1983 under the Tax Court of Canada Act, R.S.C. 1985, c. T-2)

– The independence of the judiciary of the courts established in the acts set out above (in terms of appointment until retirement, removal only if good behaviour standard not fulfilled, and the judiciary having responsibility for the administration of the courts) is
set out in the acts mentioned above.

**YES:** A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

**NO:** A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

|   | 100 | 75 | 50 | 25 | 0 |

References:
– Under The Constitution Act, 1867 (subsection 99(1) — [http://lois.justice.gc.ca/en/Const/index.html](http://lois.justice.gc.ca/en/Const/index.html) the Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons” or (under subsection 99(2)) upon reaching the age of 75 years.

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– The independence of the judiciary of the courts established in the acts set out above (in terms of appointment until retirement, removal only if good behaviour standard not fulfilled, and the judiciary having responsibility for the administration of the courts) is set out in the acts mentioned above.


– An Internet search resulted in no public evidence of direct interference by politicians in the federal courts, but did result in media articles concerning changes to the appointment process for Supreme Court of Canada justices in which justices publicly criticized the federal government’s proposed changes:


100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion,
77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:
- In law in Canada, judicial independence includes control over assigning judges so the chief justice of each court decides how to administer each court, and as a result there is no guarantee of an objective system that equitably or randomly assigns cases to judges, nor is the system transparent to the public.

The chief justices of the Federal Court of Appeal and the Federal Court have rank and precedence over the other judges (including assignment of cases to judges (with some exceptions set out in sections 15 and 16)), and under sections 14 of the Federal Courts Act they may delegate to an employee of their courts the role of judicial administrator who shall, among other things, arrange for the distribution of judicial business in the court.”

- See for background in judicial independence in Canada the discussion in Chapter 10 of the first report of the Ontario Civil Justice Review from the mid-1990s at: [http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjr/firstreport/responsible.asp](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjr/firstreport/responsible.asp)

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:
- Under The Constitution Act, 1867 (subsection 99(1) — [http://lois.justice.gc.ca/en/Const/index.html](http://lois.justice.gc.ca/en/Const/index.html) the Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons” or (under subsection 99(2)) upon reaching the age of 75 years.

- The Parliament of Canada has the power under The Constitution Act, 1867 (section 101 — [http://lois.justice.gc.ca/en/Const/index.html](http://lois.justice.gc.ca/en/Const/index.html) ) to “provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada” and used this power to establish the Supreme Court of Canada (first established in 1875 by an Act of Parliament — now under the Supreme Court Act, R.S.C. 1985, c. S-26), the Federal Court of Canada and the Federal Court of Appeal (first established as the Exchequer Court of Canada in 1871, then expanded in jurisdiction to become the Federal Court of Canada in 1971 — now under the Federal Courts Act, R.S.C. 1985, c. F-7), and the Tax Court of Canada (established in 1983 under the Tax Court of Canada Act, R.S.C. 1985, c. T-2)

- The independence of the judiciary of the courts established in the acts set out above (in terms of appointment until retirement, removal only if good behaviour standard not fulfilled, and the judiciary having responsibility for the administration of the courts) is set out in the acts mentioned above.
YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:
– Internet search and media monitoring produced no documented cases of judges being assaulted because of their involvement in a corruption case between June 2006 and June 2007.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:
– Internet search and media monitoring produced no documented cases of judges being killed because of their involvement in a corruption case between June 2006 and June 2007.
79. Do citizens have equal access to the justice system?

68

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100  |  75  |  50  |  25  |  0

Comments:
- The score of 75 is given because of documented problems with systemic racism in the Canadian justice system, problems which have not been fully resolved.

References:
- According to The Women’s Legal Education and Action Fund, findings of judicial bias on the basis of race are extremely rare in Canada — http://www.leaf.ca/legal-cases.html#test
- At the same time, there are overall issues and patterns concerning bias against aboriginals in the Canadian judicial system. See The Justice System in Canada: Does it Work for Aboriginal People? by Justice Harry S. Laforme, Indigenous Law Journal, Fall 2005, Vol. 4, No. 1 — http://www.indigenouslawjournal.org/?q=node/62

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100  |  75  |  50  |  25  |  0

References:
- An extensive Internet search produced no examples of specific biases or barriers that prevent women from having access to
the Canadian judicial system.

– For information concerning systemic socio-economic disadvantages that do affect women’s access to justice in Canada, see the following statement from the National Association of Women and the Law at: [http://www.nawl.ca/ns/en/Actions/dcldec102006.html](http://www.nawl.ca/ns/en/Actions/dcldec102006.html)

<table>
<thead>
<tr>
<th>100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.</th>
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<tr>
<td>75:</td>
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<tr>
<td>50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.</td>
</tr>
<tr>
<td>25:</td>
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<tr>
<td>0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.</td>
</tr>
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79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

**YES** | **NO**

References:
– Sections 7 and 10 of the Constitution Act, 1982, Part I: Canadian Charter of Rights and Freedoms

| YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges. |
| NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges. |

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

| 100 | 75 | 50 | 25 | 0 |

References:
– Canadian provincial governments (not the federal government) provide funding for legal aid to varying degrees through both community clinics with staff lawyers and issuing certificates for hiring and paying a lawyer. For example, Legal Aid Ontario’s Web
Site states that legal aid may be provided to a defendant in a criminal case if an offence would likely result in jail time

— According to the Canadian Criminal Lawyers Association, the 2007 Ontario provincial government budget “With today’s additional funding for Legal Aid Ontario, the government has ensured that more low income Ontarians will have proper representation in our legal system, said Louise Botham, President of the Criminal Lawyers Association.”

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:
— Papers presented to the Canadian Forum on Civil Justice 2006 national conference


— “Self-Representation Creating Chaos in Courts: Chief Justice”

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.
100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.
### VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

<table>
<thead>
<tr>
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<th>100</th>
<th>75</th>
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<td>80a.</td>
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</table>

In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

**Comments:**
- The score of 75 is given because the current commissioner of the RCMP (appointed in spring 2007) does not have experience as a law enforcement officer, and as a result his appointment is controversial.
  - “Mounties’ Policy Poobah: New Boss’ Role Has Mostly Been in Backrooms” by Canadian Press, Ottawa Sun, July 7, 2007, p. 21

**References:**
- The head of the federal police force, the Royal Canadian Mounted Police (RCMP), is appointed by the federal Cabinet (known as the Governor in Council) and is not required under subsection 5(1) of the Royal Canadian Mounted Police Act (R.S., 1985, c. R-10) [http://lois.justice.gc.ca/en/showtdm/cs/R-10](http://lois.justice.gc.ca/en/showtdm/cs/R-10) — to have experience as a law enforcement officer. However, the person must be sworn in as an officer before accepting the appointment.

  - Under subsection 3(1) and 4 of the Director of Public Prosecutions Act (2006, c. 9, s. 121 — first in force in December 2006), the Governor-in-Council (ie. federal Cabinet) appoints director of Public Prosecutions who has the power to initiate prosecutions in “the general and public interest” (ie. when the elected attorney general may be reluctant to prosecute because of political considerations); the director of Public Prosecutions “must be a member of at least 10 years standing at the bar of any province” (ie. a lawyer (the “bar” is the lawyers’ association (known as a “Law Society”) in each Canadian province, as must be any deputy directors appointed under section 6 of the Act — [http://lois.justice.gc.ca/en/showtdm/cs/D-2.5](http://lois.justice.gc.ca/en/showtdm/cs/D-2.5))

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.
80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100  |  75  |  50  |  25  |  0

References:
– RCMP Can’t Probe All Organized Crime Cases, Chief Says: Limited Resources Hurt Investigations”
  by Jeff Sallot,
  Globe and Mail, May 9, 2006, p. A5

The article quotes Royal Canadian Mounted Police (RCMP – Canada’s federal police force) Commissioner Giuliano Zaccardelli
stating that “our best guess is we can tackle one-third or what's out there [in terms of organized crime]” and that “We know there
are groups we can't go after.”

– "The RCMP's IMET [Integrated Market Enforcement Team] Has Little To Show for Itself"
  by Globe and Mail editorial board, May, 22, 2006, p. A10

re: federal securities fraud law enforcement agency

– “And Justice for Some: RCMP Market Enforcement Team”
  by John Gray,

– “Review Planned for Crime Agency”
  Globe and Mail, March 20, 2007

The article notes that IMET budget increased from $30 (US$30.4 million) million in the 2006-2007 fiscal year to $40 million
(US$40.5 million) for 2007-2008.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency’s ability to fulfill its
mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100  |  75  |  50  |  25  |  0

References:
– An Internet search produced no public evidence of political interference in the Royal Canadian Mounted Police (RCMP – the
Canadian federal police force).

– The head of the federal police force, the Royal Canadian Mounted Police (RCMP), is appointed by the federal Cabinet (known as the Governor in Council) and is not required under subsection 5(1) of the Royal Canadian Mounted Police Act (R.S., 1985, c. R-10) — http://lois.justice.gc.ca/en/showtdm/cs/R-10 — to have experience as a law enforcement officer. However, the person must be sworn in as an officer before accepting the appointment.

– Under subsection 3(1) and 4 of the Director of Public Prosecutions Act (2006, c. 9, s. 121 – first in force in December 2006), the Governor-in-Council (ie. federal Cabinet) appoints the director of Public Prosecutions, who has the power to initiate prosecutions in “the general and public interest” (ie. when the elected attorney general may be reluctant to prosecute because of political considerations) to (under section 5) a fixed term of seven years. He/she and can only be removed “for cause with the support of a resolution of the House of Commons to that effect. The director is not eligible to be reappointed for a further term of office”; however, the elected attorney general of Canada can, under section 15, assume responsibility for a prosecution from the director of Public Prosecutions, and so the director is not protected in law from political interference. As the position is newly created, what will happen in practice remains to be seen. http://lois.justice.gc.ca/en/showtdm/cs/D-2.5

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

58

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:
– In a speech on June 24, 2007, Paul E. Kennedy, the chair of the Commission, set out several flaws and loopholes in the Commission’s powers and effectiveness and proposals for correcting and closing them — http://www.cpc-cpp.gc.ca/DefaultSite/Whatsnew/index_e.aspx?ArticleID=1421

Another speech by Mr. Kennedy, on May 9, 2007 summarized the situation in a similar way — http://www.cpc-cpp.gc.ca/DefaultSite/Whatsnew/index_e.aspx?ArticleID=1387

– RCMP Often Rewrote Critical Rulings: Report — Refusal of Commissioners To Accept Reviews ‘Strikes at Core of Civilian Accountability’
by Tim Naumetz,
Ottawa Citizen, July 20, 2007, p. A3

by Kathryn May, Ottawa Citizen, Sept. 8, 2007, p. A4
References:

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

| 100 | 75 | 50 | 25 | 0 |

References:

– According to the 2006-2007 fiscal year annual report of the Commission The chronic backlog of review cases has been cleared for the first time in more than 15 years. In addition, the Commission met its commitment to complete 80 percent of final and interim review reports in less than 120 days. In fact, the average time for completing new review cases was reduced to just 91 days from the previous five-year average of 527 days.” — http://www.cpc-cpp.gc.ca/DefaultSite/Whatsnew/index_e.aspx?ArticleID=1445

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.
References:

– If an officer of the Royal Canadian Mounted Police (RCMP – Canada’s federal police force) is involved in a violation of the Criminal Code (R.S., 1985, c. C-46 — http://lois.justice.gc.ca/en/showtdm/cs/C-46) provisions concerning corruption (section 128 especially, and also sections 119 to 122, and 124 to 128), it is required that another police force (municipal or provincial) investigate the RCMP officer.

– Under subsection 3(1) and 4 of the Director of Public Prosecutions Act (2006, c. 9, s. 121 – first in force in December 2006), the Governor-in-Council (ie. federal Cabinet) appoints director of Public Prosecutions who has the power to initiate prosecutions in the general and public interest” (ie. when the elected attorney general may be reluctant to prosecute because of political considerations); the director of Public Prosecutions “must be a member of at least 10 years standing at the bar of any province” (ie. a lawyer (the “bar” is the lawyers’ association (known as a “Law Society”) in each Canadian province, as must be any deputy directors appointed under section 6 of the Act — http://lois.justice.gc.ca/en/showtdm/cs/D-2.5

– While there is no specific anti-corruption agency for the Royal Canadian Mounted Police (RCMP – Canada’s federal police force), as with almost all federal government institutions, the RCMP is covered by the following government “watchdog” agencies which help ensure corruption does not occur:
  – Conflict of Interest and Ethics Commissioner — http://www.parl.gc.ca/ciec-ccie — who enforces the Conflict of Interest Act
  – Privacy Commissioner — who investigates complaints about the abuse or disclosure of personal information collected by federal government institutions under the Privacy Act (R.S., 1985, c. P-21) — http://lois.justice.gc.ca/en/showtdm/cs/P-21
  – The RCMP also has an internal audit process, as do almost all federal government institutions, and an internal discipline process (under Part IV of the Royal Canadian Mounted Police Act (R.S., 1985, c. R-10) — http://lois.justice.gc.ca/en/showtdm/cs/R-10) and a Public Complaints Commission under Parts VI and VII of the RCMP Act, and an External Review Committee under Part II of the RCMP Act
  – However, during 2006-2007, it was revealed that more than $3 million (US$3.03 million) in funds had been removed from the RCMP’s pension and internal insurance funds, and that internal whistleblowers had been demoted or transferred by Commissioner Guiliano Zaccardelli (who resigned over this scandal and other scandals involving law enforcement). As the sources set out below make clear, the situation raised serious questions about the effectiveness of internal RCMP accountability processes, and caused many (including new Commissioner William Elliott) to propose a comprehensive inquiry into the RCMP and new institutional checks and accountability measures and institutions to ensure that the commissioner of the RCMP, and other senior officers, are not involved in corrupt activities:


  “Reticence and the RCMP” by Globe and Mail editorial board, July 19, 2006, p. A12

  “The RCMP’s ‘Culture of Secrecy’: Media Get the Silent Treatment on Killings of Six Mounties” by Katherine Harding and Dawn Walton, Globe and Mail, July 29, 2006, p. F2
YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.
81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

References:
– While there is no specific anti-corruption agency for the Royal Canadian Mounted Police (RCMP – Canada’s federal police force), as with almost all federal government institutions, the RCMP is covered by the following government watchdog agencies which help ensure corruption does not occur:
  – Conflict of Interest and Ethics Commissioner — http://www.parl.gc.ca/ciec-ccie — who enforces the Conflict of Interest Act
  – Privacy Commissioner — who investigates complaints about the abuse or disclosure of personal information collected by federal government institutions under the Privacy Act (R.S., 1985, c. P-21) — http://lois.justice.gc.ca/en/showtdm/cs/P-21
  – The RCMP also has an internal audit process, as do almost all federal government institutions, and an internal discipline process (under Part IV of the Royal Canadian Mounted Police Act (R.S., 1985, c. R-10) — http://lois.justice.gc.ca/en/showtdm/cs/R-10 ) and a Public Complaints Commission under Parts VI and VII of the RCMP Act, and an External Review Committee under Part II of the RCMP Act

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  – “The RCMP’s ‘Culture of Secrecy’: Media Get the Silent Treatment on Killings of Six Mounties” by Katherine Harding and Dawn Walton, Globe and Mail, July 29, 2006, p. F2
“Our Lost Horseman”
by Lawrence Martin,

“MPs Fear Cover-Up over RCMP Pension Fund: Attorney-General Report Says $3.1 Million Was Diverted to Other Mountie Accounts”
by Jeff Sallot,

“Tales of Corruption Rock RCMP”
by Kathryn May,
Ottawa Citizen, March 29, 2007, p. A1

“Inquiry Needed into RCMP”
by Toronto Sun editorial board,
Toronto Sun, April 19, 2007, p. 18

“A Lament for the RCMP”
by Globe and Mail editorial board,
May 16, 2007, p. A20

by Duncan Fulton,
Marketwire, June 15, 2007
http://www.marketwire.com/mw/release.do?id=742833

“RCMP ‘Horribly Broken’: Former Commissioner Zaccardelli Was ‘Autocratic’ Leader Who Punished Whistle-Blowers’ Investigator Concludes”
by Campbell Clark and Daniel Leblanc,

“RCMP ‘Institutionally Sick’: Expert – Co-Author of Study into Force Found ‘Betrayal of Trust’ between Managers, Frontline Workers”
by Kathryn May,
Ottawa Citizen, June 15, 2007, p. A1

“How to Restore a Broken RCMP”
by Globe and Mail editorial board,
June 16, 2007, p. A20

Democracy Watch’s news release
June 19, 2007
http://www.dwatch.ca/camp/RelsJun1907.html

“RCMP Nab Alleged Mole: Longtime Mountie Employee Charged with Selling Police Secrets to Montreal Mobsters”
by Michel Auger,
Ottawa Sun, Aug. 4, 2007, p. 5

by Kathryn May,
Ottawa Citizen, Sept. 8, 2007, p. A4

“RCMP’s ‘Paramilitary’ Governance Model Needs Fixing”
by Peter Kasurak,
Hill Times, Sept. 10, 2007, p. 32

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:
0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:
– All officers of the Royal Canadian Mounted Police (RCMP – Canada’s federal police force) are required to comply with the Criminal Code (R.S., 1985, c. C-46 — http://lois.justice.gc.ca/en/showtdm/cs/C-46 ) provisions concerning corruption (in Part IV, section 128 especially, and also sections 119 to 122, and 124 to 127)

– However, under sections 25 to 33 of Part I of the Criminal Code, RCMP and all other peace officers* are immune from prosecution when they are enforcing the law (with some limits).

– Under subsection 3(1) and 4 of the Director of Public Prosecutions Act (2006, c. 9, s. 121 – first in force in December 2006), the Governor-in-Council (ie. federal Cabinet) appoints the director of Public Prosecutions who has the power to initiate prosecutions in “the general and public interest” (ie. when the elected attorney general may be reluctant to prosecute because of political considerations); the director of Public Prosecutions “must be a member of at least 10 years standing at the bar of any province” (ie. a lawyer (the “bar” is the lawyers’ association (known as a “Law Society”) in each Canadian province, as must be any deputy directors appointed under section 6 of the Act — http://lois.justice.gc.ca/en/showtdm/cs/D-2.5)

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

References:
– All officers of the Royal Canadian Mounted Police (RCMP – Canada’s federal police force) are required to comply with the Criminal Code (R.S., 1985, c. C-46 — http://lois.justice.gc.ca/en/showtdm/cs/C-46 ) provisions concerning corruption (in Part IV, section 128 especially, and also sections 119 to 122, and 124 to 127)

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Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.